Chapter V

THE CHRYSLER-UAW UMPIRE SYSTEM

by

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Foreword

This article is specifically directed to the umpire system provided by the parties' National Production and Maintenance Agreement. However, much of it is also applicable to the umpire procedures of their National Office and Clerical, Parts Plants, Engineering, and Cafeteria Workers Agreements. The same impartial chairman has functioned under each of these agreements.

Since the purpose of the article is to provide a basis for comparing the elements of the Chrysler-UAW system with those of other umpire systems, as well as to tell the Chrysler-UAW umpire story, an attempt has been made to group facts relating to each of the subjects discussed. This has, of course, resulted in a certain amount of necessary duplication.

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the Negotiations and Appeals Section of Central Labor Relations); and to the International Union's Norman R. Matthews (Vice President and National Chrysler Director), Harold Julian (Assistant Chrysler Director and formerly Co-Assistant Chrysler Director), and Arthur Hughes (Administrative Assistant to Vice President Matthews and formerly Co-Assistant Chrysler Director), and to Joseph M. Rubin (practicing attorney and formerly Assistant Chrysler Director).

Creation of the System

The umpire system for Chrysler-UAW production and maintenance employees came into being with the parties' National Agreement of September 10, 1943.

Pre-Umpire Appeal Board System

Predecessor agreements of the parties had established several grievance steps which were substantially similar to those contained in most collective bargaining contracts. Additionally, in their 1939 Agreement, the parties had created a final step at an appeal board composed of two executives of the Corporation and two representatives of the International Union, but no impartial fifth member.

The members of this early appeal board, meeting in closed, appellate-like sessions, unattended by witnesses, settled a substantial number of grievances through discussion and persuasion. A degree of objectivity was provided by a practice which called for appeal board members to be managers of plants not involved in the particular grievances before the board, and international representatives who had been with local unions other than those directly concerned in the proceedings. Nevertheless, the very nature of these board members' associations with their principals made it extremely difficult for them always to act other than primarily as advocates for their respective sides.

Establishment of the Umpire System

Almost immediately after the entry of the United States into World War II, representatives of organized labor and industry met in the Labor-Management Conference of Decem-

ber 17, 1941. They there agreed to refrain from strikes and lockouts for the duration of the war emergency and to refer disputed issues to a War Labor Board for final decision.[1] It became the policy of the Board to encourage the use of private arbitration as a terminal point in the application of agreements.

In late 1942, the Union submitted to the Corporation a number of proposals, including demands for maintenance of membership and check-off, and for "a standing impartial umpire . . . whose jurisdiction and duties shall be to decide all grievances and disputes arising under the provisions of the collective bargaining agreement." [2] The resulting dispute was certified to the National War Labor Board.

In the Directive Order which followed on August 27, 1943,[3] that Board referred back to the parties those issues which it termed "minor," denied the Union's request for maintenance of membership and check-off, and specified that:

> "The present grievance procedure shall be supplemented by the appointment of an impartial chairman to the appeal board. The union and company representatives of the appeal board shall attempt to settle all grievances properly referred to the board. In the event that they are unable to settle the matters, the chairman shall make decisions which shall be final and binding."

In its accompanying opinion, written by then Vice-Chairman and Public Member George W. Taylor, the Board noted, among other things: the large number of strikes at the Corporation's plants since December 1941, as evidence that "the grievance procedure at Chrysler is not functioning properly;" [4] the impact of this upon war production; labor's wartime no-strike pledge; the necessity of providing "a substitute means of resolving issues" [5] when strike action cannot be used; its responsi-

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[1] 1 *Termination Report of the National War Labor Board* 64 (1946).

[2] In re Chrysler Corporation [Detroit, Michigan] and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, Locals 3, 7, 47, 51, 140, 227, 230, 371, 375, 490, 685, 705, 833, and 946 (CIO). Case No. 3950-D (960), 10 War Lab. Rep. 551 at 559 (BNA 1944).

[3] Id. at 551-552.

[4] Id. at 555.

[5] Id. at 555.

bility for, but reluctance to enter, the field of unresolved intra-plant grievances; and, its unanimously issued policy statement of July 1, 1943, "calling upon parties in collective bargaining agreements to work out a terminal point for the handling of grievances over the interpretation and application of agreements." [6] It also declared:

> "The removal of the obstacles to maximum production requires: (1) Acceptance of the responsibilities of leadership by all union representatives in the manner already indicated by the international representatives of the union and (2) acceptance by management of industrial relations policies adapted to the changed conditions of collective bargaining and wartime needs.[7]
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> "None of the disputes over the application of agreement terms can be permitted to interrupt production in war time. As a matter of fact, even in peace time, the parties to long-established collective bargaining agreements have recognized the need for stabilized industrial relations. In particular, they have come to see that day-by-day collective bargaining must be carried on without interruption to production or loss of employment. They have almost universally worked out grievance procedure providing for a final settlement by an impartial third party of such grievances over the application of the agreement as are not resolved by the parties themselves. Experience has shown that such a system minimizes the number of interruptions to production, induces a greater use of collective bargaining procedures to resolve grievances, and minimizes the differences existing between the parties when agreements are to be renewed." [8]

The Board also said that the impartial chairman should be

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[6] Id. at 555. Earlier, in a case involving these parties (In re Chrysler Corporation and United Automobile, Aircraft, and Agricultural Implement Workers of America (CIO), No. 240, October 2, 1942, 3 War Lab. Rep. 447 (BNA 1943)), the Board had rejected a Panel recommendation that arbitration of unresolved "disputes over new rates and standards" be required, but recommended (pp. 453-454) "to both parties that, in their impending negotiations, they give earnest consideration to the desirability of including in their new contract a provision for an impartial umpire with such jurisdiction as may be agreed upon."

[7] 10 War Lab. Rep. 551 at 552 (1944).

[8] Id. at 554.

employed on a continuing basis, that cases "shall be determined by decision of the impartial chairman and not by a majority vote of the [Appeal] Board," and that "The impartial chairman shall have the right, however, to participate in all discussions and meetings of the appeal board and shall also have the duty of assisting the parties in resolving particular questions." [9]

The umpire concept was accepted by both parties in good faith. In their efforts to work out a satisfactory and practical implementation of the Directive Order, they held a series of meetings with the National Board's representative, who later became the impartial chairman. During these meetings, it was agreed that much of the old system could and should be retained, and that the vast majority of grievances could and should be worked out by the parties themselves through collective bargaining. Accordingly, some basic understandings were arrived at: definite restrictions were to be placed on the types of cases subject to arbitration; the impartial chairman was to serve on a continuing but part-time basis, was to be called upon to determine only a limited number of cases, and was not to function as part of the normal collective bargaining process; the facts, issues and arguments in all cases were to be first fully investigated, disclosed, and discussed by the parties' appeal board representatives, meeting without the chairman; the parties themselves were to attempt to dispose of cases without calling upon the chairman; [10] cases requiring determination by the chairman were to be presented to him in appellate proceedings, without the presence of witnesses or others; decisions by the impartial chairman were to be in strict accordance with the provisions of the parties' Agreements, and were to serve as guides to the parties in their bargaining in other situations.

Some of the specific devices for applying these understandings were developed in these early meetings. Others have

[9] Id. at 555.

[10] The first contract between the parties and the chairman in 1943, and each succeeding contract, contained the following provision:

> "It is the intent, purpose and desire of all the parties hereto that every effort of the Union and the Company shall be directed toward the disposition of grievance cases before participation therein or action thereon by the Chairman is required."

evolved out of the parties' and the chairman's experiences in living together.

