CHAPTER 5

DISTRESSED GRIEVANCE PROCEDURES AND THEIR REHABILITATION

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I. *The Problem*

In this age of anxiety the forms of distress are so numerous—distressed areas, distress merchandise, stomach distress, and so on—that I had better begin by defining distressed grievance procedures. The term is not used in any precise quantitative sense. The fact that 20 percent of all grievances in a company may go on to arbitration, or that one case may be arbitrated for every hundred employees, is not really decisive. On the contrary, the true symptoms are qualitative. A distressed grievance procedure is one in which the filing of multitudinous grievances becomes a mechanical routine; one which is so overloaded that there is insufficient time for investigation and negotiation; one which results in promiscuous recourse to arbitration; one which does not effectively settle controversial issues.

I commented on this problem at the meeting of the National Academy four years ago:

> There is no doubt that some parties arbitrate too much. They arbitrate chronically and promiscuously. Arbitration becomes a mill rather than a court of last resort, a substitute for the grievance procedure rather than a means of strengthening it. Issues multiply through a process of continuous division and subdivision, so that trivial disputes which should have been buried at Step I are solemnly and painstakingly dissected in a full-dress hearing.[1]

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1 Arthur M. Ross in "The Role of the Law in Arbitration: A Panel Discussion," *Arbitration and the Law* (Washington: BNA Incorporated, 1959), pp. 69-75.

Published statistics confirm our professional experience in suggesting that there is too much arbitration in some industries. For example, the number of appointments by the Federal Mediation and Conciliation Service has increased steadily from 540 in 1951 to 1,099 in 1956 and 2,231 in 1962.[2] During this period the number of union members has risen only 20 percent, from approximately 15,000,000 to some 18,000,000; and since arbitration clauses had already been incorporated into most collective bargaining agreements by 1951, the fourfold increase in appointments during the subsequent decade cannot be explained in terms of a wider market for our services. Neither does the explanation lie in FMCS having captured a much greater share of the market. Our own surveys show that in 1952 members of the Academy arbitrated 64.7 percent of their cases by direct appointment of the parties, 6.7 percent by appointment of FMCS, and 29.6 percent under other auspices.[3] In 1957 the percentage of cases referred directly by the parties had risen to 65.6, while the percentage referred by FMCS had risen to 8.2. Thus there is every reason to believe that FMCS appoints more arbitrators year after year because more cases are being arbitrated year after year.

At the same time it seems apparent that arbitration activity is distributed unevenly throughout the market. If we had a statistical accounting of all cases submitted to arbitration, we would probably find a large proportion emanating from a relatively few companies and unions. Perhaps it is ungrateful and indelicate to mention this, but on the other hand we have anciently proclaimed that our highest ambition is to work ourselves out of our jobs.

In launching the present study of distressed grievance procedures, I was desirous of exploring a number of significant questions. Is the problem really widespread, or relatively infrequent? What are the basic causes of congested grievance and arbitration dockets? Under what circumstances does overloading develop? What measures have been adopted by employers and unions to relieve congested procedures? Have these measures been effective? What role have arbitrators played in helping to meet the problem? Should arbitrators perform solely a judicial function,

2 Source: Annual Reports, Federal Mediation and Conciliation Service.

3 "Appendix E," *The Profession of Labor Arbitration* (Washington: BNA Incorporated, 1957), p. 182.

or should they also undertake administrative and consultative activities? In the latter case, what are the necessary conditions for an augmented contribution?

The research was conducted almost entirely through correspondence. At this point I desire to express my gratitude to the numerous arbitrators, management officials and union leaders who have given me the benefit of their views and experiences on such short notice. As I promised, I have not identified any company, union or individual except with specific permission, aside from using published articles already in the public domain.

II. *Responses by Arbitrators*

A. *Incidence of congested procedures*

Inquiries were sent to several dozen Academy members who have had substantial experience as permanent umpires. The majority replied that they had personally encountered overloaded grievance procedures in the course of their professional practice. Some of the extreme cases included 6,000 grievances awaiting arbitration in one aircraft plant; 2,000 grievances filed in one glass plant over a brief period of time; 12,000 grievances on the arbitration docket in a farm equipment company; 600 cases slated for arbitration at a motor truck company; and 750 grievances certified to arbitration in a bargaining unit of 2,400 employees. At one firm the caseload was measured in terms of "height of the stack in inches."

I have made a list of twenty-five companies described as having had congested grievance and arbitration procedures sometime or other during the postwar period. In some cases the problem was quite temporary; in others it lasted a dozen years or more.

It may be significant that most of these companies are found in a small number of industries. The 25 firms are distributed as follows:

Aircraft	6
Basic steel	5
Rubber products	3
Automobiles and trucks	3
Shipbuilding	3
Other	5

It should be emphasized that the situation has improved in many of these companies; I do not mean to suggest that the problem is serious in all 25 at the present time. Furthermore it should not be assumed that all the companies, or even a majority, were mentioned by their present impartial umpires.

All the industries are characterized by large manufacturing plants with industrial bargaining units. In 19 firms the employees are represented by industrial unions formerly affiliated with the CIO. In 5 firms the predominant labor organizations have a craft-union background although using an industrial-union structure in these instances.

B. *Causes of the problem*

Most frequently mentioned by arbitrators were a set of *causes emanating from within the union organization:* structural characteristics, political pressures, membership expectations and leadership philosophy. There were numerous variations on this theme:

> – Refusal of international and local union officers to screen out the grievances; a feeling that most complaints should be taken to arbitration in order to satisfy the grievants.
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> – A provision in the constitution under which the union cannot pass a resolution without unanimous approval of the numerous locals and therefore cannot pass the legislation required to control the affairs of these locals.
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> – A shop committee, in order to perpetuate itself, first looks for trouble and files grievances at the drop of a hat.
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> – A local union riddled with factional strife. "The local was large . . . and its treasury bountiful." The committee could not refuse to arbitrate weak grievances for fear that the opposition would make political capital.
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> – Union investigation is initially poor and continues that way; poor steward training, newly changed officers, etc.

A second set of causes lies within the *management organization.* For example:

> – Company hard line on practically all grievances; hard line called for by operating people; industrial relations people having weak status in corporate setup and not attempting to educate the operating people.

— Top line management did not back up the industrial relations people. As a result, the I.R. men preferred to pass the buck to the umpire. . .

In some instances *technological and economic changes* have led to a high rate of grievance production.

— In the latter part of 1960, with the recession in business and resultant layoffs, many grievances were filed in all plants. . .

* * *

— With the constant change to automation, and resultant changes in job content, agreement as to the proper evaluation of new jobs has not been easily arrived at. . .

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— In one company, a major plant relocation put a heavy strain on the union-management relationship.

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— Much of this is due to and coincident with substantial mechanization and other plant changes and improvements [which] give rise to certain types of problems such as incentive rates and classification. [In this situation there were alleged showdowns and wildcats resulting from new or adjusted incentive rates.]

Several arbitrators emphasized *over-generous or unlimited grievance pay,* or the *availability of free or subsidized arbitration.* (At one time the U. S. Conciliation Service, like the National Railroad Adjustment Board, supplied free arbitration.)

— At the . . . arbitration proceedings these committeemen occupied a table off to one side of, and parallel to, the grievance arbitration table at which they sat and engaged in various kinds of activities seldom, if ever, connected with the case at hand.

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— There were simply too many grievance committeemen who were either on part-time or full-time grievance service. A close secondary factor in this particular case was the unusually strong internal union factionalism . . . and the real inability of union representatives to turn down grievances.

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— The basic reason for the overload concerned the method of payment of the arbitrator. Under the contract the company paid the full bill if it lost a case and one half of the fee if it won the case.

Some arbitrators lay part of the blame on *bad bargaining relationships.*

The problem was that too many grievances went through to arbitration. As far as I could tell, this process developed at a much

> earlier date when there was an extremely bad relationship between the parties. When the relationship became better . . . I found it extremely difficult to get them out of this habit.
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> Back in the early days of 1949 through 1951, the fault lay not so much in the grievance procedure as in the fact that the parties were taking such extreme stands . . . and had such poor relationships that practically no grievances were being settled whatsoever short of arbitration.

Other explanations were offered, including a *first contract* under which the parties were still jockeying for position and a *complicated job evaluation plan* which was difficult for the union to cope with.

It is evident that the principal reasons are institutional or organizational in character rather than inherent in the work situation itself. This point is confirmed by two other facts. First, several arbitrators noted the great differences in grievance load between different plants of the same company operating under the same contract with the same international union. Second, it seems to be an invariable characteristic of overloaded grievance procedures that the bulk of the grievances lack merit and are eventually withdrawn or denied.

