CHAPTER IX

THE JOHN DEERE-UAW PERMANENT ARBITRATION SYSTEM

HAROLD W. DAVEY
Professor of Economics
Iowa State College

1. Early History

Permanent arbitration of the judicial type with a single umpire has been an integral part of contract administration in the John Deere chain of farm equipment companies since 1946. The United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, is the Union concerned.[1]

This chapter describes and evaluates the permanent arbitration system of John Deere and UAW at eight of the company's plants in Iowa and Illinois.[2] Although Deere has seven other factories,[3] the eight

[1] Formerly, the Farm Equipment and Metal Workers (Ind.) held bargaining rights at the Dubuque plant and the Deere Planter Works, now under contract with UAW.

[2] The eight plants with their products and approximate number of employees in UAW bargaining units are set forth below:

John Deere Des Moines Works, Des Moines, Iowa, employs approximately 1300 production and maintenance employees represented by UAW. The IAM represents employees in the machine shop and tool room. The Des Moines plant makes corn and cotton pickers, cotton harvesters, row-crop and tool-bar cultivators, and sulky rakes. This plant began operations in 1948.

John Deere Dubuque Tractor Works, Dubuque, Iowa, employs approximately 1,380 in the production and maintenance unit. Farm tractors and stationary engines are made at Dubuque. This is also a new plant which began operations in 1947. The first contract was with FE, but the employees switched to UAW in 1948.

John Deere Ottumwa Works, Ottumwa, Iowa, employs approximately 946 in the production and maintenance unit. Ottumwa products include side-delivery rakes, automatic pickup hay balers, forage choppers, ensilage harvesters, and blowers.

John Deere Waterloo Tractor Works, Waterloo, Iowa, is the largest plant in the chain. The Waterloo plant makes farm tractors and employs aproximately 5,000 in the production and maintenance unit. (Footnote continued bottom of page 162)

plants bargaining with UAW locals form the heart of the company's manufacturing operations.

John Deere ranks second to International Harvester in the farm equipment field. Deere produces a full line of tractors and agricultural implements. Unlike Harvester, Deere has always confined its operations exclusively to farm equipment. However, in 1954 Deere began operating a urea and anhydrous ammonia plant at Pryor, Oklahoma. This new plant bargains with the Oil, Chemical and Atomic Workers Union and has an ad hoc arbitration system at the present time.

Deere and UAW negotiated their first contracts in 1943. These early contracts did not provide for arbitration. The 1945 contracts introduced grievance arbitration for the first time on an ad hoc basis. The switch to permanent arbitration was made by contract amendment in 1946, applying at that time to five of the eight plants covered in the present analysis.[4]

From the inception of the permanent arbitrator system, both the company and the union have agreed on the type of arbitration they want. Both parties firmly support judicial arbitration. Neither party wishes the permanent arbitrator to act as a mediator at any time. Cases arriving at arbitration are jointly presumed to be incapable of informal

---

John Deere Harvester Works, East Moline, Illinois, makes combines, mowers, windrowers and pickups. Approximately 2,010 employees comprise the production and maintenance unit at the Harvester plant.

John Deere Spreader Works, East Moline, Illinois, employs approximately 570 in the "p and m" unit. The Spreader plant makes manure spreaders and loaders, corn shellers, hammer mills, portable elevators, blades, loaders, bulldozers, and scoops.

John Deere Malleable Works, East Moline, Illinois, is a foundry making malleable iron and pearlitic malleable iron castings for other Deere plants. The UAW bargaining unit at Malleable includes approximately 524 employees.

John Deere Planter Works, Moline, Illinois, makes disk harrows, corn planters, and cotton planters. UAW defeated FE in a schism election in 1954. The bargaining unit includes approximately 460 employees.

[3] The non-UAW plants in addition to the Oklahoma area plant include the Vermillion Works at Hoopeston, Illinois; the Van Brunt Works at Horicon, Wisconsin; the Killefer Works at Los Angeles, California; the Plow Works and the Wagon Works in Moline, Illinois; and the Welland Works in Welland, Ontario, Canada.

[4] The five plants originally covered included the Iowa plants at Ottumwa and Waterloo and the three East Moline, Illinois, plants. *See note 2 supra.* The Des Moines plant was covered from the time it begah operations in 1948. Dubuque was included when UAW took over from FE in 1948. The Planter Works became the eighth plant in the system when UAW defeated FE in 1954.

resolution. The arbitrator is expected to make a clear-cut decision based on interpretation and application of contract language.

The permanent arbitrator's authority and jurisdiction have always been carefully defined. No contract has ever provided for unlimited arbitration. However, there has been some variation in the scope of the arbitrator's jurisdiction. In early contracts, the arbitrator had authority to rule on issues over the propriety of piece rates and rates on new hourly or incentive jobs. The permanent arbitrator's authority was made congruent with a comprehensive no strike-no lockout clause in these contracts.

In the 1950-55 contracts, however, the arbitrator was specifically precluded from ruling on piece rates and rates on new jobs. In the 1955-1958 contracts, the arbitrator's authority is expanded to cover certain incentive grievances alleging improper standards. However, his new authority is strictly circumscribed as follows:

> The jurisdiction of the Arbitrator is specifically limited and restricted to the sole determination of the following questions:
> 1. Was there a clerical error in the computation of the Incentive Standard, or
> 2. Was there a change in design, equipment, material specifications or manufacturing methods, and/or
> 3. If there was a change in design, equipment, material specifications or manufacturing methods, what elements were changed?

In addition to the foregoing narrow questions, the arbitrator can also hear grievances on incentive standards which question whether the standard was established in conformance with the Standard Hour Incentive Plan or which raise the question "of the adequacy or inadequacy of the standard". In the first year under the 1955-1958 contracts, no disputes have reached arbitration under these headings.

The 1955-1958 contracts specifically exclude four categories of grievances from the arbitrator's jurisdiction. These same categories are not covered by the contracts' no strike-no lockout clauses. The four excluded categories are: 1) changes in existing incentive standards, except for disputes of the type just described, 2) establishment of new incentive standards, 3) rate ranges for new hourly paid job classifications, and 4) occupational rates for new incentive work job classifications.

Deere-UAW contracts have always combined an open grievance procedure with a tightly defined arbitration step. The earlier steps in grievance machinery admit all grievances, whether or not they relate to matters covered by contract. However, the arbitration step is limited to disputes concerning the interpretation or application of contract provisions.

The record of Deere and UAW on tenure of permanent arbitrators is excellent. Since permanent arbitration was first introduced in 1946, the parties have been served by only three permanent arbitrators. Professor Charles Updegraff served as sole arbitrator from August, 1946 until 1950. Five year contracts were negotiated at all plants in 1950. From December, 1950 until March, 1952 the case load was handled by several arbitrators selected on an ad hoc basis utilizing the services of the Federal Mediation and Conciliation Service. Eleven different arbitrators handled cases on an ad hoc basis during this period. Most of the cases were heard by Updegraff, Kelliher, and the present arbitrator. The other eight arbitrators heard only one or two cases each. In March, 1952, Peter Kelliher was named as permanent arbitrator under the 1950-1955 contracts. Kelliher served from March until July, 1952.

