

CHAPTER IV
ARBITRATION OF DISPUTES INVOLVING
INCENTIVE PROBLEMS:
A LABOR VIEW

WILLIAM GOMBERG
*Professor of Industrial Engineering
Washington University
St. Louis, Missouri*

The principal problems faced by arbitrators arise generally in disputes over the setting of the production standards underpinning the wage incentive payment structure. These problems are closely related in their treatment to disputes over work load problems in day work factories.

This relationship was graphically brought out in the recent dispute between the Westinghouse Corporation and the International Union of Electrical Workers. The company was attempting to set production standards for maintenance workers on time work. The Union stated its position as follows:

The IUE has maintained that no work standards should be imposed by Westinghouse on its employees unless the job is put on incentive. The union maintains that to impose work standards without incentives is to create third class citizenship among Westinghouse workers. Dayworkers on standards would have all the disadvantages of dayworkers (in that they would get no incentive pay) and all the disadvantages of incentive workers (in that they would have to work against a standard).

The company would have a one-way street on this. It claims it can discipline or discharge those who do not meet the standard, but would provide no extra pay for those who exceed it.

We maintain that this is not only an unfair and unworkable program, but in fact, it is contrary to the generally accepted best practices in American industry.¹

¹ *Position Paper, IUE, November 25, 1955.*

This was an interesting reversal of usual positions where it was the union instead of the management that was demanding the extension of the wage incentive payment plan. To be sure the issues were much more complicated than stated here. They were confused by the feelings of threatened status of maintenance workers who were now to be subjected to time studies like ordinary production workers but this basic reversal did emerge.

In reviewing the problem that the arbitrator faces, it is therefore my intention to confine myself to the problem of the establishment of production standards.

When labor first raised the problem of the setting of production standards within an incentive payment plan of reference, it found itself confronted by two concepts with which it had to deal. The first was the concept of *extra* pay for *extra* work. The second was the concept that production standards were based upon scientifically discoverable facts and therefore non-arbitrable. The generally accepted definition of wage incentive payment plans follows:

An incentive wage payment plan is a method of wage payment by which workers receive extra pay for extra production. In establishing wage incentive plans, consideration must be given to (1) the base rate for the job; (2) the amount of work required to earn the base rate; and (3) the relationship between extra work above the base and extra pay for the extra performance.²

Most plans at their inception called for worker lost time, caused by machine or production breakdowns over which the workers exercised no control, to be compensated for at the base rate of pay. The movement has been away from this practice. Workers generally are compensated now at the average hourly rate which they demonstrated they could maintain in some defined past period.

The accepted concept was that the employer was responsible to the worker for his base rate as long as he was in the factory; that the premium payment for extra production was more in the nature of a reward rather than an obligation. That is now changed.

Wage incentive payment plans might more properly be renamed "production wage plans" to describe the new relationship. An implicit contract obligates management to furnish an opportunity to the work

² *Incentive Wage Provisions; Time Studies and Standards of Production*, U. S. Department of Labor, Bureau of Labor Statistics, Bull. 908-3, p. 1, 1948.

force to earn a specified hourly wage at a specified pace. The worker in turn obligates himself to meet the production standard which is agreed upon.

If either party fails to meet his obligation, he suffers the consequences. The management, in the event of a breakdown in the production organization, must pay to the worker the average wage. The worker, unless he meets the standard, receives less than that wage.

This approach is to be recommended for more than rhetorical purposes. It resolves the question of normalcy by making it an equitable concept rather than a rigid artificial scientific concept.

The consequences of the rigid view of the production standard as a quasi-scientific measurement rather than the result of an equitable agreement are found in the Stolper Steel case. Briefly, the facts of the case are as follows:

On the fifth day of August, 1948, the Stolper Manufacturing Company and the Union executed an agreement. Section 12 of this agreement set up a wage incentive payment plan. The agreement provided that this section go into effect April 15, 1948, and continue until October 14, 1948. It was to renew itself automatically for periods of six months unless notice was given by either party in writing at least sixty days prior to any six months' expiration date.

Under this agreement, production climbed to anywhere from 120 per cent to 131 per cent of standard. It seems to have been higher in the early days of the agreement (around 131.3 per cent) and fell off to around 121.7 per cent on February 6, 1949.

As a result of dissatisfaction with the operation of the plan, the Union gave proper notice and terminated the agreement as of October 14, 1948. The company unilaterally announced that it was continuing the wage incentive payment plan. Production, beginning February 13, 1949, fell to 100.3 per cent and then varied between that per cent and 104.0 per cent. The men said in effect that they would give a fair day's work for a fair day's pay; they were not interested in the incentive increment; they wished neither to exert extra effort nor to receive extra pay.

