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THE BISHOPS OF MICHIGAN ISSUE STATEMENT ON DUE PROCESS*

Notion of Due Process

THE ADEQUATE PROTECTION of human rights and freedom is a matter of concern to all men of good will. The adequate protection of rights and freedoms of persons in the ecclesial community has become a matter of increasing concern to all members of the Church.

Rights are protected in many ways. Indirectly, they are protected by education, growth of moral consciousness, development of character; directly, they are protected by law. Rights without legal safeguards, both preventive and by way of effective recourse, are often meaningless. It is the noblest service of law to afford effective safeguards for the protection of rights, and, where rights have been violated, to afford effective means for their prompt restoration.

Phrased in abstract terms, the question whether there ought to be "due process" in the Church answers itself, since everyone is obviously entitled to whatever process is "due." In all governmental procedures respect should be paid to the rights of all persons involved, whatever this may require. The question becomes real only when specific content is given to the expression "due process" so that what is asked is whether certain specific substantive and procedural protections are due, in given sets of circumstances, in order that the rights of persons involved be adequately safeguarded.

Most of the current discussion and writing about "due process" in the Church is conditioned by Anglo-American common law tradition

* This article consists of a December 1969 statement by the bishops of Michigan approving a due process procedure for the five Sees in the state, and the text of the articles approved by the bishops under which the system of conciliation and arbitration is to be carried out. Their action marks the first time in the history of the United States Church that such a procedure has been opened for all clergy, religious and laity.

which requires, substantively, that no fundamental right or freedom shall be denied without adequate justification; and procedurally, that every individual be accorded certain specific protections in administrative and judicial procedures. Among such procedural protections are, for example, the right to be informed of proposed actions which might prejudicially affect one's rights, the right to be heard in defense of one's rights, the right, in the face of accusation which could result in the imposition of a penalty, to confront one's accusers and those who testify in support of the accusation, the right not to be judged by one's accusers. Any nuanced statement of due process will have to make distinctions between many different types of situations; the notion of due process is not univocal but analogous. It is a principle of justice rather than a specific rule of law.

Ecclesiological Implications

Unity of Authority in the Bishops

It is questioned at times whether this very notion of due process has any proper place in the Catholic Church, which we understand to be, by divine institution, a hierarchical society in which the fullness of governmental power is vested in the episcopate.

Bishops govern the particular churches entrusted to them as the vicars and ambassadors of Christ. . . . This power, which they personally exercise in Christ's name, is proper, ordinary and immediate, although its exercise is ultimately regulated by the supreme authority of the Church, and can be circumscribed by certain limits, for the advantage of the Church or of the faithful. In virtue of this power, bishops have the

sacred right and the duty before the Lord to make certain laws for their subjects, to pass judgment on them and to moderate everything pertaining to ordering of worship and the apostolate. The pastoral office or the habitual and daily care of their sheep is entrusted to them completely. . . .¹

It is the opinion of some that there cannot be in the Church any such separation of powers as exists, for example, in the American form of government, in which authority is divided among legislative, executive and judicial branches of government.

The unity of authority is a necessary element of the hierarchical structure of the Church and a juridical expression of the oneness of the spiritual authority derived from Christ.²

If the bishop has the fullness of governmental power—legislative, executive and judicial—it is argued that no one could enforce specific requirements of the American concept of “due process” against the bishop; he would (in person or through his delegate), by reason of the unity of authority centered in himself, be legislator, administrator, law-enforcer, prosecutor, judge and jury.

In response to this approach, three considerations seemed to be pertinent. First: A constitutionally dictated separation of powers, as realized, for example, in the United States, is a special doctrine of government whose particular features are not to be identified with the requirements of “due process.” Many of the requirements

¹ Constitution on the Church, No. 27.

² 8 NEW CATHOLIC ENCYCLOPEDIA 61 (1967).

of "due process," both substantive and procedural, are relevant to all forms of government, even the most centralized. The right to be heard in defense of one's rights, for example, is not limited to those who live in a government characterized by separation of powers. The particular way in which authority is distributed, or not distributed, in a given society differs according to the nature and traditions of the society itself; guaranteeing fundamental firmness against abuse of authority should be the concern of every society regardless of the particular arrangement of legislative, executive and judicial powers in the governmental structure of the society.

