CHAPTER II

PROBLEMS IN THE ARBITRATION OF WAGE INCENTIVES

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In order to discuss wage incentive arbitration satisfactorily, it is necessary to set up a limiting definition of wage incentives. This must be somewhat arbitrary, as the term means different things to different people. It usually includes all monetary payments made to employees as an encouragement to perform work. Under this broad definition the term, therefore, includes hourly base rates of pay, overtime premiums, individual and group production bonuses, piecework rates of all kinds, job evaluation, etc. It excludes payments for time not worked (such as vacation and holiday pay), Christmas and year-end bonuses, profit-sharing, prizes and other payments which are not directly related in the employee's mind to productivity or time spent at the workplace. For the purpose of this paper, I shall consider only those wage incentives involving job evaluation and productivity payments.

I intend to discuss the matter of wage incentive arbitration from two viewpoints—contract interpretation and factual material. Because the former must frequently be resolved before the facts can be considered and because the interpretation not infrequently makes the grievance inadmissible for arbitration, I shall cover it first. In general, management has traditionally enjoyed the right to direct the business and the work force in pursuit of the concern's objectives. The labor agreement constitutes a sharing of some, but not necessarily all, of these managerial prerogatives with the representatives of labor, as the result of negotiation. Managerial prerogatives are becoming fewer in number every year, as more of the matters formerly decided uni-

laterally by employers become questions for collective bargaining. Incentives are no exception to this rule and few, if any of them, are now omitted from joint negotiations. Base rates and overtime have for years been the core of the union contract. Piece rates, production bonuses and job evaluation have been covered directly in contracts somewhat less frequently but are, nevertheless, subject to dispute in various ways under most agreements.

If a contract is silent on the incentive in dispute, the problem presented to the arbitrator is a serious one, as there is a strong presumption that the incentive is not one on which the company surrendered its managerial prerogative. A certified union is designated as the sole collective bargaining representative for the members of the bargaining unit with respect to wages, hours and conditions of employment and it has been argued that such a certification gives the labor organization the right to have all wage incentive grievances arbitrated. This argument seems to me to be unsound, in that the law requires the company to bargain with the union in good faith with respect to wages, but, once a contract has been signed, that agreement becomes, during its life, the guiding instrument of joint relations. For an arbitrator to take jurisdiction and render an award in a matter not covered by the contract would be equivalent to adding a clause or modifying the contract; this is something which runs directly counter to the specific provisions of most agreements.

It is my firm conviction that the arbitrator must maintain his judicial role by avoiding, both in determining arbitrability and in his award, any interpretation which cannot be based solidly on the provisions of the contract into which the parties have entered or of the formal submission of the grievance. Not only do most contracts contain clauses specifically denying to the arbitrators appointed under them the authority to "extend, curtail or amend in any way the provisions of this agreement", but any addition or modification introduced by an arbitrator as the result of his award would inevitably be to the advantage of one party and the disadvantage of the other

and would thus negate the impartiality which is one of the principal qualifications of an arbitrator.

When, as often occurs, a contract is so worded as to create a reasonable doubt concerning its application to the incentive in dispute, the arbitrator must seek further for information on which to decide the question of arbitrability. One or both of the parties are frequently inclined to introduce testimony on the discussions, offers and attitudes during pre-contract negotiations as indicating an intention or a willingness of the other party to have included in the contract a more definite statement concerning the incentive in question. In the stress of bargaining, many offers and suggestions are made by both sides, some of which are genuine and some of which are strictly for bargaining purposes, with no serious thought that they will be accepted. Under some circumstances, usually in cases where a contract clause is apparently applicable but the language is so unclear as to allow more than one interpretation, an arbitrator may be justified in taking such evidence into consideration, in considering the handling of similar cases in the past to see whether a pattern has been established into which the instant case may be fitted, or in applying a rule of reason to the situation.

If the agreement mentions the particular incentive involved in the grievance, the arbitrator must be guided by the contract language in deciding whether a violation has occurred. His only concern is to interpret the facts of the case in the light of the agreement. In a recent case the union alleged that the company had reduced the incentive rates of a group of employees in violation of the agreement. The company denied the grievance on the basis of non-arbitrability under the terms of the contract, which contained a clause to the effect that only those incentive rates which were in effect at the time the contract was signed were subject to grievances and arbitration. The company contended that the rate in question had been established after the effective date of the contract as the result of a substantial change in the physical characteristics of the material used on the job. There-

fore the job was, in effect, a new post-agreement job and the incentive rate was not an arbitrable issue.

The arbitrator inquired into the extent of the alleged change and its effect on the work loads and motion patterns of the employees. Finding that the changes were, in fact, substantial, he ruled that the job was, by the terms of the agreement, a new one and, also by the terms of the agreement, that the change in incentive rate was not an arbitrable issue. There was some speculation as to how the company had succeeded in having the clause on rate arbitrability incorporated in the agreement, and the union representatives stated that they would not have consented to the clause, had they known how the company would apply it. But the wording was clear and unequivocal and the arbitrator had no alternative but to rule as he did, without consideration of the possible reasons for inclusion of the clause.