The Wisconsin State Labor Relations Board has denounced this action as interference with production and as a slow down, and has ordered the Union to restore the "incentive level" of production. In other words, because the men had demonstrated that on a

voluntary basis it was possible to reach 125 per cent of a fair day's work, the Board has in effect ruled that this now becomes an obligation on the part of the men. Naturally, the labor member of the Board dissented and pointed out that even if the company were to discontinue paying the premium for extra effort, the union would still be obligated to produce at 125 per cent of a fair day's work.³

The application of this doctrine would lead workers' organizations in the state of Wisconsin to boycott all wage payment plans keyed to productivity if it had been maintained. Fortunately it has been abandoned.

The union approach to the problem of work standards puts it in the same realm of discourse as hourly wages. There is no more a scientific work standard separate and apart from a concept of equity than there is a scientifically set hourly wage. This approach puts the technician in his proper place. He is an expert advisor to the principals. This point of view frees both parties from what John Commons used to call the tyranny of the expert. This tyranny perhaps best expressed itself in the Loudon doctrine of the non-arbitrability of production standards. Loudon advised management ". . . A standard must be based only upon facts and changed only by facts; therefore standards must not be subject to negotiation or arbitration in their establishment or in their change."⁴

Even in those cases where management was strong enough to impose the Loudon doctrine of non-arbitrability, the logic of events imposed a change. For example, the agreement between the Ford Motor Company and the UAW had specifically made the setting of production standards a management function. Eventually there was a strike over an alleged speedup. Harry Shulman, impartial chairman of the three-man arbitration panel in the course of the majority decision defined and distinguished the nature of the right to set a production standard from other rights. He wrote:

. . . The "right of the company" (to establish, determine, maintain, and enforce standards of production) which is "fully recognized" is not a right to make a final and binding determination. It is not like other "rights" specified in Article IV, as for example,

³ "Trade Unions and Industrial Engineering," *Industrial Engineering Handbook*, Edited by Grant and Grant, William Gomberg, Prentice-Hall, 1955.

⁴ J. Keith Loudon, *Wage Incentives* (John Wiley and Sons, New York, 1946), pp. 161, 162.

the right to "decide the number and location of plants" or the "products to be manufactured" or the "schedules of production" or the "starting and quitting time." As to these matters, the company may make *final* determinations which the union must accept for the term of the contract and which may not be made the basis of strike action during that term. Such is not the case with respect to production standards. There the right "to establish and determine and to maintain and enforce" is more in the nature of *a right to initiate*. . . .⁵

What is particularly amusing about this concept of the non-arbitrability of production standards was the eventual use to which it was put by the United Auto Workers. The original agreement between International Harvester and the Automobile Workers permitted the latter no voice in the setting of production standards but allowed the union to strike over the issue. This clause was originally inserted, probably, because it was assumed that the union would never develop the power to exercise this right effectively. In 1955 the union found this right to strike so attractive that it endured a long drawn out strike in order to preserve it.

This time it was the company that was demanding that incentive disputes be resolved by arbitration. Finally clause twelve of the new agreement between the parties compromised the issue by leaving open either route at the discretion of the parties.

At this time we can take it for granted that the pace setters of American industry by and large have accepted the concept of the arbitrability of production standards.

Let us now review this problem of setting standards of production. Industrial jobs may be classified into the following categories.

1. Completely man-paced jobs
2. Jobs that are made up of a fixed machine cycle and a man-paced component
3. Completely process-paced jobs
4. Jobs where man pace and production are unrelated

A set of typical man-paced jobs would be bricklaying or sewing machine operating.

⁵ *Ford Motor Co.*, 12 LA 949 (July 1949).

Jobs that have a fixed machine cycle and a man-paced component are found in the metal cutting industries where the setup time and clean away time are generally small components of the overall time dominated by the fixed machine cutting cycle.

Completely process-paced jobs are those found on the automobile assembly line and the textile industry.

Jobs where man pace and production are unrelated are found in highly automated factories where the worker is a watchman or maintenance worker on automatic equipment.

Obviously the most critical type of job to treat is the 100 per cent man-paced job. The solution to this problem would at once make the task of treating the other three types of jobs that much more simple. How can an arbitrator go about setting an equitable rate when the parties come to him with a dispute?

