

Univ.
Shelf.

C.1

INSTITUTE OF INDUSTRIAL
RELATIONS LIBRARY
UNIVERSITY OF CALIFORNIA
BERKELEY, CA 94720

Neutrals Trained for Dispute Settlement ...
INSTITUTE OF INDUSTRIAL RELATIONS (Berkeley)
University of California, Berkeley
Funded by
U.S. Department of Labor

Cooperating agencies
American Arbitration Association,
San Francisco Regional Office
California State Conciliation Service
Federal Mediation and Conciliation Service
National Center for Dispute Settlement
of the American Arbitration Association,
San Francisco Regional Office
Industrial Relations Research Association,
Bay Area Chapter

INSTITUTE OF INDUSTRIAL
RELATIONS LIBRARY
UNIVERSITY OF CALIFORNIA
BERKELEY, CA 94720

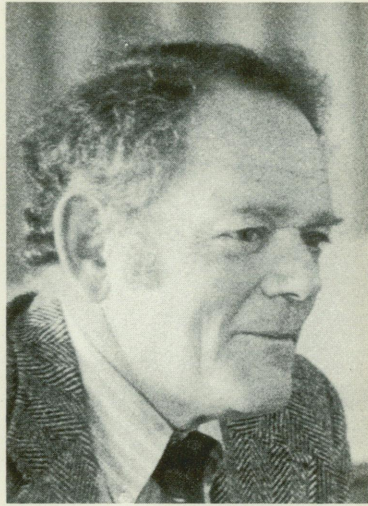


Berkeley 1973

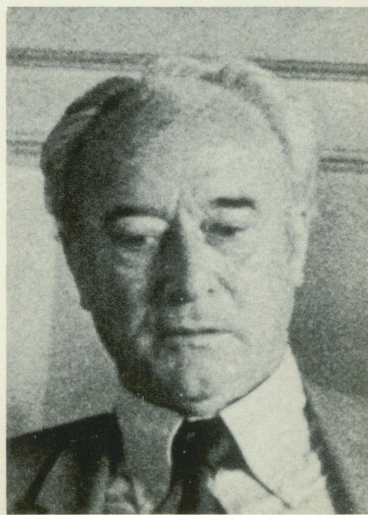
562



Pauline L. Fong
Assistant Director



Adolph M. Koven
Director



Howard E. Durham
Coordinator, Field Work



As collective bargaining in public employment expands, the use of fact-finding, mediation and arbitration promises to increase. Since many public disputes have an impact on the community-at-large, these community disputes may also offer an emerging area for the new use of neutrals. And the demand for acceptable neutrals in private sector labor disputes is growing disproportionately to the supply.

Not only in public but in private industry, more and more minority persons are becoming members of collective bargaining units; but few members of minority communities and few women are available as neutrals.

The U.S. Department of Labor, responding to this expanding need, provided funds for the Institute of Industrial Relations at the University of California (Berkeley) to develop a pilot program for training neutrals in dispute settlement.

562 persons applied for entrance to the Program.

17 candidates were ultimately chosen.

Many excellent applicants were interviewed and re-interviewed by committees consisting of the Director, Institute staff, members of the Policy Advisory Board, and persons prominent in labor and management circles in the Bay Area. The choice was most difficult. Since there were only seventeen openings, unfortunately a large number of highly appealing prospects had to be disappointed.

Objectives and General Structure: Those who select arbitrators traditionally favor known, experienced professionals and are generally hesitant to try new faces. The intensive selection process and the curriculum, combining as it did practice and theory, were designed to produce a quality of graduate which would reduce this hesitation.

Adolph M. Koven, prominent arbitrator and attorney, was named Director. He brought to the Program his experience with the National Labor Relations Board, as Conciliator with the California State Conciliation Service, and fifteen years as a practicing

Policy Advisory Board

Reginald Alleyne

Professor, UCLA School of Law

The Honorable Judge Bostick

Superior Court, Oakland

Art Carter

*Secretary, Contra Costa
County Central Labor Council*

Robert L. Cress

*President, Peace Officers
Research Assn.*

Jack Crowley

*Secretary
San Francisco Labor Council*

John A. Donaldson

*Executive for Negotiations
California Teachers Assn.*

Ralph Duncan

*Director
California State Conciliation Service*

Aileen Hernandez

*National Commission Against
Discrimination in Housing*

H. D. Huxley

*Regional Administrator
Labor-Management Services Administration
U.S. Department of Labor, San Francisco*

