tion assignments. The learned academic viewpoint is useful. It keeps us in line with many of the new trends that are sweeping the world and helps point out new directions for our consideration. But don't lose sight of our world as you help us with our problems.

There are areas in industry and in the public field where collective bargaining has not matured to the point where the relationship between the parties can be viewed as truly civilized. Any form of peaceful machinery that can be tried in such an environment is probably better than the unending strife prevailing in their deep jungle. In transit, we don't live in a jungle. We know our history, we respect each other's competence, and we are dedicated to finding the fairest answer to our problems—always, when possible, through the orderly process of arbitration after negotiations fail.

In a recent transit arbitration opinion, our distinguished and very able chairman, Harry Platt, said:

> ". . . the disparate conclusions urged upon us by the parties' expert witnesses, using the same statistical raw material, demonstrate the caution that must be used in drawing factual conclusions from the statistical evidence. Despite the difficulties inherent in the process, however, the use of such statistics is not improper. Probabilities guide men in their everyday affairs and evidence of statistical probability may likewise be considered in determining the questions presented."

Both partisan arbitrators dissented in part. Harry's resolution of the dispute was not possible over the table, but the parties accepted the award. If, again, resolution is not possible at the table, I feel reasonably certain that they will resort to arbitration.

And so I end as I began. Experience teaches that new contract arbitration is reasonable and has worked in transit. Hopefully, in the not too distant future, the same will be said of steel. And then, who knows?

## INTEREST ARBITRATION IN PUBLIC TRANSIT

MR. JOHN A. DASH: It is customary, before a group as distinguished as this, to express one's appreciation for the opportunity

and one's awareness of the privilege which has been accorded the speaker. In my case, this expression is not a routine formality. As an undergraduate at Penn in the 1930s, I worked on occasion in the industrial relations research department in a room adjacent to the office of the late Dr. George W. Taylor. I was overawed then as a teenager, literally speechless in the presence of the unique abilities of people like Dr. Taylor, Bill Simkin, and my brother, G. Allan Dash.

I have never quite overcome that feeling of awe inspired by members of your group—but I've been chipping away at it over the years, and some of you can attest that I'm no longer completely speechless in the presence of arbitrators. I suppose, in a sense, you all now share in the deep respect which a youngster felt and will never outgrow for a very special older brother. Anyway, I am honored by your invitation, and let's get on with the business at hand.

When Herman Sternstein and I were first asked to speak here, the topic was defined as "Interest Arbitration in the Private Sector." Herman and I both objected to the "private sector" terminology, since transit is no longer a private industry. Very few transit systems of any significance remain under private ownership today, and those that are privately owned are in the process of being taken over by public agencies. In fact, the transition, the changeover, from private to public ownership in transit, and more precisely the implications of that change for collective bargaining and arbitration, define the topic I want to discuss briefly today.

I am not going to attempt a learned paper cataloging the standards or the techniques used by advocates, or the analysis of evidence in the application of criteria by arbitrators. The process in which we are engaged in interest arbitration in the transit industry cannot be squeezed into neat, descriptive analyses. Herman and I can agree on that, I am sure, although we have a few other points of difference between us.

Far more significant than the nuts and bolts of interest arbitration, more important than the techniques, the criteria, the exhibits, and all the rest of it, is the definition of the new and different role of arbitration in this industry under public ownership today, as contrasted with the function of arbitration under private ownership in earlier years.

Much of what I'm going to say today may appear to be quite fundamental—very simplistic, if you will, to be said before this audience. This is done quite deliberately. To continue the sports parlance of this morning's session, I think it's time to return to the fundamentals, to the blocking and tackling, to set aside for the moment sophisticated offenses, if we are to do our respective assignments properly. At times, in our job, we have had our bellies full of sophistication, so if you'll bear with me, I'm going to get down to some rather fundamental and essential points.

As has been mentioned here, the local transit industry and the Amalgamated Transit Union have had a long history of interest arbitration. The experience in transit in the arbitration of wages and other contract terms is certainly more extensive than that of any other industry in the country. (I refer to arbitration of wages and other contract terms as "interest" arbitration.) For many years there were more interest arbitrations in the transit industry than there were in all other industries combined.

Throughout most of this long history of interest arbitration, transit was a private industry, and interest arbitration in that era was voluntarily accepted by an individual company and by an individual local union, in certain situations, as an acceptable alternative to the use of economic force. Arbitration in the private transit industry was literally an extension of the collective bargaining process. An arbitrator who served in an interest arbitration involving a privately owned transit system was always probing for what we term the "area of acceptability." He was trying to define that area of wage increase and fringe package change which, as best he could judge, would approximate and would be in the ball park of what the parties themselves would have done had they bargained to a conclusion.