Let us pass from the foregoing illustration of a problem of contract interpretation on arbitrability to the handling of factual material under clearly applicable clauses in an agreement. If a union waives objections to the introduction of job evaluation as a tool of management, it nearly always retains the right to take a grievance on the evaluation of any job, either new or revised, on which it believes too low a rating has been set. If new or revised piece rates do not produce as high average earnings as the employees think they should, a demand for upward revision will be submitted promptly. Such demands are based on contract clauses which take notice of incentives and which usually provide that no piece rate may be reduced after it has been worked for a specific number of hours—usually a very short period—so long as the job remains the same; nor may downward revisions be made in job evaluation factor values in the absence of substantial changes in methods, machines or materials.

When provisions like the foregoing have been written into agreements, it behooves management to be extremely careful in setting rates and evaluations originally and to initiate revisions in incentives immediately, when jobs are changed. If a revised job has been worked at the old rate for the period of grace allowed in the contract before

the employer gets around to establishing a revised incentive rate, the union's chances of having an arbitrator set aside the incentive change are almost perfect.

The same applies to job evaluation. In a case which occurred some time ago, the company had to wait four years before they could derive any benefit from the investment of a substantial sum of money in a major new piece of equipment. When the machine was installed, it resulted in some drastic modifications of the operator's task, but the job evaluation engineer did not restudy it until after the agreed-upon period of time had elapsed. The contract contained another provision which applied in this case, to the effect that the company could ask for the reduction of factors on established jobs on which the union opened an attack. So, when the union submitted a demand, some four years later, on the factor of responsibility for equipment, the company took the opportunity to introduce evidence showing that education, experience and working conditions had been changed radically and were grossly over-valued for the changed equipment. After studying the facts, the arbitrator was convinced that both parties were justified in their demands, because of the variety of changes in the factor values introduced by the new machine. However, the reduction in total points resulting from the company's demand so far outweighed the increase due to raising the value of responsibility for equipment that the job was reduced two labor grades. But the company had lost four years of this benefit through its initial failure to follow the contract to the letter.

Successful managements are fully aware of pitfalls like the foregoing and such examples are by no means the rule. But employers and their time-study and job evaluation people are human, so that errors of judgment and differences do crop up on incentives. Most of these can be settled between the parties but a fairly large number of them go on to arbitration and present the umpire with some situations which require unusually careful analysis.

In any wage incentive arbitration, a prime consideration is the group of relationships existing between different parts of the incen-

tive system. If a particular incentive is out of line with others and a grievance results, the arbitrator's task may be less one of determining the absolute justice of the individual claim than of bringing about proper relationships between different phases of the incentive system.

Probably the best illustrations of this situation are to be found in the field of job evaluation. A great many employers have adopted the job rating plan of the National Metal Trades Association and the unions seem, by and large, to accept the principles of this plan. The grievances arise in connection with its application to specific jobs which are claimed to be underrated, either with respect to the standards set up in the plan or in relation to the other jobs in the organization. The latter problem is often presented to the arbitrator in terms somewhat as follows:

> Job A is rated at 2nd degree on the factor of education; the union demands that this be raised to 3rd degree because Job B is rated 3rd degree and the education requirement is obviously the same as for Job A. No, says management, the requirements for Jobs A and B are not at all the same; however, Job C is rated at 2nd degree on education and it is plain to see that it compares closely with Job A on this factor. Both parties concede that the education factor is correctly rated on Jobs B and C.

The obvious task of the arbitrator is to attempt to determine the correct rating for Job A in the terms of the descriptions in the accepted rating plan. If, as not infrequently occurs, the disputed job is not clearly covered in the somewhat abbreviated statements in the manual, the arbitrator must determine to which of the two reference tasks Job A is most closely comparable. If he decides to raise the rating, Job A almost certainly moves into a higher labor grade, with an increased rate of pay as an incentive. But the arbitrator can, by erroneously upgrading Job A on education, upset a number of other relationships, including the same factor on Job C, which the company insisted was equivalent to A.

In fairness to both parties, and because of these wide-spread interrelationships, the arbitrator in a wage incentive case should state and

explain, to a greater extent than is usual on other grievances, the reasoning on which he based his decision.

For the foregoing and other reasons I think he must be doubly diligent in getting all the factual information available and should be qualified to understand and interpret the data he secures. At times, there is an inclination to base an award on the testimony of witnesses in the hearing and an examination of exhibits. Testimony is an aid to resolution of the difficulty but is no substitute for informed personal observation of actual performance of the job. Many witnesses, from both sides of the table, who are nervous and inarticulate while testifying at the hearing, present their facts with much more conviction and impressiveness when they are visited in the shop and can demonstrate as well as describe their jobs, their tools and their products. Furthermore, from the psychological point of view, a visit to each of the workers and supervisors involved is desirable because no one need feel that the arbitrator has not afforded him every opportunity to present all material facts and ideas for consideration. The feelings and opinions of the individual must not be neglected in our concern for the organization, either labor or corporate.

