

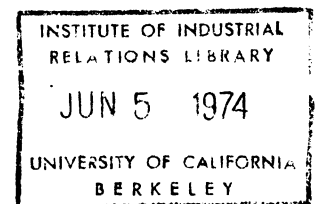
TRAINING NEUTRALS FOR DISPUTE SETTLEMENT

A program for 1972-73 funded by the U. S. Department of Labor, Division of Public Employee Labor Relations and administered by the Institute of Industrial Relations, University of California, (Berkeley.)

REPORT OF PROGRAM ACTIVITIES AND PROGRAM PROGRESS FOR THE  
PERIOD OCTOBER 1, 1972 THROUGH DECEMBER 30, 1972

The second quarterly report of the program, Training Neutrals for Dispute Settlement, covers the following areas of program activity:

1. Organization of the Project
2. The Curriculum - Classroom Training Phase
3. The Curriculum - Counterpart Training Phase
4. Other Activities
5. Third Quarter Goals



1. Organization of the Project

One major change was made in the organization of the project. Mr. Howard Durham, a well-known Bay Area arbitrator and instructor, and former member of the Federal Mediation and Conciliation Service, has been added to the project staff. Mr. Durham will be in charge of the counterpart training portion of the program.

The Project Director, Adolph Koven, will concentrate his efforts in the remaining period on the establishment of the referral mechanism and on promoting the program to that end among labor-management and community groups. Under his direction, the Institute of Industrial Relations' staff will assist him in these efforts. The administrative aspects of the program will continue to be handled by the Assistant Director, Pauline Fong. Overall supervision of the project and responsibility for its success remains with the Project Director.

The staff of the Institute of Industrial Relations continue to be involved in supporting and contributing to all aspects of the program. Don Vial, Chairman of the Center for Labor Research and Education; Betty Schneider, Director of the California Public Employee Relations Program; Bruce Poyer, Coordinator for Labor Programs; and Norman Amundson, Coordinator for Labor Programs, have all made and will continue to make substantial contributions to the progress of the program.

2. The Curriculum - Classroom Training Phase

During the second quarter, the major efforts of the project were concentrated on the classroom phase of the instruction. Classes have been held at the Institute of Industrial Relations, two evenings a week, three hours per evening, for 12 weeks, in this period of time. An additional four and a half weeks in January conclude the classroom phase of the training.

Berkeley, 1972

In the original plan of the curriculum, 8 sessions were devoted to collective bargaining, bilateral relationships, and the arbitration process; 6 sessions were devoted to the laws, history, and practices of collective bargaining in the public sector; 8 sessions to the procedures and techniques of the arbitration process; 4 sessions to decision writing; 1 session with a psychiatrist on the question of professionalism, authority and authoritarianism; and 8 sessions on community and urban dispute problems and settlement procedures.

A basic principle underlying the organization of the curriculum and the choice of instructors was that students should receive maximum exposure to the best practitioners in the field. This decision stemmed from three major concerns. One was that students should learn from those engaged in the processes themselves. The second was that the employers of arbitrators should be deeply involved in the program to ensure the kind of training they think the participants should have and to enable them to meet and appraise the students. The third concern was based on the knowledge that the students are quite sophisticated and knowledgeable people, in terms of their education, work experience, and community involvement. To sustain their interest and meet their intellectual expectations, it was definitely necessary to present them with the most knowledgeable and experienced people in the labor relations and the public sector. Another consideration which we deemed important at the outset, and which was subsequently verified by experience, was that "high energy" people were necessary to conduct classes held in the evening. Because our students are full-time working men and women, with heavy job, family and community responsibilities, evening sessions twice a week could have become burdensome if the classes were not conducted in a lively and active manner. That our strategy was correct is clear from the attendance records of our students. Except for illnesses and conflicting work demands, our students have attended regularly, and come well prepared.

Nonetheless, as could be expected, some changes had to be made as we progressed, and other problems dealt with as they became apparent. In reviewing our experience, one change that would be proposed, should such a program be conducted again, is the inclusion of more time at regular intervals for review and consolidation of the materials covered in each section of the curriculum, and to bring the parts together in a broader perspective. Given the amount of material to be covered and the overall time limitations, however, the additional sessions would have been difficult to fit into our schedule.