Effective August 15, 1952, I was named as permanent arbitrator and have served in that capacity up to the present time.

2. Operations of the Umpire System

A. Grievance Procedure

Deere and UAW employ a five-step grievance procedure in all plants. This procedure is substantially the same for all contracts and is carefully articulated.

Unless otherwise noted, all direct contract quotations are taken from one of the 1955-1958 contracts. Although each plant and local union have their own contract, negotiations for the eight plants are conducted simultaneously in Moline, Illinois. The resultant contracts are substantially uniform on most important subject matter areas.

Step A is between the aggrieved employee, his departmental steward and his immediate foreman. The grievance is to be reduced to writing and signed by the employee and his steward at this first step.

The written grievance must be presented to the employee's foreman

"within five (5) working days from the date on which the act or condition complained of last occurred." The foreman's answer must be given within one (1) working day following receipt of the written grievance. As might be expected, many grievances are discussed informally with the foreman either by the individual employee or his steward without being reduced to writing. Many are settled at this stage.

If the foreman's answer at Step A is deemed unsatisfactory, the appeal to Step B must be filed within three (3) working days after receipt. Otherwise the grievance is deemed settled on the basis of the foreman's written answer.

The second step involves the divisional steward and the plant's director of industrial relations. The latter must answer in writing to the divisional steward and the aggrieved employee "as soon as possible" and in any event within four (4) working days after receiving the grievance.

General grievances are entered at Step B. A general grievance is defined by contract as one affecting all employees in the bargaining unit or one involving a matter outside the jurisdiction of the departmental foreman.

The written answer of the director of industrial relations will settle the grievance unless appealed to Step C at the second regular shop committee meeting following his answer in Step B.

The third step (Step C) involves the local union shop committee and the plant manager or other representative designated by him. However, the contracts provide that one of the company representatives shall not have participated in any previous step.

Company representatives and the union shop committee have regular weekly meetings on grievances appealed from Step B. The shop committee must furnish in writing the day before the weekly grievance meeting a list of all grievances to be discussed at this meeting, together with a brief statement of the shop committee's position on each grievance.

If a grievance is not settled informally at Step C, the director of industrial relations must give his written answer not later than three (3) working days following the regular weekly meeting at which discussion of the particular grievance was concluded. If the union is not satisfied with the company's Step C answer, the grievance must be

appealed to Step D within ten (10) working days from the date of said answer.

Discipline grievances enter the procedure at Step C. The contracts provide a special procedure for handling all discipline cases, including a disciplinary action hearing in the plant, following which the actual decision as to whether to discipline is made. This procedure serves in lieu of Steps A and B on other types of grievances. A discipline grievance must be filed within three (3) working days following the disciplinary action hearing.

Step D, the step immediately prior to arbitration, involves the local union president, chairman of the shop committee, and an international union representative meeting with designated company representatives. Again, at least one of the company's representatives shall not have participated in any previous step. The union's international representative makes his first appearance at the Step D meeting.

As in prior steps, the time limits for appeal and answer are carefully spelled out in the contracts. The present 1955-1958 contracts also contain new language designed to insure that the nature of each party's position will be more precisely spelled out in the event the grievance should go to arbitration.

Deere and UAW have never used submission agreements. The issue has heretofore been framed by the grievance and the company's answer. Where the parties came to arbitration in disagreement as to the framing of the issue, the arbitrator's first duty was to formulate the issue as it appeared to him from argument of the parties after noting the progress of the grievance in pre-arbitration steps.

Under the current contracts, the union in its appeal to Step D is required to ". . . set out the alleged contract violation, if any, the Section or Sections of the contract violated, and the specific relief sought thereunder." If a dispute should arise as to whether the union's appeal conforms to the foregoing requirements, the contract provides that the appeal may be amended to conform at the Step D hearing.

If the union refuses to amend its appeal and the company still considers the appeal defective, the issue is arbitrable as to whether the written appeal conforms if the case is carried to Step E. To date, no issues have arisen in arbitration over these new requirements.

The union's appeal to Step D must be filed within ten (10) days after receiving the company's Step C answer. The written Step D

appeal must be presented at least three (3) workiug days prior to the Step D meeting at which it is to be discussed and such meeting must be held within fifteen (15) days after receipt of the company's Step C answer.

Any grievance submitted to Step D must be answered in writing within ten (10) working days following the meeting at which discussion of the grievance was concluded. If the grievance is denied or remains unsettled, the company's answer shall state that ". . . the contract provisions cited by the union are not violated or that other contract provisions govern the subject matter of the grievance or that no contract provision is involved in the grievance or any combination of these positions."

Any grievance not appealed to Step E within fifteen (15) working days from the date of the company's written answer in Step D is deemed settled on the basis of the company's answer.

Step E, the arbitration step, is strictly limited to grievances involving the interpretation and application of contract provisions. Furthermore, as already noted, four types of contract issues are specifically excluded from the arbitrator's jurisdiction under the 1955-1958 agreements pursuant to the parties' joint thinking that arbitration should be limited to issues amenable to judicial treatment.

Such disputes are excluded from the coverage of the no-strike, no-lockout clause and may become the basis for a legal strike during the life of the contract. Four of the eight plants were on strike for over four months in 1956 over a dispute on changed incentive standards. The permanent arbitrator took no part in this dispute in keeping with the joint desire of the parties to exclude such matters from arbitration.

At the time the union appeals a grievance to arbitration, it may, if it wishes, amend the language of its Step D appeal ". . . to cite additional or substitute contract provisions allegedly violated and to amend the relief sought." If the union takes advantage of this option, the contract gives the company an additional five days to amend its own Step D answer.

The Step D appeal and answer, or as amended in Step E, constitute the issue for determination by the arbitrator. The new language on Step D and Step E as described is designed to improve the framing of the issue for arbitration and to serve in lieu of the formal submission agreement.

The present arbitrator has a strong personal preference for submission agreements. It is curious that parties devoted to the judicial type of arbitration do not employ this familiar device for framing issues in arbitration.

The current 1955-1958 contracts involve a change in practice on requesting a hearing date from the arbitrator. The former contracts involved a "joint request" to the arbitrator within five (5) days following the filing of the Step E appeal. However, the new contracts provide that ". . . either the company or the union shall submit a request to the arbitrator that he set a date for a hearing on the disputed issue."

This change in practice on arbitrator notification resulted from a union demand in the 1955 negotiations, apparently motivated by the practice of some of the plants of refusing to join in request for arbitration on issues that management felt were not arbitrable. Deere at first resisted and then agreed to abandoning joint referral. Apparently, the *quid pro quo* for the change in referral procedure was the revision of the Step D appeal language described above.

Contract language on grievance and arbitration procedure is notable for its clarity of expression and lack of ambiguity. No disputes have arisen during my tenure over its interpretation or application.