The Honorable Judge Kennedy
Municipal Court, San Francisco

Richard A. Liebes

*Research Director
Service Employees Joint Bay
District Council #2*

James Marshall

*Director, Industrial Relations,
Alameda County*

Phyllis Mitchell

*Secretary-Treasurer
Office and Professional Employees #3*

Randall M. Prevo

*General Manager, California Public
Employees Federation*

Primo Ruiz

*Contra Costa County Board
California School Board Assn.*

Fred Sanchez

*President, California State
Council of Cannery Unions*

Kelvin D. Sharp

*Assistant Executive Officer
California State Personnel Board*

Kaye Swindoll

*Personnel Director
San Francisco Redevelopment Agency*

Walter Taylor

*General Manager
California State Employees Assn.*

L. Ling-Chi Wang

*Executive Secretary
Chinese for Affirmative Action*

The Honorable Warren Widener

Mayor, City of Berkeley

Douglas Weller

City Manager, Alameda

James Williams

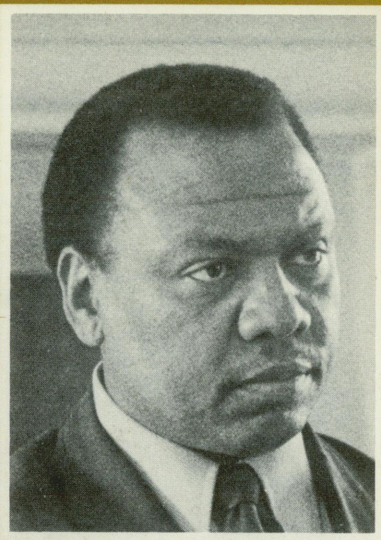
County Supervisors Assn. of California

NEW

“This arbitration to an agreement

HORACE V. ALEXANDER

received his BA in industrial education at California State University, LA after several years in the skilled trades. Former high school teacher and coordinator for school work-experience programs, he currently teaches at City College, San Francisco, and is also completing requirements for a graduate degree at San Francisco State University.



MILDRED ALEXANDER

obtained an MA in social work at Simmons College. She is lecturer and consultant at the School of Social Welfare, University of California, Berkeley, and was fieldwork supervisor at Simmons and Boston College. Volunteer activities include state and national committees of the Easter Seal Society, the Berkeley Commission on Aging, and National Rehabilitation Association.



LA VERDA O. ALLEN,

partner in the consulting firm of Homitz, Allen and Associates, which develops and evaluates educational and manpower training programs, received her MA from San Francisco State University in education administration. She was ombudsman at Peralta Community College, is a board member of Project Up-Grade, Berkeley NAACP and other minority training organizations.

arises pursuant of the parties..."

arbitrator. Howard E. Durham became Coordinator of Field Work. He is also a prominent arbitrator, and was formerly with the Wage and Hours Division, U.S. Department of Labor, Regional Director of the Federal Mediation and Conciliation Service, and Instructor of Economics and Labor Economics at the College of San Mateo. Pauline L. Fong became Assistant Director. Her prior experience includes Labor Economist, Instructor of Economics, and Research Economist at the Institute of Industrial Relations.

A Policy Advisory Board representing a broad range of public agencies, labor, management and community groups was formed to participate in policy decisions, candidate selection, curriculum planning, and evaluation of the Program.

The curriculum was taught by a faculty of top-flight professionals and academicians in the labor relations field. The academic portion of the Program consisted of a labor relations laboratory, held six hours a week.

During the second half of the year, candidates took part in a series of mock arbitrations. They also participated in direct field experience, accompanying established arbitrators and lawyers to actual mediation sessions and arbitrations, after which they met together to analyze and evaluate what had taken place.

CURRICULUM

Collective Bargaining: The goal of this part of the curriculum was to make the candidates feel at home in the collective bargaining environment.

The focus was therefore highly practical. Rather than offer a general academic course in industrial relations, the curriculum was constructed to give the candidates the kind of information and background that an arbitrator needs to know and sense about the collective bargaining process.



NEW

“Do you swear to
the whole truth...”

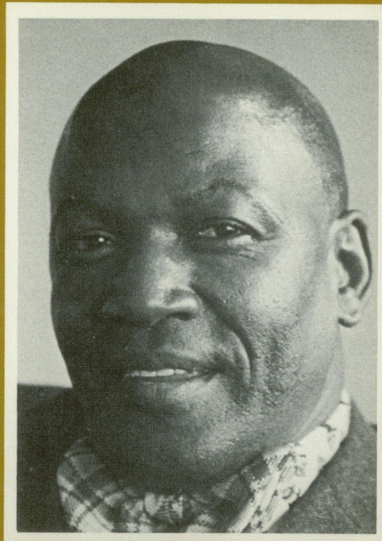
ALICE SUET YEE BARKLEY

holds a BA in architecture from the University of California. Formerly Coordinator for the Community Design Center, University of California, she has lectured at universities and community groups on housing problems in the Chinese community. Among her volunteer activities are Chinatown-North Beach Youth Center, the Asian Community Center.