Growth and Present Operation of the System

Jurisdiction

Like most parties to a collective bargaining agreement, neither the Corporation nor the Union have wanted to make certain types of issues arbitrable. Thus, during the entire period of the system, the "power and authority" of the appeal board (and therefore of the chairman) [11] have been limited, generally, to "matters involving the correctness of the classification of employees," and "applying and interpreting the provisions of the agreement . . . ." This limitation has been reinforced by a further prohibition that "The Appeal Board [Chairman] shall not have authority to add to or subtract from or to modify any of the terms of the agreement or to establish or change any wage or rate of pay", and by additional restrictions in certain specific areas.

Although the chairman believes that arbitrators generally should be given the right to modify penalties in discipline cases, he has always taken the position that he cannot substitute his judgment as to penalty without clear authorization. Originally, the parties here did not provide him with such authority. As a result, in most of the early discipline cases, penalties were either wholly sustained or wholly rescinded, but not reduced.[12] In 1945 the chairman was expressly empowered, "in proper cases," to modify "penalties assessed by the management in disciplinary discharges and layoffs." This authority has been continued in all subsequent agreements. However, the parties have retained a contractual prohibition against the chairman's allowing back pay to any employee disciplined for violating the strikes and lockouts section of the Agreement.

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[11] The parties' members of the appeal board, acting in their capacities as representatives of their principals, are of course not subject to the same restrictions as the chairman.

[12] The only exception occurred when, and to the extent, it was necessary to conform a penalty to the general pattern of Company handling in comparable situations.

Recently, the chairman's power and authority with respect to production standards has been changed. Prior to the 1955 Agreement, even though the chairman could not concern himself with rates of production or their establishment, he did have the power, authority and duty, on proper complaint, to determine whether or not the rate of production on a job was too fast. Under the 1955 Agreement, he can no longer do this. Whatever the type of case involving a production rate, he may not now determine whether the required rate is, in any respect, in noncompliance with the "Rates of Production" sections of the Agreement.

Under the Agreement, the Chairman must refer back to the parties, without decision, any case on which he has no power to rule.

Case Volume

During the umpire system's existence, the number of covered employees has ranged from approximately 80,000 to 140,000. The annual average number of decisions [13] issued in the years 1943 through 1957 was less than twenty-three. The annual average in the three-year period of 1955-1957 was fifteen. In 1957, the number issued was twelve.

This low case volume has been an outgrowth of the basic view that usually the parties can and should work out their own problems without resort to arbitration. In implementing this concept, the participants in the Chrysler-UAW system have held to the beliefs that unresolved issues can be most completely argued and decided through arbitration of a limited number of carefully prepared and considered key cases,[14] and that principles settled in those cases can be used by the parties' own representatives, as guides in similar situations. This procedure gives to each employee, at least the equivalent of a "day in court," whether the particular grievance is the actual subject of an umpire ruling or is passed upon by the parties.

[13] Some decisions cover more than one issue or grievance.

[14] Frequently, a large number of similar cases arise almost simultaneously as a result of the adoption of a new contract provision, or of an economic or social development of Corporation—or country-wide magnitude. In such circumstances, the "key case" approach has been especially helpful.

Many of the concrete factors which have tended to restrict the number of cases requiring arbitration, are treated in some detail (in other connections) elsewhere in this study. Some of the more important of these have been the presence of an Agreement-provided "declaratory judgment" procedure for securing determinations of basic issues in advance of actual grievance situations, the efficient functioning of the appeal board in its pre-arbitration sessions, and the parties' intelligent use of the chairman's (umpire's) decisions. Other measures and methods have been devised to help avoid an excessive use of the arbitration process.

One such measure was employed to handle the problem of backlog cases, when the umpire procedures were initially established in the 1943 Agreement. The parties then provided, contractually, that the appeal board would not consider in excess of twenty-five of the unsettled grievances "which were first presented prior to July 27, 1943, and then only if the grievance was answered by the Director of Labor Relations subsequent to January 7, 1943." Actually, only slightly more than one-half of this agreed number of backlog grievances had to be submitted for determination by the chairman, the others being disposed of by the Corporation and Union members of the appeal board.

The present method of compensating the chairman is also believed to have an impact on the number of cases referred to him. In the first contract between the chairman and the parties, provision was made for his receiving a per case fee, with a "guarantee" for fifty cases (including those from the backlog) during the one year term of the contract. In 1947, at the request of the chairman, the minimum case guarantee was eliminated, and the present system of a flat retainer plus per case (or per issue, in multiple issue cases) charge was instituted.[15] This suggestion was based on the premise that the

[15] Although the umpire contracts have made provision for payment by the parties of "approved expenses," the chairman has always maintained his own independent office and staff, and paid all his own expenses. In effect, the chairman's retainer takes account of these expenses, as well as the elements of availability and standby time. While the time requirements of cases vary considerably, in the interest of overall fairness and flexibility the per case or per issue fee is computed on the basis of the average number of days involved in a case.

former approach could have the effect of encouraging the parties to keep the case load at or near, rather than below, the guarantee.

General Procedural Aspects of the Grievance Process

Like all formal grievance processes, the one here involved contains certain steps which provide for discussion of grievances at various levels. Like many such systems, it also prescribes certain procedural rules, including time limits for answers and appeals, and restrictions relating to withdrawals.

At the local level, the Corporation must answer each written grievance, in writing, within three, five or seven days, depending upon the particular step. These time limits may be extended at any time by agreement between the parties. The Agreement provides further:

> "Any grievance not appealed from an answer at one step of the grievance procedure to the next step of the grievance procedure within five (5) working days after such answer shall be considered settled on the basis of the last answer and not subject to further review, except that on appeals to and from the decision of the Director of Labor Relations[16] the time shall be thirty (30) days."

If the Union wishes neither to accept the "last answer" nor to appeal therefrom, it may request the Corporation to agree to a withdrawal of the grievance "without prejudice." The Agreement now specifically authorizes such understandings, and describes their effects as follows:

> ". . . if so withdrawn all financial liabilities shall be cancelled. If the grievance is reinstated, the financial liability shall date only from the date of reinstatement. If the grievance is not reinstated within six (6) months from the date of withdrawal, the grievance shall not be reinstated. Where one or more grievances involve a similar issue whose grievances may be withdrawn without prejudice pending the disposition of the appeal of a representative case. In such event the withdrawal without prejudice will not affect financial liability."

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[16] On a trial basis, the Director of Labor Relations step has at least been temporarily discontinued. See p. 121.

Cases which have been referred to the appeal board, and on which the board is empowered to rule, may not be withdrawn at all, except by mutual consent.

Pre-Appeal Board Grievance Steps

The grievance steps outlined in the parties' most recent (1955) National Agreement substantially parallel those in use since the introduction of the umpire system. Sections 24-28 of that Agreement provide:

(Step 1)

"(a) The employee or one designated member of a group of employees may take the grievance up with the Foreman, or after obtaining permission of the Foreman to leave their work, take the grievance to the Chief Steward.

"(b) The Chief Steward then takes the matter up with the Foreman or other designated representative of the management in the district."

(Step 2)

"(a) If the Chief Steward and the Foreman or other designated representative of management are unable to dispose of the matter, the Chief Steward then shall reduce the grievance to writing and deliver copies of the written grievance to the Foreman or other designated representative of management and to the member of the Union's Plant Shop Committee to whom grievances in that district are to be referred.

"(b) The Plant Shop Committeeman then takes the written grievance up with the Superintendent or other designated management representative for the particular district."

(Step 3)

"(a) If the Plant Shop Committeeman and the designated representative of management are unable to dispose of the matter, then the Plant Shop Committeeman refers the written grievance to the Plant Shop Committee.

"(b) The Plant Shop Committee then delivers a written copy of the grievance to the Labor Relations Supervisor and thereafter takes the matter up with the Labor Relations Supervisor at the scheduled meeting."

(Step 4)

"(a) If the Plant Shop Committee and the Labor Relations Supervisor are unable to dispose of the matter, the Plant Shop

Committee then refers the matter to the proper higher officer or officers of the Local Union who may then take the matter up with the Plant Manager or his designated representative after arranging a conference. . . ."

