

**DECEMBER 2018 MINUTES
NATIONAL ACADEMY OF ARBITRATORS
RESEARCH AND EDUCATION FOUNDATION**

REF Committee Meeting
Conference Call Format

December 15, 2018
10 a.m. EST

Participating Members of the REF Board

Dick Fincher, President
Phil LaPorte, Vice President
Sharon Henderson Ellis, Vice President
Charles Fischbach
George Fleischli, Investment Chair
Susan Stewart, Nominations Chair
Sheila Mayberry, Silent Auction Co-chair
Ed Pereles
Mariann Schick, Silent Auction Co-chair
Andrew Strongin
Alan Symonette
Jeanne Vonhof

The Conference Call meeting was called to order at 10:07 a.m. by REF President Dick Fincher.

Update on REF Fund from Investment Committee

George Fleischli shared his perspective on expenditures from the REF fund and the impact this would have on the fund. George pointed out that the standard rule to preserve an endowment is to limit expenditures to 4% of the total fund per year and that it is not safe from a fiscal perspective to spend 8% of the total fund. The REF has total assets of approximately \$500,000 and a 4% annual expenditure would be \$20,000. George pointed out that the current expenditure commitments for this year total approximately \$40,000. He asked if the REF anticipated annual donations to the REF to be \$20,000 for this year?

Dick Fincher responded that the REF is not an endowment and that its purpose is support research and education efforts that pertain to arbitration on a cash flow basis. Historically the REF had been reactive in practice in waiting for research proposals. He believed that the REF should be more proactive in encouraging academics and practitioners to submit proposals on research and education topics that would benefit NAA members and the practice of arbitration.

Decision: none required.

New proposal for consideration

The REF had received a research proposal from Cornell to survey Fortune 1000 companies regarding their use of ADR in the workplace. The research proposal is being assigned to Susan Stewart and Phil LaPorte for review and a recommendation to the full REF Committee. The proposal requests funding in the amount of \$50,000, paid out over time.

No action required, as the proposal has already been referred to two REF reviewers

Ed Perles asked when the funds are actually distributed for approved proposals. The answer is that each proposal has a different funding schedule, and the distribution is at least once a year, upon receipt of a written update from the grantee.

Proposal to offer scholarships to attend NAA Annual Conference

The proposal is that law students and undergraduate students are eligible to have the cost of registration paid to attend the NAA Annual Conference. There is funding in the amount of \$11,000 for successful applications. The Bloch Committee has recommended that the NAA needs more members and greater visibility.

Sheila Mayberry raised the question of achieving greater visibility and increased membership is outside of the mission of the Research and Education Foundation. She expressed her opinion that these tasks should primarily be the responsibility of the NAA and not the REF. Alan Symonette offered his insight that providing scholarships to arbitration interns would fall within the educational component of the REF. He commented that offering a session for interns during the NAA meeting on the fundamentals of arbitration would be beneficial. Charles Fishbach commented that he had been in touch with numerous universities and interns could be identified through these contacts. Dick Fincher agreed that providing scholarships to interns would fall under the educational component of the NAA Research and Education Foundation (REF).

Jeanne Vonhof commented that she attended NAA meetings before she became a member and found that the NAA meetings were the most educational meeting she attended all year. She commented that the NAA meetings were wonderfully educational. She suggested that a 101 level workshop and being exposed to the basics of establishing and maintaining an arbitration practice would be valuable for interns.

Ed Perles, who served on the Bloch Committee, explained that the Committee believed that attending meetings would serve to develop arbitrators and encourage them to join the NAA. He commented that some Committee members favored scholarships over research. The question was raised as to why the REF and not the NAA pay for these scholarships to attend the NAA Annual Conference. He suggested that information about these scholarship opportunities be communicated to FMCS, LERA and the NAA regions.

A committee member commented that increasing the NAA's visibility was the path to increasing membership. He said that he is supervising seven (7) interns and that it would be premature, at this point in their development, to have them attend the NAA Annual Conference. Jeanne Vonhof observed that there was no consensus and that the issue should be tabled until the NAA meeting in Philadelphia. Alan Symonette agreed that there was no consensus and the issue of funding scholarships for interns to attend the Annual Meeting should be raised at the Board level. Susan Stewart offered that a simple solution would be for the Board to set a reduced rate or complimentary registration for interns to attend the NAA Annual Meeting.

Decision: Not to adopt the proposal and refer the concept of scholarships to the NAA BOG, as a valid idea.

Proposal to offer scholarships for international Labor Arbitrators and key administrators

Charles Fishbach commented that this was an excellent proposal that was mutually beneficial to developing relationships. Other members of the Committee agreed that the proposal allowed for a two-way street where international guests would learn about our arbitration system while we learned about theirs. It was properly moved and seconded that funding in the amount of \$18,000 be appropriated to support scholarships for International Labor Arbitrators and Key Administrators. The motion passed without a dissenting vote.

Decision: adopted as written for a maximum scholarship of \$3000 per person. The REF leadership will draft the final language and communicate the policy to the NAA membership and international ADR bodies. This policy will be reviewed after three years.

Proposal for Honorariums for Speakers for Annual Conference

The proposal was to offer to pay honorariums for speakers at the NAA annual conference. This payment has been done three (3) times in the past. The perception is that the NAA Annual Meeting needs to have “big hitters” on the program to attract people to attend the meeting. The discussion ensued where the amount would be capped at \$12,000 with the NAA Board of Governors responsible for the first \$5,000.

Jeanne Vonhof commented that the NAA Board covers the first \$5,000 in accordance with the policy outlined in the Executive Secretary Manual. The Annual Program Committee can ask the NAA Board for financial support for a speaker. The REF is agreeable and receptive to a request from the Annual Program Committee for financial support for speakers.