This is one area where the usual bromide offered to the arbitrators, that "it is your job to interpret the contract not to write the contract," is not particularly enlightening. All too often the parties find themselves on a hook because problems arise that are completely unforeseen or could not be spelled out operationally. The false assumptions about the dynamics of worker motivation that both parties made when they wrote out the contract come back to haunt them when the operating reality of the plan shows altogether different results than they assumed when they agreed to a plan.

For example: I have seen three inconsistent clauses in a contract: The first will declare that the piece rates shall be set to yield an average earning opportunity of 130 per cent of base. The second that the piece rates shall be consistent in their yield. The third that no rate cut shall take place as long as the material and equipment remain unchanged.

Now the plan is permitted to operate. What happens? The rates are set on a specific line of operations. The men really apply themselves and the rates in the plant average 150 per cent of the base. Have the initial rates been set too loosely or are the men giving an extra increment of effort beyond what should be expected of them?

The arbitrator has to answer this question when new lines of merchandise or new operations come up for review and a dispute breaks out between the men and the management whether or not they are entitled to be rated at 150 per cent of base or set back at the same effort level to 130 per cent of the base. The agreement more often than not

will provide little guide to the arbitrator. It will piously state that incentive payment plans are extra pay for extra effort. There, no doubt, will also be the usual statement that a fair day's work is expected of the men. It is defining this level that is the most troublesome aspect of the arbitrator's task.

The nature of the task faced by the arbitrator was spelled out some years ago by one of Frederick W. Taylor's associates. His name was Carl Barth. He was no friend of collective bargaining. In fact, when he was questioned about his attitude towards treating with unions, he exclaimed he would have nothing to do with them for the same reason that he does not treat with the devil. Yet his deep knowledge of time study led him to observe as early as 1922 that

. . . It is hardly conceivable that two time study men, however well equipped by training and experience and with physical means, would arrive at exactly the same time allowance for any job each might in turn be independently assigned to study. And still, the time allowance of either would be undoubtedly fully satisfactory for use in establishing a fair contract between the worker and the management, though the two would not be identical.⁶

Now this description of the standards setting process is much more modest than the advice of Loudon.

The approach of Barth indicates a range of measurements within which disagreement may take place and call for the services of an arbitrator.

It very often happens that the percentage disagreement between labor and management is less than the reliability range of the measurements of the time study technician and the time study technician can contribute little to the solution of the problem.

The Industrial Engineer has brought a plethora of time study techniques and methods to the rate setting process. The use of all of these techniques however remains controversial and unless the agreement specifically directs that one of these techniques is to be used to resolve differences between the parties, it would be foolhardy for the arbitrator to impose any one of them on the parties.

One of the reasons that labor usually prefers a non-engineer in the position of arbitrator in rate setting disputes is that the nationally

⁶ *Symposium on Stop Watch Time Study*, p. 108, 1922.

known engineer generally is pledged to some particular technique which he has publicly espoused. It is in the nature of his occupation.

For example, if your engineer has publicly advocated the use of the rating films of the Society for the Advancement of Management for the resolution of standards disputes, he cannot abandon this commitment and retain his professional integrity. If he is a serious advocate of one of the microscopic predetermined motion time systems like Methods Time Measurement, or the Work Factor System or the Basic Motion Time Study system, then he would feel obligated to impose this criterion in the absence of any other.

This is hardly the place or the time to go into an exhaustive review of the controversies that rage among engineers over the proper rate setting techniques or the most scientific time study system.

The important thing for the arbitrator to remember is that when the SAM rating films appeared and represented themselves to be an official consensus of the pooled judgment of the country's engineers on what is a fair day's work, they drew a condemnatory editorial signed by William Green in the *American Federationist*. Walter Reuther circulated a letter among his officers warning them against the use of the films for arbitration purposes. The labor movement resented this attempt to impose upon it a unilateral concept of a fair day's work. A technical examination of the films' deficiencies can be found in my own *Trade Union Analysis of Time Study*.

Similarly, students of industrial engineering have proved that if one of the microscopic motion time study systems is true, then all the others must be false. They give mutually contradictory results.

Therefore, unless any one of these specific techniques is included in the agreement, it would be unwise to make any one of them the final measuring rod against which to measure the standard.

The Steelworkers did include in their agreements with United States Steel Corporation a provision that workers were expected to maintain a working rhythm equivalent to a walking pace of three miles per hour. This never came to mean very much. It was predicated upon a school of time study thinking in which pace is kept separate and distinct from method. Actually production speed is an interdependent complex of these two dependent variables. The variables are impossible to separate to any significant extent. What is more important, the transferability of a walking pace to the various working paces is virtually impossible to effect. The clause therefore could not be very meaningful.