(Step 5)

"(a) If the officers of the Local Union and the Plant Manager or his designated representative do not dispose of the matter, and the officers of the Local Union believe the matter should be carried further, they then refer the matter to the International Union. If the representatives of the International Union in their discretion decide to take the matter up with the Director of Labor Relations, they shall serve notice of such intention together with a copy of the original grievance prepared by the Chief Steward upon the officers of the Local Union, the Plant Manager or his designated representative and on the Director of Labor Relations of the Corporation.

"(b) The officers of the Local Union shall then prepare a written statement of all facts and circumstances surrounding the grievance, and the Plant Manager or his designated representative shall write a complete statement of the case. Copies of each of these statements shall be promptly sent to the International Union and to the Director of Labor Relations of the Corporation.

* * *

"(d) The International Union representatives then take the matter up with the Director of Labor Relations of the Corporation."

In an experimental effort to secure a speedier and more efficient handling of grievances, Step 5 of the grievance procedure was recently and tentatively modified by the parties. This change was made possible because at least one appeal board member from each side was a participant in the Director's step. It was outlined in a January 23, 1957, memorandum of understanding (revocable by either party on ten days' notice), in which the Director of Labor Relations step was waived, with provision that grievances would pass directly from the last local step, through the International Union, to the appeal board.

An important exception to the usual procedure is provided for the handling of the heretofore mentioned "declaratory

judgment" requests. It permits top level consideration and determination of contractual issues, without reference to actual grievances or prior recourse to the grievance procedure. Under a specific provision of the Agreement, "Any issue involving the interpretation and/or the application of any term of this agreement may be initiated by either party directly with the other party," and upon failure of settlement may be "appealed directly to the Appeal Board." This, sensibly and intelligently used, offers obvious advantages in the expeditious administration of the contract. It provides both a means for heading off trouble, and a method for obtaining rulings which are not tied, and therefore perhaps limited in application, to particular fact situations. It may also be a factor in case load control, since it is capable of use in avoiding the processing of a multiplicity of grievances on a single issue.

Pre-Appeal Board Screening Procedures

Those grievances which are referred to the International Union are subjected to a pre-appeal board screening at periodic meetings of Local Union presidents. Representatives of the International Union are in attendance in an advisory and non-voting capacity. At these screening sessions, an attempt is made to evaluate the merits of the grievance, and its strength as a subject for potential arbitration. One of four decisions may be reached: to take no appeal; to withdraw the grievance without prejudice; [17] to appeal to the board; or, to appeal to the board pending further investigation.

Since the burden of deciding upon appeals almost always rests with the Union, the Corporation has no special screening committee. However, all grievances which reach the upper levels of the procedure are carefully reviewed by the Negotiations and Appeals Section of its Central Labor Relations Department.

The Appeal Board Step: without the Impartial Chairman

Only a small fraction of the total grievances reach the appeal board step, the great majority having been disposed of by the parties at one or another of the various steps heretofore re-

[17] See p. 119.

ferred to. When the Union [18] decides to submit a matter to the appeal board, it prepares copies of the original grievance and the answers, and places them in file coverings containing the designated case title (such as, In the Matter of the Discharge of John Doe), the assigned appeal board case number,[19] and the names of the two Union appeal board members who will handle the case. Copies of this preliminary "record" are forwarded to the Corporation, and to the office of the impartial chairman. Thereupon, the Corporation informs the Union and the impartial chairman of the names of its two appeal board members for the case, noting that by this action it does not admit, or waive its right to question, the jurisdiction of the appeal board. The chairman routinely dates, enters, and files the material so received from the parties. He does nothing more with the case until such time as he receives notice either that the matter is to be heard by him, or that it has been resolved by the parties' members of the board. The passive nature of the chairman's role at this point has always been a significant feature of the system. As above indicated, it stemmed basically from the desires of all concerned that the parties retain as much as possible of the previous grievance procedure, that they work out most issues through their own collective bargaining efforts, and that the chairman devote his major attention to decision making rather than to administrative functions.

All cases taken to the appeal board are first considered at board meetings which are attended only by the Corporation and Union representatives on the board, and not by the impartial chairman. In these frequent grievance review sessions, the parties' board members jointly examine and attempt to evaluate the written grievance and answers, the facts and circumstances involved, and the contract provisions and previous appeal board decisions that may be thought relevant. In

[18] Generally, the same procedure is applicable to the Company. However, to date, in all but one instance the Union has been the moving party. In that instance, the Company invoked the "declaratory judgment" procedure. An umpire decision was not required, the matter being disposed of at the pre-arbitration meeting of the appeal board.

[19] The Union numbers the cases, consecutively, and in the order in which it refers them to the appeal board.

addition, as the case has not yet reached the arbitration stage, it may be appraised, if the discussants so choose, on some basis other than the strict application of the contract.

It is the agreed policy and usual practice of both sides to make complete disclosures at these appeal board meetings. Each party attempts to make known to the other, in full, its understanding of the facts and its theory of the case. All evidentiary matter, including the written statements of witnesses, is placed on the table. Every relied upon section of the Agreement is cited, and its meaning is explored. Arguments and positions are outlined, informally but in detail. Following such disclosures, a case may be held over for further discussion at another session, in order that one party or the other may check newly raised material, and, in the light thereof, re-evaluate its position.

The pre-arbitration meetings of the appeal board, conducted as above described, serve two principal purposes. First, they make possible the settlement of a large number of cases, which otherwise either would be left unresolved, or would necessitate determinations by the impartial chairman. This is demonstrated by the statistical fact that, in recent years, over ninety percent of all cases referred to the appeal board have been disposed of by the parties themselves at that level. Second, they tend to insure that the cases which do require arbitration will be thoughtfully prepared, carefully presented, and fully understood by both the parties and the chairman.

The Appeal Board Step : with the Impartial Chairman

Cases which are not worked out by the Corporation and Union members of the appeal board are scheduled for presentation to the chairman at an appeal board meeting attended by him, i.e., an arbitration hearing. Such hearings are held only as needed, and not at regular intervals. Arrangements for a particular hearing are informally made, with a limited number of cases being set for a given date.

It is at this point that the chairman first concerns himself with the substantive aspects of the case. Prior to the hearing, he reads the grievance and grievance answers sent to him in connection with the original referral of the matter to the appeal board, and reviews other relevant material, such as

applicable contract provisions, job descriptions of cited classifications, or previous appeal board decisions having possible bearing on the probable issues.

As noted, the arbitration hearings themselves are in the nature of appellate proceedings. They are more like those employed in an appellate court than in a trial court. They are always held in Detroit, usually at the Corporation's Central Labor Relations offices, regardless of a particular grievance's place of origin. They are attended only by the chairman, and the parties' appeal board members who handled the case at a previous step or steps, and at least one of whom from each side usually has made an independent investigation. Witnesses do not appear. Instead, their "testimony" is presented in the form of true copies of statements which have been personally prepared by them and signed by them, and theretofore known by the board members representing the parties. The appeal board believes such statements to be generally as, or more, reliable than oral accounts, under oath or otherwise, given in the excitement, and under the circumstances, of direct discussion. Although on occasion the actual presence and participation of witnesses might be of some help where credibility is a factor, almost always the type of proof called for and submitted is more than adequate to enable an accurate determination of the truth. Further, the "closed" session rule encourages discussions which are frank and to the point, avoids conditions which might lead to the rekindling of old fires, and, it is believed, serves to provide, over-all, more effective and expeditious presentations as well as better relations between the parties.

