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.

tribunal, organized in 1786 by the Chamber of Commerce of New York, involved the wages of seamen."[2]

As early as 1853, the National Typographical Union, predecessor to the present International Typographical Union which was founded in 1869, stated its opposition to strikes and resolved that "in most cases all such differences can be settled satisfactorily by other and more amicable means. . . ."[3] Early union strike efforts being generally unsuccessful, such might explain the desire to find "other and more amicable means" of dispute settlement. Surely the search for "other and more amicable means" was aided by such comically unsuccessful strikes as that endured by members of Atlanta Typographical Union No. 48 during the Civil War.

Prior to the famed Battle of Atlanta, at a time when the newspapers of many Union-occupied southern cities were being printed in Atlanta, the Atlanta printers were being paid $3.50 per thousand ems for composition. The printers demanded $7.50 per thousand ems, since it was also a time "when the printer went to market with a full basket of money and returned home with what it bought in his pocket."[4] The publisher having rejected their demand, the printers struck. The strikers felt assured of a quick publisher capitulation, since most printers had enlisted in the Confederate Army at the outbreak of the war. However, soon after the strike had begun, the printers were ordered by a conscript officer to march to his office to be forcibly enlisted. To the printers' pleas that they were exempt from conscription came the reply that: "You were so long as actively engaged as printers, but having voluntarily quit work you are now subject to duty."[5] When marched to the conscript office, the printers "found awaiting them the smiling proprietors, and as the boys soon learned it was either return to their cases at $3.50 per thousand ems or face

[2] Frances A. Kellor, *American Arbitration* (New York: Harper & Bros., 1948), 4.

[3] George A. Tracy, *History of the Typographical Union* (Indianapolis, Ind.: International Typographical Union, 1913), 151. An even earlier reference is mentioned at: Eugene MacKinnon, "Arbitration in the Newspaper Business," 3 *Arb. J.* 323 (1939). MacKinnon, who was at the time chairman of the American Newspaper Publishers Association Special Standing Committee, wrote that "[t]he advantages of arbitration as a means of maintaining industrial peace was seen in the newspaper business as early as 1847." Unfortunately, no source material was cited as the basis for this statement.

[4] Undated newspaper clipping, probably circa 1902, at handscript p. 73 of "Clippings Book Number 1" in the records of Atlanta Typographical Union No. 48.

[5] *Id.*

the bullets at the front, they quickly capitulated and went back to work." [6]

In any event, the 1871 convention of the International Typographical Union, which at that time and until secessions occurred around the turn of the century, represented all of the printing crafts as we now know them, unequivocably resolved itself as favoring the arbitration of all wage disputes with employers as follows:

> "WHEREAS experience has demonstrated the pernicious effects of strikes upon business generally, resulting disastrously (even when seemingly most successful) to the interests of both journeymen and employer; therefore,
>
> "*Be it resolved,* That this International Union urgently recommends to subordinate unions the settlement of all disputes, arising by reason of any increase or reduction in the scale of prices, by arbitration." [7]

This pro-arbitration policy of the International Typographical Union was reaffirmed by the conventions of 1879 [8] and 1884 when the union's General Laws were amended to bar strikes "until every possible effort has been made to settle the difficulty by arbitration." [9] Before the turn of the century, arbitration agreements had been written into several local agreements; for example, in 1887 the publishers and typographical union in Washington, D. C., entered into such an agreement,[10] and, apparently, a similar agreement existed from about the same time between the typographical union and the newspaper publishers in Chicago.[11]

Despite the avowed preference of the International Typographical Union for such arbitration agreements, there apparently was not a similar universal preference on the part of the publishers, for it was not until 1901 that the first of the International Arbitration Agreements was executed between the American Newspaper Publishers Association and the Printers, Pressmen, and Stereotypers. In 1905, a similar agreement was entered into with the Photo-Engravers.[12] The motivation for the publish-

[6] *Id.*
[7] Tracy, *supra* note 3, at 257.
[8] *Id.* at 315.
[9] *Id.* at 374.
[10] MacKinnon, *supra* note 3, at 325.
[11] William B. Prescott, "The Services of Labor Unions in the Settlement of Industrial Disputes," 27 *Annals of the Amer. Acad. of Pol. & Social Science* 525 (1906).
[12] MacKinnon, *supra* note 3, at 326.

ers having then become the moving party seeking such an agreement[13] is traceable to the confusion created in the industry by the introduction of the linotype machine.

