

**THE NATIONAL ACADEMY
OF ARBITRATORS:**

**FIFTY YEARS
IN THE WORLD
OF WORK**



**BY GLADYS W. GRUENBERG, JOYCE M. NAJITA, AND DENNIS R. NOLAN
FOR THE NAA COMMITTEE ON ACADEMY HISTORY**

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THE BUREAU OF NATIONAL AFFAIRS, INC., WASHINGTON, D.C.

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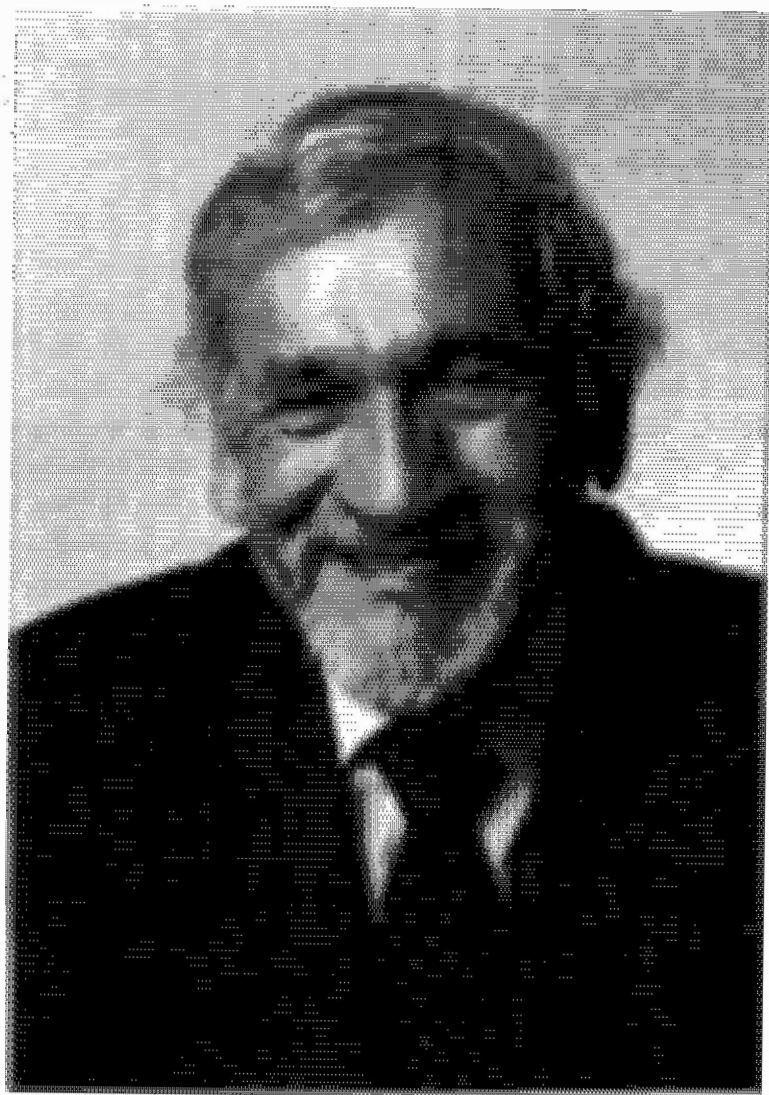


DEDICATION

This history of the National Academy of Arbitrators is dedicated to the 49 presidents who served the Academy from 1947 to 1997 and who have given so generously of their time and effort to ensure the Academy's growth and recognition as a leader in the arbitration profession.

Academy Presidents

Ralph T. Seward, 1947-49	David P. Miller, 1974
William E. Simkin, 1950	Rolf Valtin, 1975
David L. Cole, 1951	H.D. Woods, 1976
David A. Wolff, 1952	Arthur Stark, 1977
Edgar L. Warren, 1953	Richard Mittenthal, 1978
Saul Wallen, 1954	Clare B. McDermott, 1979
Aaron Horvitz, 1955	Eva Robins, 1980
John Day Larkin, 1956	Edgar A. Jones, Jr., 1981
Paul N. Guthrie, 1957	Byron R. Abernethy, 1982
Harry H. Platt, 1958	Mark L. Kahn, 1983
G. Allan Dash, Jr., 1959	John E. Dunsford, 1984
Leo C. Brown, S.J., 1960	William J. Fallon, 1985
Gabriel N. Alexander, 1961	William P. Murphy, 1986
Benjamin Aaron, 1962	Arvid Anderson, 1987
Sylvester Garrett, 1963	Thomas T. Roberts, 1988
Peter M. Kelliher, 1964	Alfred C. Dybeck, 1989
Russell A. Smith, 1965	Howard S. Block, 1990
Robben W. Fleming, 1966	Anthony V. Sinicropi, 1991
Bert L. Luskin, 1967	David E. Feller, 1992
Charles C. Killingsworth, 1968	Dallas L. Jones, 1993
James C. Hill, 1969	Arnold M. Zack, 1994
Jean T. McKelvey, 1970	J.F.W. Weatherill, 1995
Lewis M. Gill, 1971	George Nicolau, 1996
Gerald A. Barrett, 1972	Milton Rubin, 1997
Eli Rock, 1973	



George Nicolau
Academy President, 1996-1997

FOREWORD

As you read this history of the Academy, which the authors have so skillfully chronicled, themes recur: How do we govern ourselves? Who qualifies for membership? What do we do about the changing demographics of our profession? How do we ensure the highest standards of integrity for which we were established? How do we adapt to the emerging realities of dispute resolution?

Over the years, the Academy has struggled with these issues and its members have often arrived at different, sometimes contradictory conclusions, as, I suspect, would any organization of this nature. Yet, it has adapted and, in its own way, has come up, after a time, with the right answers.

What stands out in this narrative is that from the beginning those involved in the affairs of the Academy have never lost sight of and have always moved closer to the goal: the unceasing promotion of professionalism and the constant protection of the arbitration process. Yet, as any observant student of the National Academy of Arbitrators must know, the Academy at 50, like any other vibrant institution, is still a work in progress.

April 1997

George Nicolau
President (1996–1997)

PREFACE

Since its founding in 1947, the National Academy of Arbitrators has grown enormously in size and importance. From a small corps of charter members, the organization has expanded steadily to its current size of nearly 700 members. Beginning with limited financial resources, it now boasts a permanent administrative office, organizes large annual meetings, and publishes conference proceedings and other works. Once primarily concerned with camaraderie among a small group of people who had worked together during World War II, today it offers continuing education for the entire arbitration community.

This book traces the Academy's role as a primary force in shaping American labor arbitration. It views the Academy amid the labor relations environment. In particular, it links the Academy's growth with the development of the broader arbitration profession and with changes in America's collective bargaining relationships. This volume provides those interested in labor arbitration with insight into the evolution of the process and the profession. It records and preserves the organization's history for the benefit of present and future members.

After briefly describing the early roots of labor arbitration in America (Chapter 1), the book follows the Academy's progress from its founding in 1947 and early organization in the 1950s (Chapter 2) through the stages of its development as a professional organization:

Stage 1: Adoption of membership rules and procedures and creation of an administrative structure in the 1960s (Chapter 3).

Stage 2: Expansion of the Academy's role in maintaining ethical standards in the face of a growing membership in the 1970s (Chapter 4).

Stage 3: Establishment of an executive office, a research and education foundation, and a continuing education program in the 1980s (Chapter 5).

Chapter 6 examines the challenges facing the Academy and the labor arbitration profession in the years ahead. Finally, the Appendices include the Academy's governing documents and a bibliography of the Academy's *Proceedings*.

This project has a long heritage. In 1974, the Board of Governors authorized Vice President Richard Mittenthal to investigate the feasibility of recording senior members' recollections about the Academy's founding and early years. At the Board meeting on January 18, 1975, Mittenthal proposed a committee to prepare the interview questions and to conduct the interviews. The Board authorized the necessary funding, and President Rolf Valtin announced the oral history project to the membership on June 6, 1975. The project formally began when President Arthur Stark appointed Mittenthal chair of a new oral history subcommittee of the Research and Education Committee. In 1978, when Mittenthal became president of the Academy, the Board of Governors established a separate Oral History Committee, chaired by Francis Quinn. Over the next four years, committee members taped interviews with many of the Academy's most distinguished members. In 1982, the Academy published a selection of these interviews in book form under the title *Oral History Project: The Early Days of Labor Arbitration as recalled by G. Allan Dash, Jr., Sylvester Garrett, John Day Larkin, Harry H. Platt, Ralph T. Seward, and William E. Simkin*, edited by James Stern.

The Oral History Committee's work alerted the Academy to the importance of its own history and to the risk that much of that history could disappear with its founding members. Therefore, in 1984, President John Dunsford created the Committee on Academy History, with Stern as its first chair. Dunsford charged the committee with preserving the Academy's archives. In 1987, on the Academy's 40th anniversary, the committee expanded the oral history project to include all living past presidents as well as some other officers and committee chairs. By 1993, the committee had interviewed the past presidents. Academy employees, under the supervision of Administrative Assistant Kate Reif, transcribed the interviews for easier use. Additionally, the Academy History Committee produced two videotapes, one featuring its founders, the other describing events leading up to the adoption of the revised Code of Professional Responsibility.

In 1988, President Arvid Anderson encouraged the committee, under the leadership of Gladys Gruenberg, to begin a comprehensive history of the Academy. Finally, in 1992 the Academy History Committee requested funds from the Academy and the NAA Research and Education Foundation to complete the project.

Sources for this history include the Academy's archives in the Labor-Management Documentation Center of Cornell Universi-

ty's Catherwood Library, taped interviews with many of the Academy's founders and officers, discussions with members of the labor arbitration community, and the many books and articles on American labor relations and labor arbitration. Most of the illustrations originally appeared in *The Chronicle*, the *Proceedings*, or the videotapes. Gladys Gershenfeld supplied the Philadelphia Annual Meeting pictures, and Mark Kahn (who was unofficial Academy photographer for many years) was responsible for the 25th anniversary photos, among others.

Many Academy members contributed to this project, from casual suggestions to detailed critiques of our drafts. We thank them all for their insight and information about the Academy's progress, especially Benjamin Aaron, Byron Abernethy, Howard Block, John Dunsford, Alex Elson, David Feller, Clara Friedman, Richard Mittenenthal, George Nicolau, Eva Robins, Arthur Stark, James Stern, and Arnold Zack for their extensive comments on our early drafts. Their comments helped us avoid some errors and confusion. We also thank James Oldham for his work as a liaison with the Board of Governors and the publisher. Finally, we thank Timothy J. O'Rourke, of the University of South Carolina School of Law, Class of 1995, for his diligent editorial assistance. We also acknowledge the financial backing of the Academy and its Research and Education Foundation, and the institutional support of our respective universities—Saint Louis University School of Business and Administration, the University of Hawaii Industrial Relations Center, and the University of South Carolina School of Law.

Gladys W. Gruenberg, Joyce M. Najita,
and Dennis R. Nolan for the
Committee on Academy History

April 1997

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THE ARBITRATOR IN SONG AND POETRY

Arbitrator's Blues

*This case is so important
Let's get started right away.
I don't want a filibuster.
I won't stand for any delay.
Cut the bull and tell your story
Expediently.
I've got to catch a plane
At a quarter to three.*

CHORUS:

*I've got the blues; I've got the blues;
I've got the Arbitrator's Blues.
Some cases are so boring,
They drive you up the wall.
Some of them so technical,
I don't understand them at all.
But I always seem to listen,
Writing notes down all the while,
But the truth is that I'm figuring
My frequent flyer miles.*

CHORUS

*I run out to the mail box
Every morning and afternoon.
I'm hoping for a case.
I really need one soon.
The last case I had they said the check
Would reach me without fail.
I must be spending half my life
Just waiting for the mail.*

CHORUS

*I've had my share of bad luck
But last week was full of pain.
They canceled out my hearing,
Just before I caught my plane.
I had 4 cases with Eastern Airlines,
Now they're in Chapter Eleven.
I guess I'll get my check
When I'm in Arbitrator's Heaven.*

CHORUS

*I wouldn't let my kid grow up
To be an arbitrator.
ADR is moving in -
It's the age of the mediator.
You can see that times are rough
When you look into our faces.
There are more arbitrators
Than arbitration cases.*

CHORUS

*(Performed by Joe Glazer at the annual meeting
in Washington, D.C., May 30, 1991. Reprinted
with permission.)*

Joe Glazer

Sir Pila Salit

(Or Lines by an Arbitrator Who, as He
Signs His Name to an Award Finds
Himself Murmuring "Ave Caesar, Morituri te Salutant")

The arbitrator smites his furrowed brow,
And tears out clumps of all too little hair.
He seeks the where, the what, the who and how,
In order to do justice; and be fair.

When faced with spectre of impending doom
A lambent ray of light shoots through the murk;
As incandescence brightly lights the room
He seizes pen and rushes to his work.

He quite forgets, his confidence at crest,
Inevitably, someone has to lose.
The winner's bliss will never be expressed;
The loser shouts indignantly, "J'accuse"!

Peter Seitz
(1974)

Sonnet Concerning an Arbitrator in Search of a Listener

The Arbitrator's life is lone and dour!
He agonizes: who is wrong, who's right?
He finds some answers, but he's never sure,
And foolishly he seeks a plebiscite.
He searches out his colleagues in their lairs
As Greeks the Delphic Oracle besought;
Harangues them with his doubts and with his prayers,
And why he's so irresolute, distraught.
He then relates in infinite detail
The boring facts, the applicable phrase—
Nor does he note his auditor's travail,
His most unrap and inattentive gaze,
His restless waiting 'til he can intone
The boring facts in cases of his own.

Peter Seitz
(1962)

CHAPTER 1

A BRIEF HISTORY OF LABOR ARBITRATION IN AMERICA

The Concept of Labor Arbitration

Arbitration, according to *Roberts' Dictionary of Industrial Relations*, is a "procedure whereby parties agree to submit a dispute to a third party known as an arbitrator for a final and binding decision."¹ Usually this involves mutual selection of the third party by the parties themselves. In the field of industrial relations, arbitration has taken two forms. The first is "interest" arbitration, meaning the use of a third party to resolve an impasse over new contract terms. The second is "grievance" or "rights" arbitration, meaning the use of a third party to resolve disputes over the interpretation or application of an existing collective bargaining agreement. Both forms resemble, but are less formal than, legal proceedings in court or before an administrative agency.

The concept of labor arbitration has not always been so clear. In the 19th century, and even well into the 20th, parties and some commentators used "arbitration" indiscriminately to mean almost any form of dispute resolution other than economic force. Early unions would sometimes ask for arbitration when what they really sought was simply to negotiate with an employer. For example, the 1829 Constitution of the Journeymen Cabinet-Makers of Philadelphia referred to appointment of a member to "arbitrate" differences between an employer and another member.² The obvious intention was to use the appointed member as a representative of the affected employee—as a shop steward, to use the modern term—rather than as a true arbitrator. Later, unions would ask for arbitration when what they wanted was mediation, that is, the assistance of a third party to help labor and management communicate. Only since the 1930s has the labor relations commu-

¹ Roberts, *Roberts' Dictionary of Industrial Relations*, 4th ed. (BNA Books 1994), at 47.

² Commons, *History of Labour in the United States* (Macmillan 1918), I, 336-37.

nity reserved the term "arbitration" for dispute resolution by a neutral.

Even when the differences among arbitration, mediation, and negotiation were clear, the distinction between interest arbitration and grievance arbitration remained hazy. Parties expected answers to the questions posed and were not too fussy about how the arbitrators did that. Of course, the limited scope of early collective agreements—often nothing more than a bare listing of wage rates—gave arbitrators little to interpret. Not until collective agreements became more formal and more detailed in the 1930s and 1940s did the notion of limiting a grievance arbitrator to interpreting the parties' own agreement become universal.

The Development of Labor Arbitration in America

The Labor Relations Environment

Among the principal sources of labor in colonial America were indentured servants and slaves. Free workers mainly were farmers and skilled craftsmen such as carpenters, masons, shipwrights, tanners, shoemakers, tailors, smiths, and printers. Not until early in the 19th century, with the transformation in economic society brought about by the rise of the merchant capitalists, did real labor organizations emerge.

The master craftsmen with their journeymen and apprentices of the colonial period worked on common projects or joint enterprises. The interests of the journeymen and apprentices were practically identical. Labor protests or strikes during this period were generally over withheld wages, wage reductions, or low rates of pay. These ad hoc strikes enabled workers to press their demands to protect their interests; however, no real labor unions were involved. Existing societies included both masters and journeymen and were formed for philanthropic purposes and not to promote economic goals. These mutual aid societies, for example, provided sickness and death benefits for their members.

Oppressive conditions led to frequent desertions and occasional strikes. Although conditions in the New World afforded greater social and economic rights than had prevailed in the Old World, workers did not enjoy complete political liberty.³ The demands of laborers, artisans, small shopkeepers, and farmers

³Dulles, *Labor in America* (Crowell 1966), 1–20.

made up an important part of the revolutionary spirit. "Indeed, mechanics, artisans, and small tradespeople voiced the more radical demands in support of colonial liberties and kept up the agitation when the merchants and planters were willing to compromise."⁴

Beginning in the 19th century, skilled artisans in various trades followed the early example of printers and shoemakers by forming societies to guard their interests against "the artifices or intrigues" of employers and to secure adequate reward for their labor. Thus, while the societies retained their mutual aid purposes, major attention began to shift to economic action.⁵ In the early 1800s employer opposition⁶ caused worker organizations to begin independent political activity on a citywide and national basis.⁷ National organization was interrupted by the 1837 depression and the consequent unemployment. The cyclical pattern was forming: in periods of prosperity, labor unions gained bargaining power due to the increased demand for workers, and they lost ground when depression and scarce jobs made organization difficult.⁸

Workers next turned to producer and consumer cooperatives, stimulated by the work of the French socialist, Charles Fourier, the English reformer, Robert Owen, and other intellectuals of the period. Economic revival in the late 1840s brought increased demand for labor, and trade unions became active once more. By 1850, the workday had been shortened to 10 hours for most skilled artisans in the large cities, and daily wages for common labor ranged from \$1.00 to \$1.25.

For the American labor movement, the 15 years following the Civil War (1861–1865) were important in several ways.

⁴Filippelli, *Labor in the USA: A History* (Knopf 1984), at 12. The Boston massacre grew directly out of a dispute between colonial workers and British troops. A Boston employer precipitated the incident when he fired a ropemaker for objecting to the hiring of an off-duty British soldier instead of a colonial worker.

⁵The "first continuous organization" of wage earners in the United States (considered the original trade union) was the Federal Society of Journeymen Cordwainers, established in Philadelphia in 1794. This union of journeymen shoemakers conducted a strike in 1799. Dulles, *supra* note 3, at 23–25.

⁶Employers organized to resist wage demands and attempted to curb union growth. They hired nonunion workers and carried on a legal battle by prosecuting unions as criminal conspiracies.

⁷U.S. Bureau of Labor Statistics, *Brief History of the American Labor Movement* (U.S. Dep't of Labor, Bull. No. 1000, 1976), at 3 (hereinafter cited as Bull. 1000). The National Trades Union, an association of local societies in New York, Brooklyn, Boston, Philadelphia, Poughkeepsie, and Newark, was formed in 1834.

⁸Dulles, *supra* note 3, at 31–32.

During two cycles of economic recession and revival, 14 new national unions were formed. Union membership rose to 300,000 by 1872, and then dropped to 50,000 by 1878. Three unsuccessful attempts were made to unite the various craft organizations into national labor federations. This period also marked the rise of the 8-hour-day movement and the first signs of the long, bitter, and sometimes violent industrial warfare which characterized the struggle of American unionism for recognition and survival.⁹

The Knights of Labor (KOL), founded in 1869 as a small local union of Philadelphia garment workers, claimed a nationwide membership of over 700,000 by 1886. The American Federation of Labor (AFL) was formed in 1886 by craft unions when the KOL refused to respect the jurisdiction of large craft unions. The AFL began with a membership of 138,000 in 1886 and doubled in size during the next 12 years.¹⁰

Following development of improved means of transportation (canals, turnpikes, and steamboats), the merchant capitalists sought broader markets, which overshadowed the former local markets and set in motion a new world of business. Under pressure to reduce costs in the face of increased competition, employers attempted to lengthen the workday of their employees, to contain wages, and to gain new sources of cheap labor.¹¹ The merchant capitalist, a transitional figure, replaced the master artisan in the workshop enterprise, ushering in the factory system.

In the course of several decades the nation seized the leadership of the Industrial Revolution through the creation of what came to be called the American system of manufactures. The system developed, as did the encouragement of technological innovation, because of the need to produce for a rapidly expanding market with a rapidly growing, but largely unskilled, labor force. The doubling of the population between 1820 and 1840 increased both the supply of unskilled labor and the market for manufactured goods. Ever greater waves of Irish and German immigrants came in the next twenty years. In addition, canals and railroads tied the agricultural west to the heavily populated east, thus releasing thousands of young men and women from eastern farms for factory work. An American working class was developing.¹²

Between 1850 and 1900 the population tripled, and from 1859 to 1919 manufactured goods increased five times in value. The

⁹Bull. 1000, *supra* note 7, at 7.

¹⁰*Id.* at 5-10.

¹¹Dulles, *supra* note 3, at 24-25.

¹²Filippelli, *supra* note 4, at 20.

industrial labor force grew from 2.75 million in 1880 to over 8 million in 1910.¹³

The Earliest Arbitration Precedents

Scholars can find traces of labor arbitration in American law as early as the middle of the 17th century. Colonial court records show several instances of "indifferent" men, selected by the parties or appointed by a court, settling wage disputes.¹⁴ Most of these distant antecedents involved individual contracts of employment, however, not collective bargaining agreements. Their closest modern descendant is therefore individual—that is, nonunion—employment arbitration, not labor arbitration.

Labor arbitration required a further step in the evolution of industrial relations, the introduction of collective bargaining. The first "unions" in America, long before anyone used that term, did not engage in what is now recognized as collective bargaining. The normal pattern, as in the famous *Cordwainers* case,¹⁵ was for the workers' association to announce a new schedule of wage rates to employers. If the employers refused to honor it, the employees would "turn out" or strike. Eventually one side or the other would get its way. There must have been some discussions between labor and management representatives, if only to clarify demands, but there was very little collective bargaining for many decades. Not until 1865 was there a settlement of a collective wage dispute by the form of direct negotiation familiar today.¹⁶

With the expansion of industry after the Civil War came growth in the number and size of labor unions. Several unions, either

¹³ *Id.* at 52.

¹⁴ See Nolan & Abrams, *American Labor Arbitration: The Early Years*, 35 U. Fla. L. Rev. 373, 377 (1983) (hereinafter cited as Nolan & Abrams, *The Early Years*). Unless otherwise noted, the information in this section comes from *The Early Years*. We use the term "men" precisely because the earliest arbitrators were men. The only instance of women serving as arbitrators occurred in 1662. Two women, Sara Roelofitzen and Metjie Greveraats, were appointed to resolve a dispute over wages allegedly due Nanneke van Gelder for making linen caps. The incident came to naught. The plaintiff refused to appear before the arbitrators and Sara Roelofitzen declined to have anything to do with the matter, "as she will not be opposed to either one party or the other." The suit then went before the court without an arbitrator. Aiken, *New Netherlands Arbitration in the 17th Century*, 29 Arb. J. (n.s.) 145, 155, 160 (1974).

¹⁵ *Commonwealth v. Pullis* (Mayor's Court of Philadelphia, 1806), reported in 3 Commons, Documentary History of American Industrial Society (1910), at 59.

¹⁶ That dispute involved the iron puddlers of Pittsburgh. See U.S. Bureau of Labor Statistics, *Results of Arbitration Cases Involving Wages and Hours, 1865 to 1929*, 29 Monthly Lab. Rev. 1052, 1054 (1929). This case is frequently cited as the first labor arbitration in the United States, but the supposed "arbitration" board contained no neutrals. It was really a form of collective bargaining.

because of ideology or a prudent assessment of their chances in a labor dispute, sought arbitration. For example, the principal labor federation of the 1860s, the National Labor Union, resolved that each trade assembly should appoint an arbitrator to consider all disputes between employers and employees.¹⁷ In the 1880s, the Knights of Labor endorsed arbitration as an alternative to strikes. In its Declaration of Principles, the organization listed this objective:

To persuade all employers to agree to arbitrate all differences which may arise between them and their employees, in order that the bonds of sympathy between them may be strengthened and that strikes may be rendered unnecessary.¹⁸

Translating words into action proved difficult, not least because employers typically refused to recognize unions with or without arbitration. Nevertheless, there were a few successful wage arbitrations.

The development of modern unions in the last half of the 19th century eventually led to negotiations between them and their members' employers. Early negotiations seldom produced a written agreement, let alone a contract suitable for interpretation. Gradually, however, settlements became sufficiently complex to require a written agreement. Some written agreements, in turn, were complex enough to require interpretation. Even without a contract, however, arbitration could help to settle disagreements. In 1871, employers and the miners' union selected Judge William Elwell to decide disputes concerning interference with the works and discriminatory discharges. Elwell found fault on both sides. His decision must have been satisfactory, for the parties later let him settle their "bill of wages" in what might have been the country's first major interest arbitration.¹⁹

Other early experiments with arbitration were less successful. In 1874, the Ohio coal industry and the miners' union selected another judge to arbitrate a wage dispute. The judge ruled in favor of the employers' proposal to lower wages by 20 percent. One company then broke ranks and agreed to pay higher wages in return for the union's concession on other issues. Once the union accepted that settlement, employees at other operations

¹⁷ Commons, *supra* note 15, at 165.

¹⁸ Quoted in Jensen, *Notes on the Beginnings of Collective Bargaining*, 9 Indus. & Lab. Rel. Rev. 225, 229 (1956). By "arbitration," however, the Knights meant any peaceful form of dispute settlement, not simply third-party resolution.

¹⁹ See Nolan & Abrams, *The Early Years*, *supra* note 14, at 379. See also Witte, *Historical Survey of Labor Arbitration* (Wharton School 1952), at 11-12.

also sought higher wages. In the end, all the employers raised wages. The fiasco did nothing to persuade parties of the virtues of arbitration. As one historian noted, "The practice of joint conference and arbitration was destroyed for a decade."²⁰

There were several other isolated instances of grievance and interest arbitration in the late 19th century but no general trend toward arbitration. Legislators became fonder of arbitration than the parties. To a politician, arbitration seemed a godsend; someone else took responsibility for ending the strife, thus sparing the politicians the necessity of taking sides. Several states adopted laws providing for court-appointed boards of arbitration on the joint application of employers and employees, but these were seldom used.²¹ Opposition by the stronger party could stymie a voluntary arbitration law. Why should the one with the upper hand turn the decision over to an outsider? Both labor and management vehemently opposed compulsory arbitration legislation. Samuel Gompers, president of the American Federation of Labor, cited his consistent and successful opposition to compulsory arbitration as his major accomplishment: "I regard no public service of mine of greater importance than my efforts extending over forty years to prevent enactment of legislation of this character."²²

The first federal legislation on labor arbitration came about in the late 19th century. In a series of laws to prevent or resolve labor disputes in the railroad industry—the Arbitration Act of 1888, the Erdman Act of 1898, the Newlands Act of 1913, the Transportation Act of 1920, and finally the Railway Labor Act (RLA) of 1926—Congress repeatedly encouraged or required labor arbitration. Only the last of these, as amended in 1934, had much practical effect.

The RLA set up a mediation board to resolve interest disputes (which later became known in the industry as "major" disputes). If the mediation board could not resolve the dispute, the parties could take it to a tripartite arbitration board. If either party objected to arbitration, the President of the United States could appoint an advisory fact-finding body. In the 1934 RLA amend-

²⁰Ware, *The Labor Movement in the United States, 1860–1895* (D. Appleton & Co. 1929), at 33.

²¹Nolan & Abrams, *The Early Years*, *supra* note 14, at 380–82.

²²Gompers, *Seventy Years of Life and Labor* (E.P. Dutton 1925) at 149. Gompers gave little weight to the public policy arguments supporting compulsory arbitration: "The public has no rights which are superior to the toilers' rights to live and their right to defend themselves against oppression," *quoted in* Reed, *The Labor Philosophy of Samuel Gompers* (Columbia U. Press 1930), at 121.

ments, Congress established the National Railroad Adjustment Board (NRAB) to provide arbitration for grievances claiming breach of the collective bargaining agreement. These later became known as "minor" disputes. Alternatively, the parties could create their own special adjustment boards. The NRAB procedure proved satisfactory to both sides. Possibly because it was federally financed, the parties used it more frequently than they had any of its predecessors.

Experiments With Voluntary Arbitration Agreements

Despite their joint opposition to compulsory arbitration laws, employers and unions often favored voluntary arbitration of specific intractable disputes. That ardent capitalist, Andrew Carnegie, endorsed voluntary binding interest arbitration in 1901, and even Gompers supported it, with certain qualifications.²³ Outsiders—economists, ministers, social reformers, and politicians—were so enthusiastic about arbitration that one historian accurately termed arbitration the "middle class panacea" for labor conflict.²⁴ Meanwhile, some industries were voluntarily moving toward arbitration. The Pennsylvania coal industry established a Board of Conciliation and Arbitration in 1879. It lasted, though with little success, until 1885.²⁵

A bitter nationwide coal strike in 1902 led President Theodore Roosevelt to threaten a federal takeover of the mines. Reluctantly the mine owners asked him to establish a strike commission. The commission's report the next year resulted in the creation of a permanent, bipartisan Anthracite Board of Conciliation to interpret and apply the commission's award. When the partisan members of the Board deadlocked, a judicially appointed umpire made the final decision. Eventually the parties appointed a permanent neutral umpire of their own.²⁶

The newspaper industry trod the same path. A 1901 agreement with printing unions created tripartite local boards to resolve future disputes. A party dissatisfied with a local board decision had the right of appeal to a tripartite national board. Soon the

²³Nolan & Abrams, *The Early Years*, *supra* note 14, at 378.

²⁴Akin, *Arbitration and Labor Conflict: The Middle Class Panacea, 1886-1900*, 29 *Historian* 565 (1967).

²⁵Witte, *supra* note 19, at 12-14.

²⁶*Id.* at 22.

Photoengravers, the Pressmen, and the Stereotypers signed similar agreements.²⁷

Several branches of the clothing industry also adopted arbitration agreements early in the 20th century. A series of conferences chaired by Louis Brandeis, later a distinguished Supreme Court justice, produced the "Protocol of Peace" that ended a 1910 strike involving 50,000 New York cloak and suit workers. The Protocol provided for discussion of grievances by a bipartisan Board of Grievances, with presentation of unresolved grievances to a tripartite Board of Arbitration. The Protocol remained in effect for six years.²⁸

In Chicago, Hart, Schaffner & Marx signed an arbitration agreement with the United Garment Workers to settle a strike in 1911. The parties' negotiators, one of whom was the famous lawyer Clarence Darrow, drafted the agreement ending the strike and then appointed themselves the arbitrators. The next year, when Darrow resigned, the parties selected as his replacement a talented and experienced neutral, John Williams. Williams shifted from what he termed "old fashion" arbitration, by which he meant a quasi-judicial proceeding, to a more mediatory approach. Instead of trying to find the answer to a problem in the controlling document or in evidence presented by the parties, Williams helped them fashion their own resolution. This apparently suited the parties because they retained Williams and his approach for many years. Other parts of the clothing industry soon copied the Hart, Schaffner & Marx model, appointing "permanent umpires" for hosiery, hats, and other branches of the apparel industry.²⁹

An incidental by-product of the clothing industry arbitration agreements was the training of a corps of arbitrators. Several early chairs of clothing industry arbitration boards continued to work in labor dispute resolution for many years. One of the most prominent was William Leiserson who, in contrast to Williams, took a strictly judicial approach to the arbitrator's role. Leiserson argued that arbitrators must interpret the collective agreement rather than apply their own sense of justice. The Williams and Leiserson approaches provided the alternative models for the next half century of American labor arbitration.

²⁷Burns, *Daily Newspapers*, in *How Collective Bargaining Works*, ed. Millis (Twentieth Century Fund 1942), at 50-56.

²⁸Carpenter, *Competition and Collective Bargaining in the Needle Trades, 1910-1967*, *Studies in Industrial & Labor Relations* No. 17 (Cornell Univ. 1972), at 38-54.

²⁹Nolan & Abrams, *The Early Years*, *supra* note 14, at 394-95.

World War I brought about the creation of several governmental dispute-resolution bodies, the most important of which was the National War Labor Board. These were not really arbitration boards—they seldom used neutrals and usually tried to mediate rather than arbitrate cases—but they did introduce more employers and unions to the benefits of third-party dispute resolution. After the war, many of these parties followed the coal, printing, and clothing industries in establishing their own arbitration schemes. As early as 1920, 55 percent of all labor agreements had arbitration clauses. The figure rose to 66 percent by 1934 and to 76 percent by 1942.³⁰

Apart from this war-time activity, the only federal action directly affecting arbitration was the United States Arbitration Act of 1925, also known as the Federal Arbitration Act. This law was designed primarily to facilitate commercial arbitration, but most of its terms are broad enough to cover labor arbitration as well. The one exception comes in the definition of commerce to exclude “contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.” This exclusion is subject to varying interpretations. At its narrowest, it could be read as excluding only the individual employment contracts of employees engaged in interstate transportation. More broadly, it might include collective bargaining agreements within the notion of “contracts of employment,” but might still only apply to transportation employees. More broadly still, it might exclude from the Act’s coverage all employment contracts, individual or collective, of all employees engaged in any form of interstate commerce. To date, the Supreme Court has avoided a clear decision on that point. The tendency of the lower courts, and occasionally even of the Supreme Court, is to dodge the issue but to apply the Act to collective bargaining agreements by analogy.

The Impact of the New Deal

Federal jurisdiction under the Constitution’s Commerce Clause made railroads an exception to the usual view that labor disputes were matters of state rather than federal responsibility. Railroads were the epitome of interstate commerce in the late 19th century, so there was little doubt about Congress’s authority to regulate them. In other industries, court decisions until the 1930s

³⁰Jacoby & Mitchell, *Development of Contractual Features of the Union-Management Relationship*, 33 Lab. L.J. 512, 515 (1982).

limited federal and state power.³¹ Beginning in the early 1930s, however, Congress enacted several laws that promoted unionization. Indirectly, these laws contributed to the growth of labor arbitration.

To stem the fall of wages and prices during the Great Depression, Congress passed the National Industrial Recovery Act (NIRA) in 1933.³² The objective of the NIRA was to eliminate "ruinous" competition by allowing producers' cartels to fix prices. One important tool of the NIRA scheme was a wage floor in each industry. The floor would keep businesses from underbidding each other because of lower labor costs. To gain labor support, the bill's sponsors added a provision mandating collective bargaining in some circumstances. That clause, section 7(a), had little direct effect. Employer opposition and the lack of effective sanctions doomed it to failure. Nevertheless, it did encourage some bargaining. More to the point, it encouraged some arbitration.

For example, the NIRA authorized tripartite panels to enforce the wage rules established in industry codes. Service on these panels taught public members about the subject industries and about labor dispute resolution. As with the voluntary arbitration systems earlier in the century, some who served on these panels later became permanent umpires. A few wrote about their experiences, publicizing both arbitration and their own expertise.³³ Among the NIRA arbitrators were several who would later help to form the National Academy of Arbitrators: Paul Douglas, Nathan Feinsinger, Wayne Morse, and Edwin Witte.³⁴ Another was Harry Millis, a prominent labor economist who taught at the University of Chicago. Millis had been an active labor arbitrator in the men's clothing industry as early as the 1920s. President Franklin D. Roosevelt later appointed him to be the first chairman of the National Labor Relations Board.³⁵

³¹ For example, in *Adair v. United States*, 208 U.S. 161 (1908), the Supreme Court struck down a federal prohibition of "yellow dog" contracts as an unconstitutional interference with freedom of contract. In *Adkins v. Children's Hosp.*, 261 U.S. 525 (1923), it used the same reasoning to overturn a minimum wage law for the District of Columbia.

³² Cf. Gitlow, *Wage Determination Under National Boards* (Prentice-Hall 1953); Marshall, *Hours and Wages Provisions in NRA Codes* (Brookings Inst. 1935); Dearing, Homan, Lorwin, & Lyon, *ABC of NRA* (Brookings Inst. 1934).

³³ See, e.g., Eisner, William Morris Leiserson: A Biography (Univ. of Wis. Press 1967).

³⁴ See, e.g., Millis & Montgomery, *Organized Labor* (McGraw-Hill 1945); Douglas, *The Theory of Wages* (Macmillan 1934); Witte, *The Government in Labor Disputes* (McGraw-Hill 1932).

³⁵ Letter from Alex Elson to Dennis Nolan, June 15, 1995.

Early in 1935, the Supreme Court declared the NIRA unconstitutional, holding that Congress had no authority to regulate an employer doing business in a single state.³⁶ Despite this defeat, some influential members of Congress refused to take the Court's decision as the end of federally encouraged collective bargaining. At the urging of New York's Senator Robert Wagner, Congress passed the National Labor Relations Act of 1935 (better known as the NLRA or the Wagner Act). The new law tried to cure some of the NIRA's weaknesses by protecting employees who joined or supported unions, by specifically prohibiting certain employer conduct, and by providing a clear way to determine which, if any, union represented a group of employees. Wagner's assistants, and those of House Labor Committee Chair Lawrence Connery,³⁷ drafted the bill with an eye to Supreme Court review. Section 1, "Findings and Policies," referred again and again to the disruption of interstate commerce caused by strikes and lock-outs. Encouraging collective bargaining and protecting workers who chose to organize, said Congress, were essential steps to eliminate these "obstructions to the free flow of commerce." Company lawyers were certain the Court would find the NLRA unconstitutional and advised their clients to ignore the new law. Lawyers for the National Labor Relations Board bided their time until they could find the right cases to test the law. Their effort was finally successful. The Supreme Court upheld the constitutionality of the NLRA in 1937.³⁸

Despite the NLRA's stated goal of reducing labor strife, strikes continued to increase after its passage. This increase reflected both employer resistance to the Act and the astounding growth in union numbers and strength prompted by the Act itself.³⁹ Labor organization in mass production industries increased dramatically after several major national unions broke away from the American Federation of Labor (AFL) to form the Congress of Industrial Organizations (CIO) in 1935. Between 1935 and 1941 union membership increased from under 4 million to over 10 million, from 13 percent to 28 percent of nonagricultural employ-

³⁶ *Schechter Corp. v. United States*, 295 U.S. 495 (1935).

³⁷ Arnold Zack contributed the reference to Congressman Connery in a telephone conversation with Dennis Nolan on June 17, 1995. See also Zack Presidential Interview, June 3, 1995, NAA Archives. Zack's father worked with Connery in drafting the NLRA and later served with the new agency.

³⁸ *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 1 LRRM 703 (1937).

³⁹ National Labor Relations Board, Annual Report (1937).

ment.⁴⁰ Successful drives for union organization, often in the face of stiff employer opposition, caused half of the strikes occurring during this period.⁴¹

Union growth drove arbitration's growth. Newly formed unions borrowed contract terms from older unions, thus incorporating permanent umpireships, grievance procedures, and binding arbitration. As reluctant as they were to yield any of their control, employers soon found that arbitration agreements were preferable to sporadic strikes over grievances. By 1938, the National Industrial Conference Board reported that 101 of 143 contracts examined contained grievance settlement procedures, most of them providing for arbitration.⁴² For example, after the United Automobile Workers unionized General Motors, the company and union in 1937 created a grievance procedure culminating in arbitration. Three years later, they established a permanent umpire system like that of the clothing industry.

By the beginning of World War II, the concept of labor arbitration was well established, well accepted, and well understood in the industrial relations community. There were many experienced arbitrators, some using Williams's mediatory model, others using Leiserson's judicial model. Demand for qualified arbitrators outstripped supply by the late 1930s, however. In response, the American Arbitration Association, formed in 1926 primarily to promote commercial arbitration, established a Voluntary Industrial Arbitration Tribunal in 1937. The U.S. Conciliation Service, an agency in the Department of Labor, began to provide arbitration as well as conciliation services. It employed full-time arbitrators as early as 1937, and by 1942, it had 17 full-time arbitrators.⁴³

⁴⁰ U.S. Bureau of Census, *Historical Statistics of the United States: Colonial Times to 1957* (1960), Table Series 741-745: Labor Union Membership and Membership as Percent of Nonagricultural Employment, 1930 to 1956, at 98.

⁴¹ U.S. Bureau of Census, *Historical Statistics of the United States: Colonial Times to 1957* (1960), Table Series 764-778: Work Stoppages, Workers Involved, Man-Days Idle, Major Issues, and Average Duration, 1881-1957, at 99.

⁴² National Industrial Conference Board report, cited in 2 Arb.J. (n.s.) 149 (1938) (news item).

⁴³ U.S. Dep't of Labor, *Mediation Experts Accept Service With U.S. Conciliation Service*, 64 Monthly Lab. Rev. 265 (Feb. 1947). The panel included many of the Academy's later leaders, including Benjamin Aaron, William Davis, Nathan Feinsinger, Clark Kerr, Ralph Seward, Harry Shulman, William Simkin, George Taylor, Saul Wallen, Edwin Witte, and David Wolff.

The Impact of the War Labor Board

World War II made labor arbitration almost universal.⁴⁴ After several false starts, President Franklin D. Roosevelt appointed the War Labor Board (WLB) in January 1942. Congress later ratified his action and provided a statutory basis (the War Labor Disputes Act of 1943) for the new Board. The Board was tripartite, with four members each from labor, management, and the public. The 1943 law outlawed most strikes and lockouts, leaving the WLB as the only way most parties had to resolve a deadlock. The WLB had authority to use any of several methods to resolve disputes: mediation, voluntary arbitration, or compulsory arbitration. Initially, the Board tried to centralize labor dispute resolution by deciding all cases itself. By October 1942, an enormous caseload forced it to decentralize. The Board established regional offices and tripartite regional boards throughout the country. These regional boards had the same powers as the national body. By decentralizing, the Board introduced more parties—and more neutrals—to labor arbitration.

The WLB contributed in many critical ways to the development of modern labor arbitration. It practiced interest arbitration from its earliest days. It enforced privately negotiated arbitration agreements. It introduced whole industries to the concept of arbitration. WLB arbitration decisions included precedent-setting rulings on the definition of a grievance, the role of the arbitrator, and the proper interpretation of contract clauses. By 1943, WLB interest arbitration decisions often included grievance arbitration clauses. No doubt WLB panels believed that arbitration was the best way to resolve grievances, but arbitration's utility as a docket-control measure could not have escaped their notice. Every grievance resolved by an arbitrator was one less for the Board to consider. Few parties used interest arbitration after the war but almost all of those introduced to grievance arbitration by the WLB retained the procedure.

Perhaps the WLB's most important contribution, however, was an incidental one. The WLB provided on-the-job training to a large corps of arbitrators who would form the backbone of the

⁴⁴ See generally Nolan & Abrams, *American Labor Arbitration: The Maturing Years*, 35 U. Fla. L. Rev. 557 (1983). Unless otherwise noted, the following material comes from that work.

modern arbitration profession.⁴⁵ Hundreds of people served as arbitrators during the war, either on the Board's staff, on regional disputes panels, or after selection by parties sent to arbitration by the Board. The vast majority of arbitrators practicing in the immediate postwar era were WLB alumni. It was natural, then, for these alumni to become the founders of the National Academy of Arbitrators.

World War II proved to be a formative time in Canadian labor law as well. An order-in-council in 1944 established a labor law regime much like that of the Wagner Act. A federal law of 1948 and separate provincial laws around the same time codified that approach.⁴⁶ One predictable result was an arbitration system resembling that of the United States. The main difference was that many of the Canadian laws mandated arbitration of unresolved interest disputes during negotiations for the first contract after a union's recognition and required mandatory grievance arbitration provisions in all collective agreements.⁴⁷ Canadian arbitration differed from that of the United States in one other significant way. The first Canadian arbitrators were more likely to be active or retired judges rather than industrial relations practitioners or academics. In time, Canadian arbitrators would join their U.S. colleagues in the Academy.

Arbitrator Training and Development

Arbitration required no formal credentials, and arbitrators came from all backgrounds. Some were university professors of labor law and industrial relations or their graduate assistants. Some were labor or management attorneys with reputations for fairness. Others were former employees of the U.S. Department of Labor and its Conciliation Service, or of the National Labor Relations Board, National Mediation Board (NMB), or one of the wartime industrial relations agencies. Still others had served on similar state administrative bodies, notably those of California, Massachusetts, Michigan, New York, and Wisconsin.⁴⁸ The pre-

⁴⁵The only training, in fact, was on the job. According to Alex Elson, he went to his first hearing completely untrained. Letter from Alex Elson to Dennis Nolan, June 15, 1995. See also Seward Presidential Interview, June 1, 1987, NAA Archives.

⁴⁶Craig & Solomon, *The System of Industrial Relations in Canada*, 4th ed. (Prentice Hall 1993), at 140-41.

⁴⁷*Id.* at 154-55.

⁴⁸There were so-called little Wagner Acts in Massachusetts, New York, Pennsylvania, Wisconsin, and Utah. As early as 1939, Pennsylvania, Michigan, Minnesota, and Wisconsin

carious nature of arbitral selection meant that few people could make a living from arbitration alone. Only the misnamed "permanent" umpireships⁴⁹ in such industries as automobile, steel, and transportation required full-time service. Most labor arbitrators therefore continued to teach or practice law.⁵⁰

To meet the new demand for expertise in collective bargaining and dispute resolution, colleges and universities developed new programs. Many adopted curricula in industrial relations to train practitioners for this newly recognized profession. Cornell University's pioneering School of Industrial and Labor Relations, for example, began in 1945. Many others followed Cornell's example in the next few years. By 1947, practitioners and academics established a professional association, the Industrial Relations Research Association (IRRA).⁵¹

There were other sources of labor arbitrators, notably the labor schools established by Catholic bishops and university administrators. These attempted to respond to the 1931 encyclical, *Quadragesimo Anno*, which Pope Pius XI published on the 40th anniversary of Pope Leo XIII's celebrated *Rerum Novarum*.⁵² Both documents endorsed labor organizations. Both also exhorted Catholic clergy to train union officials, partly to counter Communist infiltration of the labor movement. Several hundred Catholic labor schools started between 1936 and 1944.⁵³ Some priests involved in labor education became arbitrators and mediators. Their names began to appear on American Arbitration Association (AAA) and Federal Mediation and Conciliation Service panels.⁵⁴ So did the names of other clerics, judges, and local political

sin had adopted laws foreshadowing the Taft-Hartley Act. Most of these state laws provided a mediation and arbitration procedure for intrastate labor disputes, which helped develop a pool of arbitrators.

⁴⁹Sometimes "permanent" umpireships were not so permanent; see, e.g., Zack, *Unique Problems and Opportunities of Permanent Umpireship—A Panel Discussion: I*, in *Arbitration 1989: The Arbitrator's Discretion During and After the Hearing*, Proceedings of the 42nd Annual Meeting, National Academy of Arbitrations, ed. Gruenberg (BNA Books 1990), 176.

⁵⁰Benjamin Aaron recalled that George Taylor had advised Aaron to retain his teaching position to avoid the conflict of interest Taylor believed was inherent in dependence on arbitration cases for total income. Aaron Presidential Interview, June 1, 1989, NAA Archives.

⁵¹Witte, *The University and Labor Education*, 65 Monthly Lab. Rev. 36 (1947).

⁵²*The Condition of Labor*, in *Five Great Encyclicals* (Paulist Press 1989), at 1; *Reconstructing the Social Order*, id., at 125.

⁵³Carey, *Catholic Labor Schools*, 2 Arb. J. (n.s.) 169 (1947).

⁵⁴For example, Academy members Leo Brown, Mortimer Gavin, and Francis Quinn. Cf. Gruenberg, *Labor Peacemaker: The Life and Works of Father Leo C. Brown, S.J.* (Inst. of Jesuit Sources 1981), at 30–33.

figures known for their sympathy toward labor and collective bargaining. Many in these groups became members of the Academy.

Another important source of labor arbitrators was the internship system. Many arbitrators, particularly those who practiced in urban, highly unionized areas and those who taught in industrial relations programs, took one or more aspiring arbitrators as interns. The relationships varied widely, from occasionally observing the senior arbitrator in a hearing all the way to formal internship programs in which the junior would gradually perform more and more actual arbitration work. While internships were rare in the immediate postwar period, they eventually became an important source of recruitment to the profession.⁵⁵

Arbitration blossomed after World War II. From 1946 to 1947, the AAA labor caseload increased by 100 percent.⁵⁶ Unfortunately, the growth of labor arbitration began to attract some practitioners with dubious qualifications and motives. Unsatisfactory experiences with arbitration prompted articles criticizing labor arbitrators.⁵⁷ In his speech to the Academy during its founding meeting in 1947, Edwin Witte of the University of Wisconsin attributed the criticism mainly to the activities of "amateur and ad hoc arbitrators." He warned that it was a mistake to think that the only qualifications of arbitrators were "honesty and impartiality." In addition, he said, arbitrators needed "broad knowledge of industrial relations and a good deal of specialized information on issues arising in labor disputes."⁵⁸ Arbitrators with those qualifications challenged the negative public perception by emphasizing Witte's approach. As labor arbitration matured, its practitioners became, almost inevitably, more professional.

Shortly after World War II, the AAA began discussing the merits of the arbitration "profession." The AAA encouraged its labor panel members to form an association devoted to the education

⁵⁵ Several interns eventually became presidents of the Academy: Richard Mittenthal, an apprentice of Harry Platt, and Rolf Valtin, an intern of Ralph Seward; both Mittenthal and Valtin joined the Academy in 1958. Clare (Mickey) McDermott, who joined in 1961, and Alfred Dybeck, who joined in 1969, were interns of Sylvester Garrett; Arnold Zack, who joined in 1962, was an intern of Saul Waller; and John Dunsford, who joined in 1967, was an intern of Leo Brown. Cf. the appropriate presidential tapes, NAA Archives: Mittenthal (1989), Valtin (1989), McDermott (1989), Dybeck (1991), Zack (1995), and Dunsford (1989).

⁵⁶ American Arbitration Association, 2 Arb. J. (n.s.) iv (1947).

⁵⁷ Cf. Larkin, *Introduction: The First Decade*, in *Critical Issues in Labor Arbitration*, Proceedings of the 10th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1957), viii.

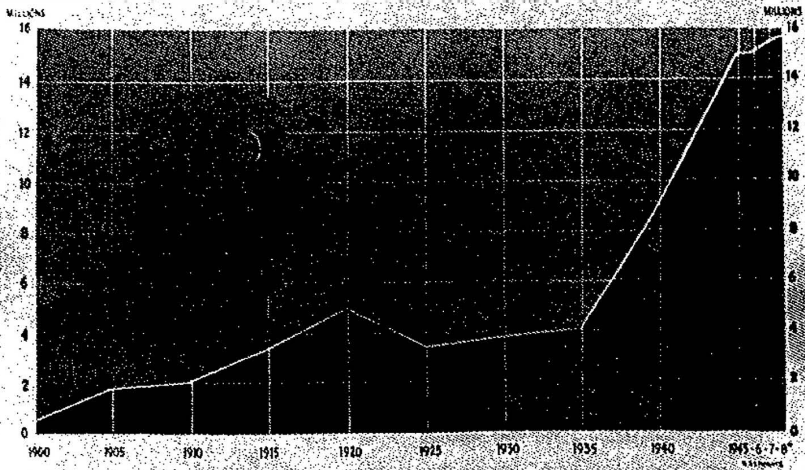
⁵⁸ Witte, *The Future of Labor Arbitration—A Challenge*, in *The Profession of Labor Arbitration*, Selected Papers From the First Seven Annual Meetings, The National Academy of Arbitrators, 1948–1954, ed. McKelvey (BNA Books 1957), 1, 16.

and training of new arbitrators.⁵⁹ When the U.S. Conciliation Service added its endorsement early in 1947, leading arbitrators acted to found an organization devoted to the labor arbitration profession.

⁵⁹ American Arbitration Association, Arb. J. 99 (Summer 1947) (editorial). The AAA had drafted a plan for an American Institute of Arbitrators in 1934, but dropped the proposal as premature. Kellor, *The Organization of Arbitration as a Profession*, 2 Arb. J. (n.s.) 199 (1947).

2.1. ECONOMIC ENVIRONMENT, 1950s

GROWTH OF AMERICAN LABOR UNION MEMBERSHIP



2.2. GOVERNMENT SUPPORT



U.S. Conciliation Service: (left to right) Arbitration Specialist Carl Schedler (charter member and Academy secretary 1950-53) and Director Edgar Warren (charter member and Academy president 1953).



War Labor Board: (left to right) George Taylor (charter member), William Davis (charter member), and Lewis Gill (Academy president 1971).

NEW YORK TIMES
September 14, 1947

ARBITRATORS FORM NATIONAL ACADEMY

Special to The New York Times.

CHICAGO, Sept. 14—A group of arbitrators prominent in the industrial relations field formed yesterday the National Academy of Arbitrators, an organization dedicated to the elevation of their work to the highest possible professional and ethical standards.

Most of the best-known names in the arbitration field are among the charter members. Spokesmen for the new organization emphasized that they were not competing with any existing group and would not operate a placement agency.

The purposes of the academy were outlined as follows:

To establish and foster high standards of integrity and competence among those engaged in the arbitration of industrial disputes on a professional basis; to adopt canons of ethics to govern the conduct of arbitrators; to promote the study and understanding of the arbitration of industrial disputes.

The first annual meeting of the academy will be held in January.

The organization meeting elected as president Ralph Seward, who has been umpire under the contract between the General Motors Corporation and the United Automobile Workers, CIO, and will take

a similar position this month under the contract between the United States Steel Corporation and the United Steelworkers, CIO.

Peter M. Kelleher of Chicago, who is umpire under the International Harvester Company's labor contract, was chosen secretary-treasurer. Other officers included the following:

Vice president—Clark Kere, director of the Institute of Industrial Relations at the University of California and umpire under the West Coast waterfront labor contract; Whitley McCoy, professor of law at the University of Alabama and writer on industrial arbitration; William Simkin of Philadelphia, an arbitrator in the rubber, textile, clothing and ship-building industries.

Board of governors—Douglas V. Brown of Cambridge, Mass.; Alfred A. Colby of Washington, D. C.; Lloyd K. Garrison and Aaron Horowitz of New York City; Harry Shulman of New Haven, Conn.; Edgar L. Warren of Washington, D. C.; Willard Wirtz of Chicago; David Wolf of Detroit; Paul Dodd of Los Angeles, and Saul Wallen of Boston.

Among the charter members were William H. Davis, Theodore W. Kheel and Arthur S. Meyer of New York. Others included the following:

Nathan P. Feinsinger of Madison, Wis.; Frank P. Graham of Chapel Hill, N. C.; William M. Leiserson of Washington, D. C.; Senator Wayne L. Morse of Oregon; Edgar A. Rowe of San Francisco; Carl R. Schedler of Litchfield, Conn.; Sumner H. Slichter of Cambridge, Mass.; Wesley A. Sturges of New Haven, Conn.; Charles P. Taft of Cincinnati, and George W. Taylor of Philadelphia.



(left to right) Secretary-Treasurer Peter Kelleher (Academy president 1964), President Ralph Seward, and Vice President William Simkin (Academy president 1950).

The Board of Governors
of
National Academy of Arbitrators
Cordially Invites

to Charter Membership in the Academy
and requests the pleasure of his presence
at the First Annual Meeting
at Drake Hotel

Chicago, Illinois
on January sixteenth and seventeenth
nineteen hundred and forty-eight

Ralph T. Seward
President

2.5. THE TAYLOR-BRADEN DEBATE



George Taylor, professor of economics,
University of Pennsylvania.



J. Noble Braden, executive vice president,
American Arbitration Association.

CHAPTER 2

ACADEMY FOUNDING AND EARLY YEARS: THE 1940s AND 1950s

The Labor Relations Environment

The Economy

The year was 1947. World War II had been over for almost two years, and the U.S. economy had suffered its worst blows since the Great Depression. From 1945 to 1947, unemployment, which had been as low as 2 percent, doubled.¹ The ranks of the unemployed swelled with women laid off to make room for returning servicemen and with veterans who had no jobs to return to. The Consumer Price Index rose 24 percent, and real gross national product fell from \$153 billion to \$138 billion.² Fears of a return to the trauma of the 1930s caused Congress to pass the Full Employment Act of 1946,³ which mandated federal intervention whenever unemployment rose above the "normal" level. (In 1946, the "normal" level meant 3 percent.) The Act also charged the new Council of Economic Advisers with maintaining adequate economic statistics. The Council was to report annually to the President and the Congress on the state of the economy.

An explosion in federal expenditures—from \$5.2 billion in 1939 to almost \$55 billion in 1945—had forced a vast increase in the nation's productive capacity. With the end of the war, real federal outlays fell back to \$8.5 billion in 1947. Business inventories

¹U.S. Council of Economic Advisers, *Report to the President*, in Economic Report of the President, 1978, Appendix B, Table B-27: Noninstitutional Population and the Labor Force, 1929–1977, at 288 (1945–1947 unemployment rate increased from 1.9 to 3.9 percent of the civilian labor force).

²U.S. Bureau of Census, Statistical Abstract, 1952, Table No. 331: Consumer Price Index for Moderate-Income Families in Large Cities: 1913 to 1951, at 278; Table No. 303: Gross National Product or Expenditure in Constant (1939) Dollars: 1929 to 1951, at 254.

³For a more complete description of the Full Employment Act of 1946, see, e.g., Flanagan, Kahn, Smith & Ehrenberg, *Economics of the Employment Relationship* (Scott, Foresman 1985), Ch. 17; Bloom & Northrup, *Economics of Labor Relations* (Irwin 1954), Ch. 11.

grew from minus \$1.8 to plus \$4.4 billion.⁴ As demand for war-related products plummeted, demand for consumer products skyrocketed. With returning servicemen quickly marrying and beginning the great baby boom, new families demanded houses, cars, furniture, and clothes. Savings had grown during the war, when steady employment, frequent overtime, and a shortage of goods gave workers more income than they could spend. After the war consumers made up for lost time. The burst in consumer demand, however, came before manufacturers could switch from wartime to peacetime production. Oddly, employment fell in some parts of the economy while prices rose tremendously in others.

When World War II ended, President Harry S Truman anticipated a release of the inflationary pressure created by wartime price controls and strike prohibitions. As the major collective bargaining agreements negotiated under War Labor Board auspices expired, unions demanded wage increases to compensate for inflation, and more. Some, like the United Auto Workers (International Union, United Automobile, Aerospace & Agricultural Implement Workers of America) even tried to prevent employers from raising prices to keep new inflation from eating up whatever raises they could win. Employers, not yet sure the postwar boom would last, vigorously resisted. The best efforts of government mediators were not enough to bridge the gaps between labor and management. Irresistible forces met immovable objects, producing one of the greatest strike waves in the nation's history.⁵ In 1946, lost time due to work stoppages reached a record high. One-third more workers were affected than in 1945, and strikes lasted longer than at any time since the 1930s.⁶

In an effort to create a mechanism for peaceably resolving labor disputes, President Truman invited labor and industry leaders to a national conference in November 1945. Like a similar meeting called by President Woodrow Wilson at the end of World War I, this one deadlocked on fundamental issues. The only item on which labor and management representatives

⁴U.S. Bureau of Census, Statistical Abstract, 1952, Table No. 307: Disposable Personal Income in Current and 1951 Prices; 1929 to 1951, at 256; Table No. 303, *supra* note 2.

⁵U.S. Federal Mediation and Conciliation Service, 1st Annual Report (1948).

⁶U.S. Bureau of Census, Statistical Abstract, 1952, Table No. 237: Work Stoppages: 1930-1951, at 196.

agreed was the value of grievance arbitration.⁷ The conference report recommended that parties adopt binding grievance arbitration clauses. (The report carefully omitted any endorsement of interest arbitration and flatly rejected compulsory arbitration.) Reflecting a clear understanding of the distinction between grievance and interest arbitration, the recommendation suggested limiting arbitrators to interpretation and application of the collective bargaining agreement.

The conference report also recommended that the U.S. Department of Labor's Conciliation Service stop providing free arbitration services. The object of this seemingly inconsistent recommendation was to maintain a clear distinction between conciliation and arbitration. As an alternative to governmental arbitration, the report urged the U.S. Conciliation Service to compile a list of qualified arbitrators from which the parties could select and hire neutrals.

Public reaction to the strikes, however, helped the Republican Party win a sweeping victory in the 1946 congressional elections. The new Congress immediately set out to amend the NLRA.

New Labor Legislation

The resulting Labor Management Relations Act of 1947 (LMRA), commonly known as the Taft-Hartley Act, changed the National Labor Relations Act (NLRA) in several important respects. Most notably, it added a list of union unfair labor practices in section 8(b) to the employer unfair labor practices listed in what became section 8(a). From an advocate for and protector of labor unions, the National Labor Relations Board became an umpire in the contest between labor and management. In the new regime, the Board was to prevent and redress violations by either side. Board orders, including prohibitions on illegal strikes, were enforceable by federal courts.

The new law contained several provisions fostering labor dispute resolution. Employers had long complained that the U.S. Conciliation Service's position in the Department of Labor politicized federal intervention in labor disputes. Section 201 of the Act therefore replaced the U.S. Conciliation Service with a new

⁷U.S. Dep't of Labor, *The President's National Labor-Management Conference: Summary and Committee Reports* (Bull. 77, 1946). Ralph Seward, who later served as the first president of the National Academy of Arbitrators, chaired the conference session that endorsed grievance arbitration. Seward Presidential Interview, June 1, 1989, NAA Archives.

and independent agency, the Federal Mediation and Conciliation Service (FMCS).

Other Taft-Hartley Act provisions expressly endorsed labor arbitration. Section 201(b), which dealt with interest disputes, stated that the national policy of settling disputes through collective bargaining was to be advanced by providing governmental facilities for conciliation, mediation, and voluntary arbitration. Section 203(c) ordered the FMCS director to encourage alternative means of settling interest disputes (presumably including arbitration) if conciliation failed. Section 203(d) endorsed "[f]inal adjustment by a method agreed upon by the parties" (again presumably including arbitration) as "the desirable method" for settling grievance disputes. Most importantly, section 301, as later interpreted by the Supreme Court, made collective bargaining agreements, including their arbitration clauses, enforceable in federal and state courts.

Union Activity

In the decade after the war, labor union membership increased from less than 15 million to more than 17 million. Although the organized percentage of the work force never again equaled its 1945 peak of 35 percent, the level remained relatively steady at about one-third of the work force through the 1950s.⁸ It was not an easy time for labor, however. The Congress of Industrial Organizations (CIO), beset with charges of Communist influence, expelled 11 unions during 1949–1950.⁹ The American Federation of Labor (AFL), on the other hand, had to contend with charges of corruption, and expelled the International Longshoremen's Association in 1953,¹⁰ followed by the expulsion of the Teamsters (International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America), the Bakery Workers (American Bakery & Confectionery Workers' International Union), and the Laundry Workers (Laundry & Dry Cleaning

⁸U.S. Bureau of Labor Statistics, *Handbook of Labor Statistics* (1967), at 256.

⁹Until its repeal in 1959 by section 201(d) of the Labor-Management Reporting and Disclosure Act (LMRDA), section 9(f)–(h) of the Taft-Hartley Act provided that unions could not use National Labor Relations Board services unless their officers had signed affidavits stating that they were not members of the Communist party. When some affiliates refused to comply with the law, the CIO expelled them for Communist domination and chartered breakaway locals as rival organizations. For example, the International Union of Electrical, Radio and Machine Workers (IUE) replaced the United Electrical, Radio and Machine Workers of America (UE) as the CIO affiliate in the electrical industry.

¹⁰Like the CIO, the AFL chartered new organizations to replace expelled affiliates.

International Union) in 1957. After widely publicized investigations into the corrupt activities, Congress passed the Labor-Management Reporting and Disclosure Act (LMRDA), better known as the Landrum-Griffin Act, in 1959. The new law for the first time imposed federal regulation on the internal affairs of unions.¹¹

Early in the new decade, AFL President William Green and CIO President Philip Murray died and were succeeded, respectively, by George Meany and Walter Reuther. With this new leadership, the labor movement recorded one of its most significant achievements. Following the negotiation of a no-raiding agreement in 1953, the AFL and CIO merged in 1955, ending a 20-year split. George Meany was elected the first president of the merged AFL-CIO, and Walter Reuther became a vice president and head of the newly created Industrial Union Department.

Development of Labor Arbitrators

In response to the recommendation of President Truman's 1945 labor-management conference, the U.S. Conciliation Service began reforming its dispute-resolution activities. Following in the footsteps of his predecessor, John Steelman, Director Edgar Warren created a panel of specialists, many of whom—notably Edwin Witte of the University of Wisconsin—assisted in founding the National Academy of Arbitrators.¹² Warren designated Deputy Director Carl Schedler to develop a list of special conciliator/arbitrators. Many were former WLB panel members and hearing officers.¹³ Others were well-known industrial relations academics and attorneys who had acted as consultants and advocates as well as arbitrators. On request of the parties, these officials could intervene, first as mediators; then as arbitrators.¹⁴ The Department of

¹¹Section 504(a) of the LMRDA replaced NLRA section 9(f)–(h). It barred Communist party members from holding union office. The U.S. Supreme Court held this provision unconstitutional in *United States v. Brown*, 381 U.S. 437, 59 LRRM 2353 (1965). By then the law had achieved its purpose: Communists were no longer a major force in American unions.

¹²U.S. Dep't of Labor, *Mediation Experts Accept Service With U.S. Conciliation Service*, 64 Monthly Lab. Rev. 265 (Feb. 1947). Cf. Director John Steelman's April 8, 1938, memorandum to his assistant, Carl Schedler, summarizing the results of a conference on arbitration: "[I]t was the consensus that this [Conciliation] Service should more actively enter the field of arbitration." Schedler Files, NAA Archives.

¹³U.S. Dep't of Labor, Labor Information Bull. (Feb. 1947), at 14 (a list of 26 names, of which 18 became charter Academy members).

¹⁴Warren, *The Conciliation Service, V-J Day to Taft-Hartley*, 1 Indus. & Lab. Rel. Rev. 351 (Apr. 1948). See also U.S. Dep't of Labor, *supra* note 12.

Labor paid their expenses and fees. After the FMCS replaced the U.S. Conciliation Service, most of the Labor Department's conciliator/arbitrators transferred to the newly established FMCS labor arbitration panel. They became the nucleus for the formation of the National Academy of Arbitrators.

Director Warren's list represented only a small portion of the country's labor arbitrators. A side effect of the Taft-Hartley Act was turnover of National Labor Relations Board personnel. Many regional directors, field examiners, and attorneys found the Taft-Hartley Act's ideology incompatible with their views of collective bargaining. Some resigned their government positions, and a few of these became arbitrators. Other former government industrial relations officials, and union and management attorneys, easily joined the FMCS and American Arbitration Association (AAA) panels. In 1947, both agencies accepted almost anyone recommended by the local labor-management community.¹⁵

FMCS arbitrators were no longer federal employees. Instead, they worked for the parties who selected them from an FMCS list. Collective bargaining agreements usually provided that a party could seek arbitration of an unresolved grievance. Most arbitration clauses specified that the parties would select their arbitrator from a panel provided by the FMCS, the AAA, or another designating agency.¹⁶

Pre-Academy Initiatives

In April 1947, Director Edgar Warren invited a group of arbitrators to a conference in Washington, D.C., to discuss arbitration laws, fee policies, wage criteria, hearing conduct, and related issues. The participants were in general agreement on the desirability of a professional association but left the matter for further consideration.¹⁷ Many years later, Alex Elson recalled the thrill of the experience:

I had been to many meetings under governmental sponsorship but this meeting had a special quality, the great satisfaction in getting to know other arbitrators. There were approximately 37 at the meeting,

¹⁵Today, designating agencies require more extensive evidence of arbitration experience, usually at least five opinions as well as recommendations by the labor-management community.

¹⁶U.S. Dep't of Labor, *Arbitration Provisions of Collective Agreements in 14 Important Industries*, 59 Monthly Lab. Rev. 1001 (Nov. 1944).

¹⁷Agenda of meeting, dated April 25-26, NAA Archives. See also letter from charter member Byron Abernethy to Dennis Nolan, August 21, 1992.

including such arbitrators as Saul Wallen, Clarence Updegraff, Whitley McCoy, Bill Simkin, Benjamin Aaron, Clark Kerr and a number of others who later achieved distinction. For most of us, it was the first time we had discussed with fellow arbitrators the decisional and procedural problems that troubled all of us. Through these discussions we were able to validate what we were doing. The meeting had an ambitious agenda and met for two days. While we found there were substantial areas of agreement, there were nevertheless areas of controversy. Notwithstanding these differences, the spirit that prevailed was one of liberation and a sense of camaraderie. We found we enjoyed talking to each other and by the time the meeting was over we were on a first name basis.¹⁸

At another meeting in August 1947, again called by Warren, the attendees took the first clear steps toward forming the new organization. They designated a committee to plan an organizational meeting, named Whitley McCoy temporary chairman, discussed potential members, asked Alfred Colby to prepare a draft of a constitution and bylaws, tentatively agreed to call the new organization the National Academy of Arbitrators, and suggested Chicago as a convenient site for the organizational meeting.¹⁹

To convince the Republican majority in Congress that he did not intend to scuttle the Labor Management Relations Act's reorganization plan for the government's labor dispute resolution services, President Truman replaced Edgar Warren with Cyrus Ching, an industry representative who had been active in War Labor Board tripartite activities.²⁰ As FMCS Director, Ching could not participate in the new arbitrators' association but he gave it his blessing. Warren meanwhile had transferred to the Los Angeles campus of the University of California to head its Institute of Industrial Relations, where he continued his efforts to organize the National Academy of Arbitrators.

The Academy Is Born

The Founding Meeting

The organizational meeting took place on September 13, 1947, at Chicago's Stevens Hotel, with David Wolff chairing the meeting. The participants accepted the proposed name of the orga-

¹⁸Letter from Alex Elson to Dennis Nolan, June 15, 1995.

¹⁹Letter from Byron Abernethy, *supra* note 17.

²⁰Ching, Review and Reflections, A Half Century of Labor Relations (B.S. Forbes 1953).

nization, adopted the constitution and bylaws, and elected the following officers:²¹

President	Ralph Seward	
Vice Presidents	Clark Kerr	
	Whitley McCoy	
	William Simkin	
Secretary-Treasurer	Peter Kelliher	
Board of Governors	Douglas Brown	Clifford Potter
	Alfred Colby	Harry Shulman
	Paul Dodd	Saul Wallen
	Lloyd Garrison	Edgar Warren
	Aaron Horvitz	Willard Wirtz
	David Wolff	

Newly elected President Ralph Seward appointed chairmen of the following standing committees:²²

Membership Committee	William Simkin
Ethics Committee	Whitley McCoy
Program Committee	Clark Kerr

The constitution and bylaws stated the purposes of the Academy:²³

1. to establish and foster the highest standards of integrity, competence, honor and character among those engaged in the arbitration of industrial disputes on a professional basis;
2. to adopt and encourage the 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.

²¹Minutes of the Organizing Meeting (Aug. 1947), NAA Archives. See also *Byron Abernethy Reminisces: 40th Anniversary Stirr Memories of Academy's Founding*, The Chronicle (NAA, May 1987), 3; *Great Moments in Arbitration: Charles Killingsworth Remembers*, The Chronicle (NAA, Feb. 1988), 5.

²²National Academy of Arbitrators, Bull. No. 1 (Feb. 4, 1948), NAA Archives.

²³Constitution and bylaws, adopted at founding meeting, September 13, 1947. As Carl Schedler optimistically noted: "It is my personal feeling that the Academy is well on the way to becoming a really potent force in the arbitration affairs of this country." Letter from Carl Schedler to George Cheney, February 3, 1948, Schedler Files, NAA Archives.

The First Annual Meeting

After the initial organizational meeting, Secretary-Treasurer Peter Kelliher invited the September participants and some other arbitrators to attend the First Annual Meeting of the National Academy of Arbitrators at the Drake Hotel in Chicago, Illinois, on January 16–17, 1948.²⁴

Like most new associations, the Academy kept few formal records and had only a tiny bank account.²⁵ At the First Annual Meeting, Secretary-Treasurer Kelliher reported that the Academy had a balance of just \$59.64. That much remained after deducting expenses from voluntary \$10 contributions made by 23 persons attending the September 13, 1947, founding meeting.²⁶

Members at the First Annual Meeting amended the constitution and bylaws to provide for another vice president and elected David Wolff to the new position.²⁷ They also divided the position of secretary-treasurer, naming Kelliher treasurer and Alfred Colby secretary. The membership elected David Cole, Nathan Feinsinger, and Carl Schedler to the Board of Governors to fill the positions vacated by Colby, Shulman, and Wolff—Colby and Wolff had been elected to other offices and Shulman had resigned. Shulman resigned apparently because he did not have time to participate actively in the new organization, although he was reelected to the Board in 1949 and 1950.

²⁴ National Academy of Arbitrators, *supra* note 22.

²⁵ Lack of adequate records was an ongoing problem. For example, when Alfred Colby became Academy secretary for the second time in 1953 (after Carl Schedler had resigned to become deputy to FMCS Director Whitley McCoy), Colby complained to his successor, Gabriel Alexander, about the lack of records: "Apparently all of our doings were mentioned in a series of newsletters." (The first reference to a newsletter appeared in a letter from William Sinkin to Schedler, dated March 25, 1950, but the earliest newsletter in the Academy Archives is dated September 2, 1952.) Letter from Alfred Colby to Gabriel Alexander, March 15, 1954, Schedler Files, NAA Archives.

President Ralph Seward discussed the Academy's finances in a letter to members, dated October 10, 1949: "Our dues are adequate to cover the bare minimum cost of a very limited program. The Secretary of the Academy . . . offered the members an opportunity to make voluntary contributions over and above the annual dues." On February 23, 1950, Schedler wrote to Gabriel Alexander: "Only half of the members have paid dues . . . 40% pay \$10, 40% pay \$25, and 20% pay \$100." Schedler Files, NAA Archives. The financial statement presented at the annual meeting, January 19, 1950, showed receipts of \$5,000, expenses of \$4,100, and a balance of \$900. The registration fee for the annual meeting was \$10. That included cocktails and Friday night dinner. Minutes, Third Annual Meeting, January 19–21, 1950, NAA Archives.

²⁶ National Academy of Arbitrators Bull. No. 2, May 10, 1948, NAA Archives.

²⁷ *Id.* at 3.

Membership Qualifications

Charter Members

It appears that all persons invited to attend either the organizational meeting in September 1947 or the First Annual Meeting in January 1948 were offered charter membership status. Academy archives reveal at least five lists of "charter" members, most undated, with differing names and numbers. The most complete list of persons who accepted charter membership in the new organization was attached to NAA Bulletin No. 1. This list, dated February 4, 1948, contained the following 105 names.²⁸

Benjamin Aaron, Los Angeles, CA	Robert Feinberg, New York, NY
Paul Abelson, New York, NY	Nathan Feinsinger, Madison, WI
Byron Abernethy, Euclid, OH	James Fly, New York, NY
Russell Bauder, Columbia, MO	W. Ray Forrester, New Orleans, LA
Jacob Blair, Pittsburgh, PA	Alexander Frey, Philadelphia, PA
Herbert Blumer, Chicago, IL	Lloyd Garrison, New York, NY
Joseph Brandschain, Philadelphia, PA	Walter Gellhorn, New York, NY
Robert P. Brecht, Philadelphia, PA	Herman Gray, New York, NY
Paul Brissenden, New York, NY	Charles Gregory, Chicago, IL
Douglass Brown, Cambridge, MA	Paul Guthrie, Chapel Hill, NC
Leo Brown, St. Louis, MO	Paul Hays, New York, NY
Robert Burns, Chicago, IL	James Healy, Boston, MA
Sidney Cahn, New York, NY	William Hepburn, Tuscaloosa, AL
John Carmody, Washington, DC	Guy Horton, Stillwater, OK
George Cheney, Los Angeles, CA	Aaron Horvitz, New York, NY
Langley Coffey, Tulsa, OK	William Hotchkiss, San Marino, CA
Alfred Colby, Washington, DC	Louis Jaffee, Buffalo, NY
David Cole, Paterson, NJ	Peter Kelliher, Chicago, IL
Maxwell Copelof, Boston, MA	Thomas Kennedy, Philadelphia, PA
Albert Cornsweet, Shaker Heights, OH	Clark Kerr, Berkeley, CA
G. Allan Dash, Philadelphia, PA	Theodore Kheel, New York, NY
William Davis, New York, NY	Charles Killingsworth, East Lansing, MI
Paul Dodd, Los Angeles, CA	Benjamin Kirsh, New York, NY
Frank Douglas, Washington, DC	John Lapp, Chicago, IL
Paul Douglas, Chicago, IL	John Larkin, Chicago, IL
John Dunlop, Cambridge, MA	
Alex Elson, Chicago, IL	

²⁸National Academy of Arbitrators Bull. No. 1, *supra* note 22.

Lee Lichliter, Harrisburg, PA	Harry Shulman, New Haven, CT
William Loucks, Philadelphia, PA	William Simkin, Philadelphia, PA
Philip Marshall, Milwaukee, WI	Sumner Slichter, Cambridge, MA
Whitley McCoy, University, AL	William Spencer, Chicago, IL
Jean McKelvey, Ithaca, NY	George Strong, Washington, DC
Arthur Meyer, New York, NY	Wesley Sturges, New Haven, CT
Arthur Miller, San Francisco, CA	Charles Taft, Cincinnati, OH
Harry Millis, Chicago, IL	Philip Taft, Providence, RI
Wayne Morse, Eugene, OR	George Taylor, Philadelphia, PA
Charles Myers, Cambridge, MA	Henry Tilford, Louisville, KY
Howard Myers, Boston, MA	Clarence Updegraff, Iowa City, IA
Thomas Norton, New York, NY	Saul Wallen, Boston, MA
Reuben Oppenheimer, Baltimore, MD	Paul Walter, Cleveland, OH
Paul Pigors, Cambridge, MA	Verner Wardlaw, Columbus, OH
Clifford Potter, Dallas, TX	Edgar Warren, Los Angeles, CA
Paul Prasow, Venice, CA	Gordon Watkins, Los Angeles, CA
James Price, Denver, CO	Thomas Whelan, Milwaukee, WI
Herman Rauch, Milwaukee, WI	Dudley Whiting, Detroit, MI
Albert Rosenshine, San Francisco, CA	Willard Wirtz, Chicago, IL
Edgar Rowe, San Francisco, CA	Edwin Witte, Madison, WI
Carl Schedler, Litchfield, CT	Harry Wolf, Chapel Hill, NC
J.J. Scherer, Richmond, VA	James Wolfe, Salt Lake City, UT
Barry Seering, Seattle, WA	David Wolff, Detroit, MI
Benjamin Selekman, Cambridge, MA	Sidney Wolff, New York, NY
Ralph Seward, Pittsburgh, PA	Herman Wyngarden, East Lansing, MI
Leo Sharfman, Ann Arbor, MI	Dale Yoder, Minneapolis, MN
	Ralph Ziegler, Detroit, MI

Early Admission Standards

At the founding meeting, the Membership Committee had the duty of recommending standards for the admission of new members.²⁹ At the First Annual Meeting the committee submitted its report, proposing that the Academy limit membership to these two categories:

1. those who were presently acting or who had recently acted in the capacity of impartial arbitrators in labor disputes and who had sufficient experience and competence in such capacity to warrant consideration;

²⁹ *Report of Membership Committee*, National Academy of Arbitrators Bull. No. 2, *supra* note 26, at 6.

2. those who had made significant contributions to the field of labor arbitration despite limited experience as arbitrators.³⁰

Neither group excluded labor or management advocates who also acted as arbitrators. If the parties continued to select them as neutrals, the Membership Committee applied the same standards to advocates as to any other candidates.³¹

The Membership Committee considered the following factors in determining whether a person was eligible for membership in the Academy:

1. acceptability by industry and labor,
2. number and type of cases decided by the applicant as an impartial arbitrator,
3. length of arbitration experience, and
4. other qualifying experience in the field of labor relations.³²

The membership unanimously adopted the Membership Committee's recommendations,³³ but qualifications for membership remained a divisive issue for many years.

There were two major schools of thought on membership qualifications. The first group argued that the Academy would gain status by including prominent industrial relations experts even without arbitration experience, such as members of Congress, writers of notable labor relations or labor law texts, judges, and influential government officials.³⁴ The second group wanted to restrict membership to active arbitrators. They did not necessarily exclude part-time arbitrators but insisted that prospective members have a minimum number of decided cases.

A leading advocate of broader membership was William Simkin. As head of the Membership Committee, he persuaded a majority of the membership to broaden Academy membership. It became

³⁰ *Id.* at 7-8. This group was not to include persons whose principal experience as arbitrators had been as industry or labor members of arbitration boards, or persons whose principal function was to act in a designating capacity in the appointment of arbitrators.

³¹ *Id.*

³² *Id.* at 8.

³³ National Academy of Arbitrators Bull. No. 2, *supra* note 26. With regard to the second factor, the number and types of cases decided by the applicant, there was much discussion in committee. The general policy was not to count National Railroad Adjustment Board cases at all because they did not involve actual hearings. Generally, too, experience in just a single industry was deemed insufficient for membership. However, Ralph Seward successfully argued that experience in either the steel or automobile industry was sufficiently diverse to satisfy the experience requirement. The committee adopted the same view with regard to the coal industry. Cf. Valtin Presidential Interview, June 1, 1989, NAA Archives.

³⁴ *Report of Membership Committee*, *supra* note 29, at 8.

the rule that prominent persons in labor relations could join the Academy even without substantial arbitration experience.³⁵ In practice, recommendation by one or two Academy members usually assured selection by the Membership Committee, unless other members questioned the candidate's integrity or ability.³⁶

Academy Secretary Alfred Colby led the other group, referred to as the "practitioner" group. He believed that acceptability to the parties was the essential criterion for recognition as a labor arbitrator. As a management consultant, Colby felt strongly that arbitration was a business; the Academy should therefore protect its members' business interests by limiting membership. He viewed the Academy as an elite organization of arbitrators recognized for their professional competence. Thus, labor and management could turn to an Academy member with confidence in the arbitrator's ability. Repeating his fear that the Academy would grow too large, Colby wrote to Simkin on January 31, 1948:

I would anticipate that your committee will be flooded with applications. I am assuming, of course, that it [the Membership Committee] will not go out in the highways and byways soliciting members. If we get too careless about that, we are likely to get into a condition of "dilution" that could easily in time result in a loss of the first-class men now on our membership roll.³⁷

To the left and right of these schools were smaller groups. A few Academy members favored accepting anyone professing to be an arbitrator. The Academy, they believed, should use meetings as training sessions to improve the quality of its members' performance as arbitrators. At the opposite extreme were those members favoring a formal certification process.

Edwin Witte, the dinner speaker at the First Annual Meeting, expressed the consensus of the membership. Witte depicted admission to the Academy as "equivalent to a certification of competence by leaders in the profession."³⁸ That did not quiet the debate.

³⁵*Id.* Whitley McCoy worried that "we might go too far . . . in loading the membership rolls down with honorary members." He suggested that the Academy have no more than eight honorary members at any one time. Letter from Whitley McCoy to Ralph Seward, January 8, 1950, Schedler Files, NAA Archives.

³⁶*Report of Membership Committee, supra* note 29, at 7: "The Committee has discarded the idea of adopting or recommending specific quantitative tests for membership."

³⁷Schedler Files, NAA Archives.

³⁸Witte, *The Future of Labor Arbitration—A Challenge*, in *The Profession of Labor Arbitration, Selected Papers From the First Seven Annual Meetings of the National Academy of Arbitrations, 1948–1954*, ed. McKelvey (BNA Books 1957), 1, 17. Witte's paper summarizes labor arbitration from England in 1824 to the time of his talk in 1948. It concludes with predictions on the future of labor arbitration and on the role of the Academy.

Later Developments

Within a few years of the Academy's founding, the organization faced additional problems in deciding whom to admit. Some of the issues were to linger for decades before the Academy finally resolved them.

At the January 1954 Board of Governors meeting, Membership Committee Chairman John Larkin, who had served in that capacity since 1951, reported that the committee rejected or tabled more applications for lack of experience than for any other reason. He suggested that setting "a specific number of cases or grievances or both" as a minimum standard for consideration "would greatly simplify the work of the Committee." A second reason for rejecting candidates, Larkin reported, was "questionable practices vis-a-vis the parties based on personal knowledge of leading Academy members or the Board of Governors."³⁹

A third problem involved partisan affiliation or interest. The Academy still had no policy against admitting persons who also worked as counsel or consultants for unions or employers. Larkin reminded the Board that several current members were in this category. "As long as they observe proper ethical practices and continue to be in demand by the parties," he added, "the Chairman of this Committee sees no reason for withholding membership."⁴⁰ At the time, most Academy members agreed with Larkin.

A fourth problem cited by Larkin involved membership applications by staff members from agencies with power to designate arbitrators, such as AAA or FMCS administrators. Larkin believed that the Academy should deal with this matter as cases arose

³⁹Report of the Membership Committee, January 15, 1954, NAA Archives. In his 1953 report, John Larkin had stated that "a few members keep hearing that a lot of undesirables are getting into the Academy and we ought to raise our standards." One complaint involved the advanced ages of some arbitrators. Larkin argued that age should not be a factor in judging an arbitrator "unless ability is impaired."

Larkin commented: "Some feel that it would be a bad idea to exclude anyone who does not have the backing of one or two responsible members." He recommended admitting an applicant "because of the strong recommendation of fellow arbitrators in Detroit." Colby also continued his drive to limit NAA membership, warning Larkin: "We have been a little too lax and . . . need a stricter policy in view of the rapidly increasing membership." Letter from Alfred Colby to John Larkin, December 10, 1953, Alexander Files, NAA Archives. According to the January 23, 1954, minutes of the Board of Governors meeting, the Academy had 200 members. Many of them must have been delinquent in paying dues. In April 1954, the new secretary, Gabriel Alexander, reported that there were only 102 dues-paying members. Alexander Files, NAA Archives.

⁴⁰Report of the Membership Committee, *supra* note 39.

rather than setting a general rule. "To our knowledge there had been no rigidly applied rule, and the committee has none to suggest at this time." He recommended that, if Board members wanted a rule, they should draft it at "a high level" and submit it to the membership.⁴¹

At the October 1955 Board of Governors meeting, Membership Chairman Larkin reported on the problem of admitting applicants primarily engaged in consulting work.⁴² Complicating the problem, he said, were the activities of some current members. Some who once did a lot of arbitration work had "found it necessary to take on more legal practice, much of which may have led them into partisan counseling." The present policy, he stated, was to exclude "those actively engaged in counseling management or labor except where they also have a current arbitration practice which is substantial rather than marginal." He asserted that the Academy "cannot properly maintain its professional standard and status if too many members are primarily engaged in representing either management or labor."⁴³ The Academy still had not resolved the issue in 1956, when it elected Larkin president after five years of service chairing the Membership Committee.

The issue of academics who arbitrated in their spare time was simpler. In his January 1955 report to the membership, President Saul Wallen announced the adoption of a new membership policy applying the following standards:

1. The applicant should be of good moral character, as demonstrated by adherence to sound ethical standards in professional activities.
2. (A) The applicant should have substantial and current experience as an impartial arbitrator of labor-management disputes or (B) in the alternative the applicant with limited but current experience in arbitration should have attained general recognition through scholarly publication or other activities as an impartial authority on labor-management relations.⁴⁴

Wallen explained that the policy "gives a place in our ranks to those whose main interest is study and research in our field but who also are active as arbitrators. It excludes those who merely

⁴¹ *Id.*

⁴² Report of the Membership Committee, October 15, 1955, NAA Archives.

⁴³ *Id.*

⁴⁴ Report of President Saul Wallen, January 29, 1955, NAA Archives.

arbitrate infrequently, thus preventing us from lending our name to aspirants in the field."⁴⁵ Thus, after many years of discussion, the Academy settled the academic versus practitioner membership question. The result was a compromise between the two schools: all members must be active arbitrators, but scholars of arbitration would need fewer cases. The Membership Committee was to apply these standards case by case.

New Sources of Academy Members

The Korean War ushered in a new period of economic emergency in 1950. For many Academy members it was *deja vu*. On September 9, 1950, President Harry S. Truman signed Executive Order 10161, establishing the Wage Stabilization Board (WSB).⁴⁶ The nine-member Board was tripartite in structure with three labor, three industry, and three public members. Academy members Clark Kerr and John Dunlop represented the public with Cyrus Ching, former FMCS Director, as chairman. The Board's wage freeze on January 15, 1951, was followed by General Wage Regulation 6, permitting voluntary wage increases up to 10 percent above the January 15, 1950 straight-time wage base.⁴⁷

On April 21, 1951, the President's Executive Order 10233 established a new 18-member tripartite WSB, under Academy member George Taylor's chairmanship. This WSB had limited authority to hear disputes submitted jointly by the parties for either a recommendation or a binding decision. In 1952, Congress stepped in and created still another 18-member tripartite board, chaired by Academy member Archibald Cox. This Board could only recommend permissible wage increases and resolve disputes over the meaning of its recommendations.⁴⁸

⁴⁵ *Id.*

⁴⁶ Federal Mediation and Conciliation Service, 4th Annual Report (1951), at 5.

⁴⁷ Steiber, *Labor's Walkout From the Korean War Stabilization Board*, 21 Lab. Hist. 239, 251-54 (1960).

⁴⁸ Mills, *Government, Labor, and Inflation* (Univ. of Chicago Press 1975), at 33-34. By the time the WSB went out of existence on July 19, 1952, it had approved cost-of-living increases and annual improvement adjustments in existing contracts; permitted corrections of inter- and intraplant inequities; decontrolled pensions and health and welfare plans; and promoted fringe adjustments by excluding them from the limitations on wage increases. See Derber, *Wage Stabilization Program in Historical Perspective*, 23 Lab. L.J. 459 (1972).

Many Academy members again entered federal service as regional board directors, public members, and hearing officers.⁴⁹ The WSB referred most disputes to hearing officers for decision, thereby introducing them as neutrals to the labor-management community.

In its 1952 Annual Report, the FMCS noted that President Truman had referred 10 contract impasse cases to the WSB for mediation and arbitration services during the previous fiscal year.⁵⁰ The biggest disputes involved the Steelworkers (United Steelworkers of America) and the Auto Workers at steel mills and aircraft factories. Most smaller disputes went before regional boards acting on recommendations of hearing officers.

When Dwight D. Eisenhower was elected President at the end of 1952, the labor members of the WSB resigned. Without its tripartite structure, the WSB lost its authority to resolve labor disputes and terminated its hearing officers. As if in compensation, FMCS grievance arbitration referrals began to increase. By 1954, the FMCS reported a 55 percent increase in requests for

⁴⁹Among the Academy members who became public members in Washington were Benjamin Aaron, John Dunlop, Nathan Feinsinger, Arthur Ross, and George Taylor. Letter from Benjamin Aaron to Dennis Nolan, June 23, 1995.

The WSB roster of public regional board members, dated November 8, 1951, contains the names of 24 Academy members: I Boston: Howard Meyers (Northeastern University); II New York: Abram Stockman (former executive director of World War II National Wage Stabilization Board), Emanuel Stein (former public member of National War Labor Board (NWLB) New York Region), and John McConnell (Cornell University); III Philadelphia: Allan Dash (former public member of NWLB Philadelphia Region); IV Richmond VA: George Strong (president, Industrial Relations Research Association, Washington chapter), Paul Guthrie (University of North Carolina and staff member NWLB Atlanta Region), and J.J. Scherer (Lutheran pastor); V Atlanta: William Forrester (Vanderbilt University Law School Dean); VIA Cleveland: Martin Wagner (former National Labor Relations Board (NLRB) regional director) and A.L. Cornsweet (former public member, NWLB Cleveland Region); VIB Detroit: Meyer Ryder (former NLRB regional director, general counsel of World War II National Wage Stabilization Board, and Western Reserve University lecturer), Gabriel Alexander (former staff member, NWLB Detroit Region), Harry Platt (former panel chairman, NWLB Detroit Region), and Russell Smith (University of Michigan law professor); VII Chicago: Thomas Whelan (former panel chairman, NWLB Chicago Region and Marquette University law professor); IX Kansas City MO: Eli Rock (former disputes director, NWLB Philadelphia Region), Russell Bauder (former vice chairman, NWLB Kansas City Region and University of Missouri economics professor), and Leo Brown (former public member, NWLB Kansas City Region and Saint Louis University economics professor); X Dallas: Byron Abernethy (former public member, NWLB Dallas Region, Texas Technological College professor), Langley Coffey (former chairman, NWLB Dallas Region), Alexander Ralston (New Orleans attorney); XII San Francisco: Arthur Ross (former assistant to General Motors-United Auto Workers umpire and University of California-Berkeley industrial relations professor); XIII Seattle: Leo F. Kotin (FMCS Commissioner and former staff member, NWLB Chicago Region).

⁵⁰Federal Mediation and Conciliation Service, 5th Annual Report (1952), at 8.

arbitrators over the previous year. In the same year, the Bureau of Labor Statistics stated that 89 percent of the 3,000 union contracts in its study specified arbitration as the last step of the grievance procedure.⁵¹

In 1953, the FMCS took over jurisdiction and funding of a panel of arbitrators created in 1948 to resolve disputes involving contractors on Atomic Energy Commission (AEC) projects.⁵² President Eisenhower appointed Cyrus Ching, the former FMCS Director, as chairman of the new Atomic Energy Labor-Management Panel. That body quickly became known as the "Ching Panel." Whitley McCoy, an Academy charter member, succeeded Ching as FMCS Director. Ching retained most of the former AEC panel, including Academy members Leo Brown, Arthur Ross, and Russell Smith. Other Academy members served on the AEC panel in later years, and Brown became panel chairman upon Ching's death in 1968.⁵³

President Eisenhower replaced many administrators at the government's industrial relations agencies. Turnover was especially great at the National Labor Relations Board, FMCS, and the Department of Labor. The FMCS helped keep these individuals' talents in the public service by placing them on its labor arbitration panel. Many became active arbitrators, and some eventually joined the Academy.⁵⁴

Another important new source of members came into existence with barely a notice. Canada, whose labor laws and practices most closely resembled those of the United States, developed an arbitration system similar to that of its southern neighbor. In fact, one Canadian Academy member wrote, "As a general statement, it can be said that grievance arbitration in Canada is essentially the same as in the U.S.A."⁵⁵ With a similar arbitration system, it

⁵¹Federal Mediation and Conciliation Service, 7th Annual Report (1954), at 22-23.

⁵²Ching, *Report of Atomic Energy Labor-Management Relations Panel*, in Federal Mediation and Conciliation Service, *id.* at 49.

⁵³Report by Atomic Energy Labor-Management Relations Panel, 1957-1964. See also Gruenberg, *Labor Peacemaker: The Life and Works of Father Leo C. Brown, S.J.* (Inst. of Jesuit Sources 1981), at 77-82, 101.

⁵⁴Among the National Labor Relations Board alumni to join the Academy were Charles Douds, Howard Camser, Howard Klech, Howard LeBaron, and Martin Wagner.

⁵⁵McLaren, *Grievance Arbitration in Canada, Vive la Difference*, The Chronicle (NAA, Oct. 1991), 4. See generally Brown & Beatty, *Canadian Labour Arbitration*, 3rd ed. (Canada Law Book 1994); Craig & Solomon, *The System of Industrial Relations in Canada*, 4th ed. (Prentice Hall 1993); Carrothers, Palmer & Rayner, *Collective Bargaining Law in Canada*, 2nd ed. (Butterworths 1986). One of the most concise explanations of the Canadian arbitration systems is Woods, *Public Policy and Grievance Arbitration in Canada*, in

was natural for Canadian arbitrators to be interested in, and to be of interest to, the Academy. In 1955, the first Canadians became members, Jacob (Jake) Finkelman in January and H.D. (Bus) Woods in October.⁵⁶ Internationalizing the Academy's membership was a significant decision, yet the Board's minutes reflect no discussion of the issue.

At the 1955 Annual Meeting, President Saul Wallen reported that Academy membership stood at 223. The membership had more than doubled since the founding in 1947.⁵⁷ The Academy's rapid growth increased the need to strengthen its membership requirements.

By the late 1950s, several arbitrators, chiefly those in permanent umpire situations, had taken on apprentices, thus helping to produce the next generation of arbitrators. In 1959, Jean McKelvey, then the editor of the annual *NAA Proceedings*, asked a young arbitrator apprenticing with Saul Wallen, Arnold Zack, to prepare a study of apprenticeships. Zack, who was not yet a member of the Academy, produced a thorough report for the next annual meeting. He concluded that apprenticeships had worked well and recommended that the Academy should do more to foster training of new arbitrators.⁵⁸

Developments in American and Foreign Arbitration, *Proceedings of the 21st Annual Meeting*, National Academy of Arbitrators, ed. Rehms (BNA Books 1968), 19.

⁵⁶Jacob Finkelman was one of the creators of modern Canadian labor law. He helped to set up dispute resolution tribunals and for many years chaired the Ontario Labour Relations Board. He later became chair of the Public Service Staff Relations Board of Canada, helping to establish public sector collective bargaining in that country. In 1976, "Bus" (pronounced "Buzz") Woods, a distinguished labor law scholar, became the first Canadian president of the Academy. These first Canadians were soon followed by others of equal stature. In 1963, Bora Laskin joined; he later became Chief Justice of Canada. While never active in the Academy, Laskin retained his membership even while Chief Justice. In 1968, Harry Arthurs, another noted scholar, joined, as did J.F.W. (Ted) Weatherill. Finkelman introduced Weatherill, then the vice chair at the Ontario Labour Relations Board, to the Academy. In 1970, President David Miller appointed Weatherill chair of the newly created Canadian Region of the Academy. In 1995, Weatherill became president of the Academy. Information on Canadian members is from telephone conversations between Dennis Nolan and Secretary-Treasurer Dana Eischen and Eischen's assistant, Kate Reif, March 9 and 10, 1995, and from a faxed letter from Ted Weatherill to Dennis Nolan, March 9, 1995.

⁵⁷Wallen, *supra* note 44.

⁵⁸Zack, *An Evaluation of Arbitration Apprenticeships*, in *Challenges to Arbitration*, *Proceedings of the 13th Annual Meeting*, National Academy of Arbitrators, ed. McKelvey. (BNA Books 1960), 169.

Academy Administration

Early Governance

The Academy's constitution and bylaws created a loose administrative structure typical of voluntary associations. Members elected officers at the annual meeting upon recommendation of a Nominating Committee appointed by the president.⁵⁹ The Nominating Committee submitted only one slate of officers. The president appointed all committee chairmen and committee members, relying on recommendations from Academy members.⁶⁰ It was sometimes difficult to convince members to accept appointments; committee assignments usually resulted in unreimbursed expenses as well as the donation of a considerable amount of time.

The first meeting of the Board of Governors took place in President Seward's hotel suite during the First Annual Meeting on January 16, 1948. Some Board members had to sit on the floor.⁶¹ Later meetings were quarterly, usually in the president's home. Attendance depended on proximity to the meeting site because Board members paid their own expenses. The same geographical consideration affected committee appointments. One of the first complaints about the Academy's administration alleged control by the "eastern establishment."⁶² Because many of the charter members lived on the East Coast between Boston and Washington, appointments naturally concentrated in this area.⁶³ Logistical considerations almost demanded it.

Dues and Finances

During the 1950s, most Academy business took place at the annual meeting. Members of the Board of Governors and of

⁵⁹ Constitution and bylaws, adopted at the founding meeting, September 13, 1947.

⁶⁰ *Id.*, Article IV, Committees. For many years the Committee on Academy History and predecessor committees have tape-recorded interviews with former presidents. In his interview, Ralph Seward stated that he sought recommendations from Academy members for committees. Seward Presidential Interview, June 1, 1989, NAA Archives.

⁶¹ Seward Presidential Interview, *supra* note 60.

⁶² This concentration remained a problem, as evidenced by a February 11, 1950, letter from David Wolff to Carl Schedler calling for a "revitalization" of the Academy. On February 9, 1950, President Seward suggested in a letter to Secretary Schedler that the regional development "should prevent the let-down that occurred last year." Schedler Files, NAA Archives.

⁶³ Cf. geographical distribution in the text, *infra*, at note 73, Schedler Files, NAA Archives. Almost half of the Academy charter members (50) lived on the East Coast between Washington, D.C. and Massachusetts.

standing committees arrived the day before the general session to complete their work. Officers and committee chairmen reported at the membership meeting. The Academy neither paid its officers and committee members nor reimbursed them for their expenses. Organizers of the founding meeting asked each person to donate \$10 ("passing the hat" was one characterization⁶⁴) to cover the organization's expenses. Obviously that could not continue. The first constitution and bylaws therefore provided for the payment of dues. The first schedule of dues was a sliding scale of \$10 to \$100. Each member decided annually whether to be a "participating," "contributing," or "sustaining" member, "giving consideration to the importance of arbitration and to its importance to him as a source of income."⁶⁵ This practice of permitting members to select any of several levels of membership contribution would plague the Academy for years.

By 1953, many members had fallen behind in their dues payments.⁶⁶ Some also objected to varying dues according to a member's own assessment. The issue came to a head at the 1957 Annual Meeting. One alternative was to apportion mandatory dues according to a member's arbitration income. Secretary Bert Luskin summarized the problem in a letter dated March 11, 1957:

The theory of a dues determination based on a percentage of earnings has been discussed at almost every annual meeting and at various meetings of the Board of Governors. It has been discarded since we did not want to get into the area of percentage computations. The only reason for retaining the \$10 classification is to take care of a group of educators who are known to be in the lower income brackets and who derive a small amount of income from arbitration.⁶⁷

In fact, some academicians with modest arbitration practices already found it difficult to justify Academy dues. Late in 1958, for example, Sumner Slichter, a well-known Harvard professor, thought about quitting the Academy. Secretary Luskin wrote him on December 16, 1958, urging him to change his mind: "We are in the process of making a study that may ultimately affect the status of members of the Academy who are in much the same posi-

⁶⁴ Abernethy videotape discussion on Academy founding (May 1987), NAA Archives.

⁶⁵ Constitution and bylaws, Article V.

⁶⁶ Cf. *supra* note 25.

⁶⁷ Luskin Files, NAA Archives.

tion you find yourself in."⁶⁸ Apparently Luskin was persuasive. Slichter was still an Academy member when he died in 1959.⁶⁹

Regional Organization

Early in 1948, to encourage membership participation, President Ralph Seward appointed Carl Schedler, an Academy charter member and a former U.S. conciliator, to the new position of regional coordinator. His task was to study the possibility of setting up regional chapters.⁷⁰ Seward and Schedler hoped to encourage rapport among Academy members in a geographical area by encouraging them to meet regularly to discuss common concerns. In cities with many arbitrators (e.g., Boston, New York, and Philadelphia), regional organizations sprang up almost immediately. In an undated report, Schedler named Pittsburgh, Detroit, and Los Angeles as potential sites for new chapters.⁷¹

On July 29, 1948, Academy Vice President David Wolff suggested that Schedler include Atlanta, Seattle, Chicago, San Francisco, Denver, Minneapolis, and Washington, D.C. Wolff added, "If I can get a meeting going in the Southwest, we will have pretty well covered the entire country."⁷² At the 1949 Annual Meeting, the Academy created a Committee on Regional Conferences. In an undated report shortly thereafter, Schedler listed the Academy's geographical distribution among 25 states and the District of Columbia:⁷³

<u>Area</u>	<u>Members</u>
1. Mass., Conn., R.I.	14
2. New York	18
3. Penn., N.J., Md., Va., D.C.	18
4. Ill., Mich., Wis., Ohio, Iowa	27

⁶⁸ *Id.*

⁶⁹ Sumner Slichter's name continued to appear in the *In Memoriam* section of the NAA Membership Directory, indicating that he was a member when he died.

⁷⁰ In a letter to Carl Schedler dated July 21, 1948, David Wolff stated: "I believe the regional activity to be of top importance in Academy work." Six days later, Wolff wrote to George Taylor: "[R]egional activities of arbitrators may not be so important to the Academy as an organization but such activities are of real importance to people doing arbitration work and those interested in the arbitration field." The same day, he wrote to Clark Kerr: "[S]uch regional meeting may well serve as a basis for getting acquainted with potential new members for the Academy." Schedler Files, NAA Archives.

⁷¹ Schedler Files, NAA Archives.

⁷² *Id.*

⁷³ *Id.*

5. Ala., N.C., Mo., Tex., Ok., La., Ky.	12
6. Calif., Wash., Ore.	13
7. Col., Utah	2
Total Membership	104

In a January 15, 1949, mailing to its members, the Academy designated these Regional Chairmen:⁷⁴

Atlanta, GA—Paul Guthrie	Boston, MA—Saul Wallen
Chicago, IL—John Larkin	Cleveland, OH—Albert Cornsweet
Detroit, MI—Dudley Whiting	Louisville, KY—Henry Tilford
Milwaukee, WI—Philip Marshall	Minneapolis, MN—Dale Yoder
New York, NY—Aaron Horvitz	North California—Clark Kerr
South California—Edgar Warren	Philadelphia, PA—Allan Dash
Pittsburgh, PA—Jacob Blair	St. Louis, MO—Leo Brown
Washington, DC—Carl Schedler	

The Academy served as a social club as well as a professional association. For many members, the annual meeting was the high point in the social calendar. Many letters in the archives discuss stays at each other's homes, greet wives (the term "spouses" was not yet in common use) and children, and recall good times together. Here are a few examples:

It will be good to see you again. . . . Ronnie [Haughton] almost definitely assured me that he would be here and I invited him to stay at our house. We have two extra bedrooms. The same invitation goes for you. We have some excellent Christmas whiskey still on hand so you better come and stay with us. . . .⁷⁵

I had a nice letter from Ronnie [Haughton], stating that he had heard from you and that you seemed quite happy! I thought you seemed happy when I last saw you and I was glad to have it confirmed by Ronnie. Good old Ronnie has a new girl but it probably won't last long as she is leaving for Europe. . . .⁷⁶

I saw Peter Seitz at a cocktail party yesterday and we are planning on going to New Haven together. It will be good to see you in New Haven.⁷⁷

⁷⁴*Id.*

⁷⁵Letter from Carl Schedler to David Wolff, January 9, 1950, Schedler Files, NAA Archives.

⁷⁶Letter from Carl Schedler to David Wolff, February 16, 1950, Schedler Files, NAA Archives.

⁷⁷Letter from Carl Schedler to Noble Braden, March 20, 1950, Schedler Files, NAA Archives.

While you were enjoying your Lake Tahoe cottage in the snow, we were spending a few days in Northern Michigan—temperature 100 degrees in the shade. . . . We spent a night at the Kellogg Center in East Lansing, were entertained by the Wyngardens and saw the Killingsworths. . . . The kids had a big time at the Kellogg Center keeping us up half the night turning switches and pressing buttons. . . . Of course, Dorothy and I are both delighted with your remarks about the kids. Incidentally, Richie made a big hit with them. They want to know how soon he'll be a neighbor. . . . Dorothy joins in our best to Jan and you.⁷⁸

The correspondence reveals deep friendship and a relaxed camaraderie. Many welcomed this relationship in what Ralph Seward called a "lonely profession."⁷⁹ The constitution and bylaws encouraged the social aspects of the organization, listing among the Academy's purposes the "friendly association among the members of the profession."⁸⁰

Training Programs

Because arbitration was only an avocation for many Academy members, many of those holding academic positions were more interested in academic organizations and training programs than in Academy leadership roles. For example, Edwin Witte served as the Industrial Relations Research Association's first president, followed by Sumner Slichter and George Taylor.⁸¹ All were charter Academy members but never held high Academy office. In contrast, at least nine of the first dozen Academy presidents were attorney practitioners.⁸²

During the 1950s, academic members involved in the new industrial relations curricula suggested programs for training arbitrators. By then, public universities in California, Illinois, Michigan, Minnesota, and Wisconsin already had Institutes of Industrial Relations, perhaps under the inspiration of Cornell's New York

⁷⁸Letter from David Wolff to Arthur Ross, September 15, 1952, Schedler Files, NAA Archives.