The appellate character of the hearings is also illustrated by the fact that the chairman does not himself view plant areas or operations which are involved in a case. In these matters, as in all other factual questions, he relies upon the parties' submissions, which may include accounts by appeal board members who have made personal inspections. Usually, the parties do not disagree as to the essential physical facts. If and when they do, the chairman may request that they re-investigate. Where such re-investigation concerns the physical characteristics of particular areas or operations, it is jointly made. In those situations in which one party conducts its own independent re-

investigation, and reports thereon, the other party has the right to further comment.

While conducted informally, the meetings of the full appeal board are strict arbitration proceedings, designed to supply the chairman with the material necessary to his final decision. Here, there is no bargaining or effort at compromise. Discussions are orderly, but emphatic and often not without heat. The parties' representatives on the board, now acting as advocates for their principals, direct their discussion to the chairman. With the moving party proceeding first, each side presents to the chairman and the other, copies of a comprehensive written statement of facts and positions, the written statements of its witnesses, and pertinent exhibits. Supplemental oral arguments and comments, of both an affirmative and rebuttal nature, are also made. Occasionally, the chairman may ask questions for the purpose of aiding his understanding of the facts, the issues, or the parties' theories and positions. A stenographic transcript is not taken. Instead, the chairman takes detailed and, if possible, verbatim notes. This practice provides an accurate record, and, at the same time, encourages the parties' spokesmen to be precise in their presentations, keep to the issue and avoid repetition.

Every effort is made to keep the proceedings brief and to the point. Rather than objecting to restrictions on the presentations, the parties have requested that they be advised at the time by the chairman, if he believes any of their statements or arguments are irrelevant, or too far afield to require an answer. Largely as a result of the thoroughness of the parties' preparations, their pre-arbitration disclosures and discussions, and their primary reliance upon written presentations, the hearing of a case usually takes under two hours and rarely requires an entire day. Even so, each hearing continues so long as any appeal board member wishes to speak, and the parties are not bound by artificial limitations in the making of their cases. For example: Regardless of its strength or weakness, or its consistency or inconsistency with the rules which are customarily applicable in the conduct of lawsuits, almost any evidence which the parties submit is received, later to be evaluated by the impartial chairman; in the relatively few instances where,

because it was either unavailable or inadvertently undisclosed at pre-arbitration meetings of the appeal board, new material is introduced, it is not peremptorily barred but is admitted subject to the right of the other side to answer at a subsequent date.

The latter type of situation is one of the very few which may result in submissions being made after the original arbitration hearing. (The practice of filing post hearing briefs is not followed.) Others include those occasions when the chairman requests additional information not forthcoming at the hearing, or asks the parties to comment on potentially significant matters not considered at the hearing. In a few cases, the record has been held open for the chairman to obtain technical information from outside experts (e.g., physicians, psychiatrists, or engineers) jointly selected or approved, and paid by the parties. In the 1955 National Agreement, specific provision was made for the chairman's seeking technical help in connection with certain disputes over the reinstatement of employees after sick leave.[20]

The Impartial Chairman's Decisions

Preparation and Form

A written decision follows the closing of the record in each case. This decision, its preparation, and its content are responsibilities of the impartial chairman alone. In keeping with the accepted strict arbitration character of the system, and the requirement that cases brought to arbitration be determined by the chairman alone and not by majority vote of the appeal board, the chairman decides upon the approach to be taken, the

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[20] "In any case appealed to the Appeal Board involving a continuing refusal of management to return an employee to work from sick leave of absence which has continued for twenty-six (26) weeks or longer, if the employee's personal physician has found, contrary to findings of a physician or physicians acting for the Corporation, that the employee is able to do a job to which his seniority entitles him, the Impartial Chairman may, if he deems it advisable, obtain the services of a competent physician or specialist in deciding a case referred to him under this Subsection (b). Costs will be paid half by the Corporation and half by the Union." September 1, 1955 National Agreement, Section (72)(b).

language to be used and the ruling to be made, without further consultation with the parties.

Usually, although initial work on a decision is begun almost immediately, and the completed decision is issued in approximately thirty days, the chairman's conclusions are not made final and written until several weeks after the hearing. The particular methods of procedure used in preparing a decision are of course controlled by, and may vary with, the requirements of the case at hand. However, the first major step normally involves a review of the notes taken and the submissions made at the hearing, an organizing and writing of the facts, positions and arguments to be placed in the decision, and an outlining or charting of these for the chairman's own purposes. These steps are completed as soon as possible after the hearing. At this point, the chairman makes no attempt to reach a decision. He makes certain he understands each party's theory of the case, determines any need for additional or clarifying information, and dictates a memorandum of first impressions and particular items to be checked. Thereafter, careful and detailed research is undertaken, with review being made of current and predecessor agreements of the parties, rate and classification data, and past decisions of the chairman. (This phase of the work is facilitated by comprehensive citator, digest and index systems,[21] which the chairman maintains in his office.) Following analysis and consideration of the various issues, problems, and potential solutions, the chairman arrives at his conclusions and incorporates them in the decision. In the course of writing his final findings and award, he may prepare and discard several outlines and rough drafts. When the final

[21] These include: a topical digest, in which extracts containing the various principles of each decision appear under the appropriate subtopic or subtopics; an alphabetical word index consisting of descriptive words with cross-references to related subtopics in the topical digest; a numerical index, listing cases by number and title; a table, listing corresponding sections of the successive agreements of the parties, and showing all of the decisions in which any given section has been cited; a citator listing the decisions in which any given decision has been cited; and, a card file showing the decisions in which any given job classification has been discussed. The chairman also keeps a set of volumes containing the decisions themselves, the original file in each case, and books of currently effective rates and job descriptions.

draft is completed, the entire decision is re-examined, typed in finished form, proofed, signed, and mailed to the parties.

In their final form, the decisions usually have a common format (consisting of the Original Grievance, the Statement, the Findings, and the Order), contain a great deal of detail, and are quite lengthy. (See Case Citations.) The Original Grievance is quoted verbatim and in its entirety. The Statement incorporates all offered exhibits and statements (both written and oral). The written submissions are quoted verbatim and, if at all possible, in their entirety. Individuals and places are identified by name.

The Findings, in decisions under this system, are comparable in coverage to entire decisions in many arbitration cases. They incorporate references to pertinent facts and to positions, as appear from the Statement, the reasons for the acceptance or rejection of these positions, a detailed analysis, and the chairman's conclusions. While the points actually decided are limited to those directly related to the disposition of the grievance issue, the Findings may contain statements of principles that often are of greater or more far reaching significance than is the Order in a particular case. After various facets of a particular subject have been discussed in separate opinions, those that are germane to the issue may be summarized in a current case.

As most arbitrators do, the chairman tries to write his findings in language which is plain and easily understandable, in a style based on a clear and natural flow of ideas, and in a manner which will not tend to aggravate, or add to, the problems of the parties.

The chairman's order (the usual form of his award) [22] specifies either that the grievance is dismissed or that certain relief is to be forthcoming. The coverage of the order is closely tied to the original grievance, since the chairman cannot, and does not, grant relief of a kind not fairly found to have been asked for in the grievance itself.[23] Substantive issues about which

[22] Where the chairman has no jurisdiction to pass on the matter, and in "declaratory judgment" cases, the award may be entitled Ruling.

[23] This is exemplified by the handling of cases involving claims of the incor-

(Footnote continued on following page.)

the chairman has no authority to rule are, as previously indicated, referred back to the parties without decision.

Occasionally the chairman may issue an order under which he continues jurisdiction over the grievance matter for a specified period thereafter. This type of award is made only in cases in which it is necessary to provide opportunity for the parties to make adjustments required under the findings. It preserves their rights to have these adjustments reviewed in an extension of the original case. Such orders are not issued to require the parties to resume bargaining over issues that the chairman has the immediate responsibility of deciding. Nor do they so require.

In accordance with the commitments in the Agreement, the parties have consistently accepted and abided by the final orders of the chairman, and the Union has discouraged its members from appealing the chairman's decisions to any court or labor board. In other words, a final order is recognized as being just that—a final order.