B. Arbitration Procedures

The nature and limits of the arbitrator's authority are carefully defined. He is empowered to determine the relevancy of the evidence presented and his decision shall be "final and binding" upon the parties. Standard language is employed to make clear that the arbitrator shall have no power to "alter, change, detract from or add to" the provisions of the contract.

Not more than three grievances covering different subject matters may be heard at any one arbitration hearing. Unlike many contracts, the Deere-UAW contracts do not impose limits upon the arbitrator for handing down his decisions. However, the great majority of decisions reach the parties within two to four weeks after the cases are heard.

Many cases appealed to Step E are not actually arbitrated. If the union is not satisfied with the company's Step D answer, the grievance is usually appealed to Step E in order to "save" it in terms of the contract's time limits. However, the union has a reasonably effective

screening procedure that serves to eliminate a great many cases. The screening is now done at a two-day meeting held each month attended by local shop committee chairmen for the eight plants and international representatives servicing the eight locals.

The arbitrator has no precise information as to what percentage of cases are screened out at these monthly meetings. My impression is that the number eliminated at this stage is considerable. Occasionally, a local union may carry a case to arbitration on its own against the recommendation that it be dropped.

Cases appealed to Step E and not screened out at the monthly meeting are set down for hearing. However, not all of these are actually heard. Not infrequently the international representative assigned to present the case in arbitration will drop cases after consultation with local union officials just prior to the hearing.

In recent months, there have been a number of cases withdrawn or settled after the hearing has actually begun. In June, 1956, two days of hearing were scheduled at Waterloo for seven cases. One case was heard on the morning of the first day, followed by a long lunch hour during which the parties disposed of five of the remaining six disputes. There appears to be little doubt that the parties are intensifying their efforts to reduce still further the number of cases actually going to arbitration.

The company has never objected formally to withdrawal of cases by the union at the last minute. However, company representatives charged with the task of preparing for arbitration have expressed annoyance at having cases dropped by the union just prior to the actual hearing. Their argument is that they have to prepare on the assumption that the union will press all cases assigned for hearing at a particular session, only to find that the union is dropping several.

Company screening procedures are informal. They hinge upon a tangible yet flexible relationship between local plant management and industrial relations staff personnel of Deere & Company in Moline. Each of the eight plants is a separate operating entity. The local director of industrial relations has authority to proceed as he sees fit. However, my impression is that close liaison is maintained between local and central office industrial relations personnel.

Industrial relations directors of the eight plants meet at least once a month with Deere & Company industrial relations personnel in Moline

to confer on common problems. Incentives for uniform contract interpretation and application in all eight plans operate upon management as well as upon the union.

The company's decision as to whether to arbitrate or settle a grievance appears to be conclusively determined in most instances by the time of the Step D meeting. However, there have been cases in which the company has granted grievances between the time of the Step D answer and the arbitration hearing.

In recent months, the Union in particular is showing interest in more thorough screening of grievances. The suggestion has been made that both parties write up in some detail a justification of their positions prior to the Step D meeting. If this were done, it might serve to wash out more cases at the Step D level and would furnish a more substantial basis for action at the Union's official monthly screening session. Furthermore, such Step D write-ups could serve as pre-hearing briefs on those cases going to arbitration.

The contracts do not specify at what stage in the procedure the introduction of new evidence is to be foreclosed. In practice, it is rare for either party to introduce new evidence or testimony at the arbitration step unless it is "fresh" evidence that has come to light since the Step D meeting.

There have been a few occasions where one party or the other has attempted to "spring" new evidence or introduce a surprise witness at the arbitration hearing. In such cases, where the objecting party can show that the evidence could have been presented earlier in the grievance procedure, its tardy introduction for strategic reasons is likely to boomerang.

On this matter, as on many other procedural questions, both parties are reasonable and flexible. The great majority of cases are heard on their merits, even where one party or the other might stand to gain by insisting on a procedural technicality. Once in arbitration, however, no new evidence may be introduced after a party has completed presentation of its direct case. Use of rebuttal witnesses is strictly limited to rebuttal.

Grievances appealed to arbitration are heard in the order of their referral to the arbitrator as a general rule. An exception to this policy is occasionally made on discipline cases. These are always heard as

promptly as possible. The arbitrator retains the initiative in setting hearing dates.

The arbitrator has no assistance other than secretarial. All cases are heard personally by the arbitrator who takes his own hearing notes on most cases. In a minority of cases, a court reporter is employed to take a verbatim record of the proceedings. The arbitrator has encouraged the parties to obtain a court reporter when it is anticipated that the case will involve complex technical questions or possible conflicts in testimony requiring determinations as to credibility.

Case presentation follows the same general pattern in all plants. Both parties make brief opening statements setting forth their contentions as to the grievance at issue and what they expect to prove. The Union then presents its direct case through witnesses and exhibits, with the Company cross-examning.

Objections as to materiality or relevancy of testimony or evidence are occasionally made. However, the rules of evidence are not followed. Seldom has either party pressed the arbitrator for an on-the-spot ruling as to admissibility. The contracts permit considerable freedom in presentation. All provide that "either party shall be entitled to present its claims to the Arbitrator in such manner as the party may desire, provided that the Arbitrator may determine the relevancy of the evidence presented."

The Company's direct case is put in following the Union's presentation, with the Union exercising cross examination privileges. An opportunity is then afforded each party for rebuttal testimony or evidence. The Union then presents its summation and final argument, followed by the Company. In only one case in five years have post-hearing briefs been submitted. In all other cases, the record was closed at the completion of oral argument.

Conduct of hearings is greatly facilitated in the Deere-UAW relationship by the fact that representatives of both parties are experienced and knowledgeable in case presentation. In my five years' experience, only two cases have required more than one day's hearing time. Frequently, two or three cases are presented in a single day's hearing.

Both the Company and the Union maintain centralized control at the arbitration stage. The management case is presented in all eight plants by an attorney from the central industrial relations staff of Deere & Company in Moline. The Union case is always presented by an

international representative rather than by local union personnel. The quality of presentation on both sides is generally excellent.

The centralized management presentation appears to have been instituted in response to a prior centralization on the Union side. Early in my tenure as arbitrator, the industrial relations directors for the four Iowa plants presented their own cases whereas the Illinois plants had their cases presented by an attorney for Deere & Company. However, for the past three years all management presentations have been made by a staff attorney for Deere & Company specializing in industrial relations.

Orderly informality is characteristic of most hearings. Little time is wasted in procedural arguments or extensive digressions from the point at issue. Duplicatory testimony is usually avoided. The average case takes about two to three hours to present.

The basic hearing pattern as described above has not changed during my tenure. From an arbitrator's standpoint, there is little to criticize. However, it would be inaccurate to conclude that there is no room for improvement.

In November, 1954 the writer met with Company and Union representatives to discuss techniques for shortening case presentations without loss of clarity. The conference was prompted by a common awareness that hearings had been tending to lengthen out unnecessarily. An informal understanding was reached on a number of points with beneficial results.

Greater use is now being made of informal stipulations as to facts. This saves a great deal of time. Also, the arbitrator has become less tolerant than he used to be whenever either party shows a tendency to mix argument in with direct case presentation. In recent months, hearings have run more smoothly and economically.