Secondly: The approach, if valid, would argue against protections from abuse of authority already provided in the Church by the present Code of Canon Law. Elaborate procedures are prescribed which a bishop must follow in the removal of pastors;³ detailed rules concerning the competence of courts, right to counsel, admissibility of evidence, burden of proof, number of judges and availability of appeal, surround the exercise of judicial power;⁴ and a bishop is required regularly to enact diocesan legislation "in synod."⁵

All of these are in the nature of procedural limitations upon the bishop, and yet they have been thought to be consistent with the centralization of all governmental authority in the local bishop.

³ Code of Canon Law cc. 2147-67 [hereinafter cited as C.I.C.].

⁴ *Id.* cc. 1552-1924, 1933-59; cf. J. KROL, *THE DEFENDANT IN CONTENTIOUS TRIALS* (1942).

⁵ C.I.C. cc. 356-62.

Thirdly: The approach seems to presume that securing the protection of basic human rights to members of the ecclesial society is equivalently to undermine the authority of the bishop. "Due process" does place limitations on a bishop's exercise of power, but, far from undermining his authority, it does much to win respect for it, and so enables him to govern more effectively. The declaration and protection of fundamental rights by guaranteeing proper substantive and procedural safeguards is one of the most important exercises of governmental authority by the bishop. If they are genuine rights, the bishop loses nothing by being required to respect them.

Vatican II Development

It seems to the bishops of Michigan that the present moment in the history of mankind imperatively calls for further development in the recognition of fundamental fairness in the governmental life of the Church. We believe this position to be solidly founded in the teaching of the Second Vatican Council:

A sense of the dignity of the human person has been impressing itself more and more deeply on the consciousness of contemporary man. And the demand is increasingly made that men should act on their own judgment, enjoying and making use of responsible freedom, not driven by coercion but motivated by a sense of duty. The demand is also made that constitutional limits be set to the powers of government, in order that there may be no encroachment on the rightful freedom of the person and of associations.⁶

⁶ Declaration on Religious Freedom, No. 1.

If conscientious co-operation between citizens is to achieve its happy effect in the moral course of public affairs, a positive system of law is required. In it should be established a division of governmental roles and institutions, and, at the same time, an effective and independent system for the protection of rights. Let the rights of all persons, families and associations, along with the exercise of those rights, be recognized, honored and fostered.⁷

Each of these statements refers directly not to the Church but to civil society. But they have obvious implications for the Church, since the Church is and must ever be "a sign and a safeguard of the transcendence of the human person."⁸ It would be unfortunate if, while civil societies labored to build "an effective and independent system for the protection of rights," the Church allowed itself to remain at a lower stage in the development of adequate safeguards for the protection of human rights. The ferment of the Gospel, continually active in the Church, is arousing in the hearts of Christians an irresistible demand that the human dignity of each member of the faithful should be recognized and protected by suitable legal guarantees.⁹

That the Church must develop adequate institutions to keep pace with modern society is implicit in the whole program of *aggiornamento* which inspired the Second Vatican Council. The Council Fathers declared that

the faithful should learn how to distinguish

carefully between those rights and duties which are theirs as members of the Church, and those which they have as members of human society. Let them strive to harmonize the two, remembering that in every temporal affair they must be guided by a Christian conscience. For even in secular affairs there is no human activity which can be withdrawn from God's dominion. In our time, however, it is most urgent that this distinction and also this harmony should shine forth as radiantly as possible in the practice of the faithful, so that the mission of the Church may correspond more adequately to the special conditions of the world today.¹⁰

In this regard, the ecclesiology of Vatican II developed earlier ecclesiologies in a manner consonant with secular developments in the field of human rights, particularly in the new emphasis placed on the rights and dignity of the laity.

