

MANDATORY ARBITRATION

Introductory Comments

Objectives

The Committee, from its inception, was duly aware of the formidability of its undertaking in the light of the novelty to the Illinois bar of the concept as well as the procedure for the conduct of nonbinding court-annexed arbitration as a method for dispute resolution. It finds, even at this date, approximately one year after the effective date of the enabling legislation, after the publication of numerous articles, the consideration of proposed rules by three major bar associations and public hearings, that the vast majority of the Illinois bar is unaware of the existence of this act and the imminence of this procedure as an integral part of the State judicial system.

The clarity, the reasonableness and the fairness of the rules to be recommended were a foremost consideration by the Committee to address both the fact of the foregoing novelty as well as the apprehension usually attendant to the introduction of a new procedure to be learned and put into practice. Equally if not more so, was the Committee dedicated to achieving a product worthy of acceptance and promulgation by this court.

At the time of our appointment, there were in effect in approximately 16 jurisdictions rules for the conduct of mandatory arbitration programs, any set of which conceivably could have served as a viable model for adoption and use in Illinois. However, the focus of our effort in relation to a set of specific rules was to recommend that which would induce support from all affected sectors of the bar and the public, and which would manifest itself as a feasible vehicle for an early economical and fair resolution of monetary disputes.

Toward these ends, it was our intention in the conduct and course of deliberations to obtain a product refined from the use and experience of the full panoply of models in existence and that of Pennsylvania in particular.

Background and Sources

When the Committee began its deliberations, there were among its members four judges who had previously served on a Judicial Conference Study Committee, whose recommendations served as the basis for the present mandatory Arbitration Act. These four judges, as a result of the prior study had available to them for use in the work of this Committee a considerable bank of knowledge of existing arbitration systems. A national conference on mandatory arbitration sponsored by the National Institute for Dispute Resolution held in Washington, D.C., May 29-31, 1985, provided the chair of this Committee with a further opportunity to discuss the development of these programs with representatives of other jurisdictions.

To enable those members of this Committee who had not served on the Study Committee to become equally informed, a visit was arranged for them to attend and observe the operation of the mandatory arbitration program at Philadelphia, Pennsylvania, and to meet with judicial and administrative personnel so engaged. For two days-December 9 and 10, 1985-several members of the Committee, State Senator Arthur Berman and four members of the Chicago bar, knowledgeable in the field of voluntary arbitration, attended actual hearings being conducted at the Arbitration Center and meetings with supervisory judges and administrators. On December 10 a round-table discussion was arranged for our contingent with 14 practitioners of Philadelphia, representing plaintiff and defense bars, insurance carriers and the metropolitan transit system. Without

exception those members of the Committee who had not previously been knowledgeable of this process, as well as the other attendees from Illinois, were imbued with enthusiasm for the prospect of a similar program available to Illinois and immensely impressed with the apparent effectiveness as well as the wide-scale acceptance of this procedure in Philadelphia.

In addition to the Philadelphia on-site study by members of this Committee, its chair and member Judge Harris Agnew, accompanied by staff attorney James Woodward, on a later occasion visited four other less populous counties of Pennsylvania to study the use and operation of their mandatory arbitration programs. These visits provided models of local rules and the opportunity to interview judges and practitioners involved as well as to learn their evaluations of the effectiveness of rules in place.

The Committee's chair met with the supervising judge, the administrator and attorney practitioners in the arbitration program at Passaic County, New Jersey, and then repeated this scenario at Pittsburgh. On a later occasion the chair visited with the administrator of the King County (Seattle), Washington, arbitration program and one of its leading practitioners to discuss the effectiveness of their local and statewide rules.

It was uniformly reported to this Committee, from those thoroughly experienced with this procedure, that a full hearing necessary to arrive at award could be achieved in less than three hours. Reports from several jurisdictions were that a full hearing usually required even less than two hours to completion. It was feasible to expect completion of a three-day, 12-person jury trial within that time via the arbitration procedure under similar rules.

The fairness of the rules governing these hearings is evidenced by the high rate of acceptance by litigants, the steady increase in the number of jurisdictions initiating these programs, and their proliferation among judicial districts within a jurisdiction once it has been initiated. The reliability and durability of existing programs are further evidenced by the relatively few amendments to the rules that have been adopted since their inception. When there has been amendment, it usually consisted of an increase in the monetary limit for arbitrability, which in itself attests to the acknowledgment of the effectiveness of their rules and this mechanism for dispute resolution.

By late summer of 1986, the Committee had reached a consensus for proposed rules for consideration by the general bar and interested members of the private and public sectors. A draft of these proposed rules was widely distributed and responses invited. The Illinois State Bar Association, the Chicago Bar Association and the Chicago Council of Lawyers were specially requested to invite appropriate committees of those associations to consider these rules and formulate responses. The Committee arranged and conducted two hearings, one in Chicago and the other in Springfield. At those hearings, representatives of these bar groups, of the judiciary, and of major insurance carrier trade associations representing the membership of several hundred companies appeared to present their views relative to the draft.

Review of this draft by respected authorities among the judiciary in Philadelphia who served in supervisory positions relative to their arbitrary programs was supportive and complimentary.

Altogether, the review of the proposed draft and the responses received were highly supportive for its acceptance in that form. Nevertheless, the Committee saw fit to consider incorporating, in the rules, recommendations that appeared to have merit and to seek to clarify those provisions that seemed to elicit misunderstanding or confusion.

The last major inquiry by the Committee consisted of a meeting on December 12 sponsored by the National Institute for Dispute Resolution, with eight distinguished attorneys selected by the Committee, from out of State, and well informed in the conduct of mandatory arbitration

proceedings in their jurisdictions. The inquiry at the meeting centered on the conduct of the hearing itself in an effort to refine the rules to the extent and in such form as would provide the broadest acceptance by all affected thereby.

Not the least of the Committee's efforts were the many meetings attended and the hundreds of hours of discussion and deliberation devoted to this undertaking.

As knowledgeable on this subject, if not more so, than any member of the Committee, Supreme Court Justice Howard C. Ryan, Liaison to the Committee, shared his knowledge and wisdom with us throughout the course of our deliberations. Constantly etched in our minds were his astute recommendations that we pay particular heed to the effectiveness of the Pennsylvania rules in the use of general guideline principles, leaving to the circuits the development of more detailed guidelines for local needs.

In aid of the objectives stated and from the foregoing sources, the following recommendations evolved.