BARBARA BRIDGEWATER

received her BA from the University of California. Presently a chemist with the California State Department of Public Health, she represents that Department on the Berkeley Human Resources Community Council and is a member of the East Bay Guidance Council.



HAROLD BLAINE BROOKS JR.,

Director of Citizen Participation, San Francisco Model Cities Agency, was formerly supervisor, community relations, San Francisco Unified School District, General Manager, Marin City Community Service District, and Program developer, San Francisco Redevelopment Agency.

FACTS

tell the truth,

Since the arbitrator is almost always concerned with the intentions of the parties in contract interpretation cases, bargaining characteristics and practices were scrutinized by focusing on such aspects of the process as the essential nature and purpose of negotiations, "from bargaining position to final offer", and bargaining in good faith. On occasion excursions were even made into such techniques as "sign language" and "horse trading".

The faculty then explored the similarities and differences between private and public bargaining as they apply to: the deadlock; the strike; the power conflict between the parties; the individual's loyalty conflict in his status both as an employee and as a union member; and the role of public opinion in disputes.

Public Agencies: Recognized experts from state, county and city governments, school boards, and public employee associations described how specific agencies operate in their emerging collective bargaining relationships. Emphasis was placed on the neutral's role in public disputes either as fact-finder, mediator, advisory arbitrator or arbitrator.

Fundamental questions were explored: Who is the real employer in "interests" disputes in the public sector? In what ways does the non-profit nature of government affect the collective bargaining relationship, and in turn the neutral's role?

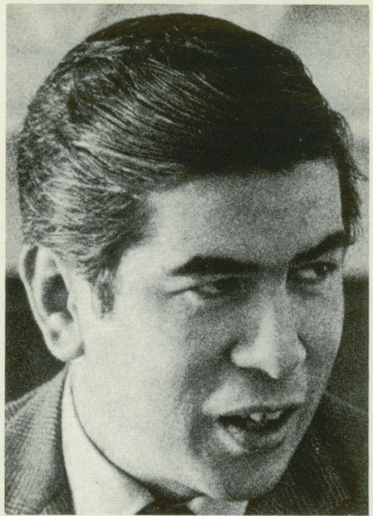


NEW

“Your objection

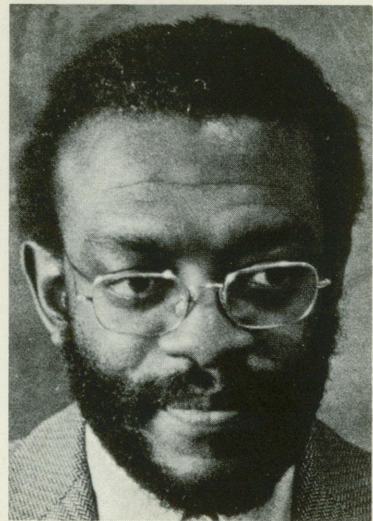
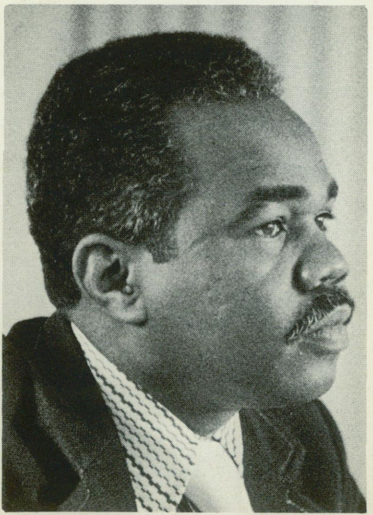
DAVID A. CONCEPCION,

Manager, Management Analysis group, University of California, Berkeley, is a graduate of the University of California, Santa Barbara. A board member, Family Service Agency, Berkeley, Volunteer Bureau, Alameda County, and Ghetto Enterprises, he is active in minority economic development programs.



HAROLD DAVIS,

Executive director of the City of Oakland Housing Authority, received an MA in public administration at the University of California, and was Labor Relations Administrator, Dept. of Social Welfare, Alameda County. He serves as president of Alameda County Mental Health Association, and is on the National Council of the YMCA.



JOHN DEARMAN,

partner in the law firm of Brown, Dearman & Smith, with a law degree from Wayne University, has been commissioner, Golden Gate Bridge, is Commissioner Metropolitan Transportation Commission, and was president, San Francisco Family Service Agency.