The awards of the National Railroad Adjustment Board (in which the great bulk of claims are denied) will serve as an interesting example. The major problem of the Adjustment Board has been an overwhelming caseload, particularly in the First Division, which covers operating employees in train and yard service. Out of some 55,000 cases filed with the Board between 1936 and 1960, almost 70 percent were docketed with the First Division. An additional 14,500 cases involving operating employees were submitted to special boards of adjustment between 1951 and 1960, because of congestion in the First Division.

Table I shows the changing "box score" of the First Division. Until World War II a fairly high proportion of claims was sustained, but the postwar experience has been radically different. Between 1946 and 1960 some 16,000 cases were filed, and the unions withdrew almost half that number. Of 8,818 awards, only 20 percent were granted; 64 percent were denied and the remainder compromised, remanded or dismissed. Thus the favorable awards constituted little more than 10 percent of all cases

TABLE I

Disposition of Cases, 1934-1960

Calendar Year	Pending at Beginning of Year	Cases Docketed	Cases Withdrawn	Total Awards	Denied		Sustained		Compromised, Remanded or Dismissed	
					Awards	%	Awards	%	Awards	%
1934	.....	.....	.....	33	6	18	24	73	3	9
1935	n.a.	1590*	101*	721	226	31	429	60	66	9
1936	1095*	1294*	66*	868	242	28	494	57	132	15
1937	n.a.	1650*	403*	808	169	21	547	68	92	11
1938	1956*	1546*	431*	923	257	28	582	63	84	9
1939	2173*	1705*	300*	1103	337	31	630	57	136	12
1940	2577*	3120*	329*	930	316	34	484	52	130	14
1941	3607	2923*	294*	931	263	28	536	58	132	14
1942	5552	2215	405	1270	432	34	630	50	208	16
1943	6092	1778	1509	1342	493	37	637	48	212	16
1944	5020	2313	1122	1193	455	38	501	42	237	20
1945	5018	1345	2017	817	312	38	376	46	129	16
1946	3529	425	1263	173	68	39	77	45	28	16
1947	2518	808	660	761	343	45	290	38	158	17
1948	1905	1072	104	682	355	52	207	30	120	18
1949	2191	1702	244	624	338	54	164	26	122	20
1950	3025	1501	542	977	591	61	247	25	139	14
1951	3007	1561	165	905	590	65	195	22	120	13
1952	3498	1878	789	894	626	70	136	15	132	15
1953	3693	1177	1299	597	384	64	104	17	109	18
1954	2974	944	555	345	245	71	54	16	46	14
1955	3018	878	294	433	307	71	43	10	83	19
1956	3169	663	384	626	468	75	47	8	111	18
1957	2822	808	588	612	433	71	59	10	120	20
1958	2430	1048	205	457	337	74	53	12	67	15
1959	2816	929	302	366	247	68	60	16	59	16
1960	3077	831	618	366	273	75	39	11	54	15
1934-60	.....	37749	15068	19757	9113	46	7645	39	2999	15
1934-45	.....	21524	7056	10939	3508	32	5870	54	1561	13
1946-60	.....	16225	8012	8818	5605	64	1775	20	1439	16

* By fiscal years.

(Source: Garth Mangum, "Railroad Grievance Procedures," *Industrial and Labor Relations Review*, Vol. 15, No. 4, p. 491, July 1962.)

filed during this 15-year period. Since the end of the Korean War the results have been even more overwhelmingly negative.

How is the persistence of a high arbitration rate (one case per year for every 220 employees) in the face of such unfavorable results to be explained? In his interesting analysis of railroad grievance procedures, Garth Mangum emphasizes three reasons: the nature of the grievances, generally consisting of claims for extra pay under controversial work rules; the reluctance to make decisions which is typical of railroad labor relations; [4] and the fact that the government furnishes free arbitration, at an average cost to the taxpayer of approximately $350.00 per case. Mangum discusses possible ways of speeding up the process, but points out that similar improvements in the past have been negated by an increasing flood of submissions. "Meaningful reforms in the grievance procedure for railroad operating employees must arise from the bargaining table and grievance handling on the properties." [5]

C. *Remedial measures initiated by the parties*

We turn now to the measures which companies and unions have adopted to reduce the grievance and arbitration load or to cope with it. These should be distinguished from measures which arbitrators themselves have initiated, although concededly it is difficult to draw the line in some instances.

Four devices were mentioned most frequently by arbitrators: (a) mass grievance settlements; (b) review or screening of grievances; (c) direct negotiation between management and union officials at higher levels of authority; and (d) procedural changes.

Mass grievance settlements are known variously as "bargain days," "fire sales" and "blitz sessions." The atmosphere is one of horsetrading rather than precise adjudication on the merits. It is possible to resolve huge numbers of grievances without the expense of arbitration through the use of this technique. Mass settlements have two serious disadvantages, however, unless accom-

[4] "An unusual propensity for buckpassing seems typical of railroad labor relations. The railroad brotherhoods are highly democratic and are not well structured for firm decision making. Local chairmen accept and process weak cases, either because it is not politically expedient to question the case, or in the off-chance the case may ultimately be sustained. General chairmen pass the cases on for the same reasons." See Mangum, p. 499.

[5] *Idem.*

panied by a more fundamental attack upon the underlying causes of the problem. First, many unsound compromises are made; and although these settlements are always labelled as non-precedent, the fact is that they do return to haunt the parties later. Second, the procedure encourages the filing of other bad grievances which may possibly be granted on some future bargain day.

A review or screening procedure consists of a coldblooded analysis of unsettled grievances by company or union officials immune from political pressure and enjoying freedom of action. The idea is that the company will grant grievances it is likely to lose in arbitration or that the union will withdraw grievances it is likely to lose. Screening systems have had variable success. The highly effective review procedure used by General Motors and the UAW is described below. On the other hand, one arbitrator writes of an agreement which "gave more control to the international representative at the step before arbitration to settle or abandon the grievance," under which "most of the international representatives played cozy politically rather than stand up to the aggressive local union presidents."

I understand that one company uses an experienced arbitrator to advise on the merits of unsettled grievances, although I have no first-hand information on this experiment.

Involvement of management and union officials at higher levels of authority has proven effective in several situations. This technique is often called "Step 2-1/2" or "Step 3-1/2." Typically the cases are reviewed jointly by a company-wide officer and an international union official before submission to arbitration. While centralized grievance handling serves to protect the arbitrator from an excessive caseload, it does not necessarily lead to the growth of realism and responsibility at the shop level. For this latter purpose the radically different grass-roots approach recently adopted at International Harvester deserves consideration.

Other *procedural changes* have been mentioned. Assistant or associate arbitrators have been used in some situations. One company insisted that grievances be arbitrated in chronological sequence so that the union would no longer be able to hold them for arbitration at some strategic moment or trade them off in a mass settlement. Another company and union agreed that briefs

would be filed in each case within thirty days of appeal to arbitration. Likewise the umpire is required to schedule a hearing within thirty days from receipt of the appeal. Another set of parties successfully policed themselves for two or three years by requiring that all grievances be disposed of within two months of being docketed at the arbitration step. One arbitrator describes an episode back in the 1940's in which "the flood of arbitration seemed to stop when free arbitration was no longer furnished by the United States Conciliation Service."

These are the major techniques which employers and unions have adopted to eliminate or forestall a burdensome caseload insofar as arbitrators are informed of them. As one would expect, in some cases several measures were taken concurrently. One of my correspondents tells of a company and union who confronted a backlog of about 1,000 grievances when the contract terminated. They established a special committee which succeeded in settling all grievances within two weeks; they reconstructed the grievance procedure to provide greater participation by top company officials; and they also radically reduced the number of stewards authorized to write grievances.

It is interesting that none of the arbitrators mentioned any instances in which the parties renegotiated contract language which had led to excessive grievance production. There are such instances, of course. For example, one company has insisted, over strong opposition from the union, upon a revised definition of "ability to perform," in connection with bumping rights, which could be applied mechanically by recourse to personnel records. However, the absence of any such references in the arbitrators' replies is nonetheless significant. It confirms our impression that the underlying causes of congestion tend to be organizational and institutional rather than substantive. And where they are substantive, the parties often prefer to retain ambiguous or unsatisfactory contract provisions because they are just too difficult to renegotiate.

To conclude this section, an interesting letter written from one of our most experienced members might be quoted:

> In my experience, the usual key to the problem has lain with the union leadership. That means that efforts to rehabilitate the procedure are usually doomed to failure or, at most, are only par-

> tially successful unless the union pulls up its socks and does its job. I have seen many things tried—crash programs of "without prejudice" settlements, the creation of special committees to negotiate concerning special problems, foreman-training and shop steward-training programs, and efforts to arbitrate everything until people got tired, but unless the union organized itself so as to make adequate screening politically possible, the benefits of these programs were temporary and things soon drifted back to where they had been before.