In keeping with my own beliefs and the desires of the parties, I have never attempted to settle a dispute during the course of a hearing, even when it seemed obvious that a particular grievance should have been granted or withdrawn. Once a case actually goes to arbitration, both parties expect the arbitrator to hear it and hand down a decision on the merits.

If during the course of a hearing the parties wish to confer informally as to a possible settlement, as occasionally happens, it is understood that the arbitrator will leave the hearing room until the conference is

concluded. This prevents either the arbitrator or the parties from being embarrassed by an off-the-record discussion if the settlement fails to materialize and the dispute remains to be adjudicated.

Deere-UAW hearings have been free in my experience from "excessive legalism." [5] Motions, counter-motions, objections, and quibbling over questions of materiality and relevancy are seldom encountered. There is a minimum of procedural formalism. Participants know one another well and respect each other's abilities. Much time is saved by elimination of post-hearing briefs. Each party makes a careful summation of his position and analysis of the evidence and contract at the conclusion of the hearing. The record is then closed.

The experience, integrity and ability of the participants have facilitated the arbitrator's task of running an orderly hearing. Occasionally, tempers flare momentarily. From time to time, it has been necessary to caution an inexperienced witness about the rules of the game. In general, however, it has not been difficult to maintain a pattern of orderly informality.

One index of a sound relationship is the attitude of the parties toward social contact with the arbitrator before and after hearings. I have stressed already the importance placed by Deere and UAW on having the arbitrator function in a strictly judicial capacity. From this it might be inferred that the parties prefer the arbitrator to have no personal contact with either side outside the hearing room. Nothing could be farther from the truth.

I have always felt free to dine or "fraternize" with Union and Company representatives separately or jointly. A firm understanding exists that during any social contact neither party will discuss with the arbitrator any case that is awaiting hearing or one which has been heard but not yet decided.

This ethical understanding was abused only once early in my tenure as permanent arbitrator when I was approached with a plea for leniency on a discipline case that had not yet been heard. This contact was reported by me to representatives of both parties at the hearings on the

[5] See my article, "Labor Arbitration: A Current Appraisal" in Vol. 9, No. 1, *Industrial and Labor Relations Review* (Oct. 1955), pp. 85-94, where "excessive legalism" is defined to include: 1) overtechnical presentation, principally in such matters as strict adherence to the rules of evidence and rigid formality in the examination of witnesses; and 2) insistence upon prehearing and/or posthearing briefs.

case in question. The understanding stated above was articulated at that time. It was agreed that if either party ever violated this understanding the arbitrator was to report this promptly to the other party. Since then the unwritten law barring discussion of an undecided case or a case awaiting hearing has never been broken.

The contract requires that the permanent arbitrator's decision be reduced to writing and each party furnished with a signed copy thereof. Complete opinions are written on all cases and are mailed to the parties. Only two memorandum opinions have been issued during the writer's tenure as arbitrator. One of these incorporated the terms of a settlement reached by the parties during a hearing. The other involved a "directed verdict" when it developed during the hearing that the Union's case was founded on an erroneous factual premise. No awards have ever been issued without opinions in my experience. Both parties prefer a complete opinion containing a full statement of the arbitrator's reasoning in arriving at his decision.

At least three sound reasons support this joint desire for full-bodied opinions. In the first place, the great majority of disputes arriving in arbitration are bona fide cases involving basic differences of opinion as to the interpretation or application of contract provisions. A final and binding decision of such disputes under long-term contracts is of critical importance to both parties. They have a right to expect the arbitrator to accompany his awards with carefully reasoned opinions.

A second consideration is the precedential impact of awards in one plant on the other seven. Although each plant and local union have their own contract, the eight contracts are nearly uniform in all important substantive areas. Thus, where identical language is involved, a decision in one plant—while technically applicable only under the contract between that particular plant and particular local—has strong precedential value in the other seven plants with UAW contracts.

A third factor favoring complete opinions is more effective utilization of arbitration decisions in contract administration. All decisions are carefully studied by management and union representatives. They furnish a basis for training foremen and stewards in improved handling of grievances. Thorough knowledge of decisions is also imperative for both parties as preparation for contract negotiations.

Both Deere and UAW endorse the educational value of arbitration opinions. Neither objects to their publication. A considerable number

of decisions by Updegraff and myself have been published, principally in BNA's LABOR ARBITRATION REPORTS.

Each plant and each local union has a complete file of all arbitration decisions arranged by subject matter. So do the international union and Deere & Company. The present arbitrator's decision files are arranged chronologically and are not indexed by subject matter.

C. Substantive Issues Brought to Arbitration

1. The Case Load: From August, 1952 through 1956, the arbitration case load has been relatively stable at a considerably lower level than prior to 1952. Table 1 indicates the number of decisions involving UAW plants by calendar years covering my service as permanent arbitrator since August, 1952.

TABLE 1

Year	*No. of Decisions*
1952 (Aug.-Dec.)	3
1953	24
1954	33
1955	23
1956	24

As used in Table 1 and as defined by both the parties and the arbitrator, a case or decision refers to any disputed issue requiring the writing of a separate opinion and award. Not infrequently, a large number of grievances involving a similar issue have been consolidated by agreement for purposes of hearing and decision. These are counted as one case, even though a much larger number of grievances are actually disposed of by the decision. Similarly, the parties may stipulate that the arbitrator's award in a particular dispute will be decisive in disposing of a number of related or companion grievances. Again, only one case or decision is counted.

The great majority of cases involve only a single disputed issue submitted for determination. However, a minority of cases may involve two or more substantive issues of interpretation or application. Again, somewhat arbitrarily, these have been counted as one decision or case.

The case load was considerably heavier during Updegraff's tenure as permanent arbitrator. He became permanent arbitrator for five plants

and five locals on August 8, 1946. During the balance of 1946, Updegraff heard and decided only six cases. However, the load increased sharply in the four subsequent years as indicated in Table 2.

TABLE 2

Year	*No. of Decisions*
1947	35
1948	41
1949	60
1950	55

No analysis has been made of the issues involved in cases heard by Updegraff. However, it is reasonable to infer that the heavy load in 1949 and 1950 might have been due in part to the broader jurisdiction of the arbitrator over incentive pay cases than has been true since 1950. Also, prior to 1950, there was considerably more diversity in contract language from one plant to another. Case presentation had not been centralized to its present extent. Screening procedures were probably less effective than at present. Finally, a number of issues were definitely laid to rest by decisions during the earlier years.

The 1950-1955 contracts were signed in December, 1950 following a strike lasting over 100 days. A new permanent arbitrator could not be agreed upon at that time. The parties decided to operate ad hoc until a new permanent arbitrator was selected. Use of ad hoc arbitrators covered a period of appproximately fifteen months until March, 1952 when Peter Kelliher was appointed permanent arbitrator.