Although the immediate reaction of the printers to the new machine was a fear of displacement (which, between 1887, the year in which the Merganthaler linotype was introduced, and 1904 could have resulted in about 36,000 hand compositors being displaced [14]), the International Typographical Union quickly moved to reduce such possible displacement by "obtain[ing] control of the operations of the linotype through agreements with the publishers that the printers already employed should be given the first opportunity to qualify as linotype operators." [15]

In time, beginning about 1897, the linotype had enabled the publishers to eliminate the purchasing of ready-made plates previously necessitated by the high cost of hand composition. The publishers now did their own such compositions by linotype, and much more matter was being produced than was previously possible. The result was that "larger profits of newspaper publishers led to strong competition which partly took the form of an increase in the size of newspapers." [16]

This competition among newspapers was felt by the unions when the publishers each began to demand "a more favorable agreement than has been granted to his competitors. Obviously this precipitated many disputes between unions and proprietors which often resulted in strikes or lockouts." [17] Therefore, in order to stabilize the industry, the publishers first approached the International Typographical Union with the proposal to enter into an arbitration agreement on the national level. When accepted by the crafts unions, the agreements provided for the arbitration of new contract terms while concurrently barring strikes. Although this national arbitration agreement was not the only one in existence at the time (other industries with national arbitration agreements were stove-molding, general foundry work, and the machinists' trade), it was unique, for it was the

[13] That it was the publishers who initiated this action, see Tracy, *supra* note 3, at 641-651; and MacKinnon, *supra* note 3, at 325.

[14] George E. Barnett, "The Introduction of the Linotype," 13 *Yale Rev.* 252-253 (1904-1905).

[15] David Weiss, "History of Arbitration in American Newspaper Publishing Industry," 17 *Monthly Lab. Rev.* 16 (1923).

[16] Barnett, *supra* note 14, at 255.

[17] Weiss, *supra* note 15, at 16.

only one containing a "provision for referring to an outside person disputes as to which the direct representatives of the organizations of employers and employees can not agree."[18] Today, an agreement purporting to be one providing for "arbitration" which did not call for the decision to be rendered by an impartial, "outside person" would surely be an anomaly.

The term "International Arbitration Agreement," it should be noted, never did, and does not now, mean that all subordinate bodies are automatically bound thereby. Each local union and each local publisher must specifically agree to be bound by the International Arbitration Agreement. In many instances, local parties have provided for a local interest arbitration agreement only. Such an agreement would leave these parties with no appeal right to the applicable International Arbitration Board unless they agreed, on an ad hoc basis, to such an appeal.

Some of the early arbitration cases demonstrate that the mere execution of an arbitration agreement was not the panacea that some, perhaps, thought it would be. The problems which stemmed from the early arbitration cases seem to relate almost universally to the parties' poor choice of an arbitrator. Thus, the Pressmen in a 1900 St. Louis case had lost every issue for which they had contended because, according to the international union's president, the individual chosen as the arbitrator "... was utterly ignorant of the technical and mechanical features of their work; also, being somewhat involved in politics, was appreciative of the fact that the good will of the newspapers was a good thing to have." [19] Happily for the St. Louis Pressmen, their international president was able to reopen the matter and to effect a compromise with the publishers. The ability to reopen the arbitration case points up the lack of enforcement provisions during these pre-LMRA Section 301 days.

The 1903 case involving Spokane ITU Local No. 193 further illustrates the early arbitration award enforcement problems. The union had asked that its $4 per day scale for seven and

[18] 17 *Reports of the United States Industrial Commission, 1900-1902;* Part I, "Summary and General Discussion," at xciii. It should also be noted in passing that the third International Arbitration Agreement for 1907-1912 eliminated the third-party neutral chairman, while the next, or fourth, International Arbitration Agreement for 1912-1917 returned to the use of neutrals because of deadlocks which had developed under the prior agreement; see Weiss, *supra* note 15, at 23 and 25.

[19] 17 *Reports of the United States Industrial Commission, 1900-1902;* Part III, "Collective Bargaining, Conciliation, and Arbitration," at 369.

one-half hours be increased to $4.50 per day. The arbitrator responded by increasing the working hours and decreasing the scale. After the international president had investigated the situation, he concluded that improprieties had occurred between the arbitrator and the publisher which amounted to a breach of the arbitration contract. Therefore, "[t]he Spokane Union then enforced its revised scale of prices";[20] that is, as the union did not agree with the award, it simply forced the publisher to accept its original proposal.

In time the parties to the several International Arbitration Agreements worked out among themselves the problems as to how awards were to be enforced. The solution was that should a local party not abide by an arbitration award, then its national body would withdraw its support. Thus, should an award be unfavorable to employees and should they respond to it with a strike, the strike would be unlawful and entitled to no support from the parent international union.