When a case involves piecework rates, the resolution of the problem frequently depends on whether a job was actually changed sufficiently to justify re-timing and the arbitrator will be assisted materially in rendering his decision if he can secure answers to certain questions:

1. Was a change actually made in methods, machines or materials?
2. Did the revision cause a significant change in the effort required of the worker?
3. Was the method of performing the job, on the basis of which the original rate was set, established by the company through recognized industrial engineering procedures?
4. Was this method clearly described to all the employees performing the work?
5. Were they required to use it?

6. Was there, in the contract or the instructions, a prohibition against changing the work methods without management's authorization?

Two examples will illustrate this point. On a group assembly job the company had fixed a certain incentive rate in dollars per 100 pieces coming off the end of the line. The line had recently been doubled in length, with two people generally assigned to perform the same job formerly done by each member of the team, although one of the tasks had been split in two, with each part being performed by one member of the enlarged group.

The company's time-study engineer had assumed that the controlling operation on the new line was the same as on the old one and had, therefore, left the incentive rate unchanged. Production fell off as soon as the enlarged line went into operation, earnings dropped and a grievance resulted. When the arbitrator began to take check observations, he found that most of the tasks on the line were not being performed in accordance with the motion patterns described in the original study. Questioning of workers and supervisors brought out the fact that the present workers did not know exactly how they were expected to perform their jobs, had never seen the analysis sheets or the operating sequences drawn from them, had not received uniform instructions on the performance of their jobs (in fact, it was difficult to detect any real training at all), and had never been told, formally or informally, not to alter the established patterns.

There was general, though somewhat reluctant agreement that the job had operated in the same offhand manner for a considerable period before the grievance and that supervision had made no attempt to change the situation. The employees were not performing their work efficiently, were unable to "make bonus", and did not seem particularly anxious to try to do so. Working pace was, and for some time had been far below a reasonable level, even for daywork, and there was more than a suspicion that the employees could increase their speed a good deal, if they so desired.

The arbitrator was faced with the dilemma of attempting to establish a rate which would be fair to both parties—giving the employees an incentive to put forth effort beyond the ordinary daywork pace while, at the same time, avoiding a rate so high as to price the company out of the competitive market. He had to do this without guidance in the form of an adequate original time-study or MTM analysis by the company and without cooperation by the employees, who were obviously working below normal capacity.

The second example is taken from a case which the American Arbitration Association has used, with variations, in a number of demonstration arbitrations in different parts of the country. It concerns the man who devised a new way of turning out his product by modifying the pressure and nozzle-size on the compressed air supply at his bench. The result was a 50 per cent increase in output and earnings. Management had specified the job procedures in detail and had supplied each worker with a copy; they had also published a rule forbidding unauthorized modifications in procedure.

The company engineers studied the change which the aggrieved employee had made, found it a desirable one, adopted it as standard, changed the instructions and the equipment on other benches and re-timed the job. The originator of the idea earned somewhat more under the new timing than he had before he made the change, but considerably less than when working the job by the new method at the old rate. He filed a grievance alleging that the company had violated the contract by re-timing the job. The company replied that the job had been substantially altered by the equipment changes and modification of the motion pattern; therefore they were empowered under the contract to re-time and establish a new incentive rate; they had offered the employee a substantial award for his idea under the suggestion system and had handled the matter in other respects in a standard way.

There seems to have been a fairly general tendency, by both the demonstration arbitrators and the audiences, to rule that the company was justified in its action, in view of the careful job instructions

and the rule against unauthorized modifications of equipment and work patterns on incentive jobs, together with the fact that the ideas of other employees had been treated in a similar way, although the others had submitted their ideas as suggestions instead of proceeding independently.

Incentives are paid for the expenditure of effort, rather than for the possession of skills and the exercise of ingenuity beyond those called for in job specifications. The employee in the last case did not put forth any extra effort in order to earn his 50 per cent bonus—he merely changed the motion pattern and equipment slightly and actually expended less effort than before. Employees not infrequently use a given motion pattern while an engineer or arbitrator takes a time-study, then change to another more efficient pattern for regular production. Needless to say, such a situation makes the arbitrator's rate unjustifiably high, in management's view.

Wage incentives are designed to encourage increased productivity by the application of increased effort, with earnings in proportion. The acceptance by employees of the whole concept of incentives is dependent on the degree of fairness and equity which they believe exists in the system. Failure of the employees to accept the system means failure of the system to produce the hoped-for increase in productivity and may, in fact, result in an actual decrease in productivity.

An arbitration award which inadvertently or unjustifiably upsets the balance of the interrelationships in an incentive system may cause just such a result. The arbitrator's responsibility in a wage incentive grievance is, therefore, to make as certain as he can that the incentives and their applications conform to the wishes of the parties, as expressed in the contract. In summary, this involves careful maintenance of his role as a judicial, rather than a legislative officer, close adherence to contract terms, and checking facts by every means at his disposal.