Let sacred pastors recognize and promote the dignity as well as the responsibility of the layman in the Church. . . . Let them confidently assign duties to him in the service of the Church, allowing him freedom and room for action. Further, let them encourage the layman so that he may undertake tasks on his own initiative. . . . Furthermore, let pastors respectfully acknowledge that just freedom which belongs to everyone in this earthly city.¹¹

The characteristics of the free man are precisely that he has rights, that he is not dependent for the enjoyment of his rights upon the good will of his superiors, and that his rights are effectively protected so as to be legally inviolable. The aim of "due

⁷ Vat. Conc. II, Pastoral Constitution on the Church in the Modern World, No. 73.

⁸ *Id.* No. 76.

⁹ *Id.* No. 26.

¹⁰ Constitution on the Church, No. 36.

¹¹ *Id.* No. 37.

process" is precisely to give such inviolability. For men of our time, the legal protection of inviolable rights in the Church would be an especially persuasive sign of that just freedom proclaimed by the Gospel as belonging to all men. To the extent that authorities in the Church are able to secure the fundamental rights of Christians, they are fulfilling an important part of their service as pastors.

Disciplinary Matters

It may be asked how resort to the protective procedures of "due process" is to be reconciled with the virtue of obedience to one's bishop. It seems to the bishops of Michigan that the obedience a bishop legitimately expects when he seeks the unity of the diocesan apostolate never requires a person unwillingly to give up his Christian rights. Moreover, obedience may take on new significance as God's People accept not only the decisions of their bishop but the consensus of their fellow Christians and the Christian community at large which concurs in and supports those decisions. "Due process" is simply one of the effective ways in which authority is exercised and obedience realized.

A more precise question may be asked whether in cases where the local ordinary is himself a party to the dispute he can be bound to accept, or responsibly can bind himself to accept, a decision made by members of his own diocese.

In purely disciplinary matters it would seem evident that there is no theological obstacle to a bishop agreeing, with regard to particular cases and even with regard to whole classes of cases, to abide by decisions of boards or courts over which he has no

direct control, just as at present he is bound by canon law to refer disputes involving his own rights, or temporal goods, or those of the diocesan curia to tribunals for decisions.¹² By freely submitting to the determinations of impartial boards or tribunals in matters to which he is a party, a local ordinary would win greater respect for his own integrity and thus govern more effectively.

Doctrinal Area

The more difficult question concerns disputes arising in the pastoral presentation of doctrine. Here the bishop cannot abdicate his responsibility as teacher; he must retain his traditional function of giving official expression to Catholic doctrine. But it is the opinion of the bishops of Michigan that he must exercise that responsibility with due regard to the total theological situation; a local ordinary may not make an absolute norm out of his own personal theological interpretations.

The bishops of a region or of the nation should be mutually solicitous for the welfare of the Church in every diocese.¹³

¹² C.I.C. c. 1572.

¹³ As lawful successors of the apostles and as members of the episcopal college, bishops should always realize that they are linked one to the other, and should show concern for all the churches. For by divine institution and the requirement of their apostolic office, each one in concert with his fellow bishop is responsible for the Church.

Vat. Conc. II, Decree on the Bishops' Pastoral Office in the Church, No. 6.

From the very first centuries of the Church the bishops who were placed over individual churches were deeply influenced by the fellowship of fraternal charity and by zeal for the

Should a serious question arise as to whether a given bishop is excessively restrictive or excessively permissive, there would be nothing inconsistent with his episcopal office if he were to allow the matter to be referred to a panel of his brother bishops for their judgment.

Thus, "due process" should be viewed as a means to an end. It is useful and important as an instrument to help the Church realize itself as a community of freedom and truth. Those securing it, in positions of authority in the Church, show their love for the People of God, their trust in the working of the Spirit and their personal disinterestedness by effectively safeguarding the rights of those entrusted to their care.

Governmental Context

Assessment of the adequacy of present structures in the Church for the protection of rights and resolution of disputes entails a study of the entire legislative, judicial and administrative structure of the Church.