Arbitration

is sustained..."

Procedures and techniques of arbitration: The arbitrator has three functions: he holds a hearing; he comes to a decision; and he writes an Opinion. Leading attorneys and arbitrators lectured on how to conduct the hearing and what goes into the decision-making process. The Director taught Opinion writing.

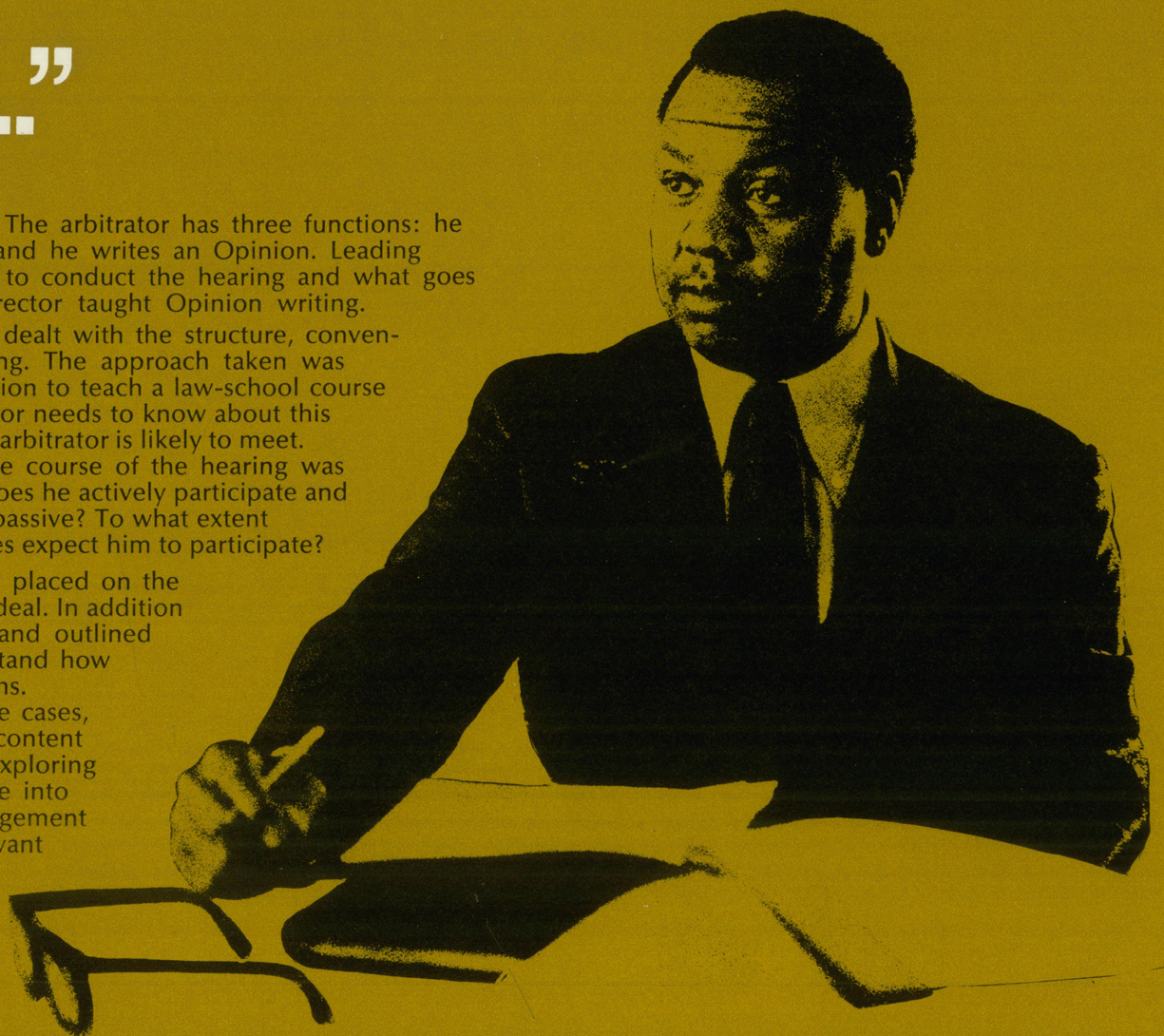
The Hearing: This part of the curriculum dealt with the structure, conventions, and formalities of holding a hearing. The approach taken was deliberately practical. It was not the intention to teach a law-school course on "Evidence", but rather what the arbitrator needs to know about this subject, and what problems in evidence an arbitrator is likely to meet.