The ad hoc period was an active one for at least three reasons: 1) the parties were testing a number of different arbitrators; 2) the contracts, patterned after the historic General Motors-UAW five year pact, contained a great deal of new language requiring interpretation; and 3) instability and friction existed at some plants as an aftermath of the long strike.

Over 50 cases were heard on an ad hoc basis in 1951. Thirty-three decisions were handed down between January, 1952 and my appointment in August, 1952. Fourteen of these were decided by Kelliher, most if not all of them during his period as permanent arbitrator between March and July, 1952.

New three-year contracts were negotiated in the summer of 1955

running until August, 1958. These contracts contain considerable new language and involve a new incentive system for six of the eight plants. It was anticipated that new contracts with new language might well produce a flood of arbitration cases comparable to that experienced during the first fifteen months of the 1950-1955 contracts. However, the case load has continued at approximately the same level as during the latter years of the 1950-1955 agreements. According to present indications, it is probable that the recent average of two cases per month will continue.

2. *Important Substantive Issues:* Quantitatively speaking, the four most important areas of dispute are 1) incentive pay grievances, 2) seniority issues, 3) discipline cases, and 4) job classification disputes. Table 3 below gives a breakdown on the basis of the issues involved in 105 cases decided by the present arbitrator from August, 1952 through December, 1956.

TABLE 3*

Issues Involved	*Number of Cases*
"Average earnings" and other incentive pay issues	21
Seniority, involving layoff and recall and job bidding provisions	21
Discipline	16
Job classification issues	13
Overtime work assignments	8
Rate of pay or rate reduction	4
Report-in pay	3
Holiday pay	2
Vacation pay	2
Inventory pay	2
Method of payment	2
Merit rating	1
Unexcused absence	1
Foreman doing production work	1
Union membership in good standing	1
Responsibility for scrap	1
Probationary period	1
Job delay factor	1
Shift preference	1

* 105 out of 107 decisions made by the writer between August, 1952, and December, 1956, are covered. Two cases in which there was "no winner" are not included in the foregoing analysis.

TABLE 3 (Continued)

Issues Involved	*Number of Cases*
Arbitrability	1
Steward seniority	1
Down time	1
Total	105

From the arbitrator's standpoint, the most difficult type of case is the so-called "average earnings" dispute. Deere and UAW for many years have incorporated in their contracts language detailing certain "special cases" where an incentive worker will receive his average straight-time hourly earnings, although not engaged in direct incentive production work.

Language governing the circumstances when average earnings will be paid is now substantially uniform in all eight UAW contracts, although some variation still remains. The average earnings provisions from the current Waterloo plant contract are set forth below:

> *Section 15.* In the following special cases, incentive workers will be paid at an hourly rate equal to their average straight-time hourly earnings. The method of computing the incentive employee's average straight-time hourly earnings shall be as follows: Divide the sum of the money paid for all hours worked (excluding the shift differential premium and overtime penalty pay) during the two (2) previous computed work weeks by the sum of the hours worked during such period.
>
> A. When an employee experiences excess stock or hard stock which is outside the material specification, either of which makes it impossible to run an operation at machine speeds and/or feeds used in determining the incentive standard, and his Foreman having been notified, directs the employee to continue at work.
>
> B. When an employee is directed to reclaim his own work when such defective work is because of improper blueprints of operations or wrong instructions by the Foreman or other authorized instructor or to rework returned material.
>
> C. When an employee is taken away from his regular incentive work when such work is available, scheduled and can be performed, and is directed to rework another employee's defective work where circumstances prevent the rework operation from being performed by the original workman.

D. When at the request of Management an employee is temporarily taken off his regular incentive work, when such work is available, scheduled and can be performed to take care of an emergency, to do maintenance work or to do work of an experimental nature on a new or basically modified product. An "emergency" as applying to work assignments for incentive workers may be created by the development of an unforeseen situation, such as power, water, or electric trouble, heavy snowfall or rainfall, fire or explosion, that requires immediate additional help at a given location by an employee or employees from a different work classification.

E. When an employee is taken from his regular incentive work when such work is available, scheduled and can be performed, to do the work of an absent employee.

F. When at the request of Management an employee is temporarily taken from his regular incentive work, when such work is available, scheduled and can be performed, to perform work of a trial nature to try out jigs, dies, and tools for a new product, job or process; the length of time spent or number of pieces to be run on a trial basis to be pre-determined by the Foreman.

G. When an operation is performed at the direction of the Foreman on a machine other than the one on which the standard was established and it is impossible to run the operation at machine speeds and/or feeds established in the standard.

H. When an employee is required to serve as an instructor.

I. If, due to failure of equipment, an operator is unable to continue his work and is not assigned to other incentive work, but is directed by his Foreman to repair the equipment.

J. An incentive standard covering the temporary conditions enumerated in paragraphs A, B, C, and G above may be established provided the conditions so enumerated last for at least eight (8) hours.

"Scheduled" is assumed to mean that the work is or would be normally machined, made, or used, as the case may be, and is required for use in succeeding operations within the current week, provided, however, that in all circumstances in which an employee's job is in operation during his absence or when he resumes his regular job immediately following a temporary assignment, his job will be considered as scheduled.

"Such work is available and can be performed" is assumed to mean that the material is at hand, in position and condition to be worked upon and it is physically practical to perform the operations listed on regular machines. In the Foundry not "physically practi-

> cal" would mean that it would not be practical to charge the material in the cupola not required by the Foundry; that the cores not be made unless required by the molding department for the current day's operation. Since the Foundry operates on a daily schedule, it is not practical to store hot metal or cores for but a very short time.
>
> K. In all cases where a condition arises which calls for payment of average straight time hourly earnings, the employee will notify the Foreman imediately. If the Foreman authorizes the employee to perform such work, the time of starting such work and the time of stopping such work shall be shown on the back of the employee's Daily Time Report and approved by the Foreman.

Most students of incentive systems would agree in principle with the policies expressed in the foregoing language. The Deere-UAW provisions on average earnings are explicit and concrete. Notwithstanding this careful effort to articulate precisely each "special" case, these paragraphs have proved over the years to be a productive source of disputes reaching arbitration. The reason appears to be a basic conflict in philosophical approach to incentive payments that finds expression in cases under this language.

Broadly speaking, the company starts from the proposition that an incentive worker should normally be paid incentive earnings only when he is directly engaged in productive incentive work.

The union, on the other hand, starts from the proposition that an incentive worker should have a normal expectation of being able to earn incentive earnings eight hours a day, 40 hours a week.

The company is understandably interested in having the contract language strictly and narrowly interpreted. The union is understandably interested in bringing as many situations as possible under the rubric of average earnings.

The typical average earnings case is one wherein the union maintains that *all* the contract conditions of one of the "special cases" are met by a given factual situation, with the Company arguing that one or more of the conditions essential to applying the clause is not fulfilled.

The parties agree in principle that average earnings is not due unless all the conditions set forth in the particular "special case" are satisfied by the factual circumstances involved. Thus, in disputed cases, this prerequisite for payment of average earnings stands in the company's

favor. In each case, the union always must assume the burden of proving that all conditions are met.