Now that judgment, of course, required an assessment of the relative economic power of the parties. Beneath the velvet glove of rhetoric in our interest arbitration cases in those days, there was always the mailed fist of economic power. This was true on both sides of the table.

An arbitrator called in, as many of you were, to resolve an interest arbitration on a privately owned transit system (such as Pittsburgh or Minneapolis or Baltimore) 10 or 20 years ago, who did not understand that he was operating by sufferance in a

power relationship, sometimes failed to do the job he was hired to do.

If the union won a clear and substantial victory in arbitration, the private owners often said (and this is paraphrased), "The heck with this! Next time we'll do it the hard way." And in the next contract, and perhaps for some years thereafter, the private owners in those situations opted for the use of their economic power in the belief that their interests would be better served by going that route.

And it happened sometimes in the other direction as well. There were times when the local union involved was convinced, after an arbitration award, that they could have done better by strike, and they decided to reject arbitration thereafter.

Let's shift mental gears now and move over to the area of public employment. *The difference in the function of interest arbitration in public employment as opposed to its function in private employment is so basic, so profound, and so obvious that it is not often perceived clearly and fully.* That difference rests, of course, on the fact that collective bargaining, in the true sense, cannot exist in the public sector. The motive power, the indispensable element of collective bargaining, is the availability of the use of *economic* power. Without potential recourse to *economic* force, there can be no such thing as real collective bargaining. This is a truism.

There is always available, in the private sector, what George Taylor termed the ultimate arbitrament of the marketplace—the real world in which the economic test of the parties can take place. At some point, either before or during a strike, the private owners and the employees reach a balancing of their interests, the point at which it is preferable for them to settle rather than to suffer, or continue to suffer, the economic losses resulting from a strike or a lockout.

This, then, is the anchor to the real world in an economic strike in private industry. *There is no counterpart to this in the public sector, and there cannot be.* Economic power, therefore, is not a factor in the public sector. Whether or not, in the confused thinking of the 1960s or the 1970s, strikes in the public sector are sometimes condoned, the strike weapon is in every sense irrelevant in public employment.

Strike, by definition, is an economic weapon. It is a device used by two opposing economic interests to determine, *through the operation of the marketplace,* the point of equilibrium at which it is best for them to compromise their conflicting selfish interests.

In the public sector there are no such opposing economic interests, and it is past the time that we recognize this fundamental fact and all of its implications.

The strike, as I say, is an economic weapon. Relative economic power obviously is not a factor in a public employment relationship. No group of workers can take on the community in an economic test. It is strictly no contest on an economic basis. Hence, the use of force, where the community allows it to happen, in the public sector is solely a political device, not an economic weapon. To the extent that any community permits public employees to strike, whatever the rationale and whatever the group, that community is taking the first step toward anarchy.

Obviously a strike in public employment cannot be permitted to run its course; its course cannot even be defined. If the contest were economic, as I have said, the union obviously would lose. The termination of a public employee strike by a political settlement proves nothing. What Dr. Taylor properly described as the ultimate arbitrament of the marketplace in private industry is not available to shape or to define the area of an acceptable settlement in a public employee dispute. I am talking about true acceptability as opposed to the *posture* of acceptability assumed by spokesmen for a special interest, and the only special interest involved in such a case as this would be the labor union. In other words, a strike in public employment has no anchor to reality.

It is a fundamental and grievous, although common, mistake to determine the size of a wage settlement for a group of public employees on the basis of the degree of militance displayed by a labor union or by its spokesmen. This is, unfortunately, what has been done in some fact-finding and arbitration cases in this industry in recent years.

Of course, not only are some arbitrators and fact-finders influenced by threats in public employment disputes, so are many, many public employers who, after all, are not out to make waves.

They're not looking for trouble and will bend over backwards to avoid it.

I want to illustrate the point in perhaps its most obvious form by reading from a fact-finding board report handed down within recent years in an important transit dispute. I will not identify this case, and in using this particular illustration—if anybody recognizes it—I do not intend to single out the people who were involved in that case. The thinking which you will hear reflected in this instance, I daresay, might well have been applied by a great many of you gentlemen, had you served under the same conditions. It is, certainly, thinking that is applied by a great many employers in the public sector.

In the instance that I'm speaking of, the fact-finders in their report reviewed the criteria they had considered, identifying such things as the cost of living, comparative wages in the community, comparative wages within the transit industry, and so forth. Then they made this statement at the end of their recital of criteria:

> "Lastly and probably most important was the Commission's consideration of the parties' reasonable expectancies within the framework of the historical bargaining relationship, their respective needs, and their respective power positions in the realities of their collective relationship."