D. *Remedies initiated by arbitrators*

What have the arbitrators themselves done to cope with the problem of overloaded dockets? Although some arbitrators have not encountered the problem, and others believe it must be left to the parties, a very substantial number have made it their concern. They have adopted various expedients which may be classified as follows (proceeding from the more superficial to the more fundamental):

Calling for help. The parties are advised that if they insist upon arbitrating so many cases, assistant arbitrators or associate arbitrators or special arbitrators will be necessary. A mountainous backlog can be disposed of in this fashion, but the underlying causes are not dealt with unless more fundamental steps are taken at the same time.

"Quickie" hearings, memorandum opinions, non-precedent decisions. Shortcut procedures likewise cannot be considered a real solution; in fact they may stimulate an even greater caseload. On the other hand, a large percentage of the cases on an overloaded docket do not present any real issues of contractual interpretation or supply any real basis for precedent. They merely involve simple factual issues which do not merit extensive analysis.

Remand of cases to the parties. Many arbitrators make a practice of remanding individual cases which have not been sufficiently investigated or negotiated; but the same practice is sometimes employed in a more wholesale fashion. I recall being appointed to arbitrate some 300 classification grievances after the installation of a job evaluation system in a manufacturing plant some 15 years ago. I heard 30 of these cases in one ghastly week, returned to Berkeley and decided them, and then persuaded the parties to dispose of the remainder. One of my correspondents reports a similar experience:

> The first time that I met with the parties on one of these dockets I recommended that they set up the sequence of grievances so that the cases they considered most important would be heard first and those of less consequence would be placed lower in the docket. By the third day we . . . had already gotten down to a point in the docket where the last case I had heard was a real 'lemon' . . . To the consternation of the AAA representative I suggested that the parties review the remaining 30 plus cases on the docket . . . When I returned there was only one case left. . . .

Limited availability. A professional surgeon does not perform all the operations his patients may desire. By the same token, it is certainly questionable whether a professional arbitrator should offer unlimited arbitration if it is not in the best interests of the parties and their bargaining relationship.

Does the arbitrator have any right to make a judgment on this point? If arbitration is a real profession, he does. Of course, the parties can always replace him if they consider him too high-handed or if he creates too many political problems.

Two instances are described as follows:

> At the time I took over there were some 3,200 grievances awaiting arbitration. The parties' practice was to accept a decision in one case but not apply it to a substantially duplicating situation. Our understanding was that this practice would be changed as follows: (1) Only key cases (other than disciplinary) would be presented. (2) These decisions would be applied, as nearly as could be, to similar cases . . . (3) I would hear not more than 60 cases a year.
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> I told both [parties] that my commitments at [the University] would preclude my handling more than 20 to 25 cases a year and they assured me that it would not run more than this . . . Such a ceiling would distribute its beneficial effects back down the line into earlier steps of the grievance procedure.

Discussion of general problems. Many arbitrators have felt that they could be of greater assistance to the parties if they might occasionally discuss a problem in its general aspects, beyond the limited scope of a particular case. Some arbitrators have entered into such discussions in their written decisions:

> Knowing that this is a first contract and since the parties have never had contact with any other arbitrator, I have tried to do more than answering grievances. I have tried to philosophize in my discussions to a degree that would help eliminate useless griev-

> ances and might point to a solution for others. I believe that I have had some beneficial results. . .
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> In one bargaining unit where I was permanent umpire, the parties . . . did have an unusually high number of subcontracting cases. At one of the hearings both parties turned to me and asked if I could not do something to help them avoid arbitrating so frequently on this subject. I suggested that I would elaborate a preliminary set of guideposts. . . . After some time and very considerable give and take by all concerned, unanimous agreement was reached; and since then the number of subcontracting disputes requiring arbitration has been negligible.

Inasmuch as many employers and unions believe that unnecessary dicta do more harm than good, this approach will not be widely acceptable. It is true that the parties who insist on arbitral self-restraint are generally those who have the least need for guidance, but in view of these objections it would appear that informal conferences, rather than formal decisions, provide the best medium for exploration of general problems. Another advantage of the informal conference is that the arbitrator can keep it under control so as to avoid moving into areas which the parties cannot comfortably explore. In any event the possibility of performing this service depends entirely on the willingness of the parties.

Consultation with parties. An experienced and trusted impartial umpire naturally develops considerable influence with the parties. Numerous arbitrators believe that they should exercise the full range of their influence and have taken the initiative in stimulating efforts to eliminate backlogs and rehabilitate grievance procedures. Patient counselling on the evils of overloaded procedures, a persistent search for the underlying causes, and an emphatic determination that the parties must assume their responsibilities have frequently paid off. Some arbitrators have persuaded the parties to establish screening procedures. In other instances they have arranged for "summit meetings" between top officials of the company and union; and on occasion these summit meetings have led to a basic reorientation of subordinate officials and a radical change in day-to-day relationships. Reassignment of company and union personnel is sometimes involved.

One of my correspondents describes his consultative efforts as follows:

> I suggested, and the parties readily agreed to, a rigorous screening of all cases in the backlog at each plant location. This screening process considerably reduced the backlog. Thereafter I had periodic meetings with top company and union representatives to discuss various problems of the arbitration system, with special emphasis on the volume of cases . . . Following such meetings, the top company and union people would usually write memorandum to their local counterparts, reporting on the meeting and usually urging even greater efforts to screen cases prior to arbitration . . . Things finally got to the point where the local people would often apologize for bothering me when they called to ask for some hearing dates.

Another arbitrator's efforts were received with less enthusiasm.

> I could and did talk to some of the union international representatives and at times to a few top local officials about submitting unmeritorious questions to arbitration. In some instances my advice was well taken, in some instances it was apparently unwelcome, and in some instances I was told that the union people appreciated that certain cases were without merit but that for strategic or political reasons they had to be terminated by an arbitrator's award.

No matter how aggressively the arbitrator counsels, educates and exhorts the parties, of course he must also perform his primary judicial function of deciding cases on their merits, which helps to strengthen the framework of responsible self-government.

E. *A larger role for arbitrators?*

The final question to arbitrators was phrased as follows: "Do you believe that the permanent arbitrator can play an administrative or consultative role in addition to his judicial role?" I was interested in obtaining opinions as to the desirability of this trend aside from accounts of specific experiences.

The responses fall into three groups: negative or pessimistic, cautiously affirmative and aggressively affirmative.

The first category includes arbitrators who believe that their proper function is strictly judicial or that they are not in a position to assume other tasks. It also includes those who regard the problem as similar to that of congestion in the courts. "We find means of reducing this from time to time and then after a few years we are once more confronted with the same difficulty."

The second group believe that the permanent arbitrator's role can be expanded, but emphasize the need for caution and the danger of outrunning the interference.

> This must, however, be done on a very selective basis and with great care and judgment and sophistication as to when this greater role should be assumed.
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> The permanent arbitrator can play an effective role in reducing the number of arbitration cases—assuming he has the desire and the know-how—only if the parties really want him to do so. Where the parties, for various reasons, are bent on arbitrating frequently, the arbitrator can do relatively little to stop it. . .
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> 'Permanents' can be useful if the parties permit, but it is a delicate matter, often involving intramural politics on one or both sides, personalities and other problems which an arbitrator would be loath to deal with.

The third group believes that the permanent umpire should aggressively seize the initiative in cases of extreme congestion. One of my correspondents, for example, advocates that the arbitrator should "keep asking the parties why in the hell they arbitrate lousy cases"; that he should conduct informal classes in grievance handling for union and company staff members; that he should hold pre-hearing conferences for the purpose of "derailing" worthless or trivial cases.

Another of our brethren offers the following comment:

> I do think rather emphatically, that permanent arbitrators can do a great deal more than most of them do to improve arbitration procedures. An important prerequisite, of course, is a desire on the part of both parties to improve their system; it might be difficult for an arbitrator to accomplish much if both parties were satisfied with a bad situation. I have the impression that a great many permanent arbitrators adopt the attitude that they should take the arbitration system as they find it, and that improvements are the responsibility of the parties. It is possible that some parties might resent and resist an arbitrator's efforts to improve their system; but I suspect that there would be far more situations in which the arbitrator could exert considerable influence in the direction of improvement.

In order to indicate my own attitude, I offer the following confession: I have referred cases back to the parties, have persuaded them to settle large batches of grievances slated for arbitration,

have participated in mass grievance settlements by deciding sticky issues after a brief oral presentation, and have delivered frequent and partly successful homilies on the evils of overloaded procedures. I have insisted that freedom of action be restored to the members of a shop committee which had become immobilized by political pressures and have been consulted with respect to possible changes in contract language. In other "permanent" assignments I have merely decided cases as they were put before me, either because the problem of congestion was not present or because the parties wanted me to keep my place. But where permitted I have acted on the premise that a permanent arbitrator can play a useful role in helping company and union restore the effectiveness of the grievance procedure and reduce the caseload. Self-reliance is the ultimate objective but an experienced arbitrator can help the parties regain it.