Dick Fincher observed that there was a general consensus that Program Chairs should go to the NAA Board of Governors to request funding for speakers for the first \$5,000 and the REF would entertain requests for funding to pay speakers that would exceed this amount.

Decision: not adopted as written. The REF is receptive to a request for such payments on an ad hoc basis from the annual conference leadership. The REF will be backup funder to the BOG.

Proposal to issue a RFP to support the NAA Janus Committee (State of the Profession)

Dan Neilson plans to develop a Request for Proposals (RFP) to be sent to universities regarding a research project on the state of the arbitration profession. This project would examine the level of arbitration activity with appointing agencies such as FMCS, AAA, NMB and public-sector agencies at the state level as well as permanent panels established by employers and unions. The project would define the universe of the public sector to include the federal sector as well as state and local governments. An area of inquiry would be the number of appointments versus the number of awards issued.

There was a consensus that the REF would be receptive to such a research project and that REF members would assist in developing the RFP to be sent to academic and research institutions.

Decision: adopted to issue a RFP to interested academics. Dan will be asked to draft the wording.

Proposal for funding Student Competitions in Arbitration Advocacy

REF Committee members mentioned universities such as Ohio State, Cornell, Rutgers, Wisconsin and Iowa as having participated in arbitration advocacy competitions like moot court competitions. Some schools have held such competitions using video while others have been in person. Some competitions have focused on mediation while others concentrated on arbitration. Some committee members raised questions as to the value of supporting such competitions to furthering the mission of the REF. Others suggested that the REF support and build on the current collaboration that exists among participating schools. One member pointed out that numerous colleges and universities are no longer offering courses in labor relations, labor law and labor arbitration. It was pointed out that the increase in interest in labor and employment issues was primarily employment and not labor. There still exists a need for a labor arbitration segment within the labor and employment area.

There was a consensus that an RFP should be issued to examine the level of activity for Labor Arbitration. Jeanne Vonhof agreed to work with Phil LaPorte on this project.

Decision: adopted as written. The REF will issue a RFP to interested academics and practitioners.

Proposal for funding a Writing Competition for Scholarship Awards

Alan Symonette commented that the College of Labor and Employment lawyers did not have good results from their recent writing competitions. He commented that the quality of the essays had decreased in spite of the fact that they have increased the amount paid for the winning essay. First place in the ABA's Labor and Employment Law Section essay competition was \$3,000. General topics such as the Family and Medical Leave Act (FMLA) and the Employment Retirement Income Security Act (ERISA) were mentioned.

Suggestions for reaching out to interested groups included Labor Professors, Labor Historians, the Labor and Employment Research Association Executive Board and the United Association for Labor Educators (UALE). Offering money to promote scholarship is always attractive to college and university personnel. It was suggested that MIT Professor Tom Kochan be invited to the next REF meeting to gain his input in promoting the goals of the REF. It was recommended that this discussion be deferred to Philadelphia as Tom Kochan is scheduled to be on the program in Philadelphia.

Decision: not adopted and defer to 2019 Annual Conference.

Proposal for funding research and policy development on Employment Arbitration

This is a proposal to issue a RFP for a collaboration of academics to create a "National Center for Policy and Practice in Employment Arbitration." In the past, there was a group founded in the 1990's including the NAA called "The Alliance" that offered training for employment neutrals. The primary funding came from the University of Pennsylvania and Cornell. There was a proposal from Cornell to "move the ball forward" on employment arbitration. The American Arbitration Association offered some training in this area as well as for Commercial Arbitration. The Due Process Protocol for the Arbitration of Statutory Claims was developed as a result of a collaborative effort among several groups. The practice of employment arbitration is growing. However, it is currently the Wild West as the standards of practice are primarily individual and standards are consistently inconsistent. The Alliance became defunct due to enrollment in their training classes dropping to a level that was not sustainable.

ArbitrationInfo.com has been a successful effort to provide a resource for journalists and others interested in gaining a better understanding of arbitration principles and standards of practice. This project benefited from sustained funding, a university affiliation and a permanent structure. There was a general consensus to support training efforts for employment arbitration. However, there was no formal commitment.

Decision: adopted as written. The REF will issue a RFP to interested academics and practitioners, including current grantees researching employment arbitration. This RFP could be similar to arbitrationinfo.com, a continuing REF funded project with an Advisory Board.

Ideas for future topics for Possible REF's

Police discipline cases

Legalization of Marijuana vs. Employer Policies Banning Drug Use

Understanding the current level of drug testing sophistication

How are Washington State and Colorado employers dealing with legal MJ use by their workers?

Safety and staffing issues for Fire Fighters and EMT

Decision: discuss these, and other ideas, at the 2019 annual conference

Update on 2019 REF Silent Auction from Co-chairs

Committee members recommended sending a request to NAA regional chairs to solicit donations for the silent auction in Philadelphia. REF members should also seek donations for items for the silent auction. Examples of items received so far include weekly rentals for properties in Maine and Colorado, a spring training rental in Arizona, jeep rides, and restaurant gift certificates. The suggested deadline for auction items to be listed in the catalog is April 1st.

A solicitation for donations to the REF Silent Auction should be sent to the REF Committee members, posted on the NAA web site and directly to NAA members on the listserv. The Silent Auction Committee should speak to the NAA Operations Office to ensure that the solicitation email is an official email from the NAA. A specific email to NAA Regional leaders requesting that they reach out to members in their region would be worthwhile.

Next Board meeting

The NAA Ops Center has agreed to allocate two hours, if needed, for our next REF meeting in Philadelphia.

Adjourn

The meeting was adjourned at 12:40 p.m. Eastern Standard Time.

Respectfully submitted,
Philip A. LaPorte, Vice President
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