with working out a solution to the problem, arbitrations of discipline might be made more constructive. I should add that arbitrations also could be reduced considerably—unless the obsolescence of arbitrators is a poor point to advocate at an arbitrators' conclave.

Discussion—

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I want to extend the thanks of the members and guests of the Academy to Dr. Myers for an excellent and well thought out paper. I also want to thank him on my own behalf for taking over the "prefabricated" subject. As some of you know, I was originally scheduled to give the paper and Howard agreed to discuss it. When I found myself unable to do so, he graciously undertook to cover the subject. I am very grateful.

As indicated in the principal paper, arbitrations over disciplinary actions by management frequently result from obscure underlying causes. It is my purpose to discuss somewhat concisely two or three specific concepts which command the attention of the parties and the arbitrators in discipline cases, but before I get into them I would like to observe that there is need for formulation and expression of a common goal by which arbitrators, management, and labor unions can approach problems of discipline. In that connection I know of no better objective than that expressed by William H. Davis in a speech he gave a number of years ago at the University of California entitled "The Logic of Collective Bargaining." At that time Mr. Davis advocated as the mutual goal of Labor and Management in our democratic society the free and spontaneous contribution by the individual of his energies to the common welfare of the enterprise.

Relating that expression to our particular inquiry, factory discipline, I think it may well be accepted by all parties that

the goal should be a system of self-restraint by employees or enforced restraint by employers predicated upon our traditional democratic concept of objectivity and fair play in the enforcement of rules for social conduct. Some managements seem to regard the power to impose disciplinary penalties as a device for maintaining managerial control over the working force. Some unions seem to regard protest over diciplinary penalties as a means of marshalling feelings against the employer and in support of the union.

I submit that the employer loses if his power to assess discipline is carried beyond the point of reasonable and willing acceptance by his employees as a group. I submit further that unions and employees lose if successful protests against discipline result in a breakdown of respect for the authority necessarily lodged in management's ranks. All parties—managements, unions, and the employees—have a common need for the effectuation of reasonable rules for employee conduct in the calm and dispassionate manner afforded by the use of labor arbitration.

A peculiar aspect of disciplinary action cases and problems is that most collective bargaining agreements are far less articulate on this subject than they are on many others. For example, the seniority section of the average collective bargaining agreement spells out in some detail the method and manner of application of the seniority concept. By contrast, the usual provisions in collective bargaining agreements relative to disciplinary action by management state little more than that the Company shall have the right to discipline and the Union shall have the right to protest such actions in the grievance procedure. Even if it be assumed that my first point is accepted by all, that is, that the goal of the parties is the just and fair application of penalties if needed, nevertheless it seems to me to be quite true that the companies and unions have not spelled out in specific terms what is to be regarded as "fair and just." As far as I know, arbitrators more than anyone else have been the persons attempting to articulate and make specific the general goal

which I have described. Moreover, in that connection, the problem of the arbitrator is generally not whether in a given case an employee is wrong. Most often, at least in my experience, it is not hard to recognize when a wrong has been committed. The most troublesome question in this area is: What should be done by way of penalty or sanctions as an aftermath of misconduct?

Turning now to the specific concepts I want to discuss. The first concerns factual certainty and punishment; the second "corrective discipline"; and the third "negative leadership."

As to the question of factual certainty and punishment, it has been my experience and observation that, because of the intensity with which disciplinary action cases are presented, the parties are seldom in agreement as to the facts. In situations where the facts are contradicted, the arbitrator sits as a jury to determine credibility questions. It is at that point, I believe, that conscientious arbitrators have great difficulty. There are some, to be sure, who profess to know immediately which witness is telling the truth and which one is lying. Most of us, I believe, are never quite sure. Doubts must be resolved, and one side or the other upheld as to the facts, but the tribulations of the arbitrator in resolving such questions are usually intense.