⁷⁹Seward Presidential Interview, June 1, 1989, NAA Archives. See also Seward, *The Next Decade*, in *Critical Issues in Labor Arbitration*, Proceedings of the 10th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1957), 145.

⁸⁰Constitution and bylaws, Article II.

⁸¹Industrial Relations Research Association (IRRA), *Membership Directory* (IRRA 1990), iv.

⁸²National Academy of Arbitrators, *Membership Directory*, List of Academy Presidents, NAA Archives.

State School of Industrial and Labor Relations.⁸³ Many Jesuit colleges had transformed their labor schools into such institutes as well. Since one of the constitutional purposes of the Academy was "to cooperate with other organizations, institutions and learned societies interested in industrial relations,"⁸⁴ the Research Committee, under the chairmanship of the University of Wisconsin's Edwin Witte, sought to cosponsor training programs.⁸⁵

Witte's successor as chair of the Research Committee, Charles Killingsworth of Michigan State University's School of Labor and Industrial Relations, continued those efforts. In a 1950 report to the Board of Governors, Killingsworth asked the following questions:

1. Is there a present need for more arbitrators?
2. What kind of training is desirable—courses, apprenticeships with established lawyers and academics?
3. Should this include training for labor and management representatives?⁸⁶

Implicit in Killingsworth's questions was a tension between two apparently conflicting goals: tightening admission standards and training new arbitrators.

At the October 1955 Board of Governors meeting, Lloyd Bailer, chairman of the Subcommittee on Education and Training under the Research Committee, recommended that the Academy should not require members to complete a specific academic course "because of the acceptability factor."⁸⁷ However, he suggested that the Academy prepare a course outline for use by schools offering courses in arbitration. The outline would list suggested readings

⁸³ Cf. Industrial Relations Research Association, Newsletter (May 1985), at 4-7, for description of 63 current industrial relations/human resource programs. The original industrial relations institutes are still active.

⁸⁴ Constitution and bylaws, Article II.

⁸⁵ Cf. Witte, *The University and Labor Education*, 65 Monthly Lab. Rev. 36 (1947). Dale Yoder of the University of Minnesota reported to President Seward, "[W]e have a course on arbitration in process on the campus. There are approximately 70 graduate and senior students who are devoting this entire semester to the study of arbitration and its use in industrial disputes." Letter from Dale Yoder to President Seward, April 1, 1948, Schedler Files, NAA Archives.

⁸⁶ Killingsworth, *Report of the Committee on Research and Education: Education and Training of Arbitrators*, in *The Profession of Labor Arbitration, Selected Papers From the First Seven Annual Meetings of the National Academy of Arbitrators, 1948-1954* (BNA Books 1950), 170-75 (published in 8½ x 11 soft cover by BNA). He listed the courses needed to prepare for arbitration as labor law, contract law, labor economics, and trade unionism. "Any profession worthy of the name devotes a great deal of time to the training of practitioners in the field."

⁸⁷ Report of the Subcommittee on Education and Training, October 15, 1955, NAA Archives.

and offer the services of Academy members as lecturers. The Academy should help design arbitration conferences for college students rather than practitioners, he concluded.

Other Issues for Academy Members

As the Academy grew, communication with the membership became more difficult. It also became harder to involve new members in the Academy's activities.⁸⁸ Secretary Carl Schedler began a newsletter to improve communication in 1950, but it appeared only sporadically, especially after Schedler resigned to join the FMCS.

The year 1957 was the Academy's 10th anniversary. Appropriately, participants took the opportunity to evaluate the Academy's policies.⁸⁹ The Board of Governors adopted several important new policies. The first was a recommendation of the Research Committee, chaired by Jean McKelvey of Cornell University. The Board endorsed the committee's suggestion that the Academy publish a volume of presentations from the first seven annual meetings.⁹⁰ The Academy had already begun to publish its annual *Proceedings*, beginning with the Eighth Annual Meeting in 1955. The new volume filled in the missing years and made it possible for later readers to have the best works from all of the Academy's early meetings. Then as now, an academic Academy member edited the volume and the Bureau of National Affairs published it. A second new policy permitted wider geographical distribution of Academy governance. In 1957, the Academy

⁸⁸ See, e.g., letter from John Larkin to Secretary Alfred Colby, November 25, 1953, Alexander Files, NAA Archives: "Certain members who are on the Board of Governors have been complaining bitterly that they are getting little or no information as to what is transpiring in the NAA except a casual rumor from somebody 'in the know.' No newsletter has been sent to the membership since the last annual meeting. . . . Some have hinted that perhaps such things have a direct relation to the long list of members delinquent in the matter of their dues. I pass this on for what it is worth." (Colby had been complaining about the delinquency problem.) Larkin added: "Before we start castigating the members who are delinquent, perhaps we should let them know that they are not forgotten men." Luskin Files, NAA Archives.

⁸⁹ Larkin, *Introduction: The First Decade*, in *Critical Issues in Labor Arbitration, Proceedings of the 10th Annual Meeting*, National Academy of Arbitrators, ed. McKelvey (BNA Books 1957), viii.

⁹⁰ Jean McKelvey, a charter member of the Academy, became Research and Education Committee chair in 1954. The next year she was elected to the Board of Governors. In addition to editing the *Proceedings*, she collaborated with Cornell University's New York State School of Industrial and Labor Relations to publish a bibliography on arbitration and mediation.

amended the constitution and bylaws to increase the size of the Board of Governors from 9 to 12 members.⁹¹

Bert Luskin became secretary of the Academy in 1956. An accountant and attorney as well as an arbitrator, Luskin warned the Board about the difficulties in transferring Academy records to newly elected officers. There had been a tendency to keep Academy papers in pockets and boxes. As a result, many of the Academy's early records had disappeared. Luskin bought some file cabinets (the Academy's first property) and routinized billing and record-keeping during his term of office.⁹² In 1960, he recommended a study of Academy structure. President Leo Brown appointed former president Saul Wallen as chairman of a special Committee on Structure. That led to the institutionalization of Academy policies and activities in the 1960s.⁹³

Ethical Concerns

Under the chairmanship of Whitley McCoy, the Ethics Committee recommended at the First Annual Meeting that the Academy proceed slowly before adopting a code of ethics. He noted that the "arbitration process is capable of infinite variety," so no code should "inhibit the possibility of varying the process to fit the present and future needs" of the parties. Committee members agreed that "certain basic canons of ethics" should embody concepts of "decency, integrity and fair play." Nevertheless, they stressed the need for consensus and further study to "strengthen public confidence in the seriousness and sincerity of the purposes of this organization."⁹⁴

⁹¹The Academy amended the constitution and bylaws at the 10th Annual Meeting in 1957. The amendment provided a staggered term for Board of Governors members. The Academy would elect four Governors each year for three-year terms. Governors would not be eligible for reelection.

⁹²In 1958 Harry Platt, a full-time attorney-arbitrator from Detroit, became Academy president. He gave a free hand to Luskin, who had been secretary since 1956.

⁹³Report of the Committee on Structure, October 12, 1960, NAA Archives. One of the committee's recommendations was to increase the secretary's term of office from two to five years.

⁹⁴*Report of Committee on Ethics*, National Academy of Arbitrators Bull. No. 2, May 10, 1948, at 9, NAA Archives. ("The Committee is in complete agreement on such matters as the impropriety of an arbitrator's soliciting appointment in particular cases, the prevention of abuses in the matter of fees, the unwisdom of formalizing arbitration procedures, and the like. . . . [T]he Committee is likewise agreed on the applicability of the basic principles of decency, integrity and fair play. The reduction of these principles to specific canons of ethics, however, presents a series of questions on which intelligent opinion is sharply divided.")

Solicitation Problems

Some Academy members wanted the Ethics Committee renamed the Grievance Committee because there were already complaints about solicitation of business.⁹⁵ It was acceptable for Academy members to use their membership as an "old boy" network to exchange information about umpireships and arbitration panels. Some permanent arbitrators even had the authority to appoint others to arbitral positions, subject only to the approval of the parties. Naturally they tended to appoint those they knew and respected. For an arbitrator to ask parties or appointing agencies for business, on the other hand, was unprofessional.

For example, one Academy member wrote to another on October 28, 1948: "How about getting your name up for consideration by [named] Tire and Rubber? . . . I have it on excellent authority that it is actively under discussion at the present moment."⁹⁶ A letter from the Pennsylvania Manufacturers Association, dated June 29, 1948, urged that an Academy member forward information about his "experience, technical training and background," since that "often influences the selection of an impartial umpire."⁹⁷ Another member's letter to an AAA official, dated June 16, 1948, states: "I hope that you have not forgotten about my interest in arbitration cases in [named state] where I manage to spend at least every other weekend to visit my family"⁹⁸

As early as April 1948, the solicitation problem was apparent. The Academy did not object to members submitting biographical sketches to the reporting services, such as the Bureau of National Affairs (BNA) or Prentice-Hall (P-H). (Commerce Clearing House (CCH) and Labor Relations Press (LRP) did not publish arbitration decisions until later.) From the outset, however, the Academy decided not to act as a referral agency. Officers referred to the AAA or the FMCS any inquiries received from the parties about particular arbitrators. In a letter dated February 23, 1948, President Ralph Seward explained the policy:

⁹⁵ Minutes of the First Annual Meeting, National Academy of Arbitrators Bull. No. 2, *supra* note 94, at 2.

⁹⁶ William Simkin referred to that appointment in a letter of June 9, 1950, to Carl Schedler: "Ben Aaron, Tom Kennedy, and you are at the top of the list in approximately that order. If I hear anything more, I'll let you know." Schedler Files, NAA Archives.

⁹⁷ Schedler Files, NAA Archives.

⁹⁸ *Id.*

I am anxious that we should do nothing in dealing with the AAA to cause resentment or a feeling that we are butting in where we do not belong. . . . I think we should do all we can to cooperate with the AAA and exchange information with them, but I do not want them to feel that we are in a position to dictate or exercise any sort of veto.⁹⁹

In response to the growing need for labor arbitration services, features and editorials appeared in newspapers and magazines throughout the country. An editorial in the *New York World Telegram*, dated January 30, 1948, stated: "The subject of arbitration and its administration has become a daily topic."¹⁰⁰ A 1947 book review in *Labor and Nation* accused arbitrators of playing politics with decisions. The review argued that voluntary arbitration had far outgrown its original commercial purpose and was now an established custom "in the troubled field of labor relations."¹⁰¹ Bemoaning the fact that "many of these men have not had actual judicial experience or training," the review continued:

Neither the vagaries of precedent-following arbitrators nor the looseness of arbitration procedure nor the present lack of adequate court review should be allowed to continue to a point where they begin to disgrace labor arbitration in the eyes of employers, employees, and the public.¹⁰²

Code of Ethics

In 1948, the AAA appointed a committee to revise its Code of Ethics. The committee's chair was Lloyd Garrison, a charter member of the Academy and dean of the University of Wisconsin Law School. In 1950, David Cole, chair of the Academy's Ethics Committee, met with the AAA committee and FMCS representatives to work on a Code revision. The result was a new document, the Code of Ethics and Procedural Standards for Labor-Management Arbitration.¹⁰³

The 1950 Code included ethical proscriptions for the parties as well as for arbitrators. According to the drafters,

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Yagoda, *Labor Arbitration Is Big Business*, *Lab. & Nation* (Sept.-Oct. 1947), 48 (book review of S. Zack, *Arbitration of Labor Disputes* (Doniger & Raughley 1947), and Updegraff & McCoy, *Arbitration of Labor Disputes* (CCH 1946)).

¹⁰² Yagoda, *supra* note 101.

¹⁰³ *Code of Ethics and Procedural Standards for Labor-Management Arbitration*, in *The Profession of Labor Arbitration, Selected Papers From the First Seven Annual Meetings, The National Academy of Arbitrators, 1948-1954*, ed. McKelvey (BNA Books 1957), Appendix B, 151.

[i]t was considered that the ethical and orderly conduct of labor-management arbitrations necessarily requires the observance by the parties of certain obligations and duties in order to make the essential standards of arbitrators more effective.¹⁰⁴

Drawing attention to the rapid growth of arbitration, the Code's drafters designed the document to meet all dispute-resolution situations whether "over the interpretation or application of an existing agreement, or over terms and conditions of the agreement to be in effect in the future." The Code was not to "deny or narrow" the right of the parties to have "whatever type of proceeding they desire" since the arbitrator served them and "the proceeding is theirs."¹⁰⁵ The Code did not apply to fact-finding, mediation, or any other nonarbitration proceeding. The Academy's membership unanimously approved the Code, and the AAA and FMCS adopted it without amendment.

Code Violations

The Academy directed its Ethics Committee to investigate alleged Code violations. The committee met regularly to consider questions about arbitral conduct. Correspondence in the Academy archives suggests that the committee considered several ethical questions soon after adoption of the Code, particularly relating to solicitation and advertising. Not until May 1953, however, did the committee issue its first formal ruling, Opinion No. 1, on the ethics of an arbitrator's fees.¹⁰⁶ The opinion found that an arbitrator had violated the Code by increasing the fee charged to the parties after the hearing.

The committee submitted only one other opinion in the 1950s. Opinion No. 2, issued in February 1955, dealt with an arbitrator's asserted obligation to disclose a previous award on the same issue between the same employer and a different union. The Ethics Committee ruled that the arbitrator's failure to disclose the previous award did not violate the Code. That an arbitrator has issued an award on a similar issue, said the committee, "has by itself no necessary significance. The decisive ethical question for the arbitrator . . . is whether he is still open to persuasion either way. . . .

¹⁰⁴ *Id.* at 151-52.

¹⁰⁵ *Id.* at 152.

¹⁰⁶ NAA Formal Advisory Opinions, *Opinion No. 1* (Ethics of an Arbitrator's Conduct (Fees)), May 1, 1953, 5. All Advisory Opinions from 1953 to 1996 are reproduced in Appendix D.

A contrary conclusion would lead to the disqualification of arbitrators solely on the basis of their experience."¹⁰⁷

Another ethical problem arising in 1957 involved the so-called "loquacious letterhead." On March 26, 1958, Secretary Bert Luskin advised Ethics Committee Chairman Benjamin Aaron that "the general consensus . . . was that the practice of listing one's affiliations on a letterhead was an exhibition of poor taste; it is a matter that should be discouraged or 'frowned upon'; but I do not recall that anyone at any time held that it is a violation of the code of Ethics."¹⁰⁸ However, in a report dated December 2, 1958, Aaron concluded that the member's letterhead was advertising in violation of Canon 9, Part I.¹⁰⁹ The committee issued no opinion, though. Instead, in a letter dated December 15, 1958, Secretary Luskin recommended:

Perhaps the simplest and most effective way to dispose of this would be for one of us to get on the telephone or approach the man personally and tell him that the matter has been referred to the Ethics Committee and what the prevailing opinion appears to be.¹¹⁰

This apparently disposed of the matter.

Other ethical issues in the 1950s involved fees and delays. For example, in a letter dated July 30, 1958, an Auto Worker regional director complained that arbitrators' fees were too high and that arbitrators were not abiding by the AAA's requirement that they issue awards within 30 days.¹¹¹ Secretary Luskin suggested that the Academy refer this complaint to the AAA since it involved AAA rules.

Academy Involvement With Legislative Proposals

As a membership organization composed of individuals with widely varying backgrounds and attitudes, the Academy has always shied away from taking stands on matters of public policy. Several times during the 1950s, however, the Academy faced the issue of what, if anything, it should do about proposed legislation affect-

¹⁰⁷NAA Formal Advisory Opinions, *Opinion No. 2* (Ethical Obligations of an Arbitrator (Similar Disputes)), February 17, 1955, 6.

¹⁰⁸Luskin Files, NAA Archives.

¹⁰⁹Report of the Ethics Committee to NAA Board of Governors, December 2, 1958. Luskin Files, NAA Archives.

¹¹⁰Luskin Files, NAA Archives.

¹¹¹*Id.*

ing labor arbitration.¹¹² The two big issues at the time were the proposed Uniform Arbitration Act and proposed federal law on labor arbitration.

The Academy's first consideration of the topic came at the 1951 Annual Meeting. The membership adopted a resolution proposed by the Committee on Law and Legislation that straddled the issue. It recognized that the "subject of legislative regulation of labor dispute arbitration" was one of "obvious interest" to the Academy, but urged that the Academy "avoid both precipitous and self-serving opposition and hasty approbation of statutory controls." Instead of precipitous action, the Academy voted to continue studying possible legislation. The 1955 Annual Meeting continued to straddle, adopting a resolution against taking an official position for or against legislation but retaining the freedom to indicate "its judgment as to the desirable content of regulatory statutes." Accordingly, the Committee on Law and Legislation was directed to make its views known to the Commissioners on Uniform State Laws concerning the draft Uniform Arbitration Act.

The Academy grew bolder in 1956, agreeing to oppose enactment of the Uniform Arbitration Act insofar as it would apply to labor arbitration. The membership went so far as to direct the Committee on Law and Legislation and the Board of Governors to prepare and publicize a statement of the Academy "to include specific proposals of changes deemed necessary to make the proposed act acceptable." The next year, the Board of Governors went a step further, deciding that the Academy "has a responsibility to be constructive, rather than simply negative, on this subject." The Board agreed that the Academy should "discharge its responsibility by developing, promulgating, and *proposing* a labor dispute arbitration act, which could be enacted at either federal or state level." The 1957 Annual Meeting featured a debate over the proposed Uniform Arbitration Act, with Dean Maynard Pirsig of the University of Minnesota Law School, who opposed legislation applying to labor arbitration; Whitley McCoy, who strongly endorsed the Uniform Arbitration Act, provided it contained an amendment exempting labor-management arbitration; and Robert

¹¹²A good review of the Academy's shifting positions on legislation appears in the *Report of the Committee on Law and Legislation*, in *Arbitration and the Law*, Proceedings of the 12th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1959), Appendix C, 174-78. Unless otherwise noted, discussion of the topic through 1958 relies on this report.

Howard of the University of Missouri Law School, who also opposed application of the proposed act to labor arbitration.¹¹³

By 1958, the Committee on Law and Legislation reported "progress" in drafting a statute for enactment by Congress. (The Supreme Court's *Lincoln Mills*¹¹⁴ decision, authorizing the federal courts to create a new "common law" of the collective bargaining relationship, had convinced the committee that any legislation should be at the federal rather than at the state level.) The committee proposed a second draft in 1959, only to encounter the familiar argument against allowing the Academy to intervene if state legislatures considered alternative bills.¹¹⁵ Even so, the Academy authorized the drafting to continue and even allowed the Board to "place its stamp of approval on the act" if it deemed such action advisable. The committee presented a third draft to the membership in late 1959, for action at the 1960 Annual Meeting.¹¹⁶ The matter was dropped when it became clear that Congress did not intend to adopt any form of arbitration statute.

Annual Meeting Presentations

In addition to socializing and settling questions of Academy policy, participants in annual meetings heard from the leading arbitration scholars and practitioners. The papers presented at the meetings, most of which appear in the annual volumes of the Academy's *Proceedings*, form the country's most important source of labor arbitration scholarship.

Among the important papers presented in the 1940s and 1950s was the first dinner address in 1949, "The Future of Labor Arbitration—A Challenge," by the University of Wisconsin's Edwin Witte.¹¹⁷ Witte reviewed the development of labor arbitration from early 19th century England to post-World War II America, posed

¹¹³Prsig, *The Proposed Uniform Arbitration Act: A Panel Discussion*, in Critical Issues in Labor Arbitration, Proceedings of the 10th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1957), 114; McCoy, *id.* at 123; Howard, *id.* at 127.

¹¹⁴*Textile Workers v. Lincoln Mills*, 353 U.S. 448, 40 LRRM 2113 (1957).

¹¹⁵Dash, *The Academy and Public Opinion*, in Challenges to Arbitration, Proceedings of the 13th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1960), 1, 7-8 (continuing the story to 1960).

¹¹⁶The text of the third draft appears in Challenges to Arbitration, Proceedings of the 13th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1960), Appendix B, 159-68.

¹¹⁷Witte, *The Future of Labor Arbitration—A Challenge*, in the Profession of Labor Arbitration, Selected Papers From the First Seven Annual Meetings of the National Academy of Arbitrators, 1948-1954, ed. McKelvey (BNA Books 1957), 1.

the problems likely to face labor arbitration in the future, and challenged the Academy to solve those problems. At the 1955 Annual Meeting, Benjamin Aaron presented the first paper on the importance of past practice, "The Uses of the Past in Arbitration."¹¹⁸ Ever the law teacher, Aaron explored his topic by posing difficult hypothetical examples involving asserted past practices.

Another significant paper presented at an Academy meeting during the 1950s was Willard Wirtz's "Due Process of Arbitration" in 1958.¹¹⁹ Wirtz, later U.S. Secretary of Labor, challenged his audience to consider the problems presented to arbitrators when procedural flaws endanger a grievant's rights. Arbitrators had the power and even the duty, he argued, to make rules to ensure fair procedures. The ultimate challenge to that power was the "acceptability" phrase, which he described as "short-hand for the principle that it is the parties and not the arbitrator who should make the rules." Among the due process problems Wirtz considered were the proper extent of the arbitrator's participation in the hearing, the offer of new evidence not presented during the grievance procedure, reliance on hearsay evidence, and the assertion of a "privilege against self-incrimination."¹²⁰

Related External Developments

Two external influences helped to shape the Academy's future. One involved the labor-management community; the other the courts.

The Taylor-Braden Debate

In 1957, J. Noble Braden died. He had been an official of the AAA since its founding. The February 16, 1957, edition of the *New York Times* described Braden as a "staunch advocate of the peaceful settlement of industrial disputes . . . and one of those largely responsible for the growth of labor arbitration."¹²¹ Academy Presi-

¹¹⁸ Aaron, *The Uses of the Past in Arbitration*, in *Arbitration Today*, Proceedings of the 8th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1955), 1.

¹¹⁹ Wirtz, *Due Process of Arbitration*, in *The Arbitrator and the Parties*, Proceedings of the 11th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1958), 1.

¹²⁰ *Id.* at 19.

¹²¹ Luskin Files, NAA Archives.

dent Paul Guthrie called him "Mr. Arbitration," and in 1959 the Academy presented a Braden bust to the AAA.¹²²

During the 1940s and 1950s, Braden had carried on an extended debate with Academy charter member George Taylor over the nature of the arbitral enterprise.¹²³ Their debate reflected the earlier contest between the mediatorial style of arbitrating typified by John Williams and the judicial style of William Leiserson.¹²⁴ The Taylor-Braden debate, however, was far more open, being carried on in articles and lectures that received wide attention in the arbitral community.

Taylor viewed arbitrators as freewheeling mediators and "agreement-makers."¹²⁵ This view was a natural consequence of its environment. Richard Mittenthal described that environment:

The parties had only recently negotiated their initial agreements. Those agreements were extremely brief, often no more than a few pages. And those pages were full of gaps and generalizations. The people responsible for administering these agreements were, for the most part, new to the task. They needed guidance, guidance that often could not be found in the language of the agreement. The art of labor relations was in its infancy.

Arbitrators often found the language to be inadequate or irrelevant to the issue at hand. They sought, given these deficiencies, a sound and workable solution to a problem. They saw themselves not only as judges engaged in analyzing a written text but also as problem solvers who were using their knowledge of the workplace and the parties' needs to transform a code (or constitutional) provision into the kind of practical result the parties could accept. They were the alchemists of a new labor-management order.¹²⁶

Braden, in stark contrast, viewed arbitrators as private judges employed by the parties solely to interpret the collective agree-

¹²² *Id.*

¹²³ See generally Nolan & Abrams, *American Labor Arbitration: The Maturing Years*, 35 U. Fla. L. Rev. 557, 611-13 (1983); Mittenthal, *Whither Arbitration?*, in *Arbitration 1990*, Proceedings of the 44th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1992), 35.

¹²⁴ Eisner, William Morris Leiserson: A Biography (Univ. of Wis. Press 1967).

¹²⁵ Taylor's clearest statements of his approach appear in Taylor, *The Arbitration of Labor Disputes*, 1 Arb. J. (n.s.) 409 (1946), and Taylor, *Effectuating the Labor Contract Through Arbitration*, in *The Profession of Labor Arbitration, Selected Papers From the First Seven Annual Meetings of the National Academy of Arbitrators, 1948-1954*, ed. McKelvey (BNA Books 1957), 20.

¹²⁶ Mittenthal, *supra* note 123, at 37.

ment.¹²⁷ He therefore looked to the courts, not to industrial relations, for a model. Mittenthal captured Braden's idea:

The Braden model produced a different mindset. Those arbitrators who embraced this model viewed the agreement, first and foremost, as a contract for which the traditional rules of contract interpretation would ordinarily suffice. They did not think of the agreement as a code or constitution. They looked to the language of the contract and looked further to the parties' purposes or matters of equity only if the language was truly ambiguous. Their collective bargaining insight was a secondary tool.¹²⁸

Taylor's approach represented the way most Academy members had learned to arbitrate, and the way they liked to arbitrate. Nevertheless, Taylor's model was dying even as he wrote. The parties negotiated ever more precise agreements, leaving fewer "gaps and generalizations" requiring arbitral amendment. As their own expertise increased, they had less need for a wise arbitrator's counsel. In some cases, the changing expectations of the parties were express and abrupt. Harry Shulman, an Academy charter member, had followed the Taylor model during his 12 years as the umpire at Ford Motor Company, from 1943 to 1955. At his death, the parties named Harry Platt to replace him. They told Platt that they wanted his interpretation of the contract, not his imagination.¹²⁹

There was a greater problem in continuing the Taylor approach as the practice of arbitration grew. It demanded arbitrators with all the skills and intellect of Taylor. When arbitrators without Taylor's talents tried to exercise the power he had held, they often failed miserably. Harold Davey of Iowa State University expressed a widespread feeling shortly after Taylor's death:

Only a gifted minority of arbitrators can handle the delicate dual assignment of functioning as mediator-arbitrators. . . . [T]here are very few arbitrators who can function effectively in the George Taylor manner.¹³⁰

¹²⁷ See Braden, *Current Problems in Labor-Management Arbitration*, 6 Arb. J. (n.s.) 91 (1951); Braden, *Arbitration and Arbitration Provisions*, in New York University Second Annual Conference on Labor (1949), 355; Braden, *Problems in Labor Arbitration*, 13 Mo. L. Rev. 143 (1948).

¹²⁸ Mittenthal, *supra* note 123, at 38.

¹²⁹ *Id.* Of course there were other factors at play besides more detailed contracts and changing expectations of the parties. Mittenthal cited the increasing use of lawyers as advocates, which made arbitration more formal; the publication of arbitration awards, which made reliance on precedent possible; the advent of arbitrators with little industrial relations experience; and the increasing legalization of the arbitration process. *Id.* at 40-44.

¹³⁰ Davey, *Labor Arbitration: A Current Appraisal*, 9 Indus. & Lab. Rel. Rev. 85, 88 (1955).

The Lincoln Mills Decision

Before 1947, few courts readily enforced collective bargaining agreements. In many jurisdictions, unions were not "legal persons." As voluntary associations, they could not sue or be sued in their own names. Additionally, courts were not always sure that parties intended their collective agreements to be legally enforceable "contracts" rather than unenforceable "gentlemen's agreements." Section 301 of the Labor Management Relations Act of 1947 overruled those concerns by authorizing parties to seek enforcement of collective bargaining agreements in federal district courts. By extension, the courts could also enforce arbitration clauses and the resulting arbitration awards. The drawback to "legalizing" collective agreements was that it provided dissatisfied parties with a legal basis for suing to set aside an arbitration award.

Not until 1957 did the U.S. Supreme Court begin to explore the full import of section 301. In *Textile Workers v. Lincoln Mills*,¹³¹ the union sued in federal court to force a reluctant employer to arbitrate a grievance. The primary legal question before the Court was whether section 301 merely gave a federal court jurisdiction to apply the appropriate state common law, or instead created a new federal common law. Writing for the majority, Justice William O. Douglas concluded that the section authorized federal courts to fashion a new federal common law. Where was this new law to come from? Justice Douglas provided only the most general answer:

We conclude that the substantive law to apply in suits under § 301(a) is federal law, which the courts must fashion from the policy of our national labor laws. . . . The Labor Management Relations Act expressly furnishes some substantive law. It points out what the parties may or may not do in certain situations. Other problems will lie in the penumbra of express statutory mandates. Some will lack express statutory sanction but will be solved by looking at the policy of the legislation and fashioning a remedy that will effectuate that policy. The range of judicial inventiveness will be determined by the nature of the problem. . . . Federal interpretation of the federal law will govern, not state law. . . . But state law, if compatible with the purpose of § 301, may be resorted to in order to find the rule that will best effectuate the federal policy.¹³²

¹³¹ *Supra* note 114.

¹³² *Id.* at 456-57, 40 LRRM at 2116 (citations omitted).

In one stroke the Court wiped out 10 years of uncertainty over the scope of section 301. Three years later, when the Court threw its full strength behind labor arbitration in the *Steelworkers Trilogy*,¹³³ arbitration's "golden age" began.¹³⁴ In the next decade, the Academy would grow from an informal association to a solid institution, and the practice of arbitration would develop from an occasional public service to a regular professional activity.

Academy members did not miss the significance of these legal developments. By 1959, the *Proceedings* of the annual meeting began to include more papers on legal issues than ever before. The 1959 meeting, in fact, concentrated on exactly those issues. The title of the *Proceedings* for that year is *Arbitration and the Law*. Two distinguished law professors who were members of the Academy, UCLA's Benjamin Aaron and Harvard's Archibald Cox, presented somewhat differing interpretations of the significance of the *Lincoln Mills* decision.¹³⁵ Aaron was quite pessimistic, predicting that "its immediate effects upon industrial relations are almost certain to be disruptive unless measures are taken to cushion its impact," because he believed most judges to be "poorly informed about industrial relations at the plant level" and likely to apply "principles or attitudes that are generally inimical to the arbitration process and to the best interests of the parties."¹³⁶ Cox, in contrast, was much more positive. He urged arbitrators and lawyers to translate "the ways of the industrial world into legal doctrines comprehensible to judges who lack industrial experience"; if they did so, he suggested, "the industrial jurisprudence which they have been developing might give wisdom and vitality to conventional law."¹³⁷ Another session at that meeting consisted of a panel discussion chaired by Nathan Feinsinger in which three other arbitrators (Arthur Ross, William Simkin, and Russell Smith) stated their differing reactions to *Lincoln Mills* and to the broader

¹³³ *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 46 LRRM 2414 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 46 LRRM 2416 (1960); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 46 LRRM 2423 (1960).

¹³⁴ Cf. Feller, *The Coming End of Arbitration's Golden Age*, in *Arbitration—1976, Proceedings of the 29th Annual Meeting*, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1976), 97.

¹³⁵ Aaron, *On First Looking into the Lincoln Mills Decision*, in *Arbitration and the Law*, *Proceedings of the 12th Annual Meeting*, National Academy of Arbitrators, ed. McKelvey (BNA Books 1959), 1; Cox, *Reflections Upon Labor Arbitration in the Light of the Lincoln Mills Case*, *id.* at 24.

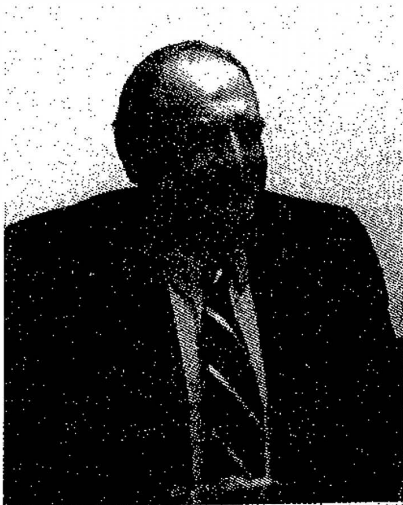
¹³⁶ Aaron, *supra* note 135, at 3–4.

¹³⁷ Cox, *supra* note 135, at 30.

question of the role of the law in arbitration.¹³⁸ That issue was to dominate Academy meetings for the next two decades.

¹³⁸Feinsinger, *The Role of the Law in Arbitration: A Panel Discussion*, in *Arbitration and the Law*, Proceedings of the 12th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1959), 68; Ross, *id.* at 69; Simkin, *id.* at 75; Smith, *id.* at 83.

3.1. PRESIDENTS RESTRUCTURE IN THE 1960s



Sylvester Garrett (1963).



Benjamin Aaron (1962).



Leo Brown (1960).



Saul Wallen (1954), chaired
Committee on Structure in 1960.

CHAPTER 3

INSTITUTIONALIZATION AND THE 1960s

The Labor Relations Environment

A sign of the coming of arbitration's golden age was the enormous increase in the number of arbitrations. Between 1960 and 1970, Federal Mediation and Conciliation Service requests for panels or direct appointment of arbitrators tripled, and the number of arbitrator appointments and awards more than doubled.¹ Supreme Court decisions stated the legal parameters of the federal common law of labor arbitration.² As explained by David Feller, the Supreme Court decisions elevated grievance arbitrators to a special place:

Unlike other adjudicators, all doubts are resolved in favor of their jurisdiction. And their decisions, unlike those of those inferior fellows, the trial and intermediate appellate-level judges, are subject to only the most limited form of review.³

By the early 1960s, labor-management relations had become institutionalized, and strikes declined to record low levels.⁴ Collective bargaining had spread throughout key sectors of the economy. Industrywide agreements characterized most mass-production industries, such as steel, coal, rubber, meat packing, and transportation. In each case, the agreement established indus-

¹Federal Mediation and Conciliation Service, 23rd Annual Report (1970), 59.

²*Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 46 LRRM 2414 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 46 LRRM 2416 (1960); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 46 LRRM 2423 (1960). For an analysis of the details and impact of the *Trilogy* cases, see Nolan & Abrams, *American Labor Arbitration: The Maturing Years*, 35 U. Fla. L. Rev. 557, 586-91 (1983). The cases are discussed more fully *infra*.

³Feller, *The Coming End of Arbitration's Golden Age*, in *Arbitration—1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators*, eds. Dennis & Somers (BNA Books 1976), 97, 98.

⁴According to the U.S. Department of Labor, the five-year period ending in 1964 "was, in relative terms, one of sustained industrial peace, paralleled in nonwar years only during the Great Depression." Strike idleness "averaged 0.16 percent of the estimated total working time during the 1960-64 period, as compared with 0.30 and 0.34 percent during the 1955-59 and 1950-54 periods, respectively." U.S. Dep't of Labor, Bureau of Labor Statistics, *Analysis of Work Stoppages, 1964* (Bull. No. 1460, 1965), 1.

try umpires or permanent panels for grievance arbitration.⁵ Elsewhere, arbitration had become the standard procedure for resolution of grievances at the workplace. As early as 1952, arbitration provisions existed in 89 percent of the 1,442 contracts studied by the U.S. Bureau of Labor Statistics.⁶ Moreover, the scope of bargaining and hence potential issues for arbitration continued to expand. Contracts included supplementary unemployment benefits, pensions, severance pay, and many other fringe benefits.⁷

With labor-management relations stabilized, new issues such as poverty, discrimination, and civil rights came to the fore in the Kennedy and Johnson administrations of the 1960s. Social dissent and political upheaval brought crisis and change, and "group consciousness emerged among blacks, the poor, the young, students, women, Hispanics, and Native Americans. There was a civil rights revolution, an assault on poverty, campus unrest, an anti-war movement. . . ."⁸ These societal changes inevitably affected the labor-management community by forcing new issues onto the bargaining table and eventually into arbitration.

Economics and Employment

The 1957–1958 recession had forced management to tighten work standards, discipline, and work force efficiency, most notably in mass-production industries. The 1960s, in contrast, were a period of strong economic growth. In time, new bargaining issues occupied negotiators' attention, including management rights, job security, work rules, and automation.⁹

⁵ See, e.g., Alexander, *Impartial Umpireships: The General Motors-UAW Experience*, in *Arbitration and the Law*, Proceedings of the 12th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1959), 108; Cole, *Chrysler-UAW Umpire System*, in *The Arbitrator and the Parties*, Proceedings of the 11th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1958), 111; Davey, *John Deere-UAW Permanent Arbitration System*, in *Critical Issues in Labor Arbitration*, Proceedings of the 10th Annual Meeting, National Academy of Arbitrators (BNA Books 1957), 161. For a historical account of the U.S. Steel umpireship, established in 1945, see Dybeck, *Arbitration in Specific Environments: I. The Steel Industry*, in *Arbitration 1989: The Arbitrator's Discretion During and After the Hearing*, Proceedings of the 42nd Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1989), 236.

⁶ U.S. Dep't of Labor, *Arbitration Provisions in Collective Agreements, 1952*, 76 Monthly Lab. Rev. 261 (1953).

⁷ Katz & Kochan, *An Introduction to Collective Bargaining and Industrial Relations* (McGraw-Hill 1992).

⁸ Chalmers, *And the Crooked Places Made Straight* (John Hopkins Univ. Press 1991).

⁹ Barbash, *The Causes of Rank-and-File Unrest*, in *Trade Union Government and Collective Bargaining*, ed. Seidman (Praeger 1970), at 8.

Other important changes were occurring in the labor force itself. By February 1961, total civilian employment had reached 67.3 million, but most of the gain had been in services, trade, and government rather than in manufacturing. It became clear later that this structural shift in employment posed a serious challenge for labor unions because their strength had always been in the mass-production industries. Organizing in unfamiliar fields would prove to be extremely difficult. Geographic changes compounded the problem. The 1960s saw the beginning of what would become a major flow of jobs from the heavily unionized "rust belt" to the nonunion "sun belt." Demographic changes in the work force presented a different sort of challenge. Nearly two-thirds of the increase was due to the influx of women workers into the labor market. Many other new workers were members of racial minorities.¹⁰ Unions historically composed of white males were poorly prepared to organize the new work force.

As early as 1962 some unions reported declines in membership. Labor leaders were becoming alarmed about the lack of union organization in the rapidly expanding service and white-collar occupations. They were also concerned with the "somewhat anomalous" condition of the economy: general economic expansion coincided with high unemployment in certain industries due to technological innovation.¹¹ The critical levels of unemployment and underemployment among minorities and youth added to these concerns.

Union Activity

The 1960s brought new governmental activity affecting labor. The Labor-Management Reporting and Disclosure Act of 1959 (the Landrum-Griffin Act) regulated internal union affairs and imposed significant reporting requirements on unions. The resulting burden was especially heavy for small unions and locals without full-time officers. Some local union officers resigned rather than follow the reporting requirements. To give members an alternative to lawsuits under the Landrum-Griffin Act, some unions,

¹⁰ Fisher, *Labor in the Economy of 1967*, 90 Monthly Lab. Rev. 1 (Dec. 1967).

¹¹ Groom, *An Account of American Labor in 1964*, 87 Monthly Lab. Rev. 1385 (Dec. 1964).

notably the Automobile Workers and Steelworkers, established Public Review Boards for arbitration of internal disputes. Several Academy members served on these union boards.¹²

By 1966, prices outpaced wages. The Landrum-Griffin Act, which granted members a greater voice in union affairs, provided a way for workers to protest their deteriorating situation. Many seized the opportunity and voted to reject contracts negotiated by their officers. William Simkin, newly appointed Federal Mediation and Conciliation Service Director and former Academy president, explained the situation:

After a reasonably long period of relative price stability, sharply rising living costs were creating strong pressures. Declining unemployment created more alternatives for workers. The new, younger workers had not yet become assimilated into the industrial community.¹³

Increases in prices coupled with labor shortages prompted a demand for wage increases in major agreements. Workers covered by cost-of-living adjustment (COLA) clauses received larger adjustments than usual, while those without COLA protection lost ground to inflation.¹⁴ In 1968, unemployment dropped to its lowest rate since 1953. The tight labor market enabled unions to negotiate higher wage increases than in any recent year. Time lost because of work stoppages reached new peaks. In 1969, the number of strikes (5,700) was at its highest annual level since the government began collecting strike statistics.¹⁵ The number of workers

¹² Cf. Klein, *Public Review Boards: Their Place in the Process of Dispute Resolution*, in *Problems of Proof in Arbitration*, Proceedings of the 19th Annual Meeting, National Academy of Arbitrators, ed. Jones (BNA Books 1967), 189; Brown, *Union Public Review Boards*, 7 Social Order 215 (May 1957), 215. The Upholsterers Union also established an ostensibly independent public review board that included Academy members Benjamin Aaron, Leo Brown, and Archibald Cox. Aaron described the board's experience:

Each year we were notified by the Union's president, Sal Hoffman, that no cases within our jurisdiction had arisen. Finally, a case was submitted and we ruled in favor of the grievant. The Union refused to comply with our decision, so the members of the Board unanimously resigned.

Letter from Benjamin Aaron to Dennis Nolan, June 23, 1995. See also Gruenberg, *Labor Peacemaker: The Life and Works of Father Leo C. Brown, S.J.* (Inst. of Jesuit Sources 1981), at 104-05.

¹³ Simkin, *Refusals to Ratify Contracts*, in *Trade Union Government and Collective Bargaining*, *supra* note 9, at 138.

¹⁴ Ondras, *A Review of Labor Relations in 1966*, 89 Monthly Lab. Rev. 1356 (Dec. 1966).

¹⁵ U.S. Dep't of Labor, *Current Labor Statistics: Work Stoppages, 1947 to Date*, 104 Monthly Lab. Rev. 106 (Dec. 1981). The number of stoppages in 1969 was exceeded only by the number in 1970 (5,716) and in 1974 (6,074). *Id.*

involved in strikes (2.5 million), however, had declined to the level of 20 years earlier, when the work force was far smaller.¹⁶

Retirement and election defeats also brought about changes in top union leadership. Tony Boyle took over the presidency of the United Mine Workers of America (UMWA) from John L. Lewis, founder of the Congress of Industrial Organizations, who headed the UMWA for more than 30 years until his retirement in 1960. Jerry Wurf became president of the American Federation of State, County and Municipal Employees, succeeding Arnold Zander, who had led the organization since its founding 28 years earlier. Paul Jennings succeeded James Carey as president of the International Union of Electrical, Radio & Machine Workers, and I.W. Abel replaced David McDonald as president of the United Steelworkers of America.

In 1967, Frank Fitzsimmons replaced Teamsters President James Hoffa, who began serving an eight-year sentence for jury tampering. Walter Reuther, president of the United Auto Workers (UAW), resigned all AFL-CIO posts except as head of the Industrial Union Department. Labor unity, joyfully achieved with the 1955 merger of the AFL and CIO, broke down again in 1968. After a long period of quarrels, the UAW disaffiliated from the AFL-CIO because of a dispute over that organization's political attitudes and its lack of organizing activities.¹⁷

Public-Sector Bargaining

There was one bright light on labor's horizon. On January 17, 1962, President John F. Kennedy signed Executive Order 10988, granting exclusive recognition rights to unions of federal government employees. This launched a dramatic increase in public-sector bargaining. Led by Wisconsin in 1962, six other states—Connecticut, Delaware, Massachusetts, Michigan, Minnesota, and New York—established public employee relations boards (PERBs) by 1967. Many others soon followed the trend. Most of the new public-sector bargaining laws required arbitration for resolution

¹⁶U.S. Dep't of Labor, Bureau of Labor Statistics, *Analysis of Work Stoppages, 1969* (Bull. No. 1687, 1971), 3-4.

¹⁷Fisher, *Labor and the Economy in 1969*, 93 Monthly Lab. Rev. 30, 40 (Jan. 1970). This disaffiliation did not affect the longstanding arbitration procedure for settlement of jurisdictional disputes. Cf. Dunlop, *The Arbitration of Jurisdictional Disputes in the Building Industry*, in *Arbitration Today*, Proceedings of the 8th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1955), 161.

of grievance disputes.¹⁸ Several also mandated arbitration of bargaining disputes.

Between 1956 and 1968, membership in public-sector unions grew steadily from 915,000 (5.1% of the public-sector work force) to 2,155,000 (10.7%). In contrast, membership in the private sector, while numerically above its 1956 total, steadily shrank as a proportion of the private-sector work force. The combination of trends meant that public-sector unions accounted for a much higher proportion of total union membership.¹⁹ Union growth in the public sector helped to "mask the initial signs of the union movement's stagnation and declining ability to organize new firms and workers in the private sector."²⁰ Predictably, the growth in public-sector bargaining produced more bargaining deadlocks. Strikes in the public sector increased from 15 in 1958 to 411 in 1969.²¹

Unionization was one means for minority employees to gain better treatment from their governmental employers. The connection between civil rights and public employee bargaining was dramatized by the assassination of Martin Luther King, Jr. At that time, King was in Memphis to support a strike by the city's garbage workers over low wages and racial discrimination.

One early prediction forecast little arbitration as a result of public-sector unionization.²² In fact, governments and their employees quickly adopted arbitration as the normal means of resolving grievances. The number of grievance arbitrations in the public sector increased several-fold between 1966 and 1968.²³

The dramatic growth of public-sector unionism had unexpected effects on labor arbitration. First, there was a substantial increase

¹⁸Schneider, *Public-Sector Labor Legislation—An Evolutionary Analysis*, in *Public-Sector Bargaining*, 2nd ed., eds. Aaron, Najita & Stern (BNA Books 1988), 189.

¹⁹U.S. Dep't of Labor, Bureau of Labor Statistics, *Directory of National and International Labor Unions in the United States 1969* (Bull. No. 1665, 1970), 72.

²⁰Kochan, Katz & McKersie, *The Transformation of American Industrial Relations* (Basic Books 1986).

²¹U.S. Dep't of Labor, Bureau of Labor Statistics, *Work Stoppages in Government, 1980* (Bull. No. 2110, 1981).

²²Killingsworth, *Grievance Adjudication in Public Employment*, in *The Arbitrator and the Parties*, Proceedings of the 11th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1958), 149, 158.

²³A 1970 survey of 45 responding governmental units showed the number of arbitrations increased from 19 in 1966 to 42 in 1967, and to 140 in 1968. Krislov & Peters, *Grievance Arbitration in State and Local Government: A Survey*, 25 Arb. J. 201 (1970). Arbitration requests received by the Wisconsin Employment Relations Commission increased from 1 case in 1963 to 34 by 1969. Krinsky, *Municipal Grievance Arbitration in Wisconsin*, 28 Arb. J. 62 (1973).

in demand for labor arbitrators, especially in areas where previously there had not been much private-sector arbitration. Some public-sector unions doubted the independence of arbitrators employed by state labor agencies, so they sought either experienced private-sector arbitrators when they were available or new arbitrators when they were not. Second, the introduction of new recruits to the arbitration profession created a demand for training the new arbitrators. In the early 1960s, for example, the American Arbitration Association established an institute directed by Arnold Zack to apply private-sector arbitration techniques to the public sector. Serving on the institute's board were Academy members Benjamin Aaron, David Cole, Nathan Feinsinger, Clark Kerr, and Lawrence Schultz.

Third, many of the new arbitrators sought membership in the Academy. Their applications required more careful scrutiny because the method of appointment in public-sector arbitration was quite different from that in the private sector. Instead of selection by the parties, many public-sector arbitrators were appointed and paid by government agencies. This flew in the face of the Academy's established standard of "acceptability." In addition, they were largely unknown to the close-knit private-sector arbitration community.²⁴

Labor Legislation

The 1960s saw increased governmental regulation of employment conditions. Two of the most important new laws were the Equal Pay Act (1963) and Title VII of the Civil Rights Act (1964). Title VII gave the Equal Employment Opportunity Commission (EEOC) a direct role in workplace decisions on hiring, promotion, transfer, seniority, discipline, and many other terms and conditions of employment. Some commentators, while sympathetic to the new legislation, feared that it would erode employees' need for unions. Yet to come were more federal statutes, among them the Occupational Safety and Health Act (OSHA) of 1970 and the Employee Retirement Income Security Act (ERISA) of 1974. Like the earlier laws, these provided more protection for workers while further weakening their incentives to join unions.

²⁴This information courtesy of Arnold Zack, in a telephone conversation with Dennis Nolan on June 7, 1995.

Court Decisions

The Steelworkers Trilogy

In 1959, Benjamin Aaron regarded the *Lincoln Mills*²⁵ decision "as a signal for widespread intervention by the federal courts into the hitherto private relationships of employers and unions."²⁶ Beginning just three years later, however, the Supreme Court was to take a radically different approach. As William Murphy described the results in his presidential address in 1988, the later decisions had the opposite effect. With the *Steelworkers Trilogy* of 1960, the Supreme Court successfully intervened "to keep the law out."²⁷

Each of the *Trilogy* cases featured an employer trying to escape the burden of an arbitration agreement with the United Steelworkers of America (Steelworkers). The first two cases, *Steelworkers v. American Manufacturing Co.*²⁸ and *Steelworkers v. Warrior & Gulf Navigation Co.*,²⁹ dealt with the contractual duty to arbitrate; the last, *Steelworkers v. Enterprise Wheel & Car Corp.*,³⁰ involved the employer's attempt to vacate an adverse arbitration award. Justice William O. Douglas, the author of *Lincoln Mills*, also wrote the *Trilogy* decisions. Each was argued by a young labor lawyer, David Feller, who later became president of the Academy.³¹

In *American Manufacturing*, the parties had adopted a standard arbitration clause with no exclusions. When a dispute arose over the employer's assertion that an employee who had received workers' compensation benefits for a permanent disability was no longer able to work, the employee filed a grievance but the company refused to arbitrate. The union sued to enforce the arbi-

²⁵ *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 40 LRRM 2113 (1957).

²⁶ Aaron, *On First Looking into the Lincoln Mills Decision*, in *Arbitration and the Law*, Proceedings of the 12th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1959), 1, 3.

²⁷ Murphy, *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. Gruenberg (BNA Books 1988), 1, 4.

²⁸ 363 U.S. 564, 46 LRRM 2414 (1960). Unless otherwise indicated, the discussion of the major court cases on arbitration during the 1960s is based on the texts of the decisions themselves and on Nolan & Abrams, *American Labor Arbitration: The Maturing Years*, 35 U. Fla. L. Rev. 558 (1983).

²⁹ 363 U.S. 574, 46 LRRM 2416 (1960).

³⁰ 363 U.S. 593, 46 LRRM 2423 (1960).

³¹ See Feller, *How the Trilogy Was Made*, in *Arbitration 1994: Controversy and Continuity*, Proceedings of the 47th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), 327.

arbitration agreement but lost before the Court of Appeals for the Sixth Circuit.³² That court granted summary judgment to the employer because the grievance was "a frivolous, patently baseless one, not subject to arbitration under the collective bargaining agreement"³³

The Supreme Court reversed, holding that the national labor policy embodied in the Taft-Hartley Act required giving the parties' dispute-resolution system "full play." Their agreement was to submit all grievances to arbitration, not merely those a court may deem meritorious. The court's role in such a situation, Justice Douglas wrote, is limited to determining whether the grievant's claim is governed on its face by the contract. Whether the grievant is right or wrong is a question of contract interpretation for the arbitrator. A district court should require arbitration even of "frivolous" claims because the processing of such claims "may have therapeutic values of which those who are not a part of the plant environment may be quite unaware."³⁴

The arbitration agreement in *Warrior & Gulf* differed from that in *American Manufacturing*. Although the main part of the arbitration clause was broader, it contained an important exclusion for "matters which are strictly a function of management." The agreement did not define which matters those might be. The company refused to arbitrate a subcontracting grievance, and the union went to court for enforcement of the arbitration agreement. The lower courts dismissed the complaint, finding that subcontracting was strictly a management function, and therefore not arbitrable.³⁵

Again the Supreme Court reversed. Again it relied on the national policy favoring grievance arbitration. In the labor context, arbitration replaced strikes and lockouts, in contrast with commercial disputes where arbitration replaced litigation. Labor arbitration therefore continued the bargaining process itself, filling in the blanks in the parties' agreement. They chose an arbitrator for that task because of the arbitrator's special expertise in the common law of the shop. Judges, in contrast, lacked that special competence. As a result, a court should not deny an order to arbitrate, even when the agreement contained an exclusion,

³² *Steelworkers v. American Mfg. Co.*, 264 F.2d 624, 43 LRRM 2757 (6th Cir. 1959).

³³ *Id.* at 628, 43 LRRM at 2760.

³⁴ *Steelworkers v. American Mfg. Co.*, *supra* note 28, at 568.

³⁵ *Steelworkers v. Warrior & Gulf Navigation Co.*, 269 F.2d 633, 44 LRRM 2567 (5th Cir. 1959).

"unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute."³⁶ Because the phrase "strictly a function of management" does not expressly include subcontracting, the lower courts should have sent the dispute to arbitration.

The last of the *Trilogy* cases, *Enterprise Wheel*, involved an employer's refusal to reinstate with back pay several discharged employees, despite an arbitrator's award, ostensibly because the collective bargaining agreement had expired before the award was issued. The Court of Appeals for the Fourth Circuit agreed, holding that the expiration made the award unenforceable.³⁷

Once again, the Supreme Court reversed. The federal policy favoring arbitration applied just as strongly after an award as before, according to Justice Douglas. Allowing federal courts to review the merits of awards would undermine that policy. The arbitrator's authority was not unlimited—the award must "draw its essence" from the collective agreement and the arbitrator did not sit to "dispense his own brand of industrial justice"—but a mere ambiguity suggesting the arbitrator exceeded his or her authority was no reason to deny enforcement.³⁸

The *Trilogy* lent the full force of the federal courts to labor arbitration. The courts were to enforce arbitration agreements, even as to apparently frivolous grievances, and to enforce arbitration awards, even those the judge may think erroneous. The effect of the decisions was to make arbitration agreements more valuable. As David Feller later put it, the *Trilogy* inaugurated labor arbitration's golden age.

Enforcement of No-Strike Agreements

Later Supreme Court decisions also affected labor arbitration. Several involved the use of arbitration agreements to stop strikes that violated a no-strike clause. *Teamsters Local 174 v. Lucas Flour Co.*³⁹ reiterated the *Trilogy*'s description of management's agreement to arbitrate as the quid pro quo for the union's agreement not to strike. That bargain meant that the courts could imply a no-strike clause simply from the presence of an arbitration agree-

³⁶ *Steelworkers v. Warrior & Gulf Navigation Co.*, *supra* note 29, at 582–83.

³⁷ *Steelworkers v. Enterprise Wheel & Car Corp.*, 269 F.2d 327, 44 LRRM 2349 (4th Cir. 1959).

³⁸ *Steelworkers v. Enterprise Wheel & Car Corp.*, *supra* note 30, at 597.

³⁹ 369 U.S. 95, 49 LRRM 2717 (1962).

ment. *Lucas Flour* exposed unions to damages caused by contract-breaking strikes, but more was to follow. *Dowd Box v. Courtney*⁴⁰ held that state courts had concurrent jurisdiction with the federal courts over section 301 suits, but *Avco Corp. v. Machinists Aero Lodge 735*⁴¹ allowed a party sued in state court to remove the case to federal court. That combination put a serious strain on another Supreme Court holding, that the anti-injunction law, the Norris-LaGuardia Anti-Injunction Act,⁴² barred federal courts from enjoining strikes in breach of the collective agreement.⁴³ State courts retained their injunctive power, but a right of removal to federal courts under *Avco* would negate the concurrent jurisdiction recognized in *Dowd Box*. Clearly something had to give. Finally, in *Boys Markets v. Retail Clerks Local 770*,⁴⁴ the Supreme Court granted federal courts the right to enjoin strikes over an arbitrable issue. Like the *Trilogy*, *Boys Markets* made an arbitration agreement vastly more valuable to employers.

The Supreme Court continued the trend in its 1964 decision in *John Wiley & Sons v. Livingston*.⁴⁵ The Court enforced an arbitration agreement against a successor employer, even after the contract's expiration date. Postexpiration arbitration was proper, the Court said, if the dispute arose, or depended on a right that accrued, during the contract term.⁴⁶

Duty of Fair Representation

As far back as 1944, the Supreme Court held that unions have a duty to represent all bargaining unit employees fairly.⁴⁷ This duty of fair representation applies as well in the arbitration context. *Vaca v. Sipes*⁴⁸ involved a suit for damages against a union that declined to arbitrate a dismissed employee's grievance. The

⁴⁰368 U.S. 502, 49 LRRM 2619 (1962).

⁴¹390 U.S. 557, 67 LRRM 2881 (1968).

⁴²47 Stat. 70 (1932), 29 USC §§ 101-115 (1988).

⁴³*Sinclair Ref. Co. v. Atkinson*, 370 U.S. 195, 50 LRRM 2420 (1962).

⁴⁴398 U.S. 235, 74 LRRM 2257 (1970).

⁴⁵376 U.S. 543, 55 LRRM 2769 (1964).

⁴⁶The Court also held that the arbitration clause was enforceable against a nonsignatory because of the need to provide protections for employees affected by business changes (as well as because of a state law background imposing a predecessor's contractual obligations on an entity surviving a merger). The successor would bear that obligation so long as there was "substantial continuity of identity in the business enterprise." The Court reaffirmed the possibility of postexpiration arbitration in *Nolds Bros. v. Bakery & Confectionery Workers Local 358*, 420 U.S. 243, 94 LRRM 2753 (1977).

⁴⁷*Steele v. Louisville & Nashville R.R.*, 323 U.S. 192, 15 LRRM 708 (1944).

⁴⁸386 U.S. 171, 64 LRRM 2369 (1967).

Supreme Court recognized the possibility of union liability but severely limited the risk. A disgruntled employee, the Court held, could win damages in these cases only by proving *both* that the employer breached the collective bargaining agreement *and* that the union breached the duty of fair representation owed to employees it represented.

Placing two high hurdles before potential plaintiffs should have strengthened unions' independent evaluation of grievances. Actually, it did the opposite. By announcing for the first time that employees had a cause of action, however restricted, against unions for their refusal to arbitrate a grievance, *Vaca* caused unions to arbitrate more cases. The big fear for many unions was the cost of litigation. Even if they were sure of winning at the end of the process, they would still have to pay for the victory. Often it was cheaper to arbitrate a dubious grievance than to risk a lawsuit for not doing so. Moreover, *Vaca* left open the possibility that a union might be liable for errors in handling arbitrations as well as for failing to arbitrate at all.⁴⁹

This legalization of arbitration, accompanied by the new federal statutes governing the employment relationship, posed new problems for the arbitration system. Often one or both parties would argue legal concerns in grievance arbitrations, forcing arbitrators to face questions beyond their labor relations expertise. In addition, the laws provided new bases for judicial review of arbitration awards. An arbitrator's failure to deal with a relevant legal issue, or failure to resolve it correctly, could lead a court to overturn the award. The result was a weakening of arbitration's independence. In David Feller's metaphor, the introduction of so much external law marked the end of arbitration's "golden age."⁵⁰

Academy Administration

The Academy in 1960 was not in a good position to fulfill its new role. It suffered from internal divisions and from an inefficient administrative structure. As arbitration became more significant in the eyes of the law, it also became more complex. This required deeper analysis of the process and stimulated a demand

⁴⁹Nolan & Abrams, *American Labor Arbitration: The Maturing Years*, 35 U. Fla. L. Rev. 558 (1983).

⁵⁰Feller, *The Coming End of Arbitration's Golden Age*, in *Arbitration—1976*, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1976), 97, 108.

for more thorough training of arbitration's practitioners. The Academy was a natural source for this analysis and training but was ill-equipped to assume this role. Thirteen years after its founding, the Academy remained a loosely knit organization with no permanent home and depended on the willingness of its officers to volunteer time and resources for governance.

There had been chronic complaints by some members that the Academy was dominated by an East Coast establishment. In partial response, the Academy sought to involve more members in its activities. In 1960, for the first time, members received a questionnaire asking their committee preferences. President Leo Brown used these expressed preferences when he appointed that year's committee chairs and members. Some members objected even to this modest attempt at democratization. For example, 1960 Local Arrangements Chairman Paul Prasow, preferring to act as a "committee of one," agreed to accept Brown's appointments if the committee would not "be expanded to include more than three persons."⁵¹

Special Committee on Structure

To improve the Academy's governance, President Brown appointed a Special Committee on Structure (SCS) under the chairmanship of Saul Wallen. The committee's preliminary recommendations, presented in May 1960, ranged from social events at annual meetings to establishment of a permanent headquarters.⁵² Many of the SCS recommendations would occupy the Academy's agenda for years.

The SCS report included several changes to provide administrative continuity and to provide for closer supervision of the organization's affairs. It recommended appointment of an executive committee, nomination of what would in effect be a president-elect, and extension of the secretary's term of office. The report criticized standing committees for their inactivity and suggested that the regions handle more of the Academy's business. It urged the Membership Committee to develop clearer standards for assessing the qualifications of applicants. The SCS also urged the Academy to take more responsibility for the entire arbitration profession. On suitable occasions, the SCS wrote, the Academy should

⁵¹Letter from Paul Prasow to President Leo Brown, February 15, 1960, Brown Files, NAA Archives.

⁵²Report of Special Committee on Structure (May 1970), Lusk Files, NAA Archives.

participate in legislative hearings, support research and training, and file amicus briefs in critical cases.

Among the most important SCS recommendations were these:

1. Appoint a paid executive secretary, with an office, stenographic help, and files.
2. Elect a first vice president to become president automatically at the expiration of the current president's term.
3. Establish an executive committee (consisting of the president, first vice president, and a few other members elected from the region where the president's office is located) for effective administration.
4. Appoint committees with active members in the same region to permit regular meetings. The committees also should have corresponding members with the right to express their views by mail but without the right to vote.
5. Increase the dues.

To carry out the SCS recommendations, the Academy adopted several constitutional amendments at its 1960 Annual Meeting.⁵³ A nominating committee was officially appointed and the first president-elect, Sylvester Garrett, took office in 1962. The Academy authorized the president to approve sponsorship of regional conferences as a safeguard "to prevent the indiscriminate use of the Academy name for conferences sponsored by certain groups with which the Academy did not desire any kind of affiliation."⁵⁴

Finances

Secretary Bert Luskin declared his willingness to have his term of office extended from two to five years to avoid the "utter chaos" of the early years, which had placed the Academy "in an embarrassing financial position."⁵⁵ Luskin began sending printed dues statements to members, including information about when dues were payable. However, the membership still received no budgets or annual reports, and office procedures remained very informal. For example, Luskin wrote to James Hill, the new treasurer, giving elementary instructions:

⁵³ *Constitution and By-Laws* [as amended January 29, 1960], in *Challenges to Arbitration*, Proceedings of the 13th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1960), 177.

⁵⁴ Letter from Secretary Bert Luskin to President Leo Brown, March 5, 1960, Brown Files, NAA Archives.

⁵⁵ Letter from Secretary Bert Luskin to Saul Wallen, October 24, 1960, Luskin Files, NAA Archives.

A word of explanation of your duties is in order. All dues come to your office. We make up deposit slips and show the name of each Academy member and the amount of his dues. . . . If you will retain the deposit slips, you will have exactly the same deposit records that I will have. . . . Deposits shown on the bank statements should coincide exactly with the receipts which will be furnished to you.

. . . Since all bills come to this office, it has been customary for me to pay them. Each check is numbered and must be accounted for.

. . . All you have to do is add up total disbursements as evidenced by checks, and they will have to coincide exactly with bank statements and records. In three years time Myers [A. H. Myers, the previous treasurer] and I have never failed to reconcile accounts to the exact penny.⁵⁶

The next year Luskin again reassured Hill that "no written report [is] necessary although you can prepare a short statement if you want to; but an oral statement should suffice since it will be noted in the minutes [of the Board of Governors]."⁵⁷

When Jean McKelvey, editor of the *Annual Proceedings*, inquired about the form for submitting expenses, Luskin answered:

You certainly do not have to keep an itemized account of every penny spent since I am quite certain that any errors in computing will be to your disadvantage. Keep some kind of record for yourself, and when you find that the enclosed check [\$25.00] has been used up, please let me know and we will be happy to reimburse you for any additional expenditures you may have entailed.⁵⁸

Failure to pay uniform dues continued to cause financial problems for the Academy. In 1960, Luskin reported the following payments by a total of 223 members:⁵⁹

85	paid	\$10.00
1	paid	\$12.00
7	paid	\$20.00
110	paid	\$25.00
19	paid	\$50.00
1	paid	\$75.00

Lewis Gill's letter to Secretary Ronald Haughton was typical of members' attitudes:

⁵⁶Letter from Secretary Bert Luskin to Treasurer James Hill, February 4, 1960, Luskin Files, NAA Archives.

⁵⁷Letter from Secretary Bert Luskin to Treasurer James Hill, January 16, 1961, Luskin Files, NAA Archives.

⁵⁸Letter from Secretary Bert Luskin to Jean McKelvey, March 11, 1960, Luskin Files, NAA Archives.

⁵⁹Luskin Files, NAA Archives.

... [T]hose doing a substantial amount of arbitration (e.g., \$5,000 a year or more in income) should be politely invited to come forward at least to the \$50 dues level pending formal action on changing the dues next year.⁶⁰

At the 1961 Annual Meeting, the Academy increased members' dues but retained a tiered dues structure. Members could decide for themselves whether to pay \$25 (participating members), \$50 (contributing members), or \$100 (sustaining members), depending on which amount was closest to one percent of their annual income.⁶¹

When Sylvester Garrett became Academy president, he was determined to remedy the Academy's problems with financial records and policies. The 1962 financial report included receipts of \$20,755.29 and disbursements of \$4,407.10, with a balance of \$16,348.19. Average dues were \$34.30 based on the \$25 to \$100 sliding scale.⁶² The registration fee for the 1962 Annual Meeting in Pittsburgh was \$25, which covered the cost of two luncheons, a dinner, and a reception.⁶³ Perhaps because of the Academy's apparently sounder financial condition, more members requested reimbursement of their travel expenses for Board and committee meetings. For example, Charles Killingsworth wrote: "Jim Hill told me that the Academy in its present prosperous state would be willing to reimburse my expenses for the trip to Chicago to meet with the Program Committee."⁶⁴ Secretary David Miller cited reimbursement of expenses as "Academy policy" requiring "no special approval" when he sent a check to Ralph Seward, who had chaired the special committee on membership status.⁶⁵

In response to President Garrett's request for specific financial data, the newly elected treasurer, Jean McKelvey, replied that "old records are of little use because they were based on a running balance system without breakdowns to show categories of expenses

⁶⁰Letter from Lewis Gill to Secretary Ronald Haughton, March 1, 1961, Haughton Files, NAA Archives.

⁶¹Announcement from President Gabriel Alexander to Academy members, March 4, 1961, Alexander Files, NAA Archives.

⁶²Secretary's Report, October 27, 1962, Miller Files, NAA Archives.

⁶³Newsletter (November 1961), NAA Archives.

⁶⁴Letter from Charles Killingsworth to Secretary David Miller, April 20, 1963, Miller Files, NAA Archives.

⁶⁵Letter from Secretary David Miller to Ralph Seward, February 21, 1963, Miller Files, NAA Archives.

and income." She confirmed the Academy's rosy financial outlook, however, stating:

In several recent years we have had some surprising surpluses from the annual meetings. [There is also] . . . \$300 in interest income which we never had before. . . . [I]ndividual members seem not disposed to request reimbursement for personal expenditures on Academy business (e.g., for stamps, phone calls, secretarial services and travel!).⁶⁶

A questionnaire about meeting expenses sent to Board members and committee chairs produced the following estimates of costs per meeting (from a total of 23 responses):⁶⁷

	<u>Total Expenses</u>	<u>Per Person Costs</u>
Transportation costs	\$1,703.84	\$74.08
Hotel, meals, miscellaneous	<u>353.78</u>	<u>15.38</u>
Total expenses	\$2,057.62	\$89.46

As a result, President Garrett appointed a special committee on financial policy. In his charge to committee members, Garrett suggested that they develop financial guidelines especially on the following items: (1) payment to members of the Board of Governors for their expenses, allowing \$2,300 for fall and spring meetings, but nothing for Board meetings held at the annual meeting; (2) \$175 for training new arbitrators; and (3) \$400 for stenographic help to the chairs of the Law and Legislation Committee and the Research Committee.⁶⁸ However, Garrett was opposed to reimbursement for expenses:

I . . . presently take a dim view of reimbursing governors for attendance at the Board meetings. It is doubtful in my mind that we yet are ready to start assuming this kind of expense as an organization. My . . . recollection is that the purpose of increasing our dues was to permit us to finance substantial projects in which the Academy was interested and not to alleviate the personal expenses of those who might serve on the Board.⁶⁹

This matter was not fully resolved until the 1980s.⁷⁰

⁶⁶Letter from Treasurer Jean McKelvey to President Sylvester Garrett, August 28, 1963, Miller Files, NAA Archives.

⁶⁷Report to President Sylvester Garrett from Secretary David Miller, August 6, 1963, Miller Files, NAA Archives.

⁶⁸Garrett Files, NAA Archives.

⁶⁹Letter from President Sylvester Garrett to Secretary David Miller, September 3, 1963, Miller Files, NAA Archives.

⁷⁰Minutes, Board of Governors, May 21, 1984 and May 30, 1988, NAA Policy Handbook.

Secretary Miller objected to close oversight in financial matters, complaining to Treasurer James Hill: "[I]t would hardly seem to make sense to obtain advance approval for each expenditure for clerical help, stamps, and supplies required in the routine conduct of business." He pointed out that Article IV of the Academy bylaws called for a standing auditing committee and wondered "if one has ever existed."⁷¹

In 1967, Bert Luskin's presidency faced a membership rebellion against a dues increase that had been authorized in 1965. He feared a "floor fight" that might lead the membership to overturn the practice of reimbursing Board members' travel expenses.⁷² He also feared that a "substantial deficit" could trigger need for another dues increase.⁷³ Secretary Miller suggested that the Academy would derive sufficient income if "everyone paid \$50 per year." He recommended a single level of payment as "appropriate" because the "higher payment levels were established when the Academy finances badly needed supplementation and certain members were willing to volunteer support."⁷⁴

Training Programs

Academy presidents had traditionally selected a specific theme on which the term of office would concentrate. In 1962, President Benjamin Aaron, supported by President-elect Sylvester Garrett, chose a two-year objective: improving the profession by training arbitrators. Appointing agencies, responding to complaints from parties about delays in the arbitration process, had suggested there might be a shortage of qualified arbitrators.⁷⁵

⁷¹ Letter from Secretary David Miller to Treasurer James Hill, March 5, 1962, Miller Files, NAA Archives.

⁷² Cf. letter from Secretary David Miller to President Bert Luskin, May 11, 1967, Luskin Files, NAA Archives. See also Minutes, Board of Governors, October 23, 1976, NAA Archives; the Board voted to reimburse governors for transportation, but not hotel and meal expenses, at the annual meeting, but to continue reimbursing all expenses at midyear Board meetings. Before then, reimbursement was apparently at the discretion of the secretary. Cf. note 65, *supra*, and accompanying text.

⁷³ Letter from President Bert Luskin to Lewis Gill, November 14, 1967, Luskin Files, NAA Archives.

⁷⁴ Letter from Secretary David Miller to President Bert Luskin, November 1, 1967, Luskin Files, NAA Archives.

⁷⁵ Cf. Killingsworth, *Report on Education and Training of Arbitrators*, Committee on Research and Education, in *The Profession of Labor Arbitration*, Selected Papers From the First Seven Annual Meetings of The National Academy of Arbitrators, ed. McKelvey (BNA Books 1957), 170: "Officials of designating agencies have indicated that there is a definite need for larger panels of acceptable arbitrators to permit easy replacement of those who become temporarily or permanently unacceptable." *Id.* at 171. See also Seward,

Echoing an initiative of the Section of Labor Relations Law of the American Bar Association (ABA), the Academy and appointing agencies agreed to promote development of qualified, experienced, and acceptable new arbitrators. Aaron emphasized the importance of this training initiative in a letter to the ABA: "I know of no problem of greater significance in the general field of labor arbitration."⁷⁶

The character and extent of the training programs proved extremely controversial within the Academy. Many members looked on arbitrator training as a threat to their livelihood. For example, at a regional meeting in Chicago Academy members who were asked to serve as mentors for new arbitrators objected to donating time for training and to lack of control over the process. This was especially true when the training sessions were sponsored by the American Arbitration Association (AAA) or the Federal Mediation and Conciliation Service (FMCS). FMCS Director William Simkin, former Academy president, took a somewhat different approach:

From the Service's standpoint, I believe it would be a mistake to consider . . . a greater "stamp of approval" than the fact that we have selected them for this program. . . . [I]t would be misleading to try to consider this as some sort of "blue ribbon" group.⁷⁷

Jointly sponsored training programs in Pittsburgh, Cleveland, and St. Louis produced mixed results.⁷⁸ A 1967 report indicated that in Pittsburgh, for example, only 4 of 116 trainee referrals resulted in selection by the parties. Chicago reported only 4 of 14 trainees had served as arbitrators.⁷⁹

The Development of Qualified New Arbitrators: Workshop: Discussion, in *Collective Bargaining and the Arbitrator's Role*, Proceedings of the 15th Annual Meeting, National Academy of Arbitrators, ed. Kahn (BNA Books 1962), 222; Report of the Committee on Labor Arbitration to the Section of Labor Relations Law of the American Bar Association, *id.* at Appendix B, 242.

⁷⁶Letter from President Benjamin Aaron to the American Bar Association, February 14, 1962, Aaron Files, NAA Archives.

⁷⁷Letter from FMCS Director William Simkin to President Sylvester Garrett, May 29, 1963, Garrett Files, NAA Archives.

⁷⁸Letter from AAA President Donald Straus to President Sylvester Garrett, June 21, 1963, Garrett Files, NAA Archives. The Academy contributed \$177.30 to the AAA as its share of the training expenses. See also letter from President Sylvester Garrett to AAA Vice President Joseph Murphy, November 4, 1963, Garrett Files, NAA Archives.

⁷⁹*Cf.* Killingsworth, *Twenty-Five Years of Labor Arbitration—and the Future: I, Arbitration Then and Now*, in *Labor Arbitration at the Quarter-Century Mark*, Proceedings of the 25th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1972), 11: "[There is] no other one issue on which we have spent more time as an Academy and accomplished less than the matter of training new arbitrators." *Id.* at 15.

To prevent unauthorized use of its name for such programs, the Academy adopted a policy requiring advance presidential approval for any joint sponsorship.⁸⁰ Even after adoption of this policy, some regions ignored the warning. Aaron appointed Vice President Jean McKelvey as the first official Coordinator of Regional Activities to ensure compliance and to encourage exchange of information among regions. She reported that in 1962, the regions had held a total of 24 meetings to train new arbitrators.⁸¹ In a letter to Vice President Robben Fleming, who succeeded McKelvey as regional coordinator, Secretary David Miller noted the existence of 13 regions, adding that "the question of whether a region should be established" rested with the Board of Governors.⁸²

Throughout his presidency Aaron continued to support new arbitrator training. In a bulletin to all members in March 1962, he wrote:

[There is] a problem of increasing the number of qualified, competent and generally acceptable arbitrators. I am convinced that the Academy has an obligation to play a leading role in this endeavor and hope that the subject will be thoroughly discussed in all the regions.⁸³

At the 1962 Annual Meeting, a workshop session addressed the problems of "providing suitable training and gaining acceptability for new arbitrators."⁸⁴ Academy members generally supported the idea of training the next generation of labor arbitrators, but self-interest kept some from volunteering. At the 1962 workshop, for example, Ralph Seward read a letter he had received from Peter Seitz. Although written tongue-in-cheek, with his usual impish sense of humor, Seitz's letter undoubtedly reflected the unspoken views of some members:

⁸⁰ Minutes, Board of Governors, April 28, 1962, NAA Archives. See also NAA Policy Handbook, 11; *The Constitution and By-Laws* [Article VIII, Section 3], in *Arbitration 1987: The Academy at Forty, Proceedings of the 40th Annual Meeting*, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix A, 205, 220.

⁸¹ Minutes, Board of Governors, January 29, 1963, NAA Archives.

⁸² Letter from Secretary David Miller to Vice President Robben Fleming, May 8, 1963, Miller Files, NAA Archives.

⁸³ Letter from President Benjamin Aaron to Academy members, March 7, 1962, Miller Files, NAA Archives.

⁸⁴ Livingston, *The Development of Qualified New Arbitrators: Workshop: Discussion*, in *Collective Bargaining and the Arbitrator's Role*, Proceedings of the 15th Annual Meeting, National Academy of Arbitrators, ed. Kahn (BNA Books 1962), 205; Simkin, *id.* at 212; Herzog, *id.* at 217; Seward, *id.* at 222. See also *Replenishment of Professional Arbitrators*, in *Labor Arbitration: Perspectives and Problems*, Proceedings of the 17th Annual Meeting, National Academy of Arbitrators, ed. Kahn (BNA Books 1964), Appendix D, 317.

With respect to the development of qualified, experienced and acceptable new arbitrators, please record me as saying "nyet". My reasons (without limitation and subject to supplementation and elaboration) are:

One. I distrust young persons. They are unduly ambitious and usually seek success at my expense. They tend to be disrespectful; and when they do not behave in that way, are fawning and hypocritical. Show me a "new arbitrator" and I will show you a person with his hand in my pocket, claiming my sustenance as his own and robbing my grandchildren of their security.

Two. Young persons are too inexperienced to exercise good judgment. They are arrogant in their opinions and attitudes. When you tell them what is right they argue and do not believe you.

Three. Young persons are like camels with noses in our tents. They do not have a decent sense of propriety.⁸⁵

Despite the Academy's official support of arbitrator training, many of its members were cool to the idea. In its 1964 report to the membership, the special committee on the training of new arbitrators, chaired by Pearce Davis, found that only a few Academy members helped increase the supply of new arbitrators.⁸⁶ The committee's recommendations were ambitious:

1. Training institutes should last at least three days, with a greater amount of instruction from senior Academy regional members.
2. Academy members should participate more actively in the choice of trainees, with the understanding that the appointing agencies would make the final selection.
3. Each trainee should be assigned to a single arbitrator to simplify attendance at hearings.
4. Trainees should be required to study evidence and argument and write practice opinions and awards.
5. A smaller number of trainees should be accepted.

Aaron's successor, Sylvester Garrett,⁸⁷ continued to emphasize arbitrator training. He charged the special committee on training of new arbitrators, still chaired by Pearce Davis, to gather more data on whether arbitrators benefited from "some kind of apprenticeship training."⁸⁸ The aging of the Academy's membership pro-

⁸⁵Seward, *supra* note 75, at 223.

⁸⁶*Replenishment of Professional Arbitrators*, *supra* note 84, at 320.

⁸⁷The first official gavel, to be passed on to successors, had been presented to President Benjamin Aaron at the Board of Governors meeting on January 29, 1963. By 1964 it was missing, and a new gavel was purchased for presentation to President Peter Kelliher. Garrett Files, NAA Archives.

⁸⁸Letter from President Sylvester Garrett to Pearce Davis, October 11, 1963. In a letter to Davis, dated January 10, 1964, President Garrett pointed out that, of the 18 Academy

vided another reason for training more arbitrators. From 1952 to 1970, the average age of members increased from 49.7 to 57.0 years.⁸⁹ Irving Bernstein, who had chaired the 1962 survey committee, noted: "Our guys are getting quite old and this points up the need of a policy to train young arbitrators."⁹⁰

In response to Garrett's request, Secretary Miller summed up the status of the training program:

[I am] . . . disheartened to hear that [the training program] seemed to be "running out" apparently because of flagging interest or because somehow all other trainees are already received as "trained." I cannot understand how that is possible considering the evidence of the number of sessions we have had with the trainees. . . . If it is because the goal or concept was only to expose new people to the parties, I have little enthusiasm for what it is—introduction and not training. If the introduction of new people is the primary purpose, I see no particular reason for the Academy's participation in the program on any formal basis. . . .

The effort should be concentrated on a few of the best possible candidates; it should be extended for an indefinite period; and there should be some understanding by the trainee and the agencies that he could not be regarded as having "been trained" merely by reason of several sessions with a member. Some minimum commitment should be required.

In the long run . . . the policy of the Academy should be to encourage individual members to advise and assist in the proper training programs when called upon to do so, and nothing more. Since we do not want to administer programs and cannot effectively control them without deep involvement, we should generally avoid sponsored entanglements and leave it to our members individually to determine when their participation is worthwhile and proper.⁹¹

Academics in the field saw the arbitrator training program as a potential competitor for students interested in industrial relations. For example, in 1963, Robben Fleming, director of the University of Illinois Institute of Industrial Relations, wrote: "Off-

members who had served an apprenticeship, 13 were compensated. Garrett Files, NAA Archives. See also *Replenishment of Professional Arbitrators*, *supra* note 84, at 319–21; Zack, *An Evaluation of Arbitration Apprenticeships*, in *Challenges to Arbitration*, Proceedings of the 13th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1960), Appendix G, 169.

⁸⁹ McKelvey, Report of Committee for the Development of New Arbitrators (1970), NAA Archives; see also *Survey of Arbitration in 1962*, in *Labor Arbitration: Perspectives and Problems*, Proceedings of the 17th Annual Meeting, National Academy of Arbitrators, ed. Kahn (BNA Books 1964), Appendix C, 292.

⁹⁰ Letter from Irving Bernstein to President Sylvester Garrett, August 28, 1963, Garrett Files, NAA Archives.

⁹¹ Letter from Secretary David Miller to President Sylvester Garrett, May 27, 1963, Miller Files, NAA Archives.

hand, my reaction to discussion of the status of training new arbitrators is negative."⁹² Robert Feinberg, director of the New York University Institute of Labor Relations, also doubted the propriety of the Academy's joint sponsorship with the AAA of these programs, noting: "There is ample room for varied approaches to the common objective of enlarging the number of qualified arbitrators available in the labor-management relations field."⁹³ As quickly as it came, the vaunted shortage of arbitrators disappeared. Less than four years later, the 1967 report of the special committee on training new arbitrators concluded: "[T]here seems now to be no significant shortage of professional arbitrators in the country."⁹⁴ How much (or even whether) the Academy's training programs eased the shortage may never be known.

Even as late as 1965, President Russell Smith was still questioning some of the obligations the Academy was incurring in connection with arbitrator training. Garrett had explained his own misgivings about the effectiveness of the training program.⁹⁵ Reacting to a bill from the AAA for expenses of the Cleveland program, Smith suggested that Secretary Miller ask the AAA to make prior expense arrangements for any future meetings.⁹⁶ In reply to Smith's request for information about Academy practice, Miller wrote:

In 1963 the Board of Governors authorized some expenditures to share the cost of . . . the training program in Pittsburgh and Cleveland. With reference to Pittsburgh, we received a statement from AAA in the amount of \$21.06. . . . I don't know whether the original authorization was meant to cover continuing expenses.⁹⁷

Smith supported regional tripartite workshops and approved the workshops' first topic, "Problems of Proof in Arbitration." The workshops' topic was tied to that of the annual meeting, and workshop leaders duly reported their discussions at the 1965 Annual

⁹²Letter from Robben Fleming to President Sylvester Garrett, April 1, 1963, Garrett Files, NAA Archives.

⁹³Letter from Robert Feinberg to President Sylvester Garrett, May 3, 1963, Garrett Files, NAA Archives.

⁹⁴Report of Committee on Training of New Arbitrators (February 1967), NAA Archives.

⁹⁵Letter from Sylvester Garrett to President Russell Smith, November 24, 1965, Miller Files, NAA Archives.

⁹⁶Letter from President Russell Smith to Secretary David Miller, February 23, 1965, Miller Files, NAA Archives.

⁹⁷Letter from Secretary David Miller to President Russell Smith, November 22, 1965, Miller Files, NAA Archives.

Meeting. The *Proceedings* of that meeting contained those reports.⁹⁸ Smith encouraged the Research Committee under Vernon Jensen of Cornell University to seek financial support for its activities from outside foundations. Secretary Miller warned Jensen that the committee "was inactive or relatively so for several prior years," adding: "It is gratifying to learn of your interest and serious attention to the research project."⁹⁹

Annual Meeting Policies

Another controversy erupted over the attendance at Academy meetings by labor and management advocates. Some members disliked the ethical implications of social contact with advocates; others believed the advocates' presence inhibited discussion among arbitrators. In 1962, the Academy reconsidered the early practice of allowing nonmembers to attend the membership business meeting. As a compromise, the Program Committee recommended a three-day conference. The first day was to be a business meeting confined to Academy members. The second and third days, open to guests, were to have morning sessions for the presentation of papers and afternoon workshops. This schedule, the committee reported, would permit "more time for casual socializing, greater audience participation, . . . provide enough material for the proceedings, and dispose of business before guests arrived."¹⁰⁰

Cost concerns exacerbated the debate. Some guests received special complimentary invitations, among them the chairman of

⁹⁸ Luskin & Elson, *Problems of Proof in the Arbitration Process: Report of the Chicago Area Tripartite Committee*, in *Problems of Proof in Arbitration, Proceedings of the 19th Annual Meeting*, National Academy of Arbitrators, ed. D. Jones (BNA Books 1967), 86, 110; E. Jones, *Problems of Proof in the Arbitration Process: Report of the West Coast Tripartite Committee*, id. at 149, 214; Duff, *Problems of Proof in the Arbitration Process: Report of the Pittsburgh Tripartite Committee*, id. at 245, 263; Stark, *Problems of Proof in the Arbitration Process: Report of the New York Tripartite Committee*, id. at 295, 305. The popularity of the workshop is evidenced by the fact that this volume is out of print. The only repetition of the experiment with regional meetings geared to the topic of the annual meeting came in 1980, when four regional panels reported on their deliberations about "decisional thinking." Elson, *Decisional Thinking: Chicago Panel Report*, in *Decisional Thinking of Arbitrators and Judges, Proceedings of the 33rd Annual Meeting*, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1981), 62; Block, *Decisional Thinking: West Coast Panel Report*, id. at 119; Christensen, *Decisional Thinking: New York Panel Report*, id. at 173; Valtin, *Decisional Thinking: Washington Panel Report*, id. at 209. Letter from Alex Elson to Dennis Nolan, June 15, 1995.

⁹⁹ Letter from Secretary David Miller to Vernon Jensen, August 26, 1965, Miller Files, NAA Archives.

¹⁰⁰ Cf. letter from President Benjamin Aaron to Program Committee members, January 30, 1962, Aaron Files, NAA Archives.

the New York Board of Mediation; the executive secretary of the National Mediation Board; three executives from the FMCS plus the local regional director; four representatives from AAA plus the local director. The Local Arrangements Committee could include other local notables. The complimentary invitations increased the cost of annual meetings and created problems of seating at the speakers' table. These special guests were also permitted to attend the members-only sessions, raising the issue of confidentiality.

The early 1960s saw the first Academy recognition of the increasing diversity of its membership and of the attendees at its meetings. President Benjamin Aaron reminded the Local Arrangements Committee that the Academy had a policy of deferring to members' religious preferences:

As you know, it has always been the practice at each annual meeting to obtain for Catholic participants a dispensation from the duty to abstain from eating meat on Friday. . . .

It is the usual practice . . . to have a representative of the Catholic, Protestant, and Jewish faith give the invocation at one of the three meals. We dispense with it at luncheons.¹⁰¹

The first "ladies" program in 1962 was designed to encourage attendance of members' wives.¹⁰²

President Aaron also addressed problems about the guest policy by appointing Bert Luskin to chair a special committee on guest invitation policy. In 1963, the Board of Governors adopted the committee's recommendations:¹⁰³

1. Members should pre-register their guests through the Local Arrangements Committee.
2. The Secretary should maintain a "permanent" list of persons representing companies and unions who desire "to pay their own way" so that a form invitation can be extended to them for their own pre-registration.
3. Members should be permitted to invite as many guests as desired and to pay for their registration.

¹⁰¹ Letters from President Benjamin Aaron to Bert Luskin and William Simkin, December 18, 1962, Miller Files, NAA Archives. The appropriateness of religious invocations was the subject of several lively discussions at NAA board meetings. The practice did not end until the mid-1980s. Letter from Alex Elson to Dennis Nolan, June 15, 1995.

¹⁰² Minutes, Board of Governors, April 22, 1961, NAA Archives. (Virtually all members at the time were men.)

¹⁰³ Report of Special Committee on Guest Invitation Policy, October 26, 1963, NAA Archives. The Academy's guest policy was amended several times in the 1970s and 1980s; see NAA Policy Handbook.

4. Special guests may be accorded complimentary registration by the Secretary or by the Local Arrangements Committee.
5. Forms should be provided at the registration desk for requesting invitations to future meetings.

The presence of advocates at annual meetings continued to trouble some Academy members, who feared that socializing too easily slipped into solicitation. A second problem was the sometimes lavish receptions sponsored by companies and unions during the conference. Accepting that hospitality, some thought, could place arbitrators in debt to their hosts. Although the Academy did not officially announce these receptions during the sessions, the Board of Governors took no official action to discourage them until the 1970s. A letter from Secretary Bert Luskin to John Stewart, president of the Bureau of National Affairs, is instructive:

The Academy has a fixed policy with respect to formal invitations for cocktail parties from various industrial sources. In order to avoid embarrassment, we have not made official announcements of such parties.

It seems to me, however, that your situation is completely different than the ordinary. I am certain that many of the members present would love to join you at your home. I would suggest, however, that you follow the procedure you outlined in your letter in extending the invitation personally to as many of those present as you can find. In that way, the Academy would not be taking any official position.¹⁰⁴

In 1964, President Peter Kelliher appointed Ralph Seward to head a special committee "for re-evaluation of the goals and the nature and function of our annual meeting."¹⁰⁵ Earlier Peter Seitz had complained about the makeup of the Program Committee, pointing out that "program activities are becoming a one-man, despotic and autocratic operation."¹⁰⁶ He added:

We are not the U.S. Chamber of Commerce, the Teamsters Union, nor are we running a testimonial dinner. . . . We should run a meeting for professional people—arbitrators and the people who have close interest in their problems. The meeting should be open to assure the representation of any point of view and interest . . . so that all might have an opportunity to talk to each other and get to meet

¹⁰⁴Letter from Secretary Bert Luskin to John Stewart, January 4, 1960, Luskin Files, NAA Archives.

¹⁰⁵Letter from President Peter Kelliher to Academy members, February 25, 1964, Kelliher Files, NAA Archives.

¹⁰⁶Letter from Peter Seitz to President Peter Kelliher, February 14, 1964, Kelliher Files, NAA Archives.

each other. . . . [T]he reception was a scandal. It resembled an Oriental . . . bazaar. . . . Guests should not be able to register for lunch or dinner.

Following up on this theme, President Kelliher charged Seward's committee:

[Some members] feel we are being crowded out by our guests. More time should be devoted to closed meetings. Questions were raised as to whether the Academy was achieving the original goals that led to its formation.¹⁰⁷

Following the recommendations of the special committee, the Board amended the guest policy for Academy annual meetings to promote a "reasonable balance between the nonmember group and the member group."¹⁰⁸ To avoid ethical problems, the Board discouraged members from paying the expenses or registration fees of labor and management guests. To provide a substitute, the Board reauthorized the secretary to issue invitations to guests based on members' suggestions.

Uncertainty over the guest policy resurfaced in 1965. In answer to an inquiry from Harold Davey, Secretary David Miller reported:

Policy with reference to guests is a bit up in the air, being a subject of current discussion, contention and so forth.

For several years under the Board's direction I have maintained a list of "guests" who have expressed interest in attending our meetings. . . . They are expected to pay their own way. I would like to keep lists up to date, maintaining the names of only those who have specifically asked to be included and those names given to me by members [300 persons]. . . .

I am strongly in favor of the Academy list approaches and feel that, except for personal friends and relatives, there should be no guests invited directly and paid for by members.¹⁰⁹

In 1967, debate on the Academy's guest policy grew more testy, especially among experienced arbitrators with a long history of relationships in certain industries, like steel, mining, clothing, and transportation. While some members objected to the so-called "bazaar" atmosphere at Academy meetings,¹¹⁰ others saw no prob-

¹⁰⁷Letter from President Peter Kelliher to Ralph Seward, February 18, 1964, Kelliher Files, NAA Archives.

¹⁰⁸Minutes, Board of Governors, October 22, 1966, NAA Archives; see also NAA Policy Handbook.

¹⁰⁹Letter from Secretary David Miller to Harold Davey, September 2, 1965, Miller Files, NAA Archives.

¹¹⁰Cf. *supra* note 106.

lem at all. Still others saw the problem as one of mere perception. In 1966 Harry Platt made two major points in a letter to President Luskin:

1. [To imply that] treating guests [is done] to obtain future business . . . is merely gossip, rumor, and suspicion. Why should a policy be adopted that casts a shadow of guilt on the entire Academy membership?

2. With reference to the appearance of being impartial, [to say that] treating [a guest] to an Academy lunch is not being impartial is ridiculous.

The Ford-UAW umpire has always socialized with the parties and invited them to his home and other social affairs. He [in turn] has been a guest of union and management committees. It is hardly right to expect him to tell the parties now that his past conduct has been questionable and he is no longer permitted to treat them. . . . There is no ethical problem involved.¹¹¹

When the Board considered the matter on February 28, 1967, Platt's was the minority view. The Board consensus was that, although Academy members were not barred from "treating" labor and management representatives at annual meetings, it was "inappropriate" for them to do so.¹¹²

Membership Participation

There was a widespread perception among new members that the strong camaraderie among War Labor Board alumni kept newcomers from participating fully in Academy activities. For this reason, among others, attendance at annual meetings fell off. The 1960 Program Committee, chaired by John Horlacher, encouraged wider participation by moving the business session from Saturday to Friday. The change, he hoped, would avoid "the scandalous practice of making important decisions with only a handful of members present."¹¹³ Horlacher added: "In constructing the program, the Committee made an effort to meet the often-expressed view that it would be desirable to introduce some new

¹¹¹Letter from Harry Platt to Secretary David Miller, November 21, 1966, Miller Files, NAA Archives.

¹¹²*Cf.* letter from President Robben Fleming to Sylvester Garrett, October 24, 1966, Luskin Files, NAA Archives. This matter is discussed in more detail under Ethical Concerns, *infra*.

¹¹³Letter from Program Chair John Horlacher to Academy members, January 4, 1960, Luskin Files, NAA Archives.

faces and to provide some opportunity for younger members of the Academy.”

By the end of 1963, the drive to involve more members in the Academy’s activities showed signs of success. Following the Academy’s practice, immediate past president Benjamin Aaron chaired the Nominating Committee. He reported to Secretary David Miller that “the response to the request for nominations has been heavier than in any previous year. You will be surprised to learn that there seem to be a few organized campaigns for several candidates.”¹¹⁴

Once the Academy began listing all the officers and committees in its membership directory, many members vied for the positions. In addition to those who simply wanted to serve, others sought name recognition or expense reimbursements. This matter continued to cause dissension. President Bert Luskin had a more pragmatic view:

I have recently received some figures from my auditor concerning my administrative costs this past year, and I have concluded that I will not bill the Academy for reimbursement thereof. It will be my pleasure to absorb those costs, and I expect no thanks in return.¹¹⁵

Lack of communication between annual meetings also vexed some Academy members. Although the Newsletter revived under James Hill in 1962, its lack of timeliness caused Secretary David Miller to include announcements and reports with other Academy mailings rather than waiting for the next issue of the Newsletter.¹¹⁶ Miller took membership relations very seriously. His unsolicited compliments to members resemble letters from a special friend rather than business correspondence. His letters also suggest the strong, almost fraternal relationships fostered by the Academy. To James Hill, for example, he wrote:

This gives me an opportunity to congratulate you on your nomination as President Elect. I fought the proposal with might and main on the ground that a guy who does not know where he lives [referring to a mix-up in the Membership Directory] ought not to be our leader. However, I was forced to concede to the collective logic of vast numbers who claimed there were more important considerations and

¹¹⁴Letter from Benjamin Aaron to Secretary David Miller, October 7, 1963, Miller Files, NAA Archives.

¹¹⁵Letter from President Bert Luskin to Secretary David Miller, January 18, 1968, Luskin Files, NAA Archives.

¹¹⁶Letters from Secretary David Miller to President Benjamin Aaron, November 29, 1962 and December 11, 1962, Miller Files, NAA Archives.

that you met and surpassed all the requirements. So from cold logic to warm sentiments, my best regards to you.¹¹⁷

To Russell Smith:

Welcome back! I assume you returned tanned and well rested from the island "paradise." . . . We particularly enjoyed our visits with you and Berta and your friends. I am sure you had a great time and hope you had a chance to get in a lot of sailing in those beautiful waters. For myself and Hazel, please accept our warm thanks to you and Berta for your gracious hospitality. When all is over, I think this is the best, lasting part of our Meetings.¹¹⁸

To Peter Seitz:

Since it is the "result" that counts, I paid little heed to the stories about how you came to be the chosen one [for newsletter editor]. Particularly I disregarded those accounts mentioning "shanghaied" and "sandbagged," being sure you accepted with grace. I have no recollection whatsoever of a "4:00 a.m. emersion in the Caribbean," besides I deny it. . . .¹¹⁹

Newsletter

The newsletters carried out a similar theme with gossipy anecdotes and humor. For example, the November 1963 newsletter lists malaprops from transcripts and correspondence submitted by Bert Levy and Harry Platt:

The steward has a photogenic mind.
We won't quabble over that point.
I always like to stand on my own two shoulders.
Let's sit down and have a house-to-house talk.
That's a lot of water over the bridge.
By mutual consent the arbitrary hearing has been postponed.

Morrison Handsaker offered squibs from student exam papers:

An arbitrator is always a completely un-interested person.
Arbitrators are either ad hoc or temporary.
The arbitrator acts as a medium during the arbitration procedure.
The union is the bargaining agent.

Newsletter Editor Lewis Gill noted that in a recent case a procedural rhubarb brought forth a company offer to have their law-

¹¹⁷Letter from David Miller to James Hill, November 20, 1967, Miller Files, NAA Archives.

¹¹⁸Letter from David Miller to Russell Smith, February 14, 1966, Miller Files, NAA Archives.

¹¹⁹Letter from David Miller to Peter Seitz, February 12, 1966, Miller Files, NAA Archives.

yer "sit in a corner and not speak to anyone." The "Social Notes" column reported:

The Washington chapter wined and dined on July 1st at the home of Nathan Cayton. An eye-witness report reveals that Carl Schedler ate both the deviled crab and the roast beef, then proposed Cayton for permanent regional chairman.

The "Poet's Corner" had two offerings by Laureate Peter Seitz. The first is a comment on *Braniff Airways*,¹²⁰ upholding a six-month reduction in grade of airline pilots for dating hostesses:

We know how amorously men behave
When parted from their ever-loving wives;
But pilots who are guardians of lives
Must drown the Impulse and be Duty's slave.

The Vestal Virgin of the stratosphere:—
The Stewardess, is strictly not for them;
And dating sounds a solemn requiem!

The rule for married pilots is most plain:
Relations, even innocent, are banned;
Six months malefactors forfeit their command.
Abandon Sex, all Ye who fly a plane!

All girlish pulchritude you must forswear!
The Brave deserve—but may not have the Fair.

The second praises the new troika "of whom it can be said that never have so few been called upon to review what was said to so many":

Hail to Healy, Aaron, Seward!
How can such a trio fail,
Skilled in sailing well to leeward;
Running briskly 'fore a gale?

Hail to Seward, Aaron, Healy,
Winken, Blinken (even Nod):
Full of majesty: a really
Modern Trinity! (Like God!)

Hail to Seward, Healy, Aaron;
Fatefully attracted towards
Endless exegeses, wherein
All's been said by prior Boards.

¹²⁰29 LA 487 (Yeager 1957).

In announcing the 1964 Annual Meeting at the New York Hilton, the November 1963 Newsletter reminded members:

The hotel is opulent and you will surely enjoy it, up until the time you get your bill. A large turnout of heavy spenders is expected, and a limited block of rooms is being set aside for our members and guests. You'll be well advised to make your reservations promptly, lest you be shunted off to some low-status secondary accommodations.

Editor Gill suggested that all of the June 1963 Newsletter might well be headed TRIVIA but "that would be unbecoming." Under "Spring Socials" he announced "the inspirational example of Philadelphia, where each June the clan gathers, *with wives*, at one of the homes for merriment and food, plus a business meeting." Gill went on:

The Philadelphia social this year, hosted by the affable subcontracting authority, Scotty Crawford, will feature yet another Quaker first—a business session with wives participating. The subject, product of the fertile Crawford mind, is "The Role of the Arbitrator's Wife in Arbitration," and a wild free-for-all, with laughter and divorces galore, is anticipated.

Gill continued the "Malaprop Section" begun by James Hill:

The brilliant pioneering work in this field by Bill Wirtz has been carried further by Jim Hill, now that he's cast off his Newsletter duties and has ample free time. In a recent address in Cleveland, he assailed the "totally unresponsive (sic) audience" with a scholarly analysis, best described in his own words:

I presented a brief but learned essay on some developments in the language of arbitration and labor relations, giving a few of the more recent tidbits not yet stolen by Wirtz or Gill, including the "garnished annual wage" and the fellow who struck a defiant pose and proclaimed that "you all ain't goin' to put the anus on me."

However, I presented a much deeper analysis, distinguishing the malaprops from other types of usage such as the mixed maxim (Elmer Brown to ITU telling the ratification meeting in New York, "If you don't ratify you be walking up a blind alley on a limb"), the spoonerism or slip of the tongue (fricken chickasee), and slip of the mind ("after all, none of us are human"), and simple Stengel-ese ("when people don't want to go to ball games, there's just nothing you can do to stop 'em").

In this same issue Gill reported new "gems" by "Original Authority" Wirtz:

We've got to keep our ear to the grindstone.
Let's pull up our trousers and throw down the gauntlet.
Whenever I smell a rat, I nip it in the bud.

Gill added his own "slip of the mind" contribution: "My witnesses' honesty is beyond integrity."

Secretary David Miller also improved the Newsletter by suggesting that Benjamin Aaron write a "President's Column." Such a column, Miller wrote, would help members "appreciate the presidential activities and might engender enthusiasm for projects to which he devotes much time and thought."¹²¹ He also encouraged James Hill to use guest editorials "on any subject of general Academy interest on which individual members would like to express themselves."¹²²

In 1966, President-elect Bert Luskin assured Editor Peter Seitz that he would have no trouble filling newsletter space because

the esteemed members of the Academy loved to see their names in print, especially those who participated in conferences and seminars and who addressed organizations both of company and union representatives as well as those members of the Academy who have authored books, articles, pamphlets and newsworthy materials.¹²³

Seitz accepted the challenge, informing President Robben Fleming that "the issue will be more in the nature of a vehicle for personal views and observations than a fact-sheet on doings and goings-on." Typically tongue-in-cheek, Seitz asked whether he would be invited to the Board of Governors meeting and who would pay his expenses. He went on to refer to his "heady" realization of the "power of the press."¹²⁴

In 1967, President James Hill appointed Arnold Zack to succeed Seitz as editor. Zack's task was to improve internal membership communication by revitalizing the Newsletter. Zack changed the four-page mimeographed layout to a printed newspaper format. He brought back the "President's Column" and introduced the "Regional Roundup," to encourage two-way communication with the membership. Zack's successor, Ted Jones, changed the Newsletter's name to *The Chronicle*, a title it maintains today.¹²⁵

Jones clearly regarded the new publication as a distinct break with the past, because he labeled it as Volume 1, Number 1. The

¹²¹ Letter from Secretary David Miller to James Hill, July 12, 1963, Miller Files, NAA Archives.

¹²² *Id.*

¹²³ Letter from Bert Luskin to Peter Seitz, February 15, 1966, Luskin Files, NAA Archives.

¹²⁴ Letter from Peter Seitz to President Robben Fleming, February 12, 1966, Luskin Files, NAA Archives. Only the March and August 1966 Newsletter issues edited by Seitz remain in the Archives.

¹²⁵ Zack Presidential Interview, June 2, 1993; Zack telephone conversation with Dennis Nolan, June 17, 1995.

first issue contained another Seitz poem; it appears as an illustration elsewhere in this volume. The masthead listed the names of all regional chairs as "Regional Editors." The new editor characterized the *Chronicle's* "rationale" as "crackerbarrel," adding: "The Chronicle . . . abjures the overt apparatus of scholarship; any footnote that appears is the result of an undersight."¹²⁶

Regional Activities

The Newsletters' repeated references to the regions reflected a growing concern within the Academy over the need for local activity. Although regions had been designated at the Academy's founding, there was little coordination of their activities until the arbitrator training drive under President Benjamin Aaron. When Robben Fleming became Coordinator of Regional Activities, he requested a report from Secretary David Miller on the regional structure of the Academy. Miller answered:

[M]y search of the "archives" discloses evidence that "regionalization" of the Academy was accomplished in 1949 when Ralph Seward was president and apparently on his suggestion. [There was] a letter from Seward that the Board of Governors adopt a program to provide for organization on a regional basis . . . with a breakdown of seven areas. Now we have 13 regions. . . . [T]he question of whether a region should be established rests with the Board of Governors—there is nothing in the constitution and by-laws.¹²⁷

Later Miller urged President Bert Luskin to visit the regions because "recent showings have been rather dismal."¹²⁸

Reexamination of Internal Operations

Lack of permanent office space continued to result in loss of important documents. In 1961 President Gabriel Alexander appointed Patrick Fisher to chair a special committee charged with preparing a policy handbook to "assist new members of the Board of Governors in becoming acquainted with policy decisions which have been made during previous administrations."

¹²⁶ NAA Archives. In 1984, *The Chronicle* Committee became a permanent special committee, chaired by Tia Denenberg. In 1989, Chester Briscoe was appointed managing editor. Membership Directories, NAA Archives.

¹²⁷ Letter from Secretary David Miller to Robben Fleming, May 8, 1963, Miller Files, NAA Archives. In 1979, Article VIII was added to the Academy Constitution, officially recognizing the regional structure.

¹²⁸ Letter from Secretary David Miller to President Bert Luskin, January 23, 1967, Miller Files, NAA Archives.

Alexander requested cooperation from Academy members in discovering past documents. He told them that the Academy lacked minutes of the Board of Governors from 1947 to 1954 and minutes of annual meetings from 1949 to 1956.¹²⁹

Secretary David Miller characterized the lack of proper files as a "formidable" problem.¹³⁰ President Benjamin Aaron reappointed Patrick Fisher to gather for publication all the policies adopted by the Board of Governors since the Academy's founding. Fisher issued his report in 1963.¹³¹ To assure proper maintenance of meeting minutes, Aaron engaged Sybil Sills of New York City to record the proceedings. She served in that capacity for more than 20 years.¹³²

Two years after Fisher's report, the lack of records still bothered Abram Stockman in his role as vice chairman of the Committee on Ethics and Grievances. He requested that Secretary David Miller check the Academy's records "to determine whether there is any material concerning the adoption of the code of ethics in 1950" since he was unable to find anything on the subject. He added: "I suspect that the administrative work was handled by AAA with Academy members and FMCS representatives serving more in an advisory capacity."¹³³

The Board of Governors continued to micromanage Academy affairs. It even required the *Proceedings* editor to seek Board approval for the title of the 1962 volume.¹³⁴ Miller apparently also began to doubt his authority to reimburse members for expenses. He told Eli Rock: "At this point the policy covering reimbursement is not too well defined. I suspect the Board of Governors may want to review it for the purpose of clarification."¹³⁵

¹²⁹ Letter from President Gabriel Alexander to Academy members, November 13, 1961, Alexander Files, NAA Archives.

¹³⁰ Letter from Secretary David Miller to Patrick Fisher, April 12, 1962, Miller Files, NAA Archives.

¹³¹ Minutes, Progress Report to Board of Governors, March 16, 1962, Miller Files, NAA Archives. The final report, Policies of the National Academy of Arbitrators as Evidenced by Minutes of Annual Meetings and Minutes of Meetings of the Board of Governors, is undated; the last policy-approval date mentioned is April 22, 1961. Secretary Dallas Jones brought the project up to date in 1989. NAA Policy Handbook, NAA Archives.

¹³² Secretary's Report, Board of Governors, April 18, 1963. Sybil Sills received an honorarium of \$200 in 1963, Miller Files, NAA Archives.

¹³³ Letter from Abram Stockman to Secretary David Miller, September 30, 1964, Miller Files, NAA Archives.

¹³⁴ Letter from President Benjamin Aaron to Ronald Haughton, April 16, 1962, Miller Files, NAA Archives.

¹³⁵ Letter from Secretary David Miller to Eli Rock, October 28, 1965, Miller Files, NAA Archives.