Let me get that last piece again: "... and their respective power positions in the realities of their collective relationship."

When you first listen to that language, it has a certain superficial appeal. These are familiar words; these are phrases we're accustomed to hearing; this is sophistication. It sounds like a knowledgeable and a pragmatic approach. Actually, of course, it was entirely, 100 percent fallacious. It was fallacious because it was applied in a public employment situation. If we calibrate the size of an appropriate wage settlement according to the degree of militance displayed by a public employee union, we can be sure that the position of that union in the future, and of other public employee unions observing that situation, will become successively more militant and increasingly irresponsible. To measure that which is equitable and fair by how much it will take to keep the public employees working is the certain route to ever-increasing demands and to bigger and better threats and to bigger and better strikes.

In substance, that fact-finding board that I quoted a moment ago said, "Give them what it takes to keep them working." That, of course, is no standard at all in public employment. The inevitable result in that case was a set of union demands the next time around which still stands as the most extreme I have ever seen in nearly 30 years of experience in this industry. And that result was, of course, predictable, and so was the strike that came the next time—that, too, was predictable.

For fact-finders or arbitrators in public employment to reward a militant position, real or threatened, by relating their recommendations or their awards to the degree of recalcitrancy displayed by a union is dead wrong. Such action on the part of arbitrators or fact-finders is a major disservice to the parties that will further complicate the relationship until, at some point in the future, considerations of fairness and equity *will* be substituted for the fear or, or for the fact of, a political strike.

In the last few minutes I have gone off on what may appear to be a tangent, namely, the matter of political strikes conducted legally or illegally by unions in public employment. It is, of course, not tangential to the subject, since *the function of interest arbitration is totally different in the public sector solely because strikes are irrelevant.*

I believe that the survival of the process of self-determination of wages, call it collective bargaining for want of a better term, in the local transit industry, and in other public employment situations, depends on the early evolution of interest arbitration as a rational, final step in contract disputes. The key word in that statement, of course, is the word "rational." Force is no longer relevant. Reason must now substitute for force, and the task of an arbitrator who must apply reason is infinitely more difficult than that of an arbitrator in private industry, who merely had to interpret power relationships and had to function essentially as a mediator.

One of the more frustrating aspects of participation today as representatives of the public in interest arbitration is the fact that the union still seeks to cast us in the role of company spokesmen in the traditional sense. We continue to be type-cast as the guys in the black hats, the exploiters of the working man, and so forth.

For obvious reasons, union spokesmen seek to carry over into the public sector the same adversary roles the parties played in the private sector. The union wants to carry over to public employment the notion that interest arbitration is an extension of an economic bargaining process. They emphasize the necessity for "acceptability" which, as you contemplate it, is really a subtle reference to keeping the employees contented and, hence, on the job.

How in the world does one define "acceptability" in a public employment situation? There is no possibility of testing the positions of the parties in the marketplace. There is no moment of truth; there is nothing but the posture of the advocates, or possibly self-serving membership votes, or even inconclusive political strikes to define that which is supposedly acceptable.

The thrust of what I'm saying is that the rules of interest arbitration changed when we moved into the public sector. However, in a number of cases we see the same philosophy and the same approaches being applied to public employee transit cases in the 1970s as were applied—and appropriately so—in the private sector 10 or 20 years ago. We can't go that route; it won't work.

Since we now speak, on our side of the table, for public agencies, for the community as a whole, we have become increasingly impatient with the various forms of gamesmanship that have traditionally been a part of this process of interest arbitration. We are convinced that the future of collective bargaining in public employment depends on the availability of a final and conclusive step for dispute settlement—which translates, of course, by one name or another, to final and binding arbitration. That means that those of us who hope to see the self-determination of wages, working conditions, and benefits in the public sector must advance the evolution of arbitration as a rational and intelligent process.

Transit may well play a unique role in this matter because, unlike most other areas of public employment, transit has a long history of collective bargaining and interest arbitration. We in transit can make a major contribution to the future of public employee dispute settlement by proving that arbitration can work, that it can do the job. Hence, we look to this process of wage and

contract arbitration in the public sector not as one in which we make or lose points by outwitting or being outwitted by our union friends across the table. In a very real sense, underneath what we are saying here today, we are on the same side in this situation. We both want this process to work.

Arbitration in public transit must result in awards which protect the proper interests of the employees. But arbitration must consider the rights and interests of the employees in perspective, so that the end result places the workers involved in a fair relationship to their neighbors, and—and this is the key point—in that determination force plays no part.