In the area of legislation, such a study reveals, on the one hand, underutilization of the diocesan synod in the practice of most dioceses¹⁴ and, on the other, recent experimentation with a type of legislative

"synod" or "diocesan council" which goes beyond the Code provisions for synods especially in regard to frequency of sessions and participation by religious and laity. In regard to pro-synodal legislation by the bishop, recent development of priests' senates and pastoral councils as consultative and collaborative bodies has opened new opportunities for effective participation in law-making and in the consequent resolution of conflicting interests in the Church through the medium of legislation.

In regard to adjudication, Church law affirms the availability of a judicial remedy for the protection of every right,¹⁵ but practice has revealed understaffed tribunals and the consequent unavailability of tribunal process for all but marriage conflicts. Moreover, the law recognizes no right to judicial review of administrative decisions of ecclesiastical authorities.

The contemplated revision of the Code of Canon Law envisions a broader use of courts for the judicial resolution of conflicts of all kinds and, in particular, envisions the creation of administrative tribunals in the Church.¹⁶ The Synod of Bishops, meeting in Rome on Oct. 7, 1967, voted unanimously for the establishment of courts to provide review of administra-

universal mission entrusted to the apostles. And so they pooled their resources and unified their plans for the common good and for that of the individual churches.

Vat. Conc. II, Decree on the Bishops' Pastoral Office in the Church, No. 36.

¹⁴ Canon 356 requires a diocesan synod every 10 years. Although such synods were frequent in the pre-Code Church in America, few dioceses have adhered to the law in this regard in recent decades.

¹⁵ C.I.C. c. 1667.

¹⁶ The reorganization of the Roman Curia, accomplished by the Apostolic Constitution *Regimini Ecclesiae Universe* (1967), pointed the way to the establishment of administrative courts elsewhere in the Church. The Constitution enlarges the competency of the Apostolic Signatura to include review of contentions arising from the exercise of administrative ecclesiastical authority by one or another of the departments of the Roman Curia.

tive decisions. Such courts will fit easily into the legal climate of this nation in which the process of judicial review traditionally has sought to provide effective protection against arbitrary administrative action. It is expected that the new Code will delineate the forms such tribunals will take, their competence and rules of procedure applicable to them. The value of judicial precedent and the interpretation of law afforded by the adjudication of concrete cases will enrich the societal life of the faithful.

It is in the administrative area of government that the Church is experiencing the fastest rate of growth, with the creation of increasing numbers of administrative boards, departments and agencies to supplement the bishops' personal administrative activities. Personnel boards, liturgical commissions, parish councils and other administrative bodies are emerging in nearly every diocese. The proliferation of administrative powers necessarily entails an increase in the number of persons entitled to exercise the discretion proper to administrative authority and, hence, an increase in the dangers to human rights and freedom that are inherent in uncontrolled and unchecked discretionary power.

It is, consequently, to the resolution of conflicts involving the exercise of administrative authority in the Church that this document principally directs itself; it is in this area that present-day conflicts are most numerous, and it is in this area that grievances most often are based on the denial of fundamental Christian rights.

Love your enemies, do good to those who hate you, bless those who curse you, pray for those who treat you badly. To the man

who slaps you on one cheek, present the other cheek too; to the man who takes your cloak from you, do not refuse your tunic. Give to everyone who asks you, and do not ask for your property back from the man who robs you. Treat others as you would like them to treat you.¹⁷

It is not the litigious, but the poor in spirit who are called blessed by Jesus;¹⁸ not judges, but peacemakers who are promised a special reward in the Kingdom.¹⁹ Forgiveness from the Father is asked as "we have forgiven those who are in debt to us."²⁰

The teaching of Christ on love of enemies, peacemaking and forgiveness is specifically applied by St. Paul to litigation. Christians are rebuked by him for litigating with one another before unbelievers.²¹ Christians are told that

it is bad enough for you to have law suits at all against one another; oughtn't you to let yourselves be wronged, and let yourselves be cheated?²²

In secular situations, litigation is a last resort. Few controversies capable of judicial resolution are judicially resolved. Conflicts so acute that the parties to them seek the counsel of lawyers are normally resolved by the lawyers through a negotiated settlement. Even in the administration of the criminal law, compromise is the usual procedure. Courts function chiefly to set

¹⁷ Luke 6:27-31.

¹⁸ Matt. 5:3.