Over the years, many key words and phrases in these paragraphs have had their meaning definitely settled by arbitration decisions. For example, a key requirement in a number of the special cases is that an employee be taken from his regular incentive work when such work is "available, scheduled and can be performed." These words are defined in the contract, but their meaning has been further clarified by a series of decisions. Also, such questions as what constitutes an "absent employee", and what constitutes "work of a trial nature" or "work of an experimental nature on a new or basically modified product" have been reasonably well answered by decisions in recent years.

A continuing basis for conflict exists, however, because new or modified factual situations are constantly developing. Many grievances of this type carry considerable "heat". An adverse decision is not always well received.

Not infrequently, cases have arisen where in my judgment equitable considerations dictated payment of average earnings, but where contractually one or more of the requisite conditions had not been satisfied. Such decisions are difficult to make and even more difficult to accept. However, in terms of the judicial theory of arbitration, the contract itself must always be the touchstone. If contract requirements and equity do not appear to coincide, the contract governs.

As in most other union-management relationships, seniority is a frequent source of grievances arriving in arbitration. However, when one considers the many layoffs and recalls that have occurred within the farm equipment industry in recent years, it is surprising that seniority cases have not made up the lion's share of the arbitration load.

An important factor here is the careful drafting and administering of the seniority articles in the eight contracts. Although there are some variations from plant to plant, in each case a careful compromise is articulated between the union's interest in straight seniority and the company's interest in insuring that those remaining at work and recalled from layoff are qualified to do the available work.

At each layoff or recall the company may designate certain individuals "whose services are required under the special circumstances then existing." Employees so designated may be retained or recalled to service regardless of their seniority while the "special reasons" exist.

The upper limit of such "deviates" from natural seniority is five percent of the plant-wide seniority list. Such an option, of course, gives the company considerable flexibility in retaining key skilled employees who may be "young" in terms of natural seniority.

Deere-UAW contracts are designed to avoid multiple bumping during layoffs. Two key arbitration decisions at the Waterloo plant in 1953 (when major layoffs were in process) firmly established the proposition that a senior employee whose work has run out during a reduction in force in his department or seniority unit bumps the "youngest" man in the department or seniority unit whose work the senior man is qualified to perform. Since 1953, although there have been a considerable number of layoffs and recalls at the various plants, comparatively few cases have come to arbitration under the seniority article.

All the contracts provide for a system of vacancy posting and job bidding. The basic principle here is that the vacancy is assigned to the "senior qualified applicant." This potentially troublesome area has produced only four arbitration cases over four years. An early decision defined conclusively what was meant by a "vacancy in the working force" and no subsequent disputes on this point have arisen. Also, the principles have been firmly established that the company prescribes qualifications for the vacancy and that management's determinations as to which applicants are qualified shall not be disturbed unless shown to have been arbitrary, capricious or discriminatory. Acceptance of these principles has doubtless reduced the number of disputes in this area.

In many union-management relationships, discipline cases account for one third or more of the arbitrator's case load. In the Deere-UAW relationship during my service as permanent arbitrator, discipline cases have accounted for approximately fifteen percent of the total case load. Only 16 out of 107 cases in approximately four and one-half years have involved discipline issues.

An important factor contributing to the comparatively small number of discipline cases reaching arbitration is the special procedure provided for in the contracts for handling discipline cases in the plant. Before an employee is sent out of the plant as a result of an incident calling for disciplinary action, the contracts provide that the employee's divisional steward, if in the plant, or another union representative must be notified and have an opportunity to hear the employee's statement.

Within a "reasonable time" after the employee has been sent out of the plant, a so-called disciplinary action hearing is held at which the employee is entitled to be present and to be represented by his divisional steward. Both parties may call witnesses and introduce evidence at this hearing before the actual decision on discipline is made. Written minutes of the disciplinary action hearing must be furnished to the chairman of the shop committee.

This uniform procedure for handling discipline cases, supplemented by certain principles established in a number of key arbitrations, has reduced the number going to arbitration. Among the more important of these principles are 1) the burden of proving "good and just cause" for discipline rests on on management; 2) if cause has been proved, a penalty imposed will not be modified unless shown to have been clearly arbitrary, excessive, capricious or discriminatory in relation to the offense; 3) discipline for going outside the grievance procedure will be sustained, notwithstanding the substantive merits of the employee's complaint.

It is difficult, if not misleading, to single out one or more decisions as being of particular significance in highlighting the relationship between Deere and UAW. The great majority of the 107 decisions in the period covered by this analysis have involved grievances of considerable general significance beyond the immediate dispute. Many have involved policy grievances where new language was being tested or a governing principle sought. In this connection, it is well to keep in mind that the eight contracts are substantially uniform, if not identical, on most subjects. A decision in one plant is not technically binding on the other seven. Realistically, however, especially where identical language is involved, a decision in one plant is followed in the other seven.

The general significance of most of the cases reaching arbitration is attested to by the fact that most of the key substantive sections of the contracts have been involved in at least one arbitration case. A complete itemized breakdown of arbitrated issues would show over thirty separate and distinct areas of controversy. The duplication of issues occurs primarily where one might expect on discipline cases, protested overtime assignments, job classification controversies and job bidding disputes. In such areas, the general principles may be clear, but the factual circumstances and thus the proper application may vary from case to case.

3. *Reasons Why Cases Reach the Arbitrator:* In analyzing why cases reach arbitration, it is important to discover if possible whether either or both parties really trusts the arbitrator to decide critically important questions. In some relationships, it is obvious that the only cases going to arbitration are "dogs" where neither party really cares about the outcome. In other relationships, it is equally obvious that the parties are delegating too much of their own work to the arbitrator.

Deere and UAW have not been afraid to trust the permanent arbitrator with some fairly critical decisions. However, a number of potentially explosive issues have been settled by agreement rather than by arbitration. In these cases, the motives for settlement may well have been complex and do not necessarily reflect lack of faith in the arbitrator or the arbitrator process. Furthermore, it appears to be axiomatic that a settlement on any disputed issue is by definition preferable in most cases to an imposed award.

In a mature relationship, both parties are cautious about taking to arbitration disputes whose decision may kill off the arbitrator's future usefulness. This should be a factor in withholding certain types of cases from arbitration in a relationship where the parties believe in the arbitration process.

Subject to the foregoing qualifications, I have never observed any tendency on the part of either Deere or the UAW to withhold a dispute on the basis of lack of confidence in either the process or the individual arbitrator. An arbitrator whose official contacts with the parties are formal in keeping with the judicial approach is not in a position to be too accurate on appraising why cases reach him. However, I would venture the opinion that a minimum of cases in this relationship are traceable to internal union or company politics or to inadequate factual investigation of the grievance at earlier steps.

When major layoffs began to hit the farm equipment industry in 1952 and 1953, some key grievances were taken to arbitration testing out the meaning of the layoff and recall sections of the seniority article. However, with this exception, few grievances carried to arbitration could be directly attributed to unanticipated economic conditions or basic technological change.