The detailed and rather lengthy character of most of the decisions has been molded by the multi-sided role that they have in the umpire system. Not only do they dispose of individual grievances, but they serve other purposes. The Statements and Findings are carefully examined and compared by the parties' appeal board members, officials and representatives who, in this manner, can evaluate the strengths and weaknesses of the presentations and find guides for use in future cases and their preparation. Further, by demonstrating the competency and thoroughness with which grievances are presented and considered, the decisions tend to foster confidence in the grievance procedure and to encourage its correct use. Also, they help to show employees with similar grievances that the problems have been fully and impartially explored in a case much like (and usually stronger than) their own. Finally, and of

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rectness of the classification of employees. If the chairman finds that an employee is improperly classified in Classification X (his present classification), but would not be correctly classified in Classification Z (the classification asked for in the grievance), he cannot order the employee's reclassification to Classification Y (the appropriate, but unrequested, classification).

paramount importance in this area, there is the precedent value of the decisions.

The Use of Precedent

As noted, in every case the chairman makes a careful review of all previous decisions that are indicated to be relevant to the matter at hand. Often his findings are rested in whole or in part on the principles enunciated in the earlier cases.[24] Frequently, patterns and standards are evolved gradually on a case by case basis, with determinations being made on various aspects of a particular problem. Contract provisions once construed are uniformly applied, until such time as the parties themselves may see fit to negotiate changes. Consistency of principles and their application is sought, not for its own sake but as a matter of fairness and as an aid to promoting predicability at the arbitration step and workability in the parties' collective bargaining relationships. In this manner, a body of case law is built up, and the system becomes institutionalized.

The parties themselves recognize the precedent value of the decisions, not only in arbitration cases, but also on their day-to-

[24] A minimum of reliance is placed on cases decided by other arbitrators involving other parties. The reasons for this were once summarized (in *Appeal Board Case No. 573)* by the chairman as follows:

> "During the Appeal Board presentation a recent decision by Harry Shulman as Umpire for Ford Motor Company and UAW (CIO) was repeatedly cited. This decision had to do with the interpretation of a contract provision the here pertinent parts of which are substantially identical with those applicable in this case. The parties were not in agreement as to the weight which the Chairman in his consideration of the instant case should give Dr. Shulman's decision and the reasoning supporting it. The Chairman realizes that despite the great similarity of contract provisions and their apparent common origin, and despite the fact of similarity of parties, location and type of business, there are distinctions which exist and must be observed. The parties are not the same parties. Their practices are not identical. Even their application of the considered contract provisions has varied. Further, while Dr. Shulman and the Chairman both act as umpires, they were not selected by, nor do they act for, the same parties. The parties making the selections undoubtedly had in mind the known general thinking of each at the time of selections, and made the selections on an individual basis. On the other hand, points of similarity may not be disregarded. In addition the Chairman has high regard for Dr. Shulman's sincerity, clarity of thought, and reasoning processes. The Chairman does not propose to unthinkingly adopt Dr. Shulman's determination in another case as his own in the instant case. However, to the extent to which he believes it here applicable, he makes use of it with appreciation."

day relationships. Although only two copies of a decision are issued to each side, both parties reproduce copies in large quantities and distribute them widely among officials and representatives of their organizations. For ready reference, they supplement this by maintaining their own indexes and digests of cases.[25] At the local levels, the parties attempt to make plant practices conform to principles announced in umpire decisions. There, they refer to decided cases in the working out of problems at the pre-grievance stage, or in the early steps of the grievance procedure. At the top levels, the decisions are almost always given immediate application in analogous disputes which may be, or come, before the (four man) appeal board. They also have a noticeable impact on determinations made with regard to the screening or settlement of subsequent cases, and frequently are considered and discussed during succeeding contract negotiations.

Problem Areas Covered

Decisions have been issued by the chairman in most of the problem areas normally involved in the administration of a labor-management contracts—i.e., for example, those relating to discipline, classification coverage, seniority, layoffs, recalls, promotions, certain wage applications, premium pay, holiday pay, vacation pay, call-in pay, production standards (but see p. 117), union jurisdiction and security, management rights, and the rights of union officials. Some of the substantive principles evolved in these fields are contained in decisions listed in the Case Citations.

Variations in the types of problems arising may reflect such factors as negotiated changes in the parties' collective bargaining agreement or the inclusion of new plants in their umpire system. Also, to some extent, they may be indicators of the prevailing economic, political, or social climate. For example,

[25] The Union has a professionally prepared loose leaf pocket-size digest, for use as a reference manual by its bargaining representatives. The Foreword to this booklet states, in part: "Every effort has been made to make this booklet as clear, concise and objective as possible. It should be remembered that this booklet contains condensed versions of decisions and, if additional information is desired, the full decision should be referred to. The full decisions are on file at the Local Union offices."

periods of war, prosperity, recession, and rapidly changing technology have all given impetus to special and varying kinds of issues.

About one-third of the total number of cases considered by the chairman have concerned disciplinary action. Another one-third of the total have related to matters involving the correctness of the classification of employees. Now, most of the cases in these two areas have to do, primarily, with factual questions and applications of basic principles to particular situations. About three-fourths of all the decided classification cases arose during the first five years of the operation of the system.

The Impartial Chairman and His Role

As pointed out above, the impartial chairman serves on a part time basis only; his compensation is related in part to cases decided by him; he pays all of his own expenses and maintains his own independent office and staff. Many of these factors differ from those applicable to his counterparts in other umpire systems of equivalent size. While some have stemmed from reasons of a primarily personal nature, most have been designed to better the workings of the system itself. They all serve to emphasize and add strength to the chairman's role as that of a final, impartial, court of appeal in a "strict arbitration" procedure.

The chairman (umpire) is a creature of the parties and their Agreement. As such, he must fill the role, and only the role, which the parties provide for him in the light of their appraisal of their own special needs, circumstances, and surroundings. Accordingly, in disputes under this umpire system, he participates only in those cases which are referred to him for decision, and acts only as an arbitrator and not as a mediator or labor relations advisor. Matters properly submitted to him for decision are not referred back to the parties for compromise or further bargaining, unless the appeal board lacks power to makes a substantive ruling (in which case, of course, referral is mandatory). His Findings and Order must be grounded, within his jurisdiction, upon the facts of the particular case and the provisions of the Agreement, with due regard to rele-

vant background and practice, but without attention, or reference, to possible extra-contractual equities which might suggest to him the greater fairness of some other result.[26]

The parties' concept of strict arbitration does not require the chairman to remain in isolation unless and until summoned to hear a case. Pending issues are, of course, never discussed when only one side is present. However, the chairman has always enjoyed free and open social relationships with the parties, both separately and together. Further, he is available to discuss procedural problems, and (within understood limits) cases in which decisions have been issued. He has often met separately with representatives of one side or the other, to discuss past decisions, the umpire system generally, and problems in the presentation of cases. Undoubtedly, in these matters, the chairman's and the parties' attitudes have been shaped, in part, by their years of living together in mutual trust and respect.

Conclusions

As in most other areas of labor-management relations, the aims and interests of one of the parties in an umpire system are seldom precisely co-extensive with those of the other. Even so, the parties here do have, among others, two objectives in common: (1) the retention and strengthening of the collective bargaining processes through which they are able to themselves work out their own problems; and (2) an expeditious procedure for the final, orderly, and impartial disposition of stated types of disputes which are not resolved in collective bargaining.