The posture of the arbitrator during the course of the hearing was also explored. Under what circumstances does he actively participate and under what circumstances does he remain passive? To what extent and under what circumstances do the parties expect him to participate?

The Decision: A substantial emphasis was placed on the basic subject matter with which arbitrators deal. In addition to attending lectures, the class analyzed and outlined many arbitration cases in order to understand how arbitrators in practice come to their decisions.

For example, in discharge and discipline cases, the focus centered on an inquiry into the content and components of "just cause". And in exploring "just cause", inquiry was necessarily made into such aspects as the proper exercise of management authority; problems of "notice" to the grievant and to the Union; the graduated penalty system; and the dual role of the shop steward as an employee and as the union's representative on the job.

Now the candidates began to see in particular cases the actual workings of

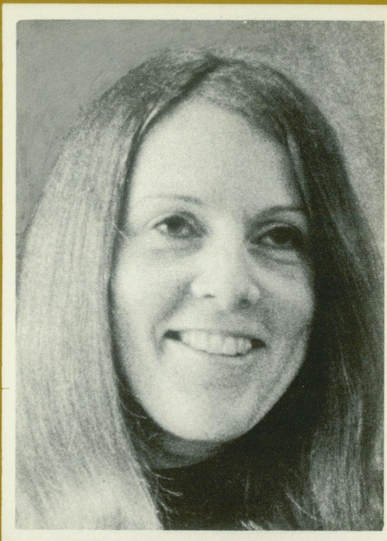


NEW

“If that is all,
the hearing

KAREN DUNLAP,

Labor Relations Coordinator with the Affiliated Hospitals, San Francisco, holds an MA in economics from Iowa State University. She has been director of research programs for The California Nurses Association.



LOUIS GARCIA,

attorney in private practice in San Francisco, is Commissioner San Francisco Human Rights Commission, board member, Bay Area Social Planning Council, and has been a Commissioner, California Fair Employment Practices Commission.



DAWN GIRARD

has an LLB from the University of Buffalo. She has been an attorney with the National Labor Relations Board, and in private practice, and held administrative positions with International Trade Secretariats in Geneva.

FAIR

gentlemen,
is closed..."

such factors as "past practice" and began to see how particular conflicts in evidence were resolved. The candidates thus became acquainted with the criteria arbitrators in general apply in discharge, subcontracting, seniority and other kinds of cases.

The Written Opinion: First, a theoretical framework was set forth by the Director suggesting how an Opinion should be organized and what it needs to contain. Then candidates were asked to analyze transcripts of the Director's prior cases, and to write their own Opinions without having seen his.

These candidate Opinions were then evaluated with such factors in mind as: Is it plainly expressed, and at the same time does it reflect the candidate's individual flavor? Does the Opinion have a professional and quasi-judicial quality? Are both the winner and the loser likely to be satisfied by the way in which their principal arguments are dealt with? Can the Opinion on its face be understood by persons not familiar with the dispute, and is the line of reasoning such that even to an outsider the award clearly and logically follows?

After criticism and evaluation by the Director, the Opinions were re-written until they met exacting professional standards.

Special Activities: Special lectures were scheduled, such as "Professionalism, and the difference between authority and authoritarianism" by Dr. Kurt Schlesinger, a prominent psychoanalyst, and "Local Government Finance" by William Parness, Livermore City Manager and Arnold Meltzner, Professor at the School of Public Policy, University of California.