The majority of disputes concern application of contract language to particular factual situations rather than interpretation issues as such. The contracts are clearly written and contain few surface ambiguities.

4. The Umpire's Philosophy of Arbitration: My approach has always been that of adjudication rather than mediation.[6] Deere and UAW do not wish the arbitrator to attempt to mediate or to settle disputes submitted to him. In fact, I believe that one of the principal considerations in my original appointment was my known adherence to the "judicial school" of arbitration.

The company appears to feel somewhat more strongly on this point than does the union. The latter has been critical of several decisions for being overly strict in contract construction to the point of being unrealistic and inequitable. However, at no time has the union ever sought to invoke the arbitrator's office as a mediator of a case actually in arbitration. Nor has the union ever used a straight box score approach as a method for evaluating the arbitrator's services. As a matter of fact, had the union been so disposed, my tenure would have long since ended since the quantitative box score has been substantially in management's favor on an over-all basis.

Arbitrators should never keep box scores since this is a practice that we all condemn. However, I could not resist the temptation in preparing this paper. I found out that out of 107 decisions, management had "won" 63, the union had "won" 42, and two cases had no winner, for technical reasons. The win-loss breakdown by individual plants reveals some interesting differences that would warrant some tentative hypotheses as to the relative abilities of local union leaders in selecting cases to push in arbitration.

The contracts themselves are an excellent index to the parties' joint expectations from arbitration. The line between the arbitrable and non-arbitrable grievances is carefully spelled out. At no time during the more than four-month strike in 1956 over changed incentive standards did either party ever suggest utilizing the permanent arbitrator as a mediatory aid to settlement. Many companies and unions might disagree with this approach. They would prefer to make all grievances subject to arbitration or, at least, any grievances arising under the contract. Deere and UAW, however, have chosen to exclude grievances not susceptible of judicial solution from the arbitrator's jurisdiction. It is possible that the long and costly 1956 strike over changed incen-

[6] See my article cited in note 5, *supra*, and an earlier article entitled "Hazards in Labor Arbitration" in Vol. 1, No. 3, *Industrial and Labor Relations Review* (April, 1948), pp. 386-405. See also Chapter 12 of my *Contemporary Collective Bargaining*, New York: Prentice-Hall, Inc., 1951.

tive standards may prompt the parties to modify their position that such disputes should be subject to strike action rather than arbitration. The disadvantages in using arbitration for such disputes may come to be regarded as a lesser evil than the possibility of prolonged strikes during the life of a contract.

Disputes over arbitrability have been comparatively rare. Only one out of 107 decisions covered by this analysis dealt solely with an arbitrability issue.[7] In a few other cases, the company raised a contention as to non-arbitrability that was rejected by the arbitrator before proceeding to a decision on the merits.

Rarely do the parties cite decisions involving other companies and unions. However, rather extensive use is made of prior arbitration decisions within the Deere chain. Prior awards are relied upon or distinguished as the case may be. This is entirely proper. I can recall comparatively few cases that appeared to be on all fours with a prior decision. However, a number have arisen where earlier decisions involving similar language or similar circumstances were helpful in clarifying the argument in the contemporary dispute.

I can recall only a few cases in which one party or the other has attempted to escape the consequences of an unpalatable award by seeking a different ruling through what might be termed a flanking operation on a very similar case. In a sophisticated relationship such as this one, such efforts do not go undetected by the opposing party.

Only one dispute was returned to the parties for negotiation. This was a recent case in which the arbitrator found that a particular job fell between two existing job classifications and, in keeping with the contract, awarded that he was without power to establish a classification or rate for the duties in question. All other cases finally submitted to arbitration have resulted in decisions on the merits, with three exceptions. In one case I ruled that the dispute was not arbitrable.[8] Another involved a memorandum opinion and award when during the hearing it developed that the Union's case had been founded on an erroneous

[7] This decision is reported at 22 LA 143. A survey of recent literature on arbitrability prompts the conclusion that the Deere-UAW experience is somewhat unusual in its comparative freedom from issues of this sort. See the scholarly paper by Jules J. Justin and my comments thereon in *Management Rights and the Arbitration Process*, Washington: BNA Incorporated, 1956.

[8] See note 7, *supra*.

factual premise. The third exception was a case where, by agreement reached during the hearing, the terms of settlement were incorporated in the award.

3. Summary Evaluation of the Deere-UAW Umpire System

Even in a permanent arbitration system where the arbitrator is reasonably well-acquainted with the parties, it is difficult for an arbitrator to assess the impact of arbitration upon labor relations at the plant level. One of the frustrating aspects of arbitration is that the arbitrator, curious though he may be, seldom learns very much about the post-operative effects of his decisions. Occasionally, he may hear by chance how John Doe made out on a higher-rated job to which the arbitrator had ruled he was entitled in rejecting a management contention that John Doe was not qualified. The arbitrator may also hear indirectly of the whereabouts of Richard Roe whose discharge for cause the arbitrator had upheld. In a few cases, the arbitrator may be reasonably sure that certain changes in contract languages are linked to earlier decisions. As a general rule, however, the arbitrator's direct knowledge of the impact of decisions upon relationships between the parties is meager and fragmentary. This is perhaps particularly true in a system of grievance arbitration of the judicial type.

With the foregoing qualifications in mind, it is possible to draw certain broad conclusions as to the impact of the arbitration system described in this chapter on union-management relations generally and on contract administration in particular. The ensuing analysis divides into three parts, 1) an appraisal of the positive accomplishments of the system described, 2) an appraisal of remaining flaws in the system viewed from the arbitrator's standpoint, and 3) a summary of certain distinctive characteristics of the Deere-UAW system that may have application value in other relationships.

Positive Accomplishments

The most fundamental affirmative conclusion that can be drawn is that the permanent arbitration machinery described in this chapter appears to have satisfied the expectations of the parties in establishing the system. To my knowledge, neither party has seriously considered abandoning the permanent arbitration mechanism since it was first

introduced in 1946. The 1950-1955 contracts, signed at a time when the parties were unable to agree on a new permanent arbitrator, contemplated a return to permanent arbitration from ad hoc as soon as a mutually acceptable individual could be found. At present writing, the conclusion appears warranted that both parties have a solid preference for permanent arbitration over ad hoc arrangements.

A second conclusion that appears to be justified by the record is that permanent arbitration has encouraged the parties to settle a greater percentage of grievances short of arbitration, particularly in recent years. The annual average of cases heard by me in the period 1952-1956 is considerably lower than during the four-year period 1946-1950 when Professor Updegraff was the permanent arbitrator. As I have already noted, there are a number of factors contributing to the reduced arbitration load in recent years. In my judgment, the most important are 1) the increased uniformity in language among the eight contracts, 2) the increased centralization in the pre-arbitration and arbitration stages on both sides of the table, and 3) the impressive body of common law built up since 1946 that has clearly operated to reduce grievances going to arbitration in recent years.

It is also safe to conclude that a better understanding of the principles of contract administration has been achieved in recent years by both foremen and stewards. I can recall no case in recent years of an employee or group of employees attempting to short-circuit the contract's grievance machinery or of a foreman's ignoring or flanking of contract provisions.