A number of changes in the curriculum were made as we progressed. We received input from Tom Colosi of the National Center for Dispute Settlement, who suggested that we begin some role playing earlier than had been planned. As a result of his suggestions, Tom and Dave Browne came out on December 1 and 2, and supervised the class in a mock collective bargaining game, called "Settle or Strike" which had been developed by Tom and Morris Sackman of the Department of Labor, Division of Public Employee Labor Relations. Friday evening, December 1, was spent in preparing for the game. The game was played on Saturday by the class and with the participation of Bob Turner, San Francisco Bay Area Representative for the National Center and the American Arbitration Association. The class was divided into two groups each playing the game simultaneously. One group went to impasse and the other one settled. A brief mediation session was conducted with the group that went to impasse, and the other group observing. The final settlements for both groups were compared and discussed. The class considered the experience very useful, especially those who had not previously had any actual negotiating experience. The enthusiastic class response to this mock problem encouraged us to incorporate considerably more such sessions in the second phase of the program.

Another area in which some curriculum changes were made was the decision writing portion. The class was given its first case by the Project Director at the outset. This involved a complete transcript and exhibits from one of the Director's own cases. Their decisions were due at the end of the first month, which coincided with the completion of the curriculum section on collective bargaining and arbitration. This initial case was given to the class very early as a diagnostic device, to give the Project Director an estimate of each student's reasoning and writing skills, as well as comprehension of the materials covered. The Director reviewed each individual decision carefully and thoroughly and held conferences with each individual student, itemizing that student's strengths and weaknesses. The class then met as a group to discuss in more general terms the problems involved in arriving at and writing a decision and award. The students were then given a second case, complete with transcript and exhibits, due a month later. Again, the Project Director reviewed each students' opinion in depth with the students individually and later as a group. Each student was then required to rework and rewrite the decision, based on the criticisms received. In every case, considerable progress was demonstrated on the submission of the rewritten decision. In addition, each student was given six more cases in which they were required to take the arbitrator's decision, dissect and analyse it, and explain the rationale and logic behind the decision. This also proved to be a valuable exercise in understanding the process of decision writing. These changes were considered to be of greater value than the originally planned four cases. The students will receive further training on decision writing during their mock arbitration cases and in the course of their counterpart work.

A third area in which a major curriculum change occurred was a decrease in classtime devoted to the community and urban disputes area. The original plan had included community disputes for several reasons. One reason is that this program has an emphasis on the placement of minority and women in the area of professional dispute resolution. Because of this emphasis, it was clear that many students would be drawn from a background that included experience in community disputes. It was felt that they would have a natural interest in the area, have considerable knowledge in this area, and would be highly acceptable as neutrals in these disputes. A second reason is that community and urban disputes are of considerable importance. A third reason was that in many instances labor and community disputes become intertwined, and these relationships needed to be understood. A fourth reason was that this group could extend traditional methods and devise new methods for settlement of community disputes. The tragic death of Willoughby Abner who was to have been the keynote speaker in this part of the curriculum required some curriculum modifications. Secondly, the majority of the class felt it had a large task ahead of them in pioneering the entrance of minorities and women into the labor-management area and the public sector and felt it more important to concentrate on doing this part well. The group also felt that many of the proposed instructors were no more knowledgeable than they and more exposure to labor-management people was preferred.

As a result of these several factors, the remainder of the classroom phase was altered to include more time in learning from the practitioners about the techniques and procedures of arbitration, mediation, factfinding, and public finance. Dispute settlement in community issues, however, will continue to be integrated in the counterpart phase and in the development of the referral system.

### 3. The Curriculum - Counterpart Training Phase

One of the program goals for the second quarter was to develop the opportunities for the counterpart or field training segment of the curriculum. It was our original intention that by involving the practitioners and members of the Policy Advisory Board in all phases of the program, we would be able to have their support in the development of the counterpart training opportunities. Consequently, we are able to report a number of important developments.

Ralph Duncan, head of the State Conciliation Service, has offered the class the opportunity to work along with members of his staff. One of our students, who is self-employed and has the requisite time flexibility, is presently exploring this possibility with Mr. Duncan.

Mr. James Marshall, who is Industrial Relations Director for Alameda County, one of the largest counties in the Bay Area, has obtained approval to recommend to the unions with whom contract negotiations will take place this year the use of our group as the panel from which arbitrators will be selected for grievance cases.

The University of California is interested in having one of our group, who is on the faculty, serve as a hearing officer on University grievance cases.

One of our students has already spent several weeks attending cases with Victor Van Bourg, one of our instructor-practitioners.

John Kagel has agreed to supervise another of our students in the counterpart training.

Arthur Jacobs, who has done a considerable amount of public school fact-finding, has been an instructor in the program, and has expressed an interest in both the mock arbitration and field training part of the program.