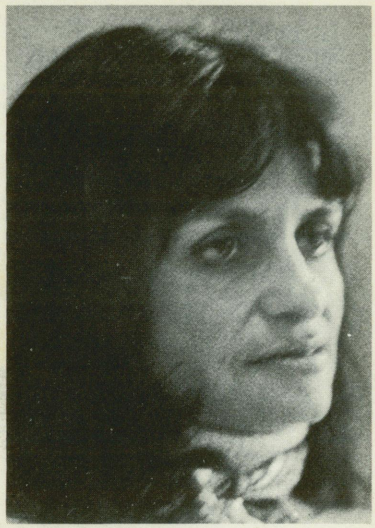


NEW

“My award is

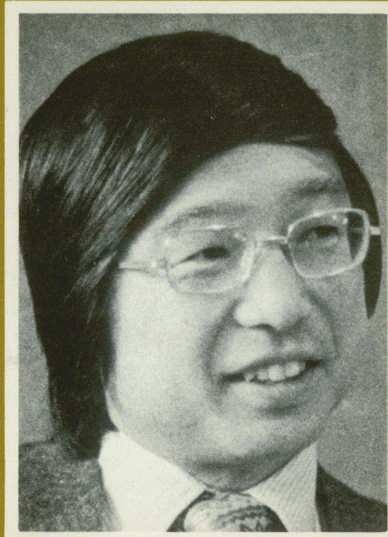
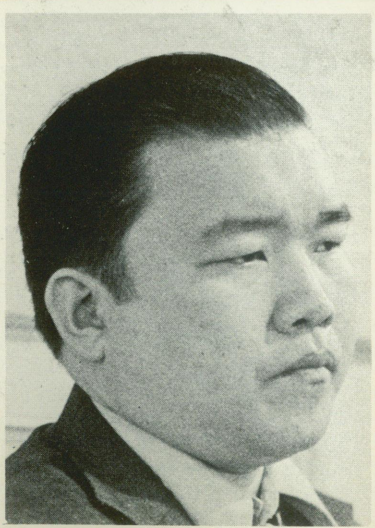
NORA M. HICKMAN

received her BA in social science at the University of California, is presently at Boalt Hall, School of Law, Berkeley, and is active in legal, health and tutoring programs in the Chicano community. She is member, Order of the Golden Bear, University of California Honorary Society.



GORDON H. LAU,

partner in the law firm of Hardesty, Lau and Dalziel, obtained his law degree at the University of San Francisco. He has served on the board of Chinatown's Youth Service Center, on the San Francisco Juvenile Delinquency Commission, and is active with the Chinese Culture Center.



NORMAN LEW

has an LLB from Hastings College of Law and is a practicing attorney in San Francisco. A member of the Mayor's Manpower Council, the Chinatown Advisory Board to the San Francisco Human Rights Commission, he is active in housing programs in the Chinese community.

Follows

as follows..."

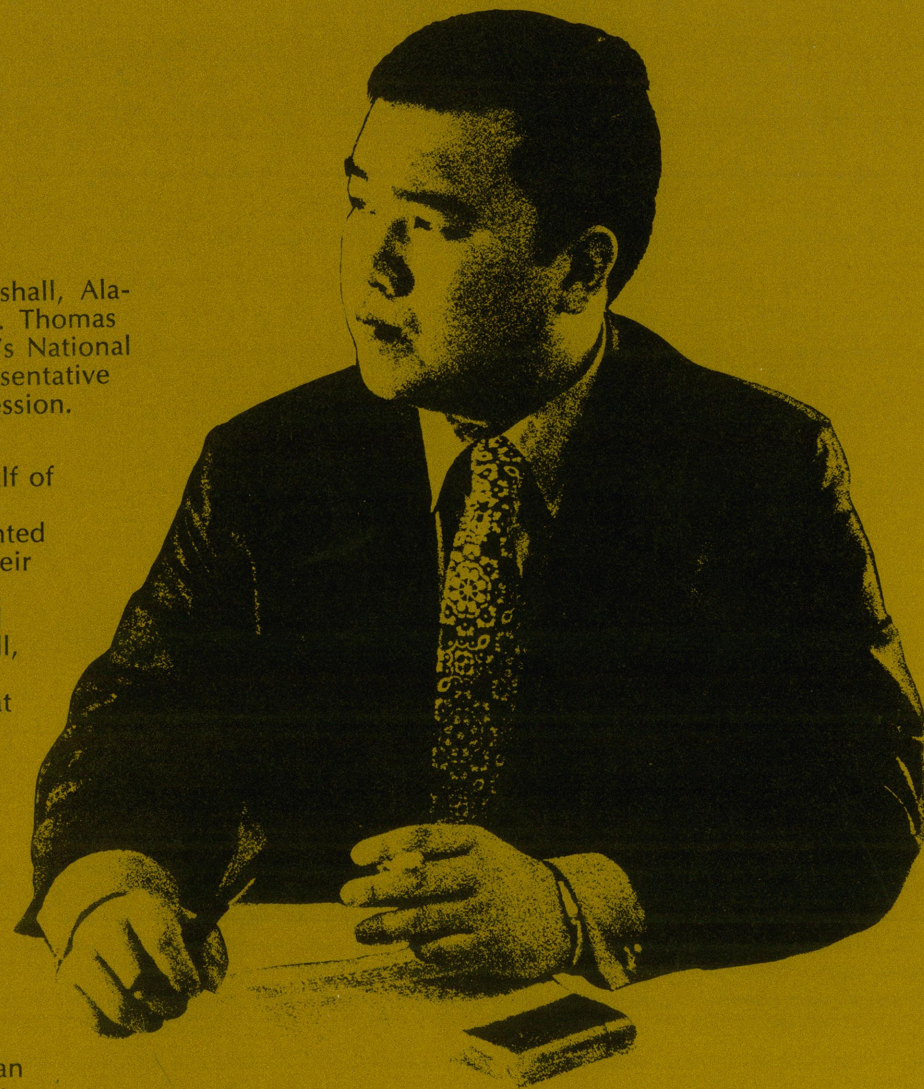
Morris Sackman of the U.S. Department of Labor and James Marshall, Alameda County Industrial Relations Director, staged a mock mediation. Thomas Colosi and David Browne from the American Arbitration Association's National Dispute Settlement Center, along with Robert Turner, Regional representative of the Center, supervised the class in a mock collective bargaining session.