There appears to have been a marked reduction of wildcat stoppages in recent years. It would be presumptuous to attribute such improvements entirely to the presence of an effective arbitration system. However, it is probable that the impact of certain key discipline decisions growing out of earlier wildcats contributed substantially to their diminution.

Another indication of more effective contract administration is the comparatively light load in the first year under the 1955-1958 contracts in contrast with the first year of operation under the 1950-1955 agreements.

Present indications are that this trend will continue. There is evidence in recent months of a marked reduction in the total of grievances filed at the various plants and a clear decline in the ratio of cases arbitrated.

Judged by my own standards, another positive accomplishment of the Deere-UAW system has been the continuing adherence to the judicial approach to arbitration. The great majority of cases have been bona fide disputes over contract interpretation or application. Seldom have I enjoyed the experience of working on a case that was "easy" to decide.

Directly related to this joint faith in the judicial approach is the record of the parties on acceptance of awards. To my knowledge, there has never been an instance of failure to put an award into effect. No arbitration decision has been contested in the courts by either party. Nor has either party ever attempted to secure a motion to stay arbitration. As already noted, issues as to arbitrability rarely arise. To my mind, these factors are indicative of a stable, mature use of permanent arbitration machinery.

Unsettled Problems

The Deere-UAW arbitration is not without its flaws. The principal areas where improvement is needed include the following: 1) better referral procedures, 2) better case preparation in some instances, 3) greater use of stipulations as to facts, 4) adoption of submission agreements, and 5) more liberal use of transcripts in complex factual disputes. Each of these problems deserves brief comment.

No uniform procedure exists for referral of cases to the arbitrator. Each local union follows its own inclinations on this matter. Only three of the eight locals submit copies of the written allegations and answers at the various steps prior to arbitration. In most cases, the arbitrator has no idea prior to the hearing what cases he is to hear and what they involve. Various abortive efforts have been made to improve the referral procedure without success. There is some indication currently that the problem may be solved by the suggestion that each party write up its case rather fully at the Step D level. If this should be agreed upon, the arbitrator would have the equivalent of pre-hearing briefs which might facilitate greatly the actual presentation of cases. As matters now stand, on each case the arbitrator starts absolutely from scratch. Of course, this is less disadvantageous in a permanent umpire set-up where the arbitrator is familiar with the contract and with the basic presentation techniques of the parties.

A second problem arises from rather considerable differences in the

ability and efficiency of local union personnel in preparing cases for arbitration. Although all cases are argued by an international representative, the latter must depend necessarily on local union officials for development of the evidential basis of his case. Inadequate or incomplete preparation handicaps the international representative rather seriously in some cases. I have had the impression on some occasions that the international representative was "playing it by ear" at the hearing because of inadequacies in case preparation. There are indications also that the attorney for Deere & Company who makes all the management presentations in arbitration has encountered this same problem, although in lesser degree than his Union opposite number.

The third criticism relates to techniques in presentation of direct evidence. Both parties still rely primarily on witnesses for presentation of factual evidence. I would personally prefer greater use of stipulations on factual material. Extensive use of witnesses may sometimes tend to cloud rather than to clarify the factual picture in the arbitrator's mind. It is my impression that in some cases more thoroughgoing investigation in pre-arbitration steps would result in expanded possibilities for stipulations as to facts. Whenever stipulations can be agreed upon, there is a clear gain in economy of case presentation and probably fuller understanding on the arbitrator's part. Also, when witnesses are used this serves not infrequently to encourage the tendency to mix argument with proof.

From the arbitrator's standpoint, it would be preferable to have a submission agreement on the issue to be decided in each case. As already noted, a step in this direction has been taken under the current agreements with the issue being framed by the Step D appeal and the company's Step D answer. However, there seems to be no valid reason for continuing to avoid the use of the submission agreement. Although I am critical of this omission, fairness compels noting at this point that the actual case presentation seldom leaves the arbitrator in any doubt as to the correct phrasing of the actual issue before him.

As a final criticism, I feel compelled to comment on the infrequent use of a court reporter in Deere-UAW hearings. A transcript is not necessary in cases where the facts are not disputed and the issue is a pure question of what clause X means or whether clause Y applies to an agreed set of circumstances. However, in a case involving credibility of testimony (discipline cases, for example) or in a case raising com-

plex technical questions (e.g., job classification disputes and incentive pay cases), a verbatim transcript is a tremendous aid to an arbitrator in reaching an informed, accurate and correct decision. In my opinion, the advantages of having a transcript in such cases far outweigh the disadvantages of added expense and time lag between the hearing and receipt of the decision.

Distinctive Aspects of the Deere-UAW System

Perhaps the primary justification for a full description of a particular arbitration system is its possible value in application to other arbitration relationships. The Deere-UAW system has a number of distinctive characteristics that make it worthy of emulation by any company and union involved in a multi-plant bargaining set-up with a comparable case load.

In the first place, ten years' experience has demonstrated the viability of the judicial approach in the use of arbitration as an instrument for improved administration of contracts. Secondly, the experience of Deere and UAW shows the value of professionalizing the presentation function in arbitration.

Both the company and the union employ "specialists" in presenting their cases. The beneficial consequences are apparent. Screening of grievances is more effective on both sides, as a result of informal advice by the "professionals" who ultimately have to present the cases going to arbitration. At the hearing stage, case presentation is more economical and more effective by virtue of the specialized talent involved on both sides of the table. Skilled oral presentation of cases serves to eliminate the need for briefs.

The absence of briefs is one of the truly distinctive characteristics of the Deere-UAW system. Briefs have been filed in only one out of 107 cases heard during the more than four years covered by this analysis. Elimination of briefs entails substantial savings in expense and time. My experience with Deere and UAW leads me to conclude that briefs are generally an expendable luxury that can be eliminated in the great majority of cases by intelligent, professional case presentation.

On the substantive side, the principal distinctive characteristic of the Deere-UAW set-up is the comparatively small number of discipline and seniority disputes reaching arbitration. The reasons for this have

been dealt with earlier. Also, the exclusion of disputes over revised incentive standards and rates on new hourly or piecework jobs from the arbitrator's jurisdiction is sufficiently unusual today to warrant being labeled distinctive. Whether to continue excluding such disputes from arbitration and the coverage of the no strike-no lockout clause is probably the most serious unsettled question facing the parties at present.

It is necessarily hazardous to predict the future course of any dynamic relationship. Present indications are that Deere and UAW will maintain the arbitration techniques and procedures described in this paper. Both parties regard arbitration of the judicial type as a logical terminal step for resolution of grievances concerning contract interpretation or application. Their estimate of its importance in contract administration is measured by the increasing attention given in recent years to improving the effectiveness of screening and to raising the level of case preparation and presentation.

Basic to the general success of the Deere-UAW system of permanent arbitration is the fact that the parties understand and agree upon the role of grievance arbitration in contract administration. The system has proven itself over a period of ten years and several contracts. It is an excellent working model of grievance arbitration of the judicial type.