However, it was under Miller that the secretary began to play a central role in Academy affairs. Committee chairs increasingly turned to Miller for answers on every detail of their responsibilities. For example, in reply to a complaint from Joseph Brandschain about badges for annual meetings, he wrote:

I am inclined to agree that the plastic pin-on badges are not too satisfactory. Apart from the reading difficulty, some of our members object to being pinned. But we may be stuck with them nevertheless. One of the things I inherited in this job was a supply of plastic holders and badges which were purchased by my predecessor in volume in an impulsive move of economizing.¹³⁶

Even as president-elect, Sylvester Garrett had decided to concentrate on stabilizing the Academy's internal operations. His first step was to request an analysis of the Academy's committee structure. In reply, Secretary Miller wrote:¹³⁷

The committees that have real working responsibilities throughout the year are Membership, Program and Arrangements. They should be cohesive and vigorously chaired. The same applies to the Liaison Committee.

The Research and Education and the Law and Legislation Committees seem not to have reports except at the year's end, and the chairman does nearly all the work.

The Ethics Committee . . . has not really functioned . . . and does not seem to have any clear idea of its responsibility and authority.

The special committees on "grievance machinery" and "membership status" are now engrossed in studies which may be completed by January 1963.

Some of the committees are unnecessarily large and perhaps a bit cumbersome. Real effectiveness depends on the chair . . . rather than the number of members on the committee.

Garrett hoped that a completely revised constitution and bylaws would result from the work of the committees to revise grievance machinery and membership policy. By the end of his term the Academy had taken concrete steps to achieve that goal.

In 1964, Abram Stockman chaired another special committee on streamlining Academy activities. Miller concurred in the need for such action, writing to Benjamin Aaron:

Academy business is in the doldrums, and I feel we are just bumbling along at this point. Clearly the organization is not self-

¹³⁶Letter from Secretary David Miller to Joseph Brandschain, May 29, 1962, Miller Files, NAA Archives.

¹³⁷Letter from Secretary David Miller to President-elect Sylvester Garrett, November 26, 1962, Miller Files, NAA Archives.

propelling. It requires the kind of leadership which it has been given in the past and which unfortunately seems now to be lacking.¹³⁸

Secretary Miller conveyed a similar evaluation to Stockman:

I was surprised and somewhat dismayed to learn that some of our members are either uninformed about the Academy's prior action [the establishment of a grievance system] or are unable to comprehend the need for safeguards which you have . . . incorporated in your recommendations. Some seem to think a simple informational system would be adequate. I agree that simplicity is desirable, but not at the risk of sacrificing the products we require.¹³⁹

A sign of administrative inertia also appears in Miller's letter to Treasurer Jean McKelvey:

The "financial policy" committee is presently dormant. [The Chairman] feels that our financial policy should be coordinated with the long range goals and thus to the work of the committee on long range development. This makes sense to me.¹⁴⁰

Russell Smith, who became Academy president in January 1965, had the good fortune to preside over a broad revision of the Academy's constitution and bylaws. The changes redefined the duties of officers and the responsibilities of the standing committees. Most important were the changes enlarging the responsibilities of the Membership Committee and the new Ethics and Grievance Committee. Smith appointed Sylvester Garrett and Abram Stockman, who had developed the grievance machinery, to head the new committee.

When Robben Fleming became president in 1966, he worried about the potential lack of continuity in Academy administration. In a letter to Secretary Miller, he voiced his fears that the Academy relied too heavily on the secretary's office:

Unless the Academy can find someone who has available space, time and clerical help and office equipment, it may have to establish its own regular office and regular hired help.¹⁴¹

¹³⁸ Letter from Secretary David Miller to Benjamin Aaron, June 22, 1964, Miller Files, NAA Archives.

¹³⁹ Letter from Secretary David Miller to Abram Stockman, May 21, 1964, Miller Files, NAA Archives.

¹⁴⁰ Letter from Secretary David Miller to Treasurer Jean McKelvey, April 15, 1964, Miller Files, NAA Archives.

¹⁴¹ Letter from President Robben Fleming to Secretary David Miller, March 16, 1966, Fleming Files, NAA Archives. In 1965 Miller had been elected to his second and last three-year term.

In answer to Fleming's complaint that he had to make too many committee assignments, Miller suggested that "an efficient way to get rid of a committee is just not to list it."¹⁴² He again explained the Academy's reimbursement policy:

As president you are entitled to attend any sessions or meetings you deem necessary on behalf of the Academy. . . . Academy's reimbursement policy has never been explicitly stated except as it permits certain specified functionaries (secretary, treasurer, and committee chairmen) to claim travel reimbursement for meetings they are required to attend. The president may or may not claim travel expenses—that is, some have done it and some have not—but such claims have always been honored. . . . In general, the Academy's policy on reimbursement is being liberalized gradually.¹⁴³

As the Academy's 20th anniversary approached, members began to think of the Academy as a lasting and important institution. That recognition prompted greater appreciation to those who began the organization. Appropriately, the Board of Governors authorized presentation of a plaque to each of the 60 charter members still alive in 1967.¹⁴⁴

Aging of the Academy's membership encouraged attention to retirement issues. In response to requests from Academy members nearing retirement age, Laurence Seibel, former Membership Committee chair, suggested that the Academy establish a Keogh-type pension plan.¹⁴⁵ Secretary Miller reported that the last time the Academy considered a retirement plan, he had found "little expression of interest by the group."¹⁴⁶ Ralph Seward had also looked into the matter in 1966 and had obtained a copy of the American Bar Association retirement plan. After investigation, Secretary Miller reported that only about 60 members were interested. Because at least 100 participants were necessary for a viable plan, he concluded that banks and insurance companies could do little more than the members could do for themselves individually.¹⁴⁷ The Academy took no further action.

¹⁴²Letter from Secretary David Miller to President Robben Fleming, March 16, 1966, Fleming Files, NAA Archives.

¹⁴³Letter from Secretary David Miller to President Robben Fleming, February 10, 1966, Fleming Files, NAA Archives.

¹⁴⁴Minutes, Board of Governors, May 6, 1967, NAA Archives.

¹⁴⁵Letter from Laurence Seibel to President Bert Luskin, May 1, 1967, Luskin Files, NAA Archives.

¹⁴⁶Secretary's Report, January 28, 1964, Miller Files, NAA Archives.

¹⁴⁷Letter from Secretary David Miller to President Bert Luskin, February 2, 1967, Luskin Files, NAA Archives.

The year 1967 brought some unforeseen problems. The urban upheaval in Detroit temporarily disrupted Academy office routine. Secretary Miller reported that the Detroit riots had kept his staff from work for several days:

Things seem to be gradually returning to normal—at least during daylight. . . . It has been a nightmarish, sleepless period. The eerie silence imposed by the curfew seems unreal in the big city. Then the violent eruptions—fire, gunshots, destruction and death—are all too real. While the gross destruction has been centered on the near west side of the city, the violent . . . incidents have not been contained in that area. People are unnecessarily apprehensive and concerned—what next? We thought it would not happen in Detroit. The deliberate siege of the police and fire stations does not appear spontaneous. We are still too close to the immediate problems to even comprehend the aftermath, much less know what to do about it.¹⁴⁸

The Ford-UAW arbitration office had provided apprentice training to several people who would later join the Academy. Permanent umpireships were important to the Academy in a more tangible way. As an early associate during Harry Shulman's umpireship and later as Ford-UAW benefits umpire, Secretary Miller conducted Academy business from that office. Because the Academy lacked its own headquarters, an important qualification for the Academy secretary was the availability of space in a university or permanent umpireship office. Since Miller's term of office as secretary was due to expire (he had served two three-year terms), Clare (Mickey) McDermott, an associate in the U.S. Steel-United Steelworkers of America Board of Arbitration, was elected to replace him.

By 1967, some routine and traditional ways of carrying on Academy business were well in place. For example, Program Committee Chair Arvid Anderson told participants that he expected them "to prepare their papers at least one month in advance in order that they can be available not only to the discussants prior to the meeting, but also so they can be duplicated and given to the members and guests during the opening days of the meeting in order that the members and guests will be prepared to participate in the discussions."¹⁴⁹

¹⁴⁸Letter from Secretary David Miller to President Bert Luskin, July 27, 1967, Luskin Files, NAA Archives.

¹⁴⁹Letter from Arvid Anderson to Program Committee members, February 14, 1966, Luskin Files, NAA Archives.

However, lack of continuity in the Academy's planning and decentralization of arrangements for the annual meetings created a crisis early in 1969. About a month before the annual meeting scheduled for Atlanta, Georgia, Local Arrangements Chair George King informed President James Hill that negotiations between the hotel management and the union had broken down. Picketing was likely to continue through the time set for the Academy's meeting. The Board of Governors had a firm policy to convene Academy meetings only in unionized hotels to avoid alienating potential guests. President Hill called on Harry Woods of Canada, who hastily substituted Montreal as the meeting site.¹⁵⁰ To ensure appropriate hotel accommodations in the future, Hill appointed Thomas Roberts chair of a new Future Arrangements Committee, a position he held for the next 14 years.¹⁵¹

Finally, during the 1960s a generational change in Academy leadership occurred. During the 1950s, with only two exceptions—Harry Platt (1958) and Allan Dash (1959)—all Academy presidents had been charter members. During the 1960s that ratio was reversed; only three presidents—Benjamin Aaron (1962), Peter Kelliher (1964), and Charles Killingsworth (1968)—were charter members. Gradually, almost imperceptibly, Academy governance was taken over by the “young Turks” (a very relative term in the Academy). Some of these new leaders had apprenticed in permanent umpireships and considered arbitration a full-time profession rather than a public service or an avocation. During the 1960s, the Academy lost some of its revered founders, as shown in Table 3-1.

External Activities

As early as 1960, Rolf Valtin had urged the Academy to involve itself in activities to promote the arbitration profession. At the 1960 Annual Meeting, he declared:

[A]rbitration is today no longer in the experimental stage. . . . [T]he Academy's role ought to progress to a more forceful one. . . . not only as a means for association by its members, but also as the body which the public may consider and use as the spokesman for arbitration.¹⁵²

¹⁵⁰Hill, *The Presidential Address: The Academy and the Expanding Role of Neutrals*, in *Arbitration and the Expanding Role of Neutrals*, Proceedings of the 23rd Annual Meeting, National Academy of Arbitrators, eds. Somers & Dennis (BNA Books 1970), 187.

¹⁵¹Roberts Presidential Interview, June 2, 1993.

¹⁵²Valtin, *The National Academy After Twelve Years: A Symposium: What I Expect of the Academy*, Proceedings of the 13th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1960), 13, 16.

Table 3-1. Membership 1960-1970

Date	Number	Deaths	Future President Admissions
1960	263	Sumner Slichter	Edgar Jones
1961	278	John Lapp Edwin Witte	Clare McDermott
1962	292		Arnold Zack
1963	296	Benjamin Selekinan	Dallas Jones
1964	310		Thomas Roberts
1965	321	William Davis	
1966	330	Carl Schedler	
1967	343	Alfred Colby	Howard Block William Murphy J.F.W. Weatherill John Dunsford
1968	350		
1969	354	Aaron Horvitz Saul Wallen	
1970	360	David Wolff	Alfred Dybeck
Increase in membership 1960-1970 = 97 (37%)			

Sources: Secretary's Reports, Board of Governors Minutes, NAA Archives.

He encouraged the Academy to become more "outward oriented—to become a stronger and more influential professional organization" and made several suggestions. The Academy, he recommended, should file amicus briefs, oppose compulsory arbitration, enforce ethical standards, but ignore complaints about appointing agencies. "[W]e are not [their] clients," he declared.¹⁵³ At the same meeting, William Loucks outlined the necessary elements for a true profession, emphasizing the need for the highest ethical standards.¹⁵⁴

In deference to the diversity of its membership, the Academy avoided political endorsements.¹⁵⁵ An unfortunate incident in 1962 prompted a forceful statement of the Academy's nonpartisanship. In a burst of unwarranted enthusiasm, a member of the

¹⁵³ *Id.* at 19.

¹⁵⁴ Loucks, *The National Academy After Twelve Years: A Symposium: Arbitration—A Profession?*, *id.* at 20, 27.

¹⁵⁵ Minutes, Board of Governors, January 26, 1955, NAA Archives; see also *The Constitution and By-Laws* [Article VIII, Section 4], in *Arbitration 1987: The Academy at Forty, Proceedings of the 40th Annual Meeting*, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix A, 205, 220.

Board of Governors signed President Benjamin Aaron's name on a telegram endorsing Arthur Goldberg's appointment as Supreme Court Justice. Aaron rebuked him, stating that it was "highly questionable whether the Academy should take any position on matters of this kind . . . [and it is] improper for the president of the Academy or anyone else to send a supporting telegram without at least consulting the Executive committee of the Academy. . . . [But it is] water over the dam and I join you and Ralph [Seward] and the rest of Arthur's friends . . . in wishing him a speedy confirmation and a long and distinguished career on the Court."¹⁵⁶

The policy of refraining from taking an official position "on the principle of statutory regulation" did not apply to legislation affecting the arbitration process, however. During the 1950s, the Academy had contributed to the debates over the proposed Uniform Arbitration Act and United States Arbitration Act. In 1965, President Russell Smith named Ted Jones to carry on the Academy's role in developing labor legislation, especially the proposed United States Arbitration Act. Smith urged the committee to concentrate on the "legal developments in relation to the arbitration process" and the "adequacy of federal legislation."¹⁵⁷

In response to requests by some members, President Sylvester Garrett appointed a special committee chaired by Benjamin Scheiber to coordinate with the American Arbitration Association and the Federal Mediation and Conciliation Service, charging it to investigate cancellation fees and whether "the Academy should go on record as endorsing any particular type of charge [fee] by arbitrators." Garrett suggested that an arbitrator's fee "must depend in good part on the circumstances in each case."¹⁵⁸ However, he was decidedly unsympathetic to a request that the Academy protest Congress's proposal to cut National Mediation Board referees' per diem from \$100 to \$75:

I am dubious . . . that it would be appropriate for the Academy to take official note of this problem. . . . [I]t would be incongruous for the Academy to advocate a minimum or established rate for arbitra-

¹⁵⁶ Letter from President Benjamin Aaron to Peter Seitz, September 21, 1962, Miller Files, NAA Archives.

¹⁵⁷ Letter from President Russell Smith to Edgar Jones, February 10, 1965, Smith Files, NAA Archives. In the 1980s and 1990s, this policy evolved into filing amicus briefs in cases that threatened arbitral immunity or the finality of arbitration awards.

¹⁵⁸ Letter from President Sylvester Garrett to Benjamin Scheiber, November 1, 1963, Garrett Files, NAA Archives.

tors in some areas without also being ready to specify appropriate maximum rates.¹⁵⁸

After receiving union complaints about increasing arbitration costs and delays, Richard Mittenenthal and Secretary David Miller met in Detroit with United Auto Worker (UAW) representatives. The consensus was that high costs and delays were caused by briefs and transcripts as well as by arbitrator procrastination. The UAW reported that many small unions were removing arbitration clauses from their contracts because they could no longer afford them. The cost and speed of arbitration remained continuing concerns for Academy members.¹⁶⁰

The Proceedings

In 1955, the Bureau of National Affairs (BNA) became the official publisher of the *Annual Proceedings*. The first contract obliged the Academy to pay BNA \$2.50 per volume, reduced by a 10 per cent royalty on all copies sold. The first volume under the contract reported the papers presented at the eighth Annual Meeting. A previous volume, edited by Jean McKelvey in her capacity as Research Committee chair, contained presentations made at the first seven annual meetings. She remained the *Proceedings* editor until 1961. In 1956 BNA increased the cost to \$4.00 per volume with royalties only after the first 1,000 copies sold. Sales dropped from a high of 2,879 in 1956 to 525 in 1962. In 1963 BNA requested a \$400 advance to cover the cost of supplying Academy members with 300 copies of the annual volume.¹⁶¹

To increase sales of the *Proceedings*, Mark Kahn, who became editor in 1962, requested that the Board relax its policy against book exhibits at annual meetings. President Sylvester Garrett agreed but specified certain conditions:

1. BNA should prepare an order form for current and past volumes to be included in registration packets.

¹⁵⁸ Letter from President Sylvester Garrett to Thomas Bagley, July 1, 1963, Garrett Files, NAA Archives.

¹⁶⁰ Letter from Secretary David Miller to AAA Manager Herrscher, July 1, 1963, Miller Files, NAA Archives. See also letter from President Sylvester Garrett to Peter Kelliher, January 20, 1964: "[Secretary of Labor Willard Wirtz] is not convinced that merely to discontinue using those who seem to overcharge will solve the problem." Garrett Files, NAA Archives.

¹⁶¹ Secretary's Report, April 27, 1963; see also BNA Royalty Statement, November 3, 1962. Miller Files, NAA Archives.

2. The BNA display at the registration desk should be limited to *Proceedings* volumes and may not advertise any other publications or services.¹⁶²

Garrett objected to inviting publishers to "hawk" their wares at annual meetings. Although that was the standard practice of most learned societies, Garrett noted that the publishers paid a fee for space rented from the hotel. To avoid those complications, he recommended that the Local Arrangements Committee get free space at the registration desk for the BNA display. The committee was authorized additional funds to assure this space.¹⁶³

Although the Board of Governors had previously retained the authority to determine the title of the *Proceedings*, in 1963 the Board decided to delegate this decision to the *Proceedings* editor, who was to determine the content of the annual volume. The Board also authorized a \$500 honorarium for editorial services.¹⁶⁴ Editor Mark Kahn started the practice of including in an appendix to the *Proceedings* committee reports and constitutional amendments approved at the annual meetings, and a list of the names of officers and members of the Board and of committees.¹⁶⁵

One indication of the Academy's growing reputation was the attention given its published *Proceedings*. Dallas Jones, *Proceedings* editor from 1965 to 1967, succeeded in listing the *Proceedings* in the Index to Legal Periodicals of the American Association of Law Libraries. The listing was retroactive, covering the 14 volumes of papers from the Academy's 20 annual meetings.¹⁶⁶ In 1969 Gerald Somers became *Proceedings* editor, with the help of Barbara Dennis, who also edited the *Proceedings of the Industrial Relations Research Association*.¹⁶⁷

Another sign of the Academy's increasing stature was a request from the International Society for Labor Law and Social Security.

¹⁶²Letter from President Sylvester Garrett to Executive Committee members, January 17, 1964, Garrett Files, NAA Archives.

¹⁶³Letter from President Sylvester Garrett to Mark Kahn, January 15, 1964, Garrett Files, NAA Archives. In the 1980s, this privilege was extended to other approved labor relations publishers; see Minutes, Board of Governors, May 27, 1985, NAA Archives.

¹⁶⁴Minutes, Board of Governors, February 2, 1963, Miller Files, NAA Archives. This honorarium was discontinued after Barbara Dennis was replaced as co-editor. See *infra* note 167.

¹⁶⁵Minutes, Board of Governors, January 29, 1963, Miller Files, NAA Archives.

¹⁶⁶Letter from President Bert Lusk to Dallas Jones, June 16, 1967, Lusk Files, NAA Archives.

¹⁶⁷Barbara Dennis's name did not appear as co-editor until 1970. That association lasted for 15 years, with James Stern replacing Gerald Somers as co-editor after the latter's untimely death in 1979.

The Society asked the Board of Governors to name a representative to serve on the Society's executive committee. The Board of Governors approved the appointment of Russell Smith.¹⁶⁸ In 1968, when Charles Killingsworth became Academy president, he encouraged association with international colleagues by appointing a Committee for Overseas Correspondence.¹⁶⁹ The 1968 Annual Meeting concentrated on comparison of American and foreign arbitration.¹⁷⁰

Membership Policy

The lack of a clear membership policy had plagued the Academy since its founding. Although in 1957 the Membership Committee began requesting applicants to submit résumés, no specific number of cases was required for admission. For example, in 1960 the four successful candidates submitted the following estimated annual caseload information: 6 to 14, 10 to 25, 3 to 10, and 9 to 12, respectively.¹⁷¹ No identification or proof was necessary.

The Academy had no procedure for determining the ability of arbitrators who applied for membership. Nevertheless, the industrial relations community regarded Academy membership as a sign of an arbitrator's quality. As early as 1959 Secretary Bert Luskin had answered a request from the industrial relations director of a Pennsylvania steel company:

It has come to my attention that a number of companies and unions have indicated a desire to have lists composed exclusively of Academy members in order to be certain that those appearing on the list are experienced arbitrators. In a number of contracts the parties have established their own panels and have named a number of arbitrators from which selection is made. In other cases the parties have agreed that lists submitted by the FMCS or the AAA must be made up of members of the Academy. I am informed that a request of that type . . . will be honored. The Academy may not under our

¹⁶⁸ Letter from President Bert Luskin to Russell Smith, April 17, 1967, Luskin Files, NAA Archives. In 1990 Benjamin Aaron was elected the Society's president.

¹⁶⁹ By 1974, overseas correspondents represented Australia, Belgium, England, France, Israel, Italy, Jamaica, Japan, Scotland, and Sweden. Secretary's Report, 1973, 1974, Dybeck Files, NAA Archives.

¹⁷⁰ Fairweather, *American and Foreign Grievance Systems: I. A Comparison of British and American Grievance Handling*, in *Development in American and Foreign Arbitration*, ed. Rehms (BNA Books 1968), 1; Woods, *II. Public Policy and Grievance Arbitration in Canada*, id. at 19.

¹⁷¹ Memorandum from Chairman Dudley Whiting, Membership Committee (n.d.), Luskin Files, NAA Archives.

Constitution engage in any activity involving recommendations, designations or appointments.¹⁷²

The Academy occasionally received requests to recommend members for specific assignments. For example, a union research director in Colorado desired "the names of 10 or 12 men" to act as "third party consultants to assist and resolve difficulties" related to the "job evaluation manual governing classification of production and maintenance jobs." Secretary David Miller's answer was similar to Luskin's:

[T]he policy from the beginning has been to avoid recommending any of our members to parties who seek recommendations. We keep no records classifying our members according to their special experience. [I refer you to] the appointing agencies, AAA and FMCS.¹⁷³

The caliber of applicants' credentials was subject to continual review and debate. Laurence Seibel, who headed the Membership Committee from 1963 to 1965, questioned whether experience as a "fulltime assistant to a permanent chairman arbitrating in a single bargaining relationship in a single industry under a single contract" was sufficiently broad to warrant Academy membership. In a letter to President Russell Smith, Seibel concluded:

After an initial period of at least two years as a full-time assistant, if his employment is continued, the assistant may be considered for membership. The Membership Committee shall examine all relevant considerations and on a case-by-case basis may recommend approval for membership.¹⁷⁴

Under Seibel's chairmanship, the Membership Committee first required applicants to submit a full page résumé with an additional sheet for further comments about their experience as arbitrators.

The question of honorary membership arose in connection with the admission of Cyrus Ching. Ching had served as the first FMCS Director and as chairman of the Atomic Energy Labor-Management Relations Panel but was no longer an active arbitrator. Seibel reported that the Membership Committee unanimously favored Ching's admission to the Academy "either as an honor-

¹⁷²Letter from Secretary Bert Luskin to the industrial relations director of Lehigh Structural Steel Co., August 20, 1959, Luskin Files, NAA Archives.

¹⁷³Letter from Secretary David Miller to the research director of the Mine, Mill and Smelter Workers Union, October 6, 1964, Miller Files, NAA Archives.

¹⁷⁴Letter from Laurence Seibel to President Russell Smith, May 28, 1965, Smith Files, NAA Archives.

ary or regular member."¹⁷⁵ Ching was eventually admitted to the Academy as a regular member in 1965; the *Proceedings* of that meeting memorialized his 90th birthday.

Advocates and Consultants

In 1956, the Academy had adopted a policy against admitting to membership those who served as advocates or consultants to management or labor. This policy continued to cause problems. Some applicants rejected on that basis complained because the Academy already included several advocates. Most of those who complained were unaware of a "grandfather" clause permitting arbitrator-advocates who were already Academy members to remain. In 1959 Secretary Bert Lusklin had answered an inquiry:

The Academy policy . . . changed in 1956 and . . . membership since that time has been denied to anyone who is primarily identified as a labor-management consultant or who is primarily identified as an advocate in labor relations matters. . . . [The policy] bases the criteria primarily upon "identification" rather than on percentage of income.¹⁷⁶

The spillover from membership standards to ethical conflicts of interest remained a serious problem. (This is discussed in more detail later in this chapter under the heading Ethical Concerns.) Opposition to admission of applicants and retention of members who engaged in advocate consultation is exemplified by a letter from Secretary David Miller to Patrick Fisher, who chaired the Ethics Committee in 1963:

[I]t is my feeling that members should not accept partisan positions and that Academy policy should at least discourage that activity. . . . It is not only neutrality that is important but also the appearance of neutrality. . . . [The] Academy as an organization should be neutral and should take a positive stand to make that neutrality evident to those who are interested.¹⁷⁷

¹⁷⁵Letter from Laurence Seibel to President Russell Smith, November 10, 1965, NAA Archives. In a letter dated November 15, 1965, Smith informed the Board of Governors of the "problem of meeting the requirements of the constitution." Smith Files, NAA Archives. On January 30, 1963, the membership had approved Article V, section 2, of the Constitution, providing for conferring "upon a member of the Academy honorary Life Membership status." Apparently Cyrus Ching could not be made an honorary life member before he was a regular member.

¹⁷⁶Letter from Secretary Bert Lusklin to Walter Seinsheimer, November 26, 1959, Lusklin Files, NAA Archives.

¹⁷⁷Letter from Secretary David Miller to Ethics Committee Chair Patrick Fisher, October 8, 1963, Miller Files, NAA Archives.

President-elect Peter Kelliher voiced an equally strong attitude against advocate activity in a letter to President Sylvester Garrett, citing the "sensitive situation" that occurred when an Academy member acted as arbitrator in a matter where "another Academy member is serving on behalf of one of the parties." Kelliher suggested:

[There should be] a "good faith clause" that would "red circle" those persons who are now members of the Academy but with the understanding that in the future we will not accept into membership persons who have in the past and intend in the future to function as other than a neutral independent arbitrator. Unless the Academy is willing to take a stand that no member shall serve either as an advocate or as a representative of a party on a board of arbitration, then there appears to be no way of resolving this problem.¹⁷⁸

One suggestion for including arbitrator-advocates was the establishment of an associate membership status. The membership voted down a motion to this effect in 1962. Members apparently feared potential confusion in the labor-management community if the Academy directory included names of persons who were not "pure" arbitrator practitioners.¹⁷⁹ Many of the Academy's internal policy debates continued for years, resurfacing again and again. This was one of them. Despite the apparently clear vote, the question remained alive until a second vote of the membership against arbitrator-advocates in April 1976.

There were actually two sides to the problem of advocacy affiliation: (1) identification before the arbitrator became an Academy member, and (2) pursuit of advocacy activities after becoming a member. The first aspect was within the province of the Membership Committee, but the second came under the jurisdiction of the Ethics and Grievance Committee. An example of the second problem arose in 1966, when an Academy member requested guidance in view of his employment by a large corporation. President Robben Fleming wrote:

The precedent, set by Tom Kennedy when he went into industry for a spell, is for the member to seek to withdraw from the Academy until such time as he may once again be a practicing neutral. At that time reapplication for membership is made. . . . I would urge you to

¹⁷⁸ Letter from President-elect Peter Kelliher to President Sylvester Garrett, September 6, 1963, Garrett Files, NAA Archives.

¹⁷⁹ Letter from Benjamin Aaron to members of the Subcommittee to Investigate Associate Membership (Chair Ralph Seward, Leo Brown, Harry Platt, and Saul Wallen), February 7, 1962, Aaron Files, NAA Archives.

do this since there are sensitive feelings within the Academy on this point.¹⁸⁰

Fleming decried the lack of membership standards in his presidential policy statement. He charged the Membership Committee to develop "reasonable guidelines which will enable the committee to act with a substantial degree of consistency."¹⁸¹ He appointed Rolf Valtin to chair the Membership Committee and continued Sylvester Garrett and Abram Stockman as co-chairs of the Ethics and Grievance Committee, urging them to work together to develop adequate standards to guide their activities. Valtin immediately consulted Garrett about a particularly difficult decision the Membership Committee faced in considering the appeal of an applicant who had been rejected for membership in 1966 because of his advocate status. Valtin requested an opinion from the Ethics and Grievance Committee about the meaning of the phrase "primarily identified as an advocate or consultant." (This was a membership disqualification cited by Secretary Luskin in 1959.) In his "unofficial" reply, Garrett noted:

... He [the applicant] appears to be still a member of his management consultant firm, listed as such in the local telephone directory, and may even be the principal owner for all we know. In these circumstances, I am not sure what he means when he said he is not an "active" management consultant. . . . If he really wants to be only an arbitrator, after having been a consultant for a long period, he ought to sever his connection completely with his . . . firm. Otherwise, we have no assurance that he will not continue to appear primarily as a management consultant in the eyes of the labor-management community in the area.

... I wonder if it would not be useful to consider means of clarifying the phrase "primarily identified." . . . The Membership Committee hardly is in a position to make detailed local surveys to determine how people are "identified" in the minds of the labor-management community, and it is possible that the Committee's approach might be significantly different today from what it was in the past, or may be in the future.¹⁸²

The significant contributions of both committees did not bear fruit until the 1970s.

¹⁸⁰ Letter from President Robben Fleming to Herbert Schmertz, June 6, 1966, Fleming Files, NAA Archives.

¹⁸¹ Letter from President Robben Fleming to Academy members, April (n.d.) 1966, Fleming Files, NAA Archives.

¹⁸² Letter from Sylvester Garrett to Rolf Valtin, November 10, 1966, Fleming Files, NAA Archives.

Apprenticeships

By the 1960s, apprenticeship programs for new arbitrators had begun to flower. More arbitrators took on more apprentices, often for a more formal training. The primary source of apprenticeships was the umpire system used in several major industries (especially the automobile and steel industries) during the decade. Usually this was an informal arrangement devised by the umpire with the tacit consent of the parties. For example, General Motors-UAW umpires hired assistants, first to research and write decisions, later to hear cases with the assistant's award subject to the umpire's approval.

The apprenticeship practice developed somewhat differently in the steel industry.¹⁸³ Due to an increasing caseload in the early 1960s, U.S. Steel and the Steelworkers permitted the chairman of the Board of Arbitration to hire a full-time assistant, thereby formalizing the apprenticeship system. Within a few years, two more full-time apprentices joined the chairman. By the mid-1970s, the complement of assistants had grown to four, and in 1980 a fifth was added. All of the assistants were lawyers. All were trained at the Board of Arbitration office in Pittsburgh. By contract, they were salaried, full-time employees of the Board. After two years they were permitted to hear a limited number of cases outside the Board, at the chairman's discretion. Other steel companies such as Armco, Bethlehem, Inland, and Jones & Laughlin used variations of the U.S. Steel system, as did the iron ore industry after 1978. These apprenticeships trained many new arbitrators who later became Academy members.

Ethical Concerns

When he chaired the Ethics Committee in 1958, Benjamin Aaron had interpreted Canon 8 of the 1951 Code of Ethics and

¹⁸³ Cf. Dybeck, *Arbitration in Specific Environments: I. The Steel Industry*, in *Arbitration 1989: The Arbitrator's Discretion During and After the Hearing*, *Proceedings of the 42nd Annual Meeting*, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1990), 236. As umpire in the steel and automobile industries, Ralph Seward hired Gabriel Alexander, Herbert Fishgold, James Harkless, Alexander Porter, Joseph Sharnoff, Seymour Strongin, and Rolf Valtin as assistants. In Boston, Saul Wallen employed Marcia Greenbaum and Arnold Zack. In Pittsburgh, Sylvester Garrett, the umpire at U.S. Steel, trained David Altrock, James Beilstein, Shyam Das, Alfred Dybeck, Peter Florey, Edward McDaniel, Clare (Mickey) McDermott, Herbert Sberman, and Helen Witt. In Detroit, Harry Platt hired Stanley Aiges, Paul Glendon, and Richard Mittenthal. All of these assistants became Academy members of distinction, and several (Alexander, Dybeck, McDermott, Mittenthal, Valtin, and Zack) rose to the office of president.

Procedural Standards for Labor-Management Arbitration as prohibiting an arbitrator from publishing an award without the parties' approval. In his report to the Board of Governors, he also recommended that "the committee ought not to wait for questions or complaints to be referred to it but should on its own motion study and report on known or suspected problems."¹⁸⁴ As president, Aaron appointed a special committee headed by Eli Rock to study Code enforcement procedure. In his charge to the committee, Aaron explained the problem:

Clearly the membership wants some kind of Grievance Committee established. Everyone is aware, however, that great care must be exercised in establishing machinery which will not only be effective but which will provide due process to all persons against whom grievances are lodged and will also protect the Academy, its officers, and its individual members from liability arising out of the filing or disposition of grievances.¹⁸⁵

The special committee recommended the appointment of a new Ethics and Grievance Committee, which the Academy finally did in 1965.¹⁸⁶ In 1962, replying to a research request from the *Yale Law Journal*, Secretary David Miller summarized the status of Code enforcement:

The few individual cases that did arise were dealt with by officers of the Academy, privately and directly with the principals involved and were resolved in that fashion. . . . [The Academy] has no special rules governing solicitation of business, but does disapprove use of the Academy name on member stationery. The Academy expects its members to adhere to its Code of Ethics and observe reasonable standards of professional conduct.¹⁸⁷

¹⁸⁴Letter from Benjamin Aaron to Ethics Committee members, November 10, 1966, Brown Files, NAA Archives.

¹⁸⁵Letter from President Benjamin Aaron to Eli Rock, March 18, 1962, Aaron Files, NAA Archives.

¹⁸⁶Letter from President Russell Smith to Academy members, March 9, 1965, Smith Files, NAA Archives. The Ethics Committee issued two opinions in the 1950s; the Ethics and Grievance Committee issued no opinions during the 1960s; Opinion No. 3 is dated simply "1972" in the NAA Advisory Opinions. The Board of Governors did not adopt formal rules implementing Code enforcement until 1993, when it approved a *Manual of Procedures of Committee on Professional Responsibility and Grievances for Disciplinary Proceedings*, in *Arbitration 1993: Arbitration and the Changing World of Work*, Proceedings of the 46th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), Appendix C, 343.

¹⁸⁷Letter from Secretary David Miller to John Young of the *Yale Law Journal*, March 28, 1962, Miller Files, NAA Archives.

Publication of Awards

In the absence of formal opinions, however, Academy members sought informal advice on applications of the Code. For example, the problem of award publication was raised again in a letter to Secretary Ronald Haughton:

What bothers me is that there are so many publishing houses getting into the field and all of them are asking for copies of the awards so that I would very much appreciate finding out exactly what the policy is of the Academy . . . particularly in the light of Mr. Strong's [FMCS General Counsel George Strong] recent release to the effect that those who have their awards published in the experience of the FMCS are the ones who are more frequently appointed. I certainly am in the market to solicit more work, but I am at a loss to know just how to handle this growing perplexing situation.¹⁸⁸

Haughton's reply was instructive but avoided the Code question:

. . . The Academy does not have a policy concerning publication of awards. . . . I know that George Strong has made quite a point about the desirability of publication. However, I think he has particularly stressed this point with respect to new arbitrators. Apparently there is an inclination by some parties to check reported cases on particular subjects before making an appointment.

From my own experience . . . after a person has been arbitrating any length of time, his competence and acceptability seem to be discussed and considered more on a word-of-mouth "grapevine" sort of basis than with regard to awards he might publish.¹⁸⁹

Advertising

Considering the Code's broad prohibition of advertising, some members questioned the wide distribution of Academy directories containing members' names and addresses.¹⁹⁰ At the time there were no limitations on distribution of the directories. In

¹⁸⁸ Letter from John Gorsuch to Secretary Ronald Haughton, April 10, 1961, Haughton Files, NAA Archives.

¹⁸⁹ Letter from Secretary Ronald Haughton to John Gorsuch, April 27, 1961, Haughton Files, NAA Archives. Section 2.C.1.c. now provides that an arbitrator may publish an award either after getting the parties' approval at the hearing or after offering them a chance to object to publication after the award is issued.

¹⁹⁰ See, e.g., postcard dated April 21, 1960, from Alfred Colby to Secretary Bert Luskin, requesting a directory for his own use "as I understand that the Board of Governors has decided we are not a promotional or trade organization. Of course, that is a good thing and I hope the practice will be stopped all around." Luskin Files, NAA Archives.

1961, Bert Luskin reported that, in addition to the regular membership, he had mailed the following quantities:¹⁹¹

Companies and Unions	35
FMCS	25
AAA	25
Member requests	12

The question of advertising also arose in connection with members' publication of journal articles that identified them as arbitrators. While the Academy did not endorse these publications, the Ethics Committee did not consider this type of recognition contrary to Academy policy. In a somewhat facetious tone, Secretary David Miller added that it was not unethical to be "too busy."¹⁹² In 1963, President Sylvester Garrett instructed Research Committee Chair Fred Holly to

gather and maintain a bibliography of members' publications. . . . [T]he Academy's interest would be advanced if we would maintain a separate bibliography brought up to date semi-annually and reproduced for distribution to the membership and others who seek reference material from the Academy.¹⁹³

The Ethics Committee considered several complaints about advertising. One concerned arbitrators' submission of material to a column (titled "Reflections of an Arbitrator") in a publication by the National Foremen's Institute. Another concerned new arbitrator rating services, which Peter Kelliher called "dope sheets."¹⁹⁴ Ralph Seward recommended that, if these services became widely used as a source of arbitrators, "it might be wise for the [Ethics] committee to . . . draw up a statement concerning the relationship which ought properly to exist between them and the arbitrator." Kelliher complained that these rating services were "not only inaccurate but tend to lower the tone of the entire arbitration process." In a report to the Board of Governors, the committee discouraged development of these rating services. It noted that the short biographies of arbitrators in BNA and CCH publications should suffice and that the parties could interview a prospective arbitrator if they desired additional data. Secretary Miller explained:

¹⁹¹ Letter from Secretary Bert Luskin to President Gabriel Alexander, February 21, 1961, Luskin Files, NAA Archives.

¹⁹² Letter from Secretary David Miller to Patrick Fisher, October 8, 1963, Miller Files, NAA Archives.

¹⁹³ Letter from President Sylvester Garrett to Fred Holly, March 27, 1963, Miller Files, NAA Archives.

¹⁹⁴ Letter from Secretary David Miller to Patrick Fisher, January 10, 1963, Miller Files, NAA Archives.

[I] . . . would be wary of a program which would seek to distinguish arbitrators on the ground that they may be regarded as "tough on discipline" or "soft on subcontracting" or any such generalities. . . . I do support the adoption of a general policy aimed at discouraging the development of such services, and I think it would be appropriate to adopt such a policy before they . . . become widely used as a source of arbitrators.¹⁹⁵

President Garrett appointed a special committee on grievance machinery, chaired by Abram Stockman, to investigate the potential liability the Academy faced in disciplining members for unethical conduct. After receiving a preliminary opinion from Willard Pedrick, law professor at Northwestern University, Stockman reported to the Board of Governors that there was "little likelihood of individual or organizational liability if the Academy acts in good faith on matters of alleged misconduct arising under the Code of Ethics." He suggested, though, that the Academy would be in a better position to defend its actions "if it were incorporated . . . and had specific consent of members to abide by the Code."¹⁹⁶

Tripartite Representation

One of the first complaints to reach the new Ethics and Grievance Committee involved an Academy member who had accepted an appointment as one of three management representatives on an arbitration board. The matter remained unresolved for more than two years. The following account is from Garrett's memorandum to Ethics and Grievance Committee members:¹⁹⁷

On May 29, 1963, a union representative from Chicago visited Secretary Miller and discussed the propriety of an Academy member accepting an appointment to represent management on an arbitration panel. The matter was referred to Patrick Fisher, who chaired the Ethics Committee at the time. He posed the following questions for the Committee's resolution:

¹⁹⁵ *Id.*

¹⁹⁶ Minutes, Board of Governors, October 26, 1963. The Board had authorized an honorarium of \$1,000 for this study at its meeting on January 29, 1963. Miller Files, NAA Archives. In response to Willard Pedrick's suggestion, the Academy sought Michigan incorporation (Article I, section 1, amended January 27, 1965); the dues statement and the membership application were revised to include a reaffirmation of the Code. *Cf.* text *infra* at note 210.

¹⁹⁷ Letter from Sylvester Garrett to Ethics and Grievance Committee members, October 11, 1965, Brown Files, NAA Archives.

What ethical considerations, if any, are involved in the following situation? Should the Academy seek to develop a statement of policy as to this type of situation in order to deal with inquiries thereon?

FACTS: A labor agreement calls for Company and Union each to appoint three members to a board of arbitration to deal with grievances. The six men then select a seventh, or neutral, to serve as chairman. The Union appointed three employees from the local membership to serve on a board to handle important issues, while the Company appointed a member of the Academy, its vice president, and its chief industrial relations executive, as Company board members. The Union questions the propriety of designation of an Academy member to serve as a partisan representative. It suggests that the Union members of the board may be unduly influenced by having an Academy member as Company representative on the board, and be embarrassed in the selection of a neutral member as well as in presentation of the cases. It also suggests that the neutral member himself may be influenced by having a colleague Academy member serving on behalf of the Company.

After the hearing the union filed a formal protest with the Ethics Committee and solicited the support of other unions to boycott the offending arbitrator. A state federation of labor joined in the protest.¹⁹⁸ The Academy member defended his action by comparing it to that of a lawyer-member who has "from time to time clients who are either employers or unions."¹⁹⁹ Asserting his neutrality, he continued:

The fact is that on very rare occasions I have advised both unions and companies on non-arbitrated matters. I have also lectured on arbitration to union classes, and a few years ago without charge for any services, I drew some bills for a union group which they caused to be introduced in the [state] assembly. However, I do not offer myself as a practitioner of labor law and do not intend doing so.

The Ethics Committee determined that the Academy member did not violate the Code but recommended that the Board of Governors adopt a policy opposing this conduct in the future. The Board referred the matter to the new Ethics and Grievance Committee in 1965. The committee affirmed the decision on the ground that the Code was intended to cover the obligations of an arbitrator when acting as a neutral and did not apply when acting as a representative of one of the parties on an arbitration board. Committee member Leo Brown framed the issues as follows:

¹⁹⁸ Letter from Jack Lewis of the Iowa Federation of Labor to Patrick Fisher, December 6, 1963, Miller Files, NAA Archives.

¹⁹⁹ Letter from Clarence Updegraff to Patrick Fisher, December 13, 1963, Miller Files, NAA Archives.

[W]e are not dealing with ethics when a man moves from the role of neutral to partisan or vice versa as long as it is clear from the circumstances what role he is filling. Rather it is a matter of prudence or good judgment. . . . [T]his changing of roles tends to undermine confidence in the arbitration process; it invites criticism both of the arbitrator and of arbitration.²⁰⁰

Ethics and Grievance Committee Co-Chair Abram Stockman suggested that the committee should involve those who would be affected and "negotiate" resolution of the problem.²⁰¹

In 1964 a similar situation had occurred when a union asked an Academy member to serve as its representative on a tripartite board. The member wrote the American Arbitration Association (AAA):

I must respectfully decline to accept assignment for the following reasons. . . . [A] question of whether a member of the Academy should accept an assignment as an arbitrator under circumstances which might be interpreted as affecting his reputation for neutrality has been referred to the Ethics Committee for their consideration and advice. . . . [U]ntil some declaration of policy is established . . . I must decline the assignment.²⁰²

President Bert Luskin exemplified the membership's ambivalence on the question. In one letter he wrote:

[T]he present climate of controversy in the whole area of arbitration makes it essential that we take whatever steps may be necessary to put our house in order if the membership is of the opinion that revision [in the Code] at this time would be essential to the best interests of those who administer the process [AAA and FMCS].²⁰³

But a month later he seemed to have second thoughts:

. . . continuing pressure from a number of our long-standing members who have evidenced continuing concern about the relatively few members of the Academy who from time to time have conducted themselves in a manner that proved embarrassing to their colleagues. [It is] not as pressing today as it was for several years and reopening the matter at this time would probably rock the boat and serve no real useful purpose. . . . [N]ormal attrition will resolve the problem. [We have] leaned over backwards in examining the applications for membership

²⁰⁰Letter from Leo Brown to Sylvester Garrett, October 11, 1965, Brown Files, NAA Archives.

²⁰¹Letter from Abram Stockman to President Bert Luskin, September 18, 1967, Luskin Files, NAA Archives.

²⁰²Letter from Arvid Anderson to AAA Regional Director A. Miller, May 14, 1964, Miller Files, NAA Archives.

²⁰³Letter from President Bert Luskin to Abram Stockman, September 28, 1967, Luskin Files, NAA Archives.

with a view to filtering out the possibility that an applicant may be (even to a minor degree) engaging in representational activities.²⁰⁴

Stockman, however, saw the matter a bit differently, stating there is "no necessary connection between membership status and proposed revisions in the Code."²⁰⁵ In 1959, Stockman, as chair of a special committee on membership status, had recommended that the Academy forestall complaints about its members by inserting a disclaimer in the Membership Directory as to their qualifications or availability as arbitrators.²⁰⁶ The report had been "torpedoed by the Board of Governors, who made short shrift of the recommendations."²⁰⁷ Thereafter a "blue ribbon" committee of past presidents was appointed "to examine the broad subject of membership policy and the right to retain membership in the Academy under circumstances where a member's status has changed." This matter was not resolved until the new Code was adopted during the next decade.

The Hays Controversy

Other complaints—about late awards,²⁰⁸ fees,²⁰⁹ and refusal to subscribe to the Code²¹⁰—were handled informally by the Ethics and Grievance Committee and did not concern the general Academy membership. However, in 1964 Judge Paul Hays of the United

²⁰⁴ Letter from President Bert Luskin to Sylvester Garrett, October 23, 1967, Luskin Files, NAA Archives.

²⁰⁵ Letter from Abram Stockman to President Bert Luskin, September 18, 1967, Luskin Files, NAA Archives.

²⁰⁶ Report of Special Committee on Membership, December 10, 1959, NAA Archives.

²⁰⁷ Letter from President Bert Luskin to Sylvester Garrett, August 1, 1967, Luskin Files, NAA Archives.

²⁰⁸ See, e.g., letter from Peter Kelliher to President Sylvester Garrett, September 6, 1963, complaining about an 18-month delay in issuing an award: "Justice delayed is justice denied. This could lead to trouble not only for the arbitrator but also for the process of arbitration." Garrett Files, NAA Archives. Opinion No. 3, prepared by the Ethics and Grievance Committee to handle this matter, stated that a delay of 18 months violated Part II, section 5 of the Code, which provided that awards be issued promptly; it was rejected by the Board of Governors. In his usual forthright fashion Peter Seitz, in dissenting from the majority Ethics and Grievance Committee report, called the opinion "absurd," adding that "failure to perform has no ethical significance." Luskin Files, NAA Archives.

²⁰⁹ See, e.g., letter from Thomas Bagley to President Sylvester Garrett, July 1, 1963, re NMB maximum of \$75 per day. Garrett Files, NAA Archives. See also letter from Laurence Seibel to President Bert Luskin, January 12, 1966; and letter from President Bert Luskin to Sylvester Garrett, October 23, 1967: "it is impossible for the Academy to act as a policing body in that respect." The AAA, the FMCS, or the parties could decide that "a single act of gouging will result in temporary if not permanent removal of the name from the list." Luskin Files, NAA Archives.

²¹⁰ At the time the Board of Governors required that an annual renewal of the Code accompany dues payments. Cf. letter from Sylvester Garrett to Secretary David Miller, Sep-

States Court of Appeals for the Second Circuit, a former arbitrator and a founding member of the Academy, severely criticized the competence and ethics of the arbitration profession in the Storrs Lectures he delivered at Yale Law School.²¹¹ Hays charged arbitrators with putting their self-interest above their professional responsibility. Bluntly rejecting Justice William O. Douglas's praise of arbitrators in the *Steelworkers Trilogy*, Hays charged that most lacked the special expertise the Supreme Court believed them to have. Many, if not most, he implied, were simply unethical. They issued compromise awards to enhance their acceptability and signed "rigged" awards to disguise unpopular settlements between labor and management. Labor arbitration itself, he concluded, was "a usually undesirable and frequently intolerable procedure."

Other critics focused on arbitration's cost and time. In July 1967, for example, the *Wall Street Journal* published a front-page article describing the labor relations community's "disenchantment" with arbitration.²¹² The *Journal* also repeated concerns that arbitrators were "overstepping their bounds" by intruding on management prerogatives.

Some brushed off the criticism as not applying to most arbitrators. The Board of Governors, for example, blasted the *Wall Street Journal* article as "misleading, derogatory, inaccurate and uninformed."²¹³ Others took the complaints more seriously. In a lengthy review of the book, Saul Wallen charged Hays with basing his criticism on false premises.²¹⁴ Wallen emphasized the experience arbitrators gained over their careers. By serving some parties repeatedly, he pointed out, an arbitrator was able "to quickly grasp and comprehend what often would be obscure to someone not previously exposed." With a not-so-subtle dig at Judge Hays, Wallen wrote that arbitrators' abilities are subject to "a test no judge is ever called upon to meet—the test of the mar-

tember 23, 1965: "My own feeling at the moment is that a bit of missionary work [to encourage members to subscribe to the Code] may be in order." Miller Files, NAA Archives. Article V, section 6 of the Academy's By-Laws calling for this renewal was repealed on April 29, 1975, and was replaced by Article VI, section 1, requiring that the membership application contain this affirmation. *The Constitution and By-Laws*, in *Arbitration 1987: The Academy at Forty; Proceedings of the 40th Annual Meeting*, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix A, 205, 215.

²¹¹ Hays, *Labor Arbitration: A Dissenting View* (Yale Univ. Press 1966).

²¹² *Settling Differences: Firms, Unions, Complaint Arbitration Consumes Too Much Time, Money*, *Wall St. J.*, July 13, 1967, A1.

²¹³ Minutes, Board of Governors, October 21, 1967, NAA Archives.

²¹⁴ Wallen, *Arbitrators and Judges—Dispelling the Hays Hoax*, 9 *Cal. Mgmt. Rev.* 17 (1967). Cf. letter from President Bert Lusk to Saul Wallen, January 11, 1966, Lusk Files, NAA Archives.

ket place—the judgment of those in a position freely to contract for their services.”

Wallen was even more direct in rejecting Hays’s allegation that arbitrators shaded their awards to enhance their acceptability. Describing the charge as “arrant nonsense,” Wallen reasoned that “the surest way for an arbitrator not to be hired for other arbitration cases by at least one of the same parties is to render a decision without regard to the evidence or the contract.” In compromising an award to avoid giving offense to either party, an arbitrator’s “cowardice becomes immediately apparent to both.” Nor was he willing to accept Hays’s description of arbitrators as venal and craven: “It may surprise Judge Hays to learn that there are some men in this world who think that to meet the challenge to act honorably and decide fairly is more important than the possible loss of future income and that not all such men are judges.”

Right or wrong, the criticism stung. Some Academy members used that criticism as reason to begin a drive for Code reform. It took several years, but the result was a new Code and a new emphasis on ethical matters within the Academy. By the end of the 1960s, the Academy was positioning itself to ensure the professionalization of the arbitration field.

Annual Meeting Presentations

Like the 1950s, the 1960s saw a number of memorable papers at the annual meetings. At the very beginning of the decade, Rolf Valtin, a member for just one year, delivered an address that marked the first signs of generational conflict within the Academy.²¹⁵ Long dominated by War Labor Board alumni and others of similar age, the Academy now had a growing group of young arbitrators. Valtin spoke for the newer members, praising the Academy’s programs and congeniality but challenging it to act as the “spokesman of the arbitration profession.” He urged the Academy to “move on to an outward orientation,” in particular by taking stands on problems like noncompliance with arbitration awards, using amicus briefs in appropriate legal cases, and overseeing its members’ compliance with ethical obligations.

²¹⁵ Valtin, *The National Academy After Twelve Years: A Symposium: What I Expect of the Academy*, in *Challenges to Arbitration*, Proceedings of 13th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1960), 13.

In the same year, Donald Crawford presented the first important paper on the subject of subcontracting disputes.²¹⁶ Subcontracting, or "contracting out," is a fertile subject for arbitrations because the practice threatens bargaining unit work and may expose the employees to competition from lower wage outside contractors. Crawford carefully explained the types of subcontracting disputes and the factors that should be used to resolve them, and examined the reported arbitration decisions on the issue.

The 1961 *Proceedings* contained two especially important talks. One was Richard Mittenthal's classic paper on past practice.²¹⁷ The other was Robben Fleming's continuation of Willard Wirz's exploration of the problems of due process in labor arbitration.²¹⁸ Fleming concluded that there was wide disagreement among arbitrators as to the nature of the arbitration process, and thus about the requirements of due process, but that "one cannot fail to be impressed with the willingness of arbitrators to experiment, and to abandon their theories in favor of practices which will tend to accommodate the diverse interests which are involved."²¹⁹

The Academy's great wit, Peter Seitz, continued to entertain the membership at the annual meetings. In 1962, he announced that he had finally discovered how arbitrators decide cases—by using "black magic."²²⁰ Citing the Bible, medieval history, and his grandmother's methods at the grocery store, adding a sonnet of his own creation, and admitting the difficulty of learning how such differing individuals act, Seitz undoubtedly relieved the tedium of more serious presentations. Five years later Seitz explored the more mundane aspects of the arbitrator's business,

²¹⁶ Crawford, *The Arbitration of Disputes Over Subcontracting*, *id.* at 51.

²¹⁷ Mittenthal, *Past Practice and the Administration of Collective Bargaining Agreements*, in *Arbitration and Public Policy*, Proceedings of the 14th Annual Meeting, National Academy of Arbitrators, ed. Pollard (BNA Books 1961), 30. Cf. Mittenthal, *Arbitration Classics: II. The Ever-Present Past*, in *Controversy and Continuity*, Proceedings of the 47th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), 134 (a paper presented at the Academy's Continuing Education Conference, October 30, 1993, which was devoted to revisiting "classics" of the arbitration literature).

²¹⁸ Fleming, *Due Process and Fair Procedure in Labor Arbitration*, in *Arbitration and Public Policy*, Proceedings of the 14th Annual Meeting, National Academy of Arbitrators, ed. Pollard (BNA Books 1961), 69.

²¹⁹ *Id.* at 91.

²²⁰ Seitz, *How Arbitrators Decide Cases: A Study in Black Magic*, in *Collective Bargaining and the Arbitrator's Role*, Proceedings of the 15th Annual Meeting, National Academy of Arbitrators, ed. Kahn (BNA Books 1962), 159.

scheduling and conducting hearings.²²¹ Offering poetic descriptions of union and management attorneys, foremen, grievants, and other participants, Seitz caught some of the difficulties arbitrators face. Here, for example, is one of his descriptions:

THE GRIEVANT

Such innocence has never been perceived
In new-born babe or guileless cherubim!
He hopes to perish if he's not believed!
Misstate a fact? Ridiculous! Not him!
He's clothed in virtue, shining like the sun—
At least 'til cross-examination is begun.

At the same meeting, Bernard Meltzer, law professor at the University of Chicago, presented his "Ruminations About Ideology, Law, and Labor Arbitration."²²² Meltzer tackled three difficult questions: Is the arbitration system especially vulnerable to pressures that are incompatible with a fair dispute-resolution system? What is the appropriate role of the courts when a party challenges an award as incompatible with the agreement? What is the proper role of the arbitrator with regard to external law that bears on the collective agreement? Of these questions, the one that reverberated the most in the Academy was the problem of external law. By urging arbitrators to "respect the agreement and ignore the law" when there was an alleged conflict between the two, Meltzer provocatively set off a debate that would last for several years.

Robert Howlett fired back at the same meeting,²²³ arguing that arbitrators had not only a right but a duty to follow the law as well as the contract: "I submit that . . . arbitrators *should* render decisions on the issues before them *based on both contract language and law*."²²⁴ He even denied the possibility of a conflict, for he believed that every contract automatically incorporated all laws. He therefore recommended that arbitrators should even "probe" to find legal issues not raised by the parties. Several other Academy members joined the debate in succeeding annual meetings.²²⁵

²²¹ Seitz, *A Funny Thing Happened to Me on the Way to My Forum*, in *The Arbitrator, the NLRB, and the Courts, Proceedings of the 20th Annual Meeting, National Academy of Arbitrators*, ed. Jones (BNA Books 1967), 299.

²²² Meltzer, *Ruminations About Ideology, Law, and Labor Arbitration*, *id.* at 1.

²²³ Howlett, *The Arbitrator, the NLRB, and the Courts*, *id.* at 67.

²²⁴ *Id.* at 83 (emphasis in original).

²²⁵ St. Antoine, *Judicial Review of Labor Arbitration Awards: A Second Look at Enterprise Wheel and Its Progeny*, in *Arbitration—1977, Proceedings of the 30th Annual Meeting, National Academy of Arbitrators*, eds. Dennis & Somers (BNA Books 1978), 29; Sovern,

At the last meeting of the decade, President Charles Killingsworth used his presidential address to explore the knotty issue of management rights.²²⁶ In a very tightly packed 19 pages, Killingsworth explained and critiqued the “pristine” version of the management-rights theory—that management retains all its pre-union rights unless limited by some specific provision of the labor agreement. Despite the “attractive virtues of neatness and simplicity,” Killingsworth stated, the pristine version wrongly assumes that silence of a contract on an issue could mean only that management had unfettered discretion. In fact, silence can have more than one meaning. The problem for the arbitrator is to determine which of the possible meanings the parties intended. He suggested that arbitrators find the contract’s true meaning by examining the *context* of any questioned term, the parties’ *past practices*, and the “*environmental necessities*” (such as changes in job content that might affect contractual incentive rates). Killingsworth did not end the debate between the “reserved rights” and “implied obligations” theories, but he did clarify the nature of the debate and the factors that must be considered when applying any claim of management rights.

When Should Arbitrators Follow Federal Law?, in *Arbitration and the Expanding Role of Neutrals*, Proceedings of the 23rd Annual Meeting, National Academy of Arbitrators, eds. Somers & Dennis (BNA Books 1970), 29; Mittenthal, *The Role of Law in Arbitration*, in *Developments in American and Foreign Arbitration*, Proceedings of the 21st Annual Meeting, National Academy of Arbitrators, ed. Rehmus (BNA Books 1968), 42.

²²⁶Killingsworth, *The Presidential Address: Management Rights Revisited*, in *Arbitration and Social Change*, Proceedings of the 22nd Annual Meeting, National Academy of Arbitrators, eds. Somers & Dennis (BNA Books 1970), 1.

NATIONAL ACADEMY OF ARBITRATORS

newsletter

MAY, 1972 ISSUE

SEYMOUR STRONGIN, EDITOR

**Total Attendance of 176 Members & 586 Guests May Be a Record
N.A.A. CELEBRATES 25TH ANNIVERSARY IN BOSTON**



4.2. WOMEN IN THE ACADEMY, 1975



(left to right) Jean McKelvey (charter member and Academy president 1970), Frances Bairstow, Eva Robins (Academy president 1980), Marcia Greenbaum, Alice Grant.

4.3. CODE REVISION LEADERS, 1975

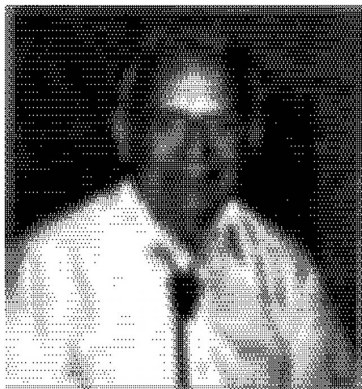


William Simkin (charter member and president 1950) chaired the Code Revision Committee.

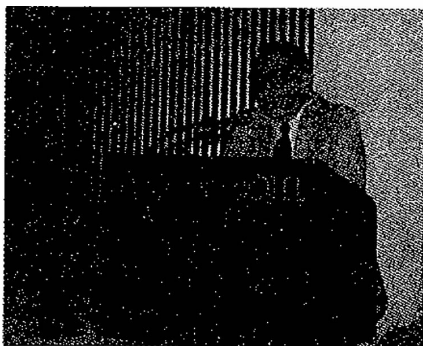


Gerald Barrett (president 1972) sparked the Code revision.

4.4. PRESIDENTS REEXAMINE THE ACADEMY



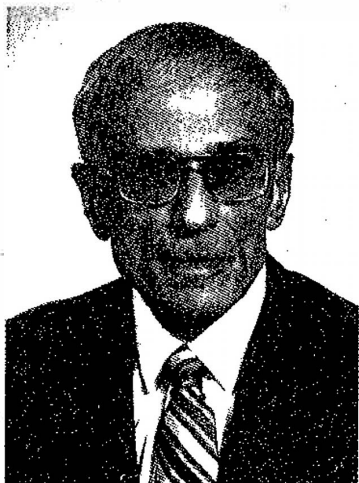
Arthur Stark (1977).



Rolf Valtin (1975).



Eva Robins (1980) and Mickey McDermott (1979).



Richard Mittenthal (1978).



David Miller (1974).

CHAPTER 4

PROFESSIONALIZATION AND THE 1970s

The Labor Relations Environment

The Economy and Politics

For the U.S. economy, the 1970s were "deja vu all over again." As had occurred during World War II in the 1940s and during the Korean engagement in the 1950s, government spending due to the Vietnam military escalation in the 1970s began to exert inflationary pressures. The Consumer Price Index, which rose at a 4 percent annual rate at the beginning of the decade, had jumped 112 percent by the end.¹ Although union wage increases averaged 10 percent annually,² real hourly earnings of workers in private employment fell from \$5.04 to \$4.89.³ From 1970 to 1980, the purchasing power of the dollar (in 1967 dollars) fell from 86.0 cents to 40.6 cents.⁴

During other 20th-century wars, employment increased along with inflation.⁵ During the 1970s, however, unemployment continued at what economists then considered a recession level of 6 percent. The disruptive effect of inflation was partly to blame, but increased international trade aggravated unemployment in some industries. Unemployment rates for automobile workers, for example, reached 20 percent by December 1974. By mid-1975, Chrysler and General Motors had exhausted their funds for

¹U.S. Bureau of Census, *Table No. 789, Consumer Price Indexes, by Major Groups: 1950 to 1984*, Statistical Abstract (1985), 475.

²Defina, *Labor and the Economy During 1975*, 99 Monthly Lab. Rev. 3, 8 (Jan. 1976); Knobloch, *Labor and the Economy in 1971*, 95 Monthly Lab. Rev. 15 (Jan. 1972).

³U.S. Bureau of Census, *Table No. 694, Gross Average Hourly and Weekly Earnings in Current and Constant (1977) Dollars, by Industry Group: 1970 to 1984*, Statistical Abstract (1985), 417.

⁴U.S. Bureau of Census, *Table No. 776, Purchasing Power of the Dollar: 1940 to 1984*, Statistical Abstract (1985), 466.

⁵Federal government outlays almost tripled, from \$195.7 billion in 1970 to \$576.7 billion in 1980. U.S. Bureau of Census, *Table No. 483, Federal Budget—Summary: 1940–1984*, Statistical Abstract (1985), 304.

supplemental unemployment benefits.⁶ By 1979, Chrysler faced bankruptcy. It avoided that fate only by a federal assistance plan that required massive restructuring to decrease labor costs. Some employers, squeezed between high labor costs and foreign competition, responded by moving to less unionized parts of the country. To counteract plant relocation, the Rubber Workers won assurances that companies would not interfere with organization of new plants. Similarly, General Motors agreed to remain neutral in UAW organizing efforts. To minimize foreign imports, the International Ladies' Garment Workers' Union negotiated a "tax" on imported garments.⁷

President Richard M. Nixon had consistently opposed wage and price controls, citing his own experience working with them during World War II. Despite his opposition, Congress authorized the President to impose controls when he believed it necessary. In August 1971, President Nixon did so, establishing by executive order several new governmental bodies to regulate the economy. The new Cost-of-Living Council, Price Commission, and Pay Board proved short-lived and ineffective.⁸ Nevertheless, they did provide a training center for government employees interested in forging links with the labor-management community.

Collective Bargaining

"Stagflation"—high inflation coupled with high unemployment—affected collective bargaining contracts in important ways. Unions demanded cost-of-living escalator clauses⁹ and shorter contract terms.¹⁰ Parties substituted fringe benefits for wage increases to avoid wage controls.¹¹ Work stoppages declined because unem-

⁶Defina, *supra* note 2, at 7.

⁷Ruben, *Industrial Relations in 1979: Inflation Still Holds Spotlight*, 103 Monthly Lab. Rev. 11, 15 (Feb. 1980).

⁸See Tiernan, *The Pay Board*, in Labor Arbitration at the Quarter-Century Mark, Proceedings of the 25th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1973), 229. By April 1974, controls had been phased out. A new round of inflation was precipitated by the steep increase in oil prices effected in late 1973 by the Organization of Petroleum Exporting Countries. That increase caused "the energy component of the CPI to rise by nearly 22 percent in 1974 alone; from the end of 1972 through 1975 energy prices rose by nearly 60 percent." Council of Economic Advisers, Annual Report (1978), 141.

⁹Defina, *Labor and the Economy in 1974*, 98 Monthly Lab. Rev. 3, 8 (Jan. 1975).

¹⁰For example, in the construction industry one-year contracts increased from 16 percent in 1970 to over 80 percent in 1974. Weber, *Labor-Management Relations in a Controlled and Rationed Economy*, in Arbitration—1974, Proceedings of the 27th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1975), 163, 167.

¹¹*Id.* at 170.

ployed workers stood ready to replace strikers, pressuring unions to seek other means for resolving labor disputes.¹²

The steel industry engaged in the most radical strike-avoidance experiment. Constant threats of strikes during negotiations caused major purchasers of steel either to stockpile steel before the industry's collective agreement expired or to deal with foreign manufacturers. The former practice led to a disruptive boom-and-bust cycle even when there was no strike. The latter caused a loss of business (and jobs), sometimes permanently. Both management and the Steelworkers realized they had to assure customers of continued supplies. In 1973, therefore, the Steelworkers and 10 major steel companies signed the novel Experimental Negotiating Agreement (ENA). The ENA provided for binding arbitration of all unresolved issues in the 1974 negotiations.¹³ The parties continued the ENA in several later agreements, without ever using it. Some suggested that fear of what an arbitrator might do to their agreement forced labor and management to settle even the most contentious issues.

The Federal Mediation and Conciliation Service summed up the collective bargaining effects of this unprecedented economic situation:

Not since the immediate post-World War II years had labor and management renegotiated so many major contracts under such unstable economic circumstances. A controlled economy was decontrolled. "Double-digit inflation" became a common term demanding uncommon reaction at the bargaining table. The strange duet of rising employment and rising unemployment emerged.¹⁴

Changes in union leadership also contributed to labor unrest. Harry Bridges, a founder of the International Longshoremen's and Warehousemen's Union, retired as president at a critical time. Replacement of traditional longshoring by containerization—a technological innovation that slashed the number of longshoremen needed by stevedoring companies—severely stressed the

¹²In 1973, strikes were at a nine-year low, constituting only 0.08 percent of work time. U.S. Bureau of Census, *Table No. 710, Work Stoppages: 1947 to 1983*, Statistical Abstract (1985), 424.

¹³Federal Mediation and Conciliation Service, Annual Report (1973), 13. To ease the pressure on relations caused by a backlog of grievances, expedited arbitration panels were created at U.S. Steel, Bethlehem Steel, and General Electric. These panels provided training for new arbitrators. See Kane, *Current Developments in Expedited Arbitration*, 24 Lab. L.J. 282 (1973); T. McDermott, *Activities Directed at Advancing the Acceptability of New Arbitrators*, in *Labor Arbitration at the Quarter-Century Mark*, Proceedings of the 25th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1973), 331, 332.

¹⁴Federal Mediation and Conciliation Service, Annual Report (1974), 6.

industry's industrial relations. Less experienced leaders then had to grapple with that intractable problem. Steelworkers President I. W. Abel, Auto Workers President Leonard Woodcock, and Machinists President Floyd Smith also reached mandatory retirement age. After a long period of service to the AFL-CIO, President George Meany passed his responsibilities on to his successor, Lane Kirkland.

Union Membership and Activities

Demographic and structural changes in the work force that began in the 1950s continued to eat away at union strength. Membership levels remained flat in the face of a growing work force. As a result, the density rate fell steadily during the decade, dropping from nearly a third of nonagricultural employment to barely a fourth.¹⁵

As in the 1960s, growth in public-sector unionism masked the private-sector decline. At the federal level, postal workers staged their first large-scale work stoppage in this century—illegal but quite effective. Congress reacted by including new collective bargaining procedures in the Postal Reorganization Act (PRA) of 1970. With one major exception, the absence of a right to strike, the Postal Service and its unions were to bargain like private-sector parties.¹⁶ The PRA went far beyond the provisions governing other federal employees. In 1969, President Nixon's Executive Order 11491, building on President John F. Kennedy's precedent, established the Federal Impasses Panel for resolution of labor disputes in the federal sector.¹⁷ Executive Order 11491 exempted the most important issues (among them wages, fringe benefits, pensions, and management rights) from the scope of bargaining. Moreover, as an executive order, it did not provide a very secure basis for unionization. A future president could change or even abolish the rules as easily as Presidents Kennedy and Nixon had adopted them. Federal-sector unions thus lobbied for statutory bargaining rights, a goal they finally achieved in the Civil

¹⁵Labor organization membership was 30.8% of the nonagricultural work force in 1970; 25.2% in 1980. U.S. Bureau of Census, *Table No. 709, Labor Organization Membership—Total and Percent of Nonagricultural Employment, by State: 1970 to 1980*, Statistical Abstract (1985), 424.

¹⁶Fisher, *Labor and the Economy in 1970*, 94 Monthly Lab. Rev. 3, 6 (Jan. 1971).

¹⁷Weber, *Federal Labor Relations: Problems and Prospects*, in *Arbitration and the Public Interest*, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators, eds. Somers & Dennis (BNA Books 1971), 148.

Service Reform Act (CSRA) of 1978. Although the new law granted most federal employees the right to bargain collectively, it followed Executive Order 11491 in requiring arbitration of unresolved bargaining disputes. The CSRA added an even more important arbitration provision: requiring that all federal-sector collective bargaining agreements contain grievance arbitration clauses.¹⁸

At the state and local levels, inflation took its toll by encouraging legislators to increase taxes, cut back services, and freeze public employees' compensation. The resulting unrest led to unprecedented strikes by firefighters, police, teachers, and other public employees. By 1975, unions represented almost one-third of all state and local government employees.¹⁹ By mid-1974 30 states had enacted public employee bargaining laws. Most of the new laws required fact-finding or arbitration to resolve negotiation impasses. Most also required arbitration of grievances arising under collective bargaining agreements.²⁰ Academy President James Hill predicted this expansion of public-sector arbitration in his 1970 presidential address: "[T]he demand for the services of neutrals in public employment disputes . . . may soon approach, perhaps surpass, the entire volume of demand for similar services in the private sector."²¹

¹⁸ See, e.g., Kagel, *The Legal Setting for Grievance Arbitration Under the Civil Service Reform Act of 1978*, in *Labor and Employment Arbitration*, Vol. III (Matthew Bender 1988), c. 84; Haughton, *Arbitration in the Federal Sector*, 38 Arb. J. 55 (Dec. 1983).

¹⁹ Membership in employee organizations was 29.9% of full-time employees in state and local government in 1975. Union membership among teachers was 64.9%; in police and fire protection employment, it was 57.7%. U.S. Bureau of Census, *Table No. 711, State and Local Governments—Full-Time Employment, Organized Employees, and Work Stoppages, 1975 to 1980, and by Function, 1980*, Statistical Abstract (1985), 425.

²⁰ See, e.g., Anderson & Weitzman, *Significant Developments in Public Employment Disputes Settlement During 1974*, in *Arbitration—1975, Proceedings of the 28th Annual Meeting, National Academy of Arbitrators*, eds. Dennis & Somers (BNA Books 1976), Appendix C, 297, 329; Anderson, *Significant Developments in Public Employment Disputes Settlement During 1973*, in *Arbitration—1974, Proceedings of the 27th Annual Meeting, National Academy of Arbitrators*, eds. Dennis & Somers (BNA Books 1975), Appendix C, 291; Block, *Criteria in Public Sector Interest Disputes*, in *Arbitration and the Public Interest, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators*, eds. Somers & Dennis (BNA Books 1971), 161; Smith, *Comment, id.* at 180; Zack, *Comment, id.* at 187. For a comprehensive analysis of public-sector bargaining, see Aaron, Najita & Stern, *Public-Sector Bargaining* (IRRA 1979).

²¹ Hill, *The Presidential Address: The Academy and the Expanding Role of Neutrals*, in *Arbitration and the Expanding Role of Neutrals, Proceedings of the 23rd Annual Meeting, National Academy of Arbitrators*, eds. Somers & Dennis (BNA Books 1970), 187, 195. While living in Philadelphia, Hill witnessed first hand the expansion of public-sector arbitration under the Pennsylvania Public Employee Relations Board. See also Robins, *Dedication: In Memoriam, James C. Hill, 1914–1991*, in *Arbitration 1991: The Changing Face of Arbitration in Theory and Practice, Proceedings of the 44th Annual Meeting, National Academy of Arbitrators*, ed. Gruenberg (BNA Books 1992), viii.

Stimulated by the public-sector experience, the practice of arbitration mushroomed during the 1970s. Federal Mediation and Conciliation Service (FMCS) arbitrator appointments grew steadily. In 1973, responding to the increased demand, the FMCS established its Office of Arbitration Services. From 1973 to 1978, the number of arbitration panel appointments rose by more than 60 percent.²²

Legislative and Judicial Changes

Legislative and judicial changes provided new challenges for the arbitration profession. Antidiscrimination laws were strengthened, giving the Equal Employment Opportunity Commission (EEOC) increased enforcement powers. The EEOC shifted some of its attention to affirmative action for women workers and to prevention of sex discrimination. New legislation impinged on the collective bargaining relationship, blurring the distinction between private contractual arrangements and public law enforcement.²³ The Occupational Safety and Health Act (OSHA) of 1970 and the Employee Retirement Income Security Act (ERISA) of 1974 imposed federal standards on workplaces and on benefit funds. Increased statutory regulation of employment relationships escalated the opportunities for conflict between the collective bargaining agreement and the law. That in turn revived the 1960s debate over the arbitrator's role when presented with questions of external law.²⁴

²²Federal Mediation and Conciliation Service, Annual Report (1978), 40. The U.S. Department of Labor sponsored several demonstration projects for public-sector arbitrator training in California and awarded a grant to the American Arbitration Association to establish a National Center for Dispute Settlement in Washington, D.C., to train neutrals in public employment procedures. T. McDermott, *Progress Report: Programs Directed at the Development of New Arbitrators*, in *Arbitration of Interest Disputes*, Proceedings of the 26th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1974), Appendix E, 247, 252-53.

²³The primary legislative strengthening of the law came in the 1972 amendments to Title VII of the Civil Rights Act of 1964; 42 U.S.C. §§1981-1982. These amendments extended coverage to smaller employers, eliminated certain exemptions, and gave the Equal Employment Opportunity Commission (EEOC) power to sue in its own right without seeking Justice Department approval. The EEOC amended its sex discrimination guidelines in 37 Fed. Reg. 6835 (Mar. 30, 1972). On the impact the changes had on collective bargaining relationships, see Gould, *Recent Law and Arbitration: II. Reflections on Wrongful Discharge Litigation and Legislation*, in *Arbitration 1984: Absenteeism, Recent Law, Panels, and Published Decisions*, Proceedings of the 37th Annual Meeting, National Academy of Arbitrators, ed. Gershenfeld (BNA Books 1985), 32, 34. See also Gould, *Agenda for Reform: The Future of Employment Relationships and the Law* (MIT Press 1993).

²⁴See Chapter 3, text, at notes 222-25.

However much arbitrators may have agreed with the policies behind the new laws, their passage threatened arbitration's privileged role. Analyzing the impact of this "external law" on collective bargaining and the arbitration profession, David Feller predicted it would end arbitration's "golden age." Feller argued that "to the extent that the collective agreement is diminished as a source of employee rights, arbitration is equally diminished."²⁵ He concluded:

The Golden Age of Arbitration was essentially premised on the fact that, for most of the important aspects of the employment relationship, the sole source of authority was the collective bargaining agreement. Insofar as that premise ceases to be correct, the institution of arbitration must suffer in one way or another.²⁶

The accuracy of Feller's prediction would be apparent by the end of the decade. Even as some Supreme Court decisions continued the *Steelworkers Trilogy's*²⁷ support for labor arbitration within its original context of contract interpretation, the Court refused to extend its policy of deference to arbitrations involving statutory interpretation. The *Trilogy* had authorized federal courts to enforce arbitration agreements, despite the anti-injunction provisions of the Norris-La Guardia Act, because of a perceived federal policy favoring labor arbitration. In 1962, *Drake Bakeries v. Bakery Workers Local 50*²⁸ had held that the courts should stay a breach-of-contract action if the agreement obliged the plaintiff to take alleged breaches to arbitration. In 1970, *Boys Markets v. Retail Clerks 770*²⁹ went one step further, empowering federal courts to enjoin strikes over arbitrable issues.³⁰ *Nolde Brothers v. Bakery & Confectionery Workers Local 358*³¹ reinforced the *Trilogy's* presumption of arbitrability, holding arbitrable a challenge to a

²⁵Feller, *The Coming End of Arbitration's Golden Age*, in *Arbitration—1976*, Proceedings of the 29th Annual Meeting, National Academy of Arbitrations, eds. Dennis & Somers (BNA Books 1976), 97, 109. David Feller, a professor of law at the University of California (Berkeley) and Academy president in 1992, represented the Steelworkers as counsel in the *Trilogy* cases in 1960. Cf. Feller's recollection of his experiences in Chapter 6, text, at note 266.

²⁶Feller, *supra* note 25, at 125.

²⁷*Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 46 LRRM 2414 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 365 U.S. 574, 46 LRRM 2416 (1960); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 46 LRRM 2423 (1960).

²⁸370 U.S. 254, 50 LRRM 2440 (1962).

²⁹398 U.S. 235, 74 LRRM 2257 (1970).

³⁰*Buffalo Forge Co. v. Steelworkers*, 428 U.S. 397, 92 LRRM 3032 (1976), made it clear that *Boys Markets* applied only to strikes over issues subject to the grievance process, not to all strikes in violation of a no-strike pledge.

³¹430 U.S. 243, 94 LRRM 2753 (1977).

plant closure that occurred after the collective bargaining agreement had expired. An order to arbitrate, the Court held, should not be denied without clear evidence that the parties did not intend the arbitration agreement to cover the dispute.

Those decisions harmonized well with the Court's rulings on labor arbitration in the previous decade. Others were less supportive. *Howard Johnson Co. v. Hotel & Restaurant Employees, Detroit Executive Board*,³² an attempt to force arbitration of contract claims following the sale of a business, refused to extend the holding of the 1964 case of *John Wiley & Sons, Inc. v. Livingston*.³³ The earlier case had ordered a successor employer in a merger to arbitrate a dispute under the predecessor's contract. *Howard Johnson* refused an arbitration order, holding that there was no substantial continuity of identity when only a small minority of the successor's employees came from the predecessor. *Hines v. Anchor Motor Freight*³⁴ permitted grievants to sue their union and employer, despite losing in arbitration, if they could prove that the union had breached its duty of fair representation by processing a grievance in a "perfunctory" manner. The natural effect was to provide a means of overturning an adverse arbitration award without having to confront the *Trilogy's* professed support for awards.

This unwillingness to extend the deference shown in the *Trilogy* beyond its origin in contract-interpretation issues became apparent when the Court considered the relationship between labor arbitration and Title VII of the Civil Rights Act of 1964. *Alexander v. Gardner-Denver Co.*³⁵ involved an employee who brought a Title VII action against his former employer despite having lost in arbitration. The Court permitted the Title VII action, holding that Congress intended the remedies for racial discrimination to be overlapping: "There is no suggestion in the statutory scheme that a prior arbitral decision either forecloses an individual's right to sue or divests federal courts of jurisdiction."³⁶ A footnote suggesting that federal courts could give arbitration awards "appropriate" weight in later litigation provided arbitrators little comfort.³⁷ According to Bernard Meltzer, *Gardner-Denver* "reaffirmed the idea that arbitration is primarily an instrument of the

³² 417 U.S. 249, 86 LRRM 2449 (1974).

³³ 376 U.S. 543, 55 LRRM 2769 (1964).

³⁴ 424 U.S. 554, 91 LRRM 2481 (1976).

³⁵ 415 U.S. 36, 7 FEP Cases 81 (1974).

³⁶ *Id.* at 47, 7 FEP Cases at 85.

³⁷ *Id.* at 60 n.21, 7 FEP Cases at 90 n.21.

parties' private purposes rather than a means for achieving public purposes reflected in the law of the land."³⁸

Most notable, however, was the Court's harsh language about labor arbitration's limitations. The Court's new tone contrasted sharply with the *Trilogy's* unbounded praise of arbitration and arbitrators. Arbitrators, said the Court, have no authority to interpret statutes. Moreover, the arbitral process is "comparatively inferior to judicial processes in the protection of Title VII rights." Arbitrators often lack legal expertise, use a weaker fact-finding process, and need not even give reasons for their awards.

Indeed, it is the informality of arbitral procedure that enables it to function as an efficient, inexpensive, and expeditious means for dispute resolution. This same characteristic, however, makes arbitration a less appropriate forum for final resolution of Title VII issues than the federal courts.³⁹

Later cases held that a collectively bargained arbitration agreement could not bar court actions for an employer's violations of the minimum wage law or an employee's constitutional rights.⁴⁰

Oddly, use of arbitration to resolve legal questions increased even as the courts restricted arbitral discretion. The National Labor Relations Board had long deferred to arbitration awards by accepting an arbitrator's factual findings or interpretation of a collective agreement. In some cases, such as disputes over whether an agreement granted management authority to make some decisions unilaterally, the arbitrator's contractual interpretation effectively resolved the legal question. If the arbitrator interpreted a management-rights clause to authorize the challenged action, the clause would act as a waiver of the union's right to bargain.

In the 1970s, the Board expanded this practice to preaward deferral. In other words, if an agreement mandated arbitration of an issue involved in an unfair labor practice case, the Board now declined to act until the parties completed the arbitration.

³⁸Meltzer, *Arbitration and Discrimination: III. The Parties' Process and the Public's Purposes*, in *Arbitration—1976*, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1976), 46.

³⁹415 U.S. at 57–58, 7 FEP Cases at 89.

⁴⁰*McDonald v. City of West Branch, Mich.*, 466 U.S. 284, 115 LRRM 3646 (1984); *Barrentine v. Arkansas-Best Freight Sys.*, 450 U.S. 728, 24 WH Cases 1284 (1981). Not until 1991 did the Court retract its criticism of labor arbitration and hold that at least some employees might have to arbitrate discrimination claims before, and perhaps instead of, litigating over them. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 55 FEP Cases 1116 (1991).

In *Collyer Insulated Wire*,⁴¹ the Board adopted prearbitration deferral for refusal-to-bargain cases. Several years later, the Board extended the *Collyer* doctrine to cases involving allegedly discriminatory discharges. Despite some waffling, the Board has maintained a strong pro-arbitration position ever since.⁴² The Supreme Court, too, recognized the primacy of arbitration under the U.S. labor relations system. In *Boys Markets*⁴³ the Court upheld the authority of the courts to enjoin a strike that violated a no-strike clause, but only when the cause of the strike was subject to arbitration.⁴⁴

While the full impact of these decisions did not occur until the 1980s, it was immediately apparent that arbitration would require a new level of skill. The Academy would have to take the lead in helping its members gain the necessary proficiency. That in turn required changes to strengthen and professionalize the organization.

Academy Administration

By 1970 the permanence of the Academy as an organization for professional arbitrators was no longer in doubt. Changes in the administrative structure during the 1960s vastly increased the organization's efficiency. Increased dues placed the Academy on sound financial footing. Membership grew steadily. However, the external industrial relations environment was beginning to cause internal pressures.

Training Programs

A clear sign of changing times was the election of the Academy's first female president in 1970. This was Jean McKelvey of Cornell University, the only woman admitted to the Academy as a charter member in 1947. For her presidential theme, President McKelvey returned to the problem of arbitrator training that

⁴¹ 192 NLRB 837, 77 LRRM 1931 (1971). See Nash, *The NLRB and Arbitration: Some Impressions of the Practical Effect of the Board's Collyer Policy Upon Arbitrators and Arbitration*, in *Arbitration—1974, Proceedings of the 27th Annual Meeting, National Academy of Arbitrators*, eds. Dennis & Somers (BNA Books 1975), 106. Peter Nash was NLRB general counsel at the time.

⁴² Cf. Nolan & Abrams, *American Labor Arbitration: The Maturing Years*, 35 U. Fla. L. Rev. 557, 607 (1983).

⁴³ *Boys Markets v. Retail Clerks Local 770*, *supra* note 29.

⁴⁴ Nolan & Abrams, *supra* note 42, at 595.

President Benjamin Aaron had addressed in 1962. After the Special Committee on the Training of New Arbitrators had reported to the Board of Governors in 1967 that there was "no general shortage of arbitrators,"⁴⁵ the Academy's interest in training had lapsed. The committee itself soon disappeared. McKelvey revived it as the Special Committee for the Development of New Arbitrators. As its chair, she appointed Thomas McDermott of Duquesne University, who held the post for five years. This initiative resulted in a series of reports that led the Academy to adopt a comprehensive policy toward educating new arbitrators.⁴⁶

As a professor at the New York State School of Industrial and Labor Relations, McKelvey had already presided over many training sessions for aspiring arbitrators. She was especially interested in affirmative action for women and minorities. Members of these groups were seriously underrepresented in the arbitration profession generally and in the Academy specifically.⁴⁷ McKelvey had agreed with the Aaron committee report that Academy-sponsored training was not the best method for developing new arbitrators. Instead she favored cooperative ventures between university industrial and labor relations (ILR) programs and the labor-management community on a local or regional level to better meet the special needs of both groups. From the time she was coordinator of regional activities in 1962, she had promoted that approach consistently.

Earlier Academy educational efforts were driven by some members' belief that there was a shortage of arbitrators.⁴⁸ Therefore the initial charge to the McDermott committee was to decide the type of continuing education program needed to enlarge the arbi-

⁴⁵ Report of the Committee on the Training of New Arbitrators (February 1967), NAA Archives.

⁴⁶ T. McDermott, *Evaluation of Programs Seeking to Develop Arbitrator Acceptability*, in *Arbitration—1974*, Proceedings of the 27th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1975), Appendix D, 329; T. McDermott, *Survey on Availability and Utilization of Arbitrators in 1972*, in *Arbitration of Interest Disputes*, Proceedings of the 26th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1974), Appendix F, 261; T. McDermott, *Progress Report: Programs Directed at the Development of New Arbitrators*, *id.* at Appendix E, 247; T. McDermott, *Activities Directed at Advancing the Acceptability of New Arbitrators*, in *Labor Arbitration at the Quarter-Century Mark*, Proceedings of the 25th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1973), Appendix C, 331; T. McDermott, *The Development of New Arbitrators: Report of Committee, 1970–1971*, in *Arbitration and the Public Interest*, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators, eds. Somers & Dennis (BNA Books 1971), Appendix D, 305. Thomas McDermott was a professor of economics at Duquesne University in Pittsburgh at the time.

⁴⁷ This matter is discussed under Membership Standards, *infra*.

⁴⁸ Cf. Chapter 3, text, at notes 75–76.

tration profession.⁴⁹ Citing membership "apathy," the committee urged the Academy to "play some positive role in providing for the development of new arbitrators."⁵⁰ This recommendation was supported mainly by constant pressure from the AAA and the FMCS that the Academy assist in expanding their labor arbitration panels, based on complaints from the labor-management community that experienced and qualified arbitrators were too expensive or too busy.

McKelvey attributed the Academy's reluctance to train new arbitrators to its "elitist" attitude.⁵¹ All the reports of the Arbitrator Development Committee indicated that many members saw aspiring arbitrators as potential competitors. It was not until later in the decade that McKelvey's efforts began to bear fruit when she presided over an arbitrator development program in the Academy's Western New York region. Jointly sponsored by Cornell's ILR School, AAA, FMCS, and the local IRRRA chapter, this program aimed primarily at introducing minorities and women into the profession.⁵²

A memorable part of McKelvey's presidency was her performance at the main luncheon during the 1971 Annual Meeting. As emcee at the luncheon head table, she introduced the women in their professional capacities rather than as the wives of participants, and described their husbands with the types of adjectives—"lovely" and "charming"—normally used for the wives. Her role reversal prompted Willard Wirtz to suggest that she end her presentation with "A-women" rather than "Amen." She analogized her presidency to the *Putney Swope* movie, which opened with the company's board president falling dead. There was one token black on the board and to everyone's surprise he was elected as the new president. He told the other board members: "There'll

⁴⁹T. McDermott, *The Development of New Arbitrators: Report of Committee, 1970-1971*, *supra* note 46, at 306.

⁵⁰*Id.* at 321.

⁵¹As evidence of this elitism, Jean McKelvey cited Peter Seitz's comment that a "new arbitrator" represented a "hand in my pocket." McKelvey Presidential Interview, June 1, 1989, NAA Archives. Seitz's comment appears in Seward, *The Development of Qualified New Arbitrators: Workshop: Discussion*, in *Collective Bargaining and the Arbitrator's Role*, Proceedings of the 15th Annual Meeting, National Academy of Arbitrators, ed. Kahn (BNA Books 1962), 222, 223.

⁵²Similar initiatives occurred in Cleveland (Western Reserve University), Philadelphia (Temple University), and St. Louis (Metropolitan Bar Association and Saint Louis University). In 1971 the AAA established the J. Noble Braden Chair for the development of labor arbitrators, financed by a fund provided by the electrical industry and the International Brotherhood of Electrical Workers (IBEW) Local 3 in New York City. McDermott, *Activities Directed at Advancing the Acceptability of New Arbitrators*, *supra* note 46, at 335.

be some changes in my administration but they'll be minimal." The next picture frame showed one token white on the board and all the others black. McKelvey added, with an arch smile, "I did something similar." She believed that her efforts to increase diversity within the Academy's membership were hampered by the limited numbers of women and minorities on the AAA and FMCS panels and the failure of the labor-management community to seek out their services.⁵³

In her presidential address, provocatively titled "Sex and the Single Arbitrator," McKelvey stressed the need for arbitrators to cooperate in bringing down the barriers facing women in the workplace. She concluded with this warning:

If the institution of arbitration is to survive and to be "relevant" to the emerging needs of a good society and economic order, it cannot afford simply to remain as a part of the "establishment."⁵⁴

In one of the Academy's sporadic efforts to increase the number of arbitrators, President Charles Killingsworth asked UCLA's Irving Bernstein in 1968 to study the feasibility of Academy sponsorship of an essay contest on arbitration. Killingsworth hoped that a contest would encourage students to study arbitration and then to enter the profession. Two years later, when the committee chairmanship passed to Mark Kahn of Wayne State's ILR School, the Board of Governors finally endorsed the idea. It approved awards of \$500 for graduate work and \$250 for undergraduate work involving original research on arbitration.⁵⁵ There is no record that any awards were ever made.

Although training of new arbitrators lapsed as an Academy priority, continuing education for Academy members was gaining support. This new concern stemmed in part from the influx of arbitrators whose background was in the public sector. Because the new members were neither part of the War Labor Board generation nor apprentices of those arbitrators, senior members thought they might need training in principles and procedures developed in the private sector.⁵⁶ Serious efforts toward developing continuing education programs occurred during the presi-

⁵³ McKelvey Presidential Interview, *supra* note 51.

⁵⁴ McKelvey, *The Presidential Address: Sex and the Single Arbitrator*, in *Arbitration and the Public Interest, Proceedings of the 24th Annual Meeting*, National Academy of Arbitrators, eds. Somers & Dennis (BNA Books 1971), 1, 22.

⁵⁵ Minutes, Board of Governors, November 25, 1970, NAA Archives.

⁵⁶ Arnold Zack, in a telephone conversation with Dennis Nolan, June 17, 1995.

dencies of Arthur Stark and Richard Mittenthal. In 1978, under the direction of the Research and Education Committee (REC), the first set of training materials was developed. The REC subcommittee on seminars, chaired by Arnold Zack, reported to the Board of Governors that study guides had been compiled on discipline, federal-sector arbitration, ERISA, evidence, job evaluation, mediation techniques, and remedies, and that seminars were scheduled for Florida in December 1978, the West Coast in January 1979, and the Midwest in February 1979.⁵⁷ The subcommittee tried to reach the nonmainstream arbitrators who did not attend the annual meetings. Among other tools, the subcommittee used videotapes of mock arbitrations.⁵⁸

Annual Meeting Policies

The Academy's guest policy again came up for scrutiny during Eli Rock's presidency in 1973. Members and guests had complained about crowded annual meetings where guests outnumbered members. The guests caused problems by hosting cocktail parties and other social events. In the eyes of the Academy's more scrupulous members, these parties created a conflict of interest for arbitrators. Rock appointed a special committee to look into the matter,⁵⁹ but no action was taken.

During Arthur Stark's term in 1977 the Academy's guest policy was examined once again. This time it was prompted by a letter from John Zalusky of the AFL-CIO. Large corporations like General Motors and Gulf & Western had provided hospitality suites and lavish receptions for arbitrators during the annual meetings. Zalusky warned of the perception that these activities "give entree not otherwise available to the vast majority of parties using arbitration." He continued:

I know union members, indeed all parties, are concerned about the impartiality of arbitrators. The use of these hospitality suites injures this important concept of impartiality. . . . Arbitration as an institution must be concerned with its image, and we feel that the hospitality suites are in poor taste. . . . Perhaps the best way of getting around this problem would be for the Academy to provide a hospitality suite in a manner that preempts . . . others. Of course, the other option

⁵⁷ Minutes, Board of Governors, May 4, 1978, NAA Archives. Zack continued his work as chair of a new committee on continuing education in the early 1980s.

⁵⁸ Arnold Zack, *supra* note 56.

⁵⁹ Cf. Chapter 3, text, at note 103. The Guest Policy Guide, adopted on October 17, 1970, was reaffirmed on May 9, 1979. NAA Policy Handbook, Appendix A.

is to take strict official action against them at the outset of the meetings.⁶⁰

Several Academy members supported Zalusky, characterizing the guest practice as “flesh peddling”⁶¹ and a “circus environment.”⁶² President Stark worried about “constitutional freedoms” that might prevent the Academy from barring “individuals or organizations from renting hotel rooms and inviting people to visit.”⁶³ Nevertheless, he reminded members that the matter had been raised “100 times before” and suggested that warnings to members be “typed in very large dark type for aged and myopic arbitrators.”⁶⁴ The Board of Governors finally decided to ask guest organizations “not to sponsor formal receptions or cocktail parties at the New Orleans Annual Meeting.”⁶⁵ Continuing criticism of the guest policy caused President Richard Mittenthal to establish yet another special committee on the subject in 1979, this one chaired by Alfred Dybeck. Much to Mittenthal’s surprise, the committee again recommended no change.⁶⁶

The Academy also debated whether interns or apprentices should be allowed to attend its meetings. Some members took seriously their obligation to prepare the next generation of arbitrators. Others feared that junior arbitrators would use the opportunity to solicit business. The dispute was resolved by allowing attendance only by a person specifically identified by a mentor as an apprentice. Apparently the belief was that mentors would guarantee the good behavior of their own apprentices. For a time, there was a day-long program for interns, but this eventually faded away.⁶⁷

President Eli Rock faced a serious and familiar external problem as the time for the 1974 Annual Meeting approached. Future

⁶⁰Letter from John Zalusky to President Arthur Stark, April 18, 1977, Stark Files, NAA Archives.

⁶¹Letter from John Dunsford to President Arthur Stark, November 4, 1977, Stark Files, NAA Archives.

⁶²Letter from Arnold Zack to President Arthur Stark, October 27, 1977, Stark Files, NAA Archives.

⁶³Letter from President Arthur Stark to John Zalusky, April 25, 1977, Stark Files, NAA Archives.

⁶⁴Letter from President Arthur Stark to John Caraway, April 25, 1977, Stark Files, NAA Archives.

⁶⁵Minutes, Board of Governors, May 21, 1977, NAA Archives. This policy was broadened in 1982 to apply to all annual meetings and strengthened in 1984 to “discourage” such conduct. NAA Policy Handbook, 3.

⁶⁶Mittenthal Presidential Interview, June 1, 1989, NAA Archives.

⁶⁷Arnold Zack, *supra* note 56.

Arrangements Chair Thomas Roberts reported that the Hotel and Restaurant Employees and Bartenders International Union was picketing the meeting site at Kansas City. This was the same problem the Academy encountered at its planned Atlanta meeting in 1970. It solved that problem by moving the meeting to Montreal. This time, with only two months to go, relocation was not feasible. Instead, Rock asked the FMCS to appoint a special mediator. The mediator tactfully suggested to the union representatives that it would not be prudent to "antagonize all these arbitrators."⁶⁸ Eventually the union agreed to call off the pickets, and the annual meeting went forward as planned. This remained a problem for the Academy because of declining unionization of hotels and the perceived need to satisfy union guests.

Early in 1976, academic Academy members complained that the April meeting conflicted with university classes and therefore prevented them from participating in Academy governance. To solve this problem, the Board of Governors changed the annual meeting date to late May or early June,⁶⁹ where it has remained ever since.

Finances and Dues

In 1975, President Rolf Valtin appointed a special committee chaired by Clare (Mickey) McDermott to examine the Academy's dues policy. Earlier, as secretary, McDermott had criticized the Academy's laxity in collecting dues.⁷⁰ The special committee recommended standardization of dues by replacing the three-tiered structure with a single rate of \$150 per year. Warning the Board that the Academy's reliance on free services weakened its financial structure, the committee recommended a dues increase to permit the hiring of a full-time staff. The Board adopted the committee's report but, based on the prevailing arbitrator per diem

⁶⁸ Rock Presidential Interview, June 1, 1989, NAA Archives.

⁶⁹ This decision meant delaying publication of the annual meeting *Proceedings* until January of the following year. Thereafter, the year of the meeting was made part of the title. Minutes, Board of Governors, October 23, 1976, NAA Archives.

⁷⁰ Dues payments were voluntarily selected by members as follows:

Type	1970	1974
Contributing (\$100)	56	53
Sustaining (\$50)	148	179
Participating (\$25)	152	132
Waiver exemption	11	n.a.

Source: Secretary's Reports (January 1971, April 1974), NAA Archives.

rate, increased the annual dues to \$200.⁷¹ Since many members had been paying only \$25 a year in dues, the raise caused considerable discussion at the annual meeting in San Francisco. Despite these objections, the membership ratified the Board's decision by majority vote. In announcing the dues increase to the membership, President Valtin dismissed the policy of "voluntarism" as a failure:

[There is] something wrong when three-fourths of the membership of an organization composed of professional people are content to pay an average of \$37.50 annual dues. Steelworkers pay three times that amount. AAA membership dues is \$100. . . . Part-time member arbitrators (most university people) handle an average of 30 cases a year.⁷²

The full impact of the dues increase did not hit until 1976, during the presidency of Canada's Harry (Bus) Woods. With that year's dues statements, Woods enclosed a special reminder of the Academy's dues waiver policy.⁷³ Apparently this was the first time members who had not attended the previous annual meeting learned of the increase. Many academics who arbitrated part time had been paying only \$25 per year. The raise to \$200 made Academy membership more of an undertaking for them. It brought to a head the underlying differences between full-time and part-time arbitrators. Many part-timers were academics who considered arbitration a public-service avocation.

A few renowned professors of economics and law resigned, and others threatened to do so.⁷⁴ Woods decided to circulate their written complaints among the members. This inadvertently opened a battle of letters. One member warned that academic members would form their own association of arbitrators and invited IRRRA members who were also Academy members to discuss countervailing action.⁷⁵ Another letter charged the Academy with domination by "elitists" and "money grubbers." The author

⁷¹ Minutes, Board of Governors, December 6, 1975, NAA Archives. Board action was ratified by the membership at the 1976 Annual Meeting in San Francisco.

⁷² Letter from President Rolf Valtin to Academy members, June 6, 1976, Valtin Files, NAA Archives.

⁷³ Letter from President Harry Woods to Academy members, November 2, 1976, Woods Files, NAA Archives.

⁷⁴ Valtin Presidential Interview, June 1, 1989, NAA Archives. The January 31, 1976 issue of *The Chronicle* had been devoted to the dues controversy and the apparent schism of university-based arbitrators but seems to have been ignored by many members.

⁷⁵ Letters from Frederic Meyers of the University of Texas to President Harry Woods, July 2 and September 8, 1976, Woods Files, NAA Archives.

complained that the "800% increase" meant that the NAA was run for "full-time arbitrators" and described the waiver policy as "demeaning."⁷⁶ In reply, Rolf Valtin characterized the last comment as "outrageous."⁷⁷ He also commiserated with President Woods for the "inherited aftermath" but insisted that there should be no return to the "tier system."⁷⁸

Summing up the academic attitude, David Feller, professor of law at the University of California, warned that the dues increase meant the Academy would be "a trade association designed only to foster and protect the financial interests of full-time professional arbitrators rather than the institution of arbitration."⁷⁹ Agreeing with Feller, Thomas Christensen, professor of law at New York University, stated that "the Academy is a unique organization joining those who have basically academic interest in labor-management relations and those who have made it their entire professional life."⁸⁰ "Saddened" by his need to differ with Feller, Valtin denied any cleavage between academics and "professionals." Valtin stressed the Academy's need to become self-supporting so that it could underwrite research projects such as the oral history.⁸¹ He pointed out that the Board of Governors, who had passed the dues increase unanimously, included six academics. President Woods remarked later: "It didn't occur to me when I took this job that I would have to preside over the second American civil war."⁸²

In an attempt to calm the controversy, Woods appointed a special committee chaired by Jean McKelvey to reexamine the dues waiver policy. Woods suggested expanding the waiver to include some part-time academics as well as inactive retirees:

If we were a fully professional body which controlled access to the practice of arbitration and if we were very largely like the profes-

⁷⁶Letter from Thomas Rimer of Atlanta to President Harry Woods, June 30, 1976, Woods Files, NAA Archives. Agreeing with Rimer was Joseph Raffaele of Philadelphia, in a letter to President Woods, September 10, 1976, Woods Files, NAA Archives.

⁷⁷Letter from Rolf Valtin to Joseph Raffaele, June 30, 1976; *see also* letter from Eli Rock to Joseph Raffaele, July 1, 1976, reminding him that the Academy was being subsidized by the umpireships, which were likely to end shortly, Woods Files, NAA Archives.

⁷⁸Letter from Rolf Valtin to President Harry Woods, July 7, 1976, Woods Files, NAA Archives.

⁷⁹Letter from David Feller to President Harry Woods, June 15, 1976, Woods Files, NAA Archives.

⁸⁰Letter from Thomas Christensen to President Harry Woods, July 9, 1976, Woods Files, NAA Archives.

⁸¹Letter from Rolf Valtin to David Feller, July 7, 1976, Woods Files, NAA Archives.

⁸²Valtin Presidential Interview, *supra* note 74.

sional bodies with which those who favor the "hard line" compare us, the case for a single dues policy without exception might be compelling. But we are not. We are a relatively small organization. We are a mixture of full-time and part-time arbitrators, whose case load falls from zero to more than one individual can handle.⁸³

The waiver policy, recommended by the committee and adopted by the Board of Governors, allowed waiver of the \$200 fee for Academy members in one or more of the following categories:⁸⁴

1. Retired persons who no longer arbitrate.
2. Those who have temporarily ceased active practice of fee-for-service arbitration for a minimum period of one year until they resume arbitration work, including:
 - (a) those prohibited from arbitrating by their position (*e.g.*, judges and staff arbitrators on government salary);
 - (b) those whose current positions or responsibilities preclude their engaging in arbitration (*e.g.*, college presidents and legislators);
 - (c) those on sabbatical or other type of leave from university positions, who do not engage in arbitration during that year;
 - (d) those who are incapacitated and unable to arbitrate; and
 - (e) those with a minimal arbitration practice, not to exceed five cases per year.

The policy encouraged members in the waiver category to make a contribution to the Academy in lieu of dues.

Closely linked to the dues controversy was a more fundamental debate about the Academy's internal structure. The lack of a permanent home base created many difficulties including inadequate maintenance of records, loss of institutional memory, and instability. As early as 1971, when Secretary McDermott requested to be relieved of his duties, as he had promised when he was elected in 1968, the Academy faced the recurring search for a built-in office. Luckily the U.S. Steel Board of Arbitration in Pittsburgh had another associate who was willing to take over the job of secretary, Alfred Dybeck. That fortuity saved the Academy from suffering the trauma of another move of its records. The Steel Board subsidized the Academy (as the Ford-UAW Retirement Plan office had under Secretary David Miller) with use of equipment and clerical staff.

⁸³ Letter from President Harry Woods to Academy membership, November 2, 1976, Woods Files, NAA Archives.

⁸⁴ Minutes, Board of Governors, October 23, 1976, NAA Archives. This policy was revised twice subsequently (1984 and 1987). NAA Policy Handbook, 9.

As Academy secretary, McDermott had often criticized this arrangement, protesting that the Academy was mature enough to finance its own office and a full-time executive secretary. When he joined the Board of Governors in 1971,⁸⁵ he urged the Board to create a special committee that would investigate that possibility and review the Academy's financial structure.

The question of competition for the office of secretary arose again during the presidential term of Canada's Bus Woods. He stressed the Academy's need for maintaining its headquarters in the secretary's "domicile" but admitted that "the time may come when we will have to accept in the interest of stability a fixed location. I do not think we are there yet."⁸⁶

The bifurcated duties of the secretary and treasurer had long been a problem. The secretary passed on all receipts to the treasurer for deposit. Their financial responsibilities and reports necessarily overlapped. President Arthur Stark suggested combining the two positions in one office of secretary-treasurer. The Board of Governors approved submission of the requisite constitutional amendment to the membership. In 1978, members elected Richard Bloch, who had succeeded Alfred Dybeck as secretary in 1977, to the new position.⁸⁷

Bloch's election as secretary-treasurer was distinctive in another respect. He was the first secretary who did not have an institutional base of operations. Bloch's private law office was in Washington, D.C. Using the funds generated by the recent dues increase, Secretary Bloch began buying equipment and hiring clerical help for the Academy. As the special committee under Mickey McDermott recommended in 1975, the Academy had finally established its administrative independence. The experiment was short-lived, however. At the end of Bloch's second term in 1983, the Academy again elected a secretary with a university

⁸⁵ Appointments at the time show the Academy's informality. Mickey McDermott had been elected secretary after serving just one year as an Academy governor. In 1971 he was reelected to the Board of Governors for a three-year term. He assumed that his selection as secretary was due to his friendship with David Miller and the availability of office space at the U.S. Steel Board of Arbitration in Pittsburgh. McDermott Presidential Interview, June 1, 1989, NAA Archives.

⁸⁶ Letter from President Harry Woods to Academy members, September 23, 1976, Woods Files, NAA Archives.

⁸⁷ Minutes, Board of Governors, April 5, 1978, NAA Archives; see also *The Constitution and By-Laws*, [Article 1, section 2], in *Arbitration 1987: The Academy at Forty, Proceedings of the 40th Annual Meeting*, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix A, 205, 208.

base, the University of Michigan's Dallas Jones. It did not attempt real independence again until 1990.

Membership Participation

Another crisis developed during the 1973 Annual Meeting when a senior member challenged the Nominating Committee's recommendation for president-elect. The challenger apparently believed that someone had promised him the position. He also thought he deserved it because of his long service to the Academy in many capacities. Eventually the dissident withdrew, but President Eli Rock had some stressful moments because of divided loyalties. The Academy had never experienced a challenged election before. Since then, there has been just one challenge to the Nominating Committee's recommendations.⁸⁸

When David Miller became president in 1974, his six years of experience as secretary gave him a clear sense that some changes were needed. He appointed a special Committee on Committees, chaired by Carl Warns, to investigate the whole process of committee appointments. Anticipating the committee report, he informally began the turnover process to involve newer members. In answer to the complaint of East Coast elitism, he recommended amendment of the Academy constitution to expand the Nominating Committee from three to five members, to include two governors, and two regional representatives.⁸⁹

Miller died just before the annual meeting. His death presented the Academy with a novel problem.⁹⁰ The constitution did not provide a procedure for a succession under these circumstances. Rolf Valtin, as president-elect, maintained that the con-

⁸⁸ Arnold Zack, in a telephone conversation with Dennis Nolan, June 17, 1995; Rock Presidential Interview, June 1, 1989, NAA Archives. Prior to 1982, the Academy's Constitution and By-Laws provided for nominations only by the Nominating Committee. In 1982, the membership amended the bylaws to permit nominations by petition and equal space in *The Chronicle* for challengers. This led to the first formal challenge to the Nominating Committee's recommendations in 1986. Letter from George Nicolau to Gladys Gruenberg, June 12, 1996. See *The Constitution and By-Laws* [Article VIII (Nominating Committee)], *supra* note 87, at 218–19. Cf. Chapter 5, text, at notes 260–64.