This is no longer a power relationship. The only relevant power in public employment is the power of the people. We must act responsibly in collective bargaining or in arbitration, which is the end step of bargaining for us in public transit. We must act responsibly, for if we don't, then the sovereign people who have given us the right to bargain and to arbitrate with their substance will take away that right. We have the freedom to spend public funds only as long as we are wise enough to use that freedom in a responsible fashion.

We, the public transit employer, the union, and the arbitrator where called upon, are collectively responsible for the use of very substantial power—the spending of public moneys. If we are wise, we can retain our freedom to bargain and to arbitrate. There is surely no assurance that this right will continue.

Please note that publicly owned transit service will continue in any event. The question is whether it will continue with collective bargaining or self-determination of wages and other basic interests, or whether wages will be set by unilateral government action. For our part, we would choose to retain the present scheme of things. This is possible only if dispute settlement machinery, interest arbitration, can fill the necessary role.

The responsibility which will rest on arbitration, and, yes, on arbitrators—on you men and women in this room—is heavy indeed. And just as an aside, don't expect a great deal of help in your task from public employers nor from the politicians who stand behind the public agencies. I have seen nothing which would make me believe that public employers in general are going to take a reasonably hard line, regardless of the basic

equities of a strongly pursued union position, if they can find *any* avenue of compromise which will avoid trouble and which they can beg or borrow money to finance. In fact, the only argument that many public employers are comfortable with is inability to pay, which has limited, if any, relevance in public employer arbitration cases.

The union, at least in transit, will be as hard-nosed and as aggressive as conditions will permit. That is their role. That is Herman's role, and he does it very well indeed. The public employer, in the nature of things, will not be.

The real danger, of course, is that the inherent lack of balance in the situation will create excesses so clear as to prompt public action in the form of progressive limitation of the right of self-determination for public employers and public employee unions.

If you have followed what I have been trying to say, you will perceive that it is not the public employers who are really risking anything. The public agency, the public transit operation, will continue, and it will get bigger and better. The politicians and the transit managers are, in the larger picture, entrenched and secure. It is the element of some degree of freedom in wage and contract determination which is, in fact, at stake and which will not survive unless we collectively use our power wisely.

In public transit, the ultimate arbitrament of that which is fair and equitable has now moved from the marketplace of free enterprise into your hands as arbitrators. Transit management and transit labor must give you the facts and the specialized insight we are capable of providing. Then you must evolve, and you must help us evolve, the philosophy, standards, and techniques which are essential to preserve our right of self-determination.

CHAIRMAN PLATT: Now we move to another important industry where arbitration of contract terms has found wide acceptance and has flourished for more than a century. In the newspaper publishing industry, in addition to individual collective bargaining agreements between local publishers and local unions, an unbroken series of five-year agreements between the American Newspaper Publishers Association and the International Printing Pressmen's Union provides for voluntary arbitration of all manner of disputes, including interest disputes.

The national agreement, entitled the International Arbitration Agreement, is known among the newspaper publishing people as the green sheet. You will hear more about it from the speakers to follow.

## THE ARBITRATION OF WAGE AND MANNING DISPUTES IN THE NEWSPAPER INDUSTRY

MR. THOMAS S. ADAIR: Industrial arbitration is generally believed to have had its beginning in the processes attendant with the need for industrial stabilization during World War II. Indeed, it was during this period that we find that Volume 1 of the Bureau of National Affairs' *Labor Arbitration Reports* was issued. Although this period may have served as the training ground for many of today's distinguished industrial arbitrators, it was not the starting point for industrial arbitration. This is most particularly true with regard to industrial arbitration in the newspaper publishing industry.

Disputes treated by industrial arbitrators can be divided into two main categories: (1) those concerning the parties' "rights" under a current agreement, and (2) those which concern the parties' "interests" under a contract yet to be consummated. The latter category, which is the subject of this paper, relates to the arbitrators' filling-in of the terms of a future contract between the parties when they themselves have become unable to do so. These disputes usually concern the establishment of wages under the future contract, although, during the past 20 years, "manning"[1] has frequently been a subject of such disputes.

Although most industrial arbitration cases concern the ascertainment of the parties' rights under a current agreement, it would appear that the oldest form of industrial arbitration concerns the establishment of the applicable wage rate at which the employees shall be paid. For example, "[o]ne of the first disputes submitted to the earliest known American arbitration

[1] The term "manning" is here used to mean the contractually agreed-upon number of men that a publisher shall employ to man his pressroom equipment. The number of men varies with the number of units making up the press and with the number and type of incidental equipment being used in conjunction with the press; for example, additional men will be added to tend to equipment being used to produce color in the newspaper.