¹⁹ *Id.* 5:9.

²⁰ *Id.* 6:12.

²¹ 1 Cor. 6:1-6.

²² *Id.* 6:7-8.

the outer limits within which compromise will be made. They could not possibly adjudicate all conflicts which lawyers could put before them. Without lawyers to resolve most conflicts the courts could not work at all.

Litigation as a way of reaching a just result requires some sort of equality between the parties, an equality which courts try to insure by isolating the judicial procedures from factors extraneous to the issue, but which no court can insure if the parties are unequal in their resources and ability to engage in protracted litigation. Few persons have the resources and ability to engage in protracted litigation with an institution.

The Code of Canon Law itself discourages litigation as a method of resolving disputes, and urges, in its stead, a process of conciliation:

Since it is highly desirable that litigation be avoided among the faithful, the judge shall admonish the parties between whom some civil controversy about their own private affairs has arisen and which they have taken to court to have settled by judicial trial, to come to a compromise if there appears to be some hope of a friendly settlement. The judge can satisfy this duty either before the parties are summoned to court or when they are for the first time in court or finally at any time that he deems most opportune and effective for proposing a compromise.²³

For these several and convergent reasons, the bishops of Michigan believe that in the Church, which should not only study

secular example but also provide example for the world, the primary process for the resolution of disputes should not be a process for the assertion of legal rights but a process for the conciliation of human persons.

It is the opinion of the bishops of Michigan that the following elements are essential to any process for conciliation:

1. Each participant must have the opportunity of a face-to-face dialogue with the person with whom he is in conflict. To be treated as a human person is to be given not only a hearing, but a response. There is no substitute for dialogue.

2. Unmediated dialogue may become debate; each participant, therefore, must have the opportunity of stating his side of the conflict to a conciliator who will attempt to lead the participants to be reconciled with one another. The conciliator should be informed of the facts and feelings of each participant so that he may understand what each participant believes to be "the real reason" for the dispute.

3. Dialogue and mediation will fail if either side is convinced that abstract principles such as "the right of conscience" or "the right of authority" be vindicated at any cost. There are few imperatives of conscience that make only one course of action mandatory, and few rights of authority which can be asserted in only one specific way.

4. Delay and concealment of relevant information have no place in a process of conciliation. Wounds should be healed quickly. Persons should not be left in suspense about their status for protracted peri-

²³ C.I.C. c. 1925.

ods. The candor of brothers, not the paternalistic assumption that the truth cannot be borne, must characterize exchange designed to heal.

5. The obligation rests with each person in authority or guided by authority to teach by his example that he belongs to a religion whose essence is love.

Arbitration

Hopefully the vast majority of controversies will be settled through the process for conciliation. But because this will not always be possible, it is the opinion of the bishops of Michigan that there should be established a "due process" procedure for the resolution of disputes not resolved by conciliation.

Arbitration is defined as the reference of a dispute, by voluntary agreement of the parties, to an impartial person or persons for determination on the basis of evidence and arguments presented by such parties.

In referring a matter to arbitration, parties are presumed to have explored every avenue of negotiation and settlement. It is as a last resort that they call upon impartial persons for a definitive decision and agree to abide by the result. There is a note of formality in arbitration proceedings, commensurate with the seriousness and importance which should characterize issues brought for resolution to such a process, and there should be some form of recording the proceedings. The time element involved in the various steps of arbitration should be enforced since undue delay prologues injustice, and so is itself unjust.

An arbitrator must personally be neu-

tral; he must be objective, a person with judicial temperament, able to listen well, to ask good questions, to understand each party's point of view. The principle of subsidiarity would call for a decision being made on a local level whenever sufficient competence is available; on the other hand, the principle of impartiality would indicate that a panel of arbitrators should be selected on a broader basis than the merely diocesan.

