

NATIONAL ACADEMY OF ARBITRATORS BOARD OF GOVERNORS

October 25-26, 2018
Austin, TX

BOG Meeting Minutes

President Ed Krinsky opened the BOG meeting by welcoming all to Austin and thanking them for their support and hard work during the first several months of his presidency.

On Motion by **VP William Marcotte**, seconded by **Governor Dick Fincher**, the BOG accepted the Committee Reports submitted prior to the FEC.

On motion by **Governor Jeanne Vonhof**, seconded by **Governor Randi Lowitt**, the BOG ratified the EC's approval of the 2018 FEC registration fee structure.

On motion by **VP Bill McKee**, seconded by **Governor Michelle Miller-Kotula**, the BOG ratified the EC's approval of intervention by the NAA through the Amicus Brief Committee in three cases before the Supreme Court of Canada, in which the Court is considering the nature and scope of judicial review of arbitration awards as addressed in *Dunsmuir*.

On motion by **VP Betsy Wesman**, seconded by **Governor Dan Zeiser**, the BOG ratified the EC's approval of a \$3000 (US) contribution to the Ontario Labor Management Arbitrators Association in support of legal efforts in the intervention in the Canadian cases.

The BOG noted its unanimous votes conducted pursuant to the Email Protocol since the 2018 Annual Meeting, to include approval of the contract for the 2020 Annual Meeting at the Grand Hyatt Denver (May 7-10, 2018) and the approval of active membership status for Martin Fitts under certain conditions.

Paula Knopf, representing the **Bloch Report Implementation Committee** and accompanied by Committee members **Arnold Zack** and **Dan Nielsen**, presented the results of the Committee's work. She emphasized that the BRIC report was agreed upon by all members of the Committee. She noted that the Report keeps what's good about the NAA and removes what's not good, while serving all stakeholders. She explained that the key features of the Report were as follows:

- Phase out the FEC but maintain the educational component and ability to meet together as members in the new 3-day spring meeting;
- Allow for more free time outside of the meeting so that attendees enjoy the meeting and the host city;
- Demand that the program be more creative;
- Suggest more training for newer arbitrators;

- Adopt new strategies for building stronger skill sets in dispute resolution methods and procedures;
- Focus on the diversity of the membership to include more diverse ages and social, cultural, and racial backgrounds;
- Encourage non-members to attend.

Knopf emphasized that the Report is a starting point, a template for NAA leadership. She reminded the BOG of its responsibility to make sure the recommendations of the Report are implemented.

Krinsky informed the BOG that he and **President-Elect Barry Winograd** are in agreement on the need to implement the report.

The BRIC Committee members and the BOG engaged in a discussion about certain provisions of the Report, including the recommendation that the fall BOG meeting be held in conjunction with Regional conferences and programs.

Prompted by Marcotte, the BOG also discussed the goal of uncoupling the Proceedings from the Annual Meeting so that Program Chairs can focus on securing speakers without the need for the speakers to prepare scholarly papers.

Governor Dick Fincher, also Chair of the REF, indicated that the REF is prepared to contribute to the goals of the report.

On motion by **VP Alan Symonette**, seconded by Lowitt, the BOG unanimously adopted the Report.

Executive Secretary-Treasurer Walt De Treux announced that attendance at the 2018 FEC was among the highest of recent FECs and the Academy expects to reach the desired break even mark financially.

De Treux reported the following membership/financial status:

600 Total Members (*September 2017 – 605 Total Members*)
Regular (446 paying Full Dues, 35 on 50% B Waivers¹) (*Sept. 2017 – 459*)
Standing (4 on 50% A1 Waivers; 105 on 100% A2 Waivers²)
(Sept. 2017 – 4 on A1; 97 on A2)
Honorary Life Members (10 with 100% Waivers). (*Same as Sept. 2017*)

¹ B Waiver pays 50% dues, 20 year member, 5 or fewer cases per year

² A1 Waiver pay 50% dues, will engage in other employment; A2 Waiver pay \$0 dues, will not engage in other employment

NAA Accounts: \$ 250,778.13 exclusive of Article IX and Board-Designated Funds)
September 2017 -- \$346,451.37

NAA Investment Account: \$1,654,132.96 (*September 2017 -- \$1,612,216*)

Legal Representation Fund Accounts: \$485,814.40 *Sept. 2017 - \$492,615.04*)

Research and Education Foundation Accounts: \$557,888.49
(Sept. 2017 - \$ 543,668.81)

De Treux presented the 2019 Proposed Budget. He discussed the goal of having the meetings pay for themselves, and the dues to cover the rest. He explained that the meeting goal should be accomplished when the NAA moves to one meeting in 2020. He expressed concern that the Chronicle and Proceedings are two big cost items not necessarily covered by dues. The move to an online Chronicle for half the members will reduce its costs. The contract with Bloomberg BNA for the Proceedings ends in 2021, and the Academy will consider options to reduce the distribution and cost of the Proceedings. Symonette requested a budget format that would compare the proposed year to the previous year. De Treux agreed to do so going forward.

On motion by Marcotte, seconded by Wesman, the BOG unanimously adopted the proposed budget.

De Treux explained that the BOG Policy Handbook has not been updated since 2002. The Handbook needs a full revision and will require input from various committees on the current practices and procedures. The goal is to have a revised handbook by the 2019 Annual Meeting.

De Treux advised that the ABA Leverage Program was extremely valuable in securing favorable terms for the Denver meeting. The BOG was amenable to continue using the ABA for future meetings. For 2021, the Academy will ask ABA Leverage to explore San Diego, Los Angeles, and Seattle.