III. *Responses of Employers*

Most of my management correspondents were Vice-Presidents or Directors of Industrial Relations in major corporations. The inquiries were centered on (a) the causes of congestion, (b) the grievance issues most difficult to settle, (c) the remedies available to the parties, and (d) the role of arbitrators.

A. *Causes of congestion as seen by employers*

Management officials, like arbitrators, most frequently invoke causes within the union organization: political pressures surrounding the election of officers, inability of the international union to control its locals, inter-union rivalries, the build-up prior to negotiations, membership expectations, leadership philosophies and personalities. In this connection one employer, apparently referring to the Landrum-Griffin Act, speaks of "increased democracy within labor unions, which results in the members forcing their leadership, sometimes against the better judgment of that leadership, to pursue grievances."

Next most prominently mentioned are technological and economic changes threatening job security:

> Cost cutting, sudden increase or decrease in the work force and significant changes in the product or equipment which involve a downgrade of skills [always create problems].

> All companies do at times . . . strive hard for economies. At such times, some management representatives forget about collective bargaining agreements . . . and consequently about union and employee rights. This will lead to widespread filing of grievances.

Thirdly, numerous employers lay the blame on arbitrators or the availability of arbitration. One mentions "the encouragement of arbitration afforded by the trilogy of Supreme Court rulings on arbitrability." Another criticizes "the type of decision rendered by arbitrators, such as those that imply that the next case in such-and-such an issue, if the facts are somewhat different, may go to the other party." Still another comments, "Such gratuitous observations (arbitrator stating what the parties might or might not have done, or could do, under other circumstances) can be productive of further grievances."

Additional reasons include pressures which develop under long-term agreements, a history of bad relations, ambiguous contract language and personality clashes.

B. *What are the intractable grievance issues?*

Aside from discharge cases, which tend to go all the way to arbitration for well-known reasons, the most difficult issues are those bearing on job rights and job security: subcontracting disputes, work-assignment grievances, jurisdictional controversies, etc. In the words of three management spokesmen:

> The grievance and arbitration procedure does not settle one problem, namely company action which can be viewed by unions as possibly curtailing jobs.
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> The type of issues that remain chronically unsettled are broad ones generally related to employee security.
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> Some disputes . . . almost defy conclusive settlement—disputes as to jurisdiction between crafts, disputes as to contracting out, disputes as to the right of management to make economic decisions, and assignment disputes.

C. *Remedial devices available to the parties*

The measures discussed by employers are essentially the same as those examined by arbitrators (see Section II above); and to some extent the points of view are similar.

For example, employers agree with arbitrators that wholesale "bargain day" settlements are not a fully satisfactory device in the long run.

> Occasionally we do become sufficiently concerned with the backlog that we engage in trading off these unsettled grievances on a 'rabbit for a horse' basis. Such relief, however, is generally short-lived.
>
> * * *
>
> The company and union . . . decided to set up a series of meetings to review these grievances with the intention of getting the vast majority, if not all, of them out of the procedure . . . Though necessary under some circumstances, [this] is not good labor relations and tends to produce unfair decisions and other inequities.
>
> * * *
>
> No more "bargain days" and no horse-trading . . . Quality should not be sacrificed for quantity.

On the other hand, employers seem to be more confident than arbitrators that grievance loads can be reduced by clearer confrontation of bargaining issues in the negotiation of agreements. They state that "people negotiating collective bargaining agreements should attempt to do a better job in the phrasing of their intentions"; and that "if issues are faced squarely in contract bargaining and agreement can be reached on contract clauses, the grievances should disappear." Perhaps the real question is not whether sharp and well-defined language can eliminate grievances, but rather whether precise criteria for decisions can always be developed and whether recourse to calculated ambiguity can always be shunned.

Several company officials advise that beating the union badly in arbitration has a salutary effect.

> Usually in an overloaded grievance procedure the union presents many grievances that are without sound foundation . . . We have sometimes let them take as many of these to arbitration as they wish with the result that they soon find that the awards they may receive are not worth the drain on the union treasury which they cause.
>
> * * *
>
> The percentage of cases won by the union began to diminish substantially, and I think the amount of money they were wasting on lost causes began to impress them.

But the majority of employers, like the arbitrators, are con-

vinced that the only real solution is to restore the effectiveness of the grievance procedure at lower levels. Many of my correspondents describe successful experiences in "grass roots" handling of grievances on the shop floor; in creating more constructive attitudes and a better understanding between the parties; and in using special screening or review procedures. There is no reason to believe that any one of these approaches is necessarily the best. On the contrary it is clear that the parties have a range of choices and that the best solution depends on particular circumstances which are difficult to classify or codify.

> De-emphasizing legalistic procedures and strengthening the authority of the local industrial relations people have reduced overloaded grievance procedures.
>
> * * *
>
> The only technique that I know is the creation of an attitude on both the part of management and the union to make the grievance procedure work . . . Management officials must understand their objectives, make them known to the union, and pursue a consistent course of behavior so that the union may know how to deal effectively with the management. If labor leaders are politically secure they can conduct themselves . . . in much the same way.
>
> * * *
>
> Contractual provisions are designed to encourage avoidance of written grievances by preliminary oral discussions, and to promote full development and disclosure of facts and positions in the early stages of the procedure.

D. *The role of arbitrators*

It is my sad duty to report that management officials, in general, are not enthusiastic over the potential contribution of arbitrators to the solution of this problem, and that several go so far as to assign us part of the blame.

> It (arbitration) normally does not contribute importantly to improving the relationship between the parties or to set the stage for the parties themselves to more effectively settle problems or issues.
>
> * * *
>
> Most of the fault lies with some labor arbitrators who try to 'balance out' on decisions . . . go beyond the contract in making awards, write lengthy decisions which stray to areas never contemplated in the issue submitted for arbitration.
>
> * * *
>
> Many arbitrators make a practice of ignoring their responsibility for interpreting the contract . . . They too often isolate the case

> with subjective treatment which they often even avoid attempting to rationalize.

Having solicited these opinions, which seem to be widely and deeply held, I think it would be ungracious to quarrel with them here. We can take some comfort, however, in recalling the recent philippic of the Industrial Union Department (AFL-CIO) concerning "avaricious arbitrators," which would seem to reinforce our impartiality by demonstrating a reservoir of ill will among both groups of clients. This, of course, is not an uncommon situation among those who permit themselves to be drawn into other peoples' quarrels. In fact it is probably true that labor is the more dissatisfied client today, since careful statistical studies indicate that permanent arbitrators are dismissed more frequently by unions than by employers.

IV. *Analysis of Union Responses*

The union replies were not so numerous as those from management, and were submitted primarily by officials at the national union level.

In the opinion of these officials, the principal cause of overloaded procedures is the manipulation of grievance machinery for ulterior purposes. One respondent notes "a tendency to use arbitration as a collective bargaining lever; the party winning it may achieve a collective bargaining advantage which is used as trading material in the next contract negotiations." Another points out that "to the extent either party is more interested in internal organizational status . . . success is made more difficult." I will quote at some length from a particularly interesting reply which distills the experience of one of our largest unions:

> There are occasions when either management or union representatives attempt to use the grievance procedure as a weapon rather than as a means of settling problems. Thus, for reasons of advantage to the company or to the union, as the case may be, one or the other side may suddenly become recalcitrant in settling problems and a sudden rise in the number of grievances occurs. In multi-plant operations this becomes especially notable immediately prior to the beginning of contract negotiations. Sometimes, however, a sudden rise in the number of unresolved grievances may be the result of a temporary conflict and ill will resulting from a

> source of irritation separate from the causes of the grievances themselves.
>
> My own feeling is that a major obstacle to an effective procedure is created by those in management and labor who become curbstone lawyers in the grievance procedure. The comma and semicolon become more important to them than the problem which gave rise to the complaint. Winning grievances and counting the number of wins and losses become a sort of shibboleth and technical perfection tends to displace sound and reasonable judgment.
>
> I believe that educational programs relating to the proper use of grievance and arbitration machinery should stress the clinical approach to grievance handling rather than the art of legal technique.
>
> There are some arbitrators, as you know, who rely too heavily on the technical answer to a grievance problem, thereby losing sight of the fact that grievances result from management-labor relationships—which of course are essentially human relationships. An arbitrator therefore who becomes overly technical spurs the parties also to become overly technical, at the expense of the human relationships.

The union officials' appraisal of remedial methods is not too different from that of the arbitrators and employers. One letter states that "whenever things get out of hand, the situation requires detailed analysis," because "each crisis must be faced in the light of its own ingredients. Greatest emphasis is placed on lower-level settlements.

> We have placed tremendous emphasis on the oral step of the grievance procedure, hopeful of getting settlements which will not be in writing and which will offer to the parties more inducement to settle.
>
> * * *
>
> Education programs . . . should stress the clinical approach to grievance handling rather than the art of legal technique.