As with the process of conciliation, so in regard to arbitration, the proposals of the bishops of Michigan do not represent a radical innovation in the governmental life of the Church. The Code of Canon Law, in discouraging judicial litigation as a means of resolving disputes, urges in its stead a process of arbitration:

In order to avoid judicial litigation, the parties may also make an agreement by which the controversy is committed to the judgment of one or several persons who shall decide the dispute according to law, or deal with the affairs according to the rules of equity. If they are to follow the rules of law, they are called *arbitri*; if they are to follow the dictates of equity, they are called *arbitratores*.²⁴

Judicial Process

Notwithstanding the Christian preference for resolving disputes through a process of conciliation of persons rather than through a process for the assertion of legal rights, there remain values indigenous to the judicial process which should not be unavailable to the societal life of the Church. Judicial

²⁴ *Id.* c. 1929.

interpretation of law, judicial delineation of rights, increasingly more precise from case to case, and judicial precedent, especially in the area of defining and protecting Christian rights, are values which the bishops of the Province of Michigan regard as enriching the governmental life of the Church.

Since both conciliation and arbitration depend in essence on the willingness of the parties, full protection of the rights of persons requires that an aggrieved party have available to him a procedure for the settling of a dispute even when the other party is unwilling. The bishops of the Province of Michigan, therefore, pending the establishment of administrative tribunals as part of the revision of the Code of Canon Law, intend in virtue of this document to establish administrative tribunals in each diocese of the province by delegating jurisdiction to such tribunals for the resolution of disputes between persons in the Church and administrative authorities or bodies within the diocese. Indeed, we hope by taking this step that we might through our experience provide the Church with a valuable source of direction in the studies of the Commission for the Revision of Canon Law.

Conclusion

For all of the reasons discussed above, we, the bishops of the Province of Michigan, promulgate the following procedures for each diocese within the state of Michigan. The procedures established hereunder shall be solely and exclusively confined to those disputes concerned with the proper exercise of authority by individuals or

groups possessing administrative authority within the Church.

Article I: Conciliation

a. Each diocese within the Province of Michigan hereby establishes an Office of Conciliation. The Ordinary of each diocese shall appoint a Clerk of such Office of Conciliation, whose duties shall be to process any grievance submitted in writing in accordance with the procedures hereinafter set forth. The term of the Clerk of the Office of Conciliation shall be a period of two (2) years.

b. Each diocese within the Province of Michigan hereby establishes a Conciliation Panel. The Conciliation Panel shall consist of five (5) individuals representative of the laity, religious and clergy of the diocese. The term of the members of the Conciliation Panel shall be a period of two (2) years. In the interest of implementing these procedures as quickly as possible, the official five (5) members will be appointed by the Ordinary. Subsequent appointments will be made after consultation with the Diocesan Pastoral Council.

c. Upon receipt of a written grievance within the purview of the "due process" procedure as delineated in the paragraph above entitled Conclusion, the Clerk shall docket such grievance and shall notify in writing, with a copy of such grievance, interested parties. Such notification shall advise all parties that each must submit, within ten (10) days from the date thereof, a complete written statement as to the issues involved.

d. Subsequent to receipt of the written statement of issues from the parties in-

volved, the Clerk shall immediately transmit same to the Conciliation Panel. It shall be the duty of the Conciliation Panel to decide within ten (10) days whether such grievance is frivolous, trivial or without merit on its face. If the Conciliation Panel decides that a grievance is frivolous, trivial or without merit on its face, it shall be within the power of the Conciliation Panel to immediately dismiss such grievance, in writing, setting forth its reasons for dismissal.

e. If the Conciliation Panel deems that a grievance merits further action, it shall instruct the Clerk to contact the convoked participant in behalf of the aggrieved party and inquire whether he will accept conciliation. If the convoked participant agrees, it shall be the duty of the Conciliation Panel to work together with the parties in an effort to arrive at an agreement upon a conciliator, acceptable to both parties, whose purpose shall be to mediate the dispute. If the parties are unable to agree upon a conciliator within ten (10) days, on request by the Clerk, the Conciliation Panel shall designate a conciliator. It shall be the duty of the conciliator to hear fully the various views and to attempt to guide them in a peaceful resolution of their problems. The conciliator shall be empowered in his discretion to call conferences with all parties present together, or he may call separate meetings if he deems such necessary. Candor and dialogue shall be expected requisites on the part of all parties. The procedures conducted by the conciliator shall be in private, and nothing revealed or discussed therein shall be made public in any manner. Mutual agreement as to the solution of the grievance, if achieved, shall be reduced to writing.