Methods and procedures calculated to encourage the meeting, by the parties, of their own collective bargaining responsibilities, have been a focal point in this umpire system and a major concern of this study. Among the system's most notable

[26] In questions relating to the modification of disciplinary penalties, the chairman's personal beliefs of what is proper or improper may be of significance. As stated earlier, the chairman refrained from modifying penalties on the basis of his own disciplinary concepts, until specifically given such authority by the parties. In the exercise of this authority, the chairman recognizes that each case must stand on its own, but also attempts to maintain a uniformity in the application of basic principles.

traditions are its consistently low case volume and the parties' general success in avoiding arbitration of cases not really necessary of determination by a third person.[27] During the period of the operation of the system, many basic issues have been fully and finally settled. A number of the guides and principles that have been established can be, and are being, applied by the parties to the new problems which are the inevitable product of each era and phase of development. At the same time, a real sense of stability should, and usually does, accompany the knowledge of the parties, and those to whom they are responsible, that the system offers a readily accessible terminal point for disputes not disposed of at the bargaining table and appropriate for resolution by the umpire.[28]

The extent to which the objectives of the parties are capable of being met, and have been met, by their umpire system, may be indicated through a study of the foregoing description of the system itself, and, in some measure at least, by its having endured in substantially the same form and principle through a relatively long and eventful period. Of course, longevity in

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[27] In a symposium in honor of Professor Edwin E. Witte, held at the University of Wisconsin on March 27, 1957, the impartial chairman spoke of the potential advantages of private mediation in many grievance disputes situations. However, having in mind the Chrysler-UAW system, he said:

> "There are those of us, who are familiar with grievance systems under which the arbitrator's function is judicial in character, where collective bargaining is carried on in such fine manner in a final pre-arbitration step, as to minimize any need for such a private mediator or consultant. For example, I know of one strict arbitration system where the large majority of cases certified to arbitration, after failure of solution through the standard steps of the grievance procedure, are disposed of at pre-arbitration joint review by the top representatives of the parties. The relatively few cases finally presented for arbitration are, usually, ones in which arbitration is properly necessary. The operation of this particular system provides an outstanding example of competent and successful pre-arbitration collective bargaining."

[28] There are, of course, exceptions, chiefly characterized here, as elsewhere, by the comparatively few who, despite this knowledge, foster, encourage or engage in unauthorized strike activity. An adequate discussion of the various possible causes of this type of activity, and whether or not it has been greater or less for these parties than for others in justifiably comparable circumstances, would require consideration of such a complex of factors and conflicting reports as would be neither possible nor appropriate of treatment here. Be this as it may, the role of the umpire system in this respect can be best judged through an examination of the system itself.

an umpire system is not an automatic sign of perfection. However, it should serve as some evidence of the system's workability and acceptance.

It seems fair to conclude that the Chrysler-UAW umpire system has worked, and worked well, for both the Union and the Company. It contains much which should merit thoughtful consideration by others. Nevertheless, to say that an identical, or even substantially similar, system would be right for any other parties, would be both presumptuous and unwise. Each system of arbitration must reflect the concepts of the parties which it serves. Each must be adapted to the desires of the particular company and union in the context of their relationship.[29]

Case Citations

Because of their ready accessibility, the Chrysler-UAW umpire decisions that have been published in *Labor Arbitration Reports* (The Bureau of National Affairs, Inc.) and *American Labor Arbitration Awards* (Prentice-Hall, Inc.) are hereafter cited. The list is not exhaustive, nor are the cases referred to necessarily the ones which are most representative of the system or most significant to the parties.[30]

Appeal Board Case No. 6, 1 ALAA par. 67,042
(jurisdiction of appeal board)
Appeal Board Case No. 10, 1 ALAA par. 67,258
(classification)
Appeal Board Case No. 18, 1 ALAA par. 67,018
(classification)
Appeal Board Case No. 22, 1 ALAA par. 67,061
(classification)

[29] See Wolff, "Permanent Arbitration Systems," *Lectures on the Law and Labor-Management Relations* 175 (University of Michigan Law School 1951). The other national umpire system under which Mr. Wolff has served since its inception—i.e., that of the Aluminum Company of America and the United Steelworkers of America—is noticeably different from the Chrysler-UAW system in a number of basic respects. However, like the Chrysler-UAW system, it has worked successfully. Each of these systems has been established and maintained by the particular parties to meet what they themselves conceive to be their own problems and purposes.

[30] In some of the decisions, names of individuals involved have been deleted by the publishers.

Appeal Board Case No. 37, 1 ALAA par. 67,133
(jurisdiction of appeal board)
Appeal Board Case No. 91, 1 ALAA par. 67,033
(discipline)
Appeal Board Case No. 116, 1 ALAA par. 67,044
(discipline—jurisdiction of appeal board)
Appeal Board Case No. 122, 1 ALAA par. 67,046
(discipline)
Appeal Board Case No. 126, 1 ALAA par. 67,035
(discipline—jurisdiction of appeal board)
Appeal Board Case No. 139, 1 ALAA par. 67,017
(jurisdiction of appeal board)
Appeal Board Case No. 146, 1 ALAA par. 67,022
(discipline)
Appeal Board Case No. 150, 1 ALAA par. 67,164
(rights of union officials)
Appeal Board Case No. 157, 1 ALAA par. 67,037
(rights of union officials)
Appeal Board Case No. 178, 1 ALAA par. 67,116
(classification)
Appeal Board Case No. 185, 1 ALAA par. 67,123
(notice of layoff)
Appeal Board Case No. 207, 1 ALAA par. 67,024
(discipline)
Appeal Board Case No. 212, 1 ALAA par. 67,158
(call-in pay)
Appeal Board Case No. 240, 1 ALAA par. 67,435
(discipline)
Appeal Board Case No. 247, 2 ALAA par. 67,568, 5 LA 420
(discipline)
Appeal Board Case No. 249, 5 LA 669
(veterans' seniority)
Appeal Board Case No. 254, 5 LA 333
(recall)
Appeal Board Case No. 260, 2 ALAA par. 67,569
(discipline)
Appeal Board Case No. 270, 6 LA 366
(classification)
Appeal Board Case No, 271, 6 LA 276
(promotion and transfer)
Appeal Board Case No. 274, 2 ALAA par. 67,577, 6 LA 328
(call-in pay)

Appeal Board Case No. 275, 6 LA 369
(vacation pay)
Appeal Board Case No. 288, 5 LA 669
(layoff—rights of union officials)
Appeal Board Case No. 301, 7 LA 380
(recall)
Appeal Board Case No. 316, 7 LA 386
(recall)
Appeal Board Case No. 353, 8 LA 914
(rights of union officials)
Appeal Board Case No. 377, 2 ALAA par. 67,822, 8 LA 750
(call-in pay)
Appeal Board Case No. 397, 8 LA 421
(seniority—rights of veterans)
Appeal Board Case No. 401, 8 LA 452
(holiday pay)
Appeal Board Case No. 408A, 8 LA 611
(discipline)
Appeal Board Case No. 454, 10 LA 110
(discipline)
Appeal Board Case No. 495, 9 LA 789
(discipline)
Appeal Board Case No. 531, 10 LA 386
(handicapped workers)
Appeal Board Case No. 570, 3 ALAA par. 68,055, 11 LA 254
(sixth day premium pay)
Appeal Board Case No. 571, 3 ALAA par. 68,070, 11 LA 237
(call-in pay)
Appeal Board Case No. 594, 3 ALAA par. 68,159, 11 LA 980
(promotion)
Appeal Board Case No. 602, 12 LA 179
(premium pay)
Appeal Board Case No. 612, 12 LA 699
(discharge)
Appeal Board Case No. 613, 3 ALAA par. 68,362, 12 LA 699
(discipline)
Appeal Board Case No. 627, 3 ALAA par. 68,284, 13 LA 235
(discipline)
Appeal Board Case No. 641, 13 LA 718
(call-in pay)