⁸⁹ The revolt was led mainly by regional chairs in the Midwest. The Board of Governors refused to seek a constitutional amendment regarding the Nominating Committee, but set forth a policy that the committee should include two past presidents, one governor, and two regional representatives. NAA Policy Handbook, 7; Minutes, Board of Governors, December 6, 1975, NAA Archives.

⁹⁰ Vice President Richard Mittenthal had presided at the Board meeting in January 1975 because of David Miller's reported illness. Minutes, Board of Governors, January 18, 1975, NAA Archives. See also Valtin, et al., [*Dedication to*] *David P. Miller*, in *Arbitration—1975*, Proceedings of the 28th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1976), vii.

stitution did not allow him to serve as president for more than one year. The Board of Governors agreed and appointed Richard Mittenthal, the ranking vice president on the Executive Committee, to serve out Miller's term as president.⁹¹

Incoming President Valtin resolved to continue Miller's initiative designed to answer the charge that the Academy was run by "the old guard."⁹² His examination of several important committees showed that the long service by older members blocked participation by newer members. Valtin had addressed this issue two years after he was admitted to the Academy. Now he could solve the problem.⁹³ The report of the Committee on Committees had recommended an annual one-third turnover in committee membership with chairs limited to terms of three to five years, except in special circumstances as determined by the president.⁹⁴ Valtin immediately carried out these recommendations by replacing most members of the Membership and Ethics Committees, much to their chagrin.⁹⁵

To keep Academy members informed, President Arthur Stark regularized publication of *The Chronicle* to three times a year under the editorship of Edgar (Ted) Jones. He also authorized an earlier mailing to elicit members' committee preferences and suggested studying the feasibility of a data bank of members' specialties for use by the annual meeting Program Committee to encourage more membership participation. Finally, Stark established a new Committee on Regional Organization, chaired by Mark Kahn, to coordinate and supervise regional activities.⁹⁶ Although the Academy had a regional structure since its founding, the bylaws did not mention regions. During Mittenthal's term, the Board of Governors authorized the Academy president to appoint a chair in each region after consulting with the members

⁹¹ Minutes, Board of Governors, April 28, 1975, NAA Archives.

⁹² Valtin Presidential Interview, *supra* note 74.

⁹³ *Id.* See also Valtin, *The National Academy After Twelve Years: A Symposium: What I Expect of the Academy*, in *Challenges to Arbitration*, Proceedings of the 13th Annual Meeting, National Academy of Arbitrators, ed. McKelvey (BNA Books 1960), 13.

⁹⁴ Minutes, Board of Governors, December 6, 1975, NAA Archives.

⁹⁵ In addition to the prestige of these committees, their members met prior to the annual meeting at the same time as the Board of Governors and were invited to participate in all the Board's social functions. Also, due to the early attendance requirement, their expenses were partially reimbursed. NAA Policy Handbook, 1.

⁹⁶ Minutes, Board of Governors, April 8 and October 21, 1977, NAA Archives.

in that region. The Board hoped that regional chairs would facilitate communication to and from the regions.⁹⁷

Other Presidential Initiatives

In accordance with the tradition that each Academy president adopt a specific theme, the 1970s were notable for several new initiatives.

Publications. In 1974, President Miller established an Oral History Committee, chaired by Richard Mittenenthal.⁹⁸ The original objective was to record the practice of arbitration before and during World War II. Mittenenthal continued the committee during his presidency in 1977–1978. By then the focus had shifted to include the entire careers of the interviewees. Some of these interviews—those with Allan Dash, Sylvester Garrett, John Larkin, Harry Platt, Ralph Seward, and William Simkin—appeared in a book the Academy published in 1982.⁹⁹ So successful was this experiment that the successor committee, the Committee on Academy History, began an effort to interview all former presidents of the Academy about their careers and their work in the Academy.

To acquaint Academy members with the growing challenge of arbitration in the public sector, Eli Rock, who chaired the Committee on Public Employment Dispute Settlement,¹⁰⁰ recommended in 1970 that the Board of Governors authorize inclusion of the committee's report as an appendix in the annual meeting *Proceedings*, a practice that lasted until 1987.¹⁰¹ In 1973, as president, Rock established an Editorial Committee to oversee the Academy's publications so that members would receive current

⁹⁷ Minutes, Board of Governors, October 20, 1978, NAA Archives. The bylaws were not amended to institutionalize the regional structure until May 23, 1984. *The Constitution and By-Laws*, [By-Laws Article VIII (Regions)], in *Arbitration 1987: The Academy at Forty, Proceedings of the 40th Annual Meeting*, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix A, 205, 219.

⁹⁸ Minutes, Board of Governors, October 11, 1974, NAA Archives. The Board authorized an expenditure of \$500 for each taping to cover travel and transcription. Minutes, Board of Governors, January 18, 1975, NAA Archives. This marked the beginning of the Academy history project and the taping of past presidents for the archives. The Committee on Academy History has carried on the project and has now interviewed every living former president.

⁹⁹ NAA, Oral History Project: The Early Days of Labor Arbitration as Recalled by G. Allan Dash, Jr., Sylvester Garrett, John Day Larkin, Harry H. Platt, Ralph T. Seward, and William E. Simkin (NAA 1982).

¹⁰⁰ Eli Rock became Academy president in 1973; earlier he had served as labor relations counsel to the City of Philadelphia and had considerable experience in public-sector arbitration. Rock Presidential Interview, *supra* note 88.

¹⁰¹ See *Proceedings*, National Academy of Arbitrators, 1970 to 1986.

information especially about decisions of the Board of Governors. The next year President Miller renamed the committee the Publications Committee and expanded it to include *Proceedings* and *Chronicle* editors and one governor, to supervise the Academy's editorial policy.¹⁰²

Reexamination. In 1973, President Rock's major project was the appointment of a special committee to reexamine all of the Academy's policies and procedures. He called it the Reexamination Committee and appointed as its chair the former Membership Committee chair, Rolf Valtin. The Board of Governors agreed that the committee should have two years for its work.¹⁰³ By happenstance, Valtin was Academy president when the committee completed its work. He was therefore able to carry out many of its recommendations, especially those relating to committees and to membership standards. (See the discussion, *infra*, under "Reexamination Committee.")

A similar initiative was undertaken by President Arthur Stark in 1977. Stark saw his responsibility as "a combination complaint and suggestion box."¹⁰⁴ He was certain that one year was not long enough to accomplish very much. He therefore solicited President-elect Richard Mittenenthal to work with him on a long-range plan. They met before the 1977 Annual Meeting and agreed on a Stark-Mittenenthal two-year plan to revitalize the organization. In addition to emphasis on continuing education and regional expansion, Stark urged that the Academy provide legal assistance to members who might be sued or summoned as witnesses in cases arising out of their awards. He appointed a new Legal Protection Committee to study the feasibility of a legal assistance program for members under the leadership of Robert Meiners. Meiners had earlier investigated professional insurance for arbitrators at the request of President Valtin.¹⁰⁵

¹⁰² Minutes, Board of Governors, May 3, 1975, NAA Archives.

¹⁰³ Minutes, Board of Governors, April 3, 1973, NAA Archives.

¹⁰⁴ Letter from President Arthur Stark to John Caraway, April 25, 1977, Stark Files, NAA Archives.

¹⁰⁵ In 1975 the Board of Governors had authorized an annual fee of \$2,000 to be paid to AAA for legal advice to Academy members, but no outside counsel was to be involved. In 1977 the Board amended its policy to include payment to outside counsel. The Legal Protection Committee reported that during 1977 2% of 450 Academy members (11 cases) had sought legal advice from AAA, costing the Academy \$2,063 for outside counsel and \$4,456 for AAA overhead, covering matters such as subpoenas, affidavits, clarification of awards, but no money damages. Minutes, Board of Governors, October 21, 1977, NAA Archives. In 1978 the AAA contract fee was raised to \$5,000. Minutes, Board of Governors, April 4, 1978, NAA Archives.

Because of Stark's administration and the two-year plan, Richard Mittenthal's succession to the presidency was smooth. Stark had dramatically reconstituted the committee structure, so Mittenthal decided not to "tinker"; rather, he continued the same committees with "only minor adjustments."¹⁰⁶ As a full-time arbitrator, he tried to maintain his heavy caseload to support his young family. Fortunately, Stark had left the Academy in good shape. Mittenthal considered his presidential address the highlight of his term in office.¹⁰⁷ Recalling many of his own experiences, he pointed out the burdens and the joys of an arbitrator's life. His definition of an arbitrator's role is a classic:

We decide disputes between employers and unions based largely upon evidence introduced at a hearing, arguments made by the parties, and language found in a collective bargaining contract. We deal with discipline, wages, seniority, contracting out, and many other subjects covered by the contract. . . . This task is so much a part of our lives that it is easy to overlook what lies beyond decision-making. The glory of our world is the challenge of new experiences, the exposure to a bewildering variety of people, the opportunity to learn each day, the chance to grow, the discovery of one's own voice.¹⁰⁸

After delineating the conflicts and challenges involved in an arbitration proceeding, Mittenthal described the arbitrator's lonely deliberative process:

Consider what we face: endless pages of transcript, a sea of exhibits, ambiguous contract language, contradictory assertions of facts, twists and turns of claim and counterclaim. To shape this formless material into two decisions a week, week after week, year after year, and to do so with care, style, and swiftness is a feat. It demands concentration, an iron will, a kind of dedication that is hard to express. The result is the development of incredible self-discipline, which, I suspect, would serve us well in anything we might do.¹⁰⁹

He concluded with an enumeration of an arbitrator's blessings:

We also enjoy an enormous amount of freedom and independence. No one supervises us. No one tells us when to work or how to do our job. The arbitrator's award is his alone. . . . He can work out of a business office or out of his home. . . . He can begin his study day at 8:00

¹⁰⁶ Mittenthal Presidential Interview, June 1, 1989, NAA Archives.

¹⁰⁷ *Id.* See also Mittenthal, *The Presidential Address: Joys of Being an Arbitrator*, in *Arbitration of Subcontracting and Wage Incentive Disputes*, Proceedings of the 32nd Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1980), 1.

¹⁰⁸ *Id.* at 1-2.

¹⁰⁹ *Id.* at 5.

A.M. or 8:00 P.M. He can work sitting, standing, or, as in my case, lying down. . . . He is free, in other words, to do as he wishes. It is a splendid life style. . . .

. . . Our title may simply be "arbitrator." But our job description encompasses a great variety of disciplines—engineering, economics, psychology, law, logic, and English.¹¹⁰

When Mickey McDermott became Academy president in 1979, he too found it difficult to maintain his full-time arbitration practice. His main concern was the presidential address. He feared that he could not produce a speech equal to those of his predecessors. Following Miententhal, whose presidential address had been so successful, was especially difficult. He had no time for extensive research. As an alternative, he devised a Socratic dialogue with Thomas Roberts on the subject of evidence. Their skillful use of this novel form thoroughly entertained Academy members and guests.¹¹¹ At Secretary-Treasurer Bloch's headquarters in Washington, D.C., the day-to-day administration of the Academy went on without problems for the rest of the decade.

Membership Standards

When Jean McKelvey became president in 1970, she was particularly interested in increasing the number of women and minorities among the Academy's membership. As noted earlier, her training programs indicated that the burgeoning use of arbitration in the public sector, especially by teachers, police, and fire protection unions, was a fertile field for affirmative action programs in the arbitration profession. However, the Membership Committee discovered that in some jurisdictions public employee relations board administrators selected the arbitrator. Obviously that sort of appointment would say nothing about the arbitrator's acceptability to the parties.¹¹² The committee also doubted whether it should count fact-finding assignments as part of the required workload.

¹¹⁰ *Id.* at 5-6, 7.

¹¹¹ McDermott Presidential Interview, June 1, 1989, NAA Archives. See also McDermott, *The Presidential Address—An Exercise in Dialectic: Should Arbitration Behave as Does Litigation?*, in *Decisional Thinking of Arbitrators and Judges*, Proceedings of the 33rd Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1981), 1.

¹¹² The importance of public-sector arbitration is reflected by the appointment of a Special Committee on Public Employment Disputes under Eli Rock in 1969, and the publication of the Committee's report in the Proceedings of the National Academy of Arbitrators from 1970 to 1986.

Public-Sector Cases

To discover the facts about arbitration in public employment, President McKelvey appointed Arthur Stark to chair a Special Committee on Membership Standards. She charged the committee with investigating whether fact-finding and public-sector cases should be considered in evaluating an applicant's caseload.¹¹³ The special committee recommended that the Membership Committee continue to consider each application on its merits, keeping in mind the variation in state practices. In 1971, when Alexander Porter became Membership Committee chair, he expressed concern about applicants who arbitrated only in the public sector, especially those who worked in only one state.¹¹⁴ In 1974, the Reexamination Committee recommended that the Membership Committee apply the same criteria to the public sector as were used to evaluate private-sector cases, namely, to include only arbitration of grievance disputes under a collective bargaining agreement where the parties hired the arbitrator.¹¹⁵ The Membership Committee continued to exclude from the applicant's caseload interest disputes and fact-finding both in private and public employment and cases in which a public agency appointed the arbitrator.

Neither of these reports addressed other concerns of the Membership Committee. During the 1960s, the Membership Committee had consistently pressured the Board of Governors to approve more specific guidelines to replace the committee's "discretionary latitude"¹¹⁶ in approving candidates. No one questioned the requirement of "good moral character," but some applicants, especially respected academics and some interns and associates of established umpireships, had been admitted with little arbitration experience. The recommendation of prominent Academy members was sufficient.¹¹⁷

¹¹³Minutes, Board of Governors, January 6, 1971, NAA Archives.

¹¹⁴Panel Discussion of Membership Standards by five former Membership Committee chairs (audiotape), May 29, 1986, NAA Archives.

¹¹⁵*Report of the Special Committee to Review Membership and Related Policy Questions of the Academy—Otherwise Known as the Reexamination Committee*, in *Arbitration—1976, Proceedings of the 29th Annual Meeting*, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1976), Appendix F, 361.

¹¹⁶Letter from Peter Seitz to President Mickey McDermott, October 8, 1979, McDermott Files, NAA Archives. See also *Report of the . . . Reexamination Committee*, *supra* note 115, at 367: "[T]he Membership Committee cannot effectively function if left without discretionary latitude—if left to a mechanical counting of cases and without adequate authority to assess the membership application in all its aspects."

¹¹⁷See, e.g., Mittenthal Presidential Interview, *supra* note 106; McDermott Presidential Interview, *supra* note 111.

Advocates and Consultants

An even more controversial problem involved arbitrator-advocates. Since its adoption in 1954, the Academy's policy against admitting arbitrators "primarily perceived" as labor or management advocates had been difficult to administer.¹¹⁸ The perception that some applicants were primarily advocates rather than neutrals was a subjective judgment. It was especially ambiguous because arbitrator-advocates who were already Academy members had been grandfathered in when the policy was adopted.¹¹⁹

When President McKelvey appointed Rolf Valtin to his fifth year as chair of the Membership Committee, Valtin determined to solve the arbitrator-advocate problem and its perceived unethical conflict of interest. He believed that persons who did any advocacy work, no matter how minimal, had no place in the Academy because their membership clouded the Academy's appearance of impartiality.¹²⁰ However, many arbitrators who were already members had achieved expertise through labor or management advocacy and naturally saw nothing unethical in continuing their practice. As a result, the committee's proposed total ban on any advocacy activity by those who were already members of the Academy aroused considerable opposition. Many charter members argued that arbitrator-advocates could be just as impartial and professionally responsible as sitting judges, most of whom had also risen from advocacy ranks. They contended that an arbitrator's general acceptability by the parties was sufficient evidence of impartiality. An adequate caseload therefore proved the applicant's professional qualifications for membership. Abram Stockman, who had chaired or co-chaired the Ethics and Grievance Committee from 1965 to 1969, summarized the consensus:

No one doubts that "acceptability" must be one of the essential bases of Academy membership. Nor is it to be disputed that a person who has had collective bargaining experience as result of representing one side or the other may prove to be an abler arbitrator than someone who has not had such experience. All we are saying is that, when he

¹¹⁸Qualifications for membership were reprinted in the Academy Membership Directories every year except 1960. On the debate over advocate-arbitrators during the 1960s, see Chapter 3, text, at notes 176-82.

¹¹⁹Report of the Membership Committee, January 15, 1954, NAA Archives. See also Chapter 2, text, at notes 34-37.

¹²⁰Valtin Presidential Interview, June 1, 1989, NAA Archives.

seeks admission to the NAA, he must have made a commitment to be a neutral.¹²¹

Others questioned the wisdom of relying solely on the parties to judge an arbitrator's credentials. They considered Academy membership an imprimatur of competence and impartiality. Conferring that imprimatur seemed to oblige the Academy to make an independent judgment of the candidates' suitability. The difficulty, of course, was in finding a way to make that judgment. Alex Elson, a charter member, at one point suggested that applicants should be required to submit several arbitration awards so that the Membership Committee could evaluate their quality. Most members, however, believed that any evaluation of awards was too subjective. As a result, the Academy never adopted this suggestion and Elson himself eventually was persuaded that it was unwise.¹²²

Reexamination Committee

In 1973, President Eli Rock charged John Dunsford, who chaired the Membership Committee, to investigate the need for revision of the Academy's membership standards. Additionally, Rock appointed Rolf Valtin, former Membership Committee chair, to reexamine all of the Academy's policies and procedures, including those related to membership qualifications.

The 1974 report of the Reexamination Committee recommended that three existing Academy membership policies remain unchanged:

1. The Academy is not a society of neutrals, but only of labor arbitrators.
2. Labor arbitration includes only private-sector grievance disputes where the parties hire the arbitrator. It does not include interest disputes in public employment or cases where a public agency appoints the arbitrator.
3. The Academy is an exclusive organization with high standards. It admits only experienced professionals, not would-be arbitrators who may seek membership as a business-getting advantage.¹²³

¹²¹Letter from Abram Stockman to President Rolf Valtin, September 4, 1975, Valtin Files, NAA Archives.

¹²²Letter from Alex Elson to Dennis Nolan, June 15, 1995. See, e.g., letter from Rolf Valtin to Peter Seitz, December 3, 1979: "[It is] impossible to read decisions and too subjective [to judge them]." McDermott Files, NAA Archives.

¹²³Minutes, Board of Governors, April 24, 1974, NAA Archives. See also *Report of the . . . Reexamination Committee*, *supra* note 115.

The Reexamination Committee saw no need to recruit candidates since membership had increased from 250 to 425 in 15 years and showed no sign of slowing down. While admitting that the conflict of interest suggested by advocacy might impair the Academy's image of impartiality, the report asserted that the "acid" test of market acceptability nurtured the best arbitrators. The committee therefore continued to support "substantial and current experience" in arbitration as the standard for admission.¹²⁴ This normally meant 50 arbitration cases, not merely work as a neutral, in the most recent five years. However, the report recommended continued admission of renowned scholars without substantial or current arbitration work. This became known as the "2B" exception.¹²⁵

After approving the Reexamination Committee's report, the Board of Governors directed Secretary Alfred Dybeck to send it to Academy members for their consideration. Valtin, who had been elected president in 1975, appointed a subcommittee to draft an appropriate amendment to the bylaws. Finally, at the 1976 Annual Meeting in San Francisco, the Academy voted to deny membership to advocates and consultants for labor or management. Thus, a longstanding Membership Committee guideline became a constitutional requirement. Members admitted before April 20, 1976, were exempt from this total restriction, but the bylaw discouraged them from appearing as advocates before other Academy members after April 21, 1977. Failure to abide by this rule could result in expulsion.¹²⁶ The Board of Governors also authorized Secretary Dybeck to develop a new membership application that included proof of the required caseload. The application would identify cases as public or private sector, and as expedited or regular, so that the Membership Committee could evaluate the candidate's general acceptability.

Thus, after much debate the Academy avoided any independent, qualitative tests to ensure arbitrator competence. The Membership Committee continued to rely on the labor-management community's evaluation of an arbitrator's credentials. An arbitra-

¹²⁴ See Annual Membership Directory, *Statement of Policy Relative to Membership*, NAA Archives.

¹²⁵ *Id.*

¹²⁶ *The Constitution and the By-Laws* [Article VI (Membership), section 6], in *Arbitration 1987: The Academy at Forty*, Proceedings of the 40th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix A, 205, 217; Minutes of the Annual Meeting, April 21, 1976, NAA Archives; Minutes, Board of Governors, December 6, 1975.

tor with a large and diverse practice was presumptively acceptable. Only proof that the applicant lacked "good moral character" or served "partisan interests" could endanger the application.

Minimum Caseload

The definition of "substantial and current experience as an impartial arbitrator of labor-management disputes" remained subject to interpretation by the Membership Committee. What number and types of cases should support the applicant's claim of general acceptability? As early as 1962, under the leadership of Laurence Seibel, the Membership Committee began requiring an applicant to document at least 10 cases a year to justify a "substantial" caseload.¹²⁷ Gradually the committee expanded the condition to require an average of 10 cases a year for the previous five years to ensure that the applicant's caseload was "current," the "5-50 yardstick."

There remained some disagreement about the types of cases that counted toward a substantial caseload. Some members wanted to reject applicants who arbitrated in just one industry because they lacked evidence of general acceptability. Others believed that, if the parties selected the arbitrator and the arbitrator handed down a written opinion, there was no need to scrutinize the matter further. The Membership Committee continued to exclude National Railroad Adjustment Board (railroad) cases, which were appeals from decisions based on a written record without de novo hearing. In contrast, the committee did count airline cases that involved typical grievance arbitration and steel industry cases that arose from different companies and involved diverse issues, even though some of those opinions required final approval by an industry board of arbitration.¹²⁸

From 1959 to 1979, Academy membership had doubled from 250 to 500. Some members grumbled that the organization was growing too fast; others complained about the quality of new members.¹²⁹ To assuage these fears, President Mickey McDermott

¹²⁷ Cf. Panel Discussion of Membership Standards, *supra* note 114.

¹²⁸ See, e.g., Eischen, *Arbitration in the Airlines: I.*, in *Arbitration 1989: The Arbitrator's Discretion During and After the Hearing*, Proceedings of the 42nd Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1990), 189; Dybeck, *Arbitration in Specific Environments: I. The Steel Industry*, *id.* at 236; Scheinman, *Arbitration in Specific Environments: III. The Railroads*, *id.* at 263.

¹²⁹ Letter from President Mickey McDermott to members of the Special Committee on Membership Standards, September 26, 1979, McDermott Files, NAA Archives. The spe-

appointed yet another special committee on membership standards, chaired by Peter Seitz, to investigate whether the "5-50 yardstick" was "too easy."¹³⁰ Chairman Seitz defined the 5-50 rule as a reflection of "general acceptability" and an "internal test," adding critically:

Once the quantitative test is passed, nothing short of proof that the applicant is a certified idiot or a moral monster should prevent his being enveloped in the maternal breast of the Academy.¹³¹

Reminding Seitz that there had been five or six years of "criticism of membership standards," President McDermott continued:

[The membership standards] are not to be applied in a wooden fashion, but the [Membership] committee has authority to adjust application of the guidelines to the peculiar facts of individual applications. . . .¹³²

Rolf Valtin, who had chaired the Membership Committee from 1967 to 1970, characterized the criticism of new members as "romanticizing the past." Just five years earlier, the Reexamination Committee concluded that "general acceptability of the parties is the only correct test for the Academy to pursue." Valtin suggested that tightening the standards would keep down membership and thus benefit current members. A "closed shop," he argued, would not improve the quality of the Academy's members.¹³³

The Seitz Committee report again recommended no change in the Academy's membership standards. It emphasized that appraising an applicant's decisions was "undesirable and impractical" because "arbitration decisions are written for the parties, not the public. Nobody is in a position to pass judgment, not having been at the hearing." The report pointed out that many new applicants were retirees from union, management, government, or academic careers; five years was a "long time to wait for one

cial committee attributed its appointment to "complaints, more and more vocal, that the standards were allowing too many applicants into the Academy or were permitting the admission of applicants not qualified for membership." Special Committee on Membership Standards Report [hereinafter Seitz Report], December 20, 1979, McDermott Files, NAA Archives.

¹³⁰ *Id.*

¹³¹ Letter from Peter Seitz to President Mickey McDermott, October 8, 1979, McDermott Files, NAA Archives.

¹³² Letter from President Mickey McDermott to Peter Seitz, October 19, 1979, McDermott Files, NAA Archives.

¹³³ Letter from Rolf Valtin to Peter Seitz, December 3, 1979, McDermott Files, NAA Archives.

who has a personal and daily interest in the operation of the mortality tables."¹³⁴

Seitz suggested for the first time the possibility of lawsuits against the Academy for denial of membership. He worried that, as applied, the 5-50 standard was "too informal" and too inconsistent and allowed the Membership Committee too much discretion. Therefore, the report urged the Membership Committee to investigate the types of cases submitted to satisfy the Academy's numerical 5-50 standard. One special concern was the weight given to expedited cases. The Seitz Committee suggested that the Membership Committee ask the following questions:

1. Were opinions issued?
2. Was there a diversity of issues?
3. Did the cases involve difficulties usually found in those decided by regular arbitrators?
4. Was there a single system?
5. If the cases involved a group of parties, were the issues restricted rather than diversified?
6. Does the experience show professional growth, that is, has the caseload increased?

The committee opposed deferrals because they encouraged premature filing of applications. Finally, the report recommended that the Academy keep careful minutes of Membership Committee and Board of Governors meetings, so that the secretary could tell rejected applicants the reasons for rejection. Not until the 1980s did the Board of Governors act on the special committee's recommendations.¹³⁵

Affirmative Action

Societal changes aggravated one final membership problem. A year after passage of the Civil Rights Act of 1964, the Academy amended its Constitution to affirm that membership was open "without regard to politics, race, creed, color or sex."¹³⁶ However, there had been no change in admission figures. In 1960, the 260 Academy members included only four women (Mabel Les-

¹³⁴Seitz Report, *supra* note 129.

¹³⁵See NAA Policy Handbook, 12-14. This topic is discussed in more detail in Chapter 5 under the heading "Membership Issues."

¹³⁶*The Constitution and By-Laws* [Article III, section 1], in *Arbitration 1987: The Academy at Forty, Proceedings of the 40th Annual Meeting*, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix A, 205.

lie, Lois MacDonald, Jean McKelvey, and Eva Robins, all of New York), and no minorities.¹³⁷ By 1970, the only change was the admission of two minority members, William Gould of California in 1970 and Ted Tsukiyama of Hawaii in 1966. The lack of women and minority members was not a stated issue before the special committees on the training of new arbitrators in the 1960s. It was, however, a concern of the Special Committee for Development of New Arbitrators appointed by President Jean McKelvey in 1970.¹³⁸ That committee's work did result in the training of women and minority arbitrators.¹³⁹ Committee reports noted that regional training sessions began to emphasize affirmative action in recruiting participants in the training programs, particularly in New York and California.¹⁴⁰ As Table 4-1 suggests, those efforts produced limited results during the late 1970s.

Table 4-1. Academy Membership in Selected Years

<u>Year</u>	<u>Total</u>	<u>Women</u>	<u>Minorities</u>
1950	145	2	0
1960	260	4	0
1970	360	4	2
1975	446	8	4
1979	500	12	4

Source: Membership Directories, NAA Archives. See also Secretary-Treasurer's Admission Report, July 30, 1993.

In 1974, the Reexamination Committee suggested "bending" membership standards for women and minority applicants. This suggestion provoked a furious controversy.¹⁴¹ Some Academy members believed that using differential standards was the only viable method of increasing the admission of women and minority arbitrators. The labor-management community was not selecting members of those groups often enough to give them the "substantial and current" caseload necessary for Academy membership.¹⁴² Oth-

¹³⁷ Membership Directories, NAA Archives.

¹³⁸ The stated issue was an alleged shortage of qualified arbitrators generally, even though the Civil Rights Act had been passed in 1964.

¹³⁹ *Supra* note 46.

¹⁴⁰ *Id.*, especially T. McDermott, *Evaluation of Programs Seeking to Develop Arbitrator Acceptability*.

¹⁴¹ The recommendation was "shot down." Letter from Rolf Valtin to Peter Seitz, December 3, 1979, McDermott Files, NAA Archives. See also Murphy Presidential Interview, June 1, 1989, NAA Archives.

¹⁴² The Committee on Training reported very minimal selection of minority and women training participants. Report of the Committee on Training of New Arbitrators (February 1967), NAA Archives.

ers, especially women and minority arbitrators who were already Academy members, insisted that lowering membership standards would demean them and the very people it purported to help.¹⁴³ Their accomplishments, they believed, would suffer from the taint of affirmative action. Stunned by the negative reaction from members of the very groups the recommendation sought to help, the Board of Governors dropped the proposal.¹⁴⁴

The Seitz Committee again cited the lack of women and minority members and concluded that raising membership standards would add new obstacles to the usual professional hurdles those applicants faced.¹⁴⁵ This item remained on the Academy agenda well into the 1980s but never again did the Academy seriously consider differential admissions.

A related societal issue involved the Equal Rights Amendment (ERA). Early in 1978 the Industrial Relations Research Association (IRRA) passed a resolution refusing to hold its annual meetings in states that had rejected the ERA. Some Academy members who belonged to both organizations lobbied for similar action by the Board of Governors. The Board refused on the ground that the Academy's 1956 policy prevented taking a stand on such legislation.¹⁴⁶

Ethical Concerns

During the 1960s, the Ethics and Grievance Committee issued no opinions.¹⁴⁷ However, this inaction was not due to lack of interest in Code violations. The committee had simply shifted to a

¹⁴³In 1970, Academy membership of 500 included 12 women and 4 minorities. The 12 women were Jean McKelvey, Lois MacDonald, Eva Robins, Mabel Leslie, Frances Bairstow, Alice Grant, Marcia Greenbaum, Clara Friedman, Marian Warns, Margery Gootnick, Emily Maloney, and Helen Witt; the 4 minorities were Reginald Alleyne, William Gould, James Harkless, and Ted Tsukiyama. Harry Edwards was also a member in the early 1970s until he resigned to accept a federal judicial appointment. *Membership Directories*, NAA Archives.

¹⁴⁴The Reexamination Committee suggested that the Academy cooperate in every appropriate way with programs designed to increase the continued development of competent and qualified arbitrators among women and minority groups. *Report of the Special Committee to Review Membership and Related Policy Questions of the Academy—Otherwise Known as the Reexamination Committee, in Arbitration—1976*, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1976), Appendix F, 361.

¹⁴⁵Seitz Report, *supra* note 129.

¹⁴⁶Minutes, Board of Governors, March 23, 1978, NAA Archives. Similar action was refused in later years when Colorado approved an anti-homosexual referendum and the Arizona legislature rescinded its approval of Martin Luther King, Jr.'s birthday as a holiday. Both refusals were in line with the Board's policy not to support divisive political objectives. NAA Policy Handbook, 12.

¹⁴⁷*Cf.* Chapter 3, text, at notes 186–86.

more proactive approach. It urged Academy members to think of the Code as a symbol of a more professional attitude toward the arbitration process and to obey the Code as a matter of pride. As early as 1965 Secretary David Miller required members to submit with their dues a signed affirmation of the Code. The membership application also included commitment to the Code and to the Academy's constitution and bylaws.¹⁴⁸ The Ethics Committee settled most complaints of Code violations informally by telephone.¹⁴⁹

Criticism of the Old Code

In 1971, the Academy began to consider revision of the Code of Ethics and Procedural Standards for Labor-Management Arbitrators that had been adopted by the Academy, the AAA, and the FMCS in 1950. The program chair for the 1971 Annual Meeting in Los Angeles, Richard Mittenthal, asked Alex Elson to present one of the papers in a members-only session on the topic of "Ethical Responsibilities of the Arbitration Profession." Elson's paper¹⁵⁰ argued that developments in the nation and in the arbitration profession since 1950 required significant changes in the old Code. Among these changes were the need for strengthening societal systems in a period of change, the enormous growth in the practice of labor arbitration, "rumors of serious misconduct" by some arbitrators outside the Academy, and complaints about the expense and delay involved in the arbitration process. Elson proposed a new Code of Professional Responsibility that would "accentuate the affirmative obligations growing out of membership in a profession." "In particular," Elson urged, "we should articulate the positive obligations of arbitrators to achieve the high objectives of the arbitration process—that of an impartial, competent, expeditious, and relatively inexpensive method of dispute

¹⁴⁸Minutes, Board of Governors, January 27, 1965. Cf. Chapter 3, text, at notes 196 and 210.

¹⁴⁹The Academy did not adopt a formal procedure for handling complaints until the 1980s. See *The Constitution and By-Laws* [By-Laws, Article IV, section 2 (The Committee on Professional Responsibility and Grievances)], in *Arbitration 1987: The Academy at Forty*, Proceedings of the 40th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix A, 205, 210.

¹⁵⁰Elson, *Ethical Responsibilities of the Arbitrator: I. The Case for a Code of Professional Responsibility for Labor Arbitrators*, in *Arbitration and the Public Interest*, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators, eds. Somers & Dennis (BNA Books 1971), 194.

resolution."¹⁵¹ Elson's argument struck a responsive chord in the Academy. A motion to revise the Code along the lines he suggested was adopted by acclamation.¹⁵²

The next year, Richard Mittenthal, chair of the Ethics and Grievance Committee from 1971 to 1974, urged the Board of Governors to begin revision of the Code. Following one of Elson's themes, he pointed out that the "Code of Ethics" was seriously flawed because it did not distinguish clearly between two types of guidance. On one hand were "canons," statements of "axiomatic norms expressing in general terms the standards of professional conduct expected," and "ethical considerations . . . aspirational in character and representing the objectives toward which every member of the profession should strive." On the other hand, there were disciplinary rules stating "the minimum level of conduct below which no one can fall without being subject to disciplinary action."¹⁵³

There were also very practical problems with the old Code. It lacked an effective enforcement mechanism, for one thing. For another, the Ethics and Grievance Committee, the only body charged with administering the Code, had no jurisdiction over the vast number of arbitrators who were not Academy members. Finally, the Code purported to regulate the conduct of the parties, a goal that was both presumptuous and unachievable. A consensus emerged within the Academy that an unenforced code was worse than no code at all. Nonenforcement produced only cynicism.

The old Code was not worthless. When an Academy member sought guidance or was the subject of a complaint, and the Code dealt specifically with the issue at hand, the Ethics and Grievance Committee could at least make a ruling. Opinion No. 3, relating to an arbitrator's advertising of unavailability, illustrates the type

¹⁵¹ *Id.* at 197.

¹⁵² Letter from Alex Elson to Dennis Nolan, June 15, 1995. Elson's was hardly the first criticism of the old Code. Rolf Valtin had pointedly asked as early as 1960 whether the Code had ever been enforced, and in the same year Allan Dash's presidential address criticized the costs, delays, and legalisms that had crept into the practice of arbitration. Judge Hays's criticisms, in *Labor Arbitration: A Dissenting View* (Yale Univ. Press 1966), discussed in Chapter 3, text, at notes 211-14, added fuel to the fire. See generally McKelvey, *Ethics Then and Now: A Comparison of Ethical Practices*, in *Arbitration 1985: Law and Practice, Proceedings of the 38th Annual Meeting, National Academy of Arbitrators*, ed. Gershenfeld (BNA Books 1986), Appendix D, 285, 288-89. Nevertheless, as McKelvey notes, it was Elson's paper that finally started the reform process.

¹⁵³ Letter from Richard Mittenthal to the Board of Governors, September 11, 1972, Simkin Files, NAA Archives.

of request considered in the 1970s. Opinion No. 3 forbids arbitrators from writing to potential parties informing them of unavailability, except for specific parties currently seeking the arbitrator's services. Part I, section 9, of the 1950 Code barred such notices because they suggested solicitation of future cases.¹⁵⁴ This was the last opinion rendered under the 1950 Code.

New Code Initiative

When Gerald Barrett was elected Academy president in 1972, his first project was to oversee revision of the Code.¹⁵⁵ Barrett arranged to meet in New York City with AAA and FMCS representatives to discuss the feasibility of Code revision. The AAA agreed to subsidize the project with a \$5,000 grant,¹⁵⁶ if the Academy would provide the leadership. Barrett asked William Simkin, a founding member, past president, and first chairman of the original Ethics Committee, to lead the revision process. The project took much more time than anyone could have anticipated.

The special committee report listed the following reasons for the revision:

Ethical considerations and procedural standards are sufficiently intertwined to warrant combining the subject matter of Parts I and II of the 1951 Code under the caption of "Professional Responsibility." It has seemed advisable to eliminate admonitions to the parties . . . except as they appear incidentally in connection with matters primarily involving responsibilities of arbitrators. Substantial growth of third party participation in dispute resolution in the public sector requires consideration. It appears that arbitration of new contract terms may become more significant. Finally, during the interval of more than two decades, new problems have emerged as private sector grievance arbitration has matured and has become more diversified.¹⁵⁷

¹⁵⁴NAA Advisory Opinions, *Opinion No. 3* (1972), 7. In an attempt to expand their case-load, some arbitrators were quite creative in devising new ways of avoiding the Code's prohibition against advertising. One arbitrator even distributed pens bearing his name and telephone number.

¹⁵⁵The Code of Ethics and Procedural Standards for Labor-Management Arbitrators had been adopted by the Academy, the AAA, and the FMCS in 1950. Many felt that it failed to address new problems facing arbitrators. Other professional associations, such as doctors and lawyers, were also revising their codes due to increasing membership and the perceived relaxation of societal values.

¹⁵⁶Minutes, Board of Governors, October 14, 1972, NAA Archives.

¹⁵⁷Code of Professional Responsibility for Arbitrators of Labor-Management Disputes (1975) (hereinafter Code), 1.

In October 1972 the Board of Governors authorized an expenditure of \$5,000 as the Academy's contribution to a Code revision effort led by Simkin.¹⁵⁸ The other committee members were Sylvester Garrett and Ralph Seward of the Academy, Frederick Bullen and Donald Straus of the AAA, and Lawrence Babcock and Lawrence Schultz of the FMCS.¹⁵⁹ After many meetings during 1972 and 1973, the committee submitted its preliminary draft of the new Code to the Board of Governors in November 1973.¹⁶⁰ The final version, approved by the Board in October 1974¹⁶¹ and by the membership the following May,¹⁶² was titled Code of Professional Responsibility for Arbitrators of Labor-Management Disputes.

Simkin reported that the committee circulated 12 drafts between February 27, 1973 and November 12, 1974. It solicited comments from members on November 1, 1973 and April 2, 1974. Simkin urged the Academy to do some serious "soul searching." Only then could it have an "honest, straightforward discussion on the merits of the thing we have thrown at it."¹⁶³

When Eli Rock became president in 1973, he feared that the first draft of the Code revision would come to fruition during his term, and he would have to preside over a controversial discussion. He was right; discussion of the proposed Code occupied the entire 1974 business meeting. The discussion lasted a full day, ending with referral back to the committee.¹⁶⁴

The Code Debate

The 1974 Annual Meeting was in session from 9:00 A.M. to 5:00 P.M. with the Code as its sole agenda item. Gerald Barrett presided. He explained that he had established the special committee "in response to the very acutely felt needs of the appointing agencies."¹⁶⁵ The draft before the membership had two major parts. The first included the norms of the current Code. The sec-

¹⁵⁸ Minutes, Board of Governors, October 14, 1974, NAA Archives.

¹⁵⁹ Code, 1. In 1989, the Academy History Committee produced a videotape of a panel discussion of the special committee's work. Frederick Bullen, Eli Rock, Ralph Seward, and William Simkin participated.

¹⁶⁰ Minutes, Board of Governors, November 1, 1973, NAA Archives.

¹⁶¹ Minutes, Board of Governors, October 11, 1974, NAA Archives.

¹⁶² Minutes, Annual Meeting, April 29, 1975, NAA Archives. See also Code, 1.

¹⁶³ Transcript, Annual Meeting, April 24, 1974 (hereinafter Transcript), 14.

¹⁶⁴ Rock Presidential Interview, June 1, 1989, NAA Archives.

¹⁶⁵ Transcript, *supra* note 163, at 17.

ond was what Simkin referred to as an Addendum that included detailed rules about arbitration practices such as the time of the hearing, the amount of notice that had to be given, how evidence should be taken, whether there should be a transcript and briefs, how soon the award should be submitted, and the arbitrator's fees. The debate was intense and wide-ranging. It focused primarily on the Addendum, which most members thought intruded too much on the exercise of their judgment about the conduct of the hearing.

Mark Kahn urged that a distinction be made between "unethical behavior and sloppy performance or poor business practices." He continued: "[An arbitrator] might be read out of the profession for unethical behavior whereas, if he has some bad practices, he just ought to be told about them."¹⁶⁶

Benjamin Aaron agreed that two distinct types of conduct were involved:

[We are] dealing with some things which a majority of Academy members believe are wrong and should be deemed violations of professional responsibility. And we are dealing with certain practices on which there are wide divergences of opinion. Matters of style or taste need not necessarily be violations of professional responsibility. As George Taylor used to say, "not to try to make everybody wear a size 9 shoe," we will have to allow for a certain amount of flexibility in the practice. [The Code] declares what is a clear violation of professional responsibility but also makes legitimate those practices by which arbitrators may differ but which clearly are not in the view of a majority such a departure from propriety that we have to label them violations of professional responsibility.¹⁶⁷

Bert Luskin objected to the details of the draft Code relating to the when, where, and how of hearing practices:

Every arbitrator has a right to work or not to work and . . . to tell the parties how he wants to work. If an arbitrator does not want to work without transcripts or briefs, that is his privilege, but it must be communicated to the parties. To say that, is not an unprofessional act.¹⁶⁸

Jesse Simon agreed that commingling principles and procedures was confusing. It also raised to "a matter of principle or postulate ordinary matters . . . which arise out of the plethora of different relationships, different structures, different procedures

¹⁶⁶ *Id.* at 21.

¹⁶⁷ *Id.* at 27.

¹⁶⁸ *Id.* at 33.

which we all know about."¹⁶⁹ Arthur Stark summed up the consensus: "Professional status has nothing to do with a code of ethics. That's something for the parties to consider in selection."¹⁷⁰

A sampling of written comments is equally revealing. In a seven-page letter, Benjamin Aaron suggested that there should be no effort to write a list of "shalt nots."¹⁷¹ He emphasized the need for arbitrators to disclose their fees to the appointing agencies so parties would know what to expect. That was especially important for study time, postponements, cancellations, travel, and use of part-time assistants. Gabriel Alexander warned against any attempt to parallel the American Bar Association code for lawyers:

Unlike attorneys we are constantly exposed to critical screening of numerous clients each of whom is a potential loser as a consequence of our professional dealings. Unlike attorneys we do not handle money belonging to clients. . . . The ethical propositions by which arbitrators should be bound . . . can be expressed in a dozen or so basic propositions.¹⁷²

Robert Feinberg had an alternate view on the issue of disclosure:

[Disclosure of representation of companies or unions] assumes this is a disqualifying factor, which it is not as such, and . . . discriminates against attorney-arbitrators. . . . Receipt of a letter forcefully calling attention to the fact that the arbitrator is an attorney and represents companies or unions would raise a question in the mind of the recipient of whether, even though he previously knew it, it is more important than he thought, and whether he should not then, for political reasons or otherwise, withdraw the designation.¹⁷³

Lewis Gill objected to the Addendum relating to hearing practices and fees on the ground that it dealt with "grubby house-keeping details which strike me as demeaning . . . and divisive."¹⁷⁴ Simkin replied: "Dropping the addendum . . . smacks too much of 'marching up the hill and then stumbling down' because we have something that is divisive. . . . Neither do I want to help perpetuate a monstrosity."¹⁷⁵

¹⁶⁹ *Id.* at 36.

¹⁷⁰ *Id.* at 54.

¹⁷¹ Letter from Benjamin Aaron to William Simkin, May 20, 1974, Simkin Files, NAA Archives.

¹⁷² Letter from Gabriel Alexander to William Simkin, June 10, 1974, Simkin Files, NAA Archives.

¹⁷³ Letter from Robert Feinberg to William Simkin, April 2, 1974, Simkin Files, NAA Archives.

¹⁷⁴ Undated letter from Lewis Gill to William Simkin, Simkin Files, NAA Archives.

¹⁷⁵ Letter from William Simkin to Lewis Gill, June 6, 1974, Simkin Files, NAA Archives.

James Hill characterized the draft Code as "more in the nature of a training course in arbitration procedures than a code of professional conduct." Referring to the proposed limitations on cancellation fees and other charges, he stated:

In New York 40 to 60 percent of scheduled hearings are postponed or canceled often on very short notice. . . . This results from the practice of parties to schedule an arbitration with the full realization that this will serve as a pressure weapon to force some kind of settlement. The arbitrator serves a constructive purpose by merely scheduling a hearing.¹⁷⁶

David Miller also argued for eliminating the long list of rules featured in the Addendum. He believed that arbitrators should disclose their fees but nothing else, because other disclosures suggested "too commercial" a consideration.¹⁷⁷ Harry Platt wrote that he too had "great difficulty" with the Addendum and asked: "Is professional responsibility a euphemism for ethical conduct?"¹⁷⁸

Peter Seitz defined a code as "a collection of rules which the entire profession already accepts . . . the mores . . . folkways of central importance accepted without question . . . the institutional imprimatur of the Academy." He concluded: "The addendum dealing with fees should be stricken."¹⁷⁹ Simkin replied:

[Drafting a code] is an occasion for each one of us to reexamine our own practices and to be prepared to change some that may have drifted away from fully acceptable practice. . . . There should not be room for individual variation. Any code that has no "cutting edges" . . . would be a least common denominator of no value to anybody.

As FMCS director, I have had exposure to some arbitrators who are "neither good nor virtuous." While most of these "wither away" in the process of natural selection and by the workings of many grapevines, a code serves two purposes: (1) to correct inexperienced and naive arbitrators before it is too late, and (2) to purge from the ranks some few who in the process of natural death can do great harm to the institution of arbitration.

A useful code must "flesh out" the bones more than would be theoretically desirable. The obvious problem . . . is how to do this without going to the other extreme of too much detail.¹⁸⁰

¹⁷⁶Letter from James Hill to William Simkin, August 1, 1974, Simkin Files, NAA Archives.

¹⁷⁷Letter from David Miller to William Simkin, May 15, 1974, Simkin Files, NAA Archives.

¹⁷⁸Letter from Harry Platt to William Simkin, May 22, 1974, Simkin Files, NAA Archives.

¹⁷⁹Letter from Peter Seitz to William Simkin, May 15, 1974, Simkin Files, NAA Archives.

¹⁸⁰Letter from William Simkin to Peter Seitz, June 6, 1974, Simkin Files, NAA Archives.

Russell Smith sympathized with Simkin's difficulty in obtaining a consensus. Smith emphasized the need to differentiate "between standards which are mandatory and those which are not." Only with that distinction in mind could the Academy take action "against the violators."¹⁸¹ In opposing the Addendum, Abram Stockman pointed out that the draft Code was "too much of a primer in the treatment of the subjects covered." He urged that "the entire matter of setting standards for fees and expenses" be left to the designating agencies.¹⁸² While opposing the Addendum on fees and charges for its "specificity," Rolf Valtin insisted that the time had come for the Academy to "put up or shut up." He added:

We would look bad if we, in effect, had to grant that we are incapable of adopting a new code in two years time. . . . The end objective is to achieve a healthy arbitration climate, and this will be achieved if we lay down "good practice" rules, together with "strictly unethical" rules, and if the Ethics Committee gets cases as to which it will tell the accused that his conduct, though not a violation of mandatory ethical conduct, amounted to something which bears improvement. . . . [There should be] a separation of the situation in which charges are brought against an arbitrator and the situation in which an arbitrator seeks an interpretation on his own motion.¹⁸³

Simkin finally succumbed to the pressure: "The addendum will be dropped and replaced with a disclosure section."¹⁸⁴

The Code was due for final approval during David Miller's term as president in 1974. However, after his untimely death the Board of Governors designated Vice President Richard Mittenthal to assume presidential duties. Thus, it was Mittenthal who chaired the annual meeting at which the members discussed the final draft of the new code he had promoted two years earlier. He was worried but pleasantly surprised when, after heated discussion, the membership adopted the new Code by an overwhelming majority at the 1975 Annual Meeting. This time, however, the draft before the membership did not include the Addendum on arbitration practices that had caused so much trouble in 1974. The debate over the new Code was one of the longest in the Academy's history, lasting about eight hours. Conscious of the issue's

¹⁸¹Letter from Russell Smith to William Simkin, June 8, 1974, Simkin Files, NAA Archives.

¹⁸²Undated letter from Abram Stockman to William Simkin, Simkin Files, NAA Archives.

¹⁸³Letter from Rolf Valtin to William Simkin, July 10, 1974, Simkin Files, NAA Archives.

¹⁸⁴Letter from William Simkin to David Miller, August 16, 1974, Simkin Files, NAA Archives.

importance, almost everyone, especially the senior members, felt compelled to speak.¹⁸⁵ Mittenthal suggested that the ambience of the "wild card" Puerto Rico meeting site might have had something to do with that.¹⁸⁶

Code Provisions

The Code emphasized that the essential personal qualifications of an arbitrator "include honesty, integrity, impartiality and general competence in labor relations matters." It directed arbitrators to display "ability to exercise these personal qualities faithfully and with good judgment, both in procedural matters and in substantive decisions."¹⁸⁷ Responding to many criticisms of the profession,¹⁸⁸ an important element of the Code related to disclosure of labor-management relationships at the time of appointment:

[A]n arbitrator must disclose directly or through the administrative agency involved, any current or past managerial, representational, or consultative relationship with any company or union involved Disclosure must also be made of any pertinent pecuniary interest.¹⁸⁹

Advertising and publication of awards were two other issues that had frequently prompted debate within the Academy. The new Code was more specific on the prohibited types of advertising. For example, while using the title of "Arbitrator" on letterheads, cards, and announcements was proper, listing membership or offices held in professional societies or panel appointments was not.¹⁹⁰ Charges of advertising continued to plague the Committee on Professional Responsibility and Grievances (the successor to the Ethics and Grievance Committee) into the 1980s.¹⁹¹

¹⁸⁵ Richard Mittenthal, in a conversation with Dennis Nolan, May 25, 1995.

¹⁸⁶ Mittenthal Presidential Interview, June 1, 1989, NAA Archives; see *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes: Revised Final Report of Joint Steering Committee to Board of Governors, National Academy of Arbitrators, American Arbitration Association, Federal Mediation and Conciliation Service*, in *Arbitration—1975, Proceedings of the 28th Annual Meeting, National Academy of Arbitrators*, eds. Dennis & Somers (BNA Books 1976), 217. The Board of Governors authorized the name change from Code of Ethics to Code of Professional Responsibility. Minutes, Board of Governors, November 30, 1974, NAA Archives.

¹⁸⁷ Code, §1(A)(1).

¹⁸⁸ Cf. Chapter 3, text, at notes 208–14.

¹⁸⁹ Code, §2(B)(1).

¹⁹⁰ Code, §1(C)(3).

¹⁹¹ See, e.g., NAA Advisory Opinions, *Opinion No. 14*, June 7, 1986, 19; *Opinion No. 16*, October 29, 1987, 22; *Opinion No. 18*, May 29, 1988, 25; *Opinion No. 19*, May 28, 1989, 27.

The Code clearly forbids publication of an award "without the consent of the parties." Whether, when, or how this consent should be solicited required a lengthy, detailed explanation in the Code.¹⁹² As adopted in 1974, the Code allowed the arbitrator to "request" but not to "press" the parties for consent to publish an award. Ambiguously, the Code stated that "normally" the request should not be made until after issuance of the award. The object of that recommendation was to eliminate any pressure the parties might feel to consent to an arbitrator's request. Using an unexplained term like "normally," however, left an unfortunate degree of uncertainty.

The controlling principle is the privacy of the arbitration process. Private-sector arbitration results from a private collective bargaining agreement. The creators of that contract therefore "own" the process. During the 1970s, when the FMCS routinely requested four copies of awards to make them available to the publishing houses, the publication problem was muted. However, when the FMCS stopped that practice in a cost-cutting move during the 1980s, publication again became an issue because publishers lost their easiest access to awards.¹⁹³

After adoption of the new Code, the Ethics and Grievance Committee issued only one opinion in the 1970s. This involved a request by one party for an interview with a prospective arbitrator. Opinion No. 5 states in part:

[I]t is not consonant with "the dignity and integrity of the office" for an arbitrator to seek an interview with a potential client party. . . . The appropriate choice of conduct for an arbitrator invited to such an interview is to decline.¹⁹⁴

In good financial shape and with the new administrative structure in place, the Academy faced the 1980s with optimism. The 1970s ended with membership standards strengthened and regularized, and the new Code provided a sound basis for professional responsibility.

¹⁹²Code, §2(C)(1)(c).

¹⁹³Because Academy members, especially the newer entrants to the profession, have a stake in publicizing awards, publication has remained an issue related to the more general advertising prohibition. The Membership Committee has a similar problem with advertising in cases where Academy members in the region accuse the applicant of aggressively seeking arbitration assignments. It especially concerns admission of arbitrators who do mediation and representation work because the Code does not apply to such activities. Code, Preamble, 4.

¹⁹⁴NAA Advisory Opinions, *Opinion No. 5*, May 8, 1979, 8.

Annual Meeting Presentations

Few papers presented at Academy meetings have received so much attention as David Feller's 1976 address on "The Coming End of Arbitration's Golden Age."¹⁹⁵ Feller's main theme was that increasing judicial scrutiny of arbitration awards was both inevitable and regrettable. As arbitrators more and more face questions of statutory law, the *Trilogy's* reason for judicial and administrative deference to their awards—that "the rights of employees and employers with respect to the employment relationship are governed by an autonomous, self-contained system of private law"—breaks down.¹⁹⁶ Deference "is awarded only when arbitrators remain within their particular area of concern, of jurisdiction if you will—that is, the interpretation and application of the collective agreement."¹⁹⁷ As the law encroaches on a formerly self-governing relationship, arbitrators will have to deal with the law as well as the agreement. If arbitrators begin to do what judges do, there is no reason for judges to defer to their decisions. And if the judges do not defer, arbitration will be seen only as a lesser sort of tribunal, not a court of separate jurisdiction. As Feller put it, "the exalted position that grievance arbitration has achieved in the whole system of industrial relations in this country is bound to suffer a substantial diminution in the years to come."¹⁹⁸

The result is inevitable, he went on, because whatever way arbitrators respond will lead to more judicial intervention. If they ignore the law, the judges will apply it rather than the awards; if arbitrators attempt to deal with the legal questions, courts will second-guess them. The better course, he said, may be to accept the inevitable loss of the golden age of deference and attempt to resolve the legal questions. That may actually lead to an expansion of the arbitrator's role, but even so "their status will be diminished."¹⁹⁹

Other presentations were less somber. Anniversaries are always good occasions for reflections and predictions, and the Academy's 25th, in 1972, was no exception. Charles Killingsworth,

¹⁹⁵In Arbitration—1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1976), 97. Cf. text, *supra* at note 25.

¹⁹⁶Feller, *supra* note 195, at 102.

¹⁹⁷*Id.* at 106.

¹⁹⁸*Id.* at 97.

¹⁹⁹*Id.* at 126.

Mickey McDermott, and Ralph Seward reflected on the Academy's past.²⁰⁰ Each evoked the industrial relations context out of which modern labor arbitration grew, and each remembered those who helped create the Academy and the institution.

Morris Myers speculated about the future, trying to imagine what labor arbitration would be like in 1980.²⁰¹ His predictions make interesting reading today. He expected the average age of arbitrators to be "materially lower" because the parties would seek those with "moral and social values" more nearly reflecting those of the work force. Older arbitrators, he worried, "lack even the threshold of awareness of the values of the young."²⁰² He expected the volume of arbitration in the private sector to remain constant, except that in the railroad industry the National Railroad Adjustment Board would disappear and the parties would use the type of arbitration system common in the rest of the economy.

Myers also expected there would be a "public scandal involving arbitration by 1980," probably in the public sector.²⁰³ Public-sector arbitration paid less, he noted, and thus attracted "untried and new" arbitrators. Moreover, public-sector interest arbitration involved large sums of money. Finally, politics is inevitably involved in public-sector arbitration, and the combination of money and politics has a tendency to corrupt. "Combining all of these factors, the question, in my view, is not *whether* there will be a public scandal, but *when*, and *whom* it will involve."²⁰⁴ He was confident, however, that the arbitrator involved would not be a member of the Academy.

Clyde Summers, then a law professor at Yale and later at the University of Pennsylvania, spoke in 1974 about the individual employee's rights under the collective agreement.²⁰⁵ Summers began by describing the unusual fact situation that had pro-

²⁰⁰ Killingsworth, *Twenty-Five Years of Labor Arbitration—and the Future: I. Arbitration Then and Now*, in *Labor Arbitration at the Quarter-Century Mark*, Proceedings of the 25th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1973), 11; McDermott, *II. Some Developments in the History of the National Academy of Arbitrators*, *id.* at 27; Seward, *Labor Arbitration: The Early Years in Retrospect: V. The Twenty-Five Year Milestone*, *id.* at 61.

²⁰¹ Myers, *Twenty-Five Years of Labor Arbitration—and the Future: III. Arbitration in the Future*, *id.* at 35.

²⁰² *Id.* at 36.

²⁰³ *Id.* at 38.

²⁰⁴ *Id.* at 39 (emphasis in original).

²⁰⁵ Summers, *The Individual Employee's Rights Under the Collective Agreement: What Constitutes Fair Representation*, in *Arbitration—1974*, Proceedings of the 27th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1975), 14.

duced the landmark Supreme Court case of *Vaca v. Sipes*,²⁰⁶ which first applied the duty of fair representation to grievance handling. He went on to discuss the origins and meaning of the duty of fair representation, explaining the difference in flexibility needed by unions between negotiating and enforcing collective agreements. After drawing several general guidelines from the *Vaca* decision, Summers attempted to apply them to a series of sample cases. He concluded by stating the emerging standards of fair representation applied in contract administration. The only one of the five standards he listed that has not been accepted by the courts is the last, that unions owe represented employees "the fiduciary duty to use reasonable care and diligence in investigating and processing grievances on their behalf." Only in the 1990s did the Supreme Court finally decide to hold unions to a less onerous standard, rejecting "mere negligence" as well as the "fiduciary duty" standards and applying instead a test of "irrationality."²⁰⁷

As always, some excellent papers dealt with the practices and principles of arbitration, rather than with the Academy itself or the relationship between arbitration and external law. Some, like those of Rolf Valtin and Thomas McDermott in 1972, dealt with issues of immediate concern in that era like employer restrictions on employees' dress and grooming and on the impacts of drugs and bomb scares.²⁰⁸ Others, like Gabriel Alexander's 1971 examination of the use of arbitral discretion²⁰⁹ and Harold Davey's 1973 examination of "situation ethics,"²¹⁰ considered broad themes of

²⁰⁶ 386 U.S. 171, 64 LRRM 2369 (1967).

²⁰⁷ *Air Line Pilots v. O'Neill*, 499 U.S. 65, 136 LRRM 2721 (1991) (union's strike settlement is not actionable as a breach of the duty of fair representation because it was not "irrational"); *Steelworkers v. Rawson*, 495 U.S. 362, 372-73, 134 LRRM 2153 (1990) ("mere negligence, even in the enforcement of a collective-bargaining agreement, would not state a claim for breach of the duty of fair representation").

²⁰⁸ Valtin, *Changing Life Styles and Problems of Authority in the Plant: I. Hair and Beards in Arbitration*, in *Labor Arbitration at the Quarter-Century Mark*, Proceedings of the 25th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1973), 235; C. McDermott, *Drugs, Bombs and Bomb Scares, and Personal Attribs*, *id.* at 252.

²⁰⁹ Alexander, *Discretion in Arbitration*, in *Arbitration and the Public Interest*, Proceedings of the 24th Annual Meeting, National Academy of Arbitrators, eds. Somers & Dennis (BNA Books 1971), 84.

²¹⁰ Davey, *Situation Ethics and the Arbitrator's Role*, in *Arbitration of Interest Disputes*, Proceedings of the 26th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1974), 162. See also the pair of papers on credibility presented in 1978: Smith, *The Search for Truth: The Search for Truth—The Whole Truth*, in *Truth, Lie Detectors, and Other Problems in Labor Arbitration*, Proceedings of the 31st Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1979), 40; Mittenthal, *II. Credibility—A Will-o'-the-Wisp*, *id.* at 61.

perennial concern. Still others concentrated on specific industries or on specific interpretation problems.²¹¹

²¹¹ See, e.g., Rubin, *Arbitration of Wage Incentives: Three Perspectives: I. The Arbitration of Incentive Issues*, in *Arbitration of Subcontracting and Wage Incentive Disputes*, Proceedings of the 32nd Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1980), 92; Dybeck, *II. Arbitration of Wage Incentives From the Perspective of the Steel Industry*, *id.* at 105; Gomberg, *III. The Present Status of Arbitration Under Wage Incentive Payment Plans*, *id.* at 116; Sinicropi, *Revisiting an Old Battle Ground: The Subcontracting Disputes*, *id.* at 125; Volz, *Health and Medical Issues in Arbitration, Employee Benefit Plans, and the Doctor's Office: I. Medical and Health Issues in Labor Arbitration*, in *Truth, Lie Detectors, and Other Problems in Labor Arbitration*, Proceedings of the 31st Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1979), 156; Segal, *II. Employee Benefit Plans in Arbitration of Health and Medical Issues*, *id.* at 187.

5.1. THE ACADEMY AT WORK IN THE 1980s



Committee Chairs 1985: (left to right) James Stern (Academy History) and Walter Gershenfeld (Publications).



1985 Annual Meeting Planners: (left to right) President John Dunsford, Arrangements Chair Michael Beck, and Secretary-Treasurer Dallas Jones.



NAA Research and Education Foundation President Alex Elson.



1984 Annual Meeting Arrangements Chair Arthur Malinowski (also chaired Arrangements Committees for 1984 and 1985 Fall Continuing Education Conferences, all in Chicago).



Registration Specialists. (left to right) Dorothy Cantucci, Willa Moore, and Elaine Kahn.

5.2. THE ACADEMY AT PLAY IN THE 1980s



Academy Walkers—6:30 a.m.



Academy Talkers—
4:30 p.m.



White water rafters on the Columbia River, 1985.



Meeting break: (left to right) Joyce Najita, Gladys Gershenfeld, and Lois Rappaport.



Hawaii fun: (left to right) Dallas Jones (Academy president 1993), Alice Grant, and Jean McKelvey (Academy president 1970).

5.3. SEMINARS AND FUTURE DIRECTIONS

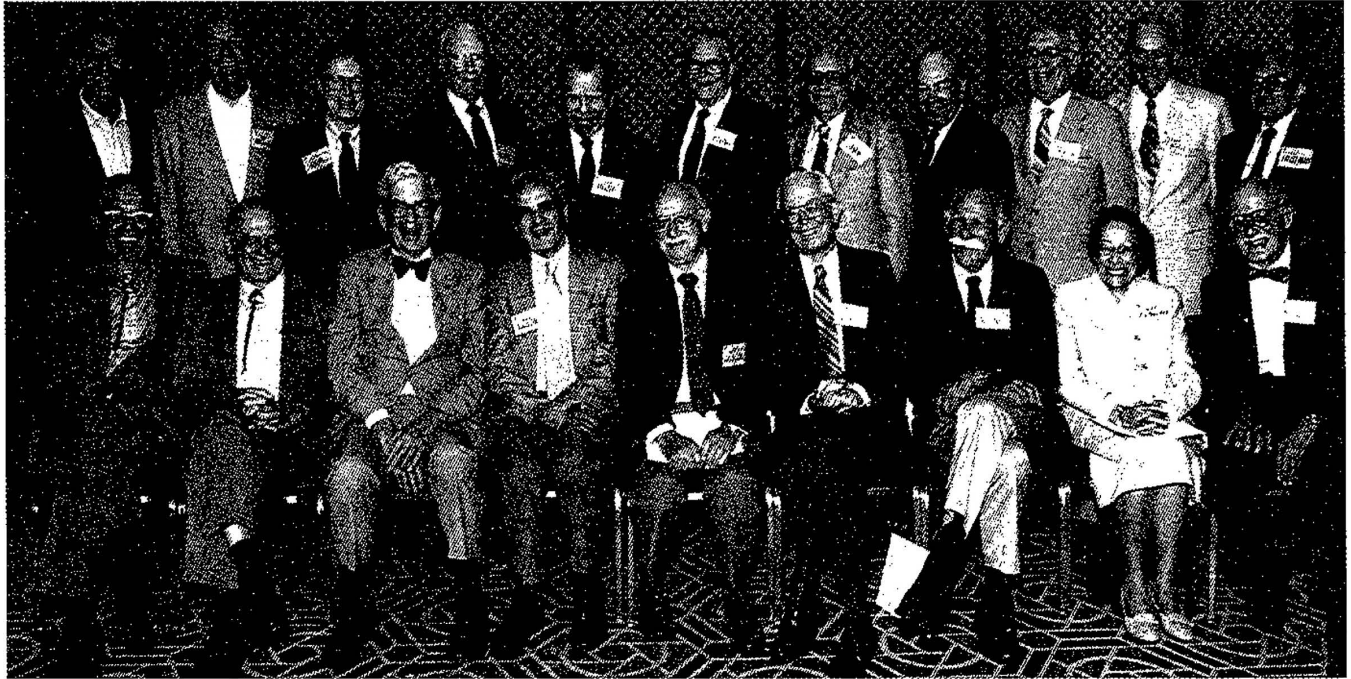


"Dog and Pony Show" Planners: (left to right) Arnold Zack and Richard Bloch.



Co-chairs, Future Directions Committee: (left to right) John Dunsford (Academy president 1984) and William Murphy (Academy president 1986).

5.4. FIRST 30-YEAR VETERANS, 1985 (Year of Entry)



Sitting: (left to right) William Simkin (1947), Sylvester Garrett (1952), Ralph Seward (1947), Alex Elson (1947), Bert Luskin (1950), Byron Abernethy (1947), Harry Rains (1949), Jean McKelvey (1947), Robert Koretz (1955). **Standing** (left to right) Eli Rock (1954), Frederick Bullen (1949), Mark Kahn (1955), Clair Duff (1955), Louis Yagoda (1950), Dallas Young (1954), Arthur Stark (1951), Patrick Fisher (1953), Allan Dash (1947), George Bowles (1953), Milton Friedman (1954).

5.5. THE 30-YEAR CERTIFICATE

The National Academy of Arbitrators
Hereby Expresses
Its Most Sincere and Profound Appreciation
to

A Member in Good Standing for Thirty Years

In recognition of your contributions to the Academy
and to the process of internal dispute settlement through labor arbitration,
we take this opportunity to convey
our gratitude, respect and affection.

Presented by

The Board of Governors and the Membership
this 29th day of May, 1983.



President

John E. Wainwright

Secretary-Treasurer

Dallas L. Jones

Revised 1979 Printing - C-1000-83

5.6. THE 1986 ANNUAL MEETING IN PHILADELPHIA (London Wild-Card Replacement)



(left to right) Thomas Roberts (Academy president 1988), James Oldham, Joseph Sharnoff, and Chester Brisco.



(left to right) Theodore St. Antoine and Benjamin Aaron (Academy president 1962).



Lewis Gill (Academy president 1971).



(left to right) Mary Wallen (Mrs. Saul), Jean McKelvey (Academy president 1970), and Alice Grant.



(left to right) Reginald Alleyne, Joseph Henderson, and Gladys Gershenfeld.

5.7. REGIONAL LEADERS, 1980s



Two Coasts Meet: (left to right) William Rule of Southern California Region and James Harkless of District of Columbia Region.



National Regional Coordinators: (left to right) Edwin Teple and James Sherman.



Regional Chairs Meeting, 1984.

CHAPTER 5

STABILIZATION AND CHALLENGES: THE 1980s

The Labor Relations Environment

Economics and Collective Bargaining

Problems facing the U.S. economy in the 1970s continued into the 1980s, marked by the impact of structural shifts brought on by intensified deregulation and foreign competition. At the bargaining table negotiators grappled with ways to restrain labor costs, increase productivity, and preserve jobs. Other issues included the rising cost of health insurance, family care, and health and safety. Employers and unions abandoned longstanding bargaining patterns in their search for new approaches to rapidly shifting economic conditions. The number of work stoppages continued the downward trend,¹ and labor-management cooperation became the rallying cry to achieve the dual aims of job preservation and increased productivity.

In 1982, business failures rose to the highest level since the Great Depression, and factory use fell to the lowest level in over 30 years.² Cycles of recession and recovery exacerbated the decline of the major manufacturing industries. The economic downturn forced most unions to adopt a concession/cooperation strategy. Concessions took the form of wage reductions, two-tier wage systems, and work-rule changes. Lump-sum payments replaced automatic cost-of-living increases. Employees were encouraged or required to minimize health care costs by using preferred provider organizations (PPOs) and health maintenance organizations (HMOs).

¹U.S. Bureau of Census, *Table No. 669: Work Stoppages, 1960-1991*, Statistical Abstract (1992), 420. The number of strikes in nonagricultural work sites with over 1,000 employees dropped from 381 in 1970, to 187 in 1980, to 44 in 1990. By the end of the decade, strikes caused a loss of only 0.02% of hours worked, the lowest ever recorded.

²U.S. Bureau of Census, *Table No. 1369, Capacity Utilization Rates in Manufacturing, 1965 to 1982*, Statistical Abstract (1984) 765; U.S. Bureau of Census, *Table No. 1137, Manufacturing—Relation of Output to Capacity, By Processing Industries Groups: 1950 to 1971*, Statistical Abstract (1971), 688.

Suffering from high fuel costs, foreign compact-car competition, and the unstable economy, the auto industry registered sluggish sales, and continuing losses, layoffs, and plant closings. In the fourth quarter of 1980, General Motors (GM), Ford, Chrysler, and American Motors reported combined losses of \$1.65 billion.³ In exchange for wage concessions, Chrysler offered UAW President Douglas Fraser a seat on its board of directors, the American auto industry's first example of formal union participation in management. In 1982, Ford and GM followed with Mutual Growth Forums to give UAW workers influence in management decisions.⁴ Other initiatives in the auto industry included plans to protect workers against layoffs due to technology, outsourcing, and plant closings. For example, at its Saturn plant, GM promised permanent job security to 80 percent of the workers;⁵ at Mazda, where the UAW negotiated its first contract with a Japanese-controlled auto manufacturer, the collective bargaining agreement banned layoffs and outsourcing.⁶

In the steel industry, foreign competition and a worldwide slump in demand caused more plant closings and layoffs. In the last quarter of 1980, U.S. Steel Corporation posted a loss of \$668.9 million, the largest quarterly loss of any single firm in U.S. history.⁷ LTV filed for protection from creditors under Chapter 11 of the Federal Bankruptcy Code. Steel bargainers faced the most complex and difficult period of negotiations in their post-World War II history. The major steel producers dissolved their association, ending pattern bargaining for the industry.⁸ In 1980, the

³Ruben, *Industrial Relations in 1980 Influenced by Inflation and Recession*, 104 Monthly Lab. Rev. 15 (Jan. 1981) (hereinafter MLR 1981).

⁴Ruben, *Collective Bargaining in 1982: Results Dictated by Economy*, 106 Monthly Lab. Rev. 28 (Jan. 1983) (hereinafter MLR 1983); see also Katz & MacDuffie, *Collective Bargaining in the U.S. Auto Assembly Sector*, in Contemporary Collective Bargaining in the Private Sector, ed. Voos (IRRA 1994), 181 (hereinafter IRRA 1994).

⁵*Auto Workers Board Approves Agreement for General Motors' Saturn Subsidiary*, 1985 Daily Lab. Rep. (BNA) (July 29, 1985), No. 145: AA-1. Saturn did not start production until July 1990. Cf. Overman, *Saturn Teams: Working and Profiting*, HRM Magazine (Mar. 1995), 72; Bennett, *New Industrial Relations and Industrial Justice: III. The Saturn Experience: A Union Viewpoint*, in *Arbitration 1991: The Changing Face of Arbitration in Theory and Practice*, Proceedings of the 44th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1992), 179.

⁶Ruben, *Collective Bargaining in 1989: Old Problems, New Issues*, 113 Monthly Lab. Rev. 19, 27 (Jan. 1990) (hereinafter MLR 1990).

⁷MLR 1981, *supra* note 3, at 15.

⁸Ruben, *A Review of Collective Bargaining in 1987*, 111 Monthly Lab. Rev. 24, 28 (Jan. 1988) (hereinafter MLR 1988); Ruben, *Labor-Management Scenes in 1986 Reflects Continuing Difficulties*, 110 Monthly Lab. Rev. 37, 39 (Jan. 1987) (hereinafter MLR 1987).

steel industry instituted "participating teams" consisting of workers and first-line supervisors. These teams aimed to improve output, employee morale, and working conditions.⁹ Nevertheless, in 1986, the Steelworkers conducted a six-month strike at USX (U.S. Steel's successor), the longest work stoppage in the industry's history.¹⁰

In telecommunications, deregulation combined with advanced technology to threaten job security. In 1950, the industry needed 148 workers per 10,000 telephones; by 1979, only 60.¹¹ The 1984 court-ordered breakup of the Bell system disrupted collective bargaining until 1986. After a 25-day strike by the Communications Workers of America (CWA), AT&T set the pattern for the industry by emphasizing job security, including a jointly financed training program for emerging jobs. To aid employees in job changes, the agreements with the CWA and the IBEW also provided for an annual report informing employees of emerging jobs and skills. Other Bell system operating companies adopted similar programs, but complete contract uniformity in the industry was abandoned.¹²

Federal deregulation upset collective bargaining patterns in the airline and trucking industries. Airline unions suffered a double blow. In the late 1970s, President Jimmy Carter endorsed deregulation in federally controlled industries to promote competition and lower consumer prices, and the Reagan administration continued that policy in the 1980s. Most of the newly formed companies that took advantage of deregulation remained nonunion. Under the Reagan administration the Department of Transportation took a harder line in bargaining with its own employees. After contract negotiations broke down in 1981, the Professional Air Traffic Controllers Organization (PATCO) called a strike, violating both federal law and its members' oaths. President Ronald Reagan immediately discharged all PATCO strikers, who refused to return to work, and the Federal Labor Relations Authority decertified PATCO as the representative of air traffic controllers. By the next year 17,000 employees in the airline industry, 6 percent of the industry's work force, had lost their jobs as a result of deregulation, competition from new carriers, and the PATCO

⁹MLR 1981, *supra* note 3, at 18; see also Arthur & Smith, *The Transformation of Industrial Relations in the American Steel Industry*, IRRA 1994, *supra* note 4, at 135.

¹⁰MLR 1988, *supra* note 8, at 28.

¹¹MLR 1981, *supra* note 3, at 18.

¹²MLR 1988, *supra* note 8, at 30; see also Keefe & Boroff, *Telecommunications Labor-Management Relations After Divestiture*, IRRA 1994, *supra* note 4, at 303.

strike. High interest rates and increases in fuel costs also played a role in the airline industry's plight. Wage concessions as high as 10 percent were common.¹³ In trucking, after the passage of the Motor Carrier Deregulation Act of 1980, 8,000 nonunion firms entered the industry, leading to the demise of 234 unionized firms in 1982.¹⁴

Decreased consumer demand combined with increased competition to close unionized plants in the meat-packing industry. Union members tried, without much success, to avert plant closings by concession bargaining. Some firms reopened nonunion under other names. New employers paid wages far below contractual scale and used fewer employees because of more efficient processing, distribution, and packaging techniques.¹⁵ Other companies filed for bankruptcy, thereby avoiding collective bargaining under existing agreements. Alleging that employers were using Chapter 11 of the Federal Bankruptcy Code to escape their collective bargaining obligations under the National Labor Relations Act, unions sought the aid of the National Labor Relations Board. Although the Board found a refusal-to-bargain violation in such a situation, the U.S. Supreme Court did not agree. In *Bildisco*,¹⁶ the Court held that an employer could lawfully terminate a union contract if the bankruptcy court found that the contract prevented financial recovery. Congress disagreed with the Court's ruling and promptly legislated it into oblivion.¹⁷ By then, however, the tactic had already caused painful adjustments.

The United Mine Workers of America (UMW) continued to fight concession demands, especially those threatening job security. In 1981, the UMW ended its 63-day strike against members of the Bituminous Coal Operators Association (BCOA) only when the 130 BCOA members agreed to avoid contracting out work and leasing coal operations when such action would cause miners to lose work they had traditionally performed.¹⁸

¹³MLR 1983, *supra* note 4, at 32.

¹⁴See Belzer, *The Motor Carrier Industry: Truckers and Teamsters Under Siege*, IRRÁ 1994, *supra* note 4, at 259.

¹⁵MLR 1983, *supra* note 4, at 31; see also Craypo, *Meatpacking: Industry Restructuring and Union Decline*, IRRÁ 1994, *supra* note 4, at 63.

¹⁶*NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 115 LRRM 2805 (1984).

¹⁷Bankruptcy Amendment and Federal Judgeship Act, Pub. L. No. 98-353, 98 Stat. 333, which forbids unilateral cancellation of union contracts prior to bankruptcy court proceedings.

¹⁸Ruben, *Collective Bargaining and Labor-Management Relations*, 1983, 112 Monthly Lab. Rev. 25, 31 (Jan. 1989) (hereinafter MLR 1989).

Family care was another hot collective bargaining subject in the late 1980s. In 1987, the International Ladies' Garment Workers' Union negotiated a six-month unpaid, job-protected leave for either parent to accommodate births and adoptions.¹⁹ Both CWA and IBEW successfully bargained with AT&T to increase the unpaid-leave periods to 12 months for births and adoptions and to 12 months within a two-year period for family illness. The contracts also provided for a \$5,000 annual tax-free deposit into a dependent-care reimbursement account. The Steelworkers negotiated a 30-day unpaid leave for births, adoptions, and family illness.²⁰ Both Ford and Boeing agreed to family care plans, while Chrysler started a child care center at a plant in Anniston, Alabama.²¹

Union Developments

To achieve economies of scale by reducing costly duplication of expenditures, unions continued to merge. Among the 48 mergers in the 1980s, the Service Employees International Union accounted for 9; the International Association of Machinists, 5; the United Food and Commercial Workers, 5; and the Communications Workers of America, 5.²² Several international unions that had "disaffiliated" from the AFL-CIO came back to the fold: the UAW in 1981, the Teamsters in 1987, the International Longshoremen's and Warehousemen's Union in 1988, and the UMW in 1989.²³

In the 1980s, union density in the private sector continued to decline while remaining relatively stable in the public sector. Available data indicate that union membership fell from 16.8 percent of the private nonagricultural work force in 1983 to 12.4 percent in 1989; union membership remained at 36.7 percent of government (federal, state, and local) employment in both years.²⁴

¹⁹ *Six-Month Parental Leave, Jury Duty Pay Highlight New Pacts for Undergarment Workers*, 1987 Daily Lab. Rep. (BNA) (July 23, 1987), No. 1: A-5.

²⁰ MLR 1990, *supra* note 6, at 20. These contractual initiatives presaged passage of the Family and Medical Leave Act of 1993, 26 U.S.C. §2601, which became effective August 5, 1993.

²¹ *Id.* at 24.

²² Williamson, *Union Mergers: 1985-94 Update*, 118 Monthly Lab. Rev. 18 (Feb. 1995).

²³ *Id.* In 1947, United Mine Worker President John L. Lewis sent a terse note to AFL President William Green: "We disaffiliate!" In 1989, UMW President Richard Trumka echoed Lewis's terseness, if not his sentiment, by writing to AFL-CIO President Lane Kirkland: "We affiliate."

²⁴ U.S. Bureau of Census, *Table No. 697, Union Members by Selected Characteristics, 1983 and 1989*, Statistical Abstract (1991), 425. It is difficult to obtain comparable data on union membership in the 1980s because the Reagan administration discontinued most labor union data collection. In 1984, the Industrial Relations Research Association held three

Arbitration Developments

After the passage of the Civil Service Reform Act (CSRA) in 1978, federal-sector interest and grievance arbitration accelerated, although union membership remained relatively unchanged. Many Academy members avoided federal arbitration cases for two reasons: the laws, rules, and regulations cited in the parties' collective bargaining agreements required arbitrators to review complicated exhibits to support their awards, and frequent appeals to the Federal Labor Relations Authority threatened the finality of awards. Federal-sector arbitration became an important topic at Academy annual meetings.

Eva Robins, in her 1980 presidential address, warned the parties that their "killer instincts" were setting private-sector arbitration on the path of appeals and reviews previously limited to the public sector.²⁵ At the same meeting, John Kagel expounded on the problems with federal-sector arbitration under the CSRA.²⁶ However, Arvid Anderson, chairman of New York City's Office of Collective Bargaining at the time, urged that "the best arbitrators . . . [should] be willing to do the 'heavy lifting' that is required in interest arbitration cases."²⁷ In 1989, federal-sector arbitration occupied a significant part of the program, suggesting that Academy members were finally anxious to learn about the process.²⁸

sessions on the occasion of the U.S. Bureau of Labor Statistics 100th anniversary. Many speakers decried the abolition of most industrial relations series; see, especially, Burdetsky, *The U.S. Bureau of Labor Statistics: 100 Years of Service and Support to the Industrial Relations Community*, Proceedings of the 37th Annual Meeting, Industrial Relations Research Association (1984), 36. "In 1982 the BLS discontinued its Directory of National Unions and Employee Associations, which provided union membership figures and other items of interest to the industrial relations community . . . at the same time in 1982 there were reductions in work stoppage computation, a reduction in the wage collection programs, and cuts in analysis of labor contract files." *Id.* at 40.

²⁵Robins, *The Presidential Address: Threats to Arbitration*, in *Arbitration Issues for the 1980s*, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1982), 1, 10.

²⁶Kagel, *Grievance Arbitration in the Federal Service: Still Hardly Final and Binding?*, *id.* at 178; see also McKee, *Federal Sector Arbitration*, in *Arbitration 1991: The Changing Face of Arbitration in Theory and Practice*, Proceedings of the 44th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1992), 187; Ross, *Comment*, *id.* at 194; Williams, *Comment*, *id.* at 197.

²⁷Anderson, *Outer Limits of Interest Arbitration: Australian, Canadian, and United States Experiences: III. The U.S. Experience*, in *Arbitration Issues for the 1980s*, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1982), 94, 107. In his distinguished speaker address, Supreme Court Justice William J. Brennan, Jr., would express this same sentiment at the 1991 Annual Meeting. Brennan, *Arbitration in a Changing Environment*, in *Arbitration 1991: The Changing Face of Arbitration in Theory and Practice*, Proceedings of the 44th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1992), 1, 10.

²⁸Ross, *Arbitration in the Federal Sector: I. A Panel Discussion*, in *Arbitration 1989: The Arbitrator's Discretion During and After the Hearing*, Proceedings of the 42nd Annual

Inevitably following trends in union membership, arbitration appointments by the FMCS fell from a peak of 13,911 in 1980²⁹ to a low of 9,652 in 1988.³⁰ As a result, Academy members looked for new opportunities in alternative dispute resolution (ADR), notably challenges to employment-at-will terminations and litigation alleging violation of antidiscrimination laws (Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act (ADEA), and Americans with Disabilities Act). Even nonunion employers were considering ADR as a cost-saving device to avoid mounting damage awards in employment litigation. Although ADR would not come to full fruition until the 1990s,³¹ Academy members realized that competition from commercial arbitrators and mediators would undermine the labor arbitration profession unless the Academy took a more proactive role in continuing education.

Finally, some of the older challenges to the arbitration profession persisted, summarized by Robben Fleming at the 1984 Annual Meeting:

As for the state of arbitration, I think the signs are generally favorable but with some clouds appearing on the horizon. The most serious, in my view, is whether in another decade or two the present criticisms as to cost, timeliness, technicalities, and isolation from the world of work will have escalated.³²

This relatively optimistic view was countered just two years later, when Thomas Kochan, MIT professor of management, warned the Academy that the "transformation" of the industrial relations system would surely cause a "slow erosion in the demand for arbitration."³³ Academy members began to feel the full impact of this prediction at the end of the decade.

Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1990), 204; Kansier, *id.* at 205; Mulholland, *id.* at 210; Dailey, *id.* at 216; Ferris, *id.* at 221; *see also* Harkless, II, *FLRA Review of Arbitration Awards*, *id.* at 229.

²⁹Federal Mediation and Conciliation Service, Annual Report (1981), 36.

³⁰Federal Mediation and Conciliation Service, Annual Report (1989), 24.

³¹Alternative dispute resolution would be propelled by enabling decisions like *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 55 FEP Cases 1116 (1991), which undercut the Court's perceived antiarbitration stance in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 7 FEP Cases 81 (1974).

³²Fleming, *Reflections on Labor Arbitration*, in *Arbitration 1984: Absenteeism, Recent Law, Panels, and Published Decisions*, Proceedings of the 37th Annual Meeting, National Academy of Arbitrators, ed. Gershenfeld (BNA Books 1985), 11, 19.

³³Kochan, *Labor Arbitration and Collective Bargaining in the 1990s: An Economic Analysis*, in *Arbitration 1986: Current and Expanding Roles*, Proceedings of the 39th Annual Meeting, National Academy of Arbitrators, ed. Gershenfeld (BNA Books 1986), 44, 46.

External Law

In contrast to the 1960s and 1970s, the 1980s were not years of great external law developments affecting arbitration. There was no significant legislation dealing with labor arbitration and most of the Supreme Court cases simply affirmed or explained earlier decisions. For example, in *AT&T Technologies v. Communications Workers*,³⁴ the Court reiterated that questions of substantive arbitrability were for courts, not arbitrators, to decide. Even the *Bildisco* case³⁵ mentioned above, which could have been significant, was quickly reversed by Congress. There were, however, two exceptions, one with little impact on arbitration, the other with great impact.

The lesser exception occurred in the area of union security. In a series of cases during the 1980s, the Supreme Court held that unions must provide fair procedures through which nonunion employees could challenge the expenditure of dues and fees they were required to pay under union-shop and agency-shop arrangements.³⁶ The required procedures included provision for an impartial decision maker, so arbitration was a likely candidate. There have, in fact, been a number of agency-fee arbitrations resulting from these decisions. Nevertheless, because the amount of money at issue is small and few employees know their legal rights, formal complaints are rare.³⁷

The greater exception involved the "public policy" ground for reviewing arbitration awards. As Congress passed more laws regulating labor conditions (e.g., Title VII, Occupational Safety and

³⁴475 U.S. 643, 121 LRRM 3929 (1986). In this case, the Academy submitted its first amicus brief to the U.S. Supreme Court. David Feller, who prepared the brief, reported to the Board of Governors that, "while the Court's decision . . . did not go as far as hoped, it did solidify the law as set forth in the Trilogy decisions." He added that two sentences in the Court's decision were taken directly from the brief—one of "critical importance," which read: "While arguable or not, even if it appears to be frivolous, the union's claim that the employer violated the collective bargaining agreement is to be decided not by the Court as to order arbitration but as the parties have agreed by the arbitrator." Minutes, Board of Governors, June 2, 1986, 14; Minutes, Annual Membership Meeting, June 4, 1986, 15. NAA Archives.

³⁵*NLRB v. Bildisco & Bildisco*, *supra* note 16.

³⁶*Communications Workers v. Beck*, 487 U.S. 735, 128 LRRM 2729 (1988); *Chicago Teachers Union Local 1 v. Hudson*, 475 U.S. 292, 121 LRRM 2793 (1986); *Ellis v. Railway, Airline & S.S. Clerks*, 466 U.S. 435, 116 LRRM 2001 (1984).

³⁷In 1992, President George Bush attempted to remedy employees' lack of knowledge about these Court rulings by issuing Executive Order 12800, which required federal contractors to post a notice that workers need not join or pay dues to unions. On February 1, 1993, President William Clinton's Executive Order 12836 rescinded Bush's order. 58 Fed. Reg. 7045 (1993). Cf. *California Saw & Knife Works*, 320 NLRB No. 11, 151 LRRM 1121 (1995).

Health Act, and ADEA), courts inevitably had to decide the proper relationship between contractual and statutory remedies. One aspect of that issue was fairly simple. *Alexander v. Gardner-Denver Co.*,³⁸ which held that the existence of a negotiated arbitration remedy did not bar an employee from access to federal statutory remedies for alleged racial discrimination, was followed in the 1980s by similar decisions involving section 1983 of the Civil Rights Act of 1871 and Fair Labor Standards Act litigation.³⁹ Another aspect has proven more problematic. To what extent may a court rely on an alleged conflict between external law and an arbitration award as a basis for overturning the award? As David Feller predicted in 1976, lower federal courts subjected arbitration to increased scrutiny as more statutes impinged on the employment relationship.⁴⁰

In 1983, the Supreme Court opened the door on this issue. In *W.R. Grace & Co. v. Rubber Workers Local 759*,⁴¹ it stated that "a court may not enforce a collective bargaining agreement that is contrary to public policy" and that "the question of public policy is ultimately one for resolution by the courts."⁴² With that opening, lower courts began to label decisions with which they disagreed as "contrary to public policy."⁴³ Four years later, in *Paperworkers v. Misco, Inc.*,⁴⁴ the Court tried to slow that trend by emphasizing that courts could refuse enforcement only where the asserted public policy was " 'well defined and dominant,' " as ascertained " 'by reference to the laws and legal precedents and not from general considerations of supposed public interests.' " ⁴⁵ Referring to a case in which a federal court overturned an arbi-

³⁸ *Alexander v. Gardner-Denver Co.*, *supra* note 31.

³⁹ *McDonald v. City of West Branch, Mich.*, 466 U.S. 284, 115 LRRM 3646 (1984) (section 1983); *Barrattine v. Arkansas-Best Freight Sys.*, 450 U.S. 728, 24 WH Cases 1284 (1981) (Fair Labor Standards Act). In 1991, the Supreme Court seemed to backtrack from the *Alexander* approach in *Gilmer v. Interstate/Johnson Lane Corp.*, *supra* note 31.

⁴⁰ Feller, *The Coming End of Arbitration's Golden Age*, in *Arbitration—1976, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators*, eds. Dennis & Somers (BNA Books 1976), 97.

⁴¹ 461 U.S. 757, 113 LRRM 2641 (1983).

⁴² *Id.* at 766, 113 LRRM at 2645.

⁴³ See Melzer, *Arbitration and the Courts: Is the Honeymoon Over?: II. After the Arbitration Award: The Public Policy Defense*, in *Arbitration 1987: The Academy at Forty, Proceedings of the 40th Annual Meeting, National Academy of Arbitrators*, ed. Gruenberg (BNA Books 1988), 39.

⁴⁴ 484 U.S. 29, 126 LRRM 3113 (1987).

⁴⁵ *Id.* at 43, 126 LRRM at 3119 (quoting *Muschany v. United States*, 324 U.S. 49, 66 (1945)). The Academy submitted a strong amicus brief, drafted by David Feller, that urged the Court to continue its policy of limiting judicial review of arbitration awards.

trator's reinstatement of a mechanic discharged for failing to tighten lug nuts on a wheel, Judge Frank Easterbrook of the Court of Appeals for the Seventh Circuit told the Academy in 1991 that the Supreme Court's admonitions had "as much effect on the way judges do their work as the supervisor's instructions had on the auto mechanic's method of tightening lug nuts."⁴⁶

The National Labor Relations Board issued two major decisions on deferral to arbitration. In *Olin Corp.*,⁴⁷ the Board announced that it would defer to awards if the contractual issue was "factually parallel" to the unfair labor practice issue and if the arbitrator was "presented generally with the facts relevant to resolving the unfair labor practice," unless the decision was "palpably wrong."⁴⁸ That would be so, said the Board, even if the arbitrator did not actually decide the unfair labor practice issue. Moreover, the party seeking a Board decision would have to prove that these broad standards for deferral had not been met. In *United Technologies Corp.*,⁴⁹ the Board once again extended its preaward deferral policy (the *Collyer*⁵⁰ doctrine) to cases alleging violations of individual rights (e.g., the right not to be discriminated against because of union activity) as well as collective rights (such as the right to bargain before an employer makes a unilateral change in working conditions).

Academy-Sponsored Education and Training

Education and training were the Academy's main concerns during the 1980s. Throughout the decade, the members struggled with the questions of whether and how to encourage development of new arbitrators and how to sharpen members' skills.

Early Initiatives

Changes in legislation and collective bargaining during the 1970s highlighted the need to reevaluate Academy policies toward

⁴⁶Easterbrook, *Arbitration, Contract, and Public Policy*, in *Arbitration 1991: The Changing Face of Arbitration in Theory and Practice*, Proceedings of the 44th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1992), 65, 67, referring to *Stead Motors of Walnut Creek v. Machinists Lodge 1173*, 886 F.2d 1200, 132 LRRM 2689 (9th Cir. 1989). A panel of the Court of Appeals for the Ninth Circuit had previously struck down the award on public policy grounds, but the Ninth Circuit en banc upheld it.

⁴⁷268 NLRB 573, 115 LRRM 1056 (1984).

⁴⁸*Id.* at 574, 576.

⁴⁹268 NLRB 557, 115 LRRM 1049 (1984).

⁵⁰*Collyer Insulated Wire*, 192 NLRB 837, 77 LRRM 1931 (1971).

education and training. Since its founding, the Academy had sought to improve its members' competence and to upgrade the standards of the arbitration profession.⁵¹ However, except for the Code of Ethics and Procedural Standards update in 1975, no formal action had been taken to implement these goals. By 1980, Academy membership had grown to more than 500.⁵²

The membership remained ambivalent about training programs. From the 1970s on, outside agencies, such as universities and the American Arbitration Association (AAA), shouldered the training burden.⁵³ Many members questioned whether the Academy should take a more active role in training new arbitrators.⁵⁴ Others regarded development of new arbitrators as increasing competition during a period of declining arbitration activity.⁵⁵ However, there was a growing consensus that court challenges and changes in the types of arbitration cases, particularly those paralleling legislation, required continuing education to maintain the quality of Academy membership and preserve the reputation of the arbitration profession.

When Eva Robins was elected Academy president in 1980, she selected arbitrator education as a major commitment.⁵⁶ Her election seemed to be a clear signal that the public sector had become an influential player in the arbitration profession. In 1960, after many years as a mediator and arbitrator with the New York State Board of Mediation, Robins had been the third woman admitted to Academy membership (among slightly more than 250 male members).⁵⁷ In 1970, she succeeded Eli Rock as chair of the Public Employment Disputes Settlement Committee, established the

⁵¹The Academy's constitution lists first among its purposes establishment and fostering of "the highest standards of integrity, competence, honor, and character" among labor arbitrators. Constitution and By-Laws, Article II, section 1, NAA Archives.

⁵²The Membership Directory (1980-81) lists a rounded 500 members, but the Secretary's Report (June 1980) lists 515 members. Bloch Files, NAA Archives.

⁵³See, e.g., Chapter 4, text, at note 52.

⁵⁴See, e.g., letter from Secretary Richard Bloch to President Eva Robins, June 19, 1980: "My own judgment is that even the best of training programs . . . have been only marginally successful in terms of producing acceptable arbitrators. These were expensive undertakings . . . and involved extraordinary amounts of time and effort in the planning and execution." Bloch Files, NAA Archives.

⁵⁵See Seitz, *A Sonnet Designed to Discourage Any New Academy Programs for the Development of Pubescent Arbitrators*, The Chronicle (NAA, Sept. 1980), reproduced on the next page. See also Chapter 3, text, at note 85.

⁵⁶Robins, President's Report to the Board of Governors (August 1980), Robins Files, NAA Archives; cf. Robins Presidential Interview, June 1, 1989, NAA Archives.

⁵⁷Membership Directory (1960-61); see also Secretary's Report (January 1960), Alexander Files, NAA Archives.

The Poets' Corner

Sonneteer Seitz has submitted the following stanzas expressing his frustration at the proliferation of young arbitrators and the programs that develop the breed.

A Sonnet Designed to Discourage Any New Academy Programs For the Development of Pubescent Arbitrators

Time was when little kids of nine or ten
 In fantasy would dream of their careers,
 Vocationally, in a world of men
 As cops, or locomotive engineers.
 And little girls, so far as one could see,
 Would play with dolls or cook a mess of fudge
 In preparation for maturity
 When they will serve as household wife and drudge.
 Today, those little boys and girls require
 A higher and more profitable Fate;
 And nothing less will satisfy desire
 Than that they be retained to arbitrate!

They leap out of their cribs and incubators
 And in a flash, they're Instant Arbitrators!

You will note Peter Seitz has chosen the more modern Shakespearian sonnet form, ending with a couplet (rhyme scheme abab cdcd efef gg, circa 1620 A.D.), instead of the more conservative Italian sonnet (rhyme scheme abba abba cdecde, circa 1500 A.D.).

In contrast to this compressed and dignified poetic offering is the following undisciplined limerick (a nonsense verse form) submitted by an anonymous, inexperienced and presumably pubescent arbitrator. With apologies to poetry purists, but in the interest of fairness, it too is included in "The Poets' Corner."

A Sage Arbiter once drew his sword,
 And chided the clamoring horde:
 "You impatient rash youth
 Are all acting uncouth,
 Get yourselves a New War Labor Board."

Notes: Reproduced from *The Chronicle* (NAA, Sept. 1980).

previous year by President James Hill.⁵⁸ Although she had opposed special affirmative action membership standards for women and minority arbitrators, she firmly believed that the Academy was not doing enough to train new arbitrators.⁵⁹ Secretary Richard Bloch, who had been involved with a number of ad hoc continuing education programs, warned about their quality:

I am concerned about not only the quality of those programs, but also the specter of Academy sponsorship being seen as potential endorsement of the candidates. . . . I simply want to warn you that these efforts could easily be seen as just one more of a series of "quickie programs" of questionable value due to either the participants or the parties.⁶⁰

Eventually budget constraints and lack of membership interest prevented Robins from accomplishing her stated presidential goal of a continuing education program.⁶¹ As a result, she relied on training programs organized by the Academy's regions with the assistance of universities and the AAA.⁶²

Regions responded to Robins's leadership in various ways. Some increased their activity enthusiastically. For example, California Regional Chair William Rule wrote:

Since so few members can attend the Annual Meeting, it would seem to follow that active regions will be increasingly important in a growing Academy and motivation of new members.⁶³

He suggested a special meeting for regional chairs at the annual meeting and permission for them to attend the Board of Governors meeting, and he recommended that the Academy provide training material and canvass members for suggestions. District of Columbia Regional Chair Joseph Sickles went even further and suggested that each region be represented on the Membership

⁵⁸ NAA, Officers, Governors, and Committee Chairmen from 1947, NAA Archives.

⁵⁹ Robins insisted that "being a success has nothing to do with sex." She was motivated primarily by a desire to "pay back the loan of help" from people at the New York State Mediation Board like James Hill, Arthur Stark, Ben Roberts, Milton Friedman, and Howard Gamser, all of whom became Academy members. Robins Presidential Interview, *supra* note 56. See also Robins & Seitz, *Not Training But Sharing*, 37 Arb. J. at 41-45 (Sept. 1982).

⁶⁰ Letter from Secretary Richard Bloch to President Eva Robins, *supra* note 54.

⁶¹ See discussion of Academy finances, *infra*, text accompanying notes 188-214.

⁶² Robins, President's Report to the Board of Governors (October 1980), Bloch Files, NAA Archives.

⁶³ Letter from William Rule to President Eva Robins, June 21, 1980, Bloch Files, NAA Archives.

Committee to screen new applicants. Characterizing this latter recommendation as a "hassle," President Robins warned Secretary Bloch that her next telephone call would take "lots of time" to discuss this matter.⁶⁴

Regions also began to request copies of the training guides developed in 1979 under Arnold Zack's chairmanship of the Seminars Committee. Available discussion guides covered the following subjects:

1. Deciding the Case
2. Disciplinary Grievance Arbitration
3. Evidence
4. Arbitration of Job Evaluation Cases
5. Problems in Mediation
6. Office Practices
7. Tripartite Panels
8. External Law in Arbitration
9. Remedies

Additional material on file in the secretary's office included transcripts on federal-sector grievance arbitration, a medical seminar, office practice and external law, evidence and remedies, and the origins and development of the Academy.⁶⁵

Some restrictions over control of these training materials, especially the training videos (the so-called Zack-Bloch "dog and pony show"), slowed their use.⁶⁶ As Secretary Bloch explained to Northwest Regional Chair J.B. Gillingham:

... The video tape materials now existing have been prepared privately by Arnold Zack and myself for use in a lecture series we have been presenting for the past several years. While we are delighted to bring them to regional and other Academy meetings whenever we can ... we have not been able to send the tapes themselves. However, the Academy is now in the process of producing some

⁶⁴Letter from President Eva Robins to Secretary Richard Bloch, September 30, 1980, Bloch Files, NAA Archives.

⁶⁵Letter from Continuing Education Committee Chair Anthony Sinicropi to committee members, January 31, 1984, summarizing the history of Academy continuing education; see also letter from Secretary Richard Bloch to Charles Weintraub, December 1, 1981, listing the nine discussion guides in a somewhat different order, but not mentioning the transcripts. Bloch Files, NAA Archives.

⁶⁶Zack Presidential Interview, June 3, 1993, NAA Archives. Zack and Bloch had produced the videos and played the roles of union and management advocates. While they had no objection to using the videos in Academy training programs, they did not want them shown at meetings attended by advocates. Eventually they produced another video with different participants that was shown at the public portions of Academy meetings. Interview with Arnold Zack, March 17, 1996.

tapes for training purposes and these will be available in the near future.⁶⁷

Bloch requested that Zack help to find a solution to the video ownership-use problem:

I have a number of requests for use of the Academy video tapes. I need a policy. Please think one up. . . . When you reach a suggested result, I will check with the Executive Committee and take appropriate steps.⁶⁸

In support of training activities, Zack wrote:

I have become increasingly convinced that us "fat cats" had better be doing more to train non-Academy members to avoid louder accusations that we are elitists or that we have "pulled up the ladder" once on board.⁶⁹

To improve the Academy's educational potential, Robins consolidated the Oral History, Continuing Education, and Research committees as subsections of the new Research and Education Committee under Francis Quinn's general chairmanship. She strengthened the Committee for Development of Arbitrators by establishing three new subsections on Planning, Internship, and Training Liaison.⁷⁰

In 1981, President Edgar (Ted) Jones, a UCLA law professor, transferred the duties of the Internship and Training Liaison subsections of the Committee for Development of Arbitrators back to the Research and Education Committee. When he received an inaccurate report that the education conferences had absorbed "13.5 percent of the Academy's annual income" in 1980, he decided to discontinue training seminars until he received a "breakdown of spending" for those conferences.⁷¹ It later developed that less than \$4,000 had actually been spent on the seminars, but the damage had been done.⁷² Jones's decision was

⁶⁷Letter from Secretary Richard Bloch to J.B. Gillingham, November 3, 1981, Bloch Files, NAA Archives.

⁶⁸Letter from Secretary Richard Bloch to Arnold Zack, June 11, 1982, Bloch Files, NAA Archives.

⁶⁹Letter from Arnold Zack to President Eva Robins, May 31, 1980, Bloch Files, NAA Archives.

⁷⁰Robins, President's Report to Board of Governors, *supra* note 62.

⁷¹Letter from President Ted Jones to Secretary Richard Bloch, November 17, 1981, Bloch Files, NAA Archives.

⁷²Letter from Secretary Richard Bloch to President Ted Jones, December 1, 1981, Bloch Files, NAA Archives; cf. Zack Presidential Interview, *supra* note 66. The 13.5% figure added the Academy's Legal Representation Fund expenditures to those of the training program.

undoubtedly influenced by the unexpected \$19,595 deficit resulting from the 1980 Annual Meeting in Los Angeles.⁷³

In 1982, President Byron Abernethy, a charter member and War Labor Board "alumnus," abolished the Committee for Development of Arbitrators, once more giving training endeavors to the Research and Education Committee.⁷⁴ An announcement for a seminar in Bermuda December 27-30, 1981, had promised use of a "Bloch-Zack video tape never before shown at any NAA seminar." Earlier, Bloch had warned President Abernethy about his failure to appoint a committee responsible for education seminars:

Something must be done about the Seminar Committee. . . . The Bermuda seminar is now at the stage where someone must coordinate efforts with the hotel immediately or it will be cancelled. . . . The numerous details as to future Seminar Committee functions can . . . only be handled by appointment of another individual if for no other reason than to terminate the programs should you so wish or to clean up the considerable mess that is now hanging.⁷⁵

In the end, all training initiatives would await the report of the Future Directions Committee.

Future Directions Committee

Presidents Jones and Abernethy agreed that a study of the Academy's future direction was essential in view of the changing environment for arbitration. They also worried about declining membership attendance at annual meetings and a general lack of participation and involvement of members in Academy activities.⁷⁶ As a result, Jones appointed William Murphy, law professor at the University of North Carolina, to chair a new Future Directions Committee. To give the committee continuity and sufficient time for the project, President-elect Abernethy approved the appointment of John Dunsford, law professor at Saint Louis Uni-

⁷³ Profit or Loss Statement, Annual Meeting, November 10, 1982, submitted to the Future Directions Committee, Bloch Files, NAA Archives. More detail on Academy finances is given, *infra*, at text accompanying notes 188-214. The deficit may have been in a very worthwhile cause. It resulted from a decision to pay the expenses of non-Academy participants in regional tripartite committees that had been established to prepare regional reports on arbitral decision making. Those reports, remembers Alex Elson, made that meeting "one of the best in the history of the Academy." Letter from Alex Elson to Dennis Nolan, March 18, 1996.

⁷⁴ Officers, Governors, and Committee Chairmen from 1947, NAA Archives.

⁷⁵ Letter from Secretary Richard Bloch to President Byron Abernethy, June 6, 1982, Bloch Files, NAA Archives.

⁷⁶ Jones Presidential Interview, June 1, 1989, NAA Archives.

versity, to succeed Murphy, who left for an overseas teaching assignment in 1982.⁷⁷ Murphy and Dunsford had joined the Academy in the mid-1960s and, in addition to several other major committee and program assignments, had served on the Board of Governors and as vice presidents.⁷⁸

Aided by geographically selected subcommittee chairs—Martin Cohen (Midwest, Chicago), Thomas Roberts (West, California), James Sherman (South, Florida), and Rolf Valtin (East, Washington, D.C.)—the committee devised a questionnaire to elicit members' opinions about national and regional programs, committee assignments, and suggestions for improvement.⁷⁹ Following are some members' answers to the final "other comments" question.⁸⁰ On Academy elitism:

The Academy gives its members the feeling that it is run by a small coterie of old-time arbitrators from the eastern states. Until that image is washed away, many members will not participate in activities which they feel they cannot influence.

Some means must be devised to break the hold of the "old boy" network on the establishment of Academy policies and practices. Certain "power brokers" should retire permanently and completely from participation in Academy affairs.

I perceive a sort of insider control of the Academy. I think we need to be as democratic as possible if we want to involve more members actively. . . . The annual business meeting should be more than a rubber stamp of the Board of Governors. . . . We should have an open election of officers.

I do not think how-to-do-it seminars or brilliant papers . . . can attract people to come regularly who do not feel themselves truly members of a fraternity . . . nor can the Academy mandate an increase in fraternal feeling.

On participation by new members:

I would *very much* like to be more involved, but I have never been sure how to do so without seeming too forward. I would welcome the opportunity!!! [emphasis in original]

⁷⁷Murphy Presidential Interview, June 1, 1989, NAA Archives.

⁷⁸Officers, Governors, and Committee Chairmen from 1947, NAA Archives.

⁷⁹*Report of the Future Directions Committee*, in *Arbitration 1984: Absenteeism, Recent Law, Panels, and Published Decisions*, Proceedings of the 37th Annual Meeting, National Academy of Arbitrators, ed. Gershenfeld (BNA Books 1985), Appendix B, 234, 234-35 (hereinafter FD Report); cf. Dunsford Presidential Interview, June 1, 1989, NAA Archives.