f. The conciliator shall have a period of thirty (30) days from the date of designation as conciliator to function in accordance therewith. If, subsequent to the thirty-day period, a resolution has not been achieved, all papers, documents and exhibits coming into his possession shall immediately be returned to the Clerk. If, however, the parties of the dispute mutually agree that a second thirty-day period could possibly result in a satisfactory solution, and so state in writing, the term of the conciliator shall be an additional thirty (30) days, but no longer.

g. Upon failure to mutually settle any facet of a grievance and/or upon the termination of the specific time periods set forth herein, either party to the dispute shall have the right to refer all unresolved matters to the Provincial Arbitration Board. Such referral shall be in writing, addressed to the Clerk of the Office of Conciliation, requesting that all papers, documents and exhibits be submitted for further processing under Article II hereof.

h. It shall then be the duty of the Clerk to contact the convoked participant both in writing and by telephone, apprise him of the problem stated by the initiating participant, and inquire if he will consent to binding arbitration. Such consent shall be obtained in writing. It shall be the further duty of the Clerk to assist in the selection of arbitrators pursuant to the provisions of Article II, Section *c infra*.

i. If the convoked participant refuses to enter into an agreement for binding arbitration, the initiating participant may withdraw his request for a settlement of the conflict or he may take his request for settlement to the diocesan administrative

tribunal. Any person or group refusing to abide by the procedures of the diocesan administrative tribunal shall, nevertheless, be subject to the judgment of such body.

Article II: Arbitration

a. The Ordinaries of the Province of Michigan hereby establish a Provincial Arbitration Board which shall consist of no more than ten (10) members of the Roman Catholic faith. Upon reviewing carefully any recommendations made to him by the Diocesan Pastoral Council (if there be one established in the diocese), each Ordinary shall name from the Province two (2) competent persons to the Board. The Ordinaries shall appoint one (1) member of the Board to act as chairman thereof.

b. Membership on the Provincial Arbitration Board shall be for a term of two (2) years. Any member of the Provincial Arbitration Board acting officially at the expiration of his term shall, however, continue his action until the culmination of a particular dispute.

c. Upon receipt of a referral as provided in Article I hereof, three (3) members of the Provincial Arbitration Board shall be chosen to hear the case involved. With the assistance of the diocesan Clerk of the Office of Conciliation selection of the arbitrators shall be accomplished by the disputants, in alternate order, striking names from the entire panel until there are three (3) persons remaining who shall then be the arbitrators.

d. The parties to a dispute may waive the requirement of three (3) arbitrators if they mutually agree that one (1) arbitra-

tor shall hear the case. Waiver must be in writing and selection of such one (1) arbitrator shall be by the method described in Section c above until one (1) arbitrator remains on the list, who shall be the hearer of the dispute. The action of the one (1) arbitrator would be final and binding as if the matter had been heard and decided by three (3) arbitrators.

e. If the parties to a dispute can agree on either three (3) arbitrators or one (1) arbitrator from the panel, as the case may be, to hear their dispute, the necessity of selection as described in Section c is dispensed with and the agreed upon person or persons shall hear and decide the dispute.

f. The arbitrators shall have within their discretion the right to refuse to hear and decide issues which are frivolous, trivial or without merit on their face. Such exercise in discretion shall be in writing.

g. The arbitrators shall appoint a time and place for open hearings and shall notify the parties of such not less than ten (10) days before each hearing.

h. Parties to the dispute may be represented at hearings by counsel or other authorized representative.

i. Persons having a direct interest in the arbitration are entitled to attend hearings. It shall be in the discretion of the arbitrators to determine the propriety of the attendance of any person.

j. For good cause shown in writing, the arbitrators may adjourn the hearing upon the request of any party or upon its own initiative and shall adjourn when all parties agree thereto.

k. Arbitration shall proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. Failure to be present shall not bar the arbitrators from proceeding into any facet of the case.