Appeal Board Case No. 662, 3 ALAA par. 68,395
(discipline)
Appeal Board Case No. 678, 4 ALAA par. 68,487, 14 LA 381
(discipline)
Appeal Board Case No. 680, 3 ALAA par. 68,411
(discipline)
Appeal Board Case No. 718, 4 ALAA par. 68,720
(holiday pay)
Appeal Board Case No. 726, 15 LA 218
(vacation pay)
Appeal Board Case No. 760, 17 LA 898
(promotion)
Appeal Board Case No. 762, 16 LA 152
(discipline)
Appeal Board Case No. 794, 16 LA 841
(call-in pay)
Appeal Board Case No. 798, 4 ALAA par. 68,806, 16 LA 510
(vacation pay)
Appeal Board Case No. 821, 4 ALAA par. 68,913
(discipline)
Appeal Board Case No. 838, 4 ALAA par. 68,875
(discipline)
Appeal Board Case No. 846, 18 LA 437
(discipline)
Appeal Board Case No. 851, 12 LA 179
(sixth day premium pay)
Appeal Board Case No. 869, 13 LA 215
(seventh day premium pay)
Appeal Board Case No. 878, 5 ALAA par. 68,974, 17 LA 814
(discipline)
Appeal Board Case No. 889, 19 LA 471
(discipline)
Appeal Board Case No. 892, 18 LA 260
(union security)
Appeal Board Case No. 900, 5 ALAA par. 69,032, 18 LA 664
(union security)
Appeal Board Case No. 906, 18 LA 565
(discipline)
Appeal Board Case No. 911, 19 LA 443
(holiday pay)
Appeal Board Case No. 921, 5 ALAA par. 69,086, 18 LA 836
(discipline)

Appeal Board Case No. 922, 5 ALAA par. 69,096, 19 LA 221
(discipline)
Appeal Board Case No. 924, 5 ALAA par. 69,170, 19 LA 984
(sixth day premium pay)
Appeal Board Case No. 926, 5 ALAA par. 69,129, 19 LA 446
(discipline)
Appeal Board Case No. 933, 5 ALAA par. 69,174, 19 LA 408
(layoff)
Appeal Board Case No. 957, 5 ALAA par. 69,354
(rights of union officials)
Appeal Board Cases Nos. 962 and 963, 19 LA 818
(discipline)
Appeal Board Case No. 980, 5 ALAA par. 69,305, 20 LA 349
(holiday pay)
Appeal Board Case No. 981, 21 LA 210
(Saturday premium pay)
Appeal Board Case No. 983, 21 LA 573
(call-in pay)
Appeal Board Case No. 1022, 21 LA 45
(union security)
Appeal Board Case No. 1059, 22 LA 128
(rates of production—jurisdiction of appeal board)
Appeal Board Case No. 1094, 22 LA 171
(vacation pay)
Appeal Board Case No. 1102, 6 ALAA par. 69,632
(layoff)
Appeal Board Case No. 1236, 23 LA 284
(discipline)
Appeal Board Case No. 1237, 6 ALAA par. 69,752
(discipline)
Appeal Board Case No. 1283, 7 ALAA par. 69,875, 24 LA 549
(discipline)
Appeal Board Case No. 1395, 26 LA 139
(call-in pay)
Appeal Board Case No. 1402, 26 LA 295
(discipline)
Appeal Board Case No. 1520, 27 LA 77
(rights of union officials)
Appeal Board Case No. 1554, 27 LA 780
(discipline)
Appeal Board Case No. 1564, 7 ALAA par. 70,221
(overtime on holidays)

Appeal Board Case No. 1634, 8 ALAA par. 70,278 (discipline)
Appeal Board Case No. 1664, 28 LA 162 (discipline)
Appeal Board Case No. 1746, 8 ALAA par. 70,367 (discipline)

Discussion—

HARRY H. PLATT *

Dave Wolff's paper on the Chrysler-UAW Umpire System confirms an opinion I have long held—that is, that he not only is an excellent arbitrator but a wise man. Early in his talk he stated that he was not appearing as an advocate for the Chrysler-UAW system but as "a narrator and explainer." What he implied was that he was not trying to "sell" the system to others or to evaluate it. This is understandable and, from the standpoint of a person in his position, wise. For an attempt to evaluate that system could easily have involved him either in glorifying or criticizing those who created it and, in a sense, himself; and Dave Wolff is too modest and circumspect a person to let himself in for something like that. And this, mind you, is said not in criticism but in admiration of Dave. For much as I believe that there is room in his paper for speculation, questioning and even criticism, and that all of it could have been supplied without damaging the system or himself, I have a gnawing feeling that if I had the same task to perform I probably would have done exactly as he did.

Of course, the same motivations for not freely discussing the Chrysler-UAW system do not exist for Nate Feinsinger or myself. And yet I find it is not easy to appraise an arbitral system when all there is before you is an outline of its procedures and little about the effect the system has had on the

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parties' relationship or their collective bargaining. Certainly if a judgment had to be based solely on the evidence Dave Wolff has laid before us, few, I think, would doubt that, despite its unusual features, the system he described has apparently functioned well at Chrysler. For how else would one explain a system that has remained substantially unaltered for 15 years and has satisfied such sophisticated people as there are in Chrysler and the UAW? Just think of it. Since 1943, in plants employing between 80,000 and 140,000 workers, an average of less than 23 cases a year had to be decided by the Impartial Chairman; and in 1957, only 12 decisions were made!

But it would hardly be right to judge the effectiveness or worth of an arbitration system or the health of a labor-management relationship by the number of cases decided each year by the umpire. At Ford, for example, where labor relations are at least as good as at Chrysler, the umpires handed down about 6500 decisions in the same 15 years, or an average of close to 435 a year. At Ford, workers have much freer access to the umpire than workers in the other large automobile companies. And though some may look upon this with gloom, there are others who sincerely regard it as an important advantage both to the union leadership and the company. There has been a good deal of speculation as to the reasons for the vast difference in the volume of umpire cases in the Big Three automobile companies. Some people have suggested that this may be due, in part at least, to the rigid pre-arbitration union screening procedures that exist in the other companies but not at Ford; others attribute it to the manner in which the parties investigate and prepare their cases before they come to arbitration; and still others believe it may be due to differences of philosophy and content of umpire decisions. But there *is* an additional reason many have overlooked. Chrysler and General Motors, for example, have *always* had a relatively small umpire case load, while Ford has *always* had a relatively large umpire case load. This does not mean that there is greater worker dissatisfaction at Ford than at the other companies or necessarily greater worker confidence in the effectiveness of one arbitration system than in the others. What it means is that

today's case loads are partly the result of traditions. If Chrysler employees are accustomed to having their grievances judged in the light of pertinent precedents, as Dave Wolff indicates, Ford employees are accustomed to having their grievances judged individually on their own merits by the umpire. If Chrysler employees are accustomed to having their grievance appeals screened by a committee of local union presidents who may be sensitive about decisions that might upset working procedures in their own plants, Ford employees are accustomed to having their own locals decide if their grievances merit review by the umpire. Patterns of conduct have thus developed in grievance administration. And those patterns, after 15 years with surprisingly few changes, have become embedded in the parties' relationship. Whether this is good or bad involves a value judgment which the parties themselves must make. The significant fact is that a tradition seems to exist.

Comparing experiences at Ford and Chrysler, there may well be a direct relationship between case load and other characteristics of the umpire and board systems. Greater formality in the Appeal Board hearings at Chrysler, exclusion of supervision and workers from the hearings, failure of the Impartial Chairman to ever view affected plant areas or operations and apparently ever to be seen by people in the shop would naturally tend to make them less familiar with the arbitration process, with the consequence that relatively few appeals find their way to the chairman. Now whether this is a desirable end result is again something for the parties to ponder. I judge the answer might depend a good deal on their needs and purposes and on their conception of the collective bargaining process and of the role grievance arbitration should have in their total relationship.