2018 FEC Program Chair Amedeo Greco reported on the highlights of the program. Krinsky thanked him for his hard work and dedication to the program.

Nominating Committee Chair Richard Adelman announced the nominations for the 2019-2020 slate of Officer and Governors, as follows:

President-Elect --	Dan Nielsen
Vice-Presidents --	Alan Symonette, William McKee (2 nd one-year term) Paula Knopf, Homer LaRue (1 st one-year term)
Governors --	Sarah Garraty, Gordon Luborsky, Andrew Strongin, Jeanne Wood

McKee, **Program Chair for the 2019 Annual Meeting**, provided an update on the theme and certain specific sessions of the upcoming program.

Wesman, **Chair of the Committee on Intra-Organizational Grievance Policy and Procedure**, reported on the progress the Committee has made to date. The Committee is scheduled to meet at the FEC and will have more to report at the 2019 Annual Meeting.

Marcotte, **Chair of the Membership Standards Committee**, reported that the Committee will meet at the FEC. He noted that the landscape has changed for neutrals in the US and Canada, and the parties are seeking resolution of disputes through methods in addition to arbitration. The opportunity to write Awards is more limited, and the Academy may want to recognize appointments and mediations as well as arbitrations. He emphasized that the focus is on acceptability to the parties. He also noted that the admission under the alternative standard may want to consider “regional stars.” The Committee expects to issue a report at the 2019 Annual Meeting.

DALC Chair Josh Javits reported on his communications with FMCS Director Arthur Pearlstein regarding an email Pearlstein sent to FMCS arbitrators regarding the level of experience needed before they should indicate on their FMCS bios that they possess federal sector experience. Javits explained that Pearlstein indicated that the FMCS is bound to investigate complaints against arbitrators, particularly those involving possible ethical violations. Pearlstein emphasized that his concerns are not with NAA members. Javits and McKee intend to meet with Pearlstein at the FEC to discuss training opportunities for NAA members and newer arbitrators who want to serve on federal sector cases. The BOG expressed concern that the FMCS email will discourage newer arbitrators from seeking work in the federal sector. Winograd expressed concern that the FMCS may not be including the Academy in complaints invoking violations of the Code. Krinsky and Winograd will join in the meeting with Pearlstein.

Membership Committee Chair Sarah Garraty, with her Committee members, reported that the Committee approved 5 applicants for admission, including Lisa Charles, Doyle O’Connor, Keith Greenberg, Augustus Richardson, and Richard Bales (under the alternative standard). Garraty explained that Bales has extensive experience in labor management relations as a professor and author. He also handles approximately 2 or 3 arbitrations per year that involve significant and complex issues. She opined that his arbitration caseload would be broader if his other obligations allowed him more time to arbitrate. On motion by Fincher, seconded by **Governor**

Randi Abramsky, the BOG unanimously accepted the Committee's recommendation to admit the applicants to membership.

Governor Steve Befort, Chair of the Amicus Brief Committee, reported that the Committee filed briefs in three cases, including the intervention in the Canadian cases regarding *Dunsmuir*, the *Epic Systems* case in support of the NLRB position that class action waivers are invalid, and the *New Prime* case regarding an arbitrability issue concerning the alleged misclassification of truck drivers as independent contractors. Winograd added that the *New Prime* case, if decided in favor of the Employer, would send a message to trucking companies that drivers can be classified as independent contractors and can be forced to sign an arbitration agreement with a class action waiver. He noted that questions from the Supreme Court Justices at oral argument indicated that the Employer position may not prevail.

International Studies Committee Chair Chris Albertyn made a presentation to the BOG on the Canadian efforts to allow Canadian NAA arbitrators to handle labor disputes under the new United States Mexico Canada trade agreement (USMCA). Albertyn and union and management advocates met with Canadian Ministry of Labor officials to educate them on the expertise of NAA arbitrators and suggest that they are best qualified to resolve labor disputes under the USMCA and other trade agreements. Albertyn suggested that the Academy pursue the same strategy in the US. He proposed that a small delegation of US NAA members explore the issue with the goal of meeting with US government officials in conjunction with labor and management advocates. After discussion, the BOG agreed to have Javits, McKee, Winograd, Fincher, and Zack begin discussions on how to identify and approach the appropriate officials. McKee and Symonette noted the AAA's involvement in international dispute resolution make the AAA a resource for the proposed discussions. **Governor Phil LaPorte** suggested the delegation contact **Member John Morneau** who resolved disputes under NAFTA.

Fincher gave an update on the REF projects to date and solicited ideas for future research topics.

CPRG Chair Susan Stewart reported minimal activity for the CPRG in the last few months. She reported on a member who was subject to highly negative attacks on Internet sites in response to a decision. She noted that the member was consulting a professional who can minimize negative search results. Stewart suggested that the Academy consider an FEC session that includes professional advice when confronting such a situation. **2019 FEC Program Chair Vonhof** expressed interest in hosting such a session in Savannah.

Stewart explained the NAA intervention in the Supreme Court of Canada cases regarding the standard of review of arbitration awards. She reported that intervention was granted. If the NAA and the other arbitration organizations are permitted to argue orally, such argument will take place December 4-6, 2018.

Under New Business, McKee suggested that members hand out flyers/brochures at hearings to promote the 2019 Annual Meeting. **Past President Kathy Miller** added that AAA and FMCS offices can be asked to stock the promotional material in their offices.

At the request of Amedeo Greco, De Treux raised the issue of whether the Academy should provide FEC program material to all members, including those who did not attend the meeting. After discussion, a majority of the BOG did not favor such distribution at this time, although they consented to considering the issue at a later date.

On motion by Marcotte, seconded by Befort, the BOG unanimously agreed to adjourn.