l. The arbitrators shall hear and determine the controversy upon the evidence produced. The parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrators may determine necessary to an understanding of a determination of the dispute. The arbitrators shall judge the relevancy and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all the arbitrators and all of the parties except where any of the parties is absent in default or has waived his right to be present. The arbitrators may require the parties to submit books, records, documents and other evidence.

m. The arbitrators shall have the power to administer oaths and take evidence by deposition whenever witnesses cannot be present at a hearing, providing that the taking of depositions is done with notification to the disputants, who would then have the right to be present.

n. A hearing shall be opened by the recording of the time, place and date of hearing, the presence of the arbitrators and parties, the presence of counsel, if any, and the receipt by the arbitrators of initial statements setting forth the nature of the dispute and the remedies sought. The arbitrators may, in their discretion, vary the normal procedure under which the initiating party first presents his claim, but

in any case shall afford full and equal opportunity to all parties for presentation of relevant proofs. The names and addresses of all witnesses and exhibits offered in evidence shall be made part of the record.

o. In the course of hearing, all decisions of the arbitrators shall be by majority vote. The award shall also be made by majority vote.

p. The arbitrators shall inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, the arbitrators shall declare the hearings closed. The hearings may be reopened by the arbitrators on their own motion or on the motion of any party for good cause shown at any time before the award is made.

q. The award and steps to be taken in implementation thereof shall be in writing and shall be signed by the arbitrators and shall be rendered promptly, unless otherwise agreed by the parties, not later than thirty (30) days from the date of closing of the hearing, or, if oral argument has been waived, then from the date of transmission of final statement or briefs. The award shall be final and binding upon all parties to the dispute.

r. Upon the rendering of a decision, the arbitrators shall immediately forward all papers, documents, transcripts and other exhibits from such hearing to the office of the Provincial Arbitration Board, where such shall be permanently kept.

s. Any party to a hearing prior thereto may request a stenographic record thereof. The requesting party shall be liable for the cost of said transcript.

t. The Ordinary of each diocese of the Province of Michigan accepts responsibility to implement the award of the arbitrators, provided that implementation is of a nature that is within the competency of the local Ordinary in exercise of his jurisdiction and authority as set forth in canon law.

u. Questions concerning the interpretation of these rules shall be referred to the Provincial Arbitration Board.

v. The Provincial Arbitration Board may obtain advisors for its purposes hereunder.

w. All conciliators and arbitrators shall serve gratis. The parties involved in the arbitration, however, shall be assessed a fee in an amount to be determined by the Provincial Arbitration Board to cover office expenses. The expenses of witnesses shall be paid by the respective parties producing witnesses. Traveling and other expenses of the arbitrators and conciliators and the expenses of any witness or the cost of any proofs produced by the direct request of the arbitrators shall be borne equally by the parties unless they agree otherwise or unless the arbitrators in their award assess such expenses or any part thereof against a specified party or parties.

Article III: Arbitration Review Board

a. There is hereby established an Arbitration Review Board to act as a board

of review of all decisions of a panel of arbitrators so provided hereunder. Such board shall not act, however, unless written request is made directly by any party to a case. A copy of such request shall concurrently therewith be sent to the Provincial Arbitration Board. The Arbitration Review Board shall be composed of three (3) people selected by lot from former members of the board and members of the board who did not act in the case.

b. Upon receipt of a request for review by the Arbitration Review Board, based upon one of the stated reasons hereunder, the Provincial Arbitration Board shall immediately forward all papers, documents, transcripts and other paraphernalia to the Arbitration Review Board.

c. The Arbitration Review Board shall have no power to review the merits of any case, but rather shall have as its limited purpose the right to hear and render decisions concerning impropriety.

d. Specifically, the jurisdiction of the Arbitration Review Board shall be to determine allegations of corruption, fraud, undue influence, partiality or exceeding of powers by the arbitrators. If the Arbitration Review Board, subsequent to hearing of such allegations, determines that such allegations are meritorious, it can order the nullity of an arbitration award and can order a rehearing before entirely new arbitrators chosen, however, in the same manner as the original arbitrators.