Another characteristic of the two systems may have a bearing on the number of cases appealed. If I understand Dave Wolff correctly, a grievance is seldom, if ever, settled at Chrysler after arbitration has begun. In the hearings before the chairman, he says, there is no effort at compromise and "matters properly submitted to him for decision are not referred back to the parties for compromise or further bargaining, unless the appeal board lacks power to make a substantive

ruling (in which case, of course, referral is mandatory)." At Ford, cases *are* settled by the parties after the arbitration hearing has begun, some at the suggestion of the umpire, others because the presentation has shed new light and the parties genuinely welcome an opportunity to reconsider their earlier positions and adjust the grievance amicably. On the surface, this may appear as a reflection on the parties' efforts in the lower steps of the procedure with the consequence that more grievances are appealed to the Ford umpire than would otherwise be the case; but it is not necessarily so. Under a system in which grievances are heard by the umpire *de novo* and in the presence of all interested parties to the controversy, it is not unusual for the hearing to disclose an underlying misunderstanding that may have blocked an earlier settlement or uncover new thoughts, new facts, and occasionally new areas of agreement that provide real opportunities for constructive settlements. At Ford, these opportunities are usually not ignored, even though it may be thought that this tends to encourage appeals to the umpire.

But aside from considerations of case load, I am a little baffled by some features of the Chrysler-UAW system. We are informed that the hearings are attended only by the chairman and two appeal board members from each side who act as advocates for their principals; that all witnesses, including the aggrieved employee, are excluded from the hearing; and that the chairman never sees the principals involved in the grievance and never personally views or investigates jobs or operations in the plants. Under other arbitration systems, the grievant not only is permitted to participate in the hearing but he and his witnesses and the company's witnesses are allowed to testify orally and be cross-examined. Where, as frequently happens, there is a factual dispute arising out of conflicting versions of a particular event, the opportunity to examine and cross-examine a witness can be most important. Now it is interesting to note that Dave Wolff believes the written statements which the appeal board members submit to him "are likely to be as, or more, reliable than oral accounts [of witnesses]." But what happens when the written statements are in conflict on a pivotal fact issue and a question of credibility arises when, as

he states, the actual presence and participation of witnesses would be helpful to him? My own feeling is that as long as the chairmanship remains in the capable hands of Dave Wolff, no Chrysler employee or the Chrysler management need fear a denial of substantial justice in any case, although I confess that, on principle, I would hardly be content with a system of adjudication for my own affairs if the trier of the facts were barred from seeing and hearing me and my witnesses and if I had no right to cross-examine my adversary and his witnesses.

One more thing. The Chrysler-UAW system is referred to as a "strict arbitration" system in which the chairman's role is that of a "final, impartial court of appeal." It is not altogether clear to me what is meant by a "strict arbitration" system. Is it a system in which the chairman acts wholly outside the union-management relationship and only to redress past wrongs, as a court does? Of course, I have no quarrel with those who may prefer an appeal system which bars outsiders from their collective bargaining or which employs strict hearing procedures or which allows no room for solving a larger problem than what appears on the surface of a particular grievance when it becomes fully disclosed in the chairman's or umpire's step of the procedure. Grievance arbitration, as George Taylor once said, is very hardy. Yet it is a flexible process. And if a strict appeal procedure best suits the needs and tastes of some parties, then by all means they should adopt a strict procedure. In industry generally, I believe the parties' tastes run somewhat differently. Many parties, I know, conceive their permanent umpire systems as mechanisms suitable not merely for resolving a particular stalemate but suitable for continuation of the parties' efforts at mutual understanding of their problems and suitable for developing the collective bargaining process. With this concept of arbitration, a strict appeal and hearing procedure such as that under the Chrysler-UAW system would be an anomaly.

There is a good deal more that can be said about the Chrysler-UAW system but I know my time has run out. One certain virtue it has is that Dave Wolff is its chairman. May it be ever so.

Discussion—

NATHAN P. FEINSINGER *

My comments will be addressed to those features of the Chrysler-UAW umpire system, as described by Mr. Wolff, which seem to me to be more or less distinctive.

It is worth noting at the outset that the umpire has not functioned at any time as the 1943 directive order and opinion of the War Labor Board, the genesis of this system, apparently contemplated. Previously the parties had an established grievance procedure culminating in a joint "appeal board." The War Labor Board provided that "the impartial chairman shall have the right . . . to participate in all discussions and meetings of the appeal board and . . . the duty of assisting the parties in resolving particular questions." This implies that the umpire was to participate in the collective bargaining process, at least as to grievances, using the technique of mediation in the first instance, and his power of decision only when necessary.

From the first, as Mr. Wolff reports, the parties deliberately excluded the umpire from the collective bargaining process, limited his function to "strict arbitration," i.e., with the terms of the written collective bargaining agreement as his sole guide, and determined that that function should be exercised through "appellate proceedings," in which only the umpire and the appeal board members, two representing each side, were to participate. Thus, it seems fair to describe the Chrysler-UAW umpire system not as an extension of the collective bargaining process, but rather as a quasi-judicial proceeding designed primarily to decide disputes as to contract interpretation and application and, through opinions in key cases, to establish precedents for the avoidance or settlement of similar disputes thereafter. In this respect, the system appears to be similar to that in effect under the John Deere-UAW Umpire Agreement,

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on which Professor Harold W. Davey reported at the 1957 meeting of the Academy.**

Mr. Wolff calls attention to what he regards as an important exception to standard arbitration procedure. Under the Chrysler-UAW umpire system, either party, apparently meaning the company or the international union, may initiate any issue involving the interpretation or application of the Agreement directly with the other party, with appeal to the appeal board, without regard to the pendency of a grievance or an actual dispute. He describes this as a "declaratory judgment" procedure, and approves it particularly as affording a means of "heading off trouble" and avoiding a multiplicity of grievances. A similar provision appears in at least one other UAW agreement in the auto industry, under which it has been used sparingly. While no doubt such a provision has the advantages pointed out by Mr. Wolff, it also has certain disadvantages. For example, an actual grievance may present an issue of contract interpretation in sharper focus than a claim stated in general terms. It would be interesting to know how often the declaratory judgment procedure has been used under the Chrysler-UAW agreement, in what kinds of cases, and the actual results compared with what the parties hoped to accomplish.

Under the Chrysler-UAW system, all meetings of the appeal board are held in Detroit. This is in keeping with the "appellate" nature of the proceedings. The only participants are the umpire and four representatives of the parties, two from each side. There are no witnesses and no plant visitations.

Mr. Wolff believes this strictly "appellate" procedure to be sound. He feels that "testimony" in the form of written, signed statements is at least as reliable as live testimony "given in the excitement of direct discussion," except, perhaps, where credibility is a relevant factor. Since one-third of the total volume are disciplinary cases and credibility is often the deciding factor in such cases, the exception may be more important than indicated. Mr. Wolff also feels that the "closed" session

** EDITOR'S NOTE: See CRITICAL ISSUES IN LABOR ARBITRATION (Washington: BNA Inc., 1957), chapter ix.

rule encourages frank discussion, avoids rekindling of old fires, expedites presentation and leads to better relations between the parties. One may ask, however, whether the grievants are satisfied with a system under which their "day in court" is by proxy only, whether the grievant, the foremen and the local representatives of the parties might not acquire some valuable education and guides for their day-to-day conduct from attendance at the umpire hearing, and whether it is not also important to improve relations at the plant level, which participation in an umpire hearing often accomplishes. It appears, however, that the parties are satisfied with their system, which, Mr. Wolff points out, is what counts.

In keeping with the concept of "strict" arbitration, Mr. Wolff reports that he never discusses pending issues with only one side. He does, however, discuss unilaterally "past decisions, the umpire system generally, and problems in the presentation of cases." It would be interesting to know more about these discussions, and what they contribute to the effectiveness of the system. In view of Mr. Wolff's ability and experience as an arbitrator, one can guess that the benefits of such discussions are not entirely on his side.