A question which may be raised in this connection is whether, as a matter of proper functioning, the arbitrator may carry into his assessment of a penalty his feelings of uncertainty as to the facts. From a simple two-valued approach, the answer is quite simple. The punished employee is either guilty or not guilty of the offense charged, and that question is resolved before proceeding further. But if we reject the two-valued approach, as I think careful thinking compels us to do, and if we recognize that the most the arbitrator can reasonably do is make findings of fact on the basis of varying degrees of probability, the question may fairly be posed whether his strength of feeling as to the facts may properly be carried into his evaluation of the penalty which is to be assessed.

Traditionally it has been considered that the arbitrator was to execute the jury function, that is, determine guilt or innocence, before taking on the judicial function of determining the extent of penalty. I have no quarrel with this mode of approach. Indeed, in the present state of thinking of arbitrators and the parties to arbitration, I would be inclined to believe that the arbitrator who did not proceed in this manner was not meeting the expectations of the parties. I wonder, however, whether this is a realistic point of view in the light of experience in the lower steps of the grievance procedure. I suspect that, in many cases, companies and unions compromise disciplinary penalties as a means of circumventing the necessity for making a straight yes or no answer on questions of fact. If this be true, would it not be more realistic for the parties to permit, perhaps even to encourage, arbitrators to pursue the same line of reasoning.

To turn from the philosophical to the practical, the second concept I wish to describe is one known as "corrective discipline." I don't know where the term was first coined, and I am not aware that anyone has written an essay attempting comprehensively to explain it. My experience with the concept occurred principally at General Motors Corporation under its National Agreement with the United Automobile Workers. Under that agreement, you should understand, the umpire is given "full discretion" in cases of violation of the shop rules. As a means of explaining to the parties what would probably happen in future cases, the various holders of that Office have over a period of ten years or more restated and defined what is meant by "corrective discipline."

Most simply put, the principle of corrective discipline requires that management withhold the final penalty of discharge from errant employees until it has been established that the employee is not likely to respond favorably to lesser penalty. To draw an analogy from the criminal law, corrective discipline is somewhat like an habitual offender statute. It presupposes that the primary purpose of punishment is to correct wrong-

doing rather than to wreak vengeance or deter others. Corrective discipline assumes that the employer as well as the employee gains more by continuing to retain the offender in employment, at least for a period of future testing, than to cut him from the rolls at the earliest possible moment. In view of the high cost of turnover of factory employees, there is considerable logic in this point of view. To paraphrase Hamlet, it may be better to live with, and adjust to, known evils than to flee from them into the possibility of unknown evils. To discharge an employee with considerable experience with his employer because of minor violations of the shop rules does not necessarily mean that the evil is wiped out. If a continuing level of employment is assumed, the discharged employee must be replaced with another. Normal hiring procedures provide little if any guarantee that the new hire will be a perfect citizen or that, on balance, his capabilities and behavior traits will be better than those of the employee discharged.

Within the general concept of "corrective discipline," there are many variations. At General Motors, it is customary to include any and all violations of the shop rules in determining whether it fairly appears that the employee is incorrigible. At other companies, to my knowledge, it is customary only to evaluate penalties for offenses identical or similar to the one currently in dispute. At General Motors, it is not customary to set up an exact scale of frequency of wrongdoing as determinative of the question of incorrigibility. At other companies, to my knowledge, specific schedules of increasingly severe penalties are promulgated or agreed upon as the basis for making a determination as to when discharge is proper. At General Motors, it has been customary, by and large, to precede discharges based upon the principle of corrective discipline by a severe penalty layoff of 30 or 60 days.

Corrective discipline is not simply a device to postpone or defeat discharges. In some circumstances, it works to the disadvantage of employees as compared to other methods of imposing discipline. In some factories, to my knowledge, minor

misconduct, such as loitering, is punishable only by mild penalties, no matter how often the offense is repeated. Under corrective discipline, an employee who persists in wasting time or loitering in the face of several penalties of increasing severity for such misconduct may justifiably be discharged for an additional offense of the same nature.

