

Kaiser Arbitration Oversight Board

Comments on the Annual Report for 2013

Introduction

The Arbitration Oversight Board has the responsibility of reviewing and commenting on the Annual Report of the Independent Administrator. The report is intended to provide detailed information about the operation of the Kaiser arbitration system for the calendar year, and in comparison to previous years, so as to allow all interested parties and the public to assess how well goals of timely, fair and cost-effective operation of the arbitration system are being met.

Members of the Board received a draft of the report several weeks in advance of their Spring meeting for purposes of the review. A major agenda item of the March 27th 2014 Board meeting was devoted to discussion of the report — with Board members offering suggestions and edits to enhance its clarity and readability. These constructive suggestions were taken into account in the final version of the report.

The following comments reflect the Board's consideration of the Report and its description of the Kaiser arbitration system during the year 2013, and over the course of the period it has been independently administered.

Overall Observations

Overall, the Board considered the Annual Report a well-organized and thorough account of the performance of the Kaiser arbitration system for the year 2013. Board members were generally familiar with the principal metric and performance measures contained in the report, as they are regularly monitored on a quarterly basis at Board meetings. Nevertheless, it was very useful to have a comprehensive look at the aggregated data on operations for the full year, with detailed analyses, and with comparisons to years past.

The report's *Summary*, to which the Board has given special attention, presents an excellent distillation of the extensive data contained in the text. Along with the Table of Contents, the Summary also serves as a useful guide to finding the location of information within the document.

The *Exhibits* complement the main body of the report. They offer much useful information about the Office, the governing Rules, the neutral arbitrators in the pool, details of the evaluations of arbitrators by parties, and the evaluations of the Kaiser arbitration system by participants, and other pertinent data.

The Board has had special interest in the use of an internet website to make information about the Kaiser arbitration system easily available. The Office has developed and maintains an excellent website. Thus, the entire annual report for 2013, and for prior years, can be readily accessed on the OIA website.

Performance of the Arbitration System

The Annual Report provides detailed data documenting expeditious selection of arbitrators, as well as timely closure of cases, even with allowable postponements and delays. The Office continues to do an outstanding job in this regard.

Maintaining a large pool of qualified neutral arbitrators, and the OIA methods used for their selection, continues to result in a very wide distribution of Kaiser cases among the arbitrators, thus minimizing the potential bias associated with the prospect of "repeat business." Evaluations of neutral arbitrators by parties, made available in their file for use in subsequent selections, is a further help in this regard. Special studies each year by the Independent Administrator, on the influence of large awards to a plaintiff on subsequent selection of the arbitrator by Kaiser are included in the Annual Report.

The Annual Report points to a number of factors that keep down the cost of the Kaiser

arbitrations. For one, in almost all the cases only a single neutral arbitrator is utilized, and the fee is usually paid by Kaiser. Moreover, the expeditious nature of OIA process — with close monitoring by the Office and enforced deadlines — results in lowered cost.

The results of evaluations submitted by neutral arbitrators, and by parties, are reviewed by the Board. The evaluations provide first-hand observations on the arbitration system by its users. Neutral arbitrators are asked to evaluate how well the system is working, and how well the Office is handling its administration. They continue to give the current Kaiser arbitration system, and the Office, very high marks. Parties are asked to evaluate, anonymously, the neutral arbitrator in their cases, and also to assess how well the arbitration system is working. In general, their evaluations continue to indicate a high degree of satisfaction with the arbitrators encountered, and a high degree of satisfaction with the Office and the arbitration system.

Year to Year Comparisons

Taken together, over the course of the last fourteen years, the Annual Reports tell the history of the Kaiser arbitration system from the time it became an independently administered entity. Because the Annual Reports have collected and presented operational data in a consistent manner, year to year, they provide a record that documents the continuous development of the arbitration system with exceptional clarity.

Past data have shown a steadily decreasing number of claims over the years, reflecting, it is believed, Kaiser's increasing ability to resolve disputes internally, closer to the settings of patient care, without need of arbitration. Ombuds programs and various initiatives to improve communication at all levels have undoubtedly been helpful in this regard. The Oversight Board has always encouraged such early resolution of disputes. However, in 2013 there was, for the first time, a slight increase in the number of claims — suggesting, perhaps, some final leveling in the number of claims coming to arbitration.