Whereas employers criticize arbitrators for exceeding their jurisdiction, departure from the contract, etc., union officials reproach us for having become overly technical and legalistic. On the whole, however, the union officials do not characterize us in such disparaging terms as the employers do. One even goes so far as to state that arbitration is a difficult job requiring "a creative man, an understanding man and a man who can win the respect of the parties."

It is interesting that employers are sterner in their evaluation of arbitrators while unions are quicker to terminate them.

V. *Three Cases of Rehabilitation*

But regardless of how the parties view our work, the fact remains that the *decisive steps in rehabilitating distressed grievance procedures are those taken by labor and management themselves.* This fact is made plain when we examine three of the most dramatic examples. Two of these (General Motors-UAW, and International Harvester-UAW) have been described extensively in published articles. The third (Convair (Fort Worth)-IAM) is familiar to me because I served as permanent arbitrator at that location for seven years. Both the Convair management at Fort Worth and District Lodge 776 of the Machinists have furnished me with helpful information for use in this paper.

A. *General Motors-UAW* [6]

In the General Motors system approximately ninety percent of all grievances are settled at the first or second step, but the coverage of the Master Agreement is so vast (just under a third of a million employees in some 135 plants) that 10,800 cases were appealed to the umpire by UAW Regional Directors between 1950 and 1958.

The Umpire actually decided only 4 percent of these appeals, however. Some 55 percent were screened out by the Union's Board of Review and the remaining 40 percent were settled by central-office personnel of the Corporation and the Union.

The settlement of virtually all appeals without recourse to an umpire decision is the most notable aspect of the General Motors-UAW system. This was not true in the early years. At one time the Umpire was deciding more than 20 cases per month but the caseload has declined continuously to its present low level of about 2 per month. The following table shows average decisions per month for each Umpire between 1941 and 1958:

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[6] Gabriel N. Alexander, "Impartial Umpireships: The General Motors-UAW Experience," *Arbitration and the Law, op. cit.,* pp. 108-160; and James Dunne, "The UAW Board of Review on Umpire Appeals at General Motors," *Arbitration Journal* (Vol. 17, No. 3, 1962), pp. 162-174.

George W. Taylor	20.4 per month	(12 months of service, 1941-42)
Allan Dash	14.4 per month	(30 months of service, 1942-44)
Ralph T. Seward	11.0 per month	(40 months of service, 1944-47)
Saul Wallen	7.3 per month	(12 months of service, 1947-48)
G. N. Alexander	6.4 per month	(66 months of service, 1948-54)
N. P. Feinsinger	2.4 per month	(1954-58) [7]

Much credit for this dramatic reduction in caseload is given to the Union's Board of Review, which screens cases after appeal to the Umpire. The National Agreement does not call for this screening mechanism, but it was established by the Union's International Executive Board, at the instance of Walter P. Reuther, in 1942. The Board was only partially successful during the first few years, but became increasingly effective after 1948 with the consolidation of Mr. Reuther's power in the Union and the improvement of bargaining relations between General Motors and the UAW.

The composition of the Board of Review has been altered from time to time over the years. As of 1962 it consisted of four permanent staff members. A separate group called the Umpire Staff investigated cases passed by the Board of Review, settled them with the Corporation staff when possible, and otherwise presented them to the Umpire. During 1962 the Union decided to amalgamate the two groups into the Review and Umpire Section, with complete authority to handle all appeal cases.

Working in pairs, the members of the combined staff review all appeal cases in a given area together with the field representatives. They personally investigate those cases which possibly have merit, and eventually dismiss the bad grievances with a letter of explanation to the Regional Director. Meanwhile the Corporation's central office staff has been making its own study of appeal cases. Those cases which survive the Union's review procedure are viewed most seriously by the Corporation because of its great respect for the independence and maturity of the UAW staff members. As noted above, most of these cases are settled between the parties without recourse to the Umpire.

Thus one central feature of the General Motors-UAW system is the high degree of independence lodged with central office per-

[7] Mr. Feinsinger is still Umpire for General Motors and UAW. Source of these statistics: Alexander, *op. cit.*, p. 122.

sonnel who assume jurisdiction over appeal cases and dispose of some 96 percent without arbitration.

Another important feature of the system is the procedural rule, established many years ago, that no important contention or piece of evidence may be introduced for the first time in an umpire hearing. Under this requirement the parties are forced to make a complete investigation, analysis and negotiation of each grievance at the earlier steps of the grievance procedure, for they are not permitted to build their case in the hearing room.

B. *International Harvester-UAW* [8]

The International Harvester-UAW grievance procedure, until recently, had a conventional structure. At Step 1 the employee and/or his steward discussed the complaint with the foreman. Step 2 was a joint shop committee. Central office company and union personnel considered the remaining grievances at Step 2½, while Step 3 was the arbitration hearing.

This grievance procedure was probably the most congested to be found anywhere in American industry. During the 1954-59 period the average number of grievances per 100 employees attained the fantastic rate of 27.5 per year; and three Harvester plants had rates of 98.0, 50.2 and 47.1, respectively. More than 48,000 grievances were appealed to arbitration during this period.

Both parties were unhappy with the situation and tried many expedients to cope with it over the years. After UAW established its Harvester Department in 1951, negotiations were increasingly centralized and a Master Agreement covering all UAW locals was signed in 1955. Although centralization permitted uniform handling of grievances, it also encouraged the tendency to push them upwards until Step 2½ was overwhelmed. At one point in 1955 there were 12,000 grievances awaiting arbitration.

Mass grievance settlements were conducted during contract negotiations. In addition the parties held special conferences in 1954 and 1955 to eliminate grievances in two of the most troublesome areas, incentives and job classification. Although the conferences were temporarily successful, these two areas continued to

[8] Robert McKersie and William Shropshire, "Avoiding Written Grievances: A Successful Program," *The Journal of Business of the University of Chicago* (Vol. 35, No. 2, April 1962), pp. 135-152.

generate complaints because the climate of relationships had not changed.

After discussions with David L. Cole, who had become Permanent Arbitrator, the parties agreed in 1957 to a moratorium on arbitration. Three special joint review boards were constituted. Considerable progress was made but an unwieldy backlog persisted. Then in 1958 the Union proposed that Mr. Cole be called in to mediate unresolved disputes. Although this experience was satisfactory to both sides, grievances continued to accumulate to the point where 2,700 reposed at Step 3 in 1959.

At this time a radically new approach emerged from conversations among Mr. Cole; William Reilly, the Company's Director of Labor Relations; and Arthur Shy, Assistant Director of the Union's Harvester Department. The idea was to handle all complaints at the level of the shop floor, without written grievances. An employee who has a problem discusses it with his foreman, possibly in the presence of his steward. If the three cannot find a solution, others are called into the investigation; and if plant-level personnel are unsuccessful, they communicate with central office representatives. But the locus of the problem remains on the shop floor. The joint investigation is informal and continuous, the purpose being to solve most problems on the day they arise and to avoid the need for written documents.

This program was introduced in December 1959 in the plant having the highest grievance rate. After it had proven successful there, it was installed in every plant early in 1960. As one would expect, local company and union personnel needed considerable instruction in the new approach; and policy issues had to be resolved at some plants before the program could be put into effect. When a new contract was negotiated in October 1961, there were no grievances in the backlog. Although a few written grievances have been filed in the meantime, the parties are greatly pleased with the outcome of the experiment up to the present. They view the elimination of written grievances not as an end in itself but as a means of improving relationships within and between the organizations; and they believe that the new program has made a significant contribution to this objective.

C. *Convair (Fort Worth)-IAM*

If International Harvester had the most congested grievance procedure in any major company, Convair (Fort Worth) doubtless holds the record for any single plant. The following tabulation shows the number of unsettled grievances in Step III or Step IV each six months between January 1955 and December 1962, together with the number of grievances certified annually between 1955 and 1962. Step III is a union-management committee at the plant-wide level, while Step IV is the arbitration docket.

	Unsettled Grievances in Procedure (Step III or IV)	Grievances Certified to Step III or IV	
Jan. 1955	1,800		
July 1955	4,100	1955	5,000
Jan. 1956	5,500		
July 1956	2,500	1956	4,100
Jan. 1957	1,800		
July 1957	1,300	1957	2,300
Jan. 1958	850		
July 1958	300	1958	1,100
Jan. 1959	500		
July 1959	300	1959	1,300
Jan. 1960	200		
July 1960	300	1960	1,600
Jan. 1961	300		
July 1961	300	1961	1,300
Jan. 1962	150		
July 1962	250	1962	950
Dec. 1962	300		

Four principal methods have been used to cope with the situation in Fort Worth: mass settlements and expedited hearings, to reduce the mountainous backlog to a manageable size; revival of an effective Step III Committee; renegotiation of contract language: and augmented activity to solve problems at the shop level.