One argument occasionally advanced in defense of employee wrongdoers is that, once a man has suffered a penalty for misconduct, he has "paid his debt to society" and thereafter is free from stigma because of previous misconduct. Corrective discipline does not accept this argument as valid. It responds with the proposition, which in my opinion has greater validity, that management is entitled to have an obedient and cooperative working force and ought not be subjected to the necessity for retaining in its employ persons who over a period of time demonstrate by their conduct that they cannot accommodate themselves to reasonable shop rules.

Corrective discipline imposes upon management a two-fold burden of firmness and patience. It requires front line supervision to adopt a reasonably firm attitude against minor violations and not to let them pass by frequently with simple admonition or complete oversight. Where the principle is properly applied, management is obligated to demonstrate that the employee has been put on notice, by penalties of increasing severity, that his course of conduct was not being condoned. It does not permit supervisors to go back to their "little black books" and advance, as grounds for present discharge, misconduct of earlier occurrence which was not taken note of and properly punished at the time.

On the other hand, corrective discipline requires of front line supervision that it be patient and that, even though an employee's behavior is aggravating and provocative, the employee be dealt with objectively and not discharged because of anger or desire to retaliate. This twofold obligation of patience and firmness sometimes traps line supervision when its actions are under review by an arbitrator. Supervision desiring to be

patient may find itself overruled on the basis of an overshow of leniency. Supervision desiring to be firm may find itself reversed on the grounds that it was not patient enough. Such instances, in my experience, are rare, however, particularly where the arbitrator restrains himself in reviewing management's exercise of its disciplinary power to considerations of reasonableness and practicability. There is a hazard in the concept if the arbitrator attempts to set a fixed pattern which must be complied with irrespective of individual circumstances.

The fundamental precept of corrective discipline is that "actions speak louder than words." By this I mean that supervision's admonition of an employee in words is less significant in appraising the employee's degree of incorrigibility than the penalty—mild, moderate, or severe—which supervision assesses at the time the admonition is given. Verbal warnings frequently repeated but unsupported by lost-time penalties seldom command the respect which is needed for observance of the rules.

A third concept applicable to some kinds of disciplinary action cases is that known as "negative leadership." The term is a misnomer. What it really means is absence of leadership where leadership is required. As far as I know, the concept applies only against union stewards or other representatives in cases arising out of unauthorized work stoppages. Under the usual clause that the Union will not "cause, or permit" strikes or stoppages contrary to the terms of the Collective Bargaining Agreement, the question arises as to what degree of guilt, if any, may be attributed to union representatives for their failure to prevent an unauthorized stoppage.

Affirmative leadership of a wildcat strike by any employee is of course a serious offense. Conduct such as calling the men from work, setting up or participating in picket lines, interference with the entry to the plant or work by other employees, etc. are offenses for which management may, and by the better view should, assess disciplinary penalties. But what of the union representative who, while not actively guilty of positive lead-

ership in furtherance of a work stoppage, fails in one of more respects to prevent or minimize such stoppage. Is such a person subject to punishment for his failure to do so? It is this question which is covered by the term "negative leadership." It is in this area moreover that union representatives find themselves most hard pressed to take decisive action. Confronted with threats to his leadership position and confronted with an unauthorized stoppage brought about by the activities of unauthorized leaders, the average union steward finds himself between two fires. If he fails to "run with the crowd," he may shortly find himself out of office. If he does run with them, he may shortly find himself out of employment.

I confess I do not have a well-rounded set of answers to all of the kinds of situations which arise in this area. In my experience, however, I have noticed occasions where management and some arbitrators failed to distinguish between affirmative acts of leadership in furtherance of an unlawful and improper work stoppage and simple "negative leadership," in which the union representative, under varying kinds of circumstances, failed effectively to prevent or minimize a wildcat strike. Failure to distinguish between these two types of activity, in my opinion, is a mistake. That is not to say that I think that negative leadership is never grounds for punishment. Depending upon the immediate circumstances of the case, it may well be. Certainly, however, in my judgment, negative leadership is subject to lesser penalties than affirmative leadership, and a realistic approach to the problem requires that management and arbitrators take into account the conflicting pressures which confront the union steward in the event of a wildcat strike.