On the other hand, where there is a macroscopic system of standard data in use, the job of the arbitrator is made that much easier. Although the elements may not be exactly additive in any combination, nevertheless their very existence acts as a stabilizer on the working environment and provides an emotional climate that encourages settlement of disputes.

Likewise, film records of typical operations in the factory, which both labor and the management have agreed are to serve as keys to rating, can likewise be very helpful where they are available.

The principal difficulty of the arbitrator in these rate disputes is how to extrapolate to the new operations the same equitable sense of effort that was expected on the old operations. His decision of necessity may be an unskilled approximation that in the future will encourage the parties to come to a rational settlement of their own. Inasmuch as it is the arbitrator's purpose to make his function obsolete, even this too will serve a useful purpose.

Most rate setting procedures are predicated upon the assumption that a worker should be judged in terms of a theoretical effort expended uniformly throughout the day. His actual working procedure, of course, will vary with his temperament and his disposition. Some like to accumulate a large bank of work early in the day and then coast the rest of the time. The number of patterns of work varies widely. Walker and Guest⁷ have described them in detail. It is the battle of the assembly line. However he is to be left free to determine this pattern for himself, provided there is no interference with the working of the assembly line.

The myth of uniformity protects the worker and cannot be used by management for its purpose. This was brought out in the Ford case. The company had distributed jobs along the assembly line. Technical limitations dictated that all of the jobs were not uniform in their demands upon the worker. Some stations would carry a 50 per cent task, others a 90 per cent task. Still others a 95 per cent task. Obviously the speed of the line was dictated by the bottleneck operation. The company attempted to speed up the line. This meant that certain jobs would be in excess of the firm's determined 100 per cent. The company argued that it had the right to do this because the rate of work was the amount of total work achieved in a full day; that random delays to which the line was subjected compensated the man over 100 per cent for his extra

⁷ "The Worker on the Assembly Line," Charles Walker and Robert Guest, *Harpers*, 1955.

effort. The arbitration commission again ruled that if the company wanted to run the line in excess of any member's 100 per cent rate, then it had to bargain out some compensating deal to which the worker would consent. The rate, therefore, was determined to be a rhythm from minute to minute rather than a sum of work over a day.⁸

We may summarize as follows:

The central problem in the determination of most wage disputes under wage incentive payment plans is the dispute over the production standard. The determination of this standard for 100 per cent man-paced jobs is critical. Once it is solved at this level, the solution for less than 100 per cent man-paced jobs becomes that much easier.

The concept of the uniformity of rate is critical in machine-paced operations. The setting of the production standard is a problem in equity. The function of the expert and the engineer is to aid the layman to extropolate this concept of equity from old jobs to new jobs.

The determination of what production level achieves a sense of equity is not the monopoly of the expert but the task of the principals to the bargain, aided if need be by the arbitrator.

Engineers are primarily useful to set up a rational range within which the principals can bargain. It is the function of the arbitrator to help the parties overcome the barrier when the collective bargaining process grinds to a halt.

Discussion—

RONALD W. HAUGHTON

Director, Institute of Industrial Relations

Wayne University

Detroit, Michigan

In the course of discussing Mr. Gomberg's paper I will mention some of the techniques which I have found helpful in the arbitration of incentive wage disputes. Here, I will limit my remarks to a consideration of the two industries where I have had the most experience in this type of work. These are automobile and rubber. This, of course, does not mean that these are the only ones which should be considered if one were to undertake a complete survey.

⁸ Ford Motor Company, 12 LA 949 (July 1949).

The extent to which third parties are included in the decision-making process for the establishment of standards varies by industry. In the rubber industry, the matter of incentives is handled by the arbitrator in substantially the same manner as are disputes on non-wage questions. There is some arbitration of standards provided for in automobile supplier agreements. On the other hand, in the automobile industry itself, arbitrators are precluded by contract from deciding production standards. Sometimes, even there, the matter is brought in by the back door of the discipline procedure. That is, the question of just cause for discipline for failure to meet a standard might be raised.

A new method of determining incentive disputes recently has been included in a Cleveland automobile supplier contract. There, the parties have agreed to appoint a qualified time-study engineer as an impartial fact finder, without authority to decide matters of contract. They then have provided that a regular arbitrator will be called in to decide any dispute which is still outstanding after the determined facts have been considered.