Five "expedited hearings" were held between May 1956 and June 1958. (Nathan P. Feinsinger, who preceded me as Permanent Arbitrator, had previously conducted two such proceedings in 1954.) The "expedited hearings" lasted from seven to ten days each and were primarily in the nature of mass grievance set-

tlements inasmuch as the great majority of grievances were disposed of by direct negotiation between the parties. I did come in for about three days each time and held a kind of informal court to resolve sticky issues after brief oral presentations. I also issued a considerable number of "policy memoranda" setting forth standards and formulas to be applied to various categories of grievances. These "expedited hearings" occasioned considerable controversy within the Union, and certainly did not constitute any real solution. However, they did bring down the backlog from 5,000 in January 1956 to 300 in July 1958, making it possible for the parties to undertake more fundamental reforms.

Efforts were then focused upon the Step III Committee. Much work was necessary to restore freedom of action to Committee members so that they would not be immobilized by political pressures as in the past. Changes in personnel were necessary.

In 1958 contract negotiations the Company insisted on a basic amendment to the seniority article, redefining the concept of "ability to perform" so that it could be applied mechanically by reference to seniority records. This amendment was strongly resisted by the Union—although not to the point of a strike—but had a dramatic effect on the caseload. Seniority grievances constituted 46.4 percent of the total in 1958, but only 8.2 percent in 1962. In recent years only a handful of grievances have related to "ability to perform."

The most significant technique in strengthening contract administration has been augmented activity on the shop floor. On this point the Company makes the following comment:

> Changes in attitude on the part of supervision, as well as Union officials, committeemen and the employees themselves, had to take place in order to reduce the grievance production rate. This had to be accomplished at the level where these attitudes are formed, namely the shop floor. As less emphasis is placed on the written grievance itself and more effort is made to resolve problems, the role of the grievance procedure (including arbitration) in decision making changes . . . The healthier condition is a procedure which is handled to apply pressure on both parties to reach decisions where they properly should be reached . . . The attitude in the shop then becomes one of attempting to anticipate . . . the decisions of the Permanent Arbitrator . . . rather than leaving it to appeals stages of the procedure and possibly arbitration to make the decision.

The President of IAM District Lodge 776, which represents production and maintenance employees at Fort Worth, likewise emphasizes shop-level settlements. He states in a letter of January 9, 1963:

> The expedited hearing has not become the tool for a better relationship as was expected by reducing the post Step II work so that business representatives might devote time to guidance of committeemen in Steps I and II. As soon as the deck is cleared a new accumulation of grievances is generated for the next periodic clean up; nothing gained!
>
> There is an improvement in the handling of grievances in Step III.
>
> This has not reduced the problem of accumulation.
>
> The place where progress needs to be made is on the shop floor. When a situation leaves Step II, unsettled crystallization of positions occurs and the fight to prove who is right begins. Good labor relations and human relations wither on the vine . . .
>
> My objective for this year, after observing for the past year, is to attempt to put our staff on a consultative basis and treat the committeemen as the "line", causing them to accept to a greater degree the responsibility of suitably settling employees' problems. Of course this entails preparation of the represented employees for acceptance of a new approach.

Thus the techniques employed by the Convair-IAM have been quite different from those adopted by General Motors-UAW or International Harvester-UAW.

VI. *Conclusions*

Although I have been able to canvass my subject only in a preliminary way, several conclusions can be drawn.

Grievance and arbitration procedures have been overloaded in only a minority of bargaining units, but have constituted an extremely serious problem in certain industries. In some companies there has been a virtual breakdown of contract administration.

The causes of this situation are not generally found in objective working conditions or substantive agreement provisions. On the contrary they are institutional and organizational in character. They involve political and personal relationships within the union, within the company and between the two organizations as well as their philosophy of contract administration. Re-

habilitation of distressed procedures requires that these relationships and philosophies be reconstructed.

This cannot be done by continuing business as usual. It is virtually impossible for the parties to arbitrate themselves out of a bottomless pit of trivial disputes lying at the end of a broken-down grievance procedure. Various expedients to handle more cases more rapidly can be utilized, but the only real solution is to rehabilitate the procedure itself.

In this paper I have reviewed numerous measures which have been initiated by the parties and by the arbitrators. It is clear that the really decisive steps are those which the parties themselves have taken. Analysis of three cases of rehabilitation indicates that there is no single solution but that the program must be based on a diagnosis of specific causes and tailored to the facts of a specific relationship.

While the parties have the primary responsibility, permanent arbitrators confronting overloaded dockets can also take the initiative in exercising their full range of influence with the parties. To do this we must conceive of arbitration not as a mechanical routine but as an inventive, creative instrument for the development of better labor-management relations under a system of industrial self-government.

Discussion—

WILLIAM J. REILLY*

Three years ago, the UAW-CIO-AFL and International Harvester agreed that both wanted to avoid further use of the written grievance. The program which was developed is coming in for a lot of attention these days. The press has described it as a "new look," a "milestone," a "revolution." The president of a prominent Chicago manufacturing company called it "the most exciting and encouraging development in industry in the last 30 years." The international president of a labor union said it was "the most outstanding contribution to common sense in labor relations in 1960." An Under Secretary of Labor called the program "a

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miracle . . . far and away the best thing of this kind I know about." Arbitrators, conciliators, teachers in labor-management relations and many from both sides of the bargaining table have sent in glowing praises for the program.

Why all the fuss? A few figures tell the story.

The 31 UAW locals representing Harvester employees in 15 manufacturing plants formerly filed thousands of last step written grievances annually. There were 8,710 in 1958, 5,915 in 1959—over 50,000 since 1954. Yet in the last two years there was a grand total of 28! And the union and the company expect that written grievances will be eliminated altogether! It's a startling contrast—and a welcome one—and the story of how it came about is worth telling.

This device—the written grievance—was introduced in industry generally back in the 1930's. Its purpose was to help air and resolve claims of violations of labor contracts. It was presumed to have limited use as a last resort. But in our situation it turned out to be a substitute for personal responsibility. The written grievance became a crutch, particularly in the production and maintenance units. Employees became less and less willing to take the supervisor's word as authority. Too often, supervisors themselves failed to understand their obligations under the contract. Often they were reticent about rendering a flat and final decision on a grievance and running the risk of being reversed at a later stage of the procedure. People became less willing to talk out their problems. Their natural reaction was to buck the problems up the line to the next authority by means of the written grievance. "Litigation" of a "dispute" then became the substitute for discussion of a problem.

One other factor contributed to the increasing number of grievances which were processed through the written steps of the grievance procedure and this was the addition of the arbitration step. Arbitration became very popular, though expensive. But their cost, the union believed, was offset by the advantage of passing the buck to the arbitrator rather than making a decision unpopular to their members. Also the unions found that, at times, the arbitrator's decision was more favorable than management's answers.

These problems could and *should* have been settled on a local level without the need of a written grievance. They *would* have been settled had both sides had a clear desire to avoid disputes—had there been mutuality in objectives at the policy-making level as well as at the plant level. If people had become dedicated to finding facts and bringing in skilled help to solve problems, we never would have had this tremendous accumulation of written grievances. But people developed the attitude "Write it up—we can't be bothered—that's what the grievance system is for." And the union became convinced that management wasn't even interested in solving problems. I remember a union committeeman at our Memphis plant who told me, "Why I used to spend all day writing grievances. I'd wind up with so many I couldn't even *try* to solve them—all I could do was push 'em through. After a while we had such a pile of grievances the supervisor would just say 'Go ahead and write it—it isn't going to do any good anyhow'."

Well, you can see why we were snowed under with grievances. Less than one percent were being arbitrated. And as the backlog went up, morale went down.

It was about eight years ago that both sides had arrived at the point where they were optimistic about their ability to arrive at a good base for effective under-contract relationships. We believed that it would be possible to accomplish this because we already had behind us settlement with the UAW of the important long-lasting contract interpretation disputes. Also, in 1954 and 1955, N.L.R.B. elections finally ended the serious union rivalry between the UAW and Farm Equipment Workers (expelled from the CIO in 1949 for heavy Communist domination). In addition, the UAW had relocated its Harvester Department in Chicago rather than Indianapolis and had set up a staff whose responsibility was to represent the local unions in their relations with the company.

There seemed to have developed a satisfactory approach to relationships and problem-handling at the central level—to the point where both sides had good reason to believe that there would not be a strike in August 1955 at the expiration of the 1950 contract. However, we did have the strike and I do not believe there is any question that it would not have happened if it were not for the animosities of employees and the local unions stemming from mass

accumulation of grievances and the local issues generated by them. The strike lasted 3½ weeks.