MOCK ARBITRATIONS

Six all-day mock arbitrations were conducted during the second half of the year under the direction of Field Work Coordinator Durham. Before each mock arbitration was held, practicing arbitrators presented background material for the cases to be used without disclosing their own decisions in those cases.

In the course of these preliminary briefings, candidates questioned the arbitrators on a broad range of subjects: To what degree, if at all, does the "unwritten record (evidence not produced which could have been produced) play a part in the arbitrator's decision? To what extent is the arbitrator himself responsible for developing a full record? If the skill of the two counsel is strikingly unequal, are there circumstances when the arbitrator intervenes? What subjective problems might a new arbitrator face? How important is it for an arbitrator to have detailed knowledge of the industry in a particular case, and if so, in what ways may he go about obtaining such knowledge?

Each mock arbitration was heard with different players in the roles of arbitrator, counsel, and witnesses. The guest arbitrators evaluated the roles and performances of each set of participants with the class. Each student had at least one opportunity to perform as the arbitrator. On the basis of the evidence produced and the arguments of the parties, the candidate who sat as arbitrator wrote an Opinion which was later fully discussed and criticized by his classmates, Coordinator of Field Work Durham, and the participating arbitrators.



NEW FACES

FIELD WORK

The candidates attended a wide range of hearings with established arbitrators and practicing labor attorneys. Practically every kind of arbitration was experienced. In one case, custom and practice was the strategic consideration; in another case, management rights were in issue. And so on down the line — standards for interpreting contract language; substantive rules of law; standards in "interests" disputes; precedent value of arbitration awards; seniority; discharge and discipline; and evidence.

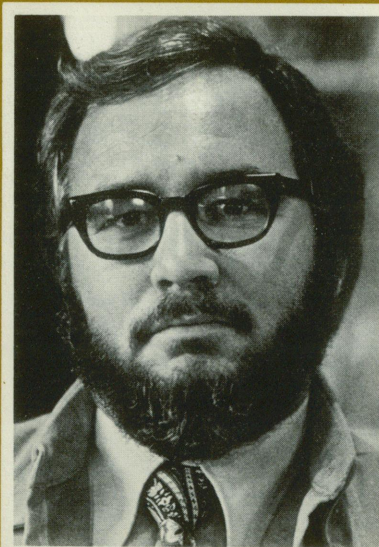
At the conclusion of the hearings, the candidate would evaluate the case with the arbitrator or the attorneys and some even assisted arbitrators in preparing actual Opinions and fact-finding reports.

One of the Director's actual hearings was held in the Institute's building on the campus so that the entire class was able to observe the same arbitration. On the basis of this common experience they were then able to evaluate the case among themselves, with the Director, and with the participating attorneys — Samuel Holmes for the Company and Victor Van Bourg for the Union.

Candidates also attended a number of conferences such as those sponsored by the Institute itself on "Innovations in Labor Arbitration" and "The Revision of California Public Employee Relations Laws", the AAA Conference on "Dispute Settlement in the Public Sector", and sessions of an "Arbitration Institute" held by the AFL-CIO Labor Studies Center.

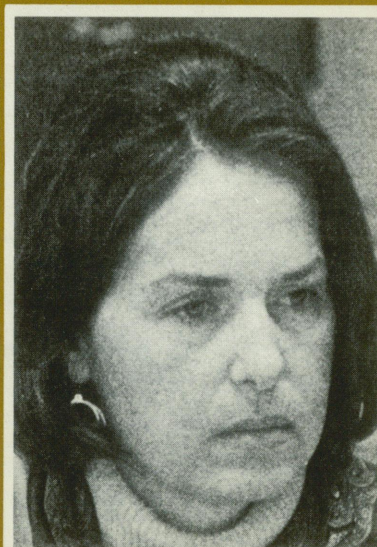
MARSHALL G. ROGERS,

Chief Personnel Analyst for the County of Los Angeles, with a BA from Whitworth College, is completing studies for a graduate degree in public administration. Formerly associate director, Upward Bound Project at Oklahoma Baptist University, associate director, Community Action Program, Oklahoma City, he is president of the American Indian Employees Association in Los Angeles.