⁸⁰All answers are from FD Committee Files, NAA Archives. Because the FD Committee promised anonymity, individuals are not identified.

What I think needs to be done . . . is to generate *appreciation of the problem*—so that those who are in a position to do something about it . . . will be sympathetic to the need to give our newcomers . . . a chance to become meaningful participants. [emphasis in original]

The problem is one of attitude and should be faced—gradually—on both the regional and national fronts. I am sure it is related to the growing size of the Academy, but it is also a product of the change in mood and personality as new arbitrators with quite different backgrounds form a bulk of the membership.

Annual meeting attendance:

If we really want the non-participants, we might think about making a degree of participation a qualification for continued membership. . . . [Nonattendance at a number of meetings might] raise a question as to whether the member should not be dropped as dead wood, [but there are] too many obstacles to permit its serious consideration. . . . In my experience it has been uniformly the most active members who have been the best to be with. Maybe just letting nature take its course is the best policy.

Attendance of approximately one third of the membership at an annual meeting is still a remarkable achievement and is probably a fair [representation] of attendance generated by local, state and national bar associations. . . . Rising escalation in costs . . . will give many members cause to pause before registering.

Selling our wares ought not to be an objective of membership or attendance at Academy meetings.

Other members sent letters to the Future Directions Committee, giving their views:

Many Academy arbitrators and private practitioners have come to view the Academy as an exclusive private club [due to] the exceptionally high cost of attending Academy meetings. . . . The Academy is run by wealthy established arbitrators who do little to solicit the opinions of either newer arbitrators or the opinions of non-members who attend the convention. . . . [They are afraid of being considered] "too pushy." While that perception may be totally wrong, the fact remains that the present structure does little to encourage new entrants to become involved in Academy functions.⁸¹

I have great difficulty getting concerned about increasing membership participation in our Annual Meetings. [But] we can improve the quality of our programs if we abandon the notion that each Annual Meeting should have its own Program Committee. . . . [This committee] should be the more important standing committee. . . . It does

⁸¹ Letter from Amedeo Greco to Richard Bloch, April 13, 1982, FD Committee Files, NAA Archives.

depress me to hear the Academy's financial situation now seems less than healthy.⁸²

I am increasingly concerned about the direction of this Academy. . . . As the group has grown . . . [it is] developing the tendency to look and act more like a trade association. . . . We need to continue to focus our attention on professionalism and arbitration as a craft.⁸³

Continuing education provides the cheapest, most rational, and most constructive device for upgrading the competence of arbitrators. . . . Continuing education requirements are not unique in other professions and may be particularly important in an organization such as ours where there are no initial or on-going credentialing authorities.⁸⁴

The Future Directions Committee initiated a town-hall discussion of its report at the 1983 Annual Meeting, where the membership enthusiastically approved the recommendations. The committee recommended several new Academy programs, especially an annual continuing education conference for members only (to be convened in the fall at a central location) and a mandatory orientation program for approved candidates before their formal admission to Academy membership.⁸⁵ This project was hailed as a significant and permanent contribution to Academy governance.⁸⁶ In fact, the work of the Future Directions Committee was so well received that Dunsford and Murphy were elected Academy presidents in 1984 and 1986, respectively. Thus, fortuitously, both played a major role in implementing the committee's recommendations.

First Continuing Education Conference

Upon his election in 1983, in response to the Future Directions Committee recommendation, President Mark Kahn, economics professor at Wayne State University, designated Chicago, Illinois, as the site for the first Continuing Education Conference

⁸²Letter from Sylvester Garrett to John Dunsford, August 23, 1982, FD Committee Files, NAA Archives.

⁸³Letter from Richard Bloch to John Dunsford, June 4, 1982, FD Committee Files, NAA Archives.

⁸⁴Letter from Arnold Zack to John Dunsford, November 17, 1982, FD Committee Files, NAA Archives.

⁸⁵FD Report, *supra* note 79, at 266-68.

⁸⁶Abernethy Presidential Interview, June 1, 1989, NAA Archives. At least one former president believes the creation of the fall educational meeting caused regions to decrease their own educational programs. Interview with Arnold Zack, March 17, 1996. *See also* text, *infra*, at note 105.

(CEC). It was attended by 112 Academy members in November of that year.⁸⁷ Dana Eischen, of Ithaca, New York, chaired the first CEC Program Committee, and Arthur Malinowski, industrial relations professor at Loyola University (Chicago), was the first CEC Local Arrangements Committee chair. Chicago's central location and easy access from other cities caused President Dunsford to choose it again as the site for the 1984 CEC. This gave Malinowski the distinction of chairing the Local Arrangements Committee for the third time in two years.⁸⁸ Referring to the first CEC, Dunsford stated:

One of the charms of the educational conference is that it is restricted to members (and spouses) only. . . . For me there has always been something of a mystique associated with those early meetings of the Academy when, according to legend, the handful of top arbitrators in the country assembled for a weekend of talk about their craft. The educational conference has captured some of that flavor.⁸⁹

Thereafter, the CEC continued to gain acceptance among the Academy membership. In view of the increasing number of attorney members, by the time of the 1989 Annual Meeting, the Academy had obtained continuing legal education (CLE) credits for its programs from 20 states.⁹⁰

New Member Orientation

President Kahn also acted to implement the Future Directions Committee recommendation concerning new members:

A committee shall be established to prepare an orientation program for those about to become members, to be presented on the day before the business session of the Annual meeting, covering such topics as the purpose and heritage of the Academy, opportunities for continuing education, the work of the several committees, and the Code of Professional Responsibility.⁹¹

Arnold Zack chaired the first New Member Orientation Committee. He asked other committee chairs and several long-time mem-

⁸⁷Dunsford, *The President's Column*, *The Chronicle* (NAA, Sept. 1984), 2.

⁸⁸Malinowski had also served as Arrangements Committee chair for the May 1984 Annual Meeting in Chicago. See Officers, Governors, and Committee Chairmen from 1947, NAA Archives.

⁸⁹Dunsford, *supra* note 87, at 2.

⁹⁰*Id.* For example, a Missouri Bar continuing legal education (CLE) regulation specifically lists the National Academy of Arbitrators among the organizations whose programs are eligible for CLE credits. See *Regulations for Minimum Continuing Legal Education*, January 22, 1988, Reg. 15.04.2. *Accredited Sponsors by Designation*.

⁹¹FD Report, *supra* note 79, at 268.

bers to acquaint new members with Academy history and activities. The all-day session climaxed with an evening reception so that the new recruits could meet Academy members in a social setting. The next morning at the membership meeting, each candidate was formally inducted into the Academy and was encouraged to make a brief presentation. This format at first was confined to annual meetings but later, at the urging of Mark Kahn, was extended to the fall CEC meeting to give new recruits an additional opportunity for interaction with Academy members.⁹²

Harking back to Eva Robins's educational goals, 1984 President John Dunsford listed development of new arbitrators as his prime concern.⁹³ He appointed Benjamin Aaron chair of a Special Committee on Arbitrator Development (Aaron Committee) "to examine the propriety, desirability, and feasibility of the Academy as an institution sponsoring a program or programs of instruction and/or training for those who are seeking to become arbitrators."⁹⁴ Dunsford cited a "general lack of qualified arbitrators who are black, Hispanic or female" and asked the committee to examine whether the Academy could "make available teaching materials free of charge" and whether Academy members could "act as instructors."⁹⁵

Special Committee on Arbitrator Development

To work with Aaron, Dunsford selected Sylvester Garrett, Jean McKelvey, Theodore St. Antoine, and Rolf Valtin, all of whom had had significant experience in arbitrator training.⁹⁶ To take advantage of the collective experience of his committee members,

⁹²Kahn, *Academy Membership Should Be Conferred Twice a Year*, The Chronicle (NAA, May 1987), 3. At the June 1988 Annual Meeting in Vancouver, British Columbia, the membership amended the Academy's bylaws to permit admission at the "National Fall Education Conference." Minutes, Annual Membership Meeting, June 1, 1988, 4, NAA Archives. See also *Amendments to Constitution of National Academy of Arbitrators* [Article VI, section 4], in Arbitration 1988: Emerging Issues for the 1990s, Proceedings of the 41st Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1989), Appendix B, 373.

⁹³Dunsford, President's Report (1984), Dunsford Files, NAA Archives.

⁹⁴Letter from President John Dunsford to Benjamin Aaron, May 31, 1984, Dunsford Files, NAA Archives.

⁹⁵*Id.*

⁹⁶Sylvester Garrett headed the Steel Board of Arbitration, long a training ground for Academy members; Jean McKelvey had directed arbitrator training for GE-IUE and the Western New York region, and had initiated a special program for women and minorities under Cornell Industrial Labor Relations School sponsorship; Theodore St. Antoine had managed arbitrator training under the auspices of the American Bar Association and the University of Michigan Law School; Rolf Valtin chaired the Bituminous Coal Board of Arbitration, from which some new arbitrators received their early assignments.

Aaron gave them a list of 10 questions, which addressed the following concerns:

1. Is there a shortage of "gifted" (i.e., acceptable) arbitrators?
2. Should the Academy sponsor a training program?
3. If so, should the Academy do it alone or in cooperation with others (i.e., universities, AAA, FMCS)? What about the need for administration and finances, and commitment of union and management representatives to use the candidates who successfully complete the course?
4. Where should the training program be located—in one place or more than one? Should the sessions be simultaneous or seriatim?
5. What should be the duration of the programs? (E.g., two models—GE-IUE: single week of intensive classroom training followed by several months of attendance at arbitration sessions and preparation of mock opinions and awards; more leisurely one term or one year with set classroom lectures, concurrent with field work of observing arbitrations.) Aaron added that the best potential candidates were young lawyers or the products of industrial relations programs because people in other careers found it hard to attend more than a single week in a concentrated approach.
6. Who should select the applicants? (E.g., GE-IUE methodology: appointing agencies selected 50 persons from panels who had inherent capabilities but were not being selected by the parties. The academic administrator chose 15 from that group with the active involvement of the parties.)
7. How should the program be funded (e.g., foundations, unions and companies, tuition from trainees)?
8. Who should select faculty (e.g., GE-IUE program selected qualified academic and full-time arbitrators from its own panel)? What should be the geographical dispersion?
9. What should be the curriculum (e.g., history, role, and legal framework of arbitration, conduct of the hearing, issues, writing decisions—nuts and bolts)?
10. What should be the benefits to those who complete the course, i.e., effort to get commitment from union and management co-sponsors to designate graduates for a minimum of arbitrations (e.g., 3 to 5)? How to decide who is successful?

Input from other Academy members was also solicited. Based on his experience with the previous Academy-sponsored seminar program, Arnold Zack advised:

... the NAA should not undertake training of arbitrators from scratch ... [but] should expand continuing education efforts ... and encourage NAA members to work with interns. ... Local training programs have produced no more arbitrators than might have developed

through self-help and luck of the draw. . . . A few did make it but largely through ties with NAA members as mentors rather than through formal training. . . . The shortage [of arbitrators] . . . has been resolved by the willingness of public sector parties to try using less experienced people. . . . There is no correlation between recruitment and training and the parties' standards of acceptability.

. . . The first step is to improve the quality of our own membership, . . . the second step . . . to cooperate in improving the quality of arbitrators who will one day become NAA members.

. . . Too many of the members tend to confuse acceptability with competence and feel that training is for everyone else. . . . We cannot avoid being tarred by attacks on non-NAA arbitrators for incompetence. . . . [These are] people who because of their case volume (and not their competence) will soon be among us as members of the NAA.⁹⁷

Answers to the 10 questions constituted the substance of the Aaron Committee report submitted to the Board of Governors at its May 1985 meeting in Seattle. The report recommended that the Academy sponsor educational programs in the few regions where qualified arbitrators were in short supply and in all areas where blacks, hispanics, and women were underrepresented in the ranks of qualified arbitrators.⁹⁸ The Aaron Committee specified the following minimum requirements as a condition of Academy cosponsorship of any training program:

1. The program should be well publicized to give eligible candidates timely notice.
2. The Academy should not participate in the screening process.
3. Applicants must have had some experience as arbitrators or a significant background in industrial relations.
4. Applicants should submit a sample of written work, including a short essay on the topic, "Why I Want To Be An Arbitrator."
5. The curriculum should include both class instruction and a practicum (i.e., attendance at arbitration hearings and exercises in decision-making and opinion-writing under the supervision of qualified arbitrators).
6. The academic portion of the curriculum should include instruction, on the history of unionism and collective bargaining, labor law, the Code of Professional Responsibility, in addition to the "nuts-and-bolts" of arbitration.

⁹⁷Letter from Arnold Zack to Benjamin Aaron, September 3, 1984, Aaron Committee Files, NAA Archives.

⁹⁸Report of the Special Committee on the Academy's Role in the Development of New Arbitrators (hereinafter Aaron Report) (n.d.), 3, NAA Archives. See also *Convention Highlights 1985*, The Chronicle (NAA, Sept. 1985), 4, 7.

7. The program should have minimum attendance requirements, adequate written work, and a written final examination.⁹⁹

Once those minimum conditions were met, the report further recommended that the Academy

- a. offer, "free of charge, certain teaching materials" (listed in the report's appendix);
- b. urge Academy members to "serve without pay . . . as instructors . . . and as participants in the practicum by making arrangements for trainees to attend some of their hearings; and to serve as mentors";
- c. urge labor and management representatives to select graduates of the program;
- d. urge the AAA to place the graduates' names on its Labor Arbitration Panel, and "to include the names . . . twice as often as normal for a period of at least two years."¹⁰⁰

The Academy's participation was to be carried out through its regional network, depending upon availability of participants, facilities, qualified instructors, and "likelihood of success."¹⁰¹ The Aaron Committee projected that adoption of its recommendations would

demonstrate the Academy's willingness to help to reduce the shortage of qualified arbitrators in several areas of the country, to assist racial and ethnic minorities and women to become qualified arbitrators, and to upgrade the technical skills of professional arbitrators who are not yet fully qualified. At the same time adoption . . . will make it clear that the Academy is not attempting to control entry into the field of arbitration and is not purporting to certify graduates of any instruction and training program.¹⁰²

The Aaron report was submitted to the membership at the 1985 Annual Meeting after a record 43 new members had been admitted.¹⁰³ Discussion from the floor centered on the following points: (1) lack of statistical data to support the conclusion of an arbitrator shortage, (2) shift of focus from shortage to improvement of the quality of new arbitrators, (3) shift of responsibility for training from the Academy to the parties, (4) lack of control over the training activity, and (5) lack of flexibility in the proposed cur-

⁹⁹ Aaron Report, *supra* note 98, at 5-6.

¹⁰⁰ *Id.* at 6-7.

¹⁰¹ *Id.* at 7.

¹⁰² *Id.*

¹⁰³ Minutes, Annual Membership Meeting, May 29, 1985, NAA Archives.

riculum.¹⁰⁴ Because the committee's report had been accepted by the Board of Governors the previous day, these comments were referred to a new committee charged with implementing the recommendations.

Incoming President William Fallon appointed Theodore St. Antoine chair of a new Committee for Development of Arbitrators (St. Antoine Committee). In his first report, St. Antoine listed two main problems in implementing the Aaron Committee's recommendations: (1) no region was ready to establish such an extensive training program (the educational activities of the regions had in fact waned during the 1980s, partly replaced by the Academy's fall continuing education conference); and (2) "there was a widespread belief that a shortage of arbitrators did not exist, although it was conceded there was a shortage of female and minority arbitrators."

St. Antoine reminded the Board of the hostility to cosponsorship of training programs for new arbitrators, which had erupted at the 1985 Seattle Annual Meeting. He emphasized, however, that death of the programs could label the Academy as a trade organization rather than a professional association with responsibility for training new arbitrators. Vice President James Sherman was not impressed with "crash courses which attempt to teach such subjects as collective bargaining" because "any person aspiring to be an arbitrator should be past that stage." Secretary Dallas Jones urged greater cooperation with the AAA in its ongoing training programs, and President-elect William Murphy called attention to the need for diversity at the regional level. Immediate Past-President John Dunsford agreed. Eventually the Board referred the matter back to the committee for further study.¹⁰⁵

St. Antoine's second report recommended that two separate programs be endorsed by the Academy: one for new arbitrators, particularly female and minority arbitrators; the other as continuing education for arbitrators with some experience. Both were to be handled by the regions. The Academy would cosponsor such programs only when a particular region did not have the necessary financial and administrative capabilities to implement a successful program. The Board approved the committee's rec-

¹⁰⁴ *Convention Highlights 1985*, *supra* note 98, at 7.

¹⁰⁵ Minutes, Board of Governors, June 1, 1986, 4-7, NAA Archives. *See also* Minutes, Board of Governors, October 31, 1986, NAA Archives. These latter minutes contain a complete historical account of both committees' activities.

ommendations.¹⁰⁶ Implementation was left for the 1990s with the establishment of a Committee on Continuing Regional Education under the supervision of the National Coordinator of Regional Activities.¹⁰⁷

Interns

To further his educational goals, President Dunsford reappointed Charles Mullin from Pittsburgh, Pennsylvania, as chair of the Intern Training Committee. Mullin had been arranging special programs for interns at Academy meetings since 1979. After several membership surveys, it became clear that only about 20 to 30 Academy members were acting as mentors to interns on any formal basis.¹⁰⁸ Enthusiasm for this program waned when it became known that some aspiring arbitrators were lobbying Academy members to designate them as "interns" so that they might attend the training programs during the members-only part of Academy meetings. Eventually the intern program lapsed and the committee was phased out.¹⁰⁹

Special Committee on Professionalism

In a further effort to augment the Academy's role in improving the quality and integrity of arbitrators, President William Murphy appointed a "blue ribbon" committee consisting of past presidents to assess "professionalism in labor arbitration and the Academy."¹¹⁰ Serving on the Professionalism Committee with Ralph Seward as chair were Byron Abernethy, Ted Jones, Richard Mittenthal, Eva Robins, and Eli Rock. Murphy gave them the following charge:

The question before the Committee is whether labor arbitration has become just another way of making money and the Academy is just one more trade organization. The 40th anniversary of the Acad-

¹⁰⁶ *Id.*

¹⁰⁷ See also discussion under Regional Activities, *infra*.

¹⁰⁸ Mullins reported that 16 interns attended the 1985 Annual Meeting. Minutes, Board of Governors, May 27-28, 1985, 11, NAA Archives. For a historical account of the Academy's intern activities, see Report of the Committee on Interns, October 31, 1984, NAA Archives.

¹⁰⁹ Minutes, Board of Governors, October 27-28, 1988, 17-18, NAA Archives. Neither the Committee for Development of New Arbitrators nor the Committee on Interns appeared in the NAA Membership Directory after 1988.

¹¹⁰ Letter from President William Murphy to Ralph Seward, June 25, 1986, Murphy Files, NAA Archives.

emy seems to be an opportunity, the time for a blue-ribbon comparative assessment of the professionalism in labor arbitration and the Academy.¹¹¹

Murphy realized that the membership might rebel at the appointment of "one more self-study committee" and admitted that "this Academy, over the years, has indulged in an introspection that borders on masochism."¹¹² This characterization turned out to be amazingly perceptive.

The Professionalism Report, admittedly based "not on any methodical study of the work product or behavior of arbitrators, but rather on the shared perceptions of the members of this Committee," was submitted at the 1987 Annual Meeting in New Orleans. The committee found "real shortcomings" in the NAA's relation to the "professional behavior of arbitrators" and emphasized the Academy's role in training its members and other arbitrators.¹¹³ Criticizing "recent" arbitration awards for their lack of "quality," the committee judged them "often much too long and poorly written," and continued:

Theoretical principles are too often imposed on the parties without regard to considerations of practicability or justice. Collective bargaining realities become obscured and play an insufficient role in the reasoning process. Self-restraint is often ignored and awards attempt to decide far more than need be decided.¹¹⁴

As the "most constructive contribution to competence," the Professionalism Committee recommended that the Academy support AAA training programs for new arbitrators and place greater stress on the "bread and butter" subjects of arbitration at its annual meetings.¹¹⁵ The second half of the committee's report criticized the "declining level of respect for the necessary proprieties" in recent years, citing solicitation, long delays in issuing awards, and unsavory fee practices as evidence of "a growing insensitivity to Code requirements."¹¹⁶

Membership reaction to the Professionalism Report ran the gamut from kudos to vituperation. Gerald McKay of Burlingame,

¹¹¹ *Id.*

¹¹² Murphy, *The President's Column*, *The Chronicle* (NAA, Oct. 1986), 2.

¹¹³ Seward, *Report of the Special Committee on Professionalism*, in *Arbitration 1987: The Academy at Forty*, Proceedings of the 40th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix B, 221 (hereinafter Professionalism Report).

¹¹⁴ *Id.* at 223.

¹¹⁵ *Id.* at 229.

¹¹⁶ *Id.* at 230, 231. This section is discussed in detail, *infra*, under Professional Responsibility and the Code.

California, was "very disappointed . . . with the quality of the report" and satirized its "good old days" character:

These good old days consisted of a time when arbitrators acted selflessly without remuneration and only for the best interests of labor and management. These "good old days" arbitrators spent hours producing brilliant decisions guiding future generations of arbitrators down the paths of righteousness and enlightenment. Based on the committee's conclusions, it appears that these good old days have crumbled in favor of the almighty dollar, convenience, and incompetency.

. . . If the committee on professionalism recognized the fact that arbitration is a business and is a profession, perhaps the committee could begin to treat the process professionally.

. . . If the Academy fails to recognize these concerns, it will simply become an anachronism whose time has come and gone.¹¹⁷

Joseph Raffaele, of Philadelphia, Pennsylvania, called McKay's comments "cheap shots," but George Larney of Chicago, Illinois, concurred in McKay's "overall assessment." Peter Florey of Haddonfield, New Jersey, "applauded [the committee's] sense of 'trade' overtaking 'profession,' and the need to focus on trying to salvage the precepts of dwindling professionalism in our ranks."¹¹⁸

Views of the "Class of '87," who were attending their first annual meeting, were also solicited. Sharon Imes of LaCrosse, Wisconsin, concluded that the committee's "lengthy discussion . . . on professionalism indicates the members remain concerned that those who practice this profession maintain high standards of integrity and competence. It will be a pleasure to associate with them." However, Allan McCausland of Contoocook, New Hampshire, was disappointed that the report was released without giving the members "an opportunity to accept, amend or reject the Report before it went public."¹¹⁹

Richard Mittenthal, who had taken over as committee chair due to Ralph Seward's illness, led the town-hall discussion of the report at the members-only session. He expressed disappointment that the committee had received very few responses to its earlier solicitation of membership input. A member from Illinois was "troubled" by the committee's judgment on arbitrator competence:

¹¹⁷ Letter from Gerald R. McKay to Academy "Colleagues," May 15, 1987, NAA Archives.

¹¹⁸ *Professionalism Committee Reports: Members React; Report Stirs Discussion*, The Chronicle (NAA, Oct. 1987), 1, 7.

¹¹⁹ *New Members Welcomed at New Orleans Annual Meeting*, The Chronicle (NAA, Oct. 1987), 4-5.

All arbitrators worth their salt have been in situations in which they wrote a short opinion in one circumstance and a long one in another. Who is to decide which is better? It depends on the issues that were raised and the number of problems that were before the arbitrator. . . . We're not all blessed with the skill of Justice (Oliver Wendell) Holmes.

One of the things that I respect this Committee for is calling each and every one of us to re-examine ourselves to see to it that we try to overcome our deficiencies, but I have great difficulty in making any kind of a determination that these deficiencies have substantially increased today as against other periods.¹²⁰

Seward had given his viewpoint earlier:

What you do about competence is really tough, because the approach to it is necessarily so subjective. One person's incompetent is another's great arbitrator. And their views of opinion writing or decisions vary equally. . . .¹²¹

A member from California raised an objection to that statement:

I thought I heard Ralph say that one man's competence may be another's incompetence, and I don't believe that is so. I believe there are standards of competence. I am reminded of a fellow's statement in another context to the effect that he can't define it but he knows it when he sees it. I can see and know incompetence when I see it, and, in reading arbitrators' awards, I see it. . . .

In preparation for a brief, . . . I discovered that the number of appellate court cases . . . has doubled in 10 years. It is possible to ascribe that to increasing distrust and ignorance and backward thinking of the courts, but it's also possible that this is happening because arbitrators' opinions . . . invite this kind of review because a judge, looking at such an opinion, says, "My God, this is incompetent!" . . .

. . . Where I find difficulty in the report is that there isn't much of a suggestion about what we do about this.¹²²

Eva Robins commented:

I totally agree with the report, . . . but I didn't share the sense that there is this declining level of quality. . . . I think there is a hazard in assessing quality based on literary output.

. . . I have been disturbed at the way precedent has come to be used in the last 10, 15 years. I am constantly seeing in arbitrators' awards the phrase "the weight of arbitral opinion." . . . [W]e have no requirements imposed on us that we adhere to anybody's opinion, let alone any decision. . . .

¹²⁰ Professionalism Report, *supra* note 118, at 251.

¹²¹ *Id.* at 245-46.

¹²² *Id.* at 257-58.

One of the refreshing aspects of coming to these meetings for me has been to hear people tell war stories and talk about having done something which seems to be out of the realm of arbitral opinion. . . . [T]hat's a very healthy thing. . . .¹²³

A member from Ohio agreed that competence was important, but he added:

I don't think that we can expect everybody, however, to be top flight in every respect including writing. I think we have to accept some members who don't write so well but who may be doing a good job at the hearing and come out with a correct result. That's the most important thing.¹²⁴

Another member called attention to the fact that only a small percentage of arbitration decisions gets published. He asserted that the publishers were biased in favor of new arbitrators and continued: "So if the impression about the level of competence in the arbitration profession rests on published decisions, the foundation is very shaky."¹²⁵

A member from Oklahoma opposed any attempt to certify competence, calling attention to the responsibility of the parties:

If the parties prefer to keep using an arbitrator who writes like a third grader or uses language that shows he has no appreciation of erudition, or those other things that might displease us, what does it matter if he's fulfilling a function desired by the parties? Have the parties suddenly become incompetent so that they are no longer able to make good choices among arbitrators? I don't think so.¹²⁶

A member from District of Columbia summed up the membership's attitude:

[I]f this discussion has been . . . somewhat apathetic, it's because there is not disagreement about this matter [the need for raising the level of competence]. There is no major problem in this area. The Academy has done very well in dealing with the education of its members.¹²⁷

In addition to its plea for excellence, the Professionalism Committee had spent considerable time discussing "the necessary proprieties."¹²⁸ The membership was concerned about this issue as

¹²³ *Id.* at 253.

¹²⁴ *Id.* at 267.

¹²⁵ *Id.* at 268.

¹²⁶ *Id.* at 254.

¹²⁷ *Id.* at 255.

¹²⁸ *Id.* at 245.

well. For example, a member from California rose to report on a regional meeting at which professionalism had been discussed:

We spent a good part of the session going through all the horror stories . . . and at the end we started talking about what we could do about it.

. . . [I]t was a general rather depressed feeling that there really wasn't very much the Academy could do or was prepared to do. . . . I would like to know to what extent the Committee considered . . . actually enforcing the Code. . . .¹²⁹

Seward replied:

As to good practice—integrity, honesty, solicitation—this aspect is somewhat easier [than competence]. It depends really on the extent to which the Academy develops its spinal column We cannot go on forever ignoring horror stories, merely because those involved are friends or acquaintances, members of the Academy. Sometime we're going to have to bite the bullet and expel.¹³⁰

A member from Michigan agreed with Seward:

[I]f we want to be serious about this, clearcut, blatant violations of the Code should be dealt with properly, and not take the view that to declare someone violated the Code by publishing an advisory opinion is going to be sufficient.¹³¹

Arthur Stark, who chaired the Committee on Professional Responsibility and Grievances (CPRG), spoke up:

You are all very familiar with hearsay evidence, and the Committee is very sensitive to that kind of problem. We hear many stories; the Committee receives documents; upon follow-up we are told that the person who submitted them is prepared neither to verify their receipt nor to back up the story which surrounds them. And we have felt that we cannot proceed in cases like that. . . .

[So] it has ended with an opinion which the Committee thought would alert all of our members . . . to certain conduct considered inappropriate. . . . We have to choose between alerting the entire membership to what we think is improper and selecting one person for some kind of discipline.¹³²

A member from New York suggested that the Code be modified to "[m]ake the matter of self-policing itself a Code responsibility, and the refusal to do so, for whatever reason, a violation of the

¹²⁹ *Id.*

¹³⁰ *Id.* at 246.

¹³¹ *Id.* at 247.

¹³² *Id.* at 248.

Code itself."¹³³ Another member from California reminded Academy members that ethics was "an extremely difficult problem," and warned that "[i]f we don't police ourselves, others will." He added:

A profession, which for me at least was an absolutely wonderful second career, may well become a profession that I want to get out of as quickly as I can.

... I would suggest that, although it is difficult, maybe even impossible, if we don't do it [police ourselves], we're going to have it done to us.¹³⁴

Secretary-Treasurer Dallas Jones added his own warning:

There are small and insidious ways in which the Academy could be considered to tolerate some unethical conduct unknowingly.

... New members get a copy of the Code and put it away in their desks; old members haven't looked at it in years. It's time we did.

... [I]f we don't start policing ourselves, meaning blowing the whistle, we're going to be in trouble.¹³⁵

After this discussion, the Professionalism Committee report was approved, and the Executive Committee authorized its publication in the *Proceedings*. The Board of Governors requested that the committee remain on call for advice on implementing its recommendations.¹³⁶

In response to the recommendation of the Professionalism Committee that the Academy devote at least one session to Code questions at each annual meeting and at each annual education conference, the 1987 Continuing Education Conference program included a presentation by Richard Mittenthal on "Ethics: The Code and the Conduct of the Hearing."¹³⁷ Subsequent program committees continued this policy.¹³⁸

¹³³ *Id.* at 263.

¹³⁴ *Id.* at 260.

¹³⁵ *Id.* at 260-61.

¹³⁶ Minutes, Board of Governors, May 24-25, 1987, 8, NAA Archives.

¹³⁷ Mittenthal, *Dissemination and Enforcement of the Code of Ethics: IV. A Code Commentary—Conduct of the Hearing*, in *Arbitration 1988: Emerging Issues for the 1990s*, Proceedings of the 41st Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1989), 236.

¹³⁸ See, e.g., Rehmus, *The Code and Postaward Arbitral Discretion*, in *Arbitration 1989: The Arbitrator's Discretion During and After the Hearing*, Proceedings of the 42nd Annual

The Professionalism Committee recommended that each region sponsor a periodic workshop on the Code of Professional Responsibility and invite all Academy members and other arbitrators on the AAA and FMCS lists to participate in the regional workshop.¹³⁹ At its May 1988 meeting, the Board of Governors implemented this recommendation by ordering each region to conduct Code workshops.¹⁴⁰ In a letter to the Professionalism Committee, Mittenthal approved the idea, likening the process to state bar associations' continuing education programs. He suggested that appointing agencies require similar Code training before listing arbitrators on their labor panels and warned that the Academy "must find new ways of improving and insuring the quality and relevancy of our annual meeting . . . and make continuing education programs more attractive and productive."¹⁴¹

The Michigan region had previously scheduled a Code workshop under the joint sponsorship of the AAA and the Michigan Employment Relations Commission. Continuing its earlier ambivalence about joint sponsorship, the Board warned the Michigan region that "speakers on the program were not necessarily speaking for the Academy because the Academy, in regard to Code questions, speaks through its Committee on Professional Responsibility and the Advisory Opinions. There was agreement that this caveat should be observed."¹⁴²

Professional Responsibility and the Code

Advisory Opinions and Code Enforcement

Prior to the adoption of the new Code in 1975, the Committee on Ethics and Grievances had issued only three Advisory Opinions, relating to fees (1953), similar disputes (1955), and availability for hearings (1972).¹⁴³ Under the chairmanship of Howard

Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1990), 127; Nolan, *Discussion*, *id.* at 137; Quinn, *Discussion*, *id.* at 142; Zack, *I. Partners in the Code—The NAA and the Designating Agencies*, *supra* note 137, at 216.

¹³⁹ Professionalism Report, *supra* note 113, at 235.

¹⁴⁰ Minutes, Board of Governors, May 30, 1988, NAA Archives.

¹⁴¹ Letter from Richard Mittenthal to Professionalism Committee members, August 18, 1987, D. Jones Files, NAA Archives.

¹⁴² Minutes, Board of Governors, May 30, 1988, 2. The Board's further efforts to encourage regional training programs are discussed, *infra*, under Regional Activities.

¹⁴³ NAA Formal Advisory Opinions: *Opinion No. 1* (Ethics of an Arbitrator's Conduct (Fees)), May 1, 1953; *Opinion No. 2* (Ethical Obligations of an Arbitrator (Similar Dis-

Cole of Ann Arbor, Michigan, the renamed Committee on Professional Responsibility and Grievances (CPRG) issued three additional Advisory Opinions: on unilateral interviewing of arbitrators by labor or management (1979), on off-the-record remarks prejudicial to the dischargee (1980), and on late posthearing briefs (1981).¹⁴⁴

Cole was disappointed in the committee's inability to enforce the Code under the existing provisions of the Academy's constitution and bylaws. He began lobbying the Board of Governors to give the committee more power to investigate complaints.¹⁴⁵ The constitution and bylaws did not include a detailed and fair procedure for resolving alleged Code violations. Most of the committee's work continued to be informal via letters and telephone calls. The potential for a libel suit made case handling extremely sensitive. For this reason the Board of Governors authorized the CPRG to issue only generic advisory opinions applicable to all Academy members as a hortatory exercise. Finally, in 1983 and 1986, under successive CPRG Chairs William Fallon and Arthur Stark, the Academy amended its constitution and bylaws to provide a fair procedure, including written charges, investigation report to the Board of Governors, hearing, discipline recommendation, and an appeal to a tribunal with final and binding power to resolve the matter.¹⁴⁶

To commemorate the 10th anniversary of the Code, the 1985 Annual Meeting featured a panel discussion by members of the

putes)), February 17, 1955); *Opinion No. 3* (Ethics of an Arbitrator's Proposed Course of Conduct (Availability for Hearings)), April 4, 1972. Advisory Opinions were issued by the Committee on Ethics from 1947 to 1965, by the Committee on Ethics and Grievances from 1965 to 1975, and by the Committee on Professional Responsibility and Grievances thereafter. All opinions are reproduced in Appendix D.

¹⁴⁴NAA Formal Advisory Opinions: *Opinion No. 5* (Unilateral Interviewing of Arbitrators by Labor or Management: Arbitrator's Responsibility), May 8, 1979; *Opinion No. 6* (Arbitrator's Duty Regarding Off-the-Record Union Representative's Remarks Prejudicial to Grievant in Discharge Case), June 10, 1980; *Opinion No. 8* (Arbitrator's Duty With Respect to Late Posthearing Brief), May 16, 1981. *Opinion No. 4* (Listing Academy and Panel Memberships on Letterhead), April 3, 1973, and *Opinion No. 7* (Donation of Arbitration Files to Libraries), June 10, 1980, once believed to have been lost, were found by the new CPRG Chair George Fleischli in 1994.

¹⁴⁵See, e.g., Minutes, Board of Governors, October 9–10, 1981, NAA Archives.

¹⁴⁶*The Constitution and By-Laws* [Article IV, section 2], in *Arbitration 1987: The Academy at Forty, Proceedings of the 40th Annual Meeting*, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix A, 205, 210–14. It was not until the 1990s that the Board of Governors approved a more detailed appeals procedure for CPRG complaints. See *Manual of Procedures of Committee on Professional Responsibility and Grievances for Disciplinary Proceedings*, in *Arbitration 1993: Arbitration and the Changing World of Work, Proceedings of the 46th Annual Meeting*, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), Appendix C, 343.

original committee responsible for drafting the Code in 1975—William Simkin, Sylvester Garrett, and Ralph Seward, with Frederick Bullen presiding. Simkin, who chaired the original Code committee, reminded the membership that the principal debate had centered on whether the Code should be a “praise of motherhood” document or should have “cutting edges”—a debate that, he said, never really ended.¹⁴⁷

Howard Cole and Alexander Porter, who had previously chaired the CPRG, also participated in the discussion. Cole remarked that he had been initiated into CPRG work with “welcome to Disneyland.” Without a permanent staff, he had wondered how the CPRG would be able to enforce the Code and how it could be applied to such an “individualistic profession.”¹⁴⁸ Porter reported that, in 10 years of the Code, there had been only six formal complaints, none of which involved a hearing because either the accused member resigned or the charges were without merit. “Horror stories are greatly exaggerated,” he said, “we hear rumors, we get complaints but they are never substantiated by proof.”¹⁴⁹ The panel members agreed that lack of Code enforcement remained a problem.

In contrast to its former reluctance to issue opinions (only six had appeared from 1953 to 1981), the CPRG under Chairman Arthur Stark issued nine opinions from 1985 to 1989 on the following subjects:

<u>No.</u>	<u>Date</u>	<u>Subject</u>
12	May 29, 1985	Arbitrator's Use of Assistants
13	June 7, 1986	Ex Parte Hearings
14	June 7, 1986	Advertising and Solicitation
15	June 7, 1986	Ex Parte Consultation
16	October 29, 1987	Advertising and Solicitation
17	May 29, 1988	Arbitrator-Mentor Soliciting for His Intern-Apprentice
18	May 29, 1988	Code Provision 1-C-3: “Arbitrator Must Not Advertise or Solicit Arbitration Assignments”
19	May 28, 1989	Advertising and Solicitation
20	October 27, 1989	Correction of Evident Errors in an Arbitration Award ¹⁵⁰

¹⁴⁷ *Convention Highlights 1985*, The Chronicle (NAA, Sept. 1985), 5.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ NAA Formal Advisory Opinions, *supra* note 143.

Code enforcement was put to the test for the first time in 1988 when a member was duly tried and suspended for violation of section 2J.3. (failure to submit an award). Stark explained to the Board of Governors that, after many letters and phone calls by the parties from 1985 to 1988, the arbitrator had failed to submit the award in spite of repeated promises to do so. He added:

A hearing officer . . . who found it unnecessary to hold a hearing because the facts were not in dispute, and the member acknowledged his culpability under Section 2J.3. of the Code . . . held that the member should be suspended for one year, provided that he submitted his opinion within 30 days. If the member did not do so, then the member should be expelled. The member submitted his opinion within the time limit.¹⁵¹

The suspension imposed by the hearing officer included:

1. removal of the member's name from the Academy Directory and mailing list;
2. prohibition on using the Academy's name for identification purposes;
3. a ban on attendance at "members-only" meetings;
4. a ban on service on Academy committees;
5. a ban on assistance from the Legal Representation Fund; and
6. notification of suspension to appointing agencies with a request that they remove reference to Academy membership in the member's biography.¹⁵²

Stark noted that the CPRG had the right to withhold the member's name, and "in this instance had decided to do so in the belief that the member had received sufficient punishment."¹⁵³ Because of the novelty of the situation, Secretary Dallas Jones felt it necessary to seek advice from the Executive Committee as to what form notification to the membership should take:

I have just learned from Art Stark that one of our members has been suspended for one year because of a series of violations of Section 2J.3. of the Code. Article 12, Section 2(f), paragraph 5 [of the constitution and bylaws] provides that the "Secretary of the Academy will advise the membership of the Academy of the disciplinary action taken in such form as will best serve the interests of the Academy." This is the first such action since this provision was approved by the

¹⁵¹ Minutes, Board of Governors, May 29, 1988, 4, NAA Archives.

¹⁵² *Id.* at 4-5.

¹⁵³ *Id.* at 5.

membership two or three years ago. As far as that goes, I believe it is the first suspension in the history of the Academy.¹⁵⁴

To keep the membership better informed about CPRG activities, Stark recommended that *The Chronicle* begin a regular column entitled "The Responsibility Corner" to cover "Code-related matters of professional responsibility." He insisted that the articles be "interesting, informative, provocative, and [represent] divergent views."¹⁵⁵

Advertising Prohibition

Advertising and solicitation continued to stand out as an ongoing ethical problem for the Academy. For example, in 1981 the ILR Press sent a questionnaire to arbitrators, offering to print vignettes of the respondents in forthcoming issues of its newsletter. Ralph Seward suggested that the CPRG draft an opinion, characterizing such response as a "self-serving answer which, even if technically accurate, would constitute advertising, solicitation, and undignified conduct within the meaning of Section 1.C.1. and 1.C.3. of the Code."¹⁵⁶ The Committee on Professionalism had cited advertising and solicitation as serious Code violations and recommended that the CPRG issue more advisory opinions on those matters.¹⁵⁷ Section 1.C.3. of the Code stated clearly that arbitrators "must not advertise or solicit arbitration assignments." Of the 14 section 1.C.3. situations set forth in Opinion No. 18, the CPRG determined that only the following four violated the Code:

- a. letterhead reference to NAA membership and/or AAA, FMCS, or other panel appointments;
- b. arbitral identification in purchased ads for testimonial dinners or tributes;
- c. purchased listings in publications such as Yellow Pages;

¹⁵⁴Letter from Secretary Dallas Jones to Executive Committee members, April 25, 1988; letter from Secretary Jones to Academy members, June 17, 1988; D. Jones Files, NAA Archives.

¹⁵⁵Letter from Arthur Stark to *Chronicle* Editor Chester Briscoe, November 14, 1988, D. Jones Files, NAA Archives. The *Chronicle* series on "Professional Responsibilities" lasted for three issues in 1990. Quinn, *The Fragility of Immunity: One Arbitrator's Experience*, *The Chronicle* (NAA, Feb. 1990), 1; Mittenthal, *Compromise, Personal Acceptability and the Code*, *The Chronicle* (NAA, May 1990), 1; Stark, *The Arbitrator as Expert Witness: Does It Conflict With NAA Policy?*, *The Chronicle* (NAA, Oct. 1990), 1.

¹⁵⁶Letter from Ralph Seward to Secretary Richard Bloch, August 27, 1981, Bloch Files, NAA Archives. This incident foreshadowed the later Academy debate about the ethics of a Martindale-Hubbell ALDR listing. Cf. Chapter 6, text, at note 187.

¹⁵⁷Professionalism Report, *supra* note 113, at 235.

- d. distribution of business cards, except upon request, to advocates and potential clients.¹⁵⁸

The Professionalism Committee had pointed out that the Membership Committee would have a difficult time resolving complaints that an applicant had engaged in conduct contrary to the standard requiring "good moral character, as demonstrated by adherence to sound ethical standards in professional activities."¹⁵⁹ In discussing reactions to the Professionalism Committee report, President Arvid Anderson summarized the issue:

The subject of advertising, is it soliciting or marketing, is complex and clearly deserves our attention. Although I personally disapprove of advertising and soliciting for arbitration business, I realize there is need for arbitrators, particularly when moving to a new location or starting in business, to send out announcements. Is it then appropriate to keep handing out business cards at professional meetings? Once a location is established, is such practice simply marketing or is it solicitation?¹⁶⁰

AAA President Robert Coulson labeled the Code's advertising ban as the "Catch 22 of labor arbitration" in that it prevented aspiring arbitrators from becoming known in the marketplace.¹⁶¹

In 1986, President William Murphy asked the Committee on Legal Affairs to consider the Academy's potential liability in enforcing the Code's advertising prohibition. By this time the American Bar Association had long since abandoned its ban on advertising as a result of the U.S. Supreme Court's ruling in *Bates v. State Bar of Virginia*.¹⁶² Under the chairmanship of George Bowles of Santa Barbara, California, the committee concluded that the Supreme Court case involved advertising by lawyers and thus was not applicable to Academy members for several reasons:

- a. Arbitrators are not licensed.
- b. The Academy does not derive its authority from the state.

¹⁵⁸NAA Formal Advisory Opinions, *Opinion No. 18* (Code Provision 1-C-3: "Arbitrator Must Not Advertise or Solicit Arbitration Assignments"), May 29, 1988, 25-26.

¹⁵⁹*Statement of Policy Relative to Membership*, Membership Directory (1994-1995), 2. See also Professionalism Report, *supra* note 113, at 232-33.

¹⁶⁰Anderson, *The President's Column*, The Chronicle (NAA, Oct. 1987), 2.

¹⁶¹Coulson, *Dissemination and Enforcement of the Code of Ethics: II. The Arbitrator's Duty to the Process*, in *Arbitration 1988: Emerging Issues for the 1990s*, Proceedings of the 41st Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1989), 226, 228.

¹⁶²433 U.S. 350 (1977).

- c. The Academy does not set fees or appoint arbitrators.
- d. Membership is voluntary.¹⁶³

The report warned that, before attempting to enforce the advertising ban, the Academy should adopt the following conditions:

1. The Academy must make clear and specific its definition of advertising.
2. The Academy must be certain that violations are not now being condoned.
3. In disciplinary actions it must make certain that its procedures are regular and fair with a declared range of appropriate penalties.
4. The administration of penalty power must be consistent and appropriate to the particular case.¹⁶⁴

The last two conditions were clearly within the jurisdiction of the Committee on Professional Responsibility and Grievances. Coincidentally, the CPRG had already proposed amending the bylaws to streamline the grievance procedure and ensure due process.¹⁶⁵

In June 1986, the Board of Governors directed the CPRG to conduct "an in-depth review of matters related to I-C-3."¹⁶⁶ The CPRG concluded that there was no general sentiment in favor of deleting the advertising and solicitation ban in the Code but that there was a perceived need to clarify the scope of the prohibition. The report recommended retaining the ban on advertising. It referred to Richard Bloch's earlier article recommending that the Academy "stick to its guns"¹⁶⁷ and to David Helfeld's 1986 proposal that:

The Academy has thoroughly legitimate interests in retaining standards defining unethical advertising and solicitation: protecting the clients of its members from injury, protecting the integrity of the arbitration process, and protecting its own reputation as an institution.¹⁶⁸

The Board of Governors accepted the CPRG report but voted to seek an opinion from the Legal Affairs Committee "as to [the] antitrust impact of the recommendations."¹⁶⁹

¹⁶³ *Advertising Prohibition Under Review*, The Chronicle (NAA, Oct. 1986), 1.

¹⁶⁴ *Id.*

¹⁶⁵ *By-Law Amendment Streamlining Grievance Procedure Is Adopted*, The Chronicle (NAA, Oct. 1986), 1. See discussion, *supra*, under Code Enforcement, at note 146.

¹⁶⁶ Minutes, Board of Governors, June 1, 1986, NAA Archives; see also CPRG Report, April 10, 1987, NAA Archives.

¹⁶⁷ Bloch, *Arbitrator Advertising*, 35 Arb. J. 21 (June 1980). Cf. Stockman, *Now, Who Shall Arbitrate?*, 19 Stan. L. Rev. 707, 715 (1967) (arbitrators are "functioning in a quasi judicial capacity like a judge but compensated like an attorney").

¹⁶⁸ CPRG Report, *supra* note 166, at 20.

¹⁶⁹ Minutes, Board of Governors, May 24, 1987, 5, NAA Archives.

When President Arvid Anderson appointed George Fleischli of Madison, Wisconsin, chair of the Legal Affairs Committee in 1987, one of the committee's first tasks was to investigate that antitrust issue. Doubts about the legality of the advertising ban were also raised by counsel to the Academy secretary, who wrote:

It is once again time for me to renew my request, now for the third time, for the Academy to seek the opinion from outside non-Academy lawyers as to whether the prohibition against advertising violates antitrust laws. . . .

If the Academy can obtain a letter from a recognized antitrust firm saying that, as a profession, Arbitrators are exempt from the Antitrust laws, then the matter will be over. But please be advised that liability under these statutes is treble damages plus attorney's fees, and successful prosecution against the Academy would bankrupt the organization.¹⁷⁰

Adding fuel to the fire was the Board of Governors' proposed authorization that the CPRG accept inquiries from AAA and FMCS relating to interpretations of the Code.¹⁷¹ The AAA and FMCS had agreed "to cooperate with the CPRG" by referring allegations of Code violations for advisory opinions without recommending "any particular action."¹⁷² Fleischli posed the issue as follows:

If a hypothetical situation is assumed wherein the Academy expels a member for repeated violation of the ban [on advertising] and action is taken by AAA or FMCS which adversely affects the person's livelihood, the additional fact of the existence of this arrangement (along with the fact that the Code was jointly drafted in the first place) might arguably increase our antitrust risk.

The Committee's new report bluntly advised the Board to seek outside legal advice if it decided to maintain its restrictions on advertising.¹⁷³ Meanwhile, membership debate on the issue was beginning to heat up. Robert Howlett, of Grand Rapids, Michigan, wrote Secretary Dallas Jones:

As arbitrators are not a certified or licensed profession, there is less reason for limiting arbitrators advertising than lawyers advertising. I

¹⁷⁰ Letter from Peter Adameist to Secretary Dallas Jones, July 23, 1987, D. Jones Files, NAA Archives.

¹⁷¹ Minutes, Board of Governors, *supra* note 169, at 5.

¹⁷² Letter from President Arvid Anderson to CPRG Committee members, July 21, 1987, D. Jones Files, NAA Archives.

¹⁷³ Report of the Legal Affairs Committee, September 9, 1987, summarized in Fleischli, *Advertising and Anti-Trust*, *The Chronicle* (NAA, Feb. 1988), 4.

am certain that if any member of the NAA takes the Academy to court, we will lose based on the Supreme Court's holding in the lawyers case [referring to the *Bates* decision].¹⁷⁴

President Anderson told Howlett:

There is a great reluctance on the part of a majority of the Board of Governors to sanction advertising. . . . The Board is of the view that the Academy is different in that it is a voluntary organization which does not license the practice of arbitration. Accordingly, the problem of proof that the denial of membership has caused a loss of income is very difficult. . . . We are like judges, who do not advertise.¹⁷⁵

The debate came into the open with an article by Amedeo Greco in *The Chronicle*¹⁷⁶ and continued well into the 1990s before resolution.

Publication of Awards

The matter of publication of arbitration awards was somewhat allied with the advertising issue. In the 1970s, publication of awards was no problem because the FMCS regularly made arbitration awards accessible to publishers (primarily Commerce Clearing House and the Bureau of National Affairs). As long as the AAA and the FMCS took responsibility for such publication, arbitrators were satisfied with the Code's prohibition of publication without the parties' consent.¹⁷⁷ However, in a cost-cutting move early in the Reagan administration, the FMCS discontinued this practice. Lewis Gill, who chaired the Liaison Committee, submitted the Academy's sentiments to FMCS Director Kay McMurray:

We would like to renew our recommendation that you return to the former policy . . . which prevailed before it was discontinued in March 1982. . . . The Academy and the appointing agencies have a common interest in having the published decisions represent a balanced cross-section, and we hope you will give this proposal favorable consideration to help in achieving that goal.¹⁷⁸

¹⁷⁴Letter from Robert Howlett to Secretary Dallas Jones, January 19, 1988, D. Jones Files, NAA Archives.

¹⁷⁵Letter from President Arvid Anderson to Robert Howlett, February 24, 1988, D. Jones Files, NAA Archives.

¹⁷⁶Greco, *Personal Opinion: Advertising*, *The Chronicle* (NAA, May 1988), 6.

¹⁷⁷Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, § 2.C.1.c. (1975) (hereinafter Code). Cf. Chapter 4, text, at note 192.

¹⁷⁸Letter from Lewis Gill to Kay McMurray, December 16, 1984. A previous request was reported by the Liaison Committee to President Mark Kahn, April 28, 1984. In addition to Gill, President Kahn had appointed two other past presidents, Eva Robins (to con-

The committee's efforts were unsuccessful, as evidenced by a report to President John Dunsford:

Last December we followed up on our earlier meeting with FMCS. . . . We have since been advised that any change in their policy is highly unlikely.

. . . Whether the Academy should seek to change the current Code provisions on this whole subject is, of course, very much on the agenda for the Seattle meeting. . . . [However, this] is not within the purview of the Liaison Committee.¹⁷⁹

Arbitrators and the labor-management community began to complain about the lack of "representativeness" of published awards on the ground that the publishers chose only those by new arbitrators to give them exposure or those involving novel decisions.¹⁸⁰ Many Academy members refused to send their awards directly to the publishers in the belief that this would violate the Code. The primary concern related to the timing of the request to publish. A few thought there was no good time for the arbitrator to ask the parties' permission to publish without infringing on the parties' privacy or potentially intimidating them into consenting. Some believed an arbitrator might seek such permission at the beginning of the hearing. Others insisted that only after the parties had seen the award could they make an informed decision about publication.

The CPRG had wrestled with the problem for a number of years. In 1982, Howard Cole, who chaired the CPRG, learned that some arbitrators had been routinely initiating inquiries at the arbitration hearing as to whether the parties would consent to publication of the award. At its May 1983 meeting, the Board of Governors approved Opinion No. 11, concluding:

[B]ecause the Code plainly states that an arbitrator's request to publish should normally not be made until after the award has been issued

tact AAA) and Rolf Valtin (to contact the FMCS), admitting that committee membership depended on "location" to save travel expenses. Robins lived in New York City near AAA national headquarters; Valtin lived in suburban northern Virginia near FMCS national headquarters in Washington, D.C. Letter from President Mark Kahn to Liaison Committee members, August 24, 1983. Liaison Committee Files, NAA Archives.

¹⁷⁹ Letter from Lewis Gill to President John Dunsford, May 21, 1985, Liaison Committee Files, NAA Archives.

¹⁸⁰ Bernstein, *How Representative Are Published Decisions?: III. Proper Prepublication Procedures: An Arbitrator's Comment*, in *Arbitration 1984: Absenteeism, Recent Law, Panels, and Published Decisions*, Proceedings of the 37th Annual Meeting, National Academy of Arbitrators, ed. Gershenfeld (BNA Books 1985), 192, 193. Cf. Cole, *How Representative Are Published Decisions?: I*, *id.* at 170.

to the parties, such an inquiry [for consent to publish] cannot properly be initiated by the arbitrator at the hearing in the absence of unusual circumstances.¹⁸¹

At the 1984 Annual Meeting in Chicago, William Bradshaw introduced a motion to rescind Opinion No. 11. That motion was defeated by a vote of 65 to 19.¹⁸² Bradshaw wrote the CPRG again in 1984, requesting that the committee reconsider and rescind Opinion No. 11, but the committee refused to take any action. Meanwhile President Dunsford brought the matter into sharp focus in his *Chronicle* column. While he personally opposed any change, he labeled Opinion No. 11 "a sharp bone in the throat of a lot of members," and suggested that those seeking change use proper constitutional means.¹⁸³ CPRG Chairman Arthur Stark agreed that the only remedy was to amend the Code and recommended the following change in section 1.C.1.c.:

c. It is a violation of professional responsibility for an arbitrator to make public an award without the consent of the parties.

An arbitrator may ask the parties whether they consent to the publication of the award either at the hearing or at the time the award is issued.

(1) If such question is asked at the hearing it should be asked in writing as follows:

"Do you consent to the submission of the award in this matter for publication?"

() ()
YES NO

If you consent you have the right to notify the arbitrator within 30 days after the date of the award that you revoke your consent."

It is desirable but not required that the arbitrator remind the parties at the time of the issuance of the award of their right to withdraw their consent to publication.

(2) If the question of consent to the publication of the award is raised at the time the award is issued, the arbitrator may state in writing to each party that failure to answer the inquiry within 30 days will be considered an implied consent to publish.¹⁸⁴

¹⁸¹NAA Formal Advisory Opinions, *Opinion No. 11* (Publication of Awards), May 24, 1983.

¹⁸²CPRG Report, A Proposed Change in the Code of Professional Responsibility for Arbitrators, 3, NAA Archives. See also Minutes, Board of Governors, November 1-2, 1984, NAA Archives.

¹⁸³Dunsford, *President's Column*, The Chronicle (NAA, Sept. 1984), 2, 6.

¹⁸⁴Minutes, Board of Governors, May 27-28, 1985, 8-9, NAA Archives.

The Board of Governors approved the Code amendment by a vote of 13 to 3.¹⁸⁵

The following day at the membership meeting, discussion ensued as to whether the Academy's decision to amend the Code would be binding on the FMCS and the AAA, since those agencies had also approved the Code.¹⁸⁶ Chairman Stark assured the membership that the FMCS had already approved the Code change. The AAA, while not satisfied that even the amended Code permitted arbitrators to seek approval for publication of the award before it was issued, announced that it would abide by the Academy's decision to change the Code. In the end, the membership ratified the Board's action.¹⁸⁷

Academy Administration

Financial Difficulties

Despite the optimism about the Academy's finances after the dues increase of 1976, lack of funds for special projects remained a problem. Early in her term, President Eva Robins had to cut back her continuing education goals.¹⁸⁸ Back-to-back financial losses at annual meetings in Los Angeles in 1980 and in Hawaii in 1981 threatened the Academy's cash flow.¹⁸⁹ According to Secretary Richard Bloch, part of the financial crisis was caused by an increased office workload, including "more telephone calls made to members on a daily basis, regional chairs utilizing duplicating and distribution facilities, [and] activities of the seminar subcommittee." Another \$5,000 budget overrun resulted when Bloch moved his office from his home to downtown Washington, D.C.,

¹⁸⁵ *Id.*

¹⁸⁶ The Code had also been adopted by some state agencies and by the National Mediation Board. See *National Mediation Board Order*, in *Arbitration 1983: Emerging Issues for the 1990s*, Proceedings of the 41st Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1989), Appendix D, 378.

¹⁸⁷ Minutes, Annual Membership Meeting, May 28, 1985, 10-11, NAA Archives.

¹⁸⁸ See text, *supra*, at note 61.

¹⁸⁹ The deficit of \$19,595 in Los Angeles was due to "unforeseen expenses for speakers and their spouses," and the "estimated deficit" with no specific figures in Maui resulted from "poor attendance." Data enclosed with letter from Secretary Richard Bloch to John Dunsford, November 10, 1982, for use by the Future Directions Committee. Bloch Files, NAA Archives. To prevent excessive expenditures for nonmember speakers in the future, the Board of Governors adopted a policy of no reimbursement for meals or for any expenses of spouses. Minutes, Board of Governors, November 1-2, 1984, 8, NAA Archives. See also NAA Policy Handbook, 2.

necessitating rental of additional office space for NAA equipment and personnel.

To evaluate the Academy's financial operations and offer recommendations for the future, President Ted Jones appointed a new Audit Committee, consisting of Seymour Strongin of Chevy Chase, Maryland, as chair, and two previous Academy secretary-treasurers, Alfred Dybeck and Mickey McDermott. In his letter to the committee, Strongin alluded to "two recent and unfortunate episodes concerning Academy funds: one being the substantial overrun of budget for the 1980 meeting and the other an unsuccessful investment of Academy funds."¹⁹⁰ But President Ted Jones downplayed those reasons. He emphasized that the committee's first priority should be "to assure that the assets, income and expenditures as well as investments are properly reported and accounted for." As cause for the appointment, he pointed to his own "sense of tidiness and prudence acquired as an occupational by-product of teaching torts for several years."¹⁹¹

In his 1981 report to the Board of Governors (revenue \$87,888, expenses \$128,487, deficit \$35,000), Bloch was very pessimistic:

Expenses of the Los Angeles meeting . . . necessitated selling GNMA bonds at a substantial loss. Despite having obtained \$33,000 in interest free loans, . . . it was eventually necessary to sell them at a time when the bond market was disastrously and unpredictably low. This resulted in a net loss of \$15,000. For the present year available funds are limited.¹⁹²

Bloch presented the following austerity plan, which the Board of Governors approved:

1. Discontinue all travel for Academy officers unless subsidized.
2. Require seminar meetings to be self-sufficient.
3. Reexamine the contract with AAA for legal representation, which was consuming 20 percent of annual income.¹⁹³

He also warned Executive Committee members about the rapid increase in travel costs and suggested that they give "consider-

¹⁹⁰ Letter from Seymour Strongin to Audit Committee members, May 13, 1981, Bloch Files, NAA Archives.

¹⁹¹ Letter from President Ted Jones to Seymour Strongin, May 21, 1981, Bloch Files, NAA Archives.

¹⁹² Secretary's Report, October 9, 1981, Bloch Files, NAA Archives.

¹⁹³ *Id.*

ably greater attention" to whom the Academy invited to the annual meeting.¹⁹⁴

Committee chairs also experienced some belt-tightening. For example, contrary to an earlier expression of optimism about funding the oral history project,¹⁹⁵ less than three months later Bloch withdrew his offer:

At this point I think it would be prudent to suspend any further expenditures on the [oral history] project for a short period of time. The Academy's cash flow situation dictates some prudence between now and next May (when the next round of dues comes in). I have written to the Executive Committee suggesting other cutbacks (such as the requirement that any seminars between now and May be self-supporting), and it would seem appropriate to hold fire on this project for the time being. . . . After the beating we took on the bond market and the resultant impact on our cash situation, I think this would make the most sense for now.¹⁹⁶

Bloch had similar bad news for the Future Arrangements Committee:

[I must] request that between now and May 1982 you attempt to limit travel (and expenditures) on behalf of the Future Arrangements Committee. . . . As you know we are somewhat tight on cash between now and May, and I am searching for all available ways to make only necessary expenditures.¹⁹⁷

When he succeeded to the presidency in 1982, Byron Abernethy vowed to get the Academy on a "sound financial basis."¹⁹⁸ His charge to the Audit Committee included "not only an annual report but a request for a cost-by-function report following the midyear meeting to be submitted to him on or before November 1."¹⁹⁹

To reduce expenses further, Bloch suggested that *The Chronicle* be cut from three to two issues per year, since the "past issue cost about \$2,900." He added: "[W]e are running very, very tight. Any

¹⁹⁴Letter from Secretary Richard Bloch to Executive Committee members, November 11, 1981, Bloch Files, NAA Archives.

¹⁹⁵Letter from Secretary Richard Bloch to James Stern, September 14, 1981: "I don't think there will be any problem with authorizing more money if it is needed." Bloch Files, NAA Archives.

¹⁹⁶Letter from Secretary Richard Bloch to James Stern, November 30, 1981, Bloch Files, NAA Archives.

¹⁹⁷Letter from Secretary Richard Bloch to Thomas Roberts, November 30, 1981, Bloch Files, NAA Archives.

¹⁹⁸Letter from President Byron Abernethy to Academy members, July 28, 1982, Bloch Files, NAA Archives. Cf. Abernethy Presidential Interview, June 1, 1987, NAA Archives.

¹⁹⁹Letter from Secretary Richard Bloch to Seymour Strongin, October 6, 1982, Bloch Files, NAA Archives.

margin . . . has probably been disposed of by the rather higher than normal Board of Governors expenses in Quebec."²⁰⁰ Lack of funds forced Abernethy to severely restrict his travel to regional programs.²⁰¹

In a further effort to control spending, the Board of Governors passed a resolution limiting fees to AAA for legal representation of Academy members, stating that "it shall not be the obligation of the Academy to pay fees for court appearances or court-related discovery by AAA or outside counsel."²⁰² Secretary Bloch reported the Board's action to AAA's general counsel:

The Board was concerned about the potential financial impact resulting from our underwriting the expenses of outside counsel and/or the expenses involved when AAA counsel would actually have to appear in court. Accordingly, the Resolution should be read as announcing the Academy's intention to discontinue the payment of fees for those purposes. Naturally, we acknowledge our obligation to satisfy all outstanding bills; indeed, the Academy's check in the amount of \$24,574.12 is enclosed.²⁰³

President Abernethy assured the AAA that the Board's resolution should not be taken "as reflecting any dissatisfaction by the Board with the quality or adequacy of the services being rendered by the AAA. . . . It was simply a case of the volume of legal representation work outgrowing the financial capacity of the Academy."²⁰⁴

When Dallas Jones, economics professor at the University of Michigan, succeeded Bloch as secretary-treasurer in 1982, finances had not improved. The Academy had a net cash deficit of about \$43,000.²⁰⁵ Earlier Bloch had explained the seriousness of the situation to Jones:

The Academy now has virtually no money for present operating expenses. As I see it we have two options: first we can sell additional GNMA securities. Second we can attempt to secure a short-term loan from a Washington bank. My estimate is that we need about \$15,000 to cover current expenses. Finally we can spend monies that should

²⁰⁰Letter from Richard Bloch to President Byron Abernethy, November 22, 1982, Bloch Files, NAA Archives.

²⁰¹Abernethy Presidential Interview, *supra* note 198.

²⁰²Minutes, Board of Governors, May 25, 1982, NAA Archives.

²⁰³Letter from Secretary Richard Bloch to AAA General Counsel Michael Hoellering, June 16, 1982, Bloch Files, NAA Archives.

²⁰⁴Letter from President Byron Abernethy to Michael Hoellering, July 28, 1982, Bloch Files, NAA Archives.

²⁰⁵Report of Auditing Committee to the Board of Governors, October 26, 1989. This report contains a history of the Academy's financial difficulties. NAA Archives.

now be coming in from registration fees [for the 1982 Annual Meeting].²⁰⁶

The move to Ann Arbor permitted the Academy to return to an institutional environment. The resulting lower costs for telephone, supplies, office space, and clerical assistance saved the Academy several thousand dollars each year.²⁰⁷ When Howard Cole, who was Jones's colleague at Ann Arbor, became Audit Committee chair in 1984, he was not satisfied with the Academy's financial status, reporting:

Except for 1976 and 1983, expenditures . . . exceeded revenues in every year since 1971. . . . [The Academy has been] living beyond its means or on the margin . . . with no reliable cushion for contingencies and unexpected events.

A previous report identified two basic needs: (1) additional operating revenues and (2) a reserve fund. . . . Because of a recent string of very profitable Annual Meetings in 1982, 1983, and 1984, and a couple of belt-tightening measures which have necessarily inhibited important Academy programs, we should have a general fund balance in the neighborhood of \$70,000 at the end of the current fiscal year.²⁰⁸

The Audit Committee recommended a \$75 dues increase (from \$250 to \$325 per year) and the establishment of a \$200,000 reserve fund. Secretary Jones agreed that the Academy's financial health was in jeopardy. He reported that "the difference between revenues from dues and operating costs is beginning to narrow."²⁰⁹

Considerable disagreement on finances existed among members of the Board of Governors. Secretary Jones and Mark Kahn, immediate past president, favored the increase, pointing out that the Academy office was being subsidized by the university and that any modest budget surplus could be "quickly dissipated if an emergency should arise." Governors Reginald Alleyne, John Caraway, Daniel Collins, and Anthony Sinicropi were opposed to the dues increase on the grounds that the Legal Representation Fund assessment had been increased to \$100 (\$50 over the initial request), and that cutting expenditures was a much better alter-

²⁰⁶ Letter from Richard Bloch to Dallas Jones, February 10, 1982, Bloch Files, NAA Archives.

²⁰⁷ Annual Report of the Secretary-Treasurer, May 29, 1985, 2, NAA Archives. This was the first report to include a "projected budget" for the coming fiscal year, with total revenues of \$155,150 and total expenses of \$109,500.

²⁰⁸ Audit Committee Report to the Board of Governors, October 12, 1984. See also letter from Howard Cole to President John Dunsford, May 21, 1984, Dunsford Files, NAA Archives.

²⁰⁹ Secretary's Report, October 25, 1984, NAA Archives.

native. The Board did not approve the dues increase or the reserve fund.²¹⁰

Further evidence of cost-consciousness was the controversy over the Academy's selection of London as its "wild card" site for the 1986 Annual Meeting.²¹¹ Eventually the meeting site was changed to Philadelphia, primarily due to the worsening exchange rate between the American dollar and the British pound.²¹² For some time Secretary Jones had expressed his disapproval of excessive annual meeting expenses.²¹³ He also believed that the increase in registration fees for the annual meeting was partially responsible for the drop in attendance, particularly of union representatives, stating:

I am troubled by the fact that we are charging a \$250 registration fee for guests who will be in meetings for two days. . . . [With] transportation and hotel costs . . . \$1,000 . . . [is] the total amount . . . for this meeting. . . . Are we pricing ourselves out of the market? . . .

Arrangements chairs [are] in "competition" . . . to make their function the "best yet."²¹⁴

Consensus was building that a dues increase alone would not solve the Academy's financial problems. No true picture of the Academy's financial condition could be obtained while a substantial portion of its expenses was hidden by institutional support. The Board of Governors authorized a study to determine whether the Academy should hire a full-time executive director and, if so, how much it would cost.

Executive Director Committee

To carry out this task, President William Fallon appointed an Executive Director Committee, consisting of Alfred Dybeck, Rolf Valtin, and Mickey McDermott as chair. The committee's charge was to investigate the potential hiring of an executive director to

²¹⁰Minutes, Board of Governors, November 1-2, 1984, NAA Archives. The Legal Representation Fund is discussed, *infra*, under Other Funding Initiatives. The reserve fund was not approved until 1989, and the bylaws were appropriately amended in 1990. *Cf.* Minutes, Annual Membership Meeting, May 30, 1990, NAA Archives.

²¹¹See *Letters to the Editor*, The Chronicle (NAA, Sept. 1984), 7, and President John Dunsford's reply, *id.* at 6.

²¹²*Philadelphia Looks Forward to 1986 Meeting*, The Chronicle (NAA, Sept. 1985), 1.

²¹³See, e.g., letter from Secretary Dallas Jones to Local Arrangements Chair Frances Bairstow, January 16, 1987 (expressing "mixed emotions" about "ad hoc" speakers' expenses); *cf.* Minutes, Board of Governors, May 25, 1987, 9, NAA Archives.

²¹⁴Letter from Secretary Dallas Jones to President Thomas Roberts and President-elect Alfred Dybeck, December 5, 1988, D. Jones Files, NAA Archives.

oversee an independent national office for the Academy. At the Board of Governors meeting in October 1986, McDermott reported that the job was more difficult than he had anticipated. Even the mundane subjects of physical space, equipment, and clerical assistance had proved daunting, to say nothing about the cost and change in philosophy involved. McDermott reminded the Board that "there are some members who wish to go in this direction regardless of the cost; others question it because of the cost."²¹⁵ He indicated that future committee discussions would center on questions such as whether the Academy had reached the point where an executive director was required and whether the Academy could afford it. He noted that a \$100 increase in dues would produce approximately \$52,000 in revenue, adding:

Another question is, if the present system is retained, should there be reimbursement for the sacrifices made by some officers and the chairs of certain committees.²¹⁶

At the Board meeting, Governor Carlton Snow questioned whether the vitality of the Academy would be undermined if it were to move in the direction of an executive director, but Governor David Feller thought that members might be more "willing to participate" if they were not burdened with "this type of [mechanical] work."²¹⁷

The Executive Director Committee's final report emphasized that the office of secretary should be open to all members, not just those who had institutional support. For that reason "the Academy must pay for the necessary space and other expenses required to carry out the work of the secretary's office."²¹⁸ The report noted that "as currently performed, the work of the Secretary is not full time," and therefore it could be accomplished with the assistance of a full-time administrative assistant.²¹⁹ A stipend of \$25,000 for the elected secretary and acquisition of permanent office space and staff would require a \$150 increase in dues. A five-year term for the office of secretary-treasurer would require an amendment to the Academy's constitution and bylaws. The committee admonished the naysayers that the proposed \$400

²¹⁵ Minutes, Board of Governors, October 30-31, 1986, 4, NAA Archives.

²¹⁶ *Id.*

²¹⁷ *Id.* at 5.

²¹⁸ Minutes, Board of Governors, May 24-25, 1987, 2, NAA Archives.

²¹⁹ Report of the Special Committee to Review the Status of Executive Secretary-Treasurer, (n.d.), 3, NAA Archives.

annual dues was equal to only "a day's pay for Academy members" and could not "reasonably be opposed as the share which each of us should be prepared to shoulder in furtherance of our joint objective of a strong and healthy Academy."²²⁰

The consensus of the Board was that an outside Executive Director should not be employed for both philosophical and practical reasons; that the Office of the Secretary should be open to any Academy member, and that the concepts advanced by the Committee should be financed by an appropriate amount of money to be determined later, as well as the method of raising the money.²²¹

At the October 1987 meeting of the Board of Governors in Cincinnati, Ohio, the committee submitted a downsized version of its original estimates: \$15,000 for the secretary's stipend and \$100 increase in dues to finance an annual administrative budget of \$50,000. The Board decided to submit the new proposal to the membership at the 41st Annual Meeting in Vancouver, Canada. After making a motion that Academy dues be increased \$100 to \$350 a year, McDermott assured the members that the increase was required "to place the Academy on a self-sustaining basis," with the warning that

if we stayed with the total present arrangement, we would be embarrassed, humiliated, shamed and whatever other word could be used for mooching, for not paying our way. Secretaries were chosen . . . for their moochability . . . [with] space and clerical help, or worked at a university that had these facilities and the Academy would not have to pay for them. That did not seem right for a mature, successful, professional organization made up of . . . relatively affluent people.²²²

McDermott pointed out that the Board's decision to increase the dues did not require ratification under the constitution, but that the Board sought membership approval in the interests of democratic participation.²²³ After a brief discussion, the members approved the dues increase.²²⁴ A *Chronicle* banner headline said it all: "Secretary's Office Loses Free Ride."²²⁵

²²⁰ *Id.* at 15.

²²¹ Minutes, Board of Governors, *supra* note 218, at 2.

²²² Transcript, Annual Membership Meeting, June 1, 1988, 14, NAA Archives.

²²³ *Id.* at 17.

²²⁴ Minutes, Membership Meeting, June 1, 1988, at 5, NAA Archives. The transcript for the entire meeting consists of only 43 pages.

²²⁵ The *Chronicle* (NAA, Feb. 1988), 1, NAA Archives.

Secretary Dallas Jones spent much of his last year in office helping his successor, Dana Edward Eischen of Ithaca, New York, move into a new office under the sponsorship of Cornell University's School of Industrial and Labor Relations. Although the institutional tie was not totally severed, the Academy was finally paying its own way.

Other Funding Initiatives

Legal Representation Fund

In response to members' continuing calls for protection against lawsuits, the Board in 1979 had adopted a cooperative arrangement with the general counsel of the American Arbitration Association (AAA) that allowed members to contact the AAA for advice and representation. The cost of that service had been escalating. In 1980, President Eva Robins confirmed an agreement with AAA for legal services. Legal Protection Committee Chair James Harkless of Washington, D.C., had negotiated the agreement providing for "advice and counsel" to Academy members in the following situations:

- (a) suits in which the arbitrator is named a party defendant, seeking to vacate his award, to secure money damages from him, etc., including ERISA matters;
- (b) subpoenas served on the arbitrator to compel him to testify at a hearing or furnish materials in his possession;
- (c) attempts to involve the arbitrator in a criminal proceeding where the accused had been a grievant or a witness in a case decided by the arbitrator; and
- (d) other matters which involve the kinds of legal problems raised in (a) through (c). However, before performing any services under this item (3), the General Counsel will secure the approval of the Chairman of the Academy's Legal Protection Committee, or, if he is not available, the approval of the Academy President.

The Academy agreed to pay AAA a retainer with a minimum of \$5,000 and a maximum of \$15,000.²²⁶ By 1983, legal expenses had increased with the rise in cases.²²⁷ To staunch the increasing drain on the Academy's general cash flow, the Board of

²²⁶ Letter from President Eva Robins to AAA General Counsel Gerald Aksen, September 1, 1980, Robins Files, NAA Archives.

²²⁷ According to a report dated August 3, 1983, the American Arbitration Association handled 18 cases in the first six months of 1983. Legal Representation Committee Files, NAA Archives.

Governors approved a cap on payments to the AAA for legal representation.²²⁸

To stop the financial uncertainty caused by these legal defense payments, the Board explored various options. President Byron Abernethy appointed a committee chaired by P.M. Williams of Oklahoma. The committee presented a proposal for an insurance program, but many members feared that an insurer would be inclined to settle cases at the expense of the principle of arbitral immunity. The members voted to return the matter for further study. Under the chairmanship of James Harkless and, later, Nathan Lipson, the Legal Representation Committee recommended a form of self-insurance. The Board finally approved establishment of a Legal Representation Fund (Fund) "for the purpose of defending the arbitration process and the National Academy of Arbitrators as an organization."²²⁹ President Dunsford summarized the rationale for the Fund:

[I]t was inevitable that sooner or later the Academy would be forced to build a legal defense fund to protect both the process and itself as an organization. For better or worse, we live in a litigious society. From time to time in the past the Academy has been faced with the threat of major lawsuits. Moreover, the principle of arbitral immunity is regularly challenged in legal actions against individual members.²³⁰

The \$50,000 Fund was to be financed by an initial \$100 assessment paid by each Academy member. Whenever the Fund assets fell below \$50,000, additional assessments would be made in increments of \$10. Effective June 1, 1984, the Fund provided payment for costs of legal advice, assistance, and retention of counsel whenever a member was involved in legal problems as a result of arbitration activity up to a maximum of \$2,500. The Fund continued to reimburse the AAA for the costs of legal assistance, which had previously been paid from Academy general funds.

The Legal Representation Committee, under the chairmanship of Milton Rubin of Croton-on-Hudson, New York, adopted a set of rules for members who sought assistance from the Fund. These rules required notice to the committee chair and the AAA legal staff as soon as a member received formal notice of legal action. The AAA would then contact opposing counsel and try

²²⁸Minutes, Board of Governors, May 25, 1982, NAA Archives.

²²⁹Legal Representation Program and Fund (hereinafter Fund), Policy Statement Adopted by the Board of Governors, May 22, 1984, NAA Archives.

²³⁰Dunsford, *President's Column*, The Chronicle (NAA, Sept. 1984), 6.

to extricate the arbitrator from the proceeding. In the event the AAA was not successful, the member could retain private counsel, who might still benefit from AAA advice, but the AAA would not be involved in any court, discovery, or administrative proceedings. Finally, the rule stated that "payments shall not be approved in cases which have no bearing on the arbitration process or where it is inappropriate for the Academy to be involved. . . . The Program is not an insurance policy which provides liability protection."²³¹

In 1987, the Legal Representation Committee reported that the Fund had spent \$14,222 "handling problems of members, disbursements from the Legal Representation Fund, and *amicus* activities."²³² Even with interest income and assessments from new members, the Fund balance had fallen to \$43,154, requiring a general assessment to bring the balance above the \$50,000 level. Six Academy members had been reimbursed \$2,500 each (the Fund maximum) for expenses of local counsel, and 21 members had consulted the AAA about legal problems. Most cases involved improper subpoena of arbitrators or their records in actions to vacate arbitration awards or in cases against unions alleging breach of the duty of fair representation.²³³ By 1990, the Fund had again fallen below the required \$50,000, and members were assessed another \$20 to restore the balance. Committee Chair Nathan Lipson reported that, while the number of members seeking assistance had declined, the amount of their claims had grown. He noted that the Fund had worked very well because no member had paid more than \$140 over the life of the Fund, much less than the cost of insurance.²³⁴

NAA Research and Education Foundation

The constant threat of assessments to support the Legal Representation Fund, combined with the Academy's limited finances, led the Board of Governors to appoint Vice President Dallas Young of Cleveland, Ohio, to meet with "a small number of persons to explore ways by which the organization might be restored

²³¹ Memorandum from the Committee on Legal Representation to Academy Members (n.d.), 2, NAA Archives.

²³² Report of the Legal Representation Committee, May 18, 1987, NAA Archives.

²³³ *Id.*

²³⁴ Minutes, Board of Governors, May 27-28, 1990, 12, NAA Archives.

to a sound financial position.”²³⁵ One of the recommendations of this “study group” was the establishment of an NAA foundation with the following objectives:

1. to provide facilities for and to support a forum for discussion of labor arbitration issues for civic and educational purposes . . . ;
2. to afford speakers . . . to encourage timely discussions of important issues in the labor relations field;
3. to accept, solicit, reserve, hold, invest, re-invest and use funds furnished from any source exclusively for the furtherance and accomplishment of the aforementioned purposes.²³⁶

Acting on Young’s recommendations, President Dunsford appointed Vice President and charter member Alex Elson of Chicago, Illinois, to submit a proposal for the formation of a tax-exempt organization. Elson’s report to the Board of Governors recommended that the new foundation be named “NAA Research and Education Foundation” and that, to ensure Internal Revenue Service (IRS) section 501(c)(3) tax-exempt status, its functions be confined to continuing education, research, and training.²³⁷ Elson summarized the Academy’s organizational status:

As a national organization which functions without a paid executive the NAA is probably unique. Its remarkable success, in the 37 years of its existence, is the result of the devotion of a group of selfless, exceptionally able and prestigious members. . . .

With the growth of membership, dues may provide a source of funds for a paid director. Another source of funds will be available through a tax-exempt organization which will pay for the carrying on of functions which are not part of the NAA budget. . . .

If a tax-exempt organization is created it will be separate and distinct from the NAA. Its nexus to the NAA will be reflected only in its statement of purposes and the composition of its Governing Committee and membership.²³⁸

At the 1985 Annual Meeting in Seattle, Washington, the Board of Governors established the National Academy of Arbitrators Research and Education Foundation (Foundation), designating the Governors as the members of the Foundation.²³⁹ The Board elected Elson president, Arnold Zack vice president, and Dallas

²³⁵ Letter from Dallas Young to President Mark Kahn, Secretary-Treasurer Dallas Jones, and President-elect John Dunsford, September 30, 1983, Dunsford Files, NAA Archives.

²³⁶ *Id.* at 2.

²³⁷ Report to the Board of Governors, September 6, 1984, NAA Archives.

²³⁸ *Id.* at 11–13.

²³⁹ Minutes, Board of Governors, May 27–28, 1985, NAA Archives.

Jones secretary-treasurer. The Governors also elected 15 members to the Foundation Board of Directors, 5 for a three-year term (Elson, Margery Gootnick, Dallas Jones, Ted Weatherill, and Zack), 5 for a two-year term (Raymond Goetz, Gladys Gruenberg, James Oldham, Carlton Snow, and James Stern), and 5 for a one-year term (John Dunsford, Theodore High, Ted Jones, Jean McKelvey, and Rolf Valtin).²⁴⁰ The Foundation was formally established as a not-for-profit Michigan corporation on July 15, 1985, and received an IRS § 501(c)(3) exemption for federal tax purposes on October 6, 1985.²⁴¹

The Academy advanced an interest-free loan of \$5,000 to the Foundation for necessary initial expenses. Subsequently the Foundation was to rely on contributions from members, particularly the so-called "life fellows" who were to donate \$1,000 each over a five-year period. The goal was to obtain 100 life members in 1986. The Foundation Board decided to postpone solicitation of outside funds until it had fully explored Academy sources, lest asking the parties for support might jeopardize the independence of the Academy. The Foundation Board also opposed funding projects from outside the Academy.²⁴²

Membership Issues

Increase in Numbers

The rapid rise in public-sector bargaining in the 1970s had spurred both interest arbitration and grievance arbitration. A steady and substantial increase in the number of labor arbitrations during the 1970s and 1980s²⁴³ laid the foundation for unprecedented growth in Academy membership.²⁴⁴

²⁴⁰ *Id.* at 14; and Minutes, NAA Research and Education Foundation (hereinafter Foundation), May 30, 1985, and November 8, 1985, 3-4, NAA Archives. See also *Academy Approves Foundation and New Training Program*, The Chronicle (NAA, Sept. 1985), 4.

²⁴¹ Foundation brochure sent to Academy members (n.d.), NAA Archives.

²⁴² Letter from Alex Elson to Dennis Nolan, March 18, 1986; Minutes, Foundation, November 8, 1985, 2, NAA Archives.

²⁴³ Cf. Federal Mediation and Conciliation Service, Annual Report (1989), 24.

²⁴⁴ For example, various issues of *The Chronicle* reported that 26 new members were inducted in 1984, 42 in 1985 (the peak), 23 in 1986, 33 in 1987, and 29 in 1988. This totaled 153 in a five-year period, compared with an increase of 97 in the entire 1960s decade. Cf. Table 3-1 in Chapter 3. These data may not coincide with the numbers of new members admitted by the Membership Committee in corresponding years because of the requirement for orientation and attendance at an Academy meeting before induction, in accordance with amendment of the bylaws, May 23, 1984. See *The Constitution and By-Laws* (Article VI (Membership), section 4), in *Arbitration 1987: The Academy at Forty*, Pro-

Some members feared that the Academy was growing too fast in the face of a declining market and that membership standards were not sufficiently rigorous. In response to these complaints about the adequacy of standards, President Mickey McDermott appointed Peter Seitz chair of a special committee to investigate membership standards in 1979. McDermott told Seitz that these complaints stemmed from a belief that standards were "allowing too many applicants into the Academy or were permitting the admission of applicants not qualified for membership," and were specifically related to the "50-5 standard."²⁴⁵ (The 50-5 standard referred to the Academy's requirement that the applicant for Academy membership had arbitrated at least 50 cases in the five years preceding the date of application.)

Seitz believed that the statement of membership standards in the Membership Directory was too vague and favored publicizing the 50-5 standard. Committee members John Dunsford, Lewis Gill, Mark Kahn, Alexander Porter, and Rolf Valtin disagreed. They insisted that the "numerical" standard was merely a "pedestrian" marker, and that the Membership Committee should retain total discretion to interpret the general "substantial and current experience" standard on a case-by-case basis.²⁴⁶ Gill suggested that he was risking having Seitz declaim "Et tu, Lew!" by agreeing with his colleagues. He added: "I look forward to your revised draft and especially the bitter comments which will accompany it."²⁴⁷ In a typical "bitter comment," Seitz compared his drafting the committee report to Thomas Jefferson's experience with the Declaration of Independence:

[I]f Jefferson had such a special committee as I share breathing down his neck when he wrote the Declaration, he might never have proceeded beyond the word "We." . . . I feel less than comfortable with a 50 and 5 standard applied *in camera* by what some may think to be a group of zealots huddling around guttering candles.²⁴⁸

ceedings of the 40th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix A, 205, 215.

²⁴⁵ Letter from President Mickey McDermott to Peter Seitz, October 19, 1979, quoted in the Special Committee on Membership Standards Report (hereinafter Seitz Report), NAA Archives.

²⁴⁶ Letters to Peter Seitz from John Dunsford, January 18, 1980; from Lewis Gill, February 1, 1980; from Mark Kahn, January 17, 1980; from Alexander Porter, January 30, 1980; from Rolf Valtin, March 6, 1980; Seitz Committee Files, NAA Archives.

²⁴⁷ Gill letter, *supra* note 246.

²⁴⁸ Letter from Peter Seitz to committee members, February 12, 1980, Seitz Committee Files, NAA Archives.

After the second draft of the committee report, Dunsford characterized Seitz as another Job: "It is said of Job that he endured much suffering but did not lose his faith in God. Should anything less be said of our noble chairman?"²⁴⁹ Thereafter Seitz signed himself "Peter Job" when he wrote to committee members.²⁵⁰ Acknowledging Valtin's comments, Seitz wrote:

This letter will not reach you until you return from the nine-day trip that you say you are about to undertake. Do you have a line of merchandise which you are drumming and hawking in second-class cities in the Middle West? . . . Although I have seldom found you to be right in the past, on this occasion I think there is merit in your view that the report should reflect humanity even at the expense of failing to indicate that I am smarter than the other members of the Committee—which, as they say, goes without saying.²⁵¹

In submitting the final draft to committee members, Seitz revealed his "expectation and hope that The Report would be signed in the Oval Office, by each of you, *seriatim*; and that . . . a Bic ball-point pen would be presented to the signatory." He continued:

If the President should be in attendance at the signing, I fear that hard breathers in the Presidential race will claim that he came out of the Rose Garden to the Oval Office for the sole purpose of making political capital by associating himself with our report. We shall have enough trouble getting membership approval of the report without getting involved in Presidential politics. . . .²⁵²

He reminded committee members that he had "humiliatingly succumbed" to their wishes about publicly explaining the numerical standard, and hoped that they would come to his rescue when, among "the Revolutionary Council of Ayatollahs, mullahs and students playing hookey from school, someone is going to rise, shake his gory locks" and ask why the committee failed to "amend the terms of the published 'policy' to include [the 50-5 standard]?" He warned:

²⁴⁹ Letter from John Dunsford to Peter Seitz, February 26, 1980, Seitz Committee Files, NAA Archives.

²⁵⁰ See, e.g., letter from Peter Seitz to committee members, March 10, 1980, enclosing a "third draft" that had been delayed "for reasons which are none of your business and for which I need not account." Seitz Committee Files, NAA Archives.

²⁵¹ Letter from Peter Seitz to Rolf Valtin, March 10, 1980, Seitz Committee Files, NAA Archives.

²⁵² Letter from Peter Seitz to committee members, April 14, 1980, Seitz Committee Files, NAA Archives.

Should the question be put to me, I look forward to Messrs. Dunsford, Valtin and Porter to spring up like the warriors whom Cadmus created by the sowing of the dragon's teeth and to defend me. . . . I can't remember what Ben Franklin said about hanging together or perishing separately; but I enthusiastically subscribe to every word. I hope that you do, too.²⁵³

Reminding the Academy that his 23-page report joined a long succession of similar studies,²⁵⁴ Seitz made the following recommendations which, in effect, maintained the status quo:

1. Make no change in the membership standards published in the Directory.
2. Continue the numerical standard of 50 arbitration cases in the 5 years preceding the application date.
3. The Membership Committee in every case should evaluate the arbitration experience and acceptability of the applicant and consider
 - a. the character, variety and relative difficulty presented by the issues decided by the applicant and the kinds of systems and procedures followed,
 - b. the extent to which the experience and acceptability of the applicant demonstrates professional growth, and
 - c. the extent of diversity in the parties requesting the applicant to serve as arbitrator.²⁵⁵

The Board of Governors accepted the Seitz Committee's report and referred its recommendations to the Membership Committee for its consideration in evaluating applicants for Academy membership. President McDermott summarized the action:

The special committee is unanimous on the point that the Membership Committee should continue to regard 50 arbitration cases decided in the five-year period prior to the date of the application (the numerical standard) to be the basic "experience" benchmark for consideration for admission.²⁵⁶

Some members, particularly in states where public employee relations boards were rapidly augmenting arbitrator rosters, were not satisfied with the Seitz report. They continued to complain that the Membership Committee was too lax and was admitting

²⁵³ *Id.*

²⁵⁴ See, e.g., *Report of the Special Committee to Review Membership and Related Policy Questions of the Academy—Otherwise Known as the Reexamination Committee*, in *Arbitration—1976, Proceedings of the 29th Annual Meeting*, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1976), Appendix F, 361, 365; cf. Chapter 4, text, at notes 123–25.

²⁵⁵ Seitz Report, April 14, 1980, Seitz Committee Files, NAA Archives.

²⁵⁶ Minutes, Board of Governors, June 10, 1980, NAA Archives.

unqualified applicants. As spokesman for this sentiment, George Nicolau of New York City made a motion at the 1980 membership meeting designed to give regions some say-so about candidates. He believed that the Membership Committee should provide regions with more information to assist in screening applicants. He proposed that, in addition to the data on caseloads already required, candidates should submit names of representatives of the parties for each case decided in the last 15 months. Along with applications, the Membership Committee should forward this list to the appropriate region for the purpose of interviewing these representatives to check on "the candidate's acceptability, substantial and current experience, moral character and adherence to sound professional ethics." Thereafter the regions could make appropriate recommendations to the Membership Committee.²⁵⁷

Considerable discussion ensued. Membership Chair Mark Kahn agreed with the proposal's objectives but expressed strong opposition to the process on the ground that it would not fit all regions. Some, like New York with a large local contingent of Academy members, could handle these responsibilities, Kahn said, but a sparsely populated region like Rocky Mountain, would find it much too onerous. The motion failed. Peter Seitz then proposed a substitute:

[T]hat it is the sense of this body that the Membership Committee should be assisted in every possible way it desired, by activity in the regions, in furnishing it information for the purpose of performing its very difficult job.²⁵⁸

This motion passed.

A Governance Issue

The drive toward "democratization" of the Academy's admission and governance processes continued all through the 1980s and did not come to fruition until the 1990s.²⁵⁹

Rebellion reared its head a second time in 1980 in a proposal to expand the nomination process. The Nominating Committee

²⁵⁷ Minutes, Annual Membership Meeting, June 11, 1980, 11, NAA Archives.

²⁵⁸ *Id.* at 12. In 1981 the Legal Affairs Committee Chair John Kagel of California advised that outside counsel considered regional screening suspect from an antitrust point of view, stating: "The greater the involvement of direct competitors of applicant arbitrators, the more open the membership decision making process is to charges of anti-competitive bias." Minutes, Membership Meeting, May 6, 1981, 6-7, NAA Archives.

²⁵⁹ Cf. Chapter 6, text, at notes 78-82.

had traditionally submitted only one slate of officer and governor candidates to the membership for election; there was no specified means in the constitution and bylaws to nominate others.

In reaction, the Board of Governors instructed Legal Affairs Chair John Kagel to draw up appropriate amendments to Article VII of the bylaws to permit contested elections. At the 1982 Annual Meeting, George Nicolau, continuing his earlier initiative, proposed the addition of a new section 4 to permit campaigning by mail and in *The Chronicle*. He submitted the amendment under the "Germane Amendment" proviso of Article VII of the constitution, permitting the membership to amend the constitution at the annual meeting without the normal advance notice or petition-referendum. All amendments passed.²⁶⁰

In 1986, as a sign of growing regional unrest, President William Fallon announced that "for the first time in the history of the Academy," there would be a contested election for seats on the Board of Governors. Marvin Feldman of Cleveland, Ohio, had placed his name in nomination after obtaining the 30 signatures required by amended Article VII of the bylaws.²⁶¹ Secretary Dallas Jones prepared a secret ballot "to assure a fair election," to be given to members in attendance whose names appeared on a current dues-paying membership list. The Board appointed a special election committee to "supervise the election and count the ballots," chaired by James Sherman of Florida, with Ralph Seward, charter member and first Academy president, as election judge "in the event a dispute should arise."²⁶² The election was held between 9:30 and 11:00 a.m. at the membership meeting on June 4, 1986. If needed, a runoff election was scheduled at the beginning of the afternoon session.²⁶³ The membership elected the Nominating Committee's slate.²⁶⁴ No challenged election has occurred since that time.

²⁶⁰ Minutes, Membership Meeting, May 26, 1982, 11, NAA Archives.

²⁶¹ Minutes, Board of Governors, June 1, 1986, 2-3; Minutes, Annual Membership Meeting, June 4, 1986, 4, NAA Archives.

²⁶² Minutes, Board of Governors, *supra* note 261, at 3.

²⁶³ Minutes, Board of Governors, June 2, 1986, 17, NAA Archives.

²⁶⁴ Minutes, Annual Membership Meeting, *supra* note 261, at 5. George Nicolau, who became Academy president in 1996, recalled that this "first formal challenge to the Nominating Committee's recommendations" in 1986 came "at a time, ironically, when the Committee had recommended me for membership on the Board of Governors." Letter from George Nicolau to Gladys Gruenberg, June 12, 1996.

Other Admission Questions

Public Sector. The increase in public-sector arbitration reawakened the debate over whether interest arbitration cases should be counted by the Membership Committee in evaluating an applicant's acceptability as an arbitrator by the labor-management community. In reaction, President William Murphy appointed President-elect Arvid Anderson, Vice President Frances Bairstow, and Governor Margery Gootnick to look into the matter.²⁶⁵ Anderson's pioneering work on the Wisconsin Employment Relations Commission and as first director of the New York City Office of Collective Bargaining uniquely qualified him to oversee this assignment.²⁶⁶

In its report the committee pointed out:

The Academy is a National Academy of Arbitrators and not a National Academy of Grievance Arbitrators; therefore they could find no basis for a distinction between interest arbitration and grievance arbitration in determining the acceptability of an applicant.²⁶⁷

The Board of Governors approved the committee's recommendation that the Membership Committee accord interest arbitration equal weight with grievance arbitration in evaluating an applicant's qualifications.²⁶⁸

Single Industry and Railroads. Although membership standards required that the applicant's arbitration experience "reflect general acceptability by the parties,"²⁶⁹ many members had gained entrance to the Academy after interning or arbitrating in single industries, especially automobile manufacturing, steel, and coal. The Membership Committee had based its decisions on the diversification of company structures and grievance issues coming to arbitration even though cases arose under industrywide collective bargaining agreements.

The railroad industry posed a special problem. After the passage of the Railway Labor Act, grievances were resolved at the local level by labor-management teams under an industrywide collective bargaining agreement (similar to the Teamsters system). These decisions could be appealed to the National Railroad Adjust-

²⁶⁵ Minutes, Board of Governors, October 30-31, 1986, NAA Archives.

²⁶⁶ Anderson Presidential Interview, June 1, 1989, NAA Archives.

²⁶⁷ Minutes, Board of Governors, *supra* note 265, at 3.

²⁶⁸ *Id.*

²⁶⁹ *Statement of Policy Relative to Membership*, Membership Directory (annual), NAA Archives.

ment Board (NRAB). NRAB tripartite panels decided cases on the basis of written submissions without a *de novo* hearing. The Membership Committee did not consider these appellate decisions countable under the 50-5 rule.

After the deregulation and mergers of the 1980s, several railroad companies and unions broke with the industrywide pattern and signed individual contracts providing for traditional grievance arbitration. The National Mediation Board began submitting arbitrator lists in railroad cases similar to the procedure in the airline industry. The arbitration hearings were the same as the *de novo* proceedings in other industries, except that the tripartite system was much more prevalent. Increasingly, applicants with this type of background sought admission to the Academy.

In 1988, the Membership Committee requested guidance from the Board of Governors on the admissibility of both single industry and railroad arbitrators. President Thomas Roberts posed the problem:

[W]hile the single industry arbitrator and the railroad arbitrator represented two distinct problems, in a sense it was one problem. If the Board found that a single industry arbitrator did not meet the standard of "general acceptability," that would dispose of the question of the railroad arbitrator. If, however, the Board found that in certain instances a single industry arbitrator met the standard of general acceptability, there remained the question of the railroad arbitrator because of the problems inherent in that particular industry.²⁷⁰

Membership Committee member Herbert Marx set forth the committee's practice regarding the single industry arbitrator, regardless of the industry:

[B]road experience in a single industry may qualify an applicant for membership, but . . . this would depend upon individual circumstances relating to the number of parties involved and the diversity of issues involved.

. . . [I]n regard to the railroad arbitrator . . . National Railroad Adjustment Board appellate cases paid for by the Federal government should not carry weight in case load assessment for membership. However, cases in other types of railroad arbitration are worthy of full consideration. These include cases where parties select and compensate the arbitrator as well as appointments to certain types of boards which involve full evidentiary hearings.²⁷¹

²⁷⁰ Minutes, Board of Governors, October 27-28, 1988, 7, NAA Archives.

²⁷¹ *Id.* at 7-8.

Membership Committee member Gladys Gershenfeld listed five questions the committee would take into consideration in evaluating a single industry application:

1. Was the arbitrator selected by the parties or appointed by some agency?
2. Was the arbitrator paid by both parties or by the government?
3. Was the hearing a *de novo* hearing or an appellate hearing?
4. Was it an expedited or a non-expedited case?
5. Did the arbitrator issue a full opinion?²⁷²

Governor George Nicolau made a motion that the recommendation of the committee be amended as follows:

Experience as an arbitrator in a single industry does not automatically disqualify an applicant under the Academy's general standards. Acceptance will depend on the breadth of the applicant's experience, the diversity of issues with which the applicant has had to deal, the number of parties by which the applicant has been selected and other such relevant factors.²⁷³

The Board passed the motion relating to the single industry arbitrator, and also approved the recommendation of the committee with reference to the railroad industry arbitrator, in essence maintaining the status quo.²⁷⁴

Member Shortage

In contrast to a "too much competition" mentality among some members seeking to tighten membership standards, declining union membership in the 1980s produced the opposite reaction among others. They feared that fewer arbitration cases would ultimately reduce the pool of applicants for membership and foresaw the Academy's demise if membership standards remained too rigid. Reliance solely on labor arbitration was seen as a straight-jacket limiting the Academy's potential, especially in view of the new emphasis on alternative dispute resolution (ADR) as a substitute for employment litigation. However, it was not until the 1990s that the Academy took action to confront this challenge.²⁷⁵

²⁷² *Id.* at 8.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ See, e.g., Sinicropi, *Presidential Address: The Future of Labor Arbitration: Problems, Prospects and Opportunities*, in *Arbitration 1992: Improving Arbitral and Advocacy Skills, Pro-*

Mario Bognanno and Clifford Smith of the Research and Education Committee fueled the debate over feast versus famine in labor arbitration when they produced the preliminary results of their study of labor arbitrators in North America at the 1988 Annual Meeting in Vancouver, Canada.²⁷⁶ Their profile of the typical labor arbitrator came as no surprise to Academy members:

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.²⁷⁷

In their original presentation, the authors speculated that, because "most arbitrators practice on a part-time basis," the often voiced "shortage" probably referred "only to full-time, Academy arbitrators" with over 20 years of experience. They concluded:

A large fraction of inactive and part-time labor arbitrators, the self-reported willingness of a significant share of the part timers to convert to full-time practice, and incidental statistics on the relatively modest number of cases heard per year or the low mean number of arbitration days worked per month, makes it difficult to credit the often heard assertion about arbitrator shortages.²⁷⁸

Dues Waivers and Honorary Life Membership

In his May 1985 report, Secretary-Treasurer Dallas Jones reminded the Board of Governors that the dues-waiver policy was "a continuing problem as it impacted upon older, retired members":

Under the current policy, the request for a waiver of dues must be made each year. In some instances, older members are physically inca-

ceedings of the 45th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1993), 1.

²⁷⁶ Bognanno & Smith, *The Arbitration Profession: I. The Demographic and Professional Characteristics of Arbitrators in North America*, in *Arbitration 1988: Emerging Issues for the 1990s*, Proceedings of the 41st Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1989), 266. The final study, financed by a joint grant from the Academy and the NAA Research and Education Foundation, was Bognanno & Smith, *Labor Arbitration in America: The Profession and Practice* (Praeger 1994).

²⁷⁷ Bognanno & Smith, *The Arbitration Profession: I. The Demographic and Professional Characteristics of Arbitrators in North America*, *supra* note 276, at 276.

²⁷⁸ *Professional Practice of Labor Arbitration Profiled in Study of 4,357 Neutrals by NAA Research Committee*, *The Chronicle* (NAA, Oct. 1988), 1, 3.

pable of making such requests; it also creates embarrassment and irritation for older members.²⁷⁹

Some members complained that, although they were not eligible for a full waiver, they did not have enough arbitration work to warrant paying the full amount of dues.²⁸⁰

The Board adopted a comprehensive waiver policy in 1984. It included three categories of waiver status:

1. a full waiver for a member with no arbitration work and a "minimal" income from other "gainful employment";
2. a 60 percent waiver for a member with a "minimal" amount of arbitration work and a "minimal" income from other "gainful employment";
3. a 50 percent waiver for a member with no arbitration work but more than a "minimal" income from other "gainful employment."²⁸¹

As might have been expected in an organization with members engaged in interpretation of ambiguous contract language, the words "minimal" and "gainful" caused considerable consternation even though the Board had set limits of five cases and net taxable income of \$10,000. Interested members were required to seek a waiver anew every year, making their own determination of their caseload and income. As the Academy membership aged, more and more members requested waivers. For example, in 1990, the secretary-treasurer reported that 104 of the 691 Academy members requested and were granted dues waivers, most under section 1.²⁸²

On the theory that the dues-waiver problem might be solved by linking it with honorary life membership, President William Murphy appointed John Dunsford "as a one-person committee to study the possibility of breathing some life into the long dormant provision in our constitution for honorary life members."²⁸³

²⁷⁹ Minutes, Board of Governors, May 27-28, 1985, 1, NAA Archives. In 1976, after the Academy's dues structure had changed from a three-tier voluntary amount to a set fee, the Board had granted a waiver of dues to "retired persons who no longer arbitrate" and "persons who have temporarily ceased the active practice of fee for service arbitration for a minimum of one year, until such time as they resume arbitration work." Cf. NAA Policy Handbook (1990), 8-9.

²⁸⁰ Cf. discussion of dues controversy in Chapter 4, text, at notes 73-82.

²⁸¹ Minutes, Board of Governors, May 21, 1984, and October 30, 1986, NAA Archives. See also NAA Policy Handbook (1990), 9-10.

²⁸² Minutes, Board of Governors, May 27-28, 1990, NAA Archives.

²⁸³ Murphy, *Reminiscences: Honorary Life Members: Introduction of Robben W. Fleming*, in *Arbitration 1992: Improving Arbitral and Advocacy Skills*, Proceedings of the 45th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1993), 307.

Dunsford's 1986 report reminded the Board that, rather than petition for a dues waiver, some eligible members chose to resign or simply stopped paying dues.²⁸⁴ To avoid the demeaning aspects of the yearly request for waiver, Dunsford recommended that the Board grant honorary life membership to all those eligible for a section 1 waiver. He noted:

The premise of such a commendation would be that the member appears to have entered retirement or is permanently disabled so that it is not expected he or she will resume the practice of arbitration or any other business activity in any substantial way in the future.²⁸⁵

The Board ordered the secretary-treasurer to name as "life members" those persons who had been on section 1 waivers for two years or more, but decided to reserve the "honorary" designation as a more prestigious award.²⁸⁶

In 1988, President Thomas Roberts appointed Arnold Zack chair of another committee to reexamine the question of "honorary life membership" and to suggest persons to receive that award. The Zack Committee's report pointed out that the original honorary life membership in Article V, section 2 of the Academy's bylaws, adopted in 1963, "arose in the context of an escalating dues structure [and] was intended to . . . encourage continuation of membership by those who might otherwise resign. . . . Honorary status has never been conferred. . . . [A] number of our most esteemed and prestigious members . . . continue to resign."²⁸⁷ Zack recommended that a designating committee be appointed to select nominees for honorary life membership based on the following qualifications:

1. the quality of the nominee's contribution to the field of labor-management arbitration;
2. the participation of the nominee in the activities of the NAA;

²⁸⁴For example, past presidents Robben Fleming and Charles Killingsworth resigned in 1985 and in 1993, respectively. Report of the Secretary-Treasurer, May 29, 1985 and May 23, 1993, NAA Archives. Fleming later was awarded honorary life membership. See Fleming, *Reminiscences: Honorary Life Members*, *supra* note 283, at 308.

²⁸⁵Report on Honorary Life Membership and the Waiver Policy, October 16, 1986, NAA Archives.

²⁸⁶Minutes, Board of Governors, October 30, 1986, and May 25, 1987, NAA Archives. See also NAA Policy Handbook (1990), 10-11. In 1988, the Board approved the designation of 35 members, who had requested dues waivers under section 1, as Life Members. Minutes, Board of Governors, May 29-30, 1988, 3, NAA Archives.

²⁸⁷Report of the Committee to Study Honorary Life Membership, October 28, 1988, NAA Archives.

3. the contribution of the nominee to public or community services during and since NAA membership.²⁸⁸

The designating committee should explore a suitable program at annual meetings to celebrate those elected. And thus was conceived the Academy's annual honorary life membership award ceremony. Some of those so honored, and some other distinguished arbitration figures, have also spoken at the portion of the annual meeting designated a "fireside chat." Those sessions have given senior arbitrators a chance to reminisce about their arbitration careers in an informal setting.

Awards to 30-Year Members

To provide recognition to the increasing number of long-time Academy members, the Board of Governors approved Program Chair William Murphy's recommendation that the Academy honor 30-year members.²⁸⁹ At the 1985 Annual Meeting in Seattle, 92 members who had joined the Academy from 1947 to 1955 (23 of whom were charter members) received lapel pins and 30-year certificates. Thus was started a ceremony that was to become a tradition at the members-only session during the annual meeting.²⁹⁰

Record-Keeping and Academy Heritage

Recurring Problems

The movement of the Academy's headquarters from Detroit to Pittsburgh to Washington, D.C., had taken a toll on Academy records. President Byron Abernethy faced a problem that had plagued presidents since the 1960s—inability to access Academy documents.²⁹¹ After asking Secretary Richard Bloch for copies of all the advisory opinions, he was told:

Rich [Bloch] has informed me that the compilation of Advisory Opinions was never assembled for distribution to the membership. Look-

²⁸⁸ *Id.* at 7.

²⁸⁹ Minutes, Board of Governors, November 1–2, 1984, 19–20, NAA Archives.

²⁹⁰ *Of Interest to Members: 30-Year Awards*, The Chronicle (NAA, Sept. 1985), 2. See also *Five Thirty-Year Members to be Honored at Annual Meeting*, The Chronicle (NAA, May 1988), 1, 6; *Eleven to be Honored in Chicago for 30 Years of NAA Membership*, The Chronicle (NAA, May 1989), 1, 2.