Apart from the claims data, there are no striking trends or deviations in the various measures of performance year to year. And evaluations by participants, with certain differences amongst them, indicate a high level of satisfaction with the arbitration system and its administration. In essence, the data point to a stable system that is performing consistently, and well.

Oversight and Governance

The Board receives regular quarterly reports from the Independent Administrator for purposes of monitoring performance of the arbitration system and discussing any problems that arise. Much Board discussion, together with the Independent Administrator, Ms. Oxborough and Ms. Bell, Director of the Office, address matters germane to continuous improvement of the system. Is there need for any change in the Rules? Can the OIA information handout to pro pers be further improved? What outreach efforts best help increase the gender and ethnic diversity of the neutral arbitrator pool? Are there difference in outcomes for arbitrators who have many cases (ten or more) as compared to all others? Of jointly elected neutral arbitrators, what proportion are members of the OIA pool? How can the OIA best respond to disclosure requirements under consideration by the legislature? How can the OIA best help neutral arbitrator to meet new disclosure requirements under consideration by the Judicial Council? How can we improve response rates and quality of reporting in OIA evaluation surveys? How well is the website working; how much is it used? These are a sampling of subjects discussed in the quest by the Office and the Board for continuous improvement in the Kaiser arbitration system.

Concluding Comments

The Board considers the Annual Report of the Independent Administrator a thorough and comprehensive document that objectively portrays how the arbitration system is functioning.

On reviewing the record of the past year, as extensively detailed in the report, the Board concludes that the Kaiser arbitration system is working well and pursuing successfully the goals of fair, timely and cost-effective arbitrations.

It is, furthermore, the Board's view that the Independent Administrator and diligent colleagues in her Office continue to maintain highest standards of excellence in administration of the Kaiser arbitration system in California.

Essential Elements of a Model Arbitration System

At an earlier time, the Oversight Board sought to identify the hall marks of an exemplary arbitration system. What were the essential elements or attributes of a model system? The following were thought to be essential elements. It is still useful to have these features of a model system in mind when reading the Annual Report and reviewing the Kaiser arbitration system.

INDEPENDENT ADMINISTRATION: The system is administered by a neutral entity, independent of the parties involved, and empowered to achieve desired goals for fair, timely, and cost-effective arbitration.

RULES: An explicit, written set of rules governs the system, to assure that it is fair. All parties must abide by the rules. The rules are periodically reviewed and modified, as necessary, based on experience, to improve the system.

OVERSIGHT: The system has oversight and governance by a body that reflects the diverse perspectives of interested parties, and the public interest.

ACCESSIBILITY: The system is readily accessed by claimants and their claims are entered into the system promptly.

QUALIFIED ARBITRATORS, FAIRLY SELECTED: The system provides well-qualified and experienced arbitrators who are selected through a process consciously designed to avoid bias. Parties evaluate the arbitrators, anonymously, in questionnaire surveys.

TIMELINESS: Deadlines are established to move the arbitration process along as expeditiously as possible, with appropriate safeguards for extenuating circumstances. They must be respected. The meeting of deadlines is monitored and enforced.

PERFORMANCE MEASURES: Accurate and verifiable data are collected systematically to permit objective review of the processes and outcomes of the arbitration system.

EVALUATION: The performance of the system is routinely evaluated by surveys of its participants conducted with appropriate anonymity. Arbitrators are routinely evaluated by the parties.

COST EFFECTIVENESS: The costs of arbitrations are tracked wherever possible. Costs to claimants are kept reasonably low.

CONVENIENCE: Arbitration meetings and hearings are scheduled at times, and in locations, that are convenient for the parties.

CLARITY: Basic information about the arbitration system and its procedures is

provided in easily understood, non-technical language.

AUDIT: The data recorded and reported by administrator of the system are periodically checked by an independent auditor.

TRANSPARENCY: Detailed information about the operation and performance of the arbitration system is published, and readily available to interested parties and the public-at-large.

CONTINUOUS IMPROVEMENT: Administration of the arbitration system should seek continuous improvement, guided by the evaluations conducted, the performance measures collected, and constructive oversight.