CAROL SCHWARTZ,

librarian with the International Longshoreman's and Warehouseman's Union, San Francisco, has been on the Board of Directors of St. Francis Square, cooperative integrated housing development, on advisory committees on cooperative housing in the Bay Area, and active in recreational and educational programs in the Western Addition, San Francisco.



REFERRAL INFORMATION

The referral system for selection of these candidates as neutrals will be operated through the University of California jointly by the American Arbitration Association, San Francisco Regional Office, the Federal Mediation and Conciliation Service, the California State Conciliation Service, the National Center for Dispute Settlement of the American Arbitration Association, San Francisco Regional Office, the Industrial Relations Research Association, Bay Area Chapter, and the Institute of Industrial Relations.

Inquiries should be addressed to: Neutrals Referral Service, University of California, 2521 Channing Way, Berkeley, California 94720. (415) 642-5452

Instructors

FACULTY

Norman Amundson

Coordinator, Labor Programs
Institute of Industrial Relations,
Berkeley

Jacob Abers

Lecturer, California State
University, Hayward

Duane Beeson

Labor Attorney

David Bowen

Senior Editor, *California Public
Employee Relations*, Institute of
Industrial Relations, Berkeley

Lawrence P. Corbett

Management Attorney

Robert L. Cress

Executive Secretary, Peace
Officers Research Assn.

John A. Donaldson

Executive for Negotiations
California Teachers Assn.

Howard Durham

Arbitrator

Robert Helsby

Chairman, N.Y. State Public
Employment Relations Board

Samuel L. Holmes

Management Attorney

Arthur B. Jacobs

Arbitrator and Attorney

John Kagel

Arbitrator and Attorney

James A. Klawitter

Field Executive
California School Boards Assn.

Adolph M. Koven

Arbitrator and Attorney

Richard A. Liebes

Research Director
Service Employees Joint Bay
District Council #2

James Marshall

Director, Industrial Relations,
Alameda County

Arnold J. Meltsner

Associate Professor, School of
Public Policy, University of
California, Berkeley

William Parness

City Manager, Livermore

Edward Peters

Arbitrator

Harold Rosen

Director of Personnel,
Santa Clara County

John Scalone

President, California
Processors Inc.

Kurt Schlesinger, MD

Psychoanalyst and Asst. Chief,
Dept. of Psychiatry, Mt. Zion
Hospital, San Francisco

Betty Schneider

Director, Public Employee
Relations Program, Institute of
Industrial Relations, Berkeley

David Smith

Asst. Editor, *California Public
Employee Relations*, Institute of
Industrial Relations, Berkeley

George Strauss

Professor, School of Business
Administration, University of
California, Berkeley

Victor J. Van Bourg

Labor Attorney

Don Vial

Chairman, Center for Labor
Research and Education
Institute of Industrial Relations,
Berkeley

M. A. Walters

Assistant Business Manager,
IBEW, Local 1245

MOCK SESSIONS

David Browne

National Dispute Settlement
Center, AAA

Paul Cassady

Arbitrator

Thomas Colosi

National Dispute Settlement
Center, AAA

Howard Durham

Arbitrator

V. Wayne Kenaston

Arbitrator

Leo Kotin

Arbitrator

Adolph M. Koven

Arbitrator and Attorney

Morris L. Myers

Arbitrator and Attorney

Morris Sackman

U.S. Department of Labor
Public Employee Relations

Robert Turner

National Dispute Settlement
Center, AAA, San Francisco

SUPPLEMENTARY SESSIONS

William Eaton

Arbitrator and Attorney

William B. Gould

Professor of Law, Stanford
University Law School

Institute of Industrial Relations

Lloyd Ulman, Director and Professor of Economics

Betty Schneider, Director, Public Employee Relations Program

Jack Hislop, Coordinator, Management Programs

Don Vial, Chairman, Center for Labor Research and Education

Bruce Poyer, Coordinator, Labor Programs

Norman Amundson, Coordinator, Labor Programs

Peter Guidry, Coordinator, Labor Programs

U.S. Department of Labor, San Francisco

Walter Slater, Assistant Regional Administrator

Labor-Management Services Administration

American Arbitration Association, San Francisco Regional Office

William D. Allender, Regional Director

National Dispute Settlement Center, San Francisco Regional Office

Robert Turner, Bay Area Representative

Brochure Preparation: Charlotte Wax

Graphics: Alan Regan

Photographs: Joshua Freiwald

Lithographed: Graphic Arts of Marin  108