²⁹¹ Letter from President Byron Abernethy to the membership, July 28, 1982, Bloch Files, NAA Archives. See also Abernethy Presidential Interview, June 1, 1989, NAA Archives. Cf. Chapter 3, text, at notes 129–33.

ing through old files I came upon those Advisory Opinions enclosed. Sorry I could not have had a better report to give you.²⁹²

Abernethy was so dissatisfied with the Academy's record-keeping that he commissioned Peter Seitz of New York City "with the task of reviewing the Academy's archives to determine . . . which files . . . could be forwarded to our repository at Cornell University."²⁹³ Seitz was somewhat chagrined to discover that 17 years earlier the Board of Governors had designated Cornell's Industrial and Labor Relations (ILR) School as the Academy's depository. He bluntly told Abernethy that there was "nothing to implement" and questioned whether analysis of Academy records was necessary.²⁹⁴

Academy History

Abernethy's interest in maintaining Academy records also caused him to ask Martin Wagner, University of Illinois industrial relations professor, to develop a policy handbook.²⁹⁵ The next year President Mark Kahn reappointed both Seitz and Wagger to continue their work. Those activities bore fruit in 1984 when the Future Directions Committee submitted its recommendation for "Preserving the Heritage of the Academy":

A committee shall be given the responsibility of actively gathering and preserving documents, photos, information of all sorts, and personal reminiscences of the origin, development, and heritage of the Academy, looking toward an ultimate utilization of such materials in a history or histories of the organization.²⁹⁶

Seitz remained unenthusiastic about the project, telling Archives Committee members:

²⁹²Letter from Sharon Willier to President Byron Abernethy, May 14, 1982. She wrote similar letters to him on May 5 and May 11, 1982, relating to Board of Governors minutes, annual meeting minutes, a regional map, and general ledgers. Bloch Files, NAA Archives. The archives and record-keeping are discussed in more detail, *infra*, under Academy History.

²⁹³Letter from Secretary Richard Bloch to University of Baltimore Professor A.E. Berkeley, October 7, 1982. Berkeley had volunteered to work with Seitz. Bloch believed that the task of "cataloging the existing files" would not take "more than a day." Bloch Files, NAA Archives.

²⁹⁴Letter from Peter Seitz to President Byron Abernethy, September 23, 1982, Archives Committee Files, NAA Archives.

²⁹⁵Patrick Fisher had completed a similar task in 1962. Cf. Chapter 3, text, at note 131.

²⁹⁶FD Report, *supra* note 79, at 265-66.

In view of the fact that Hercules Bloch is presently undertaking cleansing of his Augean Stables, I don't know at this time what residue of files he will be transmitting to Ann Arbor.²⁹⁷

Incoming Secretary Dallas Jones told Seitz that he knew nothing about the Cornell depository.²⁹⁸ Jones stated that, when he was chairman of the Research Committee, "it was proposed that the Research Committee utilize the material [in the archives] to write a history of the Academy. . . . We did not realize and no one told us that Cornell had made a bid for the Archives."²⁹⁹

In his report to the Board of Governors, Seitz referred again to the Board's 1965 resolution to use Cornell ILR library as "the official depository of the Academy's official records without charge for collecting and arranging such papers." At the time, the Board had attached two conditions: (1) that duplicated records be maintained by the secretary, and (2) that the Academy retain the right to determine which records were to be retained as confidential and not subject to release. Since only records from 1961 to 1963 had been sent to Cornell, Seitz recommended that the 1965 resolution be "revoked and rescinded," and that instead all officers and committee chairs be ordered "to transmit to the secretary-treasurer all Academy records in their possession except those containing confidential information . . . best left where they are."³⁰⁰

No further action was taken on preserving Academy history until President John Dunsford appointed James Stern, economics and industrial relations professor at the University of Wisconsin, to chair a new Academy History Committee. Committee member Richard Mittenenthal suggested:

[T]he only way to make the history useful and readable is to break it down by subject matter: (1) organization, including membership and dues policies, (2) ethics and professional responsibility, (3) annual meetings, including guest policy, (4) substantive contributions of papers presented at annual meetings, (5) committee research, etc. . . . The few organizational histories I have seen have been dry as dust.³⁰¹

²⁹⁷ Letter from Peter Seitz to committee members, March 24, 1983, Archives Committee Files, NAA Archives.

²⁹⁸ Letter from Secretary Dallas Jones to Peter Seitz, April 1, 1983, Archives Committee Files, NAA Archives.

²⁹⁹ *Id.*

³⁰⁰ Report of the Archives Committee to the Board of Governors, May 4, 1983, NAA Archives.

³⁰¹ Letter from Richard Mittenenthal to James Stern, September 10, 1984, Academy History Committee Files, NAA Archives.

Committee member Charles Killingsworth thought the Academy History Committee should "develop a collection of some of the best papers from the annual meetings and publish it as a book of readings" because there was "no satisfactory textbook for the arbitration course. . . . Elkouri . . . is like studying an encyclopedia."³⁰²

In its final report, the Academy History Committee made the following recommendations:

1. Request all members to send correspondence, minutes, photos, and other recollections about the Academy to the secretary.
2. Hire a part-time archivist to catalogue this material as well as Academy files.
3. Videotape reminiscences of distinguished senior Academy members about Academy events.
4. Instruct committees to review their files and identify documents important for a future Academy history.³⁰³

For the future, the committee suggested that the Board consider authorizing a well-researched and professional written history of the Academy to be partially financed by a grant from the Foundation.

The Archives

President William Fallon immediately implemented the committee's recommendations by requesting Academy members' cooperation in searching for "important Academy memorabilia that could be very significant to the history of the Academy."³⁰⁴ With the appointment of Anthony Sinicropi, economics professor at the University of Iowa, the Academy's archival commitment began to take shape. He urged that the Academy contact a well-recognized university depository to develop a scheduling program for disposition and preservation of Academy files. Questions of confidentiality, copyright, and ownership were also involved.³⁰⁵

The Board of Governors approved Sinicropi's recommendations and retained Philip Mason, Reuther Library director at Wayne State University, to advise on procedures "for selecting an archival library and to recommend the conditions . . . for an

³⁰²Letter from Charles Killingsworth to James Stern, October 4, 1984, Academy History Committee Files, NAA Archives.

³⁰³Academy History Committee Report, May 31, 1985, NAA Archives.

³⁰⁴Letter from President William Fallon to Academy members, July 1, 1985, Academy History Committee Files, NAA Archives.

³⁰⁵Memorandum from Anthony Sinicropi to Board of Governors, October 25, 1984, Archives Committee Files, NAA Archives.

arrangement between the Academy and the archival institution."³⁰⁶ Mason inspected 18 legal-size file drawers, 512 cartons, and "several packets of inactive records" in the secretary-treasurer's office. He recommended signing a "deposit agreement" and development of a "retention and disposal schedule" with Cornell University's Catherwood Library at New York State School of Industrial and Labor Relations.³⁰⁷ In October 1986, at its midyear meeting in St. Louis, Missouri, the Board of Governors authorized President William Murphy to complete arrangements for the archives.³⁰⁸

At the 1987 Annual Meeting in New Orleans, Academy History Committee Chair James Stern arranged for the audiotaping of a panel discussion by former Membership Committee chairs on the development of admission standards. Participants included John Dunsford, Mickey McDermott, Alexander Porter, Eva Robins, Rolf Valtin, and William Simkin.³⁰⁹ The next day four of the "founding fathers"—Byron Abernethy, Peter Kelliher, Ralph Seward, and William Simkin—gathered for a videotaping of their recollections of the Academy's origins and its first days as a fledgling organization. At the 1988 Annual Meeting, the Academy History Committee sponsored a videotaping of a panel discussion by Academy participants on development of the new Code—Frederick Bullen, Richard Mittenthal, Eli Rock, Ralph Seward, and William Simkin. The Board of Governors authorized these two videos to be shown to the membership at alternate annual meetings. The first showing of the Code panel occurred at the 1990 Annual Meeting in San Diego, California, a year after presentation of the founding video in Chicago.³¹⁰

President Arvid Anderson continued the drive to preserve Academy traditions by requesting Academy History Chair and *Proceedings* Editor Gladys Gruenberg, economics and industrial relations professor at Saint Louis University, to begin writing an Academy history. The Board of Governors sanctioned the project and joined with the NAA Research and Education Foundation in underwriting necessary expenses. After two trips to research the archives at Cornell's Catherwood Library, Gruenberg was joined

³⁰⁶ Report of the Committee on Archives, May 20, 1986, NAA Archives.

³⁰⁷ *Id.* at Appendix B.

³⁰⁸ Minutes, Board of Governors, October 30–31, 1986, 16, NAA Archives.

³⁰⁹ Transcript of panel discussion of membership standards, May 25, 1987, NAA Archives. See also Minutes, Board of Governors, May 24–25, 1987, 14, NAA Archives.

³¹⁰ Minutes, Board of Governors, May 27–28, 1990, 8, NAA Archives.

in the history project by her successor as *Proceedings* Editor, Joyce Najita, director of the Industrial Relations Center at the University of Hawaii, and her successor as Academy History Chair, Dennis Nolan, law professor at the University of South Carolina. The history was scheduled for publication to celebrate the Academy's 50th anniversary in 1997.

Other Academy Publications

Editorial Committee

In 1977, to consolidate the Academy's publication activities, President Arthur Stark established the Editorial Committee under Gerald Somers, economics professor at the University of Wisconsin, who with Barbara Dennis shared editorship of the *Proceedings*.³¹¹ When Somers died suddenly the following year, James Stern, Somers's colleague at the University of Wisconsin, agreed to take over both as coeditor and as chair of the committee. The original purpose of the committee was to oversee all of the Academy's publishing activities, including the *Proceedings*, the newsletter, and potential publications resulting from the research of any Academy committee, especially the Research and Education Committee. In addition, the Editorial Committee was to develop new ideas for Academy publications and open new channels for their sale.

The most successful outcome of this initiative was the oral history project, dating back to President Richard Mittenenthal's creation of the Oral History Committee chaired by Francis Quinn. The Board of Governors had authorized "interviews with some of the more senior arbitrators who were considered pioneers in the field . . . [to] preserve a useful and interesting addition to the literature about the development of arbitration and collective bargaining in the United States."³¹² The sellout of this 8½x11 paperback attests to the success of the project, and the demand for the oral history resulted in a second printing.³¹³ Although the Edit-

³¹¹For many years Barbara Dennis had also edited the Annual Proceedings of the Industrial Relations Research Association, headquartered at the University of Wisconsin. She retired in 1990. Cf. Membership Director (IRRA 1994).

³¹²In addition to Richard Mittenenthal and Francis Quinn, Joseph Krislow, Mickey McDermott, and Ted Jones conducted the interviews. Stern, *Introduction*, in *Oral History Project: The Early Days of Labor Arbitration as Recalled by G. Allan Dash, Jr., Sylvester Garrett, John Day Larkin, Harry H. Platt, Ralph T. Seward, and William E. Simkin* (NAA 1982).

³¹³Minutes, Board of Governors, May 28-29, 1988, 4, NAA Archives.

rial Committee tried to develop similar rapport with other committees, most of them wished to retain jurisdiction over their own publications. For example, in 1985, the Research Committee made arrangements with Commerce Clearing House for the publication of the committee's bibliography of arbitration articles.³¹⁴ In 1988, the International Studies Committee (successor to the Overseas Correspondents Committee) made similar arrangements for publication of a comparative study of interest dispute resolution. Later, under the leadership of Alvin Goldman, law professor at the University of Kentucky, the committee made similar arrangements for publication of two comparative studies of grievance and interest dispute resolution.³¹⁵

The Editorial Committee's lack of success caused President Mark Kahn to abolish it while retaining Stern as *Proceedings* editor. But the following year President John Dunsford revived the committee and its former responsibilities. He renamed it the Publications Committee and designated as its chair Walter Gershenfeld, industrial relations professor at Temple University, who also became *Proceedings* editor. The committee had no more success at coordinating the Academy's publication activities than its predecessor and eventually was again dissolved.³¹⁶

Annual Proceedings

Initially the Editorial Committee was responsible for publication of the *Proceedings*. The Board of Governors was especially disappointed that the sales of the *Proceedings* were not generating royalties. As explained by Bureau of National Affairs (BNA) representative Mary Miner:

³¹⁴Foster & Bognanno, eds., *An Annotated Bibliography of Labor Arbitration* (CCH 1986). A second edition appeared a few years later: Coleman & Haynes, *Labor Arbitration: An Annotated Bibliography* (ILR Press 1994).

³¹⁵Goldman, et al., *The Role of Neutrals in the Resolution of Interest Disputes*, 10 Comp. Lab. L.J. 271 (1989); Goldman, et al., *The Role of Neutrals in the Resolution of Shop Floor Disputes: A 12 Nation Study by the NAA Overseas Correspondents*, 9 Comp. Lab. L.J. 1 (1987). Succeeding International Studies Chairs Joseph Loewenberg of Temple University and Paul Gerhart of Case Western Reserve University continued the series in the 1990s, with a subsidy from the Academy for distribution to members. See Gerhart, et al., *Worker Privacy: A 10 Nation Study by the Committee on International Studies, National Academy of Arbitrators*, 17 Comp. Lab. L.J. 1 (1995); Loewenberg, et al., *The Neutral and Public Interests in Resolving Disputes*, 13 Comp. Lab. L.J. 371 (1992) (8 nations).

³¹⁶Since 1990, the *Proceedings* editor has been individually named without committee status. Dissolution of the Publications Committee resulted from the restructuring recommendations of the Special Committee to Review Inter-Committee Relationships and Functions, established in 1988 by President Thomas Roberts and chaired by Howard Block of Tustin, California. Minutes, Board of Governors, October 27, 1989, NAA Archives. See also NAA Policy Handbook, 8.

Prior to the 1983 meeting, BNA was not paid for copies of the *Proceedings* furnished to NAA members. Instead, a sum of \$1,000 was deducted from any royalties due from sales of the volumes to non-NAA members. The royalty was 10 percent of revenues on sales above 1,000 copies. . . . Because sales never reached 1,000 . . . during the 1970s and early 1980s, there was a net unearned royalty (or a balance due BNA) of nearly \$3,000 by the end of 1982.³¹⁷

In 1983 the Board of Governors approved payment of \$3.00 apiece for members' copies, for which BNA agreed to erase the \$2,848.81 debt. The Academy's 1984 contract with BNA provided for payment of \$7.00 for each member's copy in return for a 10 percent royalty on all copies sold to nonmembers. At the urging of Publications Committee Chair Walter Gershenfeld, the Board gave BNA permission to exhibit the *Proceedings* in the registration area during annual meetings in the hope of increasing sales.³¹⁸ Gershenfeld reported an upward trend in sales, but not sufficient to increase royalties substantially. From 1983 to 1987, BNA royalty payments to the Academy totaled only \$4,558.³¹⁹ By 1990, the Academy's cost per *Proceedings* volume for members had risen to \$12.50.³²⁰ However, the value of the *Proceedings* to Academy members and to the labor relations community has never been challenged.

Reviews of the volumes indicate that the *Proceedings* provided a genuine service to the dispute-resolution profession. In his review of the 1989 volume, Erwin Ellmann, a Michigan attorney, offered this tongue-in-cheek comment:

[T]he book continues to provide a backstage glimpse at the professional arbitration establishment, which may be rewarding to both the partisan advocate and the cultural anthropologist. . . . [F]or either the neophyte arbitrator entering these rather recondite areas or the scholar intent on evaluating them, the papers provide valuable information not readily obtainable from other sources.

In an organization of limited membership and purpose such as the Academy, it is to be expected that some themes are recurrent as appetite for them remains insatiable. . . .

³¹⁷Letter from Mary Miner to *Proceedings* Editor Gladys Gruenberg, October 6, 1989, Publication Committee Files, NAA Archives.

³¹⁸Minutes, Board of Governors, November 1-2, 1984, 18-19; May 27-28, 1985, 5, 17; Minutes, Annual Membership Meeting, May 29, 1985, 13, NAA Archives.

³¹⁹Letter from Mary Miner to Gladys Gruenberg, *supra* note 317.

³²⁰Publication Agreement and letter from Mary Miner to Secretary Dallas Jones, November 30, 1989, Publication Committee Files, NAA Archives. In conjunction with the Academy's 40th anniversary, BNA produced a 40-year index, which added \$7,862 to the \$2,500 advanced to BNA for the 1987 volume. Minutes, Board of Governors, May 29-30, 1988, 4, NAA Archives.

If this volume bespeaks some institutional tiredness, after 42 years of significant reportage, a little senility is to be expected, and even pardoned.³²¹

To show that there were no hard feelings, the next year Program Chair Marvin Hill, industrial relations professor at Northern Illinois University, invited Ellmann to make a presentation at the 1992 Annual Meeting.³²²

The Chronicle

From humble mimeographed beginnings in the 1970s, the Academy's newsletter, *The Chronicle*, evolved into a professional publication in the 1980s. In 1983, President Mark Kahn removed responsibility for *The Chronicle* from the Editorial Committee and set up a separate *Chronicle* Committee under James Sherman of Tampa, Florida. Sherman's modus operandi was to rotate the task of editing each of the three issues among the committee members. Each editor was responsible for submission of type-ready copy directly to the printer in Detroit, Michigan. When Tia Denenberg of Red Hook, New York, became *Chronicle* Committee chair in 1984, editing activities became more formalized. She introduced several new columns, such as "Milestones" and "Regional Roundup"³²³ and began soliciting scholarly articles from Academy members.³²⁴ Denenberg also suggested that *The Chronicle* be upgraded to journal quality for distribution to interested persons outside the Academy. However, the Board of Governors refused her request, fearing that *The Chronicle* "would lose its character as an internal medium of exchange among a relatively small group of colleagues and . . . could become a vehicle for 'grandstanding.'" ³²⁵

³²¹ Ellmann, *Book Review: Arbitration 1989*, 4 *Employee Res. & Resps. L.J.* 171, 174 (1991).

³²² Ellmann, *Functus Officio Under the Code of Professional Responsibility: The Ethics of Staying Wrong*, in *Arbitration 1992: Improving Arbitral and Advocacy Skills*, Proceedings of the 45th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1993), 190. A later *Proceedings* review in the Society of Professionals in Dispute Resolution's (SPIDR's) Newsletter characterized Ellmann's article as "delightful both for its thesis and its historical insight." Boskey, *The Book Shelf*, SPIDR Newsletter (Summer 1993), 15. Howard Foster, industrial relations professor at State University of New York-Buffalo, called the 1992 volume "an excellent overview of timely topics in arbitration for the 1990s." Foster, *Book Reviews: Arbitration 1991*, 46 *Indus. & Lab. Rel. Rev.* 719, 720 (1993).

³²³ Minutes, Board of Governors, June 1, 1985, 2, NAA Archives.

³²⁴ See, e.g., The "Law and Arbitration" column, written at various times by David Feller, William Murphy, Reginald Alleyne, and Jonathan Dworkin.

³²⁵ Minutes, Board of Governors, May 25, 1987, 13, NAA Archives.

In 1988, Chester Brisco of Tustin, California, cochair of the *Chronicle* Committee, recommended that *The Chronicle* expand its coverage to include committee reports and other material currently distributed by the national office. He emphasized that advances in computer hardware and software made it possible to have preparation of *The Chronicle* done entirely by Academy staff, except for pictures and the actual printing. Denenberg supported Brisco's recommendation that immediate steps be taken to modernize *Chronicle* production methods to remove as much work as possible from the volunteer editors. In response, the Board of Governors approved the following actions:

1. To authorize up to \$750 for design advice and to update the style manual that will govern the appearance of *The Chronicle*.
2. To contract with an appropriate newspaper production design organization to produce three issues of *The Chronicle* at a cost that is comparable to the present production arrangement.
3. To use a secretary, whenever possible, available to Academy members to key in the manuscript in lieu of paying a professional typesetter.

The Board also authorized appointment of a special committee to investigate new directions and functions of *The Chronicle*.³²⁶ The first issue of the new *Chronicle* appeared in October 1988. Brisco reported to the Board that Richard Denenberg had been responsible for developing the revised format.³²⁷ An even more extensive reformation of *Chronicle* administration and format was slated for the 1990s.

Regional Activities

Implementing the Future Directions Committee's recommendation of greater attention to regional activities,³²⁸ President John Dunsford appointed Vice President James Sherman as the first National Coordinator of Regional Activities to assist Edwin Teple, chair of the Committee on Regional Organization. The Board of Governors approved the committee's redistricting of regions and national coordination of regional activities. Sherman and Teple urged adoption of a standard format for regional constitutions

³²⁶ President Thomas Roberts appointed Ted Jones as chair of a new *Chronicle* Advisory Committee, but final action did not come until the 1990s.

³²⁷ Minutes, Board of Governors, October 27-28, 1988, 14-15, NAA Archives.

³²⁸ FD Report, *supra* note 79; at 253-55.

and bylaws, dues structures, and fees for national services, such as mailing notices of meetings. They also began the tradition of a regional chairs' luncheon during the annual meetings.³²⁹

National Coordinator Sherman canvassed the regional chairs about programs and activities. He discovered that, contrary to Board policy, some regions were continuing to hold conferences without the approval of the Academy president. Others complained that the Academy's Continuing Education Conference with its fall schedule would interfere with their traditional multi-region "gatherings," especially in the Northeast and the Southwest. But Sherman's survey found that the fall conference was having no adverse impact upon regional activities, and that most regions welcomed national assistance in program planning, especially on subjects related to arbitrator training and Code enforcement.³³⁰ It was not until the establishment of the permanent national office in the 1990s, however, that the Academy upgraded regional training activities by providing funds for such programs.³³¹

Annual Meeting Presentations

Annual meeting presentations during the 1980s included the usual introspection, self-criticism, examination of the mechanics of arbitration, and worries about the impact of external law and the relationship between arbitrators, the National Labor Relations Board, and the courts. Among the papers on familiar topics were two at the first meeting of the decade. Reginald Alleyne gave a thorough review of deferral issues;³³² Charles Morris countered David Feller's pessimistic prediction of the end of arbitration's "golden age" with a "celebration" of the *Steelworkers Trilogy*³³³ after

³²⁹ *Regional Roundup & Calendar*, *The Chronicle* (NAA, Sept. 1984), 3, 8.

³³⁰ Minutes, Board of Governors, May 27-28, 1985, 15; Minutes, Annual Membership Meeting, May 27, 1987, 13, NAA Archives.

³³¹ The special "Committee on Committees" under Howard Block would also play a role in coordinating regional activities by recommending creation of a new Committee on Continuing Regional Education. Cf. Minutes, Board of Governors, June 2, 1990, 2, NAA Archives.

³³² Alleyne, *Courts, Arbitrators, and the NLRB: The Nature of the Deferral Beast*, in *Decisional Thinking of Arbitrators and Judges*, Proceedings of the 33rd Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1981), 240.

³³³ *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 46 LRRM 2414 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 46 LRRM 2416 (1960); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 46 LRRM 2423 (1960).

20 years.³³⁴ The next year, David Feller and Anthony Sinicropi revisited the perennial problems in constructing remedies.³³⁵

More notable, however, were the Academy's efforts to keep abreast of the new issues facing the labor relations community. In 1981, for example, Lawrence Littrell, corporate director of industrial relations for the Northrup Corporation, introduced the Academy to the use of arbitration in nonunion settings. In 1986, Mary Jean Wolf reported on another nonunion experiment at Trans World Airlines.³³⁶ As unions declined, nonunion arbitration was to occupy a greater share of the Academy's time. The Academy also heard presentations on arbitration in other unusual settings such as professional sports³³⁷ and on the use of mediation rather than arbitration to resolve grievances.³³⁸

The increasing impact of drugs and alcohol on the workplace and national attention to the resulting problems prompted several papers during the 1980s. In 1983, Tia Denenberg, coauthor of a book on the subject, gave the arbitrator's perspective on the arbitration of drug use cases.³³⁹ In 1987, William McHugh, a union attorney from Atlanta, Willis Goldsmith, a management attorney from Washington, and Catholic University law professor Leroy Clark participated in a lengthy symposium on the same topic.³⁴⁰ Several papers in 1988 on "Just Cause and the Troubled

³³⁴ Morris, *Twenty Years of Trilogy: A Celebration*, *supra* note 332, at 331.

³³⁵ Feller, *Remedies: New and Old Problems: I. Remedies in Arbitration: Old Problems Revisited*, in *Arbitration Issues for the 1980s*, Proceedings of the 34th Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1982), 109; Sinicropi, *II. Remedies: Another View of New and Old Problems*, *id.* at 134.

³³⁶ Wolf, *Trans World Airlines' Noncontract Grievance Procedure*, in *Arbitration 1986: Current and Expanding Roles*, Proceedings of the 39th Annual Meeting, National Academy of Arbitrators, ed. Gershenfeld (BNA Books 1987), 27; Littrell, *Arbitration of Job Security and Other Employment-Related Issues for the Unorganized Worker: II. Grievance Procedure and Arbitration in a Nonunion Environment: The Northrup Experience*, *supra* note 335, at 35.

³³⁷ Luskin, *Arbitration in Professional Sports: I. An Arbitrator Appraises Football Arbitration*, in *Arbitration Promise and Performance*, Proceedings of the 36th Annual Meeting, National Academy of Arbitrators, eds. Stern & Dennis (BNA Books 1984), 155; Donlan, *II. A Management View of Football Arbitration*, *id.* at 167; Roberts, *III. Arbitrating in Baseball*, *id.* at 173; Moss, *IV. Baseball and Grievance Arbitration*, *id.* at 179.

³³⁸ LaRue & Lesnick, *Novel Roles for Arbitration and the Arbitrator: II. Transferring Arbitral Experience to Mediation: Opportunities and Pitfalls*, *supra* note 336, at 34; Goldberg, *Grievance Mediation: I. The Coal Industry Experiment*, *supra* note 337, at 125; Sarno, *II. A Management Approach*, *id.* at 136; Bourgeault, *III. Can It Work in Canada?*, *id.* 139; Gregory, *IV. A Union Advocate's View*, *id.* at 143.

³³⁹ Denenberg, *The Arbitration of Employee Drug Abuse Cases: I. An Arbitrator's Perspective*, *supra* note 337, at 90. Her paper was the first of three in a symposium on arbitration of drug cases. The other two were: Masters & Cooper, *II. Some Special Issues Peculiar to Air Carrier Pilots*, *id.* at 101; Williamson, *III. An Industrial Relations Perspective*, *id.* at 120.

³⁴⁰ McHugh, *Substance Abuse: The Problem That Won't Go Away: I. A Labor Perspective*, in *Arbitration 1987: The Academy at Forty*, Proceedings of the 40th Annual Meeting, National

Employee" dealt with the same issue.³⁴¹ At the same annual meeting, the Academy first considered the many privacy issues raised by new technology with a presentation by Columbia University Professor Alan Westin.³⁴²

Finally, perhaps reflecting the growing litigiousness in the country, two papers considered the arbitrator's risk of liability. Judge Alvin Rubin of the Court of Appeals for the Fifth Circuit concluded that arbitrators were effectively immune from damage claims. Quoting Gilbert and Sullivan, he reassured the audience that arbitrators and judges need not

Sit in solemn silence in a dull dark dock
Awaiting the sensation of a short sharp shock
From a cheap and chippy chopper
On a big black block.³⁴³

A paper the next year by two Academy members reached the same conclusion with more words but less poetry.³⁴⁴

Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), 67; Goldsmith, *II. A Management Perspective*, id. at 84; Clark, *III. Drug Abuse in the Workplace: Arbitration in the Context of a National Solution of Decriminalization*, id. at 93.

³⁴¹ Collins, *Just Cause and the Troubled Employee: I*, in *Arbitration 1988: Emerging Issues for the 1990s*, Proceedings of the 41st Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1989), 21; Miller & Oliver, *II. A Management Viewpoint*, id. at 34; Lampkin, *III. A Union Viewpoint*, id. at 68.

³⁴² Westin, *Employee Privacy, Monitoring, and New Technology: II. Monitoring and New Office Systems*, id. at 165.

³⁴³ Rubin, *Arbitrators' Immunity From Damage Claims*, *supra* note 336, at 19, 26.

³⁴⁴ Nolan & Abrams, *The Arbitrator's Immunity From Suit and Subpoena*, in *Arbitration 1987: The Academy at Forty*, Proceedings of the 40th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), 149.

6.1. FIRESIDE CHATTERS, 1990s



Jean McKelvey (charter member and Academy president 1970).



Benjamin Aaron (charter member and Academy president 1962).



David Feller (Academy president 1992).

6.2. ACADEMY PRESIDENTS THROUGHOUT THE YEARS (Year of Election)



(left to right) Harry (Bus) Woods (1976),
Mark Kahn (1983), and William Fallon
(1985).



(top, left to right) Rolf Valtin (1975)
and John Dunsford (1984).
(bottom, left to right) Arnold Zack
(1994) and Dallas Jones (1993).



(left to right) Alfred Dybeck (1989) and J.F.W. (Ted) Weatherill (1995).



(left to right) Edgar (Ted) Jones (1981), Eva Robins (1980), and
Byron Abernethy (1982).

CHAPTER 6

THE 1990s AND BEYOND

The Industrial Relations Environment

Economic Conditions

Continuing the trend begun in 1980, the last decade of the 20th century opened with deteriorating labor market conditions coupled with an increasing weakness in the U.S. economy. By the final quarter of 1989, the rate of growth in the gross national product had slowed to an annual rate of only 0.3 percent.¹ In 1991, the economy entered a recession. Employment growth slowed, with major losses in manufacturing, construction, and parts of the service sector (wholesale trade, finance, insurance, and real estate). Job growth continued in health services and in state and local governments.²

Economic problems that began in the 1980s—foreign competition, deregulation in trucking, airlines, and telecommunications, technological changes, and increasing health care costs—were complicated by the war in the Persian Gulf and the recession.³ Sluggish economic conditions caused union firms to subcontract work to nonunion shops. Some plants moved overseas or to “right to work” states; others downsized, filed for bankruptcy protection, closed obsolete facilities, or introduced new production methods.⁴

¹U.S. Dep’t of Commerce, *Survey of Current Business* (Dec. 1990), 16.

²U.S. Bureau of Census, *Employment, by Industry: 1970 to 1993*, Statistical Abstract (1994), 412.

³Cimini & Behrmann, *Collective Bargaining 1991: Recession Colors Talks*, 115 Monthly Lab. Rev. 21 (Jan. 1992) (hereinafter MLR 1992).

⁴Cimini, Behrmann & Johnson, *Labor-Management Bargaining in 1992*, 116 Monthly Lab. Rev. 19. (Jan. 1993) (hereinafter MLR 1993).

Collective Bargaining

Efforts to curb labor costs, increase productivity, and relax work rules led to increased strike activity in 1994.⁵ Overall, however, unions resorted less frequently to the use of the strike, continuing the trend started in the 1980s when strikes numbered fewer than 100 annually.⁶ Recognizing that strikes were no longer effective due to employer replacement tactics, many unions turned to alternative means, variously labeled comprehensive campaigns, corporate campaigns, or strategic approaches. According to United Mine Workers President Richard Trumka, chair of the AFL-CIO Strategic Approaches Committee, the objective was to substitute a range of tactics for the strike to strengthen the union's hand in negotiations.⁷ As part of this new strategy, the AFL-CIO had created a union-backed fund in 1981 to help finance employee buyouts of their companies.⁸

Paula Voos, economics professor at the University of Wisconsin, summarized the main developments of the 1980s in private-sector industrial relations:

[D]eclining unionization, employers setting the agenda in bargaining, the spread of employee involvement programs and workplace innovations of various types, increased decentralization in bargaining structures, declining real wages, and heightened concern for job security.⁹

These characteristics continued to predominate and influence industrial relations outcomes well into the 1990s. Reduced in bargaining power and confronted with concession demands, unions struggled to find a successful bargaining strategy.

In the automobile industry, the traditional bargaining formula—a 3 percent annual improvement factor plus COLA (cost-of-living adjustment)—was replaced by lump-sum increases, peri-

⁵There were 44 major work stoppages in the first 10 months of the year, idling 283,000 workers (4.7 million days of idleness), compared with 32 stoppages the previous year affecting 147,000 workers. U.S. Bureau of Labor Statistics, *News* (USDL 95-25, Jan. 27, 1995).

⁶*Record Low Number of Strikes Continues into 1993*, BLS Reports, 1994 Daily Lab. Rep. (BNA) (Feb. 11, 1994), No. 26: B-3.

⁷*Unions Seek Pressure Points*, 1994 Daily Lab. Rep. (BNA) (Oct. 5, 1994), No. 204: C-8.

⁸Cimini, *Collective Bargaining in 1990: Search for Solutions Continues*, 114 Monthly Lab. Rev. 19, 32 (Jan. 1991) (hereinafter MLR 1991).

⁹Voos, *An Economic Perspective on Contemporary Trends in Collective Bargaining*, in *Contemporary Collective Bargaining in the Private Sector*, ed. Voos (IRRA 1994), 1-2 (hereinafter IRRA 1994).

odic base-pay increases, and profit sharing.¹⁰ Many plants renegotiated work rules and instituted employee involvement plans to improve productivity in exchange for enhanced job security and new income plans.¹¹ The UAW won subcontracting prohibitions and some relief from outsourcing, but local strikes over subcontracting, job security, overtime, and safety and health issues "reflected the shift of power from the international union to the local unions."¹²

After filing for bankruptcy protection years earlier, LTV Steel Company negotiated with the Steelworkers a wage freeze, productivity improvements, job cuts, increased out-of-pocket health care expenses, one-time attrition buyouts, and a union seat on the board of directors of the downsized company.¹³ By 1993, the Steelworkers had moved away from adversarial bargaining and sought innovative settlements featuring long contract terms, less restrictive work rules, and reductions in the work force. In return, they obtained more job security (e.g., limitations on subcontracting) and a voice in company operations. Thus, labor and management succeeded in reshaping collective bargaining in the industry.

The Inland Steel pattern settlement, which was closely followed at U.S. Steel, Bethlehem, and National, included a precedent-setting six-year term. There were provisions on downsizing and elimination of rules restricting staffing levels, job assignments, and job descriptions. In return, the contract provided for increased job security, a seat on the board, joint committees, and stringent successorship provisions.¹⁴

On June 7, 1994, Allegheny Ludlum Corporation, the nation's largest stainless steel manufacturer, ended a 10-week strike by the Steelworkers—the first in 35 years—by settling issues concerning job security, health care, and union-worker involvement in the company's decision-making process.¹⁵ As collective bargaining

¹⁰Katz & MacDuffie, *Collective Bargaining in the U.S. Auto Assembly Sector*, IRRA 1994, *supra* note 9, at 202.

¹¹These included "guaranteed income stream benefits, joint employee development and training programs funded by company contributions, and jobs bank programs to protect workers displaced by non-market related causes," *id.* at 203.

¹²Cimini & Muhl, *Labor-Management Bargaining in 1994*, 118 Monthly Lab. Rev. 23 (Jan. 1995) (hereinafter MLR 1995).

¹³MLR 1993, *supra* note 4, at 26.

¹⁴Cimini, Behrmann & Johnson, *Labor-Management Bargaining in 1993*, 117 Monthly Lab. Rev. 20, 21-22 (Jan. 1994) (hereinafter MLR 1994).

¹⁵MLR 1995, *supra* note 12, at 34.

agreements came to be tailored to a particular company or its operations in response to economic pressures, decreased use of multi-employer bargaining and loosening of traditional bargaining patterns resulted. Thus, the steel industry witnessed the demise of multi-employer bargaining.¹⁶

Hard hit by divestiture, deregulation, and technological developments, the Communications Workers of America (CWA) and the International Brotherhood of Electrical Workers (IBEW) utilized a new bargaining tactic—the corporate campaign—in negotiations with AT&T. They encouraged AT&T customers to switch to other long-distance carriers. In the end, the unions won acceptable contract terms in exchange for greater flexibility for the company's individual business units and job cuts, to remain competitive. With this new bargaining approach the parties negotiated wages and benefits nationally; work rules and noneconomic issues, locally.¹⁷ On the labor-management cooperation front, a 1992 CWA survey indicated that there were over 30 different local employee participation programs in operation at AT&T.¹⁸

In 1994, NYNEX, parent of New York and New England Telephone companies, agreed to full protection against layoffs and pay cuts. In return, CWA and IBEW permitted the elimination of 16,800 jobs over three years. Adversely affected employees could voluntarily choose one of three options—transfer to vacancies in their geographic area, early retirement, or termination. A breakthrough in educational assistance enabled the company to tackle work-force imbalances by upgrading employee skills.¹⁹

In the UMW-Pittston Coal Company dispute, health care was a major issue. Pittston broke away from the Bituminous Coal Operators Association, cutting health benefits to retirees, widows, and disabled miners. The UMW incurred millions of dollars in fines for violations of court injunctions limiting picketing and wildcat strikes. The company also filed unfair labor practice charges and

¹⁶This was also true in the trucking industry, where the National Master Freight Agreement covered fewer companies and its role as a pattern setter was reduced. Cf. Voos, *IRRA* 1994, *supra* note 9, at 6–7.

¹⁷MLR 1993, *supra* note 4, at 23–24.

¹⁸Keefe & Boroff, *Telecommunications Labor-Management Relations: One Decade After the AT&T Divestiture*, *IRRA* 1994, *supra* note 9, at 348.

¹⁹A two-year associate degree in telecommunications technology or marketing involved a combination of work time and company-paid educational time, plus two years of educational leave without pay for employees with four years of service, with full benefits and seniority and up to \$10,000 in tuition assistance. MLR 1995, *supra* note 12, at 35.

suits for alleged destruction of property and violence. Finally, on New Year's Eve 1990, the strike was settled with benefits restored and charges withdrawn.²⁰

Union Organization

For labor unions, conditions in the 1990s changed little to stem declines in membership and to revitalize the labor movement. Union membership rose to 16.7 million in 1994 from 16.4 million two years earlier (primarily because of growth in the public sector), but dropped back to 16.4 million in 1995. The numbers remained far below the 1975 peak of 23.7 million. Union members constituted just 14.9 percent of the total work force, down from 15.5 percent in 1994 and half the peak percentage in 1953. Only 10.4 percent of the private, nonagricultural work force belonged to unions, about one-third the peak percentage in the mid-1950s.²¹

Some labor economists took a dim view of unionism's future. According to Voos, strong management resistance and weak enforcement of the National Labor Relations Act (NLRA) would continue to plague unions. She encouraged them to pay attention to the "economic environment which encourages competition based on low labor costs and the public policies which shape that economic environment."²² Others warned that a new brand of unions was necessary to cope with international challenges:

American unionism will continue down the path of decline, with density in the private sector dropping below double digits by the early 1990s. . . . Unions will be relegated to a few aged industrial sectors and to public and some nonprofit sectors, producing "ghetto unionism" similar to what the U.S. had prior to the spurt in unionisation in the 1930s and 1940s. Our industrial relations system will be effectively controlled by management.²³

Unions could take heart from one small positive sign—a national poll taken in 1991 showed the highest approval rating

²⁰MLR 1991, *supra* note 8, at 24.

²¹U.S. Bureau of Labor Statistics, *News* (Feb. 9, 1996); see also Troy & Sheflin, *Union Sourcebook*, 1st ed. (IR Data & Info. Servs. 1985), 3-10.

²²Voos, IRRA 1994, *supra* note 9, at 15.

²³Blanchflower & Freeman, *Going Different Ways: Unionism in the U.S. and Other Advanced, O.E.C.D. Countries*, National Bureau of Economic Research Working Paper No. 3342 (Apr. 1990), 29-30, 32.

for labor leaders ever recorded by the American public.²⁴ But there was little else to celebrate on the occasion of the 100th anniversary of Labor Day in 1994.

During the early part of the decade, a number of unions merged and leadership changed. Lynn Williams resigned as president of the Steelworkers; he was succeeded by George Becker. Arturo Rodriguez became president of the United Farm Workers of America, following the death of Cesar Chavez.²⁵ In 1991, Ron Carey, UPS Teamsters Local 804 president, who ran a grassroots campaign of union democracy and reform, captured the Teamsters presidency as a result of a court-ordered, first-ever direct mail ballot election of top union officers.²⁶

In 1995, a rare election contest developed within the AFL-CIO. John Sweeney, president of the Service Employees International Union, led a slate opposing the reelection of AFL-CIO President Lane Kirkland, who had held the position since succeeding George Meany in 1980. Kirkland stepped down in August 1995 to permit Secretary-Treasurer Thomas Donahue to gain a foothold as acting president before the October elections. The political campaigning threatened to create long-term disaffection within the federation. The polarizing issue concerned initiatives for expanding unionization and priorities for the future. In the end, Sweeney and his slate won the election by a comfortable margin. After his victory, as before, he promised a renewed emphasis on union organizing as the key to the AFL-CIO's survival into the 21st century.

Labor-Management Cooperation

In exchange for attention to labor's goals, some unions cooperated with management in fostering employee involvement and other workplace initiatives designed to increase productivity and product quality. While some of these programs had union participation, most occurred in unorganized workplaces. The non-union groups soon came under the scrutiny of the National Labor

²⁴ The survey, done by the National Opinion Research Center, polled 1,517 citizens on whether they had "a great deal of confidence, only some confidence, or hardly any confidence at all" in labor leaders. The favorable rating for union leaders jumped 17 points to 28 percent in 1991, the highest figure for labor since the surveys began in 1973. *Public Approval of Labor Relations on Rise, According to National Survey*, 1991 Daily Lab. Rep. (BNA) (Aug. 20, 1991), No. 161: A-1, A-1.

²⁵ MLR 1994, *supra* note 14, at 34.

²⁶ Belzer, *The Motor Carrier Industry: Truckers and Teamsters Under Siege*, IRRA 1994, *supra* note 9, at 291.

Relations Board (NLRB). In a long-awaited 1992 decision, *Electromation, Inc.*,²⁷ the Board ruled that the nonunion firm's workplace committees were actually "sham unions" created to counteract organizing efforts of the Teamsters. The next year, the Board ruled that seven safety and physical fitness committees at the Du Pont company were illegal labor organizations under section 8(a)(2) of the NLRA because the company did not involve the certified bargaining agent in their formation. The Board ordered the committees disbanded.²⁸

Unions had hoped for federal government help in assuaging their workplace woes when William Jefferson Clinton was elected U.S. President in 1992. They took as a positive sign his appointment of Academy member William Gould, law professor at Stanford University, to chair the National Labor Relations Board. Stressing the need for "reconciliation" at the Academy's 1994 Annual Meeting, Gould promised to improve the Board's efficiency and settlement processes.²⁹ Shortly thereafter, he announced that the Board would seek injunctions against employers as well as unions to stop violations of the NLRA early in the complaint procedure. He also supported holding union elections in some cases without waiting for resolution of unit disputes.

The Clinton administration next turned to a study commission for solutions to workplace problems. In a joint news briefing on March 24, 1993, Secretary of Labor Robert Reich and Secretary of Commerce Ronald Brown announced the formation of the Commission on the Future of Worker-Management Relations (Dunlop Commission), chaired by Academy charter member John Dunlop of Harvard University. After a series of hearings throughout the country, the Dunlop Commission issued a preliminary fact-finding report in May 1994. The report confirmed the decline in collective bargaining as a method of resolving labor-management disputes but decried the increased reliance on administrative and court procedures.³⁰ The commission supported the move toward employee participation and labor-management cooperation, declaring:

²⁷ 309 NLRB 990, 142 LRRM 1001 (1992), holding that the committees violated §8(a)(2) as employer-dominated labor organizations.

²⁸ *E.I. DuPont de Nemours & Co.*, 311 NLRB 893, 143 LRRM 1121 (1993).

²⁹ Gould, *Distinguished Speaker: This Generation's Reconciliation*, in *Arbitration 1994: Controversy and Continuity*, Proceedings of the 47th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books, 1994) 12, 16-17.

³⁰ Commission on the Future of Worker-Management Relations, Fact Finding Report (May 1994), at 23.

[I]t is in the national interest to promote expansion of employee participation in a variety of forms provided it does not impede employee choice of whether or not to be represented by an independent labor organization. At its best, employee involvement makes industry more productive and improves the working lives of employees.³¹

Stressing the need for labor-management cooperation, the report urged that "[e]mployee participation will have to expand to more workplaces if the American economy is to be competitive at high standards of living in the 21st century" and called for amendment of the NLRA to encourage innovation in employee participation.³²

Several important experiments with labor-management cooperation in unionized settings have been lavishly praised by the participants. William Childs, vice president for human resources at the New United Manufacturing Motors, Inc. (NUMMI), a joint endeavor of General Motors (GM) and Toyota, reported at the Academy's 1991 Annual Meeting that a new negotiated dispute-resolution procedure had virtually eliminated grievances at the Fremont, California, plant.³³ At the same meeting, Michael Bennett, president of UAW Local 1853, was equally positive about the new relationship at GM's Saturn plant in Spring Hill, Tennessee.³⁴

Arbitration and ADR

In spite of the changes in the industrial relations environment in the 1990s, the FMCS reported that the number of cases going to arbitration had remained relatively stable at about 5,500 per year.³⁵ On a note of optimism about the future of arbitration, U.S.

³¹Commission on the Future of Worker-Management Relations, Report and Recommendations (Dec. 1994), at 7 (hereinafter *Dunlop Report*).

³²*Id.* at 12. During the commission hearings, some employers had complained that employee participation plans were severely restricted by the NLRB decision in the *Electromation, Inc.* case, *supra* note 27. See also Rentfro, *Changing Values in the Workplace and Arbitration*, in *Arbitration 1993: Arbitration and the Changing World of Work*, Proceedings of the 49th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), 171, 184; Brauer, *Labor Perspective*, *id.* at 185; Hautzinger, *Management Perspective*, *id.* at 192.

³³Childs, *New Industrial Relations and Industrial Justice: II. The NUMMI Experience: A Management Viewpoint*, in *Arbitration 1991: The Changing Face of Arbitration in Theory and Practice*, Proceedings of the 44th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1992), 174.

³⁴Bennett, *III. The Saturn Experience: A Union Viewpoint*, *id.* at 179.

³⁵Federal Mediation and Conciliation Service, *Arbitration Statistics, Fiscal Years 1983-1993*. However, this was a significant reduction from the peak of 13,911 cases in 1980. See FMCS Annual Report (1991), at 36.

Supreme Court Justice William J. Brennan, Jr., in his distinguished speaker's address at the Academy's 1991 Annual Meeting, predicted that

arbitrators are as valuable today as they were when I first joined the Court The proof of your continued importance lies partly in the expanded use of arbitration But, notwithstanding the continued importance of your work, you—like all other participants in the world of industry and commerce—have had to adapt to a new era of individual rights that has made our society, one hopes, more just, but also more complex and regulated. This state of affairs presents, I think, a challenge to arbitrators. The challenge is to preserve arbitration's effectiveness and utility in a more constrained environment.³⁶

In a similar analysis, the Dunlop Commission noted that the rapid expansion of federal and state employment legislation had led to a "more than four-fold" increase in employment law cases filed in district courts between 1971 and 1991. The report recommended that private parties adopt in-house alternative dispute resolution (ADR) systems because "the costs and time involved in enforcing public employment rights through the court system are increasingly denying a broader slice of American workers meaningful access to employment law protections."³⁷ The commission warned, however, that many of the dispute resolution systems unilaterally established by nonunion employers "do not meet the test of fairness . . . essential . . . to . . . gain acceptance among employees and the general public."³⁸ In his speech at the Academy's 1995 Annual Meeting, Dunlop called upon the membership to take a leadership role in designing and implementing standards of arbitration systems, including those not governed by collective bargaining agreements.³⁹

In an earlier response to that challenge, the FMCS had begun submission of arbitrator panels to requesting nonunion employers who could affirmatively answer the following questions:

1. Is the grievance and arbitration procedure spelled out in a personnel manual or an employee handbook?

³⁶Brennan, *Arbitration in a Changing Environment: Distinguished Speaker*, *supra* note 33, at 2, 4.

³⁷Dunlop Report, *supra* note 31, at 27, 33.

³⁸*Id.* at 44-45.

³⁹Dunlop, *Employment Litigation and Dispute Resolution: The Dunlop Commission Report: I. The Industrial Relations Universe Revisited*, in *Arbitration 1995: New Challenges and Expanding Responsibilities*, Proceedings of the 48th Annual Meeting, National Academy of Arbitrators, ed. Najita (BNA Books 1996), 124. See also text's discussion of the Academy's participation in the Due Process Protocol, *infra*, at note 162.

2. Do employees have access to the grievance and arbitration procedure as a matter of right?
3. Does an employee have a voice in the arbitrator selection?
4. Does an employee have a right to representation of his or her choice in the grievance and arbitration process?
5. Is the arbitrator's award binding and enforceable?⁴⁰

After determining that it was impossible to police these requirements satisfactorily, the FMCS abandoned this initiative. The problem did not go away, however. As a result, the Academy and other organizations involved in arbitration eventually adopted their own statement of fair procedures for individual employment arbitration.⁴¹

External Law

As the 1980s had demonstrated, the statutory and judicial rules governing labor arbitration had matured. All that remained were some detailings and some wavering about certain narrow policies. For example, in *Litton Financial Printing Division*,⁴² the Supreme Court gave a narrow reading to its earlier *Nolde*⁴³ decision and held that an employer was not obliged to arbitrate after expiration of a collective bargaining agreement unless the issue grieved arose before expiration or involved accrued rights. In *Livadas v. Bradshaw*,⁴⁴ the Court declined to extend the so-called "Section 301 Preemption Doctrine" that bars certain state suits if they would require a court to interpret a collective bargaining agreement containing an arbitration clause. Even the advent of a

⁴⁰Federal Mediation and Conciliation Service, Release (n.d.), reproduced in *ALDR Forum Sparks Good Discussion*, The Chronicle (NAA, Jan. 1993), 5.

⁴¹In response to a presentation by Arnold Zack in 1994, the Council of the ABA's Section on Employment and Labor Law established a joint study committee to devise fair procedures for arbitration outside the collective bargaining environment. The committee included representatives of the AAA, the ABA, the Society of Professionals in Dispute Resolution (SPIDR), the National Employment Lawyers Association (NELA), and the American Civil Liberties Union's Workplace Rights Project. In May 1995, the Board of Governors endorsed the Protocol. Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising Out of the Employment Relationship, May 9, 1995, NAA Archives; interview with Arnold Zack, March 17, 1996. This topic is discussed in greater detail under Membership Issues, *infra*, at notes 158-71. On the background to the Protocol, see Zack, *The Evolution of the Employment Protocol*, 50 Disp. Resol. J., Oct.-Dec. 1995, 36.

⁴²*Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 137 LRRM 2441 (1991).

⁴³*Nolde Bros. v. Bakery & Confectionery Workers Local 358*, 430 U.S. 243, 94 LRRM 2753 (1977).

⁴⁴114 S.Ct. 2068, 146 LRRM 2513 (1994).

more liberal NLRB appointed by President Clinton did not produce significant changes in the arbitration rulings of the Reagan Board. In a series of cases, the NLRB passed on the opportunity to back away from decisions supporting both pre- and postaward deferral to arbitration.⁴⁵

The most significant court decision of the decade concerning arbitration was *Gilmer v. Interstate/Johnson Lane Corp.*⁴⁶ In several cases during the 1970s and 1980s, the Supreme Court had held that an arbitration provision in a collective bargaining agreement could not bar an individual employee's access to statutory remedies for alleged racial discrimination, violation of the Fair Labor Standards Act, or breach of constitutional rights.⁴⁷ In its 1991 *Gilmer* decision, however, the Court held that at least some arbitration clauses—those in which the arbitration agreement was part of a stock exchange registration rather than an employment contract—might bar some statutory claims, at least in nonunion settings. The case involved an employee of a stockbrokerage who had signed an arbitration agreement as part of his registration as a stockbroker with the New York Stock Exchange. After losing his job, Gilmer filed a claim under the Age Discrimination in Employment Act (ADEA). The Supreme Court repudiated much of its anti-arbitration language from the earlier cases and held that Gilmer's arbitration agreement barred his ADEA suit.

How far *Gilmer* undercut the Court's earlier cases is a matter of some dispute. It would be easy to distinguish the cases because of *Gilmer's* peculiar fact situation; few employees must agree to arbitrate disputes merely to obtain a license to practice their trades.⁴⁸ Nevertheless, several lower courts have given the decision a broad reading, applying it to nonstockbroker cases and to statutory

⁴⁵ On the Reagan Board's *United Technologies Corp.*, 268 NLRB 557, 115 LRRM 1049 (1984), and *Olin Corp.*, 268 NLRB 573, 115 LRRM 1056 (1984), decisions, see Chapter 5, text, at notes 47 and 49. On the Clinton Board's failure to reverse those decisions, see, e.g., *Hickey Elec. Contractors*, 315 NLRB No. 107, 148 LRRM 1045 (1994) (applying *United Technologies* in a preaward deferral case); *Derr & Gruenewald Constr. Co.*, 315 NLRB 266, 147 LRRM 1153 (1994) (applying the *Olin* standards for postaward deferral).

⁴⁶ 500 U.S. 20, 55 FEP Cases 1116 (1991).

⁴⁷ See Chapter 5, text, at note 39.

⁴⁸ For an early interpretation of *Gilmer's* meaning and likely consequences, see Sharpe, *Arbitration and the Courts: II. Adjusting the Balance Between Public Rights and Private Process: Gilmer v. Interstate/Johnson Lane Corporation*, in *Arbitration 1992: Improving Arbitral and Advocacy Skills*, Proceedings of the 45th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1993), 161.

claims far beyond the ADEA.⁴⁹ If the Supreme Court confirms that broad reading, *Gilmer* could do as much to promote nonunion employment arbitration as the *Steelworkers Trilogy*⁵⁰ did to promote arbitration under collective agreements. Many in the Academy feared that individual arbitration agreements would not provide the degree of fairness now common in labor arbitration. Similar concerns were among the reasons prompting adoption of the Due Process Protocol, which is discussed in detail later in this chapter.

The apparent stability of doctrine at the highest level disguised some unrest in its application in the judicial trenches. Lower federal courts continued their practice of overturning arbitration awards while paying lip service to the *Trilogy*'s strictures against doing just that. In 1992, Washington, D.C. labor attorney George Cohen explained the situation to the Academy:

Yes, my friends, you do not have to be paranoid to feel that the courts are looking over your shoulders, breathing down your necks, poised to pounce at the slightest provocation to vacate an award—perhaps any award—where the result does not meet with their approval. And this observation holds true whether the underlying dispute concerns procedural issues, such as a claim that the grievance is untimely, or substantive issues, such as whether a discharge is for just cause or whether an employee violated a “last chance agreement” the union negotiated with management.⁵¹

The number of awards taken to the courts remains small but increased dramatically during the last decade.⁵²

⁴⁹ E.g., *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 7 F.3d 1110, 17 EB Cases 1719 (3d Cir. 1993) (granting a motion to compel arbitration of alleged violations of the Employee Retirement and Income Security Act); *Williams v. Katten, Muchin & Zavis*, 837 F. Supp. 1430, 63 FEP Cases 792 (N.D. Ill. 1993) (holding a law firm's partner obliged to arbitrate claims of race, sex, and religious discrimination); *Scott v. Farm Family Life Ins. Co.*, 827 F. Supp. 76, 62 FEP Cases 848 (D. Mass. 1993) (dismissing pending arbitration an insurance sales agent's suit for sex and pregnancy discrimination).

⁵⁰ *Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 46 LRRM 2414 (1960); *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 46 LRRM 2416 (1960); *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 46 LRRM 2423 (1960).

⁵¹ Cohen, *Arbitration and the Courts: I. Erosion of the Arbitration Process by the Courts: Can the Award and Opinion Be Immunized?*, in *Arbitration 1992: Improving Arbitral and Advocacy Skills*, Proceedings of the 45th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1993), 149, 150 (footnotes omitted).

⁵² Leroy & Feuille, *The Steelworkers Trilogy and Grievance Arbitration Appeals: How the Federal Courts Respond*, 13 Indus. Rel. L.J. 78, 98–99 (1991); Feuille & Leroy, *Grievance Arbitration Appeals in the Federal Courts: Facts and Figures*, 45 Arb. J., 35, 43 (Mar. 1990).

Academy Administration

New Headquarters

On June 2, 1990, Dana Eischen officially succeeded Dallas Jones as secretary-treasurer of the Academy.⁵³ During the previous year they had cooperated in moving the national office from the University of Michigan at Ann Arbor to new headquarters in Ithaca, New York. Eischen, a full-time attorney/arbitrator who had been a member of the Academy since 1976, lived in Ithaca. He was the Academy's second secretary without an official institutional affiliation.⁵⁴ After his election, Eischen negotiated a letter agreement with Cornell University's School of Industrial and Labor Relations, providing for subsidized office space for the Academy.⁵⁵ The Academy's office was located about five miles from the main campus, in a business park managed by Cornell, adjacent to the airport. The letter agreement conferred other benefits on the Academy, including

use of ILR facilities for NAA conferences and meetings, and procurement of supplies, equipment, furniture, telephone and other support services for the NAA through ILR School administrative services.⁵⁶

In response to the recommendation of the Executive Director Committee,⁵⁷ the Board of Governors had approved a \$15,000 stipend for Secretary Dallas Jones as partial reimbursement for time lost from arbitration work due to Academy duties. Eischen continued to receive this stipend.⁵⁸

Dallas Jones remained on the Board of Governors as a newly elected vice president. The Board assigned \$40,000 from the operating fund to wind down the affairs of the Ann Arbor office.⁵⁹ In his final secretary's report, Jones noted that the financial condition of the Academy "continued to improve," with current membership at 691 and 11 new admissions expected at the 1990 Annual

⁵³ Minutes, Board of Governors, June 2, 1990, NAA Archives.

⁵⁴ Richard Bloch, also a full-time attorney/arbitrator, had been the first secretary without an institutional affiliation. Cf. Chapter 4, text, at note 87.

⁵⁵ Letter from Secretary Eischen to President Alfred Dybeck, May 16, 1990, and letter agreement from Eischen to ILR Dean David Lipsky, May 10, 1990, Eischen Files, NAA Archives.

⁵⁶ Letter from Eischen to Dean David Lipsky, *supra* note 55, at 2.

⁵⁷ See Chapter 5, text, at notes 215-25.

⁵⁸ Minutes, Board of Governors, June 2, 1990, Projected Budget, June 1, 1990 to May 31, 1991, NAA Archives.

⁵⁹ Minutes, Board of Governors, *supra* note 53, at 6.

Meeting in San Diego. The operating fund balance, he reported, was \$603,533 as of April 30, 1990, and should be approximately \$590,000 on May 31.⁶⁰ Jones reminded the Board, however, that the decline in institutional support and investment in new capital equipment could put pressure on the Academy's reserves. He urged caution in approving expenses that were merely desirable or "nice" but not essential.⁶¹

In his first report to the Board of Governors, Secretary Eischen characterized the Academy's financial status as "very sound, despite falling interest rates and inflationary pressures on several of our major expenditure items."⁶² The Auditing Committee expressed satisfaction that the Academy's affairs were being "competently and diligently administered" and that there should be no need for a dues increase in the foreseeable future.⁶³

In his 1991 report, Eischen assured the Board that the transition of the national office had been completed. Capital investments included "computer hardware, word processing and accounting software programs, printing, duplicating and collating equipment, fax and voice processing equipment."⁶⁴ Related training of staff and new computerized billing statements and membership directory listing forms had increased efficiency and economy.⁶⁵

In accordance with the policy adopted by the Board in May 1990, Eischen implemented the following changes in the Membership Directory:⁶⁶

1. All members' titles (including clerical, judicial, administrative, and academic) were eliminated;
2. The "In Memoriam" listing was limited to those members who died since the last directory was published;
3. The listing of the Annual Meeting Proceedings was converted to a uniform system of citation.
4. Membership Directory entries were limited to one listing each of name, address, phone number, and fax number.

⁶⁰Secretary-Treasurer's Report, May 15, 1990, 2; see also Minutes, Board of Governors, May 27-28, 1990, NAA Archives.

⁶¹Secretary-Treasurer's Report, *supra* note 60, at 3.

⁶²Minutes, Board of Governors, November 1-2, 1990, NAA Archives.

⁶³*Id.* at 4.

⁶⁴Minutes, Board of Governors, May 26-27, 1991, 3, NAA Archives.

⁶⁵Secretary's Report, May 26, 1991, 3-4, NAA Archives.

⁶⁶*Id.* at 4. Prior to this change, the 700 member names included some 1,200 address listings because many had multiple addresses.

Beginning in 1992, many of the functions performed by local arrangements chairs were brought into the office of the secretary. Newly acquired computer software handled meeting registration, printing, and accounting, and facilitated distribution of the annual meeting guest registration invitations and compilation of the membership directory. Eischen also announced plans for a membership database to provide a "service profile" for each of the Academy's 700 current members for use by the president in making committee assignments and by the Nominating Committee for selection of candidates for Academy office.⁶⁷

Naturally, these new tasks required new personnel. Eischen requested that, in addition to the full-time administrative assistant, a full-time computer specialist be hired to consolidate all computer-related tasks. The part-time office assistant would continue to handle the routine word processing, clerical/filing duties, and production work required by the Academy's large mailings. He predicted: "The annual savings generated by the in-house accounting and printing services . . . will adequately cover the salary costs associated with the new computer specialist position."⁶⁸

Early in 1991, President Anthony Sinicropi appointed an ad hoc Personnel Committee, headed by Edward Krinsky of Madison, Wisconsin, to review compensation levels in the national office. As a consequence, in 1992, the executive secretary-treasurer's stipend was increased to \$25,000.⁶⁹ The Board of Governors granted Eischen "authority and discretion to establish compensation and benefits for all staff employees in the Office of the Secretary, subject to the approval of the Executive Committee." At the same time the Board disbanded the Personnel Committee and authorized the Auditing Committee to review the stipend of the executive secretary every two years and to make appropriate recommendations to the Board.⁷⁰ In 1994, the services of the computer specialist were no longer required, and the duties of that position were split between the full-time office assistant, Michelle Hemingway, and the administrative assistant, Kathleen (Kate) Reif.⁷¹ The national office also augmented the staff "with a part-

⁶⁷Secretary-Treasurer's Report, May 15, 1992, 6, NAA Archives.

⁶⁸*Id.* at 7.

⁶⁹Minutes, Board of Governors, May 25-26, 1992, 15-16, NAA Archives.

⁷⁰*Id.*

⁷¹Secretary's Report, May 23, 1994, 5-6, NAA Archives.

time intern on work/study assignment from a local community college's office technology program."⁷²

During David Feller's presidency, the national office took on another time-consuming task—coordination of members' requests for committee assignments. Eischen first provided this service to accommodate two presidents during medical problems. Thus, the work of the national office continued to grow. These seemingly small accretions of data-processing tasks gradually turned the Academy office into a command center for coordination of details that had formerly been done by officers and committee chairs. The secretary now spent more time in the office even when there was no overriding commitment, such as preparation for the annual meeting. Eischen recalled that he had changed his attitude toward the secretary's position from one of "no big deal" to "there are a helluva lot of things about this outfit they didn't tell me when I signed on," paraphrasing the inscription of a cowboy picture behind his desk. He was quick to add: "But I never regretted a minute of it."⁷³ In his treasurer capacity, Eischen felt that, to increase interest and dividend accruals, the three funds—Academy constitutional reserve, NAA Research and Education Foundation, and Legal Representation Program—required a better investment strategy than the current conservative policy. He predicted that eventually the secretary would need money-management skills.⁷⁴

In July 1996, Eischen, after completing two three-year terms, closed the Ithaca office. He was succeeded by William Holley, business professor at Auburn University in Alabama, who had joined the Academy in 1986. Although Kate Reif agreed to continue working part-time as the Academy's meeting coordinator, the organization still faced the logistical and personnel problems of another office move.

At the Academy's 49th Annual Meeting in Toronto, Canada, Secretary Holley presented to the Board of Governors a "Plan for

⁷² Secretary-Treasurer's Report, October 27, 1994, 6, NAA Archives.

⁷³ Secretary Eischen, telephone conversation with Gladys Gruenberg, January 25, 1996.

⁷⁴ *Id.* See also Minutes, Board of Governors, May 23-24, 1995, 6, NAA Archives, where the Auditing Committee recommended a "more aggressive" investment policy. The committee report was merely "received" by the Board, but President Ted Weatherill agreed to appoint an Investment Committee "to counsel and advise the Executive Committee concerning possible changes in the current investment policy."

Transition." The plan included a detailed inventory of all the Academy's furniture, office and computer equipment, and supplies. It also designated the items to be moved, sold, or otherwise disposed of. Outlining responsibilities of the secretary-treasurer's office, the plan noted those needing immediate attention:

The dues statements will be sent out from Ithaca under my signature immediately after the Toronto meeting with requests for E-mail addresses and to have payment sent to the Auburn office.

The checking account will remain in Ithaca until the Toronto meeting payments have been made and until the Auditor's report. I will open a checking account in Auburn primarily for making deposits quickly and a Money Market CMA account with daily compound interest and unlimited checking.

Dana [Eischen] will prepare the Board Minutes for May 28 and 29, 1996; Bill [Holley] will prepare them for June 2, 1996.

During June and early July, either Brenda [Ryan, the new administrative assistant] will go to Ithaca or Kate [Reif] will go to Auburn for orientation and training of Brenda.

The projected budget for June 1, 1996 to May 31, 1997 showed estimated transition expenses of \$30,000, resulting in an operating loss of \$26,000. Even with this temporary financial setback, however, there was ample evidence that the Academy's administrative future was in capable hands as it entered the 21st century.

Member Participation

A "conspiracy"⁷⁵ of President Thomas Roberts and President-elect Alfred Dybeck planned to rationalize the Academy's committee structure and make its administration more inclusive. By 1990, their efforts came to fruition. On October 27, 1989, their jointly appointed Special Committee to Review Inter-Committee Relationships and Functions (Committee on Committees), chaired by Howard Block, had made its final report to the Board of Governors, recommending, among other things:

To permit our expanding membership to participate in the governance of the Academy, . . . as a general rule, the appointment of Committee chairs and members [should] not exceed a total of three (3) years except when special circumstances warrant a longer term.⁷⁶

⁷⁵So characterized by President Thomas Roberts in a letter to members of the Special Committee to Review Inter-Committee Relationships and Functions, August 11, 1988, D. Jones Files, NAA Archives.

⁷⁶Final Report—The Committee to Review Inter-Committee Relationships and Functions, October 2, 1989, 5 (hereinafter Block Final Report), NAA Archives.

As early as 1975 President Rolf Valtin had inaugurated the three-year rule in accordance with the recommendation of the Re-examination Committee, which he had chaired.⁷⁷ But some new members continued to believe that the Academy was run by the "old guard."⁷⁸ President Dybeck recognized "an undercurrent of dissatisfaction among some members," and set forth his concern in the February 1990 issue of *The Chronicle*:

I have sensed a certain rumbling among our "younger" members, indicating a feeling of isolation from the internal operations of the Academy. . . . [D]espite some liberalization of the nomination and election procedure some years ago, it might be said that we are still a bit oligarchist in nature.⁷⁹

To address this complaint, Dybeck authorized the Program Committee for the 1990 Annual Meeting, chaired by Anthony Sinicropi, to include a members-only session entitled "New Voices in the Academy." The new voices were represented by Mei Bickner of California, Steven Briggs of Illinois, and Barbara Tener of New Jersey.⁸⁰ They were part of the "newer" member cohort who had joined the Academy during the 1980s and now represented almost half of the Academy's total membership.⁸¹ Tener summarized the results of a questionnaire sent to this group:

The perception that access to the governance (including committees) of the Academy is restricted and that the governing body does not reflect the membership is widely held, even among the allegedly elite (many of whom denied the title). . . .

Members . . . are frustrated by the apparent inability of the existing structure to represent our increasing numbers and our evolving and varying interests.⁸²

As 1990 president, Howard Block had the opportunity to implement those recommendations of the Committee on Committees

⁷⁷ Cf. Chapter 4, text, at notes 90-92.

⁷⁸ Cf. Fraser, *Results of Questionnaire to Newer Members*, in *Arbitration 1990: New Perspectives on Old Issues*, Proceedings of the 43rd Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1991), Appendix D, 285, 286. The 315 "newer" members who received the questionnaire had been admitted to the Academy after 1980 and comprised "almost half the members listed in the 1988-89 Academy Directory," *Id.* at 285, n.*. Of the 165 usable responses, 60 percent believed that "NAA is under the influence of a small elite group of older members." *Id.* at 286.

⁷⁹ Dybeck, *The President's Column*, *The Chronicle* (NAA, Feb. 1990), 2.

⁸⁰ Bickner, *New Voices in the Academy: I. The Academy's Future: By Design or by Default*, *supra* note 78, at 256; Briggs, *II. The National Academy of Arbitrators: Trade Organization or Professional Society?*, *id.* at 263; Tener, *III. Comments on Governance*, *id.* at 270.

⁸¹ Cf. Fraser, *supra* note 78.

⁸² Tener, *supra* note 80, at 271.

that had been approved by the Board of Governors.⁸³ He reappointed only those committee chairs who had not served the maximum three years and disbanded the committees on interns and publications. He appointed Michigan Regional Chair Mario Chiesa as National Coordinator of Regional Affairs and authorized him to take a more active role in establishing educational programs at the regional level, using the educational resources available in the national office. Chiesa, the first regional coordinator who had been neither an officer nor a governor, immediately set his Committee on Continuing Regional Education to the task of preparing a manual for regional chairs and a special bi-monthly newsletter to strengthen communication with the regions. The Board of Governors approved funding of \$2,500 to cover start-up expenses of the new regional initiatives.⁸⁴

Committee on Governance

Building on his experience as chair of the Committee on Committees and spurred by a group of younger members led by Jonathan Dworkin of Cleveland, Ohio, President Block set out to improve the way the Academy was governed. He appointed Benjamin Aaron head of a Special Committee on Academy Governance (Governance Committee). To obtain a broad consensus among Academy members, Aaron chaired an open forum at the 1990 Continuing Education Conference in Dearborn, Michigan.⁸⁵ Comments addressed the issues of contested election of officers,⁸⁶ representation on the Board of Governors,⁸⁷ and lack of membership participation.⁸⁸ Mei Bickner voiced the consensus that, rather than seek membership opinion in advance, the committee should first submit recommendations for members' reactions:

[There is] not enough information to make an informed decision. . . . The committee should lay out the area of issues and uneasiness that some of our members have expressed and categorize it in some fash-

⁸³Block Final Report, *supra* note 76; see also Minutes, Board of Governors, October 27, 1989, NAA Archives.

⁸⁴Minutes, Board of Governors, June 2, 1990, 3, NAA Archives. This matter is discussed in more detail below under Regional Activities.

⁸⁵Transcript, Special Committee on Governance, November 4, 1990, NAA Archives. The transcript consisted of less than 80 pages.

⁸⁶*Id.* at 9, 20, 21, 26, 53.

⁸⁷*Id.* at 9, 14.

⁸⁸*Id.* at 17, 25, 29, 32, 34, 43.

ion so we can look at it. . . . We are spending a lot of time focusing on very small issues like mail ballots and the extent of regional representation. I am sure there are many more pressing questions regarding governance of the Academy besides those two issues.⁸⁹

David Peterson, a member of the Governance Committee, listed concerns he had heard from members:

1. Permit attendance of members and regional chairs at Board of Governors meetings at their own expense.
2. Have two-year terms for vice presidents.
3. Limit successive terms for executive secretary-treasurer.
4. Place limits on terms for members and chairs of committees.
5. Increase the size of the nominating committee.
6. Have at least two candidates for each office.⁹⁰

The Governance Committee's report expressed disappointment that only 30 members had joined in the open forum discussion and subsequently only 38 (with some duplications) had written to the committee.⁹¹ However, this apparent apathy did not deter the committee from making strong recommendations. To counter the impression "that committee appointments, particularly of chairs, are confined to a relatively few better known Academy members, many of whom have previously served or are presently serving as officers or members of the Board of Governors,"⁹² the committee recommended that, in exercising his "discretion" the president should adhere to the following policy when appointing committee chairs and members "except when it is clear . . . that the interests of the Academy would best be served otherwise":

(a) No Academy member should be appointed to more than one of the following standing and special committees: Membership, Law and Legislation, Professional Responsibility and Grievances, Research, Continuing Education, Legal Affairs, Legal Representation, International Studies, and Public Employee Disputes Settlement.⁹³

⁸⁹ *Id.* at 49; see also comments of Reginald Alleyne, *id.* at 56.

⁹⁰ *Id.* at 74-76.

⁹¹ *Report and Recommendations of the Committee on Academy Governance*, in *Arbitration 1992: Improving Arbitral and Advocacy Skills*, Proceedings of the 45th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1993), Appendix B, 337, 338 (hereinafter *Governance Report*).

⁹² *Governance Report*, *id.* at 338; see also Minutes, Board of Governors, October 31-November 1, 1991, 16, NAA Archives.

⁹³ *Governance Report*, *supra* note 91, at 352.

The committee's next recommendation was even stronger: "(b) Officers and governors should not be appointed to chair or serve on committees." The report also confirmed the importance of the three-year term for committee membership except for chairs of the Future Meeting Arrangements Committee and the Committee on Professional Responsibility and Grievances (CPRG) to prevent loss of "accumulated expertise."⁹⁴

Although the Governance Committee emphasized the need for presidential discretion in making committee appointments, subsequent membership directories demonstrate that, except for a few special assignments, Academy presidents have taken the recommendations very seriously. Aided by the new computer capability of the national office to track all member assignments, incoming presidents can make better-informed judgments about committee appointments.

The 1990s saw an upheaval in Academy governance. For example, of the 23 committee chairs listed in the 1994-1995 Membership Directory, only 9 (CPRG, Nominating, Annual Meeting Program, Legal Affairs, Legal Representation, New Member Orientation, Liaison, Tribunal Appeals, and Honorary Memberships) were admitted to the Academy before 1980; 3 of the 9 were former presidents, but none of the 23 was an incumbent officer or governor. Of the 17 regional chairs, only 3 were admitted to the Academy before 1980, and 4 were admitted after 1990. The president of the NAA Research and Education Foundation entered the Academy in 1988. Even the Nominating Committee subscribed to the "new blood" challenge: of the 12 governors in 1994, only 4 became Academy members before 1980.⁹⁵ Thus, it is clear that the Governance Committee's recommendations have borne fruit in addressing the "elitist" complaints of the 1980s alumni. An important result was a generational change in the Academy's leadership.

To broaden representation even further, the Governance Committee recommended an increase in the size of the Nominating Committee from five to seven members, to include two immediate past presidents, one governor, and four members from four different regions, "where feasible."⁹⁶ But the committee rejected nomination of competitive slates and mail ballots, explaining:

⁹⁴ *Id.*

⁹⁵ Membership Directory, 1994-1995, 4-9, NAA Archives.

⁹⁶ Governance Report, *supra* note 91, at 352.

We believe that contested elections would introduce into the Academy a divisiveness and political competition that would destroy the spirit of collegiality that has characterized our system of governance up to now. . . . [W]e are satisfied that existing procedures are those best suited for our present needs.⁹⁷

[V]otes . . . are best limited to those who are present at the meeting and who have the opportunity to listen to and participate in the discussion.⁹⁸

The Board of Governors approved the Governance Committee report and directed the preparation of appropriate constitutional amendments for membership ratification at the 1992 Annual Meeting.⁹⁹

Long-Range Program Planning

Early in the 1990s, as part of the restructuring process started by the Governance Committee, President Howard Block appointed Richard Mittenthal as chair of a new Long Range Program Planning Committee. The Board of Governors approved the following committee recommendations:

1. That the Committee's report, along with the "how to" handbook presently being developed, be given to future program committees. . . .
2. That a databank be developed with information regarding the interests and published works of our members and subject matter covered in earlier Academy meetings.
3. That a databank make structural changes in the program committee in order to improve our programming.
4. That a questionnaire be circulated to the membership and the results analyzed before any decision is made regarding the length of the annual meeting.¹⁰⁰

President Anthony Sinicropi agreed with Mittenthal that appointment of a new Program Committee chair each year resulted in "'reinvent[ing] the wheel' with limited time and logistical difficulties which impede the ability of the Committee to work cohesively." Vice President Dallas Jones, however, stressed the importance of maintaining presidential discretion in Program

⁹⁷ *Id.* at 344.

⁹⁸ *Id.* at 345.

⁹⁹ Minutes, Board of Governors, *supra* note 92, at 16; see also Proposed Amendments to the Constitution and By-Laws Recommended by Committee on Governance, adopted at the membership meeting, May 23, 1992, NAA Archives.

¹⁰⁰ Minutes, Board of Governors, May 25-26, 1992, 19-20, NAA Archives.

Committee appointments versus the need for "continuity and consistency." Howard Block had found a solution to this apparent conflict by appointment of a Program Committee chair-designate to understudy the current chair. He suggested that this practice be "institutionalized."¹⁰¹ In the end, the Board approved the committee's recommendations and instructed the Executive Committee to confer with Mittenthal concerning implementation of the databank and questionnaire.¹⁰² The results of the questionnaire led the Academy to reduce the length of the annual meetings from four to three days, with the final banquet on Saturday instead of Friday.¹⁰³ In August 1991, in a further attempt to regularize meeting structure and programs, Jay Grenig of Delafield, Wisconsin, and Steven Briggs of Darien, Illinois, had co-authored a 39-page continuing education planning manual, setting forth complete logistical data for conduct of the fall conference. The manual's appendix contains forms for registration, invitation, and evaluation.

External Relationships

Liaison With Appointing Agencies

In its relations with appointing agencies, the Academy continued to walk a fine line between addressing membership concerns and avoiding the appearance of interference in the agencies' administration. However, the Liaison Committee could not ignore persistent complaints about inconsistencies among AAA field offices on application of rules relating to time limits for submission of arbitrator awards. As early as 1990, National Coordinator of Regional Affairs Frances Bairstow suggested to the Board of Governors that "the complaints raised by some of the regions do require investigation and discussion with the AAA."¹⁰⁴ Mickey McDermott, Liaison Committee chair, replied that the committee reviewed and addressed only those complaints that had "gen-

¹⁰¹ *Id.* at 19.

¹⁰² *Id.* at 20.

¹⁰³ A survey of the membership "indicated a clear preference for a Friday-Saturday public session." The Board of Governors authorized that the public session be preceded by a one-day members-only session, half for continuing education and half for the business meeting. Minutes, Board of Governors, May 31-June 1, 1993, 13, NAA Archives. See also Minutes, Board of Governors, May 23-24, 1995, 7, NAA Archives, listing future arrangements of Academy annual meetings for the years 1996 through the year 2000.

¹⁰⁴ Minutes, Board of Governors, May 27, 1990, 2, NAA Archives.

eral applicability" to the entire membership, such as "charges of discrimination against arbitrators, procedures in selecting the names for panels, [and] problems of delay." He reported that AAA President Robert Coulson had stated that panels usually consisted of "three experienced arbitrators, three inexperienced arbitrators, and one arbitrator to promote affirmative action."¹⁰⁵ In a later report, McDermott stressed that the committee was founded

not . . . to handle complaints from individual members about the number of case appointments or referrals . . . they receive . . . [but] to function as an official channel of communication between the Academy and appointing agencies . . . on larger questions affecting policy and practice in labor-management arbitration generally.¹⁰⁶

McDermott pointed out that there had been no complaints concerning the FMCS, and that current complaints about the AAA centered on a recent communication from an AAA regional office "importuning arbitrator members of the AAA listed on the Labor Panel . . . to make a 'voluntary contribution' of one day's per diem fee to assist that particular AAA office." Board members expressed strong negative reaction to the solicitation. Several governors indicated that compliance with the request could even be a violation of the Code if there was a "perceived linkage between paying the 'contribution' and favoritism with the regional office administration from which the member directly received case appointments." Eventually the AAA repudiated its region's policy and issued a revised letter seeking voluntary contributions.¹⁰⁷

In September 1991, the AAA announced its revision of Rule 31, relating to the 30-day time limit on filing arbitration awards, calling it a "prompt service guideline."¹⁰⁸ Many Academy members complained about the wide variance in AAA regional office interpretation of Rule 31. Some regions counted mailing time within the 30-day limit, thus depriving arbitrators of the full 30 days for rendering awards. The Board instructed National Regional Coordinator Mario Chiesa to poll the regions about the interpretation of Rule 31 in their AAA jurisdictions.¹⁰⁹ The results of the poll confirmed the variation in AAA regional policy. After a meeting with Liaison Committee Chair McDermott, AAA Presi-

¹⁰⁵ *Id.*

¹⁰⁶ Minutes, Board of Governors, November 1-2, 1990, 8, NAA Archives.

¹⁰⁷ *Id.* at 9.

¹⁰⁸ American Arbitration Association, Study Time (Fall 1991).

¹⁰⁹ Minutes, Board of Governors, October 31, 1991, 1-3, NAA Archives.

dent Coulson advised that a "national" interpretation would be uniformly applied henceforth, and "the former AAA policy of 'federalism' under which each regional office individually interpreted Article 31 no longer will apply." To allow for mailing post-hearing briefs, AAA ordered a five-day period to be added to the 30-day time limit.¹¹⁰

Another matter involved AAA Rule 28, regarding introduction of evidence in labor arbitration cases, which had been amended by the AAA without consultation with the Liaison Committee. The Board authorized McDermott to inform the AAA that the Academy should be consulted about "future changes in the AAA Voluntary Labor Arbitration Rules."¹¹¹

McDermott also reported on a meeting with the National Mediation Board (NMB) regarding application of its recently announced guidelines for selection of arbitrators. The guidelines seemed to disqualify some NAA members from appointment. Thereafter, the NMB amended the guidelines, specifically stating that "employment . . . with any governmental agencies . . . [shall not] disqualify any individual who: (1) serves as a professor or instructor at a public academic institution; (2) serves as a neutral at a federal, state or local dispute resolution agency or entity."¹¹² The Liaison Committee also persuaded the NMB to clarify its procedure for dealing with arbitrators who violated the Code. Finally, the committee discussed with the FMCS methods for getting arbitrators to return promptly the FMCS case-reporting forms used for compiling statistics and legislative reports.

In view of the declining number of labor arbitrations, more Academy members—especially newer members not so steeped in the traditional labor-management ethos—sought appointment in non-collective bargaining cases that were handled by AAA commercial panels. The Liaison Committee, now chaired by Thomas Roberts, reported that the AAA had instructed its regions to make commercial panel membership available to labor-management arbitrators who wished to work on nonunion arbitration cases. Roberts reminded the Board of Governors that under commercial case rules the arbitrator was not paid for the first day, but he recommended that NAA members who wished to be admitted to

¹¹⁰ Minutes, Board of Governors, *supra* note 100, at 2.

¹¹¹ *Id.* at 4.

¹¹² National Mediation Board, 7 NAB 203 (1990), reported in Minutes, Board of Governors, *supra* note 100, at 3.

commercial panels for such work contact their regional AAA offices.¹¹³

The matter of commercial arbitration fees came up again in connection with AAA sponsorship of the new Martindale-Hubbell directory for dispute resolution professionals. AAA Vice President George Friedman informed the Academy's Executive Committee that, in restructuring its dues policy to generate additional income, the AAA was considering requiring membership as a condition for listing on the AAA's labor arbitration panels. President Dallas Jones conveyed the Academy's objection:

As of now, the AAA is a neutral provider of competent names to the Parties. If implemented this new requirement would transform the Association into an agency seeking business for its members. Joining the AAA would at least appear to become the equivalent of hiring an agent, and might even be construed as a violation of the Code prohibiting solicitation.¹¹⁴

Addressing the problem of nomination to the commercial panels and "pro bono" days, the AAA informed President Jones that "members of the AAA Employment Panel do charge their usual per diem for their services; they are not requested to provide one day without compensation." President-elect Arnold Zack pointed out that some AAA regions decline to list labor-management arbitrators on the commercial employment panel. He stated that "the ostensible reason for boycotting labor-management arbitrators is that employers in a non-union setting do not always embrace the concept of 'just cause' discipline and discharge."¹¹⁵

As a result of Liaison Committee initiatives under the leadership of Milton Rubin, the AAA announced a new policy regarding commercial panel listing, namely, that it would be conditioned upon completion of a panel-listing questionnaire to be filed through the AAA regional offices. Service on the commercial panel was at the arbitrator's regular per diem rate and charges could be made for the first day. The AAA dropped the notion of requiring membership as a condition of labor panel listing.¹¹⁶

The Liaison Committee also discussed with AAA Vice President Friedman the possibility of NAA/AAA cooperation on education and training of neutrals for dispute-resolution activity

¹¹³Minutes, Board of Governors, May 31, 1993, 11, NAA Archives.

¹¹⁴Letter from President Dallas Jones to AAA Vice President George Friedman, May 23, 1994, *quoted in* Minutes, Board of Governors, May 23-24, 1994, 3, NAA Archives.

¹¹⁵Minutes, Board of Governors, *supra* note 114, at 4.

¹¹⁶Minutes, Board of Governors, May 29, 1994, 4, NAA Archives.

under the North American Free Trade Agreement (NAFTA). President Zack pointed out that disputes covered by NAFTA panels were not traditional labor-management disputes but rather "conflict of laws issues presented by variations in labor, employment and social welfare laws in the signatory countries."¹¹⁷

In 1994, Liaison Committee Chair Rubin announced that the AAA had implemented "dramatic changes" in its organizational structure, probably because of serious financial difficulties.¹¹⁸ AAA President William Slate III had rearranged the regions under four senior vice presidents for case administration (western, northeast, midwest/south, and national headquarters) and had imposed a \$100 annual "panel maintenance fee" on each arbitrator who desired panel listing. Failure to pay the annual fee was to result in a \$25 processing fee for each case. Some Academy members, including Benjamin Aaron, Howard Block, and Dennis Nolan, had written letters of protest, questioning whether such payment might constitute a Code violation. These complaints were referred to the CPRG.¹¹⁹ Rubin further reported that the AAA had agreed to redraft its publication entitled "Resolving Employment Disputes: A Manual for Drafting Procedures," to eliminate "disparaging references to arbitrators experienced in 'just cause standards' from labor-management arbitration." The AAA agreed to consult with the Liaison Committee before final reprinting.¹²⁰

Annual Meeting Venue

The Academy's policy against taking a stand on political issues was tested once again in 1993.¹²¹ In November 1992, Colorado voters had approved Amendment 2 "invalidating local ordinances (such as those in Denver, Boulder and Aspen) which pro-

¹¹⁷ *Id.* at 5.

¹¹⁸ Minutes, Board of Governors, October 27-28, 1994, 15, NAA Archives.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 16, referring to the following statement on page 14 of the manual: "Labor arbitrators have achieved reputations for impartiality as between unions and employers, but may not always be sensitive to the employment-at-will environment that exists in non-union employment or totally familiar with the various statutory rights that are often involved in non-union cases."

¹²¹ The applicable policy, adopted January 26, 1955, states: "The Academy will not take an official position as to whether there should be statutory regulation, state or federal, regarding voluntary labor dispute arbitration, but still may indicate its judgment regarding the desirable content of regulatory statutes." Section X (Legislation), Policy Handbook, 12, NAA Archives. Cf. Chapter 4, text, at note 146, for similar Academy action in connection with boycotting states refusing to ratify the Equal Rights Amendment (ERA).

hibit discrimination on the basis of sexual orientation."¹²² Many organizations, including the Industrial Relations Research Association, decided to boycott Colorado by refusing to hold their meetings in that state. Some Academy members requested the Executive Committee to remove the 1993 Annual Meeting from Denver.

The Executive Committee refused the request primarily on the ground that there was not enough time to reschedule the annual meeting. President David Feller reminded members that the boycott would hurt the very people it was designed to help since Denver was one of the cities that had an ordinance protecting gays and lesbians from discrimination. He also pointed out that the Colorado District Court had issued a preliminary injunction against enforcement of Amendment 2 on constitutional grounds and that the Denver Area Labor Federation and the Colorado AFL-CIO had expressed their "adamant opposition" to the boycott.¹²³ In the end, the 1993 Annual Meeting was held in Denver without incident, and the U.S. Supreme Court declared Amendment 2 unconstitutional.¹²⁴

Membership Issues

Suspension Policy

The 1990s brought to the Academy for the first time the problem of how to handle a suspension from membership for a Code violation. Previous Code violations had brought penalties no worse than censure, but the Committee on Professional Responsibility and Grievances could not countenance the two-year unexcused delay in issuing an award by the member involved in this case. As a result, the Academy adopted a new policy statement, setting a minimum of one year for any suspension and giving the hearing officer discretion to impose any or all of the following conditions during the suspension period:

1. Removal of the member's name from the Academy Directory and mailing lists.

¹²² Letter from President David Feller to Academy members, January 4, 1993, Eischen Files, NAA Archives.

¹²³ Letter from President David Feller to Academy members, February 16, 1993, Eischen Files, NAA Archives. Cf. Feller Presidential Tape, May 26, 1994, NAA Archives.

¹²⁴ *Romer v. Evans*, 64 USLW 4353, 70 FEP Cases 1180 (1996).

2. Barring the member from using the Academy's name as a reference or for purposes of identification.
3. Barring attendance by the member at any members-only session of the Academy both nationally and regionally.
4. Suspension of the member from Academy office or committee membership.
5. Cancellation of legal representation rights.
6. Cancellation of obligation to pay dues or assessments to the Legal Representation Fund.
7. Failure to comply with the hearing officer's recommendations may result in expulsion.¹²⁵

The membership approved the necessary amendments to the Academy's constitution and bylaws, giving the Board of Governors authority to establish rules for expulsion or suspension, including providing appropriate notice to the appointing agencies.¹²⁶

Declining Membership

Declining collective bargaining activity in the 1980s began to take its toll on the Academy's membership in the 1990s. Entry into the Academy had reached its high-water mark in 1980. As Table 6-1 shows, Academy membership in the 1980s continued to increase, but at a decreasing rate. The 18 percent increase in Academy membership in the eight years from 1981 to 1989 exactly matched the increase in just two years from 1979 to 1981. As will be seen, in the 1990s an actual decline began.

Table 6-1. Academy Membership, 1979-1989

<i>Year</i>	<i>Number of Members</i>	<i>Percent Increase</i>
1979	500	
1981	589	18 (1979-81)
1983	623	6 (1981-83)
1985	637	5 (1983-85)
1987	670	5 (1985-87)
1989	690	3 (1987-89)
Membership increase 1981-1989		104
Percentage increase 1981-1989		18

Sources: Membership Directories and Secretary's Reports, NAA Archives.

¹²⁵ Minutes, Annual Membership Meeting, May 27, 1993, 8, NAA Archives.

¹²⁶ *Id.* at 8-9.

One clue to the membership peak was the 66 percent increase in the "In Memoriam" listings in the Membership Directory, from 132 in 1980 to 219 in 1990.¹²⁷ The number of deaths of Academy members almost outpaced (and during the 1990s, did outpace) the number of new members admitted each year. This trend was confirmed by the Research Committee's study, *Labor Arbitration in America*:

The average age of Academy members has gradually increased from the first survey of Academy membership in 1952. That year, the average age was just under 50; by 1962 it was 53 years of age. In 1987, there were 45 Academy members under 40 years old and 95 above the age of 65 with the age range from 33 to 83.¹²⁸

Dues Waivers

Another sign that the Academy's membership was aging was the increased number of dues waivers. Under the policy adopted in 1984,¹²⁹ 62 members received dues waivers in 1989. In response to Secretary Dana Eischen's complaint that the waiver policy was very difficult to administer because of the means test,¹³⁰ President Anthony Sinicropi appointed Canadian member Mark Thompson to head another Special Committee on Dues Waiver Policy. The committee found that 103 members were on dues waiver, representing 15 percent of the 1991 membership.¹³¹ After agreeing with Eischen that the means test was intrusive and difficult to administer, the committee recommended that the Academy:

1. Classify section 1 waivers (100% waiver—permanently retired with no gainful employment) as "inactive" and so list the affected members in the membership directory.
2. List honorary life members separately in the membership directory.
3. Offer inactive members all membership services but, to reduce unnecessary mailing, ask them annually to designate the services they wish to receive.

¹²⁷ Membership Directories, 1980–1981, 1990–1991, NAA Archives. In 1992 the Board of Governors voted to limit the "In Memoriam" listing to those members who had died in the previous year.

¹²⁸ Bognanno & Coleman, eds., *Labor Arbitration in America: The Profession and Practice* (Praeger 1992), 44. For the 336 Academy respondents, the average age was 59.8 compared with 55.3 for the 193 non-NAA respondents, *id.*, Table 3.1, 45.

¹²⁹ See Chapter 5, text, at note 281.

¹³⁰ *Id.* The Board had set self-reporting limits of five cases and \$10,000 taxable income.

¹³¹ Number of members on dues waiver in any one year varies with dates of the Secretary's Report, that is, in May or October.

4. Eliminate the section 2 waiver (60% waiver—limited income and caseload) and the test of “gainful employment.”
5. Create a new section 2 waiver to replace section 3 (50%—gainful employment other than arbitration, e.g., judge, academic administrator) for temporary leave from the profession, but require resignation from Academy membership for employment as an advocate, unless “grandfathered.”¹³²

The Board approved the committee's recommendations.¹³³ Table 6-2 suggests that this new waiver policy may have caused a rash of resignations. Some members may have shunned the “inactive” directory designation mandated for 100 percent dues waivers.¹³⁴ Although dues waivers remained stable at about 10 percent of membership, in the early 1980s the increased number of resignations plus deaths reduced the number of members for the first time in the Academy's history.

Table 6-2. Academy Members and Dues Waivers

Year	Members	Deaths	Resignations	Waivers	
				No.	%
1989	690	4	3	62	9
1990	691	20	6	104	15
1991	694	17	10	103	15
1992	691	18	23	74	11
1993	683	16	25	75	11
1994	674	11	12	61	9

Source: Secretary's Reports, NAA Archives.

The reduction in membership caused widespread and serious concern. Some thought that the Academy's strict membership admission policies were responsible. Others believed that the Code prohibition against advertising was deterring many eligible arbitrators from applying for Academy membership. President Sinicropi sounded the alarm at the 1992 Annual Meeting in Atlanta, Georgia:

¹³²Before April 20, 1976, arbitrator/advocates were admitted. Membership Directory, 3.

¹³³Minutes, Board of Governors, May 25–26, 1992, 21–22, NAA Archives.

¹³⁴The dues waiver issue continues to trouble the Academy. A special committee on the subject chaired by Charles Rehms recommended in 1996 that the term “Inactive Members” be changed to “Standing Members,” to eliminate any pejorative implication in the former term; that a Standing Member would remain in that status indefinitely; and that any 20-year member of the Academy who serves on five or fewer cases in the previous year may request a 50% dues waiver. Report of Special Committee on Dues Waiver Policy, April 2, 1996, NAA Archives.

We cannot postpone for a moment engaging and beginning to resolve the important issues that the future presents for our profession and the National Academy of Arbitrators.¹³⁵

After citing changes affecting the arbitration profession since 1955—economic, social, cultural, legal, and legislative—he listed three options facing the Academy:

1. We can remain the same and not alter our present posture and focus.
2. We can bifurcate our organization, bring within our fold and counting for purposes of election to the Academy employment-related dispute-resolution activity outside the sphere of what has been traditional labor arbitration.
3. We can expand the range of our formal jurisdiction to the full reach of employment-related arbitration.¹³⁶

Sinicropi urged Academy members to select the third option and not remain on the “back bench” of the arbitration profession:

We cannot wait for change to overtake us. We must put our organization and ourselves out in front of the change now sweeping the employee relations field. We must position the Academy so that it, and we, are prepared to cope with the change we will see in the remainder of this century and into the next.

... I urge my fellow members of the Academy to pick up the mantle of leadership and act assertively to ensure that our organization is capable of embracing and leading the change we are encountering.¹³⁷

ALDR Committee

In 1990, in anticipation of the Academy's changing role in the world of arbitration, President Howard Block and President-elect Anthony Sinicropi jointly appointed a two-year Special Committee to Consider the Academy's Role, If Any, in Alternative Labor Dispute Resolution (ALDR), headed by Michael Beck of Seattle, Washington. Block charged the committee (colloquially known as the “If Any” or “ALDR” committee) as follows:

¹³⁵ Sinicropi, *Presidential Address: The Future of Labor Arbitration: Problems, Prospects, and Opportunities*, in *Arbitration 1992: Improving Arbitral and Advocacy Skills*, Proceedings of the 45th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg. (BNA Books 1993), 1, 3.

¹³⁶ *Id.* at 16.

¹³⁷ *Id.* at 19–20.

In recent years, an increasing number of Academy members have been asked to serve in cases involving: (1) arbitration of grievances in unorganized plants; (2) mediation of grievance and interest disputes; and (3) wrongful termination. It is time, I believe, to determine whether the Academy can play a constructive role in one or more of these areas. In particular, I have in mind consideration of the practical and ethical questions confronted by our members as well as the additional training and education that might be indicated in order to broaden a labor arbitrator's basic skills in these areas.¹³⁸

The committee began its work by surveying Academy members to determine the extent of their experience with ADR activities other than traditional labor-management arbitration of grievance and interest disputes. Of the 201 responses covering the period January 1, 1989 through June 30, 1990, 28 percent had engaged in arbitration of grievances in unorganized plants; 28 percent in mediation; and 19 percent in wrongful termination cases.¹³⁹ The committee had already decided to limit its inquiry to employment matters, "e.g. fact-finding, grievance mediation, including 'Med-Arb,' Fair Dismissal procedures, employer promulgated arbitration, court-appointed Special Master Proceedings, Fair Share arbitration, etc." The committee's name signaled that only labor—not commercial—arbitration was involved.¹⁴⁰

To supplement the survey, an open forum of the membership occurred at the 1992 Fall Conference in Chicago, Illinois.¹⁴¹ Some members expressed concern about the competition posed by the new "med-arb" services, some of which had been formed by groups of retired judges, who were actively advertising for arbitration cases contrary to the Academy's Code. As explained by Joseph Gentile of Los Angeles:

This is not a matter of philosophy; this is a matter of livelihood, particularly in California, where labor-management cases are going down hill fast, and the other areas, regardless of what this Academy says, are expanding. Employer-promulgated arbitration is expanding also [as] an avoidance mechanism for wrongful terminations.

I have handled at least 250 [employer-promulgated arbitration cases] in my career. Some smell and I get out. A lot of them don't

¹³⁸ *Report of the Committee to Consider the Academy's Role, If Any, With Regard to Alternative Labor Dispute Resolution Procedures*, in *Arbitration 1993: Arbitration and the Changing World of Work*, Proceedings of the 46th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (NAA Books 1994), Appendix B, 325, 325 (hereinafter ALDR Report).

¹³⁹ *Id.* at 326-28.

¹⁴⁰ Minutes, Board of Governors, May 26-27, 1991, 12-13, NAA Archives.

¹⁴¹ ALDR Transcript, October 25, 1992, NAA Archives.

smell. I think the Academy can be an educational vehicle if they have some mechanism. I prefer that the constitution not be changed.¹⁴²

Ira Jaffe of Potomac, Maryland, urged that Academy members distinguish between commercial arbitrations and "those that impact the workplace." He made four additional points:

(1) Arbitration in the non-collective bargaining context . . . is going to take place. . . . The Academy ought to serve as a useful forum in terms of education . . . for discussion of existing issues . . . and promulgation of minimum standards.

(2) Union avoidance objectives were much stronger earlier and are much less today.

(3) NAA cannot play ostrich. Non-members will hear these cases and will make an impact. [There will be] court review of a situation where there may be unethical conduct.

(4) It's in the employer's self-interest to comply with guidelines.

If NAA is not available, they [employers] will sign up with someone without familiarity, background, or sensitivity to workplace realities. AAA appointments come from commercial rather than labor panels for employer-promulgated arbitration and wrongful discharge cases.¹⁴³

Elizabeth Neumeier of Gloucester, Massachusetts, pointed out that other panels of neutrals "are getting these cases [employer-promulgated arbitrations] with a wide variety of backgrounds." She noted that a complicated "patchwork" had developed. "This is going to continue regardless of what the Academy does with its bylaws."¹⁴⁴

Other members, however, felt that the Academy should not abandon its traditional role in arbitration of grievances under collective bargaining agreements. They were especially concerned about any perceived Academy support for employer-promulgated arbitration in a nonunion setting. This point of view was summarized by ALDR Committee member Stephen Goldberg, law professor at Northwestern University, in his dissent from the first draft of the committee's report:

Indeed, it would be disingenuous to pretend otherwise—to assert that acceptance of the Committee's Report would not serve as both support and encouragement for employer promulgated arbitration.¹⁴⁵

¹⁴² *Id.* at 32.

¹⁴³ *Id.* at 35.

¹⁴⁴ *Id.* at 44.

¹⁴⁵ ALDR Committee Draft Report, Dissent, at 1, NAA Archives.

... I begin from three basic propositions: (1) A system of industrial democracy based on a fair power balance between employers and employees—which requires a vibrant union movement—is vital in a free and democratic society; (2) The resolution of labor-management disputes through arbitration is a cornerstone of such a system; (3) The Academy is historically committed to encouraging and fostering high arbitration standards. . . . [S]upport of such [employer promulgated] plans cannot be squared with the foregoing propositions.¹⁴⁶

In sum, there is every reason to believe that employer promulgated arbitration plans are likely to be anti-union in purpose or effect or both *and* that such plans are unlikely to provide employees with an acceptable level of industrial justice. Both of these likelihoods, I suggest, are the basis for the most serious concern.¹⁴⁷

Goldberg endorsed the final ALDR report, however, because it clearly maintained the Academy's "position of neutrality" by supporting those members "who wish to participate in such endeavors" and protecting the interests of those "who do not wish to engage in such activities."¹⁴⁸ Neumeier encouraged the Academy to work with other organizations (e.g., AAA, American Bar Association, Society of Professionals in Dispute Resolution) "to coordinate any plausible changes in our Code so that we don't run the risk of having our members governed by conflicting codes of ethics in this area."¹⁴⁹ Sherwood Malamud of Madison, Wisconsin, was concerned that "those engaged in nontraditional dispute resolution procedures routinely engaged in solicitation and advertising."¹⁵⁰ President David Feller assured the members that the Board would refer their concerns to the proper committees (e.g., Membership, CPRG, and Legal Representation) for consideration.

The Board of Governors approved the following ALDR Committee recommendations for Academy action:¹⁵¹

A. *Arbitration*. . .

1. Amend the statement of purpose in the Academy's constitution to cover the arbitration of employment disputes in addition to labor-management disputes [under] collective agreements.

¹⁴⁶ *Id.* at 2.

¹⁴⁷ *Id.* at 7 (emphasis in original).

¹⁴⁸ Minutes, Annual Membership Meeting, May 27, 1993, 12, NAA Archives.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Minutes, Board of Governors, June 1, 1993, NAA Archives.

2. Require that Academy members performing employment arbitration be (a) bound by the Code, and (b) subject to the protection of the Legal Representation Fund. (The Board) referred these matters to the appropriate committees.
3. For employer promulgated plans, suggest areas of inquiry "to permit members to make an informed decision" about participation. The Academy should reaffirm that it neither encourages nor discourages member participation in employer promulgated arbitration.
4. For agency shop fee fair share disputes, suggest areas of inquiry, similar to those for employer promulgated plans because the procedure is set by one party, here the union.¹⁵²

B. *Mediation*. . .

1. Protect members performing mediation under the Academy's Legal Representation Fund. (The Board) referred this matter to the Legal Representation Committee.
2. Promulgate a set of ethical standards to guide members who mediate. (The Board) referred this matter to the CPRG.¹⁵³

C. *Membership Standards*. Make no change in membership standards. "The Academy should remain at its core a professional organization of labor-management arbitrators."¹⁵⁴

D. *Matters Beyond the Labor and Employment Field*. Take no Academy institutional role in such matters.¹⁵⁵

E. *Education*. Continue and expand educational programs on topics beyond labor-management arbitration, to include arbitration of employment disputes and mediation of labor-management and employment disputes.¹⁵⁶

The Board immediately presented a constitutional amendment to the membership regarding employment-related arbitration. Carefully retaining only labor-management disputes in its statement of purpose for determining membership eligibility, the Board added "employment relations" and "employment-related disputes" to its pledges to promote study and understanding and to cooperate with other organizations.¹⁵⁷

¹⁵² ALDR Report, *supra* note 138, at 340-41.

¹⁵³ *Id.* at 341-42.

¹⁵⁴ *Id.* at 342.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Constitution and By-laws, Article II, section I (as amended June 1, 1993), NAA Archives.

Due Process Protocol

During the same period, the American Bar Association Committee on Labor Arbitration and the Law of Collective Bargaining had appointed a study committee (ABA Study Committee), co-chaired by Academy member Marvin Feldman of Cleveland, Ohio, to consider "whether the National Academy of Arbitrators should play a significantly broader role than it had previously played with respect to the arbitration of employment disputes outside the context of a collective bargaining contract."¹⁵⁸ A survey of ABA committee members revealed a split between management and union practitioners as to whether the Academy should broaden its "statement of purpose to cover the arbitration of such [nonunion] employment disputes."¹⁵⁹ In a letter to NAA President Dallas Jones, the ABA section chair summarized the survey results, calling attention to the small sample:

[I]t is the very strong affirmative position of management that alternate dispute resolution procedures are to be encouraged in the field of employment law irrespective of the fact that they may take place in a non-union setting as long as such proceedings are consistent with the fairness and due process required by court decisions.

... [M]embers ... representing unions ... believe that the Academy should remain neutral on this issue and allow individual arbitrators to make their own judgments because doing so safeguards against Academy action that could damage the collective bargaining system and nullify a core value of the Academy, i.e. industrial democracy, which is also embodied in our national labor policy.¹⁶⁰

After hearing that the Academy had approved the ALDR Committee report, the ABA Section of Labor and Employment Law asked the Academy to name a committee to work with the ABA Study Committee "with regard to alternative labor dispute resolution procedures."¹⁶¹ Although President Dallas Jones warned about the dangers of buying a "pig-in-the-poke," he appointed President-elect Arnold Zack to work with the AAA and ABA to develop training programs.

¹⁵⁸Final Report of a Study Committee Appointed by Co-Chairs of the American Bar Association Committee on Labor Arbitration and the Law of Collective Bargaining, February 23, 1993, 1, NAA Archives.

¹⁵⁹*Id.* at 7. Management voted 22 to 2 in favor; union, 7 to 1 opposed; neutrals, 18 to 13 opposed.

¹⁶⁰Letter from Vincent Apruzzese to President Dallas Jones, July 23, 1993, Eischen Files, NAA Archives.

¹⁶¹Letter from Alfred C. Phillips, Charles Ipavec, and Robert Manning to President Dallas Jones, August 30, 1993, Eischen Files, NAA Archives.

When Zack succeeded to the presidency in 1994, he helped create the Task Force on Alternative Dispute Resolution in Employment to devise "proper due process safeguards . . . to provide expeditious, accessible, inexpensive and fair private enforcement of statutory employment disputes for the 100,000,000 members of the workforce who might not otherwise have ready, effective access to administrative or judicial relief." In May 1995, the task force representatives signed a document entitled "A Due Process Protocol for Mediation and Arbitration of Statutory Disputes arising out of the Employment Relationship" (Protocol).¹⁶²

The Protocol stressed the rights of employees "to be represented by a spokesperson of their own choosing" and to "limited pre-trial discovery."¹⁶³ To ensure selection of qualified mediators and arbitrators, the Protocol urged "special training" for "expertise in statutory requirements in the employment field," including

substantive, procedural and remedial issues to be confronted and . . . employer procedures governing the employment relationship as well as due process and fairness in the conduct and control of arbitration hearings and mediation sessions.¹⁶⁴

The document also covered panel selection, conflicts of interest, authority of the arbitrator, and compensation of mediators and arbitrators. It closed with an admonition: "The arbitrator's award should be final and binding and the scope of review should be limited."¹⁶⁵

Almost before the signatory ink on the Protocol was dry, Zack presented the document to the Board of Governors at the San Francisco meeting in May 1995.¹⁶⁶ Several Board members expressed concern that the Board had not had enough time to study the document and that the Protocol lacked sufficient

¹⁶² A Due Process Protocol for Mediation and Arbitration of Statutory Disputes arising out of the Employment Relationship, May 9, 1995, NAA Archives (hereinafter Protocol). The Protocol was signed by representatives of the Council of the ABA's Section on Labor and Employment Law, the AAA, the NAA, the Society of Professionals in Dispute Resolution (SPIDR), the National Employment Lawyers Association (NELA), and the ACLU's Workplace Rights Project. See *A Due Process Protocol for Resolving Employment Disputes Involving Statutory Rights*, 50 Disp. Resol. J. 37 (Oct.-Dec. 1995); Zack, *The Evolution of the Employment Protocol*, *id.* at 36.