With specific reference to Mr. Gomberg's paper, I agree with him that the central problem of most wage disputes under incentive wage plans is over the production standard. However, I would include also a reference to matters of interpretation of what little contract language is available to guide the parties and the arbitrator in setting standards. Unfortunately, while the objective evidence often is clear, the proper method of handling it is covered under such broad language as: "Standards shall be set in accordance with the time study practices of the Company."

Frequently the contract provisions are so vague and ambiguous that the conscientious arbitrator must make extensive investigations in the plant in order to try to understand practices with respect to which there is sharp disagreement. Each party can be expected to give a clear but diametrically opposed statement of how the standard should have been set. Both claims are based upon straightforward testimony and both are persuasive. A typical example of how this can happen can be found when one considers the able presentations of Mr. Gomberg and of Mr. Fairweather. One would like to agree with each of them, but that is not possible.

I am not sure that my company and union technician friends would take issue with some of the implications contained in Mr. Gomberg's

statement that: "There is no more scientific work standard separate and apart from the concept of equity than there is a scientifically set hourly wage."

This seems to assume a certain lack of objective criteria available for the setting of an hourly wage. It is true that in most cases relationships within a wage structure have evolved from the collective bargaining process. However, once those relationships have been set, the arbitrator has available rather precise objective guides to aid him in deciding specific disputes over individual jobs or classifications which may come to him.

Just as a particular hourly rate can be set rather precisely, so can a standard when the company and union technicians present evidence which has been obtained in accordance with a commonly understood method. I believe that Mr. Gomberg has this necessary ingredient of mutuality in mind when he warns against applying any one specific time study technique unless it is included in the agreement. I agree with him wholeheartedly.

I have already noted that the details of time study methods are seldom spelled out in any helpful detail in the contract. This means that the arbitrator must turn to past practice as an aid to resolving incentive disputes. Here, he can use skills which he had developed in handling non-time-study cases. He will need them because many times he will encounter what appears to be almost unbelievable disagreement even as to the basic criteria to be used and as to the methods which have been followed.

When there is such disagreement, the parties can be asked to make a further investigation, or the arbitrator might ask them to accompany him while he tries to dig out the facts himself. When he undertakes the latter course, he may find a skeleton in a little used closet which will surprise all concerned.

Even though an investigation can be time consuming, I believe that it is absolutely essential that the arbitrator make no final decision until he is satisfied that he knows how a particular time study system works and how it has been applied. In addition to conducting careful fact-finding when possible, the arbitrator should insist that joint time studies be available so that he can make comparisons of particular values. Often he can then find that what are seemingly sharp differences simply occurred because two time-study men used different break

points in making their studies. Such differences can be resolved by a lumping of several values together for purpose of comparison.

Of course, when all possible facts have been obtained, the arbitrator still must make up his mind regarding the remaining disputed matters. Even at this point, joint discussions with competent company and union technicians can be most helpful. If they act as board members, they will serve the important function of making sure that the arbitrator does not make a devastating error because of lack of knowledge. I believe Mr. Gomberg would consider the technician's roles as arbitration board members as an important complement to what he refers to as their function as expert advisers to the principals.

The technicians sometimes can be jolted into renewed efforts at narrowing areas of disagreement if the arbitrator uses a scare technique. In one rather far-reaching case where two good time study men were some sixteen per cent apart on their speed ratings, I almost frightened them to death by threatening to go out in the plant and make my own ratings. Just yesterday I asked one of the principals involved if he recalled the occasion when I made the threat. He answered, "Yes—I hear that both the technicians fainted!"

The fact is that most time study cases are resolved before the arbitration stage. Furthermore, of the incentive cases which are decided by arbitration, only a small percentage relate to differences in such matters as elapsed time, and speed and effort rating. Speed rating disputes are without a doubt the most vexing. Questions relating to effort rating should not be difficult to resolve. Presumably peg points are available in regard to jobs of like or similar difficulty. Differences in elapsed time findings can usually be resolved by a further check.

In the main, I have found that given competent technical assistance the arbitration of incentive disputes lends itself to the same procedures and techniques as does the arbitration of the other contract issues more frequently submitted to a third party for decision. This means that the setting of a production standard is not necessarily wholly a problem in equity as might be implied from one statement in Mr. Gomberg's paper.

In closing, I have one final word. Perhaps the advance of automation and the oft-resulting machine-paced jobs will minimize subjective decisions, and make setting standards an easy task based upon objective evidence.