Morris Myers has also indicated his willingness to take some of our students as apprentices.

Leo Kotin, in the Los Angeles area who has also had considerable experience in conducting mock arbitrations, has agreed to be the counterpart to our student who resides in Los Angeles and also to work with us on the mock arbitrations.

William Eaton, a Bay Area arbitrator who has done a great deal of work in the public sector, is scheduled to talk to the class on the early part of February, and is quite interested in the program.

We are still in the process of talking with several other leading arbitrators in the area and expect good cooperation from them. In addition, of course, both Adolph Koven and Howard Durham will be involved in the counterpart training. Some of the students have continued to go to hearings with the Program Director during the classroom phase.

In the previous section of the report, the changes in the community disputes portion of the classroom phase was discussed. Although class work on this subject was eliminated, we expect to include observation of dispute resolution on community issues in the field training. For convenience in discussing such "community" disputes, six categories can be identified, in which it might be possible to extend settlement procedures based on labor-management precedents. These are (a)

legal and court system; (b) educational system; (c) housing or landlord-tenant relations; (d) penal system; (e) health care delivery system; (f) affirmative action programs; (g) ombudsmen (whose activities may cut across any of the preceding categories).

At the present time in Northern California, dispute settlement or referral procedures which treat the grievances of community residents in a systematic manner designed to facilitate the resolution of their problems have been adapted only in categories (c) and (g). During the field training phase, students will be assigned to observe and report on how problems are handled in these categories, primarily in the Oakland Housing Authority procedure, and through the office of the Berkeley Ombudsman. We also hope to involve our trainees in the extension of dispute settlement procedures to community problems, particularly in the judicial, educational, penal, healthcare, and affirmative action areas.

In addition to the counterpart and field work, we have scheduled six mock arbitration cases over the next five months. Each student will have an opportunity to serve as the arbitrator in a case, conduct the hearing, and write the opinion and award. The group will reconvene to discuss the case and opinions. Each student will also have the opportunity to serve in the roles of union and management spokesman, grievant, and witness throughout these six cases. The six cases will be selected to cover a variety of issues such as discipline and discharge, contract interpretation, management rights, wages and fringe benefits, unit determination. As reported above, several of the arbitrators have indicated an interest in working on the mock arbitration sessions with the staff and students. In addition, both Norman Amundson and Bruce Poyer, from the Institute staff, will assist Howard Durham and Pauline Fong on the development of these cases.

#### 4. Other Activities

Another of the goals which we set for the second quarter was the continued involvement of our Policy Advisory Board. Some members of the Board have been involved as instructors in the program. Others have attended the class sessions. The Board members have been invited to observe and participate in the mock arbitration sessions. It was also reported above that some of our Board members have assisted us in the development of the counterpart training opportunities.

The fourth goal which was set for the second quarter was continued work on promoting the program. We have continued to receive national publicity on the program and have received a number of requests for information on our program from academics, hopeful applicants, and practitioners in Hawaii, Oregon, Ohio, and Pennsylvania. We have also received inquiries from the Rocky Mountain Chapter of the Industrial Relations Research Association, which is working on an effort to train new labor arbitrators. We were also visited by Mr. Clifford P. Greck, Director of Public Affairs, for the American Arbitration Association. We have been asked by the executive editor of the new Journal of Collective Negotiations in the Public Sector to write an article on our program.

In the Bay Area, we have developed through the efforts of Betty Schneider considerable interest and support for our program from the employee relations committee of the influential League of California Cities. This committee is concerned that our students be knowledgeable in the subject of public finance and one of the members has agreed to talk on this subject for the class. We have also been in touch with Pat Baker, from the Department of Labor in San Francisco, on conducting further publicity for the program in the local area.

Through the efforts of one of our students, we have received funds to provide us assistance in transcribing the tape recordings of the class discussions. Mr. Peter Guidry, Director of the Institute's Labor and Urban Studies Program, will make available to us equipment to videotape the mock arbitration sessions.

#### 5. Third Quarter Goals

During the third quarter, two important tasks must be done. First, the students counterpart work must be scheduled, coordinated, and their progress monitored. The cases for the mock arbitration sessions must be developed and the students' performances evaluated.

Secondly, a major effort must be made to promote the program and the students and to develop a case referral system for them.

These two tasks will undoubtedly occupy the bulk of our time. At this stage in the program, each of the students will have to be given individualized attention to arrange the variety of field experiences that best suit their interests and needs. In order to promote the program and the students, we will have to prepare a brochure and begin to make a series of individual contacts and visits with the many potential users of our group.