Since the first International Arbitration Agreements were entered into in 1901, they have worked well. However, there has been a gradual lessening of the effectiveness of interest arbitration in the newspaper industry due to the withdrawal from many local agreements by whichever party feels aggrieved by decisions which they have received. This downward trend was initiated by the International Typographical Union's refusal to renew the International Arbitration Agreement in 1922 because of the insistence by the American Newspaper Publishers Association that the General Laws of the union be subject to arbitration.[21] However, local unions of the International Typographical Union apparently could still enter into local arbitration agreements, for many decisions are reported during later years.

During the past seven decades, the Pressmen's Union has utilized interest arbitration more than any other of the printing crafts unions. Although no recent study has been found, it is worthy of note that a 1939 study concluded that "... printing trade wage trends in the 100 largest cities over the last 30 years [show] that the Pressmen have a slight advantage over the other crafts in percentage gained in rates and a considerable advantage in decreased hours and other provisions." [22]

[20] Tracy, *supra* note 3, at 735-741.
[21] See, generally, Weiss, *supra* note 15, at 31-32.
[22] MacKinnon, *supra* note 3, at 329.

The statement that by arbitration the Pressmen had gained "a considerable advantage in decreased hours" is worthy of further comment because, when contrasted with the experience of the Typographical Union in achieving reduced hours for *non-newspaper* printers, the usefulness of arbitration is increased tenfold.

Prior to the start of the Great Depression, the six-day week prevailed throughout both the newspaper and the non-newspaper printing industries. When the Depression struck, the amount of available work, of course, decreased sharply. Rather than see tens of thousands of its members thrown out of work, the Typographical Union initiated a campaign for the introduction of a five-day week. At the outset, members of the Typographical Union who were still working gave up one day of work per week to members who had lost their jobs. Next, the Typographical Union commenced a series of arbitration cases in the newspaper industry to have their contracts altered to provide for the five-day workweek. In the non-newspaper industry, where interest arbitration clauses were generally nonexistent, the reduced workweek was achieved through a series of costly strikes. The concurrent attempt in both segments of the printing industry to maintain six days' pay for the five-day week was generally not successful, although limited wage increases on an hourly basis were achieved.

In the case of the *San Diego Sun and San Diego Union-Tribune* v. *San Diego Typographical Union No. 221*,[23] the publisher sought a 20-percent wage reduction and retention of the six-day, 45-hour week. Arbitrator Lyman Bryson rejected the 20-percent wage cut demand by noting that "... the system of job-sharing now in force among their membership, by means of which they are relieving unemployment at personal sacrifice, more than compensates for any reduction in the cost of living." [24] He concluded "[t]hat technological unemployment, which is the evil of our present machine age, can not be remedied except by reducing the workers' regular hours of labor so that more men in each skilled trade may find work to do," [25] and, therefore, a 7½-percent wage cut was warranted as the quid pro quo for the institution of a five-day, 37½-hour workweek.

[23] International Typographical Union (ITU), 20 *Bulletin* 214 (1932). Reported also, in part, at 35 *Monthly Lab. Rev.* 1120 (1932).
[24] *Id.*
[25] *Id.*

In the 1934 case of *Cleveland (Ohio) Typographical Union No. 53* v. *Publishers of Cleveland News, Plain Dealer and Press,*[26] Arbitrator William Feather similarly awarded a five-day, 37½-hour week, after commending the union "... for its excellent program of self-help. Its members have not been carried on public or charitable funds at any time." [27] However, rather than reducing the wages, he awarded an increase. (See also the *Tribune Publishing Co. and Tacoma Times Publishing Co. of Tacoma* v. *Tacoma Typographical Union No. 170* [28] case for another instance of a reduced workweek being accompanied by a wage increase.)

By 1936, the cases simply note the reduced workweek as being a fait accompli. For example, in the 1936 case of *San Antonio Typographical Union No. 172* v. *San Antonio Daily Newspaper Publishers,*[29] Arbitrator (and future U.S. Senator) Paul H. Douglas awarded a wage increase based on comparisons with other similar-sized cities, but noted that he could not take into account reduced weekly wages because such had occurred due to the "... union's mandate [to reduce the hours of work] in order to spread employment." [30] In contrast with Arbitrator Douglas' decision, several arbitrators specifically held that the weekly wage loss occasioned by the reduction in hours should not be borne solely by the employees. Thus, in the case of *Milwaukee Typographical Union No. 23* v. *The Journal Company and the Milwaukee Publishing Company,*[31] Arbitrator George Affeldt awarded a wage increase which placed the union's members "... on a basis comparable with that of similar employees in other cities of approximately the size, nature and character of the city of Milwaukee," [32] and added that "... the entire decrease in the weekly and annual wage of the employe, as