¹⁶³ Protocol, *supra* note 162, at 2.

¹⁶⁴ *Id.* at 3-4.

¹⁶⁵ *Id.* at 5.

¹⁶⁶ Minutes, Board of Governors, May 23-24, 1995, NAA Archives.

description of the minimal requisites for a fair hearing. Governor Alvin Goldman pointed out that the Protocol sought to "imitate labor-management arbitration" without recognizing "the common law of arbitration and just cause discipline," and suggested redrafting.¹⁶⁷ President Zack reminded the Board that the signatories to the Protocol had toiled long and hard to come up with a compromise acceptable to the diverse constituencies. He emphatically stated that redrafting was impossible because the task force had completed its work and the ABA had already approved the document. He therefore urged the Board to "vote the document up or down" without "dissents or footnotes to the Protocol."¹⁶⁸ Vice President Charles Rehms worried that the document could become an Academy endorsement of unqualified arbitrators.

Vice President Theodore St. Antoine hailed the Protocol as a "major step forward." Governor John Flagler called the document a "good and decent beginning" within which NAA members could "comfortably conduct business without diminishing or derogating any of the basic tenets we hold dear."¹⁶⁹ Governors Earl Williams and Jack Clarke supported that view. In reply to Vice President Michael Beck's question concerning application of the Code to such arbitration, Zack stated that the Code was "extraneous" to the Protocol; "it does not deal with compliance by individuals or representative organizations with the Code."¹⁷⁰ In the end, the Board voted to endorse the Protocol.

Discussion continued when Zack announced the Board action at the membership meeting later in the week. Walter Gershenfeld labeled the Protocol "a reasonable start" but urged additional Academy liaison with designating agencies, discussion of enforcement authority, and open forums for educational purposes. Governor Goldman repeated the criticism he had voiced at the Board meeting, calling the Protocol a "flawed document," but both St. Antoine and David Feller rose to support the initiative. Feller reminded the members that the naysayers to the ALDR report had been proved wrong and urged continued support of these endeavors.¹⁷¹

¹⁶⁷*Id.* at 1-2.

¹⁶⁸*Id.* at 2-3.

¹⁶⁹*Id.* at 2.

¹⁷⁰*Id.*

¹⁷¹Minutes, Annual Business Meeting, May 25, 1995, 6-7, NAA Archives.

Even before the advent of the Task Force, the AAA sought to interest the Academy in workshops on employment law issues.¹⁷² Stressing the need for "joint" ("AAA and NAA") sponsorship of "training programs . . . to prepare labor arbitrators to handle employment-related disputes," AAA Vice President Allan Silberman urged the Academy to take advantage of AAA initiatives:

We have brought together a small working group of NAA members who all sit on the AAA's Labor Education Advisory Committee to assist us in developing an appropriate program. Susan Mackenzie chairs the Committee and will be joined by Dan Brent and Gladys Gershenfeld on the working group. I noticed that both Dan and Gladys were on the Committee that prepared the NAA's report.¹⁷³

In his reply to the AAA, President Dallas Jones stressed the importance of gearing NAA educational activities to the interests of its own members. He appointed a new committee chaired by Zack to establish programs for training members in "such matters as employer promulgated arbitration, fair share arbitration and arbitration under various statutes."¹⁷⁴ Jones suggested that these educational activities likely would occur within the context of existing NAA programs at annual meetings, fall conferences, and regional seminars under the guidance of the Continuing Education Committee and the Regional Coordinator. This matter is discussed in more detail below under Regional Activities.

Ethical Considerations

ALDR Implications for the Code

In response to the ALDR report, CPRG Chair Alex Elson appointed a subcommittee, headed by George Fleischli of Madison, Wisconsin, to determine the Code changes required by the ALDR recommendation to apply the Code to non-collective bargaining arbitration. The subcommittee recommended changes in Part 2 (Responsibilities to the Parties) to apply to the following "employment arbitrations":

¹⁷²Letter from Allan Silberman to President Dallas Jones, August 24, 1993; see also earlier letter from Robert Coulson to President David Feller, June 30, 1992, and Feller's reply, July 11, 1992, deferring "any Academy action until there was further opportunity to address the issues" raised by the ALDR draft report. Eischen Files, NAA Archives.

¹⁷³Letter from Allan Silberman to President Dallas Jones, *supra* note 172.

¹⁷⁴Letter from President Dallas Jones to Allan Silberman, August 30, 1993, Eischen Files, NAA Archives.

1. Employer promulgated arbitrations.
2. Disputes involving wrongful termination or other issues, arising under an implied or explicit individual employment contract.
3. Individual employment claims arising pursuant to statute.
4. Arbitration as a tool in the settlement of employment litigation.
5. Internal employer and internal union disputes.¹⁷⁵

The subcommittee suggested no Code amendments regarding mediation or conciliation. The Board of Governors approved the following amendment to Part 2-A-3 of the Code:

3. An arbitrator who is asked to arbitrate a dispute under a procedure established unilaterally by an employer or union, to resolve an employment dispute or agency shop or fair share dispute, has no obligation to accept such appointment. Before accepting such an appointment, an arbitrator should consider the possible need to disclose the existence of any ongoing relationships with the employer or union.
 - a. If the arbitrator is already serving as an umpire, permanent arbitrator or panel member under a procedure where the employer or union has the right unilaterally to remove the arbitrator from such a position, those facts should be disclosed.¹⁷⁶

The Code and Mediation

Mediation activities among Academy members also required attention. President Dallas Jones appointed a Special Committee on Mediation, chaired by Charles Rehmus of Poway, California, former dean of Cornell's ILR School. Two major issues concerned the committee: (1) whether "the present Code should be altered to include mediation or remain unchanged" or whether there should be "some other code"; and (2) whether the present Code should be altered "to permit NAA members to advertise any of these activities."¹⁷⁷

The committee concluded that "most of the principles set forth . . . in the existing Code . . . would serve well to guide NAA members when acting as mediator in employment-related disputes,"¹⁷⁸ and listed four alternatives in dealing with the controversial issue of advertising:

¹⁷⁵ Minutes, Board of Governors, October 28-29, 1993, 16, NAA Archives.

¹⁷⁶ *Id.* at 17.

¹⁷⁷ Letter from Charles Rehmus to Mediation Committee members, July 2, 1993, Mediation Committee Files, NAA Archives. See also *Special Mediation Committee Recommends Modifying Code's Preamble; Divided on Other Changes*, *The Chronicle* (NAA, Jan. 1994), 1.

¹⁷⁸ Minutes, Board of Governors, *supra* note 175, at 9.

1. Do nothing (i.e., leave Advisory Opinion No. 21 [Advertising and Solicitation, May 26, 1991] in force).
2. Extend the ban on advertising to mediation.
3. Specifically exempt mediation from the advertising ban.
4. Bring the advertising issue before the membership through appointment of a new committee.¹⁷⁹

The Board selected the fourth alternative and authorized appointment of a new special committee to investigate general Code revision in the context of the ALDR report, especially as it related to the advertising ban.

Code Ban on Advertising

For several years the Academy had been wrestling with the issue of advertising.¹⁸⁰ The CPRG had written several opinions expanding the application of the Code's ban on advertising.¹⁸¹ Many Academy members believed that the ban was necessary to preserve the "dignity" of the arbitration profession.¹⁸² Others thought the ban put Academy members at a disadvantage in competing for arbitration business.¹⁸³ Advisory Opinion No. 21¹⁸⁴ added fuel to the fire by extending the solicitation ban to mediation work.¹⁸⁵ The ALDR Committee raised the issue again by recommending that the Code be applied to all employment-related activities.¹⁸⁶

Finally, in 1994, Academy members expressed concern "regarding the apparent conflict between the Code ban on advertising and the new joint AAA/Martindale-Hubbell directory for dispute resolution professionals."¹⁸⁷ CPRG Chair Alex Elson advised mem-

¹⁷⁹ *Id.*

¹⁸⁰ See especially CPRG Report, April 10, 1987, NAA Archives (hereinafter Stark Report). This 27-page report included a historical account of Code §1-C-3, provisions of other codes, application of antitrust laws, and Academy members' pro and con comments. Cf. Chapter 5, text, at notes 155-76.

¹⁸¹ Code of Professional Responsibility for Arbitrators of Labor-Management Disputes, §1-C-3: "An arbitrator must not advertise or solicit arbitration assignments." See, e.g., NAA Formal Advisory Opinions, *Opinion No. 18* (Code Provision 1-C-3: "Arbitrator Must Not Advertise or Solicit Arbitration Assignments"), May 29, 1988, 25; *Opinion No. 19* (Advertising and Solicitation, May 28, 1989, 27.

¹⁸² See, e.g., Seward, *Report of the Special Committee on Professionalism*, in *Arbitration 1987: The Academy at Forty*, Proceedings of the 40th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1988), Appendix B, 221, 230, 231-35.

¹⁸³ Stark Report, *supra* note 180, at 17. Cf. Chapter 5, text, at notes 160-61.

¹⁸⁴ NAA Formal Advisory Opinions, *Opinion No. 21* (Advertising and Solicitation), May 26, 1991.

¹⁸⁵ Minutes, Board of Governors, May 26, 27 & June 1, 1991, 4, NAA Archives.

¹⁸⁶ ALDR Report, *supra* note 138, at 341-42.

¹⁸⁷ Minutes, Board of Governors, May 23-24, 1994, 3, NAA Archives.

bers that mere listing in the directory did not violate the Code, but that payment for a more extensive display did.¹⁸⁸ Under the chairmanship of George Fleischli, who succeeded Elson, the CPRG reconsidered the Martindale-Hubbell matter and wrote another advisory letter to the membership because

[t]he Committee was uncomfortable with the idea of basing its opinion solely on whether payments were required, and recognized the obligation to make complete and accurate information available to users of such directories.¹⁸⁹

The CPRG concluded that directory listing was governed by Code section 1.C.3.b., to the effect that information provided for published biographical sketches must be accurate and "may include membership in professional organizations . . . and listings on rosters of administrative agencies." Fleischli emphasized that this interim decision was applicable only to the 1994 version of the directory.¹⁹⁰

In response to the continuing controversy, President Dallas Jones and President-elect Arnold Zack appointed John Kagel of San Francisco, California, chair of a new Code Revision Committee. In his report to the Board, Kagel recommended that:

1. Section 1-C-3 of the Code should not be enforced except in proven instances of non-truthful advertising.
2. Section 1-C-3 of the Code should not be extended to employment arbitration unless the advertising ban is rewritten.
3. The CPRG should redraft a new Section 1-C-3 along the lines suggested in a legal opinion obtained by the Code Revision Committee.¹⁹¹

Rather than adopt the committee's recommendations, the Board authorized the CPRG to conduct an open forum at the 1994 Fall Education Conference in Boston on the question: "Whether, as a matter of NAA policy, the current Code ban on

¹⁸⁸Letter from Alex Elson to Academy members, April 11, 1994, Eischen Files, NAA Archives.

¹⁸⁹Letter from George Fleischli to Academy members, *quoted in* Minutes, Board of Governors, May 29, 1994, 6, NAA Archives.

¹⁹⁰*Id.*

¹⁹¹Minutes, Board of Governors, *supra* note 187, 18. The legal opinion, contained in a letter from Adam Siegman to John Kagel, May 12, 1994, concluded that "a total prohibition on advertising by members of the Academy and the AAA runs a significant risk of *per se* invalidity under the Sherman Act. . . . The prohibition on solicitation and advertising by members of the FMCS is very likely to be struck down by the court [since such government rules] do not withstand First Amendment analysis." Code Committee Files, NAA Archives.

advertising should be continued?" Preceding the open forum, a "Point/Counterpoint" debate had appeared in *The Chronicle*.¹⁹² In supporting the advertising ban, John Dunsford pointed out that

the high esteem in which both the process and labor arbitrators are held is deeply rooted in the repudiation of commercialism. A dilution of the prevailing standards will mark the beginning of an inevitable decline in reputation.¹⁹³

Elizabeth Neumeier, on the other hand, called for the Academy to meet "the needs of the membership." Limiting what members may publish in directories, announcements, and conference promotions, she maintained, protected members' economic interests and presented a "'seedy appearance' of an academy limiting access to business to those already 'in.'" She claimed that "questionable" assumptions underlay the ban, namely, that

advertising would destroy the collegial nature of the NAA; some advertising would inevitably be offensive, misleading, and demeaning to the process; appointing agencies and publishing houses provide information eliminating any need for advertising; parties will not select arbitrators through ads; etc. The bases for such assumptions are questionable. Why do we assume that the parties lack the ability to weed out the advertising charlatans?

... It is time for the NAA to lead on the question: by setting standards for ethical advertising. By example, the NAA can "establish and foster the highest standards of integrity, competence, honor, and character" in advertising, as it has in other areas of practice.¹⁹⁴

In a letter to the editor, Eric Lawson of Buffalo, New York, saw nothing unethical about an arbitrator's publicity. In fact, without "an acceptable vita," he said, "the possibility of building a volume of cases sufficient to get into the Academy would be as diaphanous a goal as balancing the federal budget."¹⁹⁵

Members' comments during the open forum suggested consensus for a revision of the Code's advertising ban. Alex Elson, a charter member of the Academy, admitted that he had changed his views over the years to the point where he now favored a narrowly tailored revision of the Code to allow a "free flow of information about arbitrators to the parties, subject to restrictions on untruthful or misleading communications, subjective judgments

¹⁹²Dunsford, *The Ban on Advertising Should be Retained*, *The Chronicle* (NAA, Sept. 1994), 3; Neumeier, *The Ban on Advertising Should Be Revoked*, *id.*

¹⁹³Dunsford, *supra* note 192.

¹⁹⁴Neumeier, *supra* note 192.

¹⁹⁵Lawson, *Re: Point/Counterpoint: A Riposte*, *The Chronicle* (NAA, Jan. 1995), at 2.

about an arbitrator's ability, or statements suggesting how an arbitrator might rule." Most speakers avoided extreme positions, recognizing that the issue is a "line-drawing one."¹⁹⁶

The Board of Governors authorized the CPRG to recommend appropriate Code revisions. The CPRG urged continuation of the ban on "outright advertising and solicitation" without precluding "the dissemination of accurate information about labor arbitrators in which potential users of their services had a legitimate interest."¹⁹⁷ Thus, the Martindale-Hubbell directory compromise of 1994 was expanded to permit "(a) . . . accurate, objectively verifiable biographical information (including fees and expenses) for inclusion in administrative agency arbitration rosters, [and] dispute resolution directories. . . ."¹⁹⁸ In addition, the CPRG proposed the following explanatory notes:

(b) Information provided under paragraph (a) may not include editorial or adjectival comments concerning the arbitrator's qualifications.

(c) It is a matter of personal preference whether an arbitrator includes "Labor Arbitrator" or similar titles on professional letterheads, cards and announcements.

(d) Solicitation, as prohibited by this section, includes the making of requests for arbitration work through personal contacts with individual parties, orally or in writing.¹⁹⁹

The CPRG report occasioned considerable discussion at the Board of Governors meeting. Vice President Charles Rehms was especially disappointed by the decision to delete the prohibition against a member's listing "current or former Academy offices on his/her letterhead."²⁰⁰ While agreeing that such advertising was "distasteful," Governor Alvin Goldman noted that it was "not a Code matter." He suggested that the Academy address this regulation of the "use of its own name" as a separate policy item. In the end, the Board adopted the CPRG report without recorded dissent, and the CPRG was authorized to circulate the proposed Code changes to the AAA and the FMCS.²⁰¹

¹⁹⁶ *Advertising Forum Reveals Relative Consensus on Modification of the Ban*, The Chronicle (NAA, Jan. 1995), 1, 10.

¹⁹⁷ Weckstein, *The Code Ban on Advertising: Coming Closer to Consensus*, The Chronicle (NAA, Sept. 1995), 1, 12.

¹⁹⁸ *Id.* at 12. See also CPRG Report, May 25, 1995, 5, NAA Archives.

¹⁹⁹ CPRG Report, *supra* note 198, at 10.

²⁰⁰ Minutes, Board of Governors, May 23-24, 1995, 10, NAA Archives.

²⁰¹ *Id.*

At the membership meeting later in the week, CPRG Chair Fleischli reported the Board's action and explained the timetable required to implement the Code revision.²⁰² He described the lengthy process required for Code revisions: (1) concurrence of the cosponsors of the Code, (2) formal approval by the Board of Governors, and (3) a ratification vote by the membership.²⁰³ This process was completed in Toronto, where the membership approved the Code changes at its meeting on May 30, 1996.

Code Education

The discussions leading up to the Code advertising revision suggested that Academy members were not as familiar with the Code as they should be. Walter Gershenfeld of Flourtown, Pennsylvania, presented a proposal for production of a videotape depicting vignettes of the eight Code sections, covering topics such as arbitral delay in rendering awards, mediation in arbitration, assisting the weak advocate, and requests for agreed awards not designated as such. President Thomas Roberts appointed Gershenfeld to chair a Special Committee on Professionalism Programs to oversee the video production and arrange for financing and screening in cooperation with Cornell ILR School, the American Arbitration Association, and the NAA Research and Education Foundation.

The first showing of the videotape, entitled "Ethics in Arbitration," occurred at the 1990 Annual Meeting in San Diego, California. The committee proposed to work out "a sales-and-distribution arrangement" with AAA with receipts divided on "a pro-rata basis to reflect the relative contributions" of the Academy, the Foundation, and the AAA.²⁰⁴ The committee also prepared a leader's manual for use at training sessions during the Fall Continuing Education Conference and at regional meetings. AAA agreed to use the video for its own Code training, and Academy members could buy copies for \$80.00 each. Mario Chiesa, in his report on continuing regional education, stated that the ethics video had been used at educational sessions in New York City

²⁰²Minutes, Annual Business Meeting, May 25, 1995, 5, NAA Archives.

²⁰³Fleischli, 1995 *Committee Report Abstracts: Committee on Professional Responsibility and Grievances*, *The Chronicle* (NAA, Sept. 1995), 6. See also letter from George Fleischli to Academy members, May 25, 1995, Eischen Files, NAA Archives.

²⁰⁴Report of Committee on Professionalism Programs (May 1990), NAA Archives.

and St. Louis, and in California, Eastern Pennsylvania, Illinois, Ohio, and Oregon.²⁰⁵

In 1994, Gershenfeld reported to the Board of Governors that the AAA had not fulfilled its commitment to market the film. The Board approved his recommendation that "the NAA exercise its option to withdraw from the marketing contract with AAA," and look for other publishers.²⁰⁶

Publication of Awards

Another perennial Code issue involved publication of awards. In a letter to President David Feller, the Bureau of National Affairs (BNA) requested Board authorization to solicit arbitration awards for publication from Academy members.²⁰⁷ BNA complained about not receiving enough awards from experienced arbitrators. In response, Feller appointed Reginald Alleyne, UCLA law professor, as chair of a committee to consider "whether there is a problem with respect to the adequacy, balance and scope of published arbitration decisions; and, if so, to recommend whatever action may be appropriate by the Academy to resolve that problem, consistent with the requirements of the Code."²⁰⁸

The 1994 report of the committee recommended that arbitrators submit awards to publishers with the request that the publishers obtain permission from the parties for publication. The Board rejected that recommendation. President Arnold Zack appointed another committee to work with the CPRG, the Designating Agency Liaison Committee, and the ABA Committee on Collective Bargaining and Arbitration to work out a satisfactory solution to the problem.²⁰⁹ This matter had not been resolved by the time this volume went to press.

In connection with publication of awards, CPRG Chair George Fleischli pointed out that plagiarism had reared its ugly head.

²⁰⁵ Combined Report, National Coordinator of Regional Activities and Committee on Continuing Regional Education, 1990-1991, 1, NAA Archives.

²⁰⁶ Minutes, Board of Governors, *supra* note 187, at 1-2.

²⁰⁷ Letter from Ruth West, *Labor Arbitration Reports* editor, to President David Feller, May 25, 1993, Eischen Files, NAA Archives. Attached was a sample "permission letter" requesting consent to publish, which BNA suggested the arbitrator send to the parties. Cf. Chapter 5, text, at notes 177-87.

²⁰⁸ Minutes, Board of Governors, May 31-June 1, 1993, 2, NAA Archives. Code §2-C-1, requires that "an arbitration . . . must be treated . . . as confidential unless . . . waived by both parties . . ."

²⁰⁹ Minutes, Board of Governors, May 23-24, 1994, 11, NAA Archives.

Edward Krinsky of Madison, Wisconsin, had raised the issue in a *Chronicle* article, stating:

There is nothing wrong with using the work of our arbitrator brothers and sisters so long as we give credit where it is due. By not giving such credit, however, we give our clients work which is not ours and we do not show them whose work it really is.²¹⁰

Krinsky reported an instance where an award was used "virtually verbatim" without attribution. Fleischli told the Board that the CPRG considered plagiarism "unacceptable and unethical,"²¹¹ and reminded the membership to be "careful in that regard."²¹²

Along similar lines, Eva Robins questioned use of assistants for decision writing. In a letter to *The Chronicle*, she noted:

I need not remind our members that Section "H" of our Code addressed this subject and precludes the use by an arbitrator of an assistant to whom is delegated decision-making or decision-writing, without the knowledge and consent of the parties.²¹³

In a subsequent comment, Reginald Alleyne saw no problem with using assistants so long as the arbitrator "bears responsibility" for the opinion. He concluded:

Except for the arbitrator and his or her assistant, it may be that no one will ever know the full measure of their allocation. The privacy of their working arrangement gives them an unreviewable final say.²¹⁴

When Fleischli became chair of the CPRG, the committee noted that several advisory opinions (Nos. 4, 7, 9, 10, and 11) were missing from the ring-binder which had been distributed to the membership earlier.²¹⁵ Some of these reputedly "rescinded" opinions were found to be still in effect.²¹⁶

²¹⁰Krinsky, *CPRG: The Need for Attribution*, *The Chronicle* (NAA, Jan. 1995), 3.

²¹¹Minutes, Board of Governors, *supra* note 200, 11.

²¹²Minutes, Annual Business Meeting, *supra* note 202, at 5.

²¹³*Are Ghost Writers Haunting Us?*, *The Chronicle* (NAA, Jan. 1995), 3.

²¹⁴Alleyne, *Arbitrators' Assistants: Does the Code Assist?*, *The Chronicle* (NAA, Apr. 1995), 3.

²¹⁵NAA Formal Advisory Opinions, *Opinion No. 4* (Listing Academy and Panel Memberships on Letterhead), April 3, 1973; *Opinion No. 7* (Donation of Arbitration Files to Libraries), June 10, 1980; *Opinion No. 9* (Duty of Disclosure), May 16, 1981; *Opinion No. 10* (Publication of Awards), October 1, 1982; *Opinion No. 11* (Publication of Awards), May 24, 1983. These newly discovered opinions are included with the other Advisory Opinions in Appendix D.

²¹⁶Minutes, Board of Governors, *supra* note 200.

Regional Activities

The 1990s brought expanded regional initiatives. President Howard Block appointed a new Committee on Continuing Regional Education (CCRE) under the leadership of National Coordinator of Regional Activities Mario Chiesa, former chair of Michigan Region 10. He succeeded Frances Bairstow of Clearwater, Florida, former Industrial Relations Center director at the University of Montreal in Quebec, Canada. Chiesa outlined the following CCRE priorities:

1. Inventory, codification and assessment of educational and training documentary resources currently existing within the Academy;
2. Development of a panel of Academy-member volunteers ready, willing and able to travel at Academy expense to regions outside their own and act as speakers, educators or trainers, with special emphasis upon matters of ethics and professionalism;
3. Preparation and distribution of an inter-regional bimonthly newsletter, to supplement the Chronicle column and aid the Committee in assessing the needs, marshalling the resources and improving communications among various regions.²¹⁷

Chiesa urged the Board to provide financial support for these initiatives.

Several governors voiced objection to this ambitious program. Governor Gladys Gershenfeld reminded Chiesa that "excellent training and discussion materials" had been developed for the Continuing Education Conferences each year since 1983. Governor Marlin Volz felt that universities, the AAA, and the FMCS had enough training programs. Governor Clifford Smith thought the regional programs should be "self-supporting." Vice President Dallas Jones pointed out that "in past years, national funding of regional education and training activities had proven to be a controversial issue financially and politically," and he reminded the Board that 18 study and discussion guides were available in the national office. In the end, the Board authorized \$2,500 for CCRE start-up expenses but postponed consideration of financial assistance to the regions.²¹⁸

At the next meeting, Chiesa recommended that the Board of Governors establish a Financial Assistance Program (FAP) to provide up to \$600 in reimbursable "seed money" per year to each

²¹⁷Minutes, Board of Governors, June 2, 1990, 3, NAA Archives.

²¹⁸*Id.* at 4.

qualifying region for educational programs.²¹⁹ The Board adopted funding for two years on a trial basis. The CCRE drafted a request for grant (RFG) proposal for regional chairs "to aid those regions which need assistance to create and present regional educational programs." The FAP would grant such requests under the following conditions:

[I]f the application establishes that the program contributes to increasing the quality of our profession and from the data submitted displays the reasonable likelihood that the requested assistance will be either totally or substantially reimbursed to the Academy.²²⁰

The Southeastern Region 5, chaired by Jack Clarke of Montgomery, Alabama, was the first to receive a \$600 FAP grant. The region totally reimbursed the Academy after a "very successful meeting in Atlanta." Chiesa reported that FAP was "effective, painless, and worked as planned."²²¹ In 1993, similar assistance was extended to New England Region 1 and to Southern California Region 16.²²²

To promote further communication among regional members, the Board adopted a "Policy Statement on Reimbursement of Regional Chairs for Costs of Regional Meetings at Mid-Year Education Conferences and Annual Meetings" to reimburse regional chairs up to \$100 for meeting room rental and refreshments. Such reimbursement was to be certified by the National Coordinator and justified by a written report "indicating members in attendance and business conducted." Regional chairs were warned to avoid conflicts with regular programs.²²³ The Board also authorized distribution of official stationery to regional chairs.

In 1991, President Block reported that he had traveled to nine regional meetings during the year with several more to come, and that regional education of Academy members and new arbitrators continued to expand. The CCRE began developing "course outlines and curricula [and] a menu of prepackaged education programs" for use by the regions.²²⁴

²¹⁹Minutes, Board of Governors, November 1-2, 1990, 7, NAA Archives.

²²⁰Committee on Continuing Regional Education, *Financial Assistance Program* (n.d.), 1, NAA Archives.

²²¹Combined Report, National Coordinator of Regional Activities and Committee on Continuing Regional Education, 1990-1991. See also Minutes, Board of Governors, May 26-27 & June 1, 1991, 8, NAA Archives.

²²²Minutes, Board of Governors, May 31-June 1, 1993, 9, NAA Archives.

²²³Minutes, Board of Governors, *supra* note 221, at 9.

²²⁴Minutes, Board of Governors, October 31-November 1, 1991, 8, NAA Archives.

True to his commitment, Chiesa compiled the Regional Educational Activities Support Program Resource Guide and the Regional Chair Policy Manual, later called a handbook. The documents discussed the Academy's regional organizations and set forth the bylaws applicable to regional activity. These publications provide guidance for regional chairs in carrying out their responsibilities for programs, meetings, seminars, annual meetings, and *The Chronicle's* "Regional Roundup." A first supplement, submitted to regional chairs at their luncheon during the 1992 Annual Meeting, included potential presentations by five Academy presidents (Howard Block, Alfred Dybeck, Thomas Roberts, Arvid Anderson, and William Murphy), who had agreed to make themselves available as discussion leaders at regional meetings.²²⁵

When William Holley of Auburn, Alabama, became National Coordinator of Regional Activities in 1993, the CCRE program was well in place. In seeking accreditation of all Academy programs under continuing legal education (CLE) rules, Holley reported that state bar CLE requirements varied widely²²⁶ and the ABA was attempting to standardize the process.²²⁷ He recommended that CCRE concentrate on a theme for education projects over the next three years (the Americans with Disabilities Act—or ADA—was chosen for 1993) and that committee members be retained for planning continuity. To comply with the Board's request for information about regional programs and policies, Holley developed a questionnaire. Results showed that only four regions had constitutions and bylaws and that methods for selection of chairs varied widely.²²⁸

Status of Special Funds

Legal Representation Program

In tandem with the ALDR Committee's investigation of the Academy's potential involvement in all nonunion employment disputes, the Legal Representation Committee, under the leadership of Timothy Heinsz, dean of the University of Missouri's law

²²⁵ Chiesa, *Continuing Regional Education Committee Supplement Distributed*, *The Chronicle* (NAA, Sept. 1991), 9.

²²⁶ A 1993 Fall Conference registration packet insert listed 29 states that had approved Academy meetings for varying amounts of continuing legal education credits.

²²⁷ Minutes, Board of Governors, October 28–29, 1993, 8, NAA Archives.

²²⁸ Minutes, Board of Governors, *supra* note 209, at 8–9.

school, reexamined Academy policy limiting coverage to members' arbitration activities. Earlier in the decade when expenditures for the Legal Representation Program (Program) began to average between \$10,000 and \$11,000 per year, the Board of Governors had approved an increase from \$50,000 to \$100,000 in the reserve fund.²²⁹

Even before the ALDR report, in response to a request for clarification of coverage, the committee had recommended that the Program cover all "arbitration activity as a neutral in labor-management disputes, including rights arbitration, interest arbitration, grievance mediation, med-arb, factfinding and advisory arbitration." However, the committee refused to extend coverage to "cases of employer-promulgated arbitration in a non-union setting or employment-at-will arbitration." Mediation activities also remained excluded, "since the fundamental premise of the Program was to defend the arbitration process and arbitral immunity." The Board of Governors approved the committee's recommendation.²³⁰ Later Heinsz reported that the committee had not experienced an increase in representation requests as a consequence of extending coverage, but Secretary Eischen levied a \$20 assessment in 1993 and another \$10 in 1994 "due to the decline in interest rates as well as increased expenditures for legal representation."²³¹

At the same time, in response to some complaints from members, President Dallas Jones requested the committee to reinvestigate alternatives to the Program. The committee again found that "no other available insurance program would provide the cost-benefit features which we currently enjoy," and the Board of Governors approved the committee's recommendation that the Program continue unchanged.²³²

When Joseph Gentile of Los Angeles, California, became chair of the Legal Representation Committee, his first task was to analyze the impact of the ALDR recommendation that the Program

²²⁹ Annual Report, Executive Secretary-Treasurer, May 26, 1991, 3, NAA Archives. The maximum reimbursement is \$2,500 per case.

²³⁰ Minutes, Board of Governors, May 25-26, 1992, 16, NAA Archives; Minutes, Annual Membership Meeting, May 28, 1992, 5, NAA Archives.

²³¹ Annual Report, Executive Secretary-Treasurer, May 23, 1994, 3, NAA Archives. The assessment in 1995 was \$40. Report of Legal Representation Committee, June 21, 1995, 2, NAA Archives.

²³² Minutes, Board of Governors, June 6, 1993, 4, NAA Archives. In 1990, Legal Representation Chair Nathan Lipson reported that "no member has paid more than \$140 over the life of the Program. This cost is much less than what the cost would be for insurance." Minutes, Board of Governors, May 27-28, 1990, 12, NAA Archives.

cover all employment-related arbitration activities of members. There were "increasing concerns that extended coverage would likely create serious financial problems for the Fund."²³³ In his report to the Board of Governors at the 1994 Annual Meeting, Gentile emphasized the difficulty of predicting "[f]und usage implications of expanding coverage to include employer promulgated arbitration, intra-union disputes and other employment-related matters not currently covered by the Legal Representation Program." Also excluded from the Program are "statutory arbitration of tenured-teacher discipline and discharge, intra-union constitution and by-law disputes, and arbitration of jurisdictional disputes under the AFL-CIO Constitution."²³⁴

The Legal Representation Committee report analyzed the 20 cases handled in 1995 as follows (duplications due to listing in more than one category):

Public sector	13
Public sector, involving law enforcement or correctional officers	5
Private sector	7
Academy member named defendant	9
Subpoena for records, testimony, or deposition	11
Academy member named in pro se action	5
(public sector—4)	
Request for tapes and notes	6
Retention of jurisdiction	4235

Based on his experience since becoming chair, Gentile predicted that "an assessment for FY '95-'96 may become a reality." While the annual representation outlay to AAA had decreased by \$2,237 to \$3,476, the \$16,609 reimbursement to members for individually obtained legal counsel was "substantially more" than the \$9,731 paid out the previous year.²³⁶

NAA Research and Education Foundation

When Dana Eischen succeeded Dallas Jones as secretary-treasurer of the Academy, he also became the secretary of the Research and Education Foundation. At that time the Foundation's assets totaled \$92,557, with an additional \$90,000 in outstanding pledges. The only expenses during 1990 were for

²³³ Minutes, Board of Governors, *supra* note 227, at 4.

²³⁴ Minutes, Board of Governors, May 23-24, 1994, 11, NAA Archives.

²³⁵ Report of Legal Representation Committee, *supra* note 231.

²³⁶ *Id.* at 2. No assessment was necessary in 1996.

production of the videotape on ethics.²³⁷ In 1991, Foundation President Arnold Zack reported that the Foundation's participation with the Academy in funding a Research Committee project resulted in the publication of a book on the labor arbitration profession.²³⁸ By May 1992, the Foundation fund principal had increased by 20 percent to \$122,000, but the Foundation had received no applications for funding.²³⁹

In 1993, Foundation President Joseph Loewenberg of Wynnewood, Pennsylvania, recommended that the Foundation "actively solicit funding proposals."²⁴⁰ In a *Chronicle* article, he reported that, in addition to the Research Committee study on the arbitration profession, the Foundation had funded the ethics videotape and the forthcoming history of the Academy. He listed suggestions for possible Foundation funding:

1. Development of a computer program to retrieve arbitration decisions.
2. A study to evaluate advocate performance and need for training.
3. A study of the impact of labor-management cooperation on arbitration.
4. A study of arbitral criteria in difficult discharge cases.
5. Development and implementation of training in the Code for non-NAA arbitrators.
6. A study of parties' satisfaction with arbitration.
7. Training arbitrators in employer promulgated procedures.²⁴¹

Loewenberg reminded Academy members that funding was usually limited to \$10,000, but that the Foundation encouraged cofunding of projects with other funding sources.²⁴² The Foundation has recently concentrated on establishing an endowment.

²³⁷ Minutes, Board of Governors, May 27-28, 1990, 16, NAA Archives. Under the Foundation's bylaws, the Board of Governors constitutes the membership of the Foundation, and the Academy secretary has traditionally been elected secretary of the Foundation. Pledges represented outstanding contributions promised by life fellows, who agree to donate \$1,000 over a period of five years.

²³⁸ Minutes, Board of Governors, *supra* note 221, at 13, referring to Bognanno & Coleman, eds., *Labor Arbitration in America: The Profession and Practice* (Prager 1992).

²³⁹ Minutes, Board of Governors, May 25-26, 1992, 17-18, NAA Archives; Minutes, Membership Meeting, May 28, 1992, 4, NAA Archives.

²⁴⁰ Minutes, Board of Governors, *supra* note 222, at 15. Later, Joseph Loewenberg announced to Academy members that the Foundation was undertaking a "more proactive solicitation of proposals" for research funding. Minutes, Annual Membership Meeting, May 27, 1993, NAA Archives.

²⁴¹ Loewenberg, *Research and Education Foundation Seeks Funding Proposals*, *The Chronicle* (NAA, Jan. 1994), 2.

²⁴² Secretary-Treasurer's Report, October 27, 1994, 4, NAA Archives. As of October 20, 1994, the Foundation balance was \$155,144.

Academy Publications

Gender-Neutral Initiative

At the 1990 Fall Conference, the Board of Governors approved establishment of a committee, chaired by Gladys Gershenfeld of Flourtown, Pennsylvania, "to review official Academy documents and to make recommendations on revisions where appropriate to insure gender-neutral terminology."²⁴³ The committee reported that most of the needed changes were in the constitution and bylaws. These would require membership approval. The Board could make the necessary changes in the Code and Policy Handbook at the time it considered other changes.²⁴⁴

For other Academy publications, the committee recommended that a set of guidelines be provided to editors for future use by authors. On July 12, 1991, the committee distributed these guidelines:

1. Use the plural where appropriate.
2. Eliminate the pronoun, especially he/she.
3. Use a different construction where possible.
4. Repeat the noun if necessary.
5. Substitute the word "one" if the singular is required.²⁴⁵

Research Studies

Under the successive leadership of Joseph Loewenberg and Paul Gerhart, the International Studies Committee continued to coordinate the reports of overseas correspondents for publication in the *Comparative Labor Law Journal*.²⁴⁶ The Academy subsidized distribution of the journal to members.²⁴⁷

Under the leadership of Mario Bognanno of the University of Minnesota and Charles Coleman of Rutgers University, the

²⁴³Report to the Board of Governors, Committee on Gender-Neutral NAA Terminology (n.d.), NAA Archives.

²⁴⁴The membership amended the constitution and bylaws to effectuate gender-neutral language at the 1994 Annual Business Meeting in Minneapolis, Minnesota. The membership approved the gender-neutral changes in the Code at the 1996 Annual Meeting in Toronto.

²⁴⁵Cf. Gershenfeld, *Avoiding the He/She Syndrome*, unpublished paper submitted to the "Gender and Arbitration" workshop at the 1996 Annual Meeting of the Industrial Relations Research Association, January 6, 1996, 4-5.

²⁴⁶Gerhart, et al., *Worker Privacy: A 10 Nation Study by the Committee on International Studies, National Academy of Arbitrators*, 17 Comp. Lab. L.J. 1 (1995); Loewenberg, et al., *The Neutral and Public Interests in Resolving Disputes*, 13 Comp. Lab. L.J. 171 (1992).

²⁴⁷Minutes, Board of Governors, May 23-24, 1995, 4, NAA Archives. Cf. Chapter 5, text, at note 315.

Research Committee sponsored two publications, with financial support from the Academy and the NAA Research and Education Foundation.²⁴⁸ In 1993, the Research Committee arranged for distribution to the membership of the work of Donald Crane of Georgia State University and Paul Gerhart of Case Western Reserve University, entitled "Issues and Dilemmas in the Arbitration of Claims Under Wrongful Dismissal Legislation and Other Forms of Non-union Arbitration."²⁴⁹

The Chronicle

In 1990, President Howard Block implemented the 1989 recommendations of the Special Committee on New Directions and Functions of *The Chronicle*. The chair of that committee was Ted Jones, one of the early *Chronicle* editors.²⁵⁰ The recommendations were these:

1. Discontinue rotation of issue editors and restructure the staffing . . . whereby a Managing Editor appointed for a period of years by the President will appoint and work with a group of Associate Editors, each responsible for a specific function as determined by the Managing Editor; the Managing Editor will designate a Production Editor (who may or may not be a member) who will be compensated to work on the production phase of publication.
2. Publication is to be moved onto a targeted schedule of three issues each year (January 15, April 15 and September 15).
3. The annual production budget for the three issues should be targeted at \$12,000, inclusive of \$1,500 (\$500 per issue) for the Production Editor.
4. The *Chronicle* Committee, presently a "special committee," should be reconstituted as a Standing Committee chaired by the Managing Editor.²⁵¹

²⁴⁸Coleman & Haynes, eds., *Labor Arbitration: An Annotated Bibliography* (ILR Press 1994); Bognanno & Coleman, *supra* note 238.

²⁴⁹Minutes, Board of Governors, May 31 & June 1, 1993, 8, NAA Archives.

²⁵⁰Report of the Committee on New Directions and Functions of *The Chronicle*, August 25, 1989; Minutes, Board of Governors, October 27, 1989, 15-16, NAA Archives. See also Chapter 5, text, at note 326. The Committee had been commissioned by President Thomas Roberts "to study the long-term role of the *Chronicle* . . . within the financial constraints of our budget," in response to "perceived problems" as "a volunteer unpaid operation," whose "contributions [were] not adequately recognized by the Academy" and resulted in "uneven quality, uncertain content and style." The report gave a complete history of *The Chronicle*, including costs of production from 1986 to 1989; one *Chronicle* issue of eight pages costs, on average, approximately \$3,000.

²⁵¹Report of the Committee on New Directions and Functions of *The Chronicle*, *supra* note 250.

At the 1990 Annual Meeting, the membership approved establishment of the *Chronicle* Committee as a standing committee,²⁵² and the annual budget began to include \$12,000 for publication of *The Chronicle*.²⁵³

A membership survey undertaken by the first managing editor, Chet Brisco of Tustin, California, demonstrated the success of the new *Chronicle* initiatives: "[M]any respondents . . . awarded a five-star rating with a 'keep up the good work' comment."²⁵⁴ The three most popular items were "Law and Arbitration," "Professional Responsibility," and "The President's Column" (later changed to "Comments from the President"). However, some members cited the age-old "elitist" challenge, mentioning the "Good Ole Boy syndrome" and "the same old faces." In answer to suggestions that nonmembers be included in writing and distribution, Brisco reiterated the policy that "*The Chronicle* should remain a publication for communication between Academy members about the Academy and the subjects of concern to the members."²⁵⁵

In 1991, Gil Vernon of Eau Claire, Wisconsin, succeeded Brisco as managing editor and appointed Sharon Imes, a member from LaCrosse, Wisconsin, as production editor. Vernon pledged to continue *The Chronicle* as a "community" newspaper and announced "new features" on arbitral topics, including "Technology and the Office," "Lend Me Your Ear" (personal opinion), and "Point/Counterpoint" (a forum for debate on contemporary issues).²⁵⁶

Following the Academy's policy of limiting chairs to three-year terms, President Arnold Zack appointed Andria Knapp of San Francisco, California, managing editor in 1994 (President Dallas Jones had appointed her managing editor-designate the year before). Knapp then named Bonnie Bogue of Albany, California, as associate managing editor. Knapp labeled the newspaper "our figurative 'back fence.'" She listed her goals: (1) "to continue the fine work begun by my predecessors," and (2) to solicit contributions, "whether it's a substantive article, an op-ed piece,

²⁵²NAA Constitution and By-Laws, as amended through May 30, 1990, Article IV, section 1, NAA Archives.

²⁵³See, e.g., Projected Budget, June 1, 1990 to May 31, 1991, NAA Archives.

²⁵⁴Brisco, *The Chronicle Is a Must-Read, Membership Survey Reveals*, *The Chronicle* (NAA, Oct. 1990), 6.

²⁵⁵*Id.*

²⁵⁶Vernon, *The Chronicle to Experiment With New Features*, *The Chronicle* (NAA, Oct. 1991), 2.

announcement of a new professional or personal accomplishment for Milestones, your latest quote, humorous hearing anecdote, or vacation photos for Flipside, or just an idea for a story or column you would like to read." She reminded Academy members that "*The Chronicle* is what you make it. . . ." ²⁵⁷

Annual Proceedings and Academy History

In 1993, President Dallas Jones and President-elect Arnold Zack agreed that Joyce Najita, director of the University of Hawaii's Industrial Relations Center, should succeed Gladys Gruenberg as *Proceedings* editor for the 1995 Annual Meeting. ²⁵⁸ Under the leadership of successive chairs Gladys Gruenberg, Dennis Nolan, and James Oldham, the Academy History Committee negotiated an agreement with the Bureau of National Affairs to publish the Academy history as part of the hardcover 50-year *Annual Proceedings* index volume, scheduled to appear in 1998. BNA also agreed to print a separate soft cover edition of the history in time for the Academy's 50th anniversary celebration in 1997. ²⁵⁹

Annual Meeting Presentations

Throughout its history, the Academy's annual meetings have provided ample opportunities for exploration of contemporary workplace problems and for constructive self-criticism about the arbitration process. The 1990s proved no exception. There were familiar but incisive presentations on the impact of external law and on judicial review of arbitration awards. ²⁶⁰ There were also several talks on emerging concerns such as drug testing, sexual

²⁵⁷ Knapp, *A New Editorial Team Takes Over The Chronicle*, *The Chronicle* (NAA, Sept. 1994), 2.

²⁵⁸ *Proceedings Has New Editor*, *The Chronicle* (NAA, Jan. 1995), 9. In accordance with the continuity recommendation of the Committee on Committees, Joyce Najita first became *Proceedings* editor-designate.

²⁵⁹ Report of the Academy History Committee, Minutes, Board of Governors, *supra* note 247, at 8, NAA Archives. The Academy and the NAA Research and Education Foundation jointly subsidized the paperback edition.

²⁶⁰ Easterbrook, *Arbitration, Contract, and Public Policy*, in *Arbitration 1991: The Changing Face of Arbitration in Theory and Practice*, *Proceedings of the 44th Annual Meeting, National Academy of Arbitrators*, ed. Gruenberg (BNA Books 1992), 65; Oldham, *Arbitration and Relentless Legislation in the Workplace: I*, in *Arbitration 1990: New Perspectives on Old Issues*, *Proceedings of the 43rd Annual Meeting, National Academy of Arbitrators*, ed. Gruenberg (BNA Books 1991), 23.

harassment, employee privacy, and the unfortunate latest development, violence in the workplace.²⁶¹

With the approach of a new millennium, annual meeting presentations naturally showed an unusual degree of concern with the past and the future. A large part of the 1994 Annual Meeting in Minneapolis, for example, was devoted expressly to the history of arbitration and retrospective analysis of its development. Reaching into the far past in search of labor arbitration's antecedents, James Oldham, law professor at Georgetown University, found surprisingly familiar practices and concerns in 18th and 19th century England.²⁶² Laura Cooper, law professor at the University of Minnesota, looked at Ford/UAW umpire Harry Shulman's decisions on women's grievances during World War II and found them unexpectedly sensitive to what some think are recent issues.²⁶³ In the same *Proceedings* volume are two papers on historical subjects delivered at the previous Fall Continuing Education Conference. David Feller reconsidered his three arbitration "classics," his earlier works on the theory of the collective bargaining agreement, the impact of external law on labor arbitration, and the coming end of arbitration's "golden age";²⁶⁴ and Richard Mittenenthal did the same for his 1961 landmark analysis of past practice.²⁶⁵ Feller

²⁶¹ Flannery, *Violence in the Workplace: Prevention Strategies*, in *Arbitration 1994: Controversy and Continuity*, Proceedings of the 47th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), 80; Maltby, *Performance Monitoring and Arbitration*, in *Arbitration 1993: Arbitration and the Changing World of Work*, Proceedings of the 46th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), 231; Deeny & Williams, *Management Perspective*, *id.* at 238; Bornstein, *Arbitration of Sexual Harassment*, in *Arbitration 1991: The Changing Face of Arbitration in Theory and Practice*, Proceedings of the 44th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1992), 109; Denenberg, *Drug-Testing Disputes: Introduction*, in *Arbitration 1990: New Perspectives on Old Issues*, Proceedings of the 43rd Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1991), 235; Tobias, *I. A Union Viewpoint*, *id.* at 237; Doering, *II. A Management Viewpoint*, *id.* at 242.

²⁶² Oldham, *Arbitral Continuity: I. On the Constancy and Pedigree of the Arbitrator's Heritage*, in *Arbitration 1994: Controversy and Continuity*, Proceedings of the 47th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), 138.

²⁶³ Cooper, *Arbitral Continuity: II. Harry Shulman: Deciding Women's Grievances in Wartime*, *id.* at 153.

²⁶⁴ Feller, *Arbitration Classics: I. Revisiting Three "Classics," id.* at 169 (considering Feller, *The Coming End of Arbitration's Golden Age*, in *Arbitration—1975*, Proceedings of the 29th Annual Meeting, National Academy of Arbitrators, eds. Dennis & Somers (BNA Books 1976), 97; Feller, *The Impact of External Law Upon Labor Arbitration*, in *The Future of Labor Arbitration in America* (AAA 1976); Feller, *A General Theory of the Collective Bargaining Agreement*, 61 Cal. L. Rev. 663 (1973)).

²⁶⁵ Mittenenthal, *Arbitration Classics: II. The Ever-Present Past*, in *Arbitration 1994: Controversy and Continuity*, Proceedings of the 47th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), 184 (considering Mittenenthal, *Past Practices and the Administration of Collective Bargaining Agreements*, in *Arbitration and Public Policy*, Pro-

made an unusual second appearance in the same volume with his "fireside chat" on the origins of the *Steelworkers Trilogy*.²⁶⁶

At the other end of the chronological spectrum, perhaps reflecting the Academy's forthcoming 50th anniversary, a large number of papers considered arbitration's future, and with it, that of the Academy itself. Arbitration's future, several speakers predicted (some reluctantly), lies with employer-promulgated arbitration.²⁶⁷ With or without unions, arbitrators will have to confront the problems posed by a far more diverse work force, several others warned.²⁶⁸

If the nature of labor arbitration changes, the Academy will have to change with it. That was the message presented by both junior and senior members of the Academy during the first half of the 1990s. As already reported in the section on Membership Issues, three relatively new members urged major changes in the Academy's procedures, goals, and governance.²⁶⁹ In 1992, Anthony Sinicropi's presidential address was a wake-up call:

Despite my level of comfort with the traditional model of labor arbitration, I am confronted by an undeniable reality. My friends, the labor and employee relations world as we have known it is changing - and changing dramatically. . . .²⁷⁰

ceedings of the 14th Annual Meeting, National Academy of Arbitrators, ed. Pollard (BNA Books 1961), 30).

²⁶⁶Feller, *How the Trilogy Was Made*, in *Arbitration 1994: Controversy and Continuity*, Proceedings of the 47th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), 327.

²⁶⁷Walt, *Arbitration Forums Revisited: II. Employer-Promulgated Arbitration*, in *Arbitration 1990: New Perspectives on Old Issues*, Proceedings of the 43rd Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1991), 189; Rentfro, *id.* at 192; Das, *id.* at 199.

²⁶⁸Stallworth & Malin, *Conflicts Arising Out of Work Force Diversity*, in *Arbitration 1993: Arbitration and the Changing World of Work*, Proceedings of the 46th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1994), 104; Fraser, *A New Diversity in the Workplace—The Challenge to Arbitration: I. The U.S. Experience*, Proceedings of the 44th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1992), 143; Bird, *II. A Canadian Viewpoint*, *id.* at 160; Gottesman, *III. A Union Viewpoint*, *id.* at 166.

²⁶⁹Bickner, *New Voices in the Academy: I. The Academy's Future: By Design, or by Default*, in *Arbitration 1990: New Perspectives on Old Issues*, Proceedings of the 43rd Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1991), 256; Briggs, *II. The National Academy of Arbitrators: Trade Organization or Professional Society?*, *id.* at 263; Tener, *III. Comments on Governance*, *id.* at 270.

²⁷⁰Sinicropi, *Presidential Address: The Future of Labor Arbitration: Problems, Prospects, and Opportunities*, in *Arbitration 1992: Improving Arbitral and Advocacy Skills*, Proceedings of the 45th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books 1993), 1, at 1 and 3.

Because of these changes, the Academy must, he insisted, expand its charter to "Embrace the Full Range of Employment-Related Arbitration."²⁷¹

As we have seen, the Academy has just begun to answer his call. The next year, the Board of Governors adopted the report of its "If Any" ALDR Committee.²⁷² That report recommended a cautious opening to mediation and to employer-promulgated and statutory arbitration systems. The Board of Governors endorsed a "Project on the Arbitral Common Law of the Workplace" chaired by the University of Michigan's Theodore St. Antoine.²⁷³ The object of the new project is to publish a compendium of arbitral principles, particularly for the guidance of parties and neutrals new to the arbitration process. The Academy endorsed the Protocol, joining other interested organizations to establish minimum due-process standards for individual employment arbitration agreements. Arnold Zack has worked on the Academy's behalf with the AAA and the AFL-CIO to create panels of NAA members to handle disciplinary grievances on short notice.

Although labor-management arbitration would remain the core of the Academy's existence, the burgeoning field of employer-promulgated arbitration will also look to the NAA for guidance. The organization's new projects, particularly the Protocol and the Project on Arbitral Common Law, will pass on to others the dispute-resolution ethos developed during the Academy's first half-century. As a result, traditional labor arbitration will not be the Academy's sole focus in the 21st century. The next 50 years will be vastly different for the Academy and for labor arbitration.

²⁷¹ *Id.* at 17.

²⁷² *Report of the Committee to Consider the Academy's Role, If Any, With Regard to Alternative Labor Dispute Resolution Procedures*, in *Arbitration 1993: Arbitration and Changing World at Work*, Proceedings of the 46th Annual Meeting, National Academy of Arbitrators, ed. Gruenberg (BNA Books, 1994), 325.

²⁷³ Minutes, Board of Governors, June 2, 1996, 11-28, NAA Archives. See also Nicolau, *The Road Ahead*, *The Chronicle* (NAA, Sept. 1996), 2; *Common Law Project Proceeds Following Plenary Session at Annual Meeting*, *id.*, at 8.

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APPENDIX A

NATIONAL ACADEMY OF ARBITRATORS OFFICERS, GOVERNORS, AND COMMITTEE CHAIRS, 1947-1997

	<u>1947</u> (Original Meeting)	<u>1948</u>	<u>1949</u>	<u>1950</u>	<u>1951</u>	<u>1952</u>	<u>1953</u>
<u>President</u>	Seward	Seward	Seward	Simkin	D. Cole	D. Wolff	Warren
<u>Vice-Presidents</u>	Kerr McCoy Simkin	Kerr McCoy Simkin D. Wolff	D. Cole McCoy Simkin D. Wolff	D. Cole Guthrie Warren D. Wolff	Guthrie Kheel Platt Warren	Horvitz Larkin Wallen Warren	Guthrie Horvitz Larkin Wallen
<u>Secretary</u>	Kelliker ¹	Colby	Colby	Schedler	Schedler	Schedler	Schedler-Colby
<u>Treasurer</u>		Kelliher	Kelliher	Strong	Strong	Edwards	Edwards
<u>Board of Governors</u>	D. Brown Cole Dodd Garrison Horvitz Potter Shulman Wallen Warren Wirtz D. Wolff	D. Brown Cole Dodd Feinsinger Garrison Potter Schedler Wallen Warren Wirtz	D. Brown Feinsinger Forrester Guthrie Horvitz Kerr A. S. Meyer Schedler Shulman Wallen Warren	Copelof Feinberg Horvitz Larkin McCoy Shulman Taylor Updegraff Whiting	Alexander Copelof Feinberg Forrester Larkin Taylor Updegraff Whiting S. Wolff	Alexander L. Brown Copelof Dash Dunlop Feinberg Forrester Killingsworth Whiting S. Wolff	Alexander Cushman Dash Dunlop Killingsworth Ross Scheiber S. Wolff

	1947	1948	1949	1950	1951	1952	1953
<u>Chairs</u>							
Membership	Simkin	Simkin	Simkin	Feinberg	Larkin	Larkin	Larkin
Ethics	McCoy	Feinsinger	Feinsinger	Cole	Alexander	Alexander	Alexander
Research		Witte	Witte	Killingsworth	Ross	Prasow	Bernstein
Legislation		Wirtz	Gellhorn	R. Smith	R. Smith	R. Smith	R. Smith
	1954	1955	1956	1957	1958	1959	1960
<u>President</u>	Wallen	Horvitz	Larkin	Guthrie	Platt	Dash	L. Brown
<u>Vice-Presidents</u>	L. Brown	L. Brown	Dash	Alexander	Killingsworth	Aaron	Aaron
	Guthrie	Dash	Blair	Blair	Ross	Killingsworth	Horlacher
	Kelliher	Kelliher	Feinberg	Feinberg	Scheiber	Scheiber	Roberts
	S. Wolff	S. Wolff	Alexander	Ross	Stashower	Stashower	Whiting
<u>Secretary</u>	Alexander	Alexander	Luskin	Luskin	Luskin	Luskin	Luskin
<u>Treasurer</u>	Schedler ¹	Schedler	A. H. Myers	A. H. Myers	A. H. Myers	A. H. Myers	Hill
<u>Board of Governors</u>	Bailer	Aaron	Aaron	Aaron	Abrahams	Abrahams	Davey
	Blair	Bailer	Bailer	Abrahams	Davey	Davey	P. Davis
	Cushman	Blair	Garrett	Bailer	P. Davis	P. Davis	Fleming
	Dash	Marshall	Marshall	Garrett	Garrett	Fleming	Haughton
	Killingsworth	McKelvey	Roberts	Horlacher	Horlacher	Haughton	Holly
	Marshall	Ross	Schedler	McKelvey	McKelvey	Horlacher	Kahn
	McKelvey ²	Scheiber	R. Smith	Roberts	Roberts	McKelvey	Rock
	Ralston	R. Smith	Stashower	Schedler	Sanders	Sanders	Sanders
	Ross	Stashower	Stowe	R. Smith	Schedler	Seibel	Seibel
	Scheiber			Stashower	Stockman	Stark	Stark
				Stowe	Stowe	Stockman	Stockman
				Stutz	Stutz	Stutz	Wirtz
<u>Chairs</u>							
Membership	Larkin	Larkin	Whiting	Whiting	Whiting	Whiting	Stashower
Ethics	Platt	Platt	Platt	Aaron	Aaron	Feinsinger	Alexander
Research/Education	McKelvey	McKelvey	McKelvey	Bailer ³	Jensen	Handsaker	Handsaker
Legislation	R. Smith	R. Smith	Abrahams	R. Smith	R. Smith	R. Smith	Wirtz

¹●Offices of Secretary and Treasurer were combined at that time.

²McKelvey replaced Schedler who resigned mid-term.

³Bailer is shown as Chairman in 1957 "amended" Directory whereas Luskin Newsletter issued March 1957 shows Handsaker as Chairman and Bailer as member of R & E Committee.

	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>
<u>President</u>	Alexander	Aaron	Garrett	Kelliher	R. Smith	Fleming	Luskin
<u>President-Elect</u>		Garrett ¹	Kelliher	R. Smith	Fleming	Luskin	Killingsworth
<u>Vice-Presidents</u>	Horlacher McKelvey Roberts Whiting	Schedler McKelvey R. Smith Stockman	Fleming Schedler R. Smith Stockman	Bernstein Fleming Luskin Stutz	Bernstein Kennedy Luskin Stutz	Barrett Crawford Hill Kennedy	Barrett Crawford Hill Seibel
<u>Secretary</u>	Haughton	D. Miller	D. Miller	D. Miller	D. Miller	D. Miller	D. Miller
<u>Treasurer</u>	Hill	Hill	McKelvey	McKelvey	McKelvey	Gill	Gill
<u>Board of Governors</u>	Abernethy Bernstein Duff P. Fisher Fleming Holly Kahn Luskin Rock Seibel Stark Uible	Abernethy Begley Bernstein Duff P. Fisher Gilden Holly Kahn Kennedy Luskin Rock P. Seitz	Barrett Begley Bernstein Crawford Duff P. Fisher Friedman Gilden Kennedy Hill Kennedy Luskin P. Seitz	Barrett Begley Crane Crawford Friedman Gilden Hill Kennedy Prasow P. Seitz Valtin J. S. Williams	Barrett Crane Crawford Donaldson Friedman Hill Lynch McPherson Prasow Sherman Valtin J. S. Williams	Anderson Crane Donaldson E. A. Jones Lynch McPherson Prasow Robins Ryder Sherman Valtin J. S. Williams	Anderson Donaldson ³ E. A. Jones Lynch C. B. McDermott McPherson Mittenthall Roberts Robins Ryder Sherman Vadakin/Gorsuch ³
<u>Chairs</u>							
<u>Membership</u>	Stashower	Seibel	Seibel	Seibel	Seibel	Valtin	Valtin
<u>Ethics/Grievance</u>	P. Fisher	P. Fisher	P. Fisher	P. Fisher	Garrett & Stockman ²	Garrett & Stockman	Garrett & Stockman
<u>Research</u>	Handsaker	Holly	Holly	Holly	Jensen		
<u>Legislation</u>	Aaron	Koretz	Sanders	E. A. Jones	E. A. Jones	E. A. Jones	E. A. Jones

¹Office of President-Elect established.²Ethics and Grievance Committee replaced Ethics Committee.³Gorsuch replaced Donaldson, who died suddenly in the third year of his term.

	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
<u>President</u>	Charles Killingsworth	James C. Hill	Jean T. McKelvey	Lewis M. Gill	Gerald A. Barrett
<u>President-Elect</u>	James C. Hill	Jean T. McKelvey	Lewis Gill	Gerald A. Barrett	Eli Rock
<u>Vice-Presidents</u>	Pearce Davis Paul Prasow Eli Rock Laurence E. Seibel	Pearce Davis Paul Prasow Eli Rock Lewis Gill	Clair Duff Edgar Jones Peter Seitz Rolf Valtin	Clair V. Duff Edgar Jones Peter Seitz Rolf Valtin	Patrick J. Fisher David P. Miller Arthur Stark Harry D. Woods
<u>Secretary</u>	C. B. McDermott	C. B. McDermott	C. B. McDermott	Alfred C. Dybeck	Alfred C. Dybeck
<u>Treasurer</u>	Lewis M. Gill	Eva Robins	Eva Robins	Eva Robins	Arnold Zack
<u>Board of Governors</u>	Arvid Anderson Peter DiLeone William J. Fallon John E. Gorsuch Edgar A. Jones David P. Miller Richard Mittenthal Thomas T. Roberts Eva Robins Meyer S. Ryder James C. Vadakin Martin Wagner	Peter DiLeone William J. Fallon Howard Gamser John E. Gorsuch David L. Kabaker Thomas McDermott David P. Miller Richard Mittenthal Thomas Roberts James Vadakin Martin Wagner Harry D. Woods	Peter DiLeone William Fallon Howard Gamser John E. Gorsuch Robert G. Howlett David L. Kabaker Thomas McDermott David P. Miller John Sembower Martin Wagner Ralph R. Williams Harry D. Woods	Howard S. Block William J. Fallon Howard G. Gamser Robert G. Howlett David L. Kabaker John Phillip Linn Clare B. McDermott Thomas J. McDermott John F. Sembower Ralph R. Williams Benjamin H. Wolf Harry D. Woods	Howard S. Block John E. Dunisford William J. Fallon Wayne E. Howard Robert G. Howlett John Phillip Linn Clare B. McDermott Jacob Seidenberg John F. Sembower Edwin R. Teple Ralph R. Williams Benjamin H. Wolf
<u>Chairs</u>					
<u>Membership</u>	Rolf Valtin	Rolf Valtin	Rolf Valtin	Alexander B. Porter	Alexander B. Porter
<u>Ethics/Grievance</u>	Abram H. Stockman	Abram H. Stockman	Russ Smith	Richard Mittenthal	Richard Mittenthal
<u>Law/Legislation</u>	Edgar A. Jones	Edgar A. Jones	William Gould	William B. Gould	William B. Gould
<u>Arrangements</u>	John Phillip Linn	George S. King	Paul Prasow	William J. Fallon	George S. King
<u>Program</u>	Jack Stieber	Gerald A. Barrett	Richard Mittenthal	Milton Friedman	Patrick J. Fisher

	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Cooperation with NLRB/Agency Liaison	Robert G. Howlett	Robert G. Howlett	David Stowe	Martin Wagner ¹	Martin Wagner
Training of New Arbitrators	Pearce Davis		Thomas J. McDermott	Thomas J. McDermott	Thomas J. McDermott
Essay Contest	Irving Bernstein	Charles Killingsworth	Mark Kahn		
Legal Affairs		Hillard Kreimer	Hillard Kreimer	John E. Gorsuch	John E. Gorsuch
Overseas					
Correspondence				William H. McPherson	William H. McPherson
Public Employment Disputes Settlement		Eli Rock	Eva Robins	Jean T. McKelvey	Robert G. Howlett
	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
<u>President</u>	Eli Rock	David P. Miller	Rolf Valtin	H. D. Woods	Arthur Stark
<u>President-Elect</u>	David P. Miller	Rolf Valtin	H. D. Woods	Arthur Stark	Richard Mittenenthal
<u>Vice-Presidents</u>	Patrick J. Fisher Richard Mittenenthal Arthur Stark Harry D. Woods	Clare B. McDermott Richard Mittenenthal Eva Robins Jerre S. William	William J. Fallon Clare B. McDermott Eva Robins Jerre S. Williams	Byron R. Abernethy John E. Dunsford William J. Fallon Mark L. Kahn	Byron R. Abernethy John E. Dunsford Milton Friedman Mark L. Kahn
<u>Secretary</u>	Alfred C. Dybeck	Alfred C. Dybeck	Alfred C. Dybeck	Alfred C. Dybeck	Richard I. Bloch
<u>Treasurer</u>	Arnold M. Zack	Arnold M. Zack	Howard S. Block	Howard S. Block	Howard S. Block
<u>Board of Governors</u>	Howard S. Block John E. Dunsford Alex Elson Paul D. Hanlon Wayne E. Howard	John E. Dunsford Harry J. Dworkin Alex Elson Paul D. Hanlon Wayne E. Howard	Thomas Christensen Harry J. Dworkin Harry T. Edwards Alex Elson Paul D. Hanlon	Thomas Christensen Howard A. Cole Harry J. Dworkin Harry T. Edwards George Savage King	Frances Bairstow Thomas C.S. Christensen Howard A. Cole Harry T. Edwards Arthur A. Malinowski

¹Cooperation with NLRB committee changed to Agency Liaison Committee.

	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>
<u>Board of Governors</u> (Cont'd.)	John Phillip Linn Clare B. McDermott Alexander B. Porter Jacob Seidenberg Edwin R. Teple Carl A. Warns Benjamin H. Wolf	George Savage King Morris L. Myers Alexander B. Porter Jacob Seidenberg Edwin R. Teple Carl A. Warns John F. W. Weatherill	George Savage King Morris L. Myers Alexander B. Porter Seymour Strongin Carl A. Warns John F.W. Weatherill P. M. Williams	Arthur A. Malinowski Morris L. Myers Seymour Strongin L. Reed Tripp John F.W. Weatherill P. M. Williams Dallas M. Young	Robert G. Meiners William P. Murphy Seymour Strongin L. Reed Tripp P. M. Williams Dallas M. Young Arnold M. Zack
<u>Chairs</u>					
<u>Membership</u>	John E. Dunsford	John E. Dunsford	John E. Dunsford	Eva Robins	Eva Robins
<u>Ethics/Grievance</u>	Richard Mitenthal	Richard Mitenthal	Alexander B. Porter	Alexander B. Porter	Alexander B. Porter
<u>Oral History</u>					Clare B. McDermott
<u>Seminars</u>					Walter L. Eisenberg
<u>Research</u>					Dallas L. Jones
<u>Law/Legislation</u>	William B. Gould	William B. Gould	William P. Murphy	William P. Murphy	William P. Murphy
<u>Arrangements</u>	P. M. Williams	James C. Vadakin	William Eaton	John F.W. Weatherill	John F. Caraway
<u>Program</u>	Jerre S. Williams	Clare B. McDermott	Arthur Stark	Harry T. Edwards	John Phillip Linn
<u>Agency Liaison</u>	Milton Friedman	Milton Friedman	Milton Friedman		
<u>Development of New</u>					
<u>Arbitrators</u>	Thomas J. McDermott	Thomas J. McDermott	Edwin R. Teple	Edwin R. Teple	Edwin R. Teple
<u>Legal Affairs</u>	John E. Gorsuch	John E. Gorsuch	John E. Gorsuch	John Kagel	John Kagel
<u>Overseas</u>					
<u>Correspondents</u>	Morrison Handsaker	Morrison Handsaker	Morrison Handsaker	Jack Stieber	Jack Stieber
<u>Public Employment</u>					
<u>Disputes</u>					
<u>Settlement</u>	Arvid Anderson	Arvid Anderson	Arvid Anderson	Arvid Anderson	Walter J. Gershenfeld
<u>Insurance/Legal</u>					
<u>Protection</u>			Robert G. Meiners	Robert G. Meiners	Robert G. Meiners
<u>Dues/Expenditures</u>			Clare B. McDermott	Robert G. Meiners	
<u>Future Meeting</u>					
<u>Arrangements</u>					Thomas T. Roberts
<u>Program Resources</u>					Martin Wagner
<u>Regional Activities</u>					Mark L. Kahn
<u>Editorial</u>					Gerald G. Somers

	<u>1975</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
<u>President</u>	Richard Mittenenthal	Clare B. McDermott	Eva Robins	Edgar A. Jones	Byron R. Abernethy
<u>President-Elect</u>	Clare B. McDermott	Eva Robins	Edgar A. Jones	Byron R. Abernethy	Mark Kahn
<u>Vice-Presidents</u>	Arvid Anderson Howard S. Block Harry T. Edwards Edwin R. Teple	Arvid Anderson Howard S. Block Harry T. Edwards Edwin R. Teple	John Phillip Linn William P. Murphy Alexander B. Porter Arnold M. Zack	Alfred C. Dybeck John Phillip Linn Martin Wagner Arnold M. Zack	Alfred C. Dybeck Thomas T. Roberts Martin Wagner Dallas M. Young
<u>Secretary-Treasurer</u>	Richard I. Bloch	Richard I. Bloch	Richard I. Bloch	Richard I. Bloch	Richard I. Bloch
<u>Board of Governors</u>	Frances Bairstow Raymond L. Britton Howard A. Cole Alfred C. Dybeck Arthur A. Malinowski Robert G. Meiners William P. Murphy Charles M. Rehmus Anthony V. Sinicropi L. Reed Tripp Dallas M. Young Arnold M. Zack	Frances Bairstow Raymond L. Britton Alfred C. Dybeck David E. Feller Dallas L. Jones Robert G. Meiners Charles J. Morris William P. Murphy Charles M. Rehmus Anthony V. Sinicropi S. H. Unterberger Arnold M. Zack	Raymond L. Britton Martin A. Cohen Alfred C. Dybeck David E. Feller Walter J. Gershenfeld James M. Harkless Dallas L. Jones Charles J. Morris Francis X. Quinn Charles M. Rehmus Milton Rubin Anthony V. Sinicropi	Martin A. Cohen David E. Feller Walter J. Gershenfeld Marcia Greenbaum James M. Harkless Dallas L. Jones John Kagel Edward E. McDaniel Charles J. Morris Francis X. Quinn Milton Rubin James J. Sherman Eva Robins ¹ (Ex-Officio)	Howard D. Brown Martin A. Cohen Walter J. Gershenfeld Marcia Greenbaum James Harkless John Kagel Edward E. McDaniel Milton Rubin James J. Sherman James L. Stern Ted T. Tsukiyama Marian E. Warns Edgar A. Jones (Ex-Officio)
<u>Chairs</u>					
<u>Membership</u>	Seymour Strongin	Mark L. Kahn	Mark L. Kahn	Mark L. Kahn	Arvid Anderson
<u>Ethics/ Grievance</u>	Alexander B. Porter	Howard A. Cole	Howard A. Cole ²	Howard A. Cole	Howard A. Cole
<u>Oral History Seminars</u>	Clare B. McDermott Arnold M. Zack	Francis X. Quinn Arnold M. Zack			
<u>Research/ Education</u>	Dallas L. Jones	Francis X. Quinn	Francis X. Quinn ³	Cornelius J. Peck	Anthony V. Sinicropi

¹ Immediate past president made ex-officio member of Board of Governors.

² Committee name changed to Professional Responsibility and Grievances (CPRG).

³ Research Committee became Research and Education Committee.

	1978	1979	1980	1981	1982
Sections/ Planning			Anthony V. Sinicropi		
Oral History			Francis X. Quinn ⁴		
Education					
Seminars			Arnold M. Zack ⁵	Arnold M. Zack	Dana E. Eischen
Research			Milton Rubin	Martin Wagner	Howard G. Foster
Law/ Legislation	Charles J. Morris	Charles J. Morris	Charles J. Morris	Thomas J. Lewis	Ivan G. Rutledge
Arrangements	Mark L. Kahn	Thomas T. Roberts	Ted T. Tsukiyama	Nicholas H. Zumas	John F.W. Weatherill
Program	John E. Dunsford	Edgar A. Jones, Jr.	Daniel G. Collins	Theodore J. St. Antoine	Frances Birstow
Legal Affairs	John Kagel	John Kagel	John Kagel	John Kagel	Howard S. Block
Legal Representa- tion					P.M. Williams
Overseas Corre- spondents	Jack Stieber	Jack Stieber	Jack Stieber	Jack Stieber	Charles J. Morris
Public Employ- ment Disputes					
Settlement	Walter J. Gershenfeld	Walter J. Gershenfeld	Paul Prasow	Helen M. Witt	Helen M. Witt
Development of Arbitrators	Edwin R. Teple	Edwin R. Teple	Anthony V. Sinicropi	Anthony V. Sinicropi	Charles L. Mullin ⁶
Intern			Charles L. Mullin	Charles L. Mullin ⁷	
Training			Louis Yagoda		
Liaison					
Future Meeting Arrangements	Thomas T. Roberts	Thomas T. Roberts	Thomas T. Roberts	Thomas T. Roberts	Thomas T. Roberts
Legal Pro- tection					
Program	James M. Harkless	James L. Harkless	James M. Harkless	James M. Harkless	
Resources	Martin Wagner	Edward B. Krinsky			
Regional Activities	Mark L. Kahn	Zel S. Rice	Zel S. Rice	Edwin R. Teple	
Editorial	James L. Stern	James L. Stern	James L. Stern	James L. Stern	James L. Stern

⁴Oral History Committee became a subcommittee of the Research and Education Committee.

⁵Seminars Committee became an Education Seminars subcommittee of the Research and Education Committee.

⁶Development of Arbitrators and Intern Liaison committees combined as one subcommittee of the Research and Education Committee.

⁷Intern Training became a subcommittee of the Research and Education Committee.

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>
Future Directions				John Dunsford William P. Murphy	John Dunsford William P. Murphy Seymour Strongin Alexander B. Porter
Auditing					
Nominating					
<u>Special Committees</u>					
Policy Handbook					Martin Wagner
Archives					Peter Seitz
<i>Chronicle</i>					James L. Sherman
	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
<u>President</u>	Mark L. Kahn	John E. Dunsford	William J. Fallon	William P. Murphy	Arvid Anderson
<u>President-Elect</u>	John E. Dunsford	William J. Fallon	William P. Murphy	Arvid Anderson	Thomas T. Roberts
<u>Vice-Presidents</u>	Alex Elson Thomas T. Roberts John F.W. Weatherill Dallas M. Young	Alex Elson James J. Sherman Anthony V. Sinicropi John F.W. Weatherill	David E. Feller Milton Rubin James J. Sherman Anthony V. Sinicropi	Frances Bairstow Howard Cole David E. Feller Milton Rubin	Frances Bairstow Howard A. Cole Walter J. Gershenfeld James M. Harkless
<u>Secretary-Treasurer</u>	Dallas L. Jones	Dallas L. Jones	Dallas L. Jones	Dallas L. Jones	Dallas L. Jones
<u>Board of Governors</u>	Richard I. Bloch Howard D. Brown John F. Caraway Daniel G. Collins Marcia Greenbaum John Kagel Edward E. McDaniel John C. Shearer James J. Sherman James L. Stern Ted T. Tsukiyama Marian K. Warns Byron R. Abernethy (Ex-Officio)	Reginald Alleyne Richard I. Bloch Howard D. Brown John F. Caraway Daniel G. Collins Margery F. Gootnick Theodore K. High William E. Rentfro John C. Shearer James L. Stern Ted T. Tsukiyama Marian K. Warns Mark L. Kahn (Ex-Officio)	Reginald Alleyne Richard I. Bloch John F. Caraway Daniel G. Collins Dana E. Eischen Margery F. Gootnick Theodore K. High Charles L. Mullin William E. Rentfro John C. Shearer Theodore J. St. Antoine Nicholas H. Zumas John E. Dunsford (Ex-Officio)	Reginald Alleyne Mario F. Bognanno Dana E. Eischen Margery F. Gootnick Theodore K. High J. Joseph Loewenberg Charles L. Mullin George Nicolau William E. Rentfro Carlton J. Snow Theodore J. St. Antoine Nicholas H. Zumas William J. Fallon (Ex-Officio)	Mario F. Bognanno C. Chester Brisco Dana E. Eischen Gladys W. Gruenberg Nathan Lipson J. Joseph Loewenberg Charles L. Mullin George Nicolau Carlton J. Snow Theodore St. Antoine Jack Stieber Nicholas H. Zumas William P. Murphy (Ex-Officio)

	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
<u>National Coordinator of Regional Activities</u>			James J. Sherman ¹	James J. Sherman	Frances Bairstow
<u>Chairs</u>					
<u>Membership</u>	Arvid Anderson	Alfred C. Dybeck	Alfred C. Dybeck	Thomas T. Roberts	Margery F. Goodnick
<u>Professional Resp./Grievances (CPRG)</u>	William J. Fallon	Arthur Stark	Arthur Stark	Arthur Stark	Arthur Stark
<u>Law/Legislation</u>	Emily Maloney	Emily Maloney	Sol M. Yarowsky	Marlin M. Volz	Marlin M. Volz
<u>Auditing</u>	Howard A. Cole	Howard A. Cole	Howard A. Cole	George Nicolau	George Nicolau
<u>Nominating</u>	James L. Stern	Richard I. Bloch	Howard S. Block	Marian K. Warns	Anthony Sinicropi
<u>Research</u>	Mario F. Bognanno ²	Mario F. Bognanno	Mario F. Bognanno	Clifford E. Smith	Clifford E. Smith
<u>Continuing Education</u>	Anthony V. Sinicropi ²	Carlton J. Snow	Carlton J. Snow	I. B. Helburn	I. B. Helburn
<u>Archives</u>	Peter Seitz		Anthony V. Sinicropi	Anthony V. Sinicropi	
<u>Chronicle</u>	James J. Sherman	Tia S. Denenberg	Tia S. Denenberg	Tia S. Denenberg	Tia S. Denenberg
<u>Professionalism</u>				Ralph T. Seward	Richard Mittenenthal
<u>Academy Role in Development of New Arbitrators</u>		Benjamin Aaron	Theodore St. Antoine		
<u>Intern Training</u>		Charles L. Mullin ²	Charles L. Mullin	Lewis R. Amis	Lewis R. Amis
<u>Future Meeting Arrangements</u>	Thomas T. Roberts	Thomas T. Roberts	Nicholas H. Zumas	Nicholas H. Zumas	Nicholas H. Zumas
<u>Arrangements/Next Annual Meeting</u>	Arthur A. Malinowski	Michael H. Beck	Gladys Gershenfeld Walter Gershenfeld	John F. Caraway	Mark Thompson

¹First year for National Coordinator of Regional Activities.

²Research, Continuing Education, Development of New Arbitrators, and Intern Training became separate committees.

	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>
Chairs (Cont'd.)					
Arrangements/ Education Conference	Arthur A. Malinowski ³	Arthur A. Malinowski	John J. Flagler	Peter J. Maniscalco	Theodore K. High
Development of New Arbitrators	Charles L. Mullin ²		Theodore St. Antoine	Theodore St. Antoine	Jean T. McKelvey
Legal Affairs	Howard S. Block	Howard S. Block	George E. Bowles	George E. Bowles	George R. Fleischli
Legal Represent- ation	Milton Rubin	Milton Rubin	Nathan Lipson	Nathan Lipson	Nathan Lipson
International/ Overseas					
Correspondents	Charles J. Morris	Charles J. Morris	Charles J. Morris	Alvin L. Goldman	Alvin L. Goldman
Academy History		James L. Stern	James L. Stern	James L. Stern	Gladys W. Gruenberg
Public Employment Disputes					
Settlement	Helen M. Witt	Charles M. Rehms	Charles M. Rehms	Robert G. Howlett	Robert G. Howlett
Publications/ <i>Proceedings</i>					
Editor ⁴	James L. Stern	Walter J. Gershenfeld	Walter J. Gershenfeld	Walter J. Gershenfeld	Gladys W. Gruenberg
Program/Next Annual Meeting	Charles M. Rehms	William P. Murphy	Reginald Alleyne	Richard I. Bloch	James L. Stern
Disability Insurance		Theodore K. High	Theodore K. High	Robert G. Howlett	Robert G. Howlett
New Member Orientation	Arnold M. Zack	Alexander B. Porter	Alexander B. Porter	Mark L. Kahn	John E. Dunsford
Policy Handbook	Martin Wagner	Martin Wagner	James C. Duff	James C. Duff	Paul E. Glendon
Agency Liaison		Lewis M. Gill	Lewis M. Gill	Lewis M. Gill	Lewis M. Gill
Exec. Director Study				Clare B. McDermott	Clare B. McDermott
Tribunal Appeals					Patrick J. Fisher

²Research, Continuing Education, Development of New Arbitrators, and Intern Training became separate committees.

³First year for Fall Continuing Education Conference.

⁴Publications Committee chair traditionally became *Proceedings* Editor.

	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992-1993</u>
<u>President</u>	Thomas T. Roberts	Alfred C. Dybeck	Howard S. Block	Anthony V. Sinicropi	David E. Feller
<u>President-Elect</u>	Alfred C. Dybeck	Howard S. Block	Anthony V. Sinicropi	David E. Feller	Dallas L. Jones
<u>Vice-Presidents</u>	Martin A. Cohen Walter J. Gershenfeld James M. Harkless James L. Stern	Howard D. Brown Martin A. Cohen Marcia L. Greenbaum James L. Stern	Howard D. Brown Dallas L. Jones Ted T. Tsukiyama	Reginald Alleyne Theodore K. High Dallas L. Jones Ted T. Tsukiyama	Reginald Alleyne Margery Goomnick Theodore K. High George Nicolau
<u>Secretary-Treasurer</u>	Dallas L. Jones	Dallas L. Jones	Dana Edward Eischen	Dana Edward Eischen	Dana Edward Eischen
<u>Board of Governors</u>	Michael H. Beck Mario F. Bognanno C. Chester Brisco Gladys W. Gruenberg I. B. Helburn Harold D. Jones Nathan Lipson J. Joseph Loewenberg George Nicolau William S. Rule Carlton J. Snow Jack Stieber Arvid Anderson (Ex-Officio)	Michael H. Beck C. Chester Brisco Gladys Gershenfeld Gladys W. Gruenberg I. B. Helburn David M. Helfeld Harold D. Jones Nathan Lipson William S. Rule Jack Stieber Mark Thompson Marlin M. Volz Thomas T. Roberts (Ex-Officio)	Michael H. Beck George R. Fleischli Gladys Gershenfeld I. B. Helburn David M. Helfeld Harold D. Jones Herbert L. Marx William S. Rule Clifford E. Smith Mark Thompson Marlin M. Volz Alan Walt Alfred C. Dybeck (Ex-Officio)	Tim Bornstein George R. Fleischli Gladys Gershenfeld Jay E. Grenig David M. Helfeld Herbert L. Marx Clifford E. Smith Barbara Z. Tener Mark Thompson Roland Tremblay Marlin Volz Alan Walt Howard S. Block (Ex-Officio)	Tim Bornstein George R. Fleischli Claude H. Foisy Raymond Goetz Jay E. Grenig Herbert E. Marx Kenneth A. Perea Clifford E. Smith Barbara Z. Tener Alan Walt J. Earl Williams Helen Witt Anthony V. Sinicropi (Ex-Officio)
<u>National Coordinator of Regional Activities</u>	Frances Bairstow	Frances Bairstow	Mario Chiesa ²	Mario Chiesa	Mario Chiesa
<u>Annual Proceedings Editor</u>		Gladys W. Gruenberg ¹	Gladys W. Gruenberg	Gladys W. Gruenberg	Gladys W. Gruenberg

¹Publications Committee discontinued and *Proceedings* Editor designated separately as chair.

²First year for Continuing Regional Education Committee, with National Coordinator of Regional Activities.

	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992-1993</u>
Chairs					
Membership	Margery F. Gootnick	Margery F. Gootnick	Margery F. Gootnick	James J. Sherman	James J. Sherman
Law/Legislation	Marlin M. Volz	Roland F. Talarico	Roland F. Talarico	Roland F. Talarico	Roger L. Abrams
Professional Resp./ Grievances (CPRC)	Arthur Stark	Arthur Stark	Arthur Stark	Alex Elson	Alex Elson
Auditing	Mark L. Kahn	Mark L. Kahn	Mark L. Kahn	George Nicolau	Milton Rubin
Research	Clifford E. Smith	Mario F. Bognanno	Mario F. Bognanno	Charles J. Coleman	Charles J. Coleman
Continuing Education	Jay E. Grenig	Jay E. Grenig	Jay E. Grenig	William H. Holley	William H. Holley
Nominating	James J. Sherman	Milton Rubin	Raymond Goetz	Howard D. Brown	Alan Walt
Arrangements/Next Annual Meeting	Arthur A. Malinowski	Kenneth A. Perea	Joseph M. Sharnoff Herbert Feingold	Jack Clarke	John F. Sass
Program/Next Annual Meeting	I. B. Helburn	Anthony V. Sinicropi	Tia S. Denenberg I. B. Helburn	Marvin F. Hill	Alvin L. Goldman
Arrangements/ Education Conference	Steven Briggs	Edward P. Archer	Robert P. McCormick	Claude H. Foisy	Harvey Nathan
Future Meeting Arrangements	Nicholas H. Zumas	Nicholas H. Zumas	Nicholas H. Zumas	Nicholas H. Zumas	Nicholas H. Zumas
Legal Affairs	George R. Fleischli	George R. Fleischli	Gerry L. Fellman	Gerry L. Fellman	Gerry L. Fellman
Legal Represen- tation	Nathan Lipson	Nathan Lipson	Timothy J. Heinsz	Timothy J. Heinsz	Timothy J. Heinsz
Academy History	Gladys W. Gruenberg	Gladys W. Gruenberg	Dennis R. Nolan	Dennis R. Nolan	Dennis R. Nolan
Continuing Regional Education			Mario Chiesa ¹	Mario Chiesa	Mario Chiesa
New Member Orientation	John E. Dunsford	John E. Dunsford	Eva Robins	Eva Robins	Eva Robins
Policy Handbook	Dallas L. Jones				

¹First year for Continuing Regional Education Committee, with National Coordinator of Regional Activities.

	1988	1989	1990	1991	1992-1993
International Studies <i>Chronicle</i>	Alvin L. Goldman Chester Brisco Tia S. Denenberg	J. Joseph Loewenberg Chester Brisco ¹ (Managing Editor)	J. Joseph Lowenberg Chester Brisco	J. Joseph Lowenberg Gil Vernon	Paul F. Gerhart Gil Vernon
Publications/ <i>Proceedings</i> Editor	Gladys W. Gruenberg	Gladys W. Gruenberg ²			
Designating Agency Liaison	Eva Robins	Clare B. McDermott	Clare B. McDermott	Clare B. McDermott	Thomas T. Roberts
Public Employment Disputes					
Settlement	Walter L. Eisenberg	Walter L. Eisenberg	Walter L. Eisenberg	Harry Graham	Harry Graham
Tribunal Appeals	Patrick J. Fisher	Patrick J. Fisher	William E. Rensfro	William E. Rensfro	Arthur Stark
Intern Training	Lewis R. Amis				
Professionalism Programs	Walter J. Gershenfeld	Walter J. Gershenfeld	Walter J. Gershenfeld		
New Directions and Functions of the <i>Chronicle</i>	Edgar A. Jones	Edgar A. Jones	Edgar A. Jones		
Inter-Committee Relationships and Functions	Howard S. Block	Howard S. Block			
Honorary Memberships	Arnold M. Zack	William P. Murphy	William P. Murphy	William P. Murphy	Arnold M. Zack
Long Range Program Planning			Richard Mittenthal	Richard Mittenthal	
Academy's Role, If Any, Alternative Labor Dispute Resolution			Michael H. Beck	Michael H. Beck	Michael H. Beck
Dues Waiver Policy				Mark Thompson	Mark Thompson
Academy Governance			Benjamin Aaron	Benjamin Aaron	
Gender-Neutral Terminology				Gladys Gershenfeld	

¹First year for Managing Editor who chairs *Chronicle* Committee.

²Publications Committee discontinued and *Proceedings* Editor designated separately as chair.

	<u>1988</u>	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992-1993</u>
Continuing Legal Education Personnel				Jay E. Grenig Edward Krinsky	Jay E. Grenig
	<u>1993-1994</u>	<u>1994-1995</u>	<u>1995-1996</u>	<u>1996-1997</u>	
<u>President</u>	Dallas L. Jones	Arnold M. Zack	J.F.W. Weatherill	George Nicolau	
<u>President-Elect</u>	Arnold M. Zack	J.F.W. Weatherill	George Nicolau	Milton Rubin	
<u>Vice-Presidents</u>	Richard I. Bloch Margery Gootnick George Nicolau Charles M. Rehms	Michael H. Beck Richard I. Bloch Charles M. Rehms Theodore J. St. Antoine	Michael H. Beck I. B. Helburn Theodore J. St. Antoine Nicholas H. Zumas	Gladys W. Gruenberg I. B. Helburn John Kagel Nicholas Zumas	
<u>Secretary-Treasurer</u>	Dana Edward Eischen	Dana Edward Eischen	Dana Edward Eischen	William H. Holley	
<u>Board of Governors</u>	Tim Bornstein Mario Chiesa John J. Flagler Claude H. Foisy Raymond Goetz Jay E. Grenig Timothy J. Heinsz Dennis R. Nolan Kenneth A. Perea Barbara Z. Tener J. Earl Williams Helen M. Witt David E. Feller (Ex-Officio)	Mario Chiesa Jack Clarke John J. Flagler Raymond Goetz Alvin L. Goldman Timothy J. Heinsz Dennis R. Nolan Kenneth A. Perea Lois A. Rappaport Joseph M. Sharnoff J. Earl Williams Helen M. Witt Dallas L. Jones (Ex-Officio)	Daniel F. Brent Mario Chiesa Jack Clarke John J. Flagler Alvin L. Goldman Timothy J. Heinsz Sharon K. Imes Dennis R. Nolan Lois A. Rappaport John F. Sass Joseph M. Sharnoff Gil Vernon Arnold M. Zack (Ex-Officio)	Daniel F. Brent Jack Clarke Shyam Das Alvin L. Goldman Sharon K. Imes Edward B. Krinsky Richard H. McLaren James C. Oldham Lois A. Rappaport John F. Sass Joseph M. Sharnoff Gil Vernon J.F.W. Weatherill (Ex-Officio)	

	<u>1993-1994</u>	<u>1994-1995</u>	<u>1995-1996</u>	<u>1996-1997</u>
<u>National Coordinator of Regional Activities</u>	William H. Holley	William H. Holley	William H. Holley	Margery F. Gootnick
<u>Annual <i>Proceedings</i> Editor</u>	Gladys W. Gruenberg	Joyce M. Najita	Joyce M. Najita	Joyce M. Najita
<u>Chairs</u>				
Membership	James J. Sherman	Roberta L. Golick	Roberta L. Golick	Roberta L. Golick
Law/Legislation	Roger L. Abrams	Roger L. Abrams	Elliott Goldstein	Elliott Goldstein
Professional Responsibility/ Grievances (CPRG)	Alex Elson	George R. Fleischli	George R. Fleischli	George Fleischli
Auditing	Milton Rubin	Allan S. McCausland	Allan S. McCausland	Allan McCausland
Research	Mei Liang Bickner	Mei Liang Bickner	Mei Liang Bickner	Stephen L. Hayford
Continuing Education	Sara Adler	Sara Adler	Sara Adler	Anita Knowlton
Nominating	Arthur Stark	James M. Harkless	Mark L. Kahn	Barbara Z. Tener
<i>Chronicle</i> /Managing Editor	Gil Vernon	Andria S. Knapp	Andria S. Knapp	Andria S. Knapp
Arrangements/Next Annual Meeting	John J. Flagler	Geraldine M. Randall	Richard L. Verity	Steven Briggs
Program/Next Annual Meeting	Dennis R. Nolan	Edward B. Krinsky	Elizabeth Neumeier	Janet L. Gaunt
Future Meeting Arrangements	Nicholas Zumas	David A. Petersen	David A. Petersen	David A. Petersen
Arrangements/ Education Conference	David A. Petersen	Susan R. Brown	I. B. Helburn	Charles Feigenbaum Kathrine Hogan

<u>Chairs</u> (Cont'd.)	<u>1993-1994</u>	<u>1994-1995</u>	<u>1995-1996</u>	<u>1996-1997</u>
Legal Affairs	John F. Caraway	John F. Caraway	Daniel M. Winograd	Daniel M. Winograd
Legal Representation	Joseph F. Gentile	Joseph F. Gentile	Joseph F. Gentile	Barry Winograd
Academy History	James C. Oldham	James C. Oldham	James C. Oldham	Clara H. Friedman
New Member				
Orientation	Howard S. Block	Howard S. Block	Howard S. Block	Herbert L. Marx
International Studies	Paul F. Gerhart	Paul F. Gerhart	Benjamin Aaron	Benjamin Aaron
Designating Agency				
Liaison	Thomas T. Roberts	Milton Rubin	Milton Rubin	Helen M. Witt
Public Employment			Alexander Mac-	
Disputes Settlement	Harry Graham	Alexander Macmillan	millan	Martin Ellenberg
Tribunal Appeals	Arvid Anderson	Arvid Anderson	Arvid Anderson	Arvid Anderson
Honorary Memberships	J.F.W. Weatherill	Anthony V. Sinicropi	Howard D. Brown	Howard D. Brown
<u>Special Committees</u>				
Mediation	Charles M. Rehms			
Continuing Education				
Conference	John E. Dunsford			
Publication of Awards	Reginald Alleyne	Carol Wittenberg	Carol Wittenberg	
Investment Policies			Allan S. McCausland	
Dues Waiver Policy			Richard I. Bloch	
Common Law of the			Theodore J. St.	Theodore St. Anto-
Workplace			Antoine	ine
ADR Taskforce				Arnold M. Zack
Use of Assistants				Edward B. Krinsky
Technology				Andria S. Knapp
ALDR Review				Michel C. Picher

APPENDIX B

NATIONAL ACADEMY OF ARBITRATORS

THE CONSTITUTION AND BY-LAWS

THE CONSTITUTION

ARTICLE I

Section 1. The name of this organization is the National Academy of Arbitrators, a non-profit corporation. (As amended January 27, 1965).

Section 2. The principal office and headquarters of the Academy shall be located in such place as shall be designated by the Board of Governors.

ARTICLE II

Section 1. The purposes for which the Academy is formed are: To establish and foster the highest standards of integrity, competence, honor, and character among those engaged in the arbitration of labor-management disputes on a professional basis; to secure the acceptance of and adherence to the Code of Professional Responsibility for Arbitrators of Labor-Management Disputes prepared by the National Academy of Arbitrators, the American Arbitration Association and the Federal Mediation and Conciliation Service, or of any amendment or changes which may be hereafter made thereto; to promote the study and understanding of the arbitration of labor-management and employment disputes; to encourage friendly association among the members of the profession; to cooperate with other organizations, institutions and learned societies interested in labor-management and employment relations, and to do any and all things which shall be appropriate in the furtherance of these purposes. (As amended April 29, 1975 and June 1, 1993).

Section 2. The Academy shall not recommend, designate or appoint arbitrators.

ARTICLE III

(As amended January 27, 1965)

Section 1. The Academy is a non-profit, professional and honorary organization of arbitrators, open to membership without regard to politics, race, creed, color or sex; its membership shall be composed of those who associate themselves together and agree to further the objects and purposes here set forth in accordance with this Constitution and the By-Laws of the Academy and such other persons as may from time to time be elected to membership as hereinafter provided.

ARTICLE IV

Section 1. The government and management of the Academy shall be vested in a Board of Governors consisting of twelve (12) members in addition to the ex-officio members hereinafter provided. At the Annual Meeting in January 1957, four (4) shall be elected for a three-year term, one (1) for a two-year term, and one (1) for a one-year term. At each Annual Meeting thereafter four (4) members shall be elected for a three-year term. After the election to be held January 20, 1950, no member of the Board shall be eligible for two (2) successive three-year terms. (As amended February 2, 1957).

ARTICLE V

(As amended April 21, 1976)

Section 1. Members shall be elected by the Board of Governors in the manner provided in the By-Laws.

Section 2. The Board of Governors may at its discretion confer upon a member of the Academy honorary *Life Membership* status. (Adopted January 30, 1963).

ARTICLE VI

(As amended April 5, 1978)

Section 1. The officers of the Academy shall consist of a President, four (4) Vice Presidents, an Executive Secretary-Treasurer, and a President-Elect, who shall serve as ex-officio members of the Board of Governors with the right to vote.

Section 2. The President, Vice Presidents, and President-Elect shall be elected at the 1962 Annual Meeting for one-year terms. Thereafter, the Vice Presidents and President-Elect shall be elected at each Annual Meeting for one-year terms. The Vice Presidents shall be eligible for no more than two successive terms in the same office. The President shall

not be eligible for a successive term. At the expiration of a one-year term of office, the President shall automatically be succeeded by the President-Elect who had been elected at the previous Annual Meeting. The retiring President shall serve as an ex-officio member of the Board of Governors for one year with the right to vote. (As amended April 5, 1978).

Section 3. The Executive Secretary-Treasurer shall be elected for a three-year term, beginning with the Annual Meeting in 1962. (As amended April 5, 1978).

Section 4. In the event of death or the inability of the President to serve, the President-Elect shall serve as interim President for the unexpired portion of the President's term or during the period of the President's incapacity. (As Amended May 26, 1994).

Section 5. In the event of the inability of the Executive Secretary-Treasurer to serve, the President shall designate a member to serve as interim Executive Secretary-Treasurer, if necessary, and shall declare that a vacancy exists in the office of the Executive Secretary-Treasurer. (Added by amendment May 30, 1990).

ARTICLE VII

Section 1. Amendments to the Constitution or By-Laws shall be made by affirmative vote of two-thirds (2/3) of those voting at any membership meeting: Provided, however, that after February 2, 1957 no proposed amendment shall be adopted unless it has been (a) approved by a majority vote of the Board of Governors, or (b) signed by ten (10) members of the Academy; and thereafter filed in writing with the Secretary-Treasurer at least ninety days prior to the membership meeting, and distributed by mail to the entire membership at least forty-five days prior to the meeting. This proviso shall not be construed to prevent the making of germane amendments to such provision at the time of the membership meeting. (As amended April 5, 1978).

ARTICLE VIII

(Added by amendment May 9, 1979)

Section 1. The Academy shall have regions, in a number and with territorial boundaries as designated by the Board of Governors and as amended by the Board of Governors from time to time in response to changing membership numbers, geographical distribution and interests.

Section 2. Regional organization and activities are intended to encourage implementation of the purposes of the Academy as set forth

in Article II, Section 1, by facilitating communication and contact among members between the Annual Meeting and their study and understanding of arbitration in matters of regional as well as general relevance.

ARTICLE IX

(Added by amendment May 26, 1982)

Section 1. At an Annual Meeting where there is a contest for office, the election for such contested office or offices shall be by secret ballot of the members in attendance. The candidate or candidates, as the case may be, receiving a majority of the votes cast shall be declared elected.

THE BY-LAWS

ARTICLE I

DUTIES OF OFFICERS

Section 1. The President

The President or one of the Vice Presidents in the President's absence shall preside at all meetings of the Academy. At the Annual Meeting the President shall present a report of the general affairs of the Academy.

Section 2. The Executive Secretary-Treasurer

The Executive Secretary-Treasurer under the direction of the President and the Board of Governors, shall perform the customary duties of such office. The Executive Secretary-Treasurer shall conduct the correspondence of the Academy; record the proceedings of all meetings of the Academy and the proceedings of the meetings of the Board of Governors. The Executive Secretary-Treasurer shall issue all notices and other documents requiring verification; make at each Annual Meeting a report of the membership of the Academy and all other matters pertaining to the conduct of the office; and perform such other duties as may be assigned to that office by the President and by the Board of Governors. The Executive Secretary-Treasurer may be authorized by the Board of Governors to employ a paid assistant, under terms to be established by the Board of Governors. The Executive Secretary-Treasurer shall collect and deposit all moneys due the Academy; verify all bills and pay them when approved by the President or the Board of Governors; and make at each Annual Meeting, or more often if required by the Board of Governors, a report of the accounts of the Academy. (As amended April 5, 1978).

ARTICLE II

THE ANNUAL MEETING

Section 1. The Annual Meeting of the Academy shall be held in the spring of each year at such time and place as shall be designated by the Board of Governors. (As amended June 1, 1988).

ARTICLE III

THE BOARD OF GOVERNORS

Section 1. The Board of Governors shall be the governing body of this Academy.

Section 2. The Board of Governors shall be elected by the members, as provided in the Constitution, and shall hold office for the term elected or until successors are elected and qualified.

Section 3. Vacancies on the Board of Governors occasioned by death, resignation, or other reasons, shall be filled by appointment by the President, and Governors as appointed shall serve until the next Annual Meeting of the membership.

Section 4. The annual meeting of the Board of Governors shall be held immediately following the Annual Meeting of the membership for the purpose of considering such matters as may be properly brought to its attention.

Section 5. Regular meetings of the Board of Governors shall be held semi-annually at such time and place as the President shall designate.

Section 6. Special meetings of the Board of Governors of this Academy may be called by the President or upon formal request in writing by a majority of its members. Such notice shall specify the objects and purposes of such special meeting and no other business shall be transacted except by unanimous consent of those present.

Section 7. Notice of all meetings of the Board of Governors stating time and place of the meetings shall be forwarded by the Secretary-Treasurer to each member of the Board at least ten days prior to any such meeting.

Section 8. Five (5) or more members of the Board of Governors shall constitute a quorum.

Section 9. Between meetings of the Board of Governors, the authority of the Board shall be vested in an Executive Committee consisting of the President, the Executive Secretary-Treasurer and three (3) members or ex-officio members of the Board of Governors elected by the Board. Three (3) or more members of the Executive Committee shall

constitute a quorum. Action of the Executive Committee shall be subject to ratification by the Board of Governors at the next succeeding meeting of the Board. (Added by amendment January 24, 1962). (As amended April 5, 1978).

Section 10. Any dispute over the President's ability to serve or to resume service shall be resolved by the Board of Governors at a special meeting called under Article III, Section 6, of the By-Laws.

ARTICLE IV

Section 1. The President shall appoint the following standing committees:

Membership Committee

Committee on Professional Responsibility and Grievances

Committee on Law and Legislation

Committee on Research and Education

Auditing Committee

The Chronicle Committee

(As amended May 30, 1990).

Section 2. The Committee on Professional Responsibility and Grievances

(a) It shall be a function of the Committee on Professional Responsibility and Grievances from time to time to recommend to the Board of Governors such revisions of the Code of Professional Responsibility for Arbitrators as may be deemed appropriate and to advise the membership and others by written communication signed by the Chair of the Committee concerning the application of the Code to particular situations. When the Committee decides that a formal advisory opinion interpretive of the Code should be issued, the Chair shall provide a copy to the Academy Executive Secretary-Treasurer, who shall provide copies to the Board of Governors and the Executive Committee. The opinion shall be thereafter issued by the Committee, if it is approved by the Board of Governors.

At a meeting of the Committee on Professional Responsibility and Grievances called to consider Code revisions, a two-thirds (2/3) majority of the committee present and voting, must approve any recommended change in the Code. Following a vote of the Committee to recommend a Code change, the Chair of the Committee, or designee, or both, shall meet with representatives of the American Arbitration Association and the Federal Mediation and Conciliation Service, to inform them of the recommended Code change and to clear such changes with both agencies.

Following such exchange, the recommended change in the Code will be presented to the Board of Governors. Upon approval by the Board of Governors, the recommended change will be presented to the membership at the next Annual Meeting for ratification. Upon a majority vote of the membership present and voting, the Code change shall become effective and shall be promulgated by the Academy Executive Secretary-Treasurer to the full membership and the American Arbitration Association and the Federal Mediation and Conciliation Service. (As amended May 25, 1983 and May 23, 1984).

(b) It shall be a function of the Committee on Professional Responsibility and Grievances, in accordance with the procedures outlined below, to act upon charges against a member for asserted violation of the Code of Professional Responsibility for Arbitrators, or of Article VI, Section 6 hereof. (As amended May 20, 1991).

(c) **STEP ONE.** On receipt by the Academy from a member or any affected person of a written charge that a member of the Academy has violated the Code of Professional Responsibility for Arbitrators, or Article VI, Section 6 hereof, the charge shall be referred to the Chair of the Committee on Professional Responsibility and Grievances for preliminary investigation. The Chair, or a member of the Academy designated by the Chair, shall investigate the charge, using an informal and conciliatory approach where appropriate. The Chair or the designee may request the charged member to supply information relevant to the charge, and the charged member shall comply promptly and as fully as reasonably possible with such request. (As amended May 21, 1991).

At each stage of the proceedings the complaining party and the charged member may designate a personal representative.

(d) **STEP TWO.** Based on the investigation of the Chair or that of the designee, and after consultation with two other members of the Committee on Professional Responsibility and Grievances, the Chair shall prepare a brief written report finding either that (a) there is probable cause to proceed further, or (b) the charges have not established probable cause. Upon a finding of no probable cause, the Chair shall notify both the complainant and the charged individual. The Chair will endeavor to complete these preliminary steps within 45 days from the receipt of the complaint.

(e) **STEP THREE.** Upon a finding of cause to proceed, the Chair shall appoint a Hearing Officer from among the members of the Committee on Professional Responsibility and Grievances. The Hearing Officer shall supply the charged member with the written charges, specifying the particular provisions of the Code which relate to those charges, or of Article VI, Section 6 hereof. The charged member shall within twenty-one (21) days submit to the Hearing Officer a written statement

responding to the charges. Should the charged member fail to respond to the request of the Hearing Officer, the presumption of the Hearing Officer shall be that the charge as presented has not been denied. (As amended May 21, 1991).

If the facts are not in dispute, the Hearing Officer may make a determination based on the written record. Under those circumstances, the Hearing Officer shall render a decision based on the evidence submitted and the relevant standards set forth in the Code.

Should the Hearing Officer find that there are factual matters in dispute, the Hearing Officer shall establish a suitable time and place for a formal hearing on the charges. The charged member and the complainant shall be given at least thirty (30) days' notice of such scheduled hearing. The hearing shall be private and need not follow formal rules of court procedure but shall be so conducted as to assure the charged member a fair hearing including the right of confrontation. A transcript or tape recording shall be made of the hearing at the expense of the Academy. The Hearing Officer has the right to grant extensions. The charged member has the right to waive a formal hearing, if desired.

Upon completion of the hearing and the receipt of all documentary evidence, including briefs, the Hearing Officer shall make a written report, which shall include findings of fact and a decision as to the appropriate disposition of the matter, along with the discipline, if any, to be imposed. The Hearing Officer shall endeavor to complete the report within forty-five (45) days of the close of the hearing.

The Hearing Officer shall proceed as follows:

(i) If the Hearing Officer finds that the charge has not been proved by clear and convincing evidence, the complaint shall be dismissed and both the complainant and the charged member will be notified of this action by the Chair of the Committee, who shall transmit a copy of the Hearing Officer's report to both persons.

(ii) If the discipline determined to be appropriate by the Hearing Officer is either advice or censure, such decision shall be conveyed to both the charged member and the complainant by the Chair of the Committee together with a copy of the report.

(iii) If the Hearing Officer believes that discipline more severe than advice or censure may be appropriate, the Hearing Officer shall consult with two past presidents of the Academy before arriving at a decision. Following such consultation, if the Hearing Officer decides that suspension or expulsion from the Academy is the proper discipline, that determination shall be transmitted to the charged member and the complainant by the Chair of the Committee together with a copy of the report.

After receiving the advice of the Committee on Professional Responsibility and Grievances, the Board of Governors shall establish rules specifying the mandatory terms of expulsion or suspension and those terms that the Hearing Officer shall have the discretion to impose. Such rules may provide for notice to appointing agencies. They shall be effective upon adoption, subject to amendment or repeal by the Board of Governors upon recommendation of the Committee on Professional Responsibility and Grievances. Nothing herein is intended to involve the Board of Governors in the consideration of individual cases.

(f) **STEP FOUR.** The decision of the Hearing Officer, whether to discipline or dismiss, shall be final unless an appeal is taken. Should either the complainant or the charged member appeal the decision of the Hearing Officer, that appeal shall be directed to a Tribunal of three (3) Academy members appointed by the President of the Academy with the consent of the Board of Governors. The appeal must be submitted within thirty days of receipt of the decision and shall include the rationale for the appeal. The original members of the Tribunal shall be appointed for staggered terms of two (2), three (3) and four (4) years and thereafter for three-year terms. An alternate member of the Tribunal may be designated by the President of the Academy in the event of a conflict of interest or the unavailability of a member of the Tribunal for a particular appeal.