We entered into a three-year contract in September, 1955 and, during its term, there continued to be improvement in our employee relations and relations centrally with the union. Above all we continued to reduce areas of disagreement with respect to the meaning of the contract. During those three years, we tried every method and procedure which seemed to hold any promise as a way of disposing of written grievances and to minimize the use of arbitration. During the term of that contract, we arbitrated only 17 grievances as contrasted to 428 cases arbitrated with the same local unions during the period of the prior contract.

Again in the 1958 negotiations, the big problem was the accumulated disputes and grievances piled up by the thousands. The local unions had presented 36,000 written grievances in the last step of the procedure. During the negotiations, the company and the union were not very far apart on the "pattern issues"—the matters most meaningful to the union and the company. But again there was a strike. And again animosities and local issues traceable to the unproductive local relationships made it impossible to establish a base for agreement. The end result of this impasse was a 68-day strike involving almost 32,000 employees. When the strike ended, the written grievance "rat race" was resumed. In the next 18 months, 8,500 more were written.

Finally, the UAW's Harvester department and the Company decided to try a new approach—an approach born out of mutual desperation—an approach that was startling in its simplicity. Its essence is this: the written grievance is a sign of failure, not a device of justice; reliance on the slow grievance procedure is costly to both company and union and satisfactory to neither; a much better alternative is to talk out employee problems as they arise, to have full discussion on the spot, involving as many people as necessary to reach a fair solution—bring people to the problem to help the people in the best position to solve the problem. The heart of the program, as expressed by both parties, is "Do it *now*." In other words, don't write, don't litigate—discuss and review. If an employee has something coming, he should get it *now*. If he has nothing coming, he should be told *now*. The job is to

get the facts and let the facts decide—to solve problems on the basis of *what* is right, not *who* is right.

In short, ours was an approach based on individual responsibility, common sense, and mutual respect.

To explain the approach, we jointly made a round of the company plants. We addressed joint meetings of union and management and hammered away at the several basic premises upon which the success or failure of the approach would depend. *Every grievance can be settled without resorting to writing.* There were, however, several big IFS. IF the employee, steward and foreman met in an atmosphere of mutual respect and determination to arrive at an equitable solution to the problem; IF these parties made every effort to unearth all the facts in the case; IF, failing to arrive at a mutually satisfactory solution, they were willing and able to secure the help of anyone else in management or the union who could help resolve the problems; and IF union and management looked objectively at the facts and related them to the provisions of the existing contract.

Here let me interject a most pertinent point: When this project was initially introduced, some of the skeptics looked upon it as a "sweetheart" agreement—one where the union and the company agreed to quit disagreeing. Some management people suspected that the program was designed with appeasement in mind, and it took a bit of doing to convince them that the contract was still a legal, binding document which must be followed to the letter.

Some union representatives initially took the view that this new approach was the equivalent of telling the foreman that he had better accede to union demands.

Neither of these outlooks could be further from the truth. At the very outset, the company and union representatives minced no words on the responsibilities of our respective organizations. Management told management people that they were expected to adhere to contracts to the letter. And the union told its people: "We don't intend to give up one thing that we have coming under the contract."

The first stop made on our tour of the plants was Memphis Works where written grievances ran about 300 a month. Both

sides listened, caught the spirit of the program and pledged to make it work. Before long, the number of written grievances there was reduced by 95 percent. Today at Memphis Works, they have been eliminated entirely.

Next we visited Harvester's Emeryville, California plant. Here was a place that really provided the acid test. The grievance rate was extremely high. Both labor and management termed the situation "very bad"; both listened to our appeals. Both complied. A few months later, I got a report from our Emeryville industrial relations supervisor: "No new grievances filed; all old grievances disposed of; the most pleasant union-management relations our operation has ever experienced."

And that's how it went at every plant.

Well, it was a frustrating, expensive, rancor-provoking monster, this written grievance, and I say good riddance to it. Our problems aren't solved—not by a long shot. If we're going to maintain this new relationship, both sides will have to remember to keep abiding by the *spirit* and the letter of our contract. We'll have to work at it—all of us. But, certainly, the new approach is worth working for. The elimination of written grievances has been a great incentive.

The program of oral handling of grievances was not born out of a desire to avoid arbitration. One of its purposes, obviously, is to avoid the over reliance on arbitration which had plagued the parties for a long time. We have a permanent arbitrator and both parties recognize that there will be cases subject to arbitration which we will not be able to agree upon. We hope they will be few in number. So long as the program operates effectively, we will not need to ask the third party to find facts for us or to bring reasonableness and objectivity to the solution of our problems.

In the past 24 months there has been only one arbitration session. It involved seven oral grievances. There are no cases currently pending arbitration.

Even more significant are the attitudes the new approach has inspired.

A labor relations official told me: "I was at the meeting when management and unions first heard about this. Frankly, I was skeptical. But the progress within a couple of days was almost

unbelievable. I guess the new approach is like religion—it involves a lot of intangibles. Unless you've experienced it yourself, you can't realize its full potential."

The president of one of the local unions wrote: "There's been a remarkable change in relationships around here. We've waited a long, long time for this."

The comment that summed it up most aptly, I thought, came from an old union committeeman. "Looks to me," he said, "like we've all grown up overnight."

Discussion—

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I am flattered to have been invited to discuss this very important question before the National Academy members and your guests. I should like to make it clear that my personal experience in this field is limited and I am certainly far from being an expert in directing relief in the area of distressed grievance procedures. I have been associated with the Steelworkers Union on a full time basis, and located in the East Chicago, Indiana area, since 1942. Physically located in Sub-District #2 are some 30 plants with which the Steelworkers have contracts, with a membership totalling approximately 33,000 members, broken down into 36 local unions. We have the largest local union membership-wise in the Steelworkers Union, Local Union 1010, and we have Local Unions with less than 50 members. We have two Basic Steel plants and varied industrial plants falling within the jurisdiction of the Steelworkers Union. I shall almost entirely confine my observations on this subject to experiences in my own area with possibly brief reference to two Basic Steel plants outside of our district that have recently engaged themselves in a program designed to make more effective the grievance procedure and rehabilitate the orderly processes of handling grievances.

In commenting on Professor Ross' paper and to the subject of the workshop, I should first like very briefly to go back into the

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history of our organization which will possibly somewhat explain some of our shortcomings in this particular area. During the organizing years, 1936 through 1941, it was not uncommon for grievance committeemen and Local Union officers to seek out problems and grievances for the purpose of demonstrating to the membership the necessity for having a Union and the good that could come out of it. All of us who were active in this period not only encouraged the filing of grievances, but also encouraged the filing of grievances on the slightest provocation even to the extent of possibly creating incidents in order to keep activity keyed up. Many of our people who are still active in the Union including staff members came up in the Union movement with an orientation that grievances, no matter how trivial or how just, must be prosecuted to the fullest extent in order to prove our worth to the membership.

On the other side the Union was far from being accepted by the companies we dealt with during this organization period (1936-1941). Most companies took the position of business as usual; the Union was to be placed in the worst possible light and many supervisors took great delight in demonstrating to their superiors that they could outwit the Union representatives in the handling of the problems.

Our beginning was anything but healthy. The handling of grievances in many cases became contests. Our first Collective Bargaining Contracts in Basic Steel were signed in August of 1942 and our actual experience with contractual grievance procedure has extended over a period of 20 years with some 10 years of this period occurring during World War II, the postwar period and the Korean Conflict. During the period 1941 through 1950, most contractual grievance procedures provided for 5 or 6 steps, with the step prior to the arbitration somewhat resembling a mass meeting with little consideration given to settling grievances on the basis of facts. Threats of strikes were common methods used by the union in settling grievances.

The Union constantly complained of the too numerous steps and the long delays in getting answers from the Company. No one in our organization, and I dare say in the company organizations, gave any real consideration to improving the techniques of handling grievances, but took each grievance that arose either

one at a time, in an attempt to settle that particular problem giving priority to the important cases and leaving the less important cases fall by the wayside, or left it in one step or another to die a natural death.

This brings us down to the 1952 period and really shortens the period to a 10-year span during which we have really tried to systematize the handling of grievances and to give some attention to the study of contractual relations and the techniques of handling grievances—the installation of education programs in both the Union and the Management circles with real attention being given to the specialized field of labor relations. So, is it really unusual that we might have in some areas the need for the so-called "distressed grievance procedure?"

I should also like quickly to say that in some cases the backlog of grievances awaiting arbitration and also being processed through the grievance procedure would seem excessive and somewhat unreasonable to someone outside the Union or the Company, while the Company and the Union may be complacent and fail to realize that there really is a problem in this area. I think the Companies many times measure the value of the grievance procedure, not by the number of cases that are being taken and filed or being appealed to arbitration, but whether or not there are any labor disturbances such as "wildcat strikes" in lieu of using the grievance procedure. Too often the companies have in a sense urged the filing of grievances irrespective of the merits of the oral discussion. As an example of what I believe to be ridiculousness in the filing of grievances: only in the last year or so a grievance committeeman in one of our Local Unions filed a grievance alleging that the Company in requiring workmen to make out reports with a common pencil was violating the safety and health rules because the use of the common pencil could pass germs from one employee to another. On the other hand, in the last year or so we have had grievances go through the grievance procedure including arbitration on issues almost equally ridiculous where an employee was allowed to come to work on a shift change, which occurred some 10 hours after a major breakdown had occurred, with the Company using the equipment breakdown exemption in the reporting pay article to sustain their position. During a full 8-hour shift no one in the Company organization had made any

attempt to cancel out employees due on the next shift change. I use these examples to show the type of grievances that the Company has been harrassed with as well as type of grievances the Union has been forced to take to arbitration. These I hope are in the past.

In 1956, the Inland Steel Company and the Union agreed that we should retain the services of a "permanent" arbitrator rather than to engage ad hoc selections as we had in the past. At this time the backlog of grievances awaiting arbitration numbered 213. I personally believe that with this move began a new era of stabilization in the handling of grievances in this particular plant. For the first time we had agreement on a schedule of cases to be arbitrated and had some idea as to how many cases would be handled during the period of one year.

While this new arrangement seemed to be the answer to one of our problems and certainly was an improvement, somewhere along the line in the next five years we failed in stopping the flow of grievances coming up through the procedure and have entirely too many grievances heard in the third step and appealed to arbitration. It may very well be that grievance committeemen have been sensing that we now have an "arbitration mill" in operation making it simpler for them to pass grievances on up the line without hurting anyone's feelings and without taking responsibility for dropping undeserving grievances. There is no doubt but what grievance committeemen build up relationships with superintendents to the extent that they mutually agree to pass the knotty problems on to the next step. As Professor Ross commented, "arbitration had become a mill rather than a court of last resort."

After some six years of experience with a permanent arbitrator and at disposing of up to 85 or 90 cases per year through this method, we still had docketed and awaiting arbitration slightly more than 300 cases. Obviously if all were arbitrated it would take an excess of three years just to arbitrate the backlog. This, of course, is not the case and the record shows that more than 50% of the cases that are filed for arbitration will be dropped mostly through the Union dropping them, but occasionally through the Company granting a grievance. Even so, a case load of better than 100 and 150 cases still would be backlog at the

present rate of almost two years of arbitration. Discussions took place between the Company and the Union on many occasions regarding this matter and he, the arbitrator, had a rather strong feeling that if change was to be made in the handling of grievances that it could only be made if the top administration in the Union and in the Company were in complete agreement as to what should be done in avoiding a continued build up of this backlog.

So it was that our "permanent" arbitrator, David L. Cole, arranged a meeting with Joseph Block, Chairman of the Board of Inland Steel Company and President David J. McDonald, of the International Union, placing the problem before them and securing their promise of complete cooperation in rectifying this situation. Shortly thereafter David Cole held a meeting with top level company and union administrators and explained his plan which had worked so well at International Harvester.

Under the provisions of the 1960 Basic Steel settlement, the Human Relations Research Committee was established as a joint study committee with some specific assignments as well as authority to study and make recommendations on any subject of mutual interest. The committee agreed that problems existed in many of the plants of the eleven companies in the area of handling grievances, entirely too much time elapses between the filing of a grievance and eventual answer in arbitration, too many cases were passed on to the third or fourth step without any real effort to settle. It was agreed by the Committee that here was an area that the parties should and could agree on a recommendation to the bargaining committees. A study was made and the committee made recommendations which contained many of the ideas and concepts advanced by David Cole. The recommendations were passed on to each negotiating committee of the eleven companies for their consideration. Our committee concerned with our problems at Inland Steel adopted that part of the committee's recommendations that we thought fit our needs and problems.

As strange as it may seem, in the Inland contract we added a step in the grievance procedure, going back to four steps prior to arbitration with the third step allowing opportunity for the Grievance Committee Chairman to meet with a representative of Labor Relations Department in an attempt to settle such cases

as reach that step. Both the Company and the Union believed that the agreement should emphasize the settlement of grievances in the oral step because we recognize that once a grievance is reduced to writing the chances of settlement or withdrawal become increasingly smaller. We have not yet had sufficient time to evaluate the full value of this new procedure since the parties recognize that getting across the message—that the Company intends that its supervision shall at all times act in good faith and, to supervision, that the Union intends that its grievance committeemen shall likewise act in good faith and address themselves to the problem fairly and objectively—realizing, of course, that this objective cannot be attained without hard work and perseverance on the part of both parties.

I can tell you that since the effective date of the 1962 Agreement, July 1st, to the present date, not one grievance has been appealed to the arbitration step of the grievance procedure. The Company and the Union in this case addressed themselves to the handling of the grievance from the first step through the fourth step (International Step), both agreeing that something had to be done to get rid of the backlog of grievances in both the third step of the grievance procedure and the arbitration step. We are presently having a series of meetings to decide our future course of action. Both the Company and the Union, separately and together, have met with Arbitrator Cole to consult with him regarding our progress and seeking his advice. We presently have under consideration four proposals which have been made either by the Company or the Union designed to cut down or eliminate entirely the backlog and furthermore to facilitate the grievance procedure in the lower steps.

The suggestions are as follows:

1. Refer all grievances now pending in Step 3 back to Step 2 for further hearings to give further opportunity to the departmental superintendents and grievance committeemen to settle or withdraw grievances.

2. Establish a Joint Study Committee, that will make a survey of where the heavy load of grievances arise, check the grievances against the contract and attempt to agree on contractual interpretation as guide lines for the future.

3. Give consideration to additional weeks of arbitration to cut down the backlog at this point.

4. To take from the grievance procedure those cases involving alleged changes in job duties and place them in the hands of an already established classification committee.

We will be meeting shortly and will undoubtedly adopt some of these suggestions. I personally believe that the top level of the Union, including the officers of the Local Union, are convinced of the Company's sincerity. I likewise believe that the Company is convinced of our sincerity. Both of us have a job to do below this level and I believe the success or failure of this venture lies in our ability to pass on down this feeling of sincerity and good faith.

I previously said that I would comment on two other Steelworkers' plants where distressed grievance procedure has been used over the last year or so. The plant located on the West Coast reports an excellent degree of success and that local union grievance committeemen and the company have assumed this responsibility in settling grievances, with relatively few being filed in the written stage and appealed to the International Union and arbitration at a bare minimum. Not so at a basic steel plant to the east of us. It appears as though the parties have not been able to get across the all-important point of settlement of grievances at the lower level. I quote directly from the Staff Representative handling grievances in this plant:

> . . . very little was accomplished in the settlement of grievances in the lower level of the grievance procedure. Reluctance and lack of trust between the foremen, the stewards, the grievance committeemen and the Industrial Relations Department has resulted in a steady flow of grievances in the Grievance Procedure.

It appears as though too much emphasis was placed on eliminating the backlog with not enough emphasis placed on the settlement of grievances in the oral step of the grievance procedure to stop the flow. However, my report is that both parties recognize certain shortcomings and are making an attempt to bolster the procedure where needed.

I have previously said that we have in our Sub-District 36

different contracts among some 30 plants. In checking the record of arbitration for the year 1962, in one Local Union, the largest Local Union, 59 cases were arbitrated and in all other Local Unions the number of cases arbitrated was 50. The membership in the one large Local Union (Inland Steel) is approximately 16,000 and in all other plants in the Sub-District the total is about 17,000. The comparison of one local to all others membership-wise as to cases arbitrated seems fairly well in line, the chief difference being in backlog. We have backlog only in the two large basic steel locals—no others. In one plant with approximately 1,000 Bargaining Unit employees, 10 cases were arbitrated last year. In many plants, two of which have a membership above 2,000, no cases were arbitrated. All cases were settled. There are no one or two reasons why this situation exists. Staff Representatives are different—Management people are different—Local Union officers display different degrees of aggression and cooperation. Political differences in the Union influence grievances. Changes in top management influence these matters. Each plant is a different case study. There is no pattern as between plants and no formula that can be used in each plant to insure success. We do look forward to the time when a larger portion of the time of the International Representative and Local Union officers can be spent in determining causes and working out cures rather than accepting as inevitable the fact that we will have volumes of grievances and many arbitration cases.

There will never be a day when the grievance committee will not be an important committee of our Union. We will always have cases involving the judgment of the supervisors in discipline and discharge cases, seniority cases and scheduling cases for a long time to come, but we can look forward to the day when even this type of case can be disposed of at the departmental level.

Arbitrators, in the meanwhile, can render a service to the parties by rendering clean-cut, understandable decisions. Arbitrators can be of further service to the parties by rendering decisions within a reasonable time after the hearing. Delays at this point are even less understandable to our members than at prior steps. Arbitrators can also render another service *if* they are familiar with all the circumstances in making constructive criticism of the practices of the respective parties.