The Tribunal shall review all material pertinent to the charge and decide whether to uphold the dismissal or discipline imposed based on the appellate record and not on a de novo proceeding. The Hearing Officer's findings of fact shall be deemed final if supported by substantial evidence. The determination of a violation of the Code, or of Article VI, Section 6 hereof, shall be based on clear and convincing evidence. (As amended May 21, 1991).

The decision of the Tribunal shall be final and conclude the proceedings. The Tribunal shall endeavor to complete its determination of the appeal within forty-five (45) days. Its written decision shall be conveyed to both the charged member and the complainant.

Where the final official action on a charge or charges is a finding that the charge has been proved and that discipline no more severe than advice or censure is appropriate, notice of that action shall be given only to the member and the complainant.

Where the final official action on a charge or charges is a finding that the charge has been proved and that suspension or expulsion is appropriate, notice of the action shall be given to the offending member and the complainant; in addition, the Executive Secretary-Treasurer of the Academy will advise the membership of the Academy of the name of the member disciplined, the nature of the offense committed, and the

discipline imposed. In any of these cases the circumstances surrounding the final action may form the basis for an Opinion by the Committee which, if issued, shall not identify any of the parties involved. (Approved by the Board of Governors, May 26, 1992).

The charged member shall have the right at any time to terminate the proceedings by resigning from the Academy. In that circumstance, a record of the matter shall be kept by the Chair of the Committee on Professional Responsibility and Grievances. In the event of a reapplication by the member, the information and record shall be disclosed to Academy members considering such application. (As amended May 25, 1983, and June 4, 1986).

Section 3. The President shall appoint such Special Committees as may be deemed necessary and advisable from time to time by the President in the furtherance of the objects and purposes of this Academy or as voted by the membership at any Annual Meeting. Nothing herein contained shall be so construed as to limit the power of the Board of Governors to appoint such sub-committees as it may deem necessary in the furtherance of the power conferred upon it under the Constitution.

ARTICLE V

DUES

Section 1. Dues statements shall be distributed to the members as of June 10 of each year. Dues shall be returned to the Executive Secretary-Treasurer by July 15 of each year. Members who have not paid as of such date shall be notified that they are in arrears, and unless payment is made within sixty (60) days of such notification, they shall be required to pay a \$100.00 late fee. Those members who fail to pay their dues within this sixty (60) day period shall be notified that they are to pay the late fee and that if the dues and late fee are not received by the Executive Secretary-Treasurer one week prior to the mid-year meeting of the Board of Governors, they shall be subject to suspension by the Board of Governors. Any member suspended by the Board of Governors for nonpayment of dues and the late fee shall be automatically reinstated upon payment of all arrears within thirty (30) days of such suspension. After the lapse of such thirty (30) days, reinstatement may occur only by vote of the Board of Governors. (As amended April 26, 1975; April 5, 1978; May 23, 1984 and May 31, 1989).

Section 2. The Board of Governors may at its discretion authorize the waiver of dues from members who have become inactive as arbitrators. (As amended January 29, 1960).

Section 3. The annual dues may be changed by resolution of the Board of Governors, subject to ratification by a majority vote of the mem-

bership of the Academy at an Annual Meeting or at a special meeting called for that purpose. (Added by amendment January 24, 1962).

Section 4. The dues of members upon whom membership is conferred at the Academy's National Fall Education Conference shall, for the remainder of that membership year, be one-half the amount of the regular dues for that full membership year. The time intervals and procedures in Article V, Section 1, adjusted to the period between the Fall Conference and the Annual Meeting, shall apply to their dues obligations. (Added by amendment June 1, 1988).

ARTICLE VI

MEMBERSHIP

Section 1. Application for membership shall be filed with the Chair of the Membership Committee on an approved form which shall contain a statement to the effect that the applicant is familiar with the Code of Professional Responsibility for Arbitrators, subscribes to the Code, and agrees to be bound by the provisions of the Constitution and By-Laws prescribing procedures for determining whether members have adhered to the Code. (As amended April 29, 1975).

Section 2. At least thirty (30) days prior to the approval or disapproval of an application by the Membership Committee, the Committee shall send to each member a statement of the qualifications of the applicant. (As amended January 29, 1960).

Section 3. Upon completion of the review of an application and following a majority vote of those present at a meeting called for the consideration of such application, the Membership Committee shall submit its recommendations to the Board of Governors.

Section 4. The Board of Governors shall act on the recommendations of the Membership Committee at any regular meeting of the Board or at a special meeting called for that purpose. Approval of a recommendation shall require a two-thirds ($2/3$) vote of those present. Membership in the Academy shall be conferred upon an applicant previously approved by the Board, and who remains eligible for membership, on the occasion of the applicant's attendance and presentation at the Business Session of any succeeding Annual Meeting or, at a plenary session of any succeeding National Fall Education Conference. (As amended June 1, 1988).

Section 5. (Added by Amendment April 29, 1975).

(a) The Executive Secretary-Treasurer shall send written notification to each applicant whose application for membership has been denied by the Board of Governors within sixty (60) days after the meet-

ing of the Board at which the decision for denial was made. Such notice shall include a brief statement of the reason or reasons for denial of the application.

(b) An application for membership shall not be deemed denied upon the decision of the Board (i) to table the application for action at a later regular or special meeting of the Board or (ii) to remand the application to the Membership Committee for reconsideration. The Chair of the Membership Committee shall send written notification of such action to the applicant within sixty (60) days after the meeting of the Board at which such action was taken.

(c) In the case of denial of an application for membership by the Board of Governors, the applicant who wishes to appeal said denial may elect either, but not both, of the following courses of action:

(i) Within sixty (60) days after notification by the Executive Secretary-Treasurer of said denial, an applicant may request the Membership Committee to reconsider the application. Such request shall be made in writing to the Executive Secretary-Treasurer and may include such written statements, documents or other tangible evidence as the applicant deems pertinent. The Committee shall proceed thereafter to reconsider the application for membership in the manner provided in Section 3 of this Article. Subsequent action by the Board upon the Committee's recommendations as provided in Section 4 of this Article shall be deemed conclusive.

(ii) Within sixty (60) days after notification by the Executive Secretary-Treasurer of said denial, an applicant may make a request through the President for a Hearing at which evidence may be produced and the application for membership can be reviewed. Such request shall be made in writing to the Executive Secretary-Treasurer. The President shall have sole discretion to appoint for said Hearing either a single Hearing Officer or a Hearing Committee consisting of three (3) persons to receive evidence and review the application. If a Hearing Committee is appointed, the President shall designate one of its members as chair; a quorum shall consist of two members and any findings and recommendations of the Committee need not be unanimous.

The Hearing Officer and the members of the Hearing Committee shall be members in good standing of the Academy, but none of them shall be members of the Membership Committee which acted upon the applicant's application for membership. Any one or more of them may be officers of the Academy or members of its Board of Governors.

At least thirty (30) days prior to the Hearing, the Executive Secretary-Treasurer shall send the applicant written notice of the time and place of the Hearing and shall state whether a Hearing Officer or a Hearing

Committee has been appointed by the President. A copy of such notice shall be sent to the Chair of the Membership Committee.

Any Hearing held pursuant to this subsection (ii) shall be private. The applicant may be represented by counsel and shall have the opportunity to present such evidence as may be relevant to the reconsideration of the application for membership. The Membership Committee may also appear, by counsel or by any of its members, and present relevant evidence. Evidence may be presented in written or oral form and testimony may be adduced from witnesses; however, formal rules of evidence shall not apply. The Hearing Officer or the Chair of the Hearing Committee shall make such rulings with respect to procedure and conduct of the Hearing, including the use of a transcript, continuances and postponements, as will assure a fair, orderly and impartial proceeding.

Within sixty (60) days after the Hearing has been concluded, the Hearing Officer or Hearing Committee shall send findings and recommendations to the Executive Secretary-Treasurer. Within twenty (20) days after receipt of the findings and recommendations, the Executive Secretary-Treasurer shall forward copies thereof to the applicant and the Chair of the Membership Committee. Within sixty (60) days of the mailing by the Executive Secretary-Treasurer of the findings and recommendations, the applicant may submit a written statement respecting such findings and recommendations to the Executive Secretary-Treasurer for consideration by the Board of Governors.

The Board of Governors thereafter shall act upon the applicant's request for reconsideration in accordance with Section 4 of this Article and such action by the Board shall be deemed conclusive.

(d) All notices provided to the applicant pursuant to this Section 5 shall be mailed to the applicant at the address provided in the application for membership; provided, however, that if the applicant notifies the Executive Secretary-Treasurer by registered or certified mail of a change of address, all subsequent notices shall be mailed to the applicant at the address provided. Except where otherwise indicated herein, all time periods shall commence with the date of mailing. (As amended April 5, 1978).

Section 6. (Added by Amendment April 21, 1976).

Pursuant to the membership policy adopted on April 21, 1976, the Academy deems it inconsistent with continued membership in the Academy: (a) for any member who has been admitted to membership since April 21, 1976, to undertake thereafter to serve partisan interests as advocate or consultant for Labor or Management in labor-management relations or to become associated with or to become a member of a firm which performs such advocate or consultant work; (b) for any member

to appear, from and after April 21, 1977, in any partisan role before another Academy member serving as a neutral in a labor-relations arbitration or fact-finding proceeding.

Any charges or complaints alleging a violation of either of these policy statements shall be referred to the Committee on Professional Responsibility and Grievances under Article IV, Section 2. (As amended May 20, 1991).

ARTICLE VII

(Added by amendment January 24, 1962)

NOMINATING COMMITTEE

Section 1. On or before the 15th day of September preceding the Annual Meeting, the President shall designate a Nominating Committee consisting of seven (7) members. The names of the Nominating Committee shall be announced promptly to the membership. The Nominating Committee shall select one or more candidates for each vacancy, and shall report its selections to the President on or before the 15th day of November preceding the Annual Meeting. After receipt of the report of the Nominating Committee, the President shall announce promptly to the membership of the Academy the names of the candidates selected by the Nominating Committee. (As amended April 21, 1976 and May 28, 1992).

Section 2. (Added by amendment May 26, 1982). Other candidates for office (except for the office of President) may thereafter be nominated by members of the Academy. To be valid, a nomination must be made in writing by at least (30) thirty members in good standing and must be filed with the Executive Secretary-Treasurer, either as a single petition or as separate petitions, at least sixty (60) days prior to the Annual Meeting at which the election is to occur. If nominations have been made within the period specified, the President shall promptly announce to the membership of the Academy the names of said nominees.

Section 3. (Added by amendment May 26, 1982). Elections for President-Elect and Executive Secretary-Treasurer: Each member present shall be entitled to cast one (1) vote for each office. If no candidate receives a majority of the votes cast, a second ballot shall then be held between the two candidates who received the highest number of votes. The candidate then receiving the highest number of votes shall be declared elected.

Elections for Vice-Presidents and Board of Governors: Each member present shall be entitled to cast multiple votes on a single ballot as fol-

lows: The number of votes cast on such ballot for each office shall be no more than the number of positions being filled for that office. The candidates receiving the most votes (but not less than one-half [1/2] of the number of ballots cast) shall be deemed elected. A second ballot shall be conducted as to any positions not filled by the first ballot. The number of candidates shall be equal to twice the number of positions remaining to be filled; the candidates shall be the unelected candidates who received the highest votes on the first ballot. Based on the number of positions remaining, the members present shall be entitled to cast multiple votes on the second ballot; the requisite number of candidates receiving the highest votes shall be deemed elected.

Section 4. (Added by amendment May 26, 1982). In the event there is a contest for an office or offices, such candidates shall have the right to set forth their qualifications and views in a statement of reasonable length which is to be mailed to the membership by the Executive Secretary-Treasurer at the Academy's expense at least three (3) weeks prior to the Annual Meeting. In lieu thereof, said statement or statements may be printed in the **Chronicle**, provided, however, that said **Chronicle** is mailed to the membership within the time limit specified above.

ARTICLE VIII

(Added by amendment May 23, 1984)

REGIONS

Section 1. Members of each region shall elect their own Chair each year and report the name of the person chosen to the President-Elect of the Academy before the start of the business session at the Annual Meeting. If an election has not been held and a report communicated to the President-Elect by the start of the business session at the Annual Meeting, the President-Elect shall appoint a person in that region to serve as Chair for that year.

Section 2. Any region desiring to establish by-laws may do so, provided: (a) that the text of the proposed by-laws is sent to all members of the region and approved by a majority of the members by mail ballot; (b) that the proposed regional by-laws are approved by the Board of Governors as consistent with the National Constitution and By-Laws; and (c) that the payment of any regional dues is voluntary.

Section 3. Regions shall not sponsor public functions, either alone or in conjunction with other organizations, except with the prior approval of the President of the Academy. This proscription shall not preclude the inclusion of family members, personal friends, students, interns, non-

member arbitrators and guest speakers in a regional meeting of Academy members.

Section 4. Regions shall not adopt a public policy position either as a region or in the name of the National Academy of Arbitrators. Any region may request the National Academy of Arbitrators, through a communication directed to the President and to the Executive Secretary-Treasurer, to adopt a position favored by the membership of that region.

Section 5. A National Coordinator of Regional Activities shall be appointed by the President annually, but the same person shall not serve longer than three (3) consecutive years. The Coordinator shall report to the Board of Governors and to the membership at the Annual Meeting on the state of regional activities.

ARTICLE IX

(Added by amendment May 30, 1990)

RESERVE FUND

Section 1. A Reserve Fund of two hundred thousand dollars (\$200,000) is hereby established and shall be maintained by the Board of Governors. No part of the principal of the Reserve Fund may be utilized for any purposes unless authorized by a two-thirds (2/3) affirmative vote of the Board of Governors.

APPENDIX C

CODE

**OF PROFESSIONAL
RESPONSIBILITY
FOR ARBITRATORS
OF LABOR-MANAGEMENT
DISPUTES**

**OF THE
NATIONAL ACADEMY OF ARBITRATORS
AMERICAN ARBITRATION ASSOCIATION
FEDERAL MEDIATION AND CONCILIATION SERVICE**

As amended and in effect May 30, 1996

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Foreword

This "Code of Professional Responsibility for Arbitrators of Labor-Management Disputes" supersedes the "Code of Ethics and Procedural Standards for Labor-Management Arbitration," approved in 1951 by a Committee of the American Arbitration Association, by the National Academy of Arbitrators, and by representatives of the Federal Mediation and Conciliation Service.

Revision of the 1951 Code was initiated officially by the same three groups in October 1972. The following members of a Joint Steering Committee were designated to draft a proposal:

Chair

William E. Simkin

Representing American Arbitration Association

Frederick H. Bullen

Donald B. Straus

Representing Federal Mediation and Conciliation Service

Lawrence B. Babcock, Jr.

L. Lawrence Schultz

Representing National Academy of Arbitrators

Sylvester Garrett

Ralph T. Seward

The proposal of the Joint Steering Committee was issued on November 30, 1974, and thereafter adopted by all three sponsoring organizations. Reasons for Code revision should be noted briefly. Ethical considerations and procedural standards were deemed to be sufficiently intertwined to warrant combining the subject matter of Parts I and II of the 1951 Code under the caption of "Professional Responsibility." It also seemed advisable to eliminate admonitions to the parties (Part III of the 1951 Code) except as they appear incidentally in connection with matters primarily involving responsibilities of arbitrators. The substantial growth of third-party participation in dispute resolution in the public sector required consideration, as did the fact that the arbitration of new contract terms had become more significant. Finally, during the interval of more than two decades, new problems had emerged

as private-sector grievance arbitration matured and became more diversified.

In 1985, the provisions of section 2.C.1.c. were amended to specify certain procedures, deemed proper, which could be followed by an arbitrator seeking to determine if the parties are willing to consent to publication of an award.

In 1996, the wording of the Preamble was amended to reflect the intent that the provisions of the Code apply to covered arbitrators who agree to serve as impartial third parties in certain arbitration and related procedures, dealing with the rights and interests of employees in connection with their employment and/or representation by a union. Simultaneously, the provisions of section 2.A.3. were amended to make clear that an arbitrator has no obligation to accept an appointment to arbitrate under dispute procedures adopted unilaterally by an employer or union and to identify additional disclosure responsibilities for arbitrators who agree to serve under such procedures.

Preamble

Background

The provisions of this Code deal with the voluntary arbitration of labor-management disputes and certain other arbitration and related procedures which have developed or become more common since it was first adopted.

Voluntary arbitration rests upon the mutual desire of management and labor in each collective bargaining relationship to develop procedures for dispute settlement which meet their own particular needs and obligations. No two voluntary systems, therefore, are likely to be identical in practice. Words used to describe arbitrators (Arbitrator, Umpire, Impartial Chair, Chair of Arbitration Board, etc.) may suggest typical approaches, but actual differences within any general type of arrangement may be as great as distinctions often made among the several types.

Arbitrators of labor-management disputes are sometimes asked to serve as impartial third parties under a variety of arbitration and related procedures dealing with the rights and interests of employees in connection with their employment and/or representation by a union. In some cases these procedures may not be the product of voluntary agreement between management and labor. They may be established by statute or ordinance, *ad hoc* agreement, individual employment contract, or through procedures unilaterally adopted by employers and unions. Some of the procedures may be designed to resolve disputes over new or revised contract terms, where the arbitrator may be referred to as a Fact Finder or a member of an Impasse Panel or Board of Inquiry, or the like. Others may be designed to resolve disputes over wrongful termination or other employment issues arising under the law, an implied or explicit individual employment contract, or an agreement to resolve a lawsuit. In some such cases the arbitrator may be referred to as an Appeal Examiner, Hearing Officer, Referee, or other like titles. Finally, some procedures may be established by employers to resolve employment disputes under personnel policies and handbooks or established by unions to resolve disputes with represented employees in agency shop or fair share cases.

The standards of professional responsibility set forth in this Code are intended to guide the impartial third party serving in all of these diverse procedures.

Scope of Code

This Code is a privately developed set of standards of professional behavior for arbitrators who are subject to its provisions. It applies to voluntary arbitration of labor-management disputes and the other arbitration and related procedures described in the Preamble, hereinafter referred to as "covered arbitration dispute procedures."

The word "arbitrator," as used hereinafter in the Code, is intended to apply to any impartial person, irrespective of specific title, who serves in a covered arbitration dispute procedure in which there is conferred authority to decide issues or to make formal recommendations.

The Code is not designed to apply to mediation or conciliation, as distinguished from arbitration, nor to other procedures in which the third party is not authorized in advance to make decisions or recommendations. It does not apply to partisan representatives on tripartite boards. It does not apply to commercial arbitration or to uses of arbitration other than a covered arbitration dispute procedure as defined above.

Format of Code

Bold Face type, sometimes including explanatory material, is used to set forth general principles. *Italics* are used for amplification of general principles. Ordinary type is used primarily for illustrative or explanatory comment.

Application of Code

Faithful adherence by an arbitrator to this Code is basic to professional responsibility.

The National Academy of Arbitrators will expect its members to be governed in their professional conduct by this Code and stands ready, through its Committee on Professional Responsibility and Grievances, to advise its members as to the Code's interpretation. The American Arbitration Association and the Federal Mediation and Conciliation Service will apply the Code to the arbitrators on their rosters in cases handled under their respective appointment or referral procedures. Other arbitrators and administrative agencies may, of course, voluntarily adopt the Code and be governed by it.

In interpreting the Code and applying it to charges of professional misconduct, under existing or revised procedures of the National Academy of Arbitrators and of the administrative agencies, it should be recognized that while some of its standards express ethical principles basic to the arbitration profession, others rest less on ethics than on considerations of good practice. Experience has shown the difficulty of drawing rigid lines of distinction between ethics and good practice, and this Code does not attempt to do so. Rather, it leaves the gravity of alleged misconduct and the extent to which ethical standards have been violated to be assessed in the light of the facts and circumstances of each particular case.

1

Arbitrator's Qualifications and Responsibilities to the Profession

A. General Qualifications

1. Essential personal qualifications of an arbitrator include honesty, integrity, impartiality and general competence in labor relations matters.

An arbitrator must demonstrate ability to exercise these personal qualities faithfully and with good judgment, both in procedural matters and in substantive decisions.

a. Selection by mutual agreement of the parties or direct designation by an administrative agency are the effective methods of appraisal of this combination of an individual's potential and performance, rather than the fact of placement on a roster of an administrative agency or membership in a professional association of arbitrators.

2. An arbitrator must be as ready to rule for one party as for the other on each issue, either in a single case or in a group of cases. Compromise by an arbitrator for the sake of attempting to achieve personal acceptability is unprofessional.

B. Qualifications for Special Cases

1. When an arbitrator decides that a case requires specialized knowledge beyond the arbitrator's competence, the arbitrator must decline appointment, withdraw, or request technical assistance.

a. An arbitrator may be qualified generally but not for specialized assignments. Some types of incentive, work standard, job evaluation, welfare program, pension, or insurance cases may require specialized knowledge, experience or competence. Arbitration of contract terms also may require distinctive background and experience.

b. Effective appraisal by an administrative agency or by an arbitrator of the need for special qualifications requires that both parties make known the special nature of the case prior to appointment of the arbitrator.

C. Responsibilities to the Profession

1. An arbitrator must uphold the dignity and integrity of the office and endeavor to provide effective service to the parties.

a. To this end, an arbitrator should keep current with principles, practices and developments that are relevant to the arbitrator's field of practice.

2. An experienced arbitrator should cooperate in the training of new arbitrators.

3. An arbitrator must not advertise or solicit arbitration assignments.

a. For purposes of this standard, advertising shall not include:

(1) providing accurate, objectively verifiable biographical information (including fees and expenses) for inclusion in administrative agency arbitration rosters, dispute resolution directories, and

(2) providing name, address, phone numbers and identification as an arbitrator in telephone directories, change of address and/or change of services offered announcements.

b. Information provided under paragraph a. may not include editorial or adjectival comments concerning the arbitrator's qualifications.

c. It is a matter of personal preference whether an arbitrator includes "Labor Arbitrator" or similar titles on professional letterheads, cards and announcements.

d. Solicitation, as prohibited by this section, includes the making of requests for arbitration work through personal contacts with individual parties, orally or in writing.

2

**Responsibilities to
the Parties****A. Recognition of Diversity in Arbitration Arrangements**

1. An arbitrator should conscientiously endeavor to understand and observe, to the extent consistent with professional responsibility, the significant principles governing each arbitration system in which the arbitrator serves.

a. Recognition of special features of a particular arbitration arrangement can be essential with respect to procedural matters and may influence other aspects of the arbitration process.

2. Such understanding does not relieve an arbitrator from a corollary responsibility to seek to discern and refuse to lend approval or consent to any collusive attempt by the parties to use arbitration for an improper purpose.

3. An arbitrator who is asked to arbitrate a dispute under a procedure established unilaterally by an employer or union, to resolve an employment dispute or agency shop or fair share dispute, has no obligation to accept such appointment. Before accepting such an appointment, an arbitrator should consider the possible need to disclose the existence of any ongoing relationships with the employer or union.

a. If the arbitrator is already serving as an umpire, permanent arbitrator or panel member under a procedure where the employer or union has the right unilaterally to remove the arbitrator from such a position, those facts should be disclosed.

B. Required Disclosures

1. Before accepting an appointment, an arbitrator must disclose directly or through the administrative agency involved, any current or past managerial, representational, or consultative relationship with any company or union involved in a proceeding in which the arbitrator is being considered for appointment or has been tentatively designated to serve. Disclosure must also be made of any pertinent pecuniary interest.

a. The duty to disclose includes membership on a Board of Directors, full-time or part-time service as a representative or advocate, consultation work for a fee, current stock or bond ownership (other than mutual fund shares or appropriate trust arrangements) or any other

pertinent form of managerial, financial or immediate family interest in the company or union involved.

2. When an arbitrator is serving concurrently as an advocate for or representative of other companies or unions in labor relations matters, or has done so in recent years, such activities must be disclosed before accepting appointment as an arbitrator.

An arbitrator must disclose such activities to an administrative agency if on that agency's active roster or seeking placement on a roster. Such disclosure then satisfies this requirement for cases handled under that agency's referral.

a. It is not necessary to disclose names of clients or other specific details. It is necessary to indicate the general nature of the labor relations advocacy or representational work involved, whether for companies or unions or both, and a reasonable approximation of the extent of such activity.

b. *An arbitrator on an administrative agency's roster has a continuing obligation to notify the agency of any significant changes pertinent to this requirement.*

c. When an administrative agency is not involved, an arbitrator must make such disclosure directly unless the arbitrator is certain that both parties to the case are fully aware of such activities.

3. An arbitrator must not permit personal relationships to affect decision-making.

Prior to acceptance of an appointment, an arbitrator must disclose to the parties or to the administrative agency involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this section, which might reasonably raise a question as to the arbitrator's impartiality.

a. Arbitrators establish personal relationships with many company and union representatives, with fellow arbitrators, and with fellow members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

4. If the circumstances requiring disclosure are not known to the arbitrator prior to acceptance of appointment, disclosure must be made when such circumstances become known to the arbitrator.

5. The burden of disclosure rests on the arbitrator. After appropriate disclosure, the arbitrator may serve if both parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, the

arbitrator should withdraw, irrespective of the expressed desires of the parties.

C. Privacy of Arbitration

1. All significant aspects of an arbitration proceeding must be treated by the arbitrator as confidential unless this requirement is waived by both parties or disclosure is required or permitted by law.

a. Attendance at hearings by persons not representing the parties or invited by either or both of them should be permitted only when the parties agree or when an applicable law requires or permits. Occasionally, special circumstances may require that an arbitrator rule on such matters as attendance and degree of participation of counsel selected by a grievant.

b. *Discussion of a case at any time by an arbitrator with persons not involved directly should be limited to situations where advance approval or consent of both parties is obtained or where the identity of the parties and details of the case are sufficiently obscured to eliminate any realistic probability of identification.*

A commonly recognized exception is discussion of a problem in a case with a fellow arbitrator. *Any such discussion does not relieve the arbitrator who is acting in the case from sole responsibility for the decision and the discussion must be considered as confidential.*

Discussion of aspects of a case in a classroom without prior specific approval of the parties is not a violation provided the arbitrator is satisfied that there is no breach of essential confidentiality.

c. *It is a violation of professional responsibility for an arbitrator to make public an award without the consent of the parties.*

An arbitrator may ask the parties whether they consent to the publication of the award either at the hearing or at the time the award is issued.

(1) If such question is asked at the hearing it should be asked in writing as follows:

"Do you consent to the submission of the award in this matter for publication?"

() ()
YES NO

If you consent you have the right to notify the arbitrator within 30 days after the date of the award that you revoke your consent."

It is desirable but not required that the arbitrator remind the parties at the time of the issuance of the award of their right to withdraw their consent to publication.

(2) If the question of consent to the publication of the award is raised at the time the award is issued, the arbitrator may state in writing to each party that failure to answer the inquiry within 30 days will be considered an implied consent to publish.

d. It is not improper for an arbitrator to donate arbitration files to a library of a college, university or similar institution without prior consent of all parties involved. When the circumstances permit, there should be deleted from such donations any cases concerning which one or both of the parties have expressed a desire for privacy. As an additional safeguard, an arbitrator may also decide to withhold recent cases or indicate to the donee a time interval before such cases can be made generally available.

e. Applicable laws, regulations, or practices of the parties may permit or even require exceptions to the above noted principles of privacy.

D. Personal Relationships with the Parties

1. An arbitrator must make every reasonable effort to conform to arrangements required by an administrative agency or mutually desired by the parties regarding communications and personal relationships with the parties.

a. Only an "arm's-length" relationship may be acceptable to the parties in some arbitration arrangements or may be required by the rules of an administrative agency. The arbitrator should then have no contact of consequence with representatives of either party while handling a case without the other party's presence or consent.

b. In other situations, both parties may want communications and personal relationships to be less formal. It is then appropriate for the arbitrator to respond accordingly.

E. Jurisdiction

1. An arbitrator must observe faithfully both the limitations and inclusions of the jurisdiction conferred by an agreement or other submission under which the arbitrator serves.

2. A direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, must be accepted by the arbitrator as removing further jurisdiction over such issues.

F. Mediation by an Arbitrator

1. When the parties wish at the outset to give an arbitrator authority both to mediate and to decide or submit recommendations regarding residual issues, if any, they should so advise the arbitrator prior to appointment. If the appointment is accepted, the arbitrator must perform a mediation role consistent with the circumstances of the case.

a. Direct appointments, also, may require a dual role as mediator and arbitrator of residual issues. This is most likely to occur in some public sector cases.

2. When a request to mediate is first made after appointment, the arbitrator may either accept or decline a mediation role.

a. *Once arbitration has been invoked, either party normally has a right to insist that the process be continued to decision.*

b. *If one party requests that the arbitrator mediate and the other party objects, the arbitrator should decline the request.*

c. *An arbitrator is not precluded from suggesting mediation. To avoid the possibility of improper pressure, the arbitrator should not so suggest unless it can be discerned that both parties are likely to be receptive. In any event, the arbitrator's suggestion should not be pursued unless both parties readily agree.*

G. Reliance by an Arbitrator on Other Arbitration Awards or on Independent Research

1. An arbitrator must assume full personal responsibility for the decision in each case decided.

a. *The extent, if any, to which an arbitrator properly may rely on precedent, on guidance of other awards, or on independent research is dependent primarily on the policies of the parties on these matters, as expressed in the contract, or other agreement, or at the hearing.*

b. When the mutual desires of the parties are not known or when the parties express differing opinions or policies, the arbitrator may exercise discretion as to these matters, consistent with the acceptance of full personal responsibility for the award.

H. Use of Assistants

1. An arbitrator must not delegate any decision-making function to another person without consent of the parties.

a. *Without prior consent of the parties, an arbitrator may use the services of an assistant for research, clerical duties, or preliminary drafting under the*

direction of the arbitrator, which does not involve the delegation of any decision-making function.

b. If an arbitrator is unable, because of time limitations or other reasons, to handle all decision-making aspects of a case, it is not a violation of professional responsibility to suggest to the parties an allocation of responsibility between the arbitrator and an assistant or associate. The arbitrator must not exert pressure on the parties to accept such a suggestion.

I. Consent Awards

1. Prior to issuance of an award, the parties may jointly request the arbitrator to include in the award certain agreements between them, concerning some or all of the issues. If the arbitrator believes that a suggested award is proper, fair, sound, and lawful, it is consistent with professional responsibility to adopt it.

a. Before complying with such a request, an arbitrator must be certain of understanding the suggested settlement adequately in order to be able to appraise its terms. If it appears that pertinent facts or circumstances may not have been disclosed, the arbitrator should take the initiative to assure that all significant aspects of the case are fully understood. To this end, the arbitrator may request additional specific information and may question witnesses at a hearing.

J. Avoidance of Delay

1. It is a basic professional responsibility of an arbitrator to plan a work schedule so that present and future commitments will be fulfilled in a timely manner.

a. When planning is upset for reasons beyond the control of the arbitrator, every reasonable effort should nevertheless be exerted to fulfill all commitments. If this is not possible, prompt notice at the arbitrator's initiative should be given to all parties affected. Such notices should include reasonably accurate estimates of any additional time required. To the extent possible, priority should be given to cases in process so that other parties may make alternative arbitration arrangements.

2. An arbitrator must cooperate with the parties and with any administrative agency involved in avoiding delays.

a. An arbitrator on the active roster of an administrative agency must take the initiative in advising the agency of any scheduling difficulties that can be foreseen.

b. Requests for services, whether received directly or through an administrative agency, should be declined if the arbitrator is unable to schedule a hearing as soon as the parties wish. If the parties, nevertheless, jointly desire to obtain

the services of the arbitrator and the arbitrator agrees, arrangements should be made by agreement that the arbitrator confidently expects to fulfill.

c. An arbitrator may properly seek to persuade the parties to alter or eliminate arbitration procedures or tactics that cause unnecessary delay.

3. Once the case record has been closed, an arbitrator must adhere to the time limits for an award, as stipulated in the labor agreement or as provided by regulation of an administrative agency or as otherwise agreed.

a. If an appropriate award cannot be rendered within the required time, it is incumbent on the arbitrator to seek an extension of time from the parties.

b. If the parties have agreed upon abnormally short time limits for an award after a case is closed, the arbitrator should be so advised by the parties or by the administrative agency involved, prior to acceptance of appointment.

K. Fees and Expenses

1. An arbitrator occupies a position of trust in respect to the parties and the administrative agencies. In charging for services and expenses, the arbitrator must be governed by the same high standards of honor and integrity that apply to all other phases of arbitration work.

An arbitrator must endeavor to keep total charges for services and expenses reasonable and consistent with the nature of the case or cases decided.

Prior to appointment, the parties should be aware of or be able readily to determine all significant aspects of an arbitrator's bases for charges for fees and expenses.

a. Services Not primarily Chargeable on a per Diem Basis

By agreement with the parties, the financial aspects of many "permanent" arbitration assignments, of some interest disputes, and of some "ad hoc" grievance assignments do not include a per diem fee for services as a primary part of the total understanding. In such situations, the arbitrator must adhere faithfully to all agreed-upon arrangements governing fees and expenses.

b. Per Diem Basis for Charges for Services

(1) When an arbitrator's charges for services are determined primarily by a stipulated per diem fee, the arbitrator should establish in advance the bases for application of such per diem fee and for determination of reimbursable expenses.

Practices established by an arbitrator should include the basis for charges, if any, for:

(a) hearing time, including the application of the stipulated basic per diem hearing fee to hearing days of varying lengths;

(b) study time;

(c) necessary travel time when not included in charges for hearing time;

(d) postponement or cancellation of hearings by the parties and the circumstances in which such charges will normally be assessed or waived;

(e) office overhead expenses (secretarial, telephone, postage, etc.);

(f) the work of paid assistants or associates.

(2) *Each arbitrator should be guided by the following general principles:*

(a) *Per diem charges for a hearing should not be in excess of actual time spent or allocated for the hearing.*

(b) *Per diem charges for study time should not be in excess of actual time spent.*

(c) *Any fixed ratio of study days to hearing days, not agreed to specifically by the parties, is inconsistent with the per diem method of charges for services.*

(d) *Charges for expenses must not be in excess of actual expenses normally reimbursable and incurred in connection with the case or cases involved.*

(e) *When time or expense are involved for two or more sets of parties on the same day or trip, such time or expense charges should be appropriately prorated.*

(f) *An arbitrator may stipulate in advance a minimum charge for a hearing without violation of (a) or (e) above.*

(3) *An arbitrator on the active roster of an administrative agency must file with the agency the individual bases for determination of fees and expenses if the agency so requires. Thereafter, it is the responsibility of each such arbitrator to advise the agency promptly of any change in any basis for charges.*

Such filing may be in the form of answers to a questionnaire devised by an agency or by any other method adopted by or approved by an agency.

Having supplied an administrative agency with the information noted above, an arbitrator's professional responsibility of disclosure under this Code with respect to fees and expenses has been satisfied for cases referred by that agency.

(4) *If an administrative agency promulgates specific standards with respect to any of these matters which are in addition to or more restrictive than an individual arbitrator's standards, an arbitrator on its active roster must observe the agency standards for cases handled under the auspices of that agency, or decline to serve.*

(5) *When an arbitrator is contacted directly by the parties for a case or cases, the arbitrator has a professional responsibility to respond to questions by submitting the bases for charges for fees and expenses.*

(6) *When it is known to the arbitrator that one or both of the parties cannot afford normal charges, it is consistent with professional responsibility to charge lesser amounts to both parties or to one of the parties if the other party is made aware of the difference and agrees.*

(7) *If an arbitrator concludes that the total of charges derived from the normal basis of calculation is not compatible with the case decided, it is consistent with professional responsibility to charge lesser amounts to both parties.*

2. An arbitrator must maintain adequate records to support charges for services and expenses and must make an accounting to the parties or to an involved administrative agency on request.

Responsibilities to Administrative Agencies

A. General Responsibilities

1. An arbitrator must be candid, accurate, and fully responsive to an administrative agency concerning qualifications, availability, and all other pertinent matters.

2. An arbitrator must observe policies and rules of an administrative agency in cases referred by that agency.

3. An arbitrator must not seek to influence an administrative agency by any improper means, including gifts or other inducements to agency personnel.

a. It is not improper for a person seeking placement on a roster to request references from individuals having knowledge of the applicant's experience and qualifications.

b. Arbitrators should recognize that the primary responsibility of an administrative agency is to serve the parties.

4

Prehearing Conduct

1. All prehearing matters must be handled in a manner that fosters complete impartiality by the arbitrator.

a. The primary purpose of prehearing discussions involving the arbitrator is to obtain agreement on procedural matters so that the hearing can proceed without unnecessary obstacles. If differences of opinion should arise during such discussions and, particularly, if such differences appear to impinge on substantive matters, the circumstances will suggest whether the matter can be resolved informally or may require a prehearing conference or, more rarely, a formal preliminary hearing. When an administrative agency handles some or all aspects of the arrangements prior to a hearing, the arbitrator will become involved only if differences of some substance arise.

b. *Copies of any prehearing correspondence between the arbitrator and either party must be made available to both parties.*

Hearing Conduct

A. General Principles

1. An arbitrator must provide a fair and adequate hearing which assures that both parties have sufficient opportunity to present their respective evidence and argument.

a. Within the limits of this responsibility, an arbitrator should conform to the various types of hearing procedures desired by the parties.

b. An arbitrator may: encourage stipulations of fact; restate the substance of issues or arguments to promote or verify understanding; question the parties' representatives or witnesses, when necessary or advisable, to obtain additional pertinent information; and request that the parties submit additional evidence, either at the hearing or by subsequent filing.

c. An arbitrator should not intrude into a party's presentation so as to prevent that party from putting forward its case fairly and adequately.

B. Transcripts or Recordings

1. Mutual agreement of the parties as to use or non-use of a transcript must be respected by the arbitrator.

a. A transcript is the official record of a hearing only when both parties agree to a transcript or an applicable law or regulation so provides.

b. An arbitrator may seek to persuade the parties to avoid use of a transcript, or to use a transcript if the nature of the case appears to require one. However, if an arbitrator intends to make appointment to a case contingent on mutual agreement to a transcript, that requirement must be made known to both parties prior to appointment.

c. If the parties do not agree to a transcript, an arbitrator may permit one party to take a transcript at its own cost. The arbitrator may also make appropriate arrangements under which the other party may have access to a copy, if a copy is provided to the arbitrator.

d. Without prior approval, an arbitrator may seek to use a personal tape recorder to supplement note taking. The arbitrator should not insist on such a tape recording if either or both parties object.

C. Ex Parte Hearings

1. In determining whether to conduct an ex parte hearing, an arbitrator must consider relevant legal, contractual, and other pertinent circumstances.

2. An arbitrator must be certain, before proceeding ex parte, that the party refusing or failing to attend the hearing has been given adequate notice of the time, place, and purposes of the hearing.

D. Plant Visits

1. An arbitrator should comply with a request of any party that the arbitrator visit a work area pertinent to the dispute prior to, during, or after a hearing. An arbitrator may also initiate such a request.

a. Procedures for such visits should be agreed to by the parties in consultation with the arbitrator.

E. Bench Decisions or Expedited Awards

1. When an arbitrator understands, prior to acceptance of appointment, that a bench decision is expected at the conclusion of the hearing, the arbitrator must comply with the understanding unless both parties agree otherwise.

a. If notice of the parties' desire for a bench decision is not given prior to the arbitrator's acceptance of the case, issuance of such a bench decision is discretionary.

b. When only one party makes the request and the other objects, the arbitrator should not render a bench decision except under most unusual circumstances.

2. When an arbitrator understands, prior to acceptance of appointment, that a concise written award is expected within a stated time period after the hearing, the arbitrator must comply with the understanding unless both parties agree otherwise.

6

Post Hearing Conduct**A. Post Hearing Briefs and Submissions**

1. An arbitrator must comply with mutual agreements in respect to the filing or nonfiling of post hearing briefs or submissions.

a. An arbitrator, in his or her discretion, may either suggest the filing of post hearing briefs or other submissions or suggest that none be filed.

b. When the parties disagree as to the need for briefs, an arbitrator may permit filing but may determine a reasonable time limitation.

2. An arbitrator must not consider a post hearing brief or submission that has not been provided to the other party.

B. Disclosure of Terms of Award

1. An arbitrator must not disclose a prospective award to either party prior to its simultaneous issuance to both parties or explore possible alternative awards unilaterally with one party, unless both parties so agree.

a. Partisan members of tripartite boards may know prospective terms of an award in advance of its issuance. Similar situations may exist in other less formal arrangements mutually agreed to by the parties. In any such situation, the arbitrator should determine and observe the mutually desired degree of confidentiality.

C. Awards and Opinions

1. The award should be definite, certain, and as concise as possible.

a. When an opinion is required, factors to be considered by an arbitrator include: desirability of brevity, consistent with the nature of the case and any expressed desires of the parties; need to use a style and form that is understandable to responsible representatives of the parties, to the grievant and supervisors, and to others in the collective bargaining relationship; necessity of meeting the significant issues; forthrightness to an extent not harmful to the relationship of the parties; and avoidance of gratuitous advice or discourse not essential to disposition of the issues.

D. Clarification or Interpretation of Awards

1. No clarification or interpretation of an award is permissible without the consent of both parties.

2. Under agreements which permit or require clarification or interpretation of an award, an arbitrator must afford both parties an opportunity to be heard.

E. Enforcement of Award

1. The arbitrator's responsibility does not extend to the enforcement of an award.

2. In view of the professional and confidential nature of the arbitration relationship, an arbitrator should not voluntarily participate in legal enforcement proceedings.

APPENDIX D

NATIONAL ACADEMY OF
ARBITRATORS

FORMAL ADVISORY OPINIONS
(WITH CPRG NOTES, JUNE 1996)
ISSUED BY

COMMITTEE ON PROFESSIONAL RESPONSIBILITY
AND GRIEVANCES
(1975-1991)

COMMITTEE ON ETHICS AND GRIEVANCES
(1965-1975)

COMMITTEE ON ETHICS
(1947-1965)

ADVISORY OPINIONS

No.	Date	Subject
1	May 1, 1953	Ethics of an Arbitrator's Conduct (Fees)
2	February 17, 1955	Ethical Obligations of an Arbitrator (Similar Disputes)
3	April 4, 1972	Ethics of an Arbitrator's Proposed Course of Conduct (Availability for Hearings)
4	April 3, 1973	Listing Academy and Panel Memberships on Letterhead
5	May 8, 1979	Unilateral Interviewing of Arbitrators by Labor or Management: Arbitrator's Responsibility
6	June 10, 1980	Arbitrator's Duty Regarding Off-the- Record Union Representative's Remarks Prejudicial to Grievant in Discharge Case
7	June 10, 1980	Donation of Arbitration Files to Libraries
8	May 16, 1981	Arbitrator's Duty with Respect to Late Posthearing Brief
9	May 16, 1981	Duty of Disclosure
10	October 1, 1982	Publication of Opinions and Awards
11	May 24, 1983	Publication of Awards
12	May 29, 1985	Arbitrator's Use of Assistants
13	June 7, 1986	Ex Parte Hearings
14	June 7, 1986	Advertising and Solicitation
15	June 7, 1986	Ex Parte Consultation
16	October 29, 1987	Advertising and Solicitation
17	May 29, 1988	Arbitrator-Mentor Soliciting for His Intern-Apprentice

- 18 May 29, 1988 Code Provision 1-C-3: "An Arbitrator Must Not Advertise or Solicit Arbitration Assignments"
- 19 May 28, 1989 Advertising and Solicitation
- 20 October 27, 1989 Correction of Evident Errors in an Arbitration Award
- 21 May 26, 1991 Advertising and Solicitation
- 22 May 26, 1991 Duty to Disclose

OPINION NO. 1

May 1, 1953

Subject: Ethics of an Arbitrator's Conduct (Fees).

The Committee has been asked to give its opinion on the ethics of an arbitrator's conduct, described as follows:

An arbitrator agreed to serve at a rate of \$50.00 for a one day hearing and \$50.00 for the preparation of his award. When he arrived at the hearing he stated that he believed the fee arranged was too low and in view of the fees paid to other arbitrators he should be allowed \$100.00 a day with a minimum of \$300.00. The parties thereupon agreed to an increase of \$200.00.

At the outset, let it be emphasized that our opinion is directed exclusively to the statement of facts set forth above. We do not know whether this statement accurately and fairly describes the actual conduct of any arbitrator. We have not heard evidence. We do not know the nature of the original "agreement" as to the arbitrator's fees, or the nature of the discussions prior to the hearing, or how the question of a revision of fees came to be raised or many other facts which would have to be known in order to make a fair judgment on the conduct of the actual arbitrator involved.

On the facts as stated, however, we have no hesitation in expressing our opinion. We do not believe that the conduct described was proper or consistent with the Code of Ethics of the Academy.

Part II, Section 1(b), of the Code states, in part, that:

A fee previously fixed by the parties or by schedule should not be altered during the proceeding or after the award is delivered.

The reasons for this rule are obvious. Though the parties have a technical right to reject a proposed increase in fees, an exercise of that right might cause them great embarrassment. Selection of an arbitrator is a grant of power. Once that power has been granted, either party might well hesitate to displease its possessor, lest in so doing it prejudiced its case before him.

Any attempt by an arbitrator to use the power which the parties have given him as a lever to raise his fees would be clearly unethical. In the opinion of the Committee, it would be well to avoid even the appearance of such conduct.

CPRG NOTE (June 1996): Decided under the superseded 1951 Code. Decision and rationale are consistent with Part 2-K of the current Code.

OPINION NO. 2

February 17, 1955

Subject: Ethical Obligations of an Arbitrator (Similar Disputes).

The Committee has been asked to give its opinion on the ethical obligations of an arbitrator under the following circumstances:

An arbitrator served in dispute #1 between a national company and a local union in one of its plants. So far as he knew, his award in that case was not published. Subsequently, he was asked to serve as arbitrator in dispute #2 between the same company and another local union affiliated with another international in a different plant. After accepting the appointment, he learned that the issue to be arbitrated appeared to be identical with that in dispute #1, and that the union apparently did not know of his participation as arbitrator in the earlier case.

(a) Under these circumstances, was the arbitrator under an ethical obligation to disclose to the union the facts concerning dispute #1?

(b) Would a different ethical standard apply if the award in dispute #1 had been published, or if the local involved in dispute #2 was affiliated with the same international as the local involved in dispute #1?

Canon 3 of the Code of Ethics makes it "incumbent upon the arbitrator at the time of his selection to disclose to the parties any circumstances, associations or relationships that might reasonably raise any doubt as to his impartiality or his technical qualifications for the particular case." Thus, the question presented is whether the circumstances related above "might rea-

sonably raise" a doubt as to the arbitrator's impartiality. In the judgment of the Committee they do not.

It should be noted, initially, that is virtually impossible for an arbitrator to know, prior to the actual submission of a case, whether it is in fact identical with one he has previously decided. Even when an issue is fundamentally the same as others he has determined before, the arbitrator usually finds that each new case has some unique, distinguishing feature that requires special consideration.

In any event, the fact that an arbitrator has issued a prior decision on a similar or identical case has by itself no necessary significance. The decisive ethical question for the arbitrator is not whether he has considered a similar issue before, but whether he is still open to persuasion either way. If the arbitrator feels free to revise his prior decision, no disclosure would seem necessary; but, if for any reason the arbitrator feels bound by a prior decision, then he should certainly disclose that fact.

In conclusion, it may be stated that parties to an arbitration are entitled to an honest, rather than an uninformed, decision. A contrary conclusion would lead to the disqualification of arbitrators solely on the basis of their experience.

CPRG NOTE (June 1996): Decided under the superseded 1951 Code. Decisions and rationale are consistent with Part 2-B of the current Code.

OPINION NO. 3

April 4, 1972

Subject: Ethics of an Arbitrator's Proposed Course of Conduct (Availability for Hearings).

The Committee has been asked to give its opinion on the ethics of an arbitrator's proposed course of conduct. The circumstances were as follows:

An arbitrator was about to go overseas in August on a sabbatical leave from his university. He intended to write to those parties for whom he had heard cases earlier in the year and advise them he would be

out of the country and hence unavailable as an arbitrator from August to January. Before writing such a letter, however, he sought the Committee's opinion as to whether his proposed conduct was in any way unethical.

Part I, Section 9, of the Code of Ethics states:

Advertising by an arbitrator and soliciting of cases is improper and not in accordance with the dignity of the office. No arbitrator should suggest to any party that future cases be referred to him.

Whether an "unavailability" letter violates the prohibition against advertising and solicitation depends upon the relationship of the arbitrator to the parties and the content of the letter itself. For example, when the parties request the services of an arbitrator, he may advise them he will be unavailable for hearings between certain dates. Or if one has a continuing relationship with parties, either as a permanent arbitrator or as a member of a panel of arbitrators, he may advise them of his unavailability during a certain period of time. In these situations, the "unavailability" letter merely provides the parties with information they request or need in scheduling disputes to be heard. Such a letter cannot be construed as advertising or solicitation.

However, the "unavailability" letter proposed here is quite different. The arbitrator planned to write the parties for whom he'd heard cases earlier in the year. He apparently had no continuing relationship with these parties. And his letter would not have been in response to a specific request to hear a case. Under those circumstances, the Committee's opinion is that the "unavailability" letter would serve to "suggest" to the parties that "future cases be referred" to the arbitrator upon his return from his overseas trip. That is precisely the kind of solicitation which Part I, Section 9 of the Code meant to prevent. This would be true no matter how well-intentioned the arbitrator may have been. For the purpose of the prohibition in Part I, Section 9 is to avoid the appearance of advertising or solicitation.

There would, of course, be nothing improper about notifying the appointing agencies of one's unavailability.

CPRG NOTE (June 1996): Decided under the superseded 1951 Code. See Part 1-C-3-a(2) of current Code, adopted May 30, 1996, permitting change of address and services notices to be sent more broadly than to parties with whom an arbitrator has a continuing relationship.

OPINION NO. 4

April 3, 1973

Subject: Listing Academy and Panel Memberships on Letterhead.

The Committee has been asked to express its view on the following question of ethics.

An arbitrator was about to order new stationery. He wished to use a letterhead which would indicate, besides his profession as an arbitrator, his membership in the National Academy of Arbitrators and his status as a panel member for the American Arbitration Association and the Federal Mediation and Conciliation Service. He sought the Committee's opinion as to whether his proposed letterhead was in any way unethical.

Part 1, Section 9 of the Code of Ethics states: "Advertising by an arbitrator and soliciting of cases is improper and not in accordance with the dignity of the office...." The Committee believes that any reference on a letterhead to membership in the Academy or membership on AAA and FMCS panels would be a gross impropriety. Such references are essentially a self-laudatory device for impressing labor and management with one's accomplishments. They are a form of advertising and are not in keeping with the dignity of the office. For these reasons, the proposed letterhead would be unethical under Part 1, Section 9.

CPRG NOTE (June 1996): Decided under the superseded 1951 Code. See Part 1-C-3-c of current Code, adopted May 30, 1996, which omits a sentence contained in the 1975 version of the Code, with the result that listing of professional and panel memberships on an arbitrator's letterhead is a matter of personal preference or taste rather than ethics.

OPINION NO. 5

May 8, 1979

Subject: Unilateral Interviewing of Arbitrators by Labor or Management: Arbitrator's Responsibility.

The Committee on Professional Responsibility and Grievances has been asked to provide guidance concerning an arbitrator's responsibility when invited by a representative of Labor to present himself for an interview "for the purpose of being selected in the future to serve as an ad-hoc arbitrator."

Facts: The director of arbitration for an international union sends a letter to a number of arbitrators which reads as follows:

The _____ Union is setting up a period of time in March, 1979 within which to interview prospective arbitrators. The week of March 5 through 9 has been set aside as our interview week. If you are desirous of being interviewed by the Union for the purpose of being selected in the future to serve as an ad-hoc arbitrator, it is hereby suggested that you contact John Doe at our office (Tel. 123-XY3-0000) to set up the time for your interview.

Issue: May an arbitrator properly participate in an interview of this kind?

Opinion: In the Committee's view, it is contrary to the spirit of the Code for an arbitrator to attend an interview by one party or the other for the purpose of being selected in the future as an arbitrator for that Company or Union and for its unrepresented counterpart across the table. The Code of Professional Responsibility does not deal expressly with this matter. However, Part 1.C.1 (Marginal Paragraph 18), 1.C.3 (Marginal Paragraph 21) and 2.D (Marginal Paragraphs 48, 49, and 50) bear at least indirectly on the problem.

The Committee believes it is not consonant with "the dignity and integrity of the office" for an arbitrator to seek an interview with a potential client party, alone, particularly where the announced purpose of the interview is to be considered for selection in future cases. In the Committee's view, also, the principles enunciated in Part 2.D regarding the avoid-

ance of unilateral contact with either party are applicable, in principle, to the question at hand. Finally, while it may not technically be "soliciting" under Part 1.C.3 to ask for an interview in the circumstances postulated here, one who asks for such an interview is obviously seeking to be "selected in the future to serve as an ad-hoc arbitrator." The appropriate choice of conduct for an arbitrator invited to such an interview is to decline.

(Reprinted 6/96)

OPINION NO. 6

June 10, 1980

Subject: Arbitrator's Duty Regarding Off-the-Record Union Representative's Remarks Prejudicial to Grievant in Discharge Case.

Facts: Prior to the start of a discharge hearing, the Union representative approached the arbitrator and remarked, out of earshot of the Company representative: "I've got a loser. I don't expect to win this one." The arbitrator admonished him that he had misbehaved, and that his remarks could prejudice the grievant's rights. The arbitrator stated that he would excise the remarks from his evaluation of the dispute and would decide the case on its merits without regard to them. Before the hearing began, the arbitrator disclosed to the Company the Union representative's remarks and the arbitrator's response. Neither the Company nor the Union interposed any objection to the arbitrator's continued service in the case.

Issue: What is the arbitrator's duty in such a case, with respect to disclosure to the grievant and withdrawal?

Opinion: In Paragraph 11 of the Code, "honesty" and "integrity" are included among the essential personal qualifications of an arbitrator. Paragraph 12 states that an arbitrator "must demonstrate ability to exercise these personal qualities faithfully and with good judgment, both in procedural matters and in substantive decisions." Paragraph 18 requires that an arbitrator "uphold the dignity and integrity of the office and endeavor to provide effective service to the parties."

Paragraph 26 of the Code shows that an arbitrator has a "responsibility to seek to discern and refuse to lend approval or consent to any collusive attempt by the parties to use arbitration for an improper purpose."

In a discharge case, where the parties make a joint effort to induce the arbitrator to sustain the discharge, this constitutes a collusive attempt by the parties to use arbitration for an improper purpose. The arbitrator has a responsibility to seek to discern such an effort. Where the arbitrator discerns such an effort, continued service by the arbitrator in the case without the informed consent of the discharged employee constitutes a lending of approval or consent to such a collusive attempt in violation of Paragraph 26, also constitutes a failure to uphold the dignity and integrity of the office in violation of Paragraph 18, and is inconsistent with the essential personal qualifications of honesty and integrity referred to in Paragraphs 11 and 12.

A unilateral effort by the Union to induce an arbitrator to sustain a discharge constitutes an attempt, albeit not a collusive attempt, to use arbitration for an improper purpose. A failure by the arbitrator to seek to discern such an effort by the Union, or continued service by the arbitrator without the informed consent of the discharged employee in a case where the arbitrator discerns such a Union effort, is not violative of Paragraph 26, but does constitute a failure to uphold the dignity and integrity of the office in violation of Paragraph 18, and is inconsistent with the essential personal qualifications of honesty and integrity referred to in Paragraphs 11 and 12.

Remarks like those made by the Union representative to the arbitrator in the instant case may or may not reflect an effort by the Union to induce the arbitrator to sustain the discharge. The arbitrator has a duty to make an honest judgment, based upon his experience and his knowledge of the facts and circumstances, as to whether they do reflect such an effort by the Union. If in his judgment they do reflect such an effort by the Union, he should not continue to serve without the informed consent of the discharged employee. It is noted that the arbitrator has the option of withdrawal without disclosure and without giving a specific rea-

son, and that he might find this course to be the one least likely to harm the discharged employee and the collective bargaining relationship.

In addition to making a judgment as to whether the Union representative's remarks reflect an effort by the Union to induce the arbitrator to sustain the discharge, the arbitrator must also make a judgment as to whether he can effectively disregard the remarks in weighing the evidence and continuing to a decision in the case. If he sincerely believes that he can disregard them and do full justice to the parties and to the discharged employee, the fact that they were made does not in and of itself require his withdrawal. If he does not sincerely believe that he can disregard them and judge honestly and fairly on the evidence properly before him, the Code requirements of "honesty" and "integrity" necessitate his withdrawal.

The basic conclusions stated herein are equally applicable to both ad hoc and permanent arbitrators.

(Reprinted 6/96)

OPINION NO. 7

June 10, 1980

- Subject:** Donation of Arbitration Files to Libraries.
- Facts:** A member has inquired as to whether a donation of an arbitrator's complete arbitration files to a library may properly include files of cases in which the parties opposed publication.
- Issue:** Where an arbitrator is donating complete arbitration files to a library, may the donation properly include files of cases in which the parties opposed publication?
- Opinion:** Part 2-C of the Code contains provisions relating to the privacy of arbitration. Part 2-C-1, Paragraph 39 states the general principle that "All significant aspects of an arbitration proceeding must be treated by the arbitrator as confidential unless this requirement is waived by both parties or disclosure is required or permitted by law." Part C-1-c, paragraph 44 amplifies this general

principle by stating that "It is a violation of professional responsibility for an arbitrator to make public an award without the consent of the parties." The relationship of these general rules to donations of arbitration files to libraries of colleges, universities or similar institutions is specifically dealt with in Part C-1-d, Paragraph 46, as follows:

It is not improper for an arbitrator to donate arbitration files to a library of a college, university or similar institution without prior consent of all the parties involved. When the circumstances permit, there should be deleted from such donations any cases concerning which one or both of the parties have expressed a desire for privacy. As an additional safeguard, an arbitrator may also decide to withhold recent cases or indicate to the donee a time interval before such cases can be made generally available.

In a case where both parties have consented to publication, or where neither party has expressed a desire that the award not be published, the arbitrator may properly include the arbitration file in that case in a donation to a library of a college, university or similar institution without prior consent of the parties. However, where a party has expressed to the arbitrator a desire that the award not be published, it has "expressed a desire for privacy" within the meaning of Paragraph 46; in such a case, the arbitration file should be deleted from such donation, when "the circumstances permit."

Whether "the circumstances permit" such deletion, must necessarily be determined in the light of the particular facts of each individual situation, with special consideration being given to whether the case in which a party has opposed publication can be currently identified by the arbitrator without undue difficulty.

CPRG NOTE (June 1996): The reference to paragraph 46 of the Code, regarding donations of an arbitrator's files to a library, has been renumbered as Paragraph 48, due to insertion of new material in Part 2-C-1-c by a 1985 Code Amendment.

OPINION NO. 8

May 16, 1981

Subject: Arbitrator's Duty with Respect to Late Posthearing Brief.

Facts: An arbitrator accepted an appointment to serve in a matter involving two grievances. The proceedings were not administered by an administrative agency. One of the grievances concerned a termination. The applicable collective bargaining agreement provided, in part, that "the Arbitrator shall render his Award, in writing, as quickly as possible," and that "All discharges or disciplinary cases shall be given precedence of disposition."

Hearings on both grievances were held on the same day. As to both grievances, it was agreed that posthearing briefs would be mailed to the arbitrator on a specified date, and that the arbitrator would handle the brief exchange. The Union's brief was mailed on or before the agreed upon date. The Employer's brief was not mailed until almost five months after the agreed upon date. The arbitrator exchanged the briefs. The arbitrator considered both briefs.

It is not clear whether the arbitrator inquired about the lateness of the Employer's brief at any time prior to its filing. However, if there was such an inquiry by the arbitrator, it did not occur until more than three months after the agreed upon filing date.

At no time prior to issuance of the arbitration decision, did the Union protest the lateness of the Employer's brief or request that it not be considered by the arbitrator. After the issuance of the decision, the Union complained that the arbitrator had acted improperly in considering the Employer's late brief. The Union also complained that the arbitrator had been guilty of undue delay. (In part, the latter complaint was based on the time which elapsed between the filing of the Employer's brief and the issuance of the decision.)

Issues: (1) Did the arbitrator act improperly in considering Employer's late posthearing brief, after it was filed?

(2) Did the Arbitrator act improperly with respect to the Employer's late posthearing brief, before it was filed?

Opinion:

Posthearing briefs and submissions are dealt with in Part 6-A of the Code of Professional Responsibility for Arbitrators. Part 6A-1 provides:

1. An arbitrator must comply with mutual agreements in respect to the filing or nonfiling of post hearing briefs or submissions.

a. An arbitrator, in his or her discretion, may either suggest the filing of post hearing briefs or other submissions or suggest that none be filed.

b. When the parties disagree as to the need for briefs, an arbitrator may permit filing but may determine a reasonable time limitation.

Avoidance of delay is dealt with in Part 2-J of the Code. Part 2-J-2 provides:

An arbitrator must cooperate with the parties and with any administrative agency involved in avoiding delays.

Where the parties agree to a certain date for the filing of posthearing briefs, and also agree that the arbitrator should not consider a posthearing brief filed after that date, Part 6-A-1 precludes the arbitrator from considering a posthearing brief filed by a party after that date, without the consent of the other party. However, where the parties agree only that posthearing briefs are to be filed by a certain date, without agreeing as to what the effect of a late filing is to be, Part 6-A-1 does not preclude the arbitrator from considering a posthearing brief filed after the agreed upon date.

An arbitrator does have Code responsibilities when a posthearing brief is not filed by an agreed upon date, even where the parties have made no agreement as to the effect of a late filing. These responsibilities arise primarily from the arbitrator's Part 2-J-2 duty to cooperate with the parties in avoiding delays. After a reasonable period (allowing for possibilities such as a delayed mail delivery or an unannounced agreement by the parties to an extension), the arbitrator should

make appropriate inquiry and take appropriate action. At some point, it may become incumbent upon the arbitrator to give notice that the decision may be issued after a certain date whether or not the tardy brief has been received by that date.

In the instant case, the arbitrator did not violate Part 6-A-1 of the Code by considering the Employer's late brief. The arbitrator did, however, violate Part 2-J-2 of the Code by failing to make any inquiry or taking any action concerning the late brief until several months after the agreed upon filing date.

(Reprinted 6/96)

OPINION NO. 9

May 16, 1981

Subject:

Duty of Disclosure.

Facts:

An arbitrator served in a case in which the employer was represented by a certain law firm. Subsequently, he accepted an appointment to serve in another case involving the same parties. After accepting the appointment, but prior to the hearing, he learned that his wife had contracted to act as a library consultant for the aforementioned law firm, which the arbitrator assumed would be representing the employer in the forthcoming arbitration. The consulting job was not to be of a continuing nature, but the possibility existed that the law firm might ask her to do additional work in the future. The arbitrator immediately informed the parties of the situation and advised them that, if either party believed it to be appropriate, he would be happy to withdraw from the case. The arbitrator seeks guidance as to whether such disclosure was required by the Code of Professional Responsibility for Arbitrators.

Issue:

Did the arbitrator have a duty to disclosure in the situation above described?

Opinion:

Part 2-B of the Code [Part 2-B-3 of the current Code] specifically mentions several circumstances which, if present, must be disclosed by an arbitrator prior to acceptance of an appointment. It goes on to state:

Prior to acceptance of an appointment, an arbitrator must disclose to the parties or to the administrative agency involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this section, which might reasonably raise a question as to the arbitrator's impartiality. [Emphasis added.]

It further states:

4. If the circumstances requiring disclosure are not known to the arbitrator prior to acceptance of appointment, disclosure must be made when such circumstances become known to the arbitrator.

5. The burden of disclosure rests on the arbitrator. After appropriate disclosure, the arbitrator may serve if both parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.

The Committee is of the opinion that the here considered situation presented a "circumstance . . . which might reasonably raise a question as to the arbitrator's impartiality." When the circumstance came known to the Arbitrator, he was required to disclose it. After disclosure, he could not properly continue to serve if either party desired that he not serve. The arbitrator's communication to the parties correctly reflected the requirements of the Code.

(Reprinted 6/96)

OPINION NO. 10

October 1, 1982

Subject: Publication of Opinions and Awards.

Facts: The Committee's attention has been called to two situations involving arbitrator requests of parties for permission to publish arbitration decisions.

In the first situation, the arbitrator sent a written communication to the parties, prior to the hearing, stating that "in the absence of objection from either side,

the arbitrator's opinion and decision may be published."

In the second situation, the arbitrator sent a written communication to the parties, upon issuance of the decision, stating: "I will assume I have your consent unless you return to me the form below. If you do not return the attached form with your remit or within 30 days, which ever is first, I will send a copy of my decision in your case to the publishers for their consideration." The attached form contained the statement: "We do not wish to have our arbitration award considered for publication." In this situation, the arbitrator has expressly requested a Committee determination as to whether this procedure is in compliance with the Code.

Issue: Are the above described procedures, or either of them, in compliance with the Code?

Opinion: The Committee finds that the above stated issue must be answered in the negative. Both of the above described procedures are inconsistent with Part 2-C-1 of the Code, which provides in part:

All significant aspects of an arbitration proceeding must be treated by the arbitrator as confidential unless this requirement is waived by both parties or disclosure is required or permitted by law.

* * *

c. It is a violation of professional responsibility for an arbitrator to make public an award without the consent of the parties.

An arbitrator may request but not press the parties for consent to publish an opinion. Such a request should normally not be made until after the award has been issued to the parties.

* * *

e. Applicable laws, regulations, or practices of the parties may permit or even require exceptions to the above noted principles of privacy.

Clearly, consent of the parties must be present before an arbitrator is free to submit a decision for publication. In both of the above-described situations, con-

sent is assumed by the arbitrator on the basis of silence by the parties in the face of notice from the arbitrator that silence will be regarded as meaning consent. The Committee feels that such an assumption of consent is unjustified in most cases. There can be various reasons for the silence of a party in the circumstances described. The silence may in fact be due to a favorable attitude toward publication. On the other hand, it may be due to oversight, or to a perception that the arbitrator might be offended by an express denial of permission to publish, or to some other factor not indicative of consent to publish.

Further, even if consent to publish could reasonably be assumed from the parties' silence, it is doubtful that such consent would have been obtained in a manner consistent with the Code. In many situations at least, by placing a burden of response on the parties, an arbitrator using either of the here considered procedures would be going beyond "requesting" consent to "pressing for" consent.

CPRG NOTE (June 1996): This opinion has been superseded by a 1985 amendment to Part 2-C-1-c of the Code, and a different response, in part, is now required to the second situation described in the opinion.

OPINION NO. 11

May 24, 1983

- Subject:** Publication of Award.
- Facts:** It has been reported to the Committee that some arbitrators have been routinely initiating inquiries at the arbitration hearing as to whether the parties consent or object to publication of the award in the case being heard.
- Issue:** Does the Code, in normal circumstances, permit an arbitrator to make such an inquiry at the arbitration hearing?
- Opinion:** Part 2-C-1 of the Code provides, in part:
- 1. All significant aspects of an arbitration proceeding must be treated by the arbitrator as confidential unless this requirement is waived by both parties or disclosure is required or permitted by law.**

* * *

c. It is a violation of professional responsibility for an arbitrator to make public an award without the consent of the parties.

* * *

An arbitrator may request but not press the parties for consent to publish an opinion. Such a request should normally not be made until after the award has been issued to the parties.

* * *

e. Applicable laws, regulations, or practices of the parties may permit or even require exceptions to the above noted principles of privacy.

The Committee is of the opinion that, in most cases at least, an arbitrator-initiated inquiry as to whether the parties consent or object to publication of an award is considered by the parties to be, and in effect is, a request by the arbitrator for consent to publish. Because of this, and because the Code plainly states that an arbitrator's request to publish should normally not be made until after the award has been issued to the parties, such an inquiry cannot properly be initiated by the arbitrator at the hearing in the absence of unusual circumstances.

CPRG NOTE (June 1996): This opinion has been superseded by a 1985 amendment to Part 2-G-1-c of the Code, and the response in this opinion now requires qualification.

OPINION NO. 12

May 29, 1985

Subject: Arbitrator's Use of Assistants.

Issue: Part 2 H of the Code of Professional Responsibility reads in Paragraphs 62-64 as follows:

1. An arbitrator must not delegate any decision-making function to another person without consent of the parties.

a. *Without prior consent of the parties, an arbitrator may use the services of an assistant for research, clerical duties, or preliminary drafting under the direction of the arbitrator, which does not involve the delegation of any decision-making function.*

b. *If an arbitrator is unable, because of time limitations or other reasons, to handle all decision-making aspects of a case, it is not a violation of professional responsibility to suggest to the parties an allocation of responsibility between the arbitrator and an assistant or associate. The arbitrator must not exert pressure on the parties to accept such a suggestion.*

A member asks for an opinion on whether an arbitrator who has employed an assistant is required by the Code to obtain the parties' consent for any or all of these uses of that assistant.

A. The arbitrator hands the case file to the assistant with the instruction to write up an opinion and award (and there is no further discussion), when

- (1) the assistant has attended the hearing.
- (2) the assistant has not attended the hearing but a transcript is available.

B. The arbitrator hands the case file to the assistant with only the instruction as to which side is to prevail, when

- (1) the assistant has attended the hearing.
- (2) the assistant has not attended the hearing but a transcript is available.

C. The arbitrator hands the case file to the assistant and briefly discusses the case, giving the assistant an analysis of the issues and a statement as to how they are to be resolved, when

- (1) the assistant has attended the hearing.
- (2) the assistant has not attended the hearing but a transcript is available.

It is assumed in each of the examples that the arbitrator reviews the assistant's work and (1) if he approves the opinion and award, he signs and mails them to the

parties, and (2) if he disapproves, he directs the assistant to do the necessary rewriting.

Opinion:

We would like to emphasize, at the outset, that these questions cannot be answered by any simple rules. The key factor in every case is the arbitrator's own sense of ethics and responsibility. Even in situations covered by Example C, for instance, real questions may arise. Thus, it might be easy to discuss a case with an assistant, analyze the issues and state how they are to be resolved if the case is fairly simple and was recently heard and if the arbitrator has confidence in his recollection and his notes. But what if the case was heard several weeks before any discussion with the assistant could be held? Or suppose it presents complicated issues of fact and contract interpretation? Does not the process of examining the evidence and the writing itself help determine the outcome?

Other questions which might be asked: Does it make a difference whether there is or is not a transcript? Does it make a further difference whether or not the parties filed briefs? Is the assistant a neophyte or a person of experience, already hearing and deciding cases on his or her own? Or suppose the assistant, on studying the case, sees a point he thinks the arbitrator has overlooked and which might influence the reasoning and even the ultimate decision? If he brings the point to the arbitrator's attention is he influencing the decision? Should not the arbitrator want—and indeed instruct—the assistant to do just that if error is to be avoided? On the other hand, is there not a point at which an assistant's suggestions to correct errors and omissions become, in effect, an effort to influence the arbitrator's judgment?

We will not attempt, here, to give any general answers to these questions or to the many possible variations. Each arbitrator must answer them for him or herself. We do stress, however, that working effectively and efficiently with an assistant without, in effect, delegating the decision-making function can be extremely difficult and the arbitrator must always be on guard to see that he is fulfilling his responsibilities to the parties.

This having been said, we think that in the Example C situation, it is possible to use an assistant effectively and

properly without first seeking the parties' consent. The reason, simply, is that he (or she) has not delegated any decision-making function. He has decided, independently, how the dispute is to be resolved and the reasoning is his. Moreover, if the assistant's translation of the arbitrator's directives into opinion form is in any way defective, the arbitrator will make or direct the necessary corrections. If the "style" of the ultimate opinion is not that of the arbitrator, however, discerning parties may harbor doubts as to the extent of the assistant's participation in the decision-making process. Such doubts, even if unfounded, could be harmful to the arbitrator and to the process itself.

In Examples A and B, in the Committee's view, the arbitrator is required by the Code to obtain the parties' consent. We would, however, distinguish the situation where—as in some of the steel umpireships—the parties approve the hiring of assistants and, in fact, pay their salaries. In virtually all other circumstances the arbitrator would, in effect, be delegating the decision-making function. Even though a review process takes place, an assistant's initial draft of award and opinion could easily influence the arbitrator's decision in a manner not contemplated by the Code. This is particularly true where there is a long record and the assistant may be winnowing out facts which the arbitrator may not recall.

It is essential to remember that decision-making starts with fact finding. The parties rely on the arbitrator to determine what the facts are (credibility) and which ones are important (weight). He should not delegate those functions without their knowledge.

The Committee recognizes that there may be some long-standing arbitrator/assistant relationships in which less arbitrator direction is required. But as a matter of general practice, if an assistant is to be used for anything more than research, clerical duties, or preliminary drafting under the direction of the arbitrator (as in Example C), the parties are entitled to be told and to be asked for their consent.

The Board of Governors, at its recent meeting, asked the Committee on Professional Responsibility and

Grievances whether the findings in Opinion #12 on assistants also applied to interns.

The Committee has responded as follows:

The precepts of Opinion #12 apply to interns who perform the same functions as assistants as those functions are described in the Opinion.

(Reprinted 6/96)

OPINION NO. 13

June 7, 1986

Subject: Ex Parte Hearings.

Issue: Was the arbitrator's conduct, in the circumstances set forth below, in violation of any of these Code provisions:

Part 5-A-1:

A. General Principles

1. An arbitrator must provide a fair and adequate hearing which assures that both parties have sufficient opportunity to present their respective evidence and argument.

Part 5-C-1:

C. Ex Parte Hearings

1. In determining whether to conduct an ex parte hearing, an arbitrator must consider relevant legal, contractual, and other pertinent circumstances.

2. An arbitrator must be certain, before proceeding ex parte, that the party refusing or failing to attend the hearing has been given adequate notice of the time, place, and purposes of the hearing.

Circumstances: An Employer denied a grievance on grounds of timeliness. It informed the Union that if the matter was submitted to arbitration the Employer would only be prepared to test the timeliness of the grievance and would not be prepared to try the merits of the grievance.

The Union filed a demand with the American Arbitration Association, an arbitrator was selected by the parties and a hearing was scheduled and then postponed for three months. Two weeks before the hearing date the Union notified the Employer that it intended to deal with the merits of the grievance at the arbitration hearing. A copy of the letter was sent to the American Arbitration Association which took no action on the matter. Neither did the Employer.

When the arbitrator arrived at the hearing he had no prior knowledge that he would be confronted with a dispute over the scope of the hearing. The Union insisted that he rule that both the issue of timeliness and the issue on the merits be tried in a single hearing. The Employer insisted on its right to a hearing solely on the timeliness question and, depending on the outcome, a subsequent hearing on the merits. The Union argued that it had notified the Employer of its intention to deal with the merits, but the Employer responded that the Union had not "objected" to the Employer's position that it was prepared to try only the timeliness issue. The Employer further stated that it was unprepared to go forward in the hearing on the merits. Both parties insisted that the arbitrator rule on the scope of the hearing.

The arbitrator recessed the hearing for fifteen minutes and offered the Employer a two-hour adjournment in which to prepare its case on the merits or, in the alternative, a bifurcated hearing on condition that the Employer would pay the total cost of the second day of hearing which he estimated would amount to \$1000 for his services and expenses. The Employer refused both alternatives, claiming that it had a right to a bifurcated hearing because, prior to the hearing, the Union had never "objected" to its insistence on so proceeding; that the time was 4:30 p.m., that two hours was inadequate to prepare a case based on past practice; and that the agreement stated clearly that arbitration costs were to be shared equally by the parties.

The arbitrator, after hearing the timeliness question, ruled that he would hear the issue on the merits as an integral part of a single hearing.

Both parties participated fully in the hearing on the timeliness question. But, before the hearing on the merits, the Employer's attorney withdrew from the hearing, protesting that there was no way that he could prepare in two hours' time, and that the arbitrator's decision to continue *ex parte* was unfair to the Employer. Accordingly, only the Union's case on the merits was heard by the arbitrator.

The arbitrator subsequently rendered his award which was favorable to the Union both on the question of timeliness and on the merits.

Opinion:

It is clear that the arbitrator violated 5-A-1 of the Code by insisting that the Employer pay the full cost of his services and expenses for a second day of hearing as a condition for granting a bifurcated hearing. Instead of assuring "that both parties have sufficient opportunity to present their respective evidence and argument," the arbitrator was prepared to allow the Employer to have "a fair and adequate hearing" only if it was willing to renounce its right under the Agreement to have the costs of arbitration equally shared by the parties. He acted beyond his authority, in effect conditioning the right to a fair hearing on the waiver of a contractual right. In giving greater weight to the alleged economic consequences of an additional \$500 in expenses, the arbitrator failed to assure the preeminent values of "sufficient opportunity" by the Employer to present its "evidence and argument." Part 5-A-1 requires the arbitrator to assure to both parties "sufficient opportunity to present their respective evidence and argument." Faced with the conflicting positions of the parties, the arbitrator had the responsibility to assure to both the essential due process values guaranteed by the Code.

The imposition of a two-hour preparation limit by the arbitrator also violated the Code. Part 5-A-1 requires the arbitrator to assure to both parties sufficient opportunity to present their respective evidence and argument. The arbitrator was informed by the Employer at the hearing that it was unprepared to present its case on the merits, that it was 4:30 on a Friday afternoon, and that it was impossible in two hours to interview witnesses, read through the minutes of various meetings going over a period of six or seven years and pre-

pare its case on the merits. The arbitrator thought otherwise and thus failed to effectuate the mandate of 5-A-1.

Whether the Employer could have prepared its affirmative case in two hours is debatable, but the arbitrator could not be certain that his estimate of the time needed was correct and therefore he should have resolved the doubt in favor of a continuance. That was the only way he could have complied with his responsibility to assure a fair and adequate hearing.

Moreover, the arbitrator failed to respect the mandate of 5-A-1-c: "*An arbitrator should not intrude into a party's presentation so as to prevent that party from putting forward its case fairly and adequately.*" By imposing a two-hour limit, when the Employer had presented a plausible argument that preparation in two hours was not feasible, he did effectively prevent it from "putting forward its case fairly and adequately."

Finally, the arbitrator's justifications—that the Employer was unprepared because of its own fault and that it was unfair to impose an additional burden of cost on the Union—cannot be accepted if the result is to deny the paramount responsibility mandated by 5-A-1: assurance to both parties of a fair and adequate hearing. That guarantee should have been implemented by the arbitrator. As in the first question on how the costs of a second hearing day should be borne, the arbitrator had the duty to assure the integrity of the arbitration process. By imposing a two-hour limit, he failed in his duty.

The arbitrator, additionally, violated Part 5-C-1 and 2 of the Code by holding an ex parte hearing on the merits. The arbitrator did not have to hold the ex parte hearing just because the Employer elected to walk out. The failure of the Employer to remain did not relieve the arbitrator from his responsibility to follow 5-C-1 and 2. The Employer, from its perspective, had not been given "adequate notice of the purposes of the hearing." Since there was no joint submission of both issues, the Employer was not prepared to go forward on the merits, understanding that its sole responsibility was to prepare for the arbitrability issue, and that fact alone should have persuaded the arbitrator not to

have held an ex parte hearing. Under 5-C-1, the most "pertinent circumstance," which for the arbitrator should have been decisive, was that an ex parte hearing involved the risk of an unjust result, because the Employer was unprepared to try the case on the merits and probably could not prepare in two hours.

(Reprinted 6/96)

OPINION NO. 14

June 7, 1986

Subject: Advertising and Solicitation.

Issue: Was the arbitrator's conduct, in the circumstances set forth below, in violation of this Code provision?

Part 1-C-3

C. Responsibilities to the Profession

* * *

3. An arbitrator must not advertise or solicit arbitration assignments.

Circumstances: An arbitrator sent letters to labor and management representatives throughout the country stating:

I am writing to introduce myself to you and to advise you that I am interested in expanding my labor arbitration practice in your area. My experience in this field now spans over more than a decade, and I am anxious to communicate my availability to parties in diverse regions of America.

Enclosed for your perusal is my biographical sketch. If I can be of service to you, please let me know.

The biographical sketch referred to the arbitrator's membership in the Academy as well as the Academy offices he holds.

Opinion: An arbitrator is ordinarily required to give a biographical sketch to appointing agencies. He (or she) may also give this biography to any labor or management representative who requests it. These actions, however, are significantly different from sending unsolicited letters and biographical data to those who employ arbitrators.

The arbitrator's purpose in sending this material was to publicize his availability and to encourage parties to use his services. This is plainly solicitation in violation of Part 1-C-3 even though the letter nowhere expressly asks the parties to appoint him as an arbitrator. Solicitation can take many forms. But the letter in question with its implicit request for arbitration work does precisely what the no-solicitation rule was meant to prevent.

CPRG NOTE (June 1996): See also current Code Part 1-C-3-a(2), adopted May 30 1996, permitting change of services offered announcements (but without biographical sketches) and Part 1-C-3-d defining solicitation.

OPINION NO. 15

June 7, 1986

Subject: Ex Parte Consultation.

Issue: Would an arbitrator's affirmative response, in the circumstances set forth below, be in violation of the Membership Policy or Section 2-D-1 of the Code?

The Membership Policy includes these paragraphs:

The Academy deems it inconsistent with continued membership in the Academy for any member who has been admitted to membership since the adoption of the foregoing restriction to undertake thereafter to serve partisan interests as advocate or consultant for Labor or Management in labor-management relations or to become associated with or to become a member of a firm which performs such advocate or consultant work.

Because the foregoing restriction was not a condition for continued membership prior to April 20, 1976, it is the Academy's policy to exempt from the restriction members who were admitted prior thereto. . . .

Part 2-D-1 of the Code reads in part:

D. Personal Relationships with the Parties

1. An arbitrator must make every reasonable effort to conform to arrangements required by an administrative agency or mutually desired by the par-

ties regarding communications and personal relationships with the parties.

a. Only an "arm's-length" relationship may be acceptable to the parties in some arbitration arrangements or may be required by the rules of an administrative agency. The arbitrator should then have no contact of consequence with representatives of either party while handling a case without the other party's presence or consent.

b. In other situations, both parties may want communications and personal relationships to be less formal. It is then appropriate for the arbitrator to respond accordingly.

Circumstances: A state teachers association, with the cooperation of the American Arbitration Association's regional office, has sent a form letter to arbitrators on the AAA panel (Academy members and non-members) specifying that its representatives "would like the benefit of feedback from the arbitrator who conducted a hearing where he/she was the advocate." This critique would be solely at the request of the association's representative and would be a private one-on-one session. The association would pay a reasonable fee for such a service. The arbitrators are asked to respond on an enclosed form as to their willingness to participate in this professional in-service program.

Opinion: There is no doubt that an ex parte, paid-for session with a labor (or management) advocate, after the issuance of an arbitration award, constitutes consultation within the meaning of the Membership Policy and the Code. Such activity is barred to any Academy member. If the parties jointly sought the arbitrator's views after the case, however, the restriction would not apply.

(Reprinted 6/96)

OPINION NO. 16

October 29, 1987

Subject: Advertising and Solicitation.

Issue: Would an arbitrator's conduct, in the circumstances set forth below, violate the provisions of Code Part 1-C-3 which state:

C. Responsibilities to the Profession

* * *

3. An arbitrator must not advertise or solicit arbitration assignments.

Circumstances: The arbitrator, who is an attorney, has printed an announcement of the relocation of his law office. He sends the announcement to members of his local bar association, attorneys practicing labor law in his state, and to unions throughout the state, not all of whom have used his professional services.

The single-fold four-page announcement lists the new address and telephone number on its face, and states that the arbitrator is "Engaging Primarily in the Practice of Arbitration and Mediation/Conciliation."

The additional pages contain the arbitrator's "Vita" under headings of "Education," "Former Employment," "Professional Memberships" (including the Academy) and "Bar Membership"; a description of his experience in a variety of types of disputes; his "Availability" to accept disputes in many areas, using the "techniques of Arbitration, Expedited Arbitration, Mediation/Conciliation, Med/Arb. Fact Finding, Training Programs and Expert Witness; a recitation of his availability to labor unions, management groups, the courts, environmental groups, and others as "a teacher or consultant on the techniques of dispute resolution"; and a listing of his basic fee schedule.

Opinion: An arbitrator may appropriately distribute change-of-address announcements. In the circumstances described above, the arbitrator went beyond informing the labor-management community of a change of address. His purpose, clearly, was to publicize his availability and credentials and to encourage parties to use his services and thus he violated the terms of C-3-a: **"An arbitrator must not advertise or solicit arbitration assignments."**

The arbitrator's status as a lawyer has no bearing on the propriety of his actions as an arbitrator under the Code. Neither state nor federal codes of professional responsibility for attorneys supersede the Code adopted by the Academy, American Arbitration Association and Federal Mediation and Conciliation Service for arbi-

trators. The scope of the Code, as set forth in the Preamble, extends to advisory arbitration, impasse resolution panels, arbitration prescribed by statutes, fact finding, and other special procedures. The word "arbitrator," as used in the Code, is intended to apply to "any impartial person, irrespective of specific title, who serves in a labor management dispute procedure in which there is conferred authority to decide issues or to make formal recommendations."

Accordingly, an arbitrator who sends the announcement described above would be in violation of the Code.

CPRG NOTE (June 1996): See also Opinion 21 regarding limitations on arbitrators, subject to the Code, advertising their availability as mediators.

OPINION NO. 17

May 29, 1988

Subject: Arbitrator-Mentor Soliciting for His Intern-Apprentice.

Code Provisions: Part 1-C-3: "An arbitrator must not . . . solicit arbitration assignments."

Facts: An arbitrator has an intern who has worked for him for several years. They share office space. The mentor pays all office expenses and the intern reimburses her mentor by paying him 10 percent of the fees she generates from her own arbitration practice. The mentor, in an attempt to help his intern gain acceptability, wishes to send the following letter to parties for whom he had arbitrated in the past:

I am writing to introduce my intern to you and to advise you that she is interested in expanding her labor arbitration practice in your area. Her experience in this field now spans several years and over one hundred cases as my assistant. She is anxious to communicate her availability to parties in diverse regions of America.

Enclosed for your perusal is her biographical sketch. If she can be of service to you, please contact her immediately.

The intern's biographical sketch refers to her mentor's Academy membership and arbitration experience.

Opinion:

Can a mentor-arbitrator solicit work for his intern without violating the Code's no-solicitation rule? We believe that the response must depend largely on the facts of the particular case.

The purpose of the rule in Part 1-C-3 is to prohibit any kind of direct solicitation by an arbitrator. However, the Code draftsmen were no doubt focusing on the arbitrator who solicits in his own behalf and probably never considered the kind of situation presented here.

Any reading of the no-solicitation rules should be tempered by common sense which would take into consideration the interest of the Academy and the parties in the training of new arbitrators by experienced well-accepted arbitrators. Any such mentor who works successfully with an intern for several years and who has confidence in the intern's ability is certain to help him/her with their career. That is implicit in their relationship. This help often involves recommending the intern to parties who are familiar with the mentor and who have a current work relationship with him. Under such circumstances there may be nothing improper in the mentor recommendation. One would have to consider such factors as the manner in which the parties were contacted, the mentor's connection to the parties, and the nature of the recommendation. Thus, the no-solicitation rule does not necessarily bar any and all instances of mentor sponsorship.

We find, however, that the letter in this case would be a Code violation (1) because the mentor apparently intended to send a letter to many parties with whom he had no current work relationship, (2) because the intern's biographical sketch referred to the mentor's Academy membership and arbitration experience, and (3) because the mentor had a financial interest, however small, in his intern's arbitration practice.

CPRG NOTE (June 1996): Pursuant to Part 1-C-3-a(2) and c, adopted May 30, 1996, it would no longer be a violation for the letter to be sent to parties with whom the mentor had no current work relationship or for the intern's biographical sketch to refer to the mentor's Academy membership.

OPINION NO. 18

May 29, 1988

Subject: Code Provision 1-C-3: "An Arbitrator Must Not Advertise or Solicit Arbitration Assignments."

Question: Would an arbitrator who participates in the actions or activities set forth below be in violation of this Code provision?

Opinion:	Activity	Code Violation
	1. Name in NAA Directory, on NAA letterheads when used for official business on Chronicle masthead, and on NAA programs.	No
	2. Reference on one's own letterhead to membership in the NAA or on panels of AAA, FMCS, and other panels.	No*
	3. Name and NAA identification on announcements and programs of AAA, state, federal, and city agencies, bar associations, and universities and other privately sponsored educational and training conferences concerning the arbitration process.	No
	4. Participation (as speaker) in management, union, educational, or privately sponsored training conferences concerning the arbitration process. This does not refer to consulting with a labor or management organization with regard to the merit of specific pending cases to be possibly presented to another arbitrator which is covered by the membership policy.	No
	5. Name and NAA identification on articles, books, and advertisements of same.	No

Opinion:	Activity	Code Violation
	6. Factual listings in professional association publications, reference books, Who's Who, and dispute resolution directories.*	No
	7. Attendance at a joint meeting of management and union representatives or attorneys by whom the arbitrator is being expressly considered for arbitration appointments.	No
	8. In the absence of the parties' initial mutual agreement to such meetings, attendance at separate meetings of employers, unions, or employer or union attorneys by whom the arbitrator is being expressly considered for arbitration assignments. (See also Opinion No. 5.)	Yes
	9. Arbitral identification in purchased ads or tables for testimonial dinners or tributes.	Yes
	10. Purchased listings in publications such as Yellow Pages.	No*
	11. Distributing business cards, except upon request, to advocates and potential clients.	Yes
	12. Sending change of address announcements to persons other than those with whom the arbitrator has worked.	No*
	13. Sending a simple announcement that one has retired from a profession (academic, law) and plans to devote full (instead of part) time to arbitration; such announcements to go to the appointing agencies and to persons with whom the arbitrator has worked.	No

Opinion:	Activity	Code Violation
	14. Entertaining parties or advocates in order to advertise or solicit arbitration assignments.	Yes

* The responses to activity numbers 2, 10 and 12 have been changed from "Yes" in the original opinion to "No" and the "No" response to activity number 6 has been expanded to include "dispute resolution directories" (whether or not subject to payment of a listing fee), consistent with Part 1-C-3-a(2) and c, adopted May 30, 1996.

OPINION NO. 19

May 28, 1989

Subject: Advertising and Solicitation.

Issue: Would an arbitrator's conduct, in the circumstances set forth below, violate the provisions of Code Part 1-C-3 which state:

C. Responsibilities to the Profession

* * *

3. An arbitrator must not advertise or solicit arbitration assignments.

Circumstances: The arbitrator, who is a professor, had for many years used his office at the University for all mail regarding his arbitration practice. When he retired, he continued to maintain a university office but decided to conduct his arbitration practice out of his home. At subsequent hearings, he had to advise the parties of his new arbitration address. Instead of getting business cards for this purpose, he purchased ballpoint pens imprinted with his name and address. During all subsequent hearings he handed a pen to each of the parties' representatives with instructions to send their post-hearing briefs or letters to him at the address listed on the pen. He also handed the pens to others present at the hearing as souvenirs.

Opinion: There is nothing improper about an arbitrator handing a business card to the parties' representatives at a

hearing.¹ Subsequent communications may be necessary and the parties' representatives have an obvious interest in learning or being reminded of the arbitrator's address. The ballpoint pens in question obviously conveyed this same information. But they also constituted a useful writing tool which, to the extent it was thereafter used, would serve as a continuing reminder of the arbitrator's availability. These characteristics convert the pens into a form of advertising or solicitation prohibited by 1-C-3. Although that may not have been the arbitrator's intention, it is the necessary effect of his actions and, accordingly, this distribution is barred under the Code.

(Reprinted 6/96)

OPINION NO. 20

October 27, 1989

- Subject:** Correction of Evident Errors in an Arbitration Award.
- Issue:** Can and should an arbitrator correct evident clerical mistakes or computational errors in an award upon request by one party or on the arbitrator's own initiative?
- Code Provisions:** Part 6-D-1: "No clarification or interpretation of an award is permissible without the consent of both parties."
- Circumstances:** An arbitrator awards specific sums of back pay to designated employees as remedy for failure to assign them to particular overtime work and rejects the claims of certain other named employees. After the award issues, the Union informs the arbitrator that the award mistakenly identifies one of the employees entitled to back pay and that the amount of back pay awarded to another employee was incorrect due to an arithmetic miscalculation by the arbitrator. In both instances the cited errors are evident from the undisputed facts of the grievance set forth in the opinion accompanying the award. The Union asks for a corrected award. After determining that these errors were inadvertently made

¹But see Opinion No. 18 with respect to the general distribution of business cards.

in the award, the arbitrator contacts the company, which says the award is final and binding and does not consent to the arbitrator issuing a corrected award. Alternatively, the arbitrator on his or her own initiative discovers these errors without hearing from either party.

Opinion:

In these circumstances, correction of the identity of one of the employees entitled to back pay and of the arithmetic error in calculation of the back pay awarded, or other corrections of similar evident clerical mistakes or computational errors, would not constitute "clarification or interpretation of an award" within the meaning of Part 6-D-1.

The parties expect that the award they receive reflects the true intentions of the arbitrator. Where obvious clerical or computational mistakes have been made, they should be subject to correction. That kind of correction is not really "clarification or interpretation" but rather an attempt to rectify the arbitrator's carelessness in identifying grievants, making arithmetic calculations, or proofreading the typewritten award. To permit such obvious errors to be binding on the parties would impose unfair burdens on them, perhaps prompting court suits, and would be detrimental to the arbitration process. Of course, the arbitrator should insure each party the right to be heard before any such correction is made.

These observations are consistent with both common law and statutory law. There is general recognition that the common law rule of *functus officio* does not bar correction of clerical mistakes or obvious computational errors. Some state statutes, based on the Uniform Arbitration Act, also permit such corrections to be made on application of a party or by submission to the arbitrator by a court to whom a party has made such application. Such statutes speak of correcting "an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award."

Therefore, such corrections can and should be made by an arbitrator at the request of one party or on the arbitrator's own initiative provided that, in either event,

the parties are given an opportunity to express their views before any correction is made.

(Reprinted 6/96)

OPINION NO. 21

May 26, 1991

- Subject:** Advertising and Solicitation.
- Issue:** Would an arbitrator's action, as described below, violate Code Provision 1-C-3, which states: "**An arbitrator must not advertise or solicit arbitration assignments.**"
- Circumstances:** A national corporation has subsidiaries in several states. Each subsidiary negotiates contracts with one or more unions containing provisions for grievance arbitration. None has ever used the services of a private mediator. An arbitrator sends letters to the person in charge of arbitration at each of the subsidiaries and the unions with which it deals offering his or her services as a mediator in resolving negotiation or grievance impasses. The letterhead on the stationery used describes the writer as a mediator. The letters specifically describe the function of a mediator as not being that of an arbitrator who judges the merits of each party's position. An extensive Curriculum Vitae is enclosed. It describes briefly the writer's dispute resolution experience. It also lists, however, at much greater length the writer's extensive experience as an arbitrator, with a long list of companies and unions as well as a number of publications and speeches dealing with labor arbitration. Among the numerous professional societies listed are the National Academy of Arbitrators, the American Arbitration Association, SPIDR and SFLRP.
- Opinion:** The Code deals only with actions of arbitrators. The preamble explicitly states that the term arbitrator is intended to apply only to a person who serves "in a labor-management dispute procedure in which there is conferred authority to decide issues or to make formal recommendations." Stated negatively, the preamble states that the Code is not designed to apply to mediation or conciliation or to any other procedures in which the third party is not authorized in advance to make decisions or recommendations. Since Part

1-C-3 of the Code prohibits only advertisement or solicitation of arbitration assignments, it does not prohibit solicitation of appointments as a mediator. Standards for advertising and the solicitation of such work are established by other bodies such as SPIDR. The mere fact that a person is an arbitrator, as that term is defined in the Code, does not bring that person's simple solicitation of mediation work within the scope of Part 1-C-3.

In certain contexts, however, solicitation of appointment as a mediator may constitute a violation of the Code. Solicitation of arbitration assignments need not be explicit. (See Opinions Nos. 4, 16, 18, and 19.) Mediation and arbitration are alternative and sometimes successive methods of dispute resolution and many mediators also serve as arbitrators. Accordingly, if under all the circumstances it is reasonable to conclude that a communication nominally seeking appointment only as a mediator constitutes an indirect suggestion of the availability of the author for arbitration assignments, there would be a violation. Among others, the factors to be considered are 1) whether the persons to whom the solicitation is addressed have the authority to nominate or suggest the appointment of arbitrators, 2) whether there is any evidence that they have used or are likely to use mediation, and 3) whether the author of the solicitation describes primarily experience as an arbitrator or other evidence of arbitration skills in order to demonstrate his or her qualifications. In the hypothetical fact situation described above each of those factors is present and the letter would constitute a violation of provision 1-C-3 of the Code.

(Reprinted 6/96)

OPINION NO. 22

May 26, 1991

Subject: Duty to Disclose.

Issue: Would the arbitrator's conduct, in the circumstances set forth below, be in violation of any of these Code provisions: Part 2-B.3, 2-B.4, 2-B.5; Part 2-D.1 and 2-D.1.a.

B. Required Disclosures

* * *

3. . . .

Prior to acceptance of an appointment, an arbitrator must disclose to the parties or to the administrative agency involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this section, which might reasonably raise a question as to the arbitrator's impartiality.

* * *

4. If the circumstances requiring disclosure are not known to the arbitrator prior to acceptance of appointment, disclosure must be made when such circumstances become known to the arbitrator.

5. The burden of disclosure rests on the arbitrator. After appropriate disclosure, the arbitrator may serve if both parties so desire. If the arbitrator believes or perceives that there is a clear conflict of interest, he or she should withdraw, irrespective of the expressed desires of the parties.

* * *

D. Personal Relationships with the Parties

1. An arbitrator must make every reasonable effort to conform to arrangements required by an administrative agency or mutually desired by the parties regarding communications and personal relationships with the parties.

a. Only an arm's-length relationship may be acceptable to the parties in some arbitration arrangements or may be required by the rules of an administrative agency. The arbitrator should then have no contact of consequence with representatives of either party while handling a case without the other party's presence or consent.

Circumstances: An individual was appointed by one of the administrative agencies as an ad hoc arbitrator to hear a discharge case in which the parties were an Employer and Union A. Before and during the pendency of the discharge matter, the arbitrator regularly served as an

expedited arbitrator in cases between this same Employer and Union B.

The biographical material provided by the arbitrator to the administrative agency and by the agency to Union A did not refer to the arbitrator's position as a regular expedited arbitrator for the Employer and Union B. Nor did the arbitrator disclose this position to Union A at any time.

After the arbitration hearing and while the matter was still pending, the arbitrator received a telephone call from a clerk in the office of the Employer's Director of Labor Relations asking whether the arbitrator could meet with the Director on the next Friday (when an expedited hearing for the Employer and Union B would be conducted). The arbitrator asked what the meeting was about but the clerk did not know.

A meeting was held on the following Friday. Present were the Labor Relations Director, another representative of management, and the arbitrator. The arbitrator was told that he was under consideration for a position as an arbitrator under the regular arbitration procedure governing non-expedited grievances between the Employer and Union B and asked if he was interested in being considered and available to serve. The remuneration for the arbitration work involved was said to run at a level of up to \$40,000 per year. The arbitrator replied that he would give the matter consideration and the meeting ended without any firm commitment having been made. The arbitrator did not disclose this discussion to Union A.

Approximately two weeks after this meeting, the arbitrator issued a decision upholding the discharge of the grievant involved in the case between the Employer and Union A. He accepted the regular assignment for the Employer and Union B subsequently.

Opinion:

Previous or current service as a neutral arbitrator for a particular employer and/or union is not a relationship requiring disclosure under the Code. Absent some personal relationship or other special circumstance mandating disclosure, such service is not a "circumstance . . . which might reasonably raise a question as to the arbitrator's impartiality."

On the other hand, the arbitrator's meeting with Employer representatives to discuss an opening in a well-paid, regular, if part-time, position which entailed hearing and deciding disputes between that Employer and one Union, at a time when the arbitrator had under advisement a dispute between the same Employer and another Union, was a "circumstance" of the kind alluded to in Part 2-B.3 (marginal paragraph 35). It "might reasonably raise a question as to the arbitrator's impartiality," whether or not the offer of employment was accepted. Marginal paragraph 35 refers, of course, to disclosures prior to acceptance of an appointment. However, Part 2-B.4 (marginal paragraph 37) extends the same disclosure requirement to circumstances which become known to the arbitrator after acceptance of appointment.

Parties who regularly participate in *ad hoc* arbitration with a particular arbitrator often ask the arbitrator about future hearing dates, either in the course of an arbitration hearing or after that hearing has been concluded but before the decision has been issued. Such inquiries are usually made on behalf of both parties, however. While individual circumstances might dictate a contrary result, such inquiries about *ad hoc* hearing dates are not of sufficient consequence to constitute a "circumstance . . . which might reasonably raise a question as to the arbitrator's impartiality" and, hence, need not be disclosed by the arbitrator.

Given the nature of the employment opportunity involved herein, however, an outside party, such as Union A here, may well feel that the Employer who tenders information about retaining the arbitrator for very substantial arbitration work in the future is seeking to curry favor with him. It is a short step from there to a suspicion that the arbitrator's impartiality in deciding the pending case between the same Employer and Union A may, consciously or unconsciously, be compromised by the prospect of significant future employment with the Employer and another Union. It is thus a "circumstance . . . which might reasonably raise a question as to the arbitrator's impartiality."

As to Part 2-D.1 and 1.a, the arbitrator's innocence concerning the intended purpose of the meeting with the Employer representatives, together with the casual

"drop-in-while-you're-in-the-building" nature of the gathering, saves the arbitrator from a violation of these provisions.

See also advisory Opinion No. 5 and Advisory Opinion No. 18, paragraph 8.

CPRG NOTE (June 1996): Laws requiring disclosures in applicable jurisdictions also should be consulted.

APPENDIX E

ANNUAL PROCEEDINGS

Date	Annual Meeting Number	Title	Editor
1954 Cumulative	1st to 7th	The Profession of Labor Arbitration	J. McKelvey
1955	8th	Arbitration Today	J. McKelvey
1956	9th	Management Rights and the Arbitration Process	J. McKelvey
1957	10th	Critical Issues in Labor Arbitration	J. McKelvey
1958	11th	The Arbitrator and the Parties	J. McKelvey
1959	12th	Arbitration and the Law	J. McKelvey
1960	13th	Challenges to Arbitration	J. McKelvey
1961	14th	Arbitration and Public Policy	S. Pollard
1962	15th	Collective Bargaining and the Arbitrator's Role	M. Kahn
1963	16th	Labor Arbitration and Industrial Change	M. Kahn
1964	17th	Labor Arbitration: Perspectives and Problems	M. Kahn
1965	18th	Proceedings of the National Academy of Arbitrators	D. Jones
1966	19th	Problems of Proof in Arbitration	D. Jones
1967	20th	The Arbitrator, the NLRB, and the Courts	D. Jones

Date	Annual Meeting Number	Title	Editor
1968	21st	Developments in American and Foreign Arbitration	C. Rehmus
1969	22nd	Arbitration and Social Change	G. Somers
1970	23rd	Arbitration and the Expanding Role of Neutrals	Somers & Dennis
1971	24th	Arbitration and the Public Interest	Somers & Dennis
1972	25th	Labor Arbitration at the Quarter-Century	Dennis & Somers
1973	26th	Arbitration of Interest Disputes	Dennis & Somers
1974	27th	Arbitration—1974	Dennis & Somers
1975	28th	Arbitration—1975	Dennis & Somers
1976	29th	Arbitration—1976	Dennis & Somers
1977	30th	Arbitration—1977	Dennis & Somers
1978	31st	Truth, Lie Detectors, and Other Problems in Labor Arbitration	Stern & Dennis
1979	32nd	Arbitration of Subcontracting and Wage Incentive Disputes	Stern & Dennis
1980	33rd	Decisional Thinking of Arbitrators and Judges	Stern & Dennis
1981	34th	Arbitration Issues for the 1980s	Stern & Dennis
1982	35th	Arbitration 1982: Conduct of the Hearing	Stern & Dennis
1983	36th	Arbitration: Promise and Performance	Stern & Dennis
1984	37th	Arbitration 1984: Absenteeism, Recent Law, Panels, and Published Decisions	W. Gershenfeld

Date	Annual Meeting Number	Title	Editor
1985	38th	Arbitration 1985: Law and Practice	W. Gershenfeld
1986	39th	Arbitration 1986: Current and Expanding Roles	W. Gershenfeld
1987	40th	Arbitration 1987: The Academy at Forty	G. Gruenberg
1988	41st	Arbitration 1988: Emerging Issues for the 1990s	G. Gruenberg
1989	42nd	Arbitration 1989: The Arbitrator's Discretion During and After the Hearing	G. Gruenberg
1990	43rd	Arbitration 1990: New Perspectives on Old Issues	G. Gruenberg
1991	44th	Arbitration 1991: The Changing Face of Arbitration in Theory and Practice	G. Gruenberg
1992	45th	Arbitration 1992: Improving Arbitral and Advocacy Skills	G. Gruenberg
1993	46th	Arbitration 1993: Arbitration and the Changing World of Work	G. Gruenberg
1994	47th	Arbitration 1994: Controversy and Continuity	G. Gruenberg
1995	48th	Arbitration 1995: New Challenges and Expanding Responsibilities	J. Najita
1996	49th	Arbitration 1996: At the Crossroads	J. Najita
1997	50th	Arbitration 1997: The Next 50 Years	J. Najita



APPENDIX F

NAA RESEARCH AND EDUCATION FOUNDATION OFFICERS AND DIRECTORS 1985-1996

<u>Officers</u>	<u>1985-1986</u>	<u>1986-1987</u>	<u>1987-1988</u>	<u>1988-1989</u>	<u>1989-1990</u>
President	Alex Elson	Alex Elson	Alex Elson	Alex Elson	Arnold M. Zack
Vice-President	Arnold M. Zack	Arnold M. Zack	Gladys Gershenfeld	Arnold M. Zack	John E. Dunsford
Secretary-Treasurer	Dallas L. Jones	Dallas L. Jones	Dallas L. Jones	Dallas L. Jones	Dallas L. Jones
<u>Directors</u>	John E. Dunsford Raymond Goez Margery F. Gootnick Gladys W. Gruenberg Theodore K. High Edgar A. Jones Jean T. McKelvey James C. Oldham Carlton J. Snow James L. Stern Rolf Valtin J.F.W. Weatherill	John E. Dunsford Gladys Gershenfeld Margery F. Gootnick Gladys W. Gruenberg Theodore K. High Edgar A. Jones Jean T. McKelvey James C. Oldham Carlton J. Snow James L. Stern Rolf Valtin J.F.W. Weatherill	John E. Dunsford Margery F. Gootnick Gladys W. Gruenberg Theodore K. High Edgar A. Jones Jean T. McKelvey James C. Oldham Carlton J. Snow James L. Stern Rolf Valtin J.F.W. Weatherill Arnold M. Zack	Peter DiLeone John E. Dunsford Gladys Gershenfeld Gladys W. Gruenberg Theodore K. High Edgar A. Jones Jean T. McKelvey James C. Oldham Carlton J. Snow James L. Stern Rolf Valtin J.F.W. Weatherill	Martin A. Cohen Peter DiLeone Alex Elson Gladys Gershenfeld Gladys W. Gruenberg Edgar A. Jones Joseph Loewenberg James C. Oldham Carlton J. Snow James L. Stern Rolf Valtin J.F.W. Weatherill

<u>Officers</u>	<u>1990-1991</u>	<u>1991-1992</u>	<u>1992-1993</u>	<u>1993-1994</u>	<u>1994-1995</u>
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Treasurer	Dana E. Eischen	Dana E. Eischen	Dana E. Eischen	Dana E. Eischen	Dana E. Eischen
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<u>Officers</u>	<u>1995-1996</u>
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Vice-President	Jack Stieber
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APPENDIX G

NATIONAL ACADEMY OF ARBITRATORS
ARCHIVES SUMMARY INDEX
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THE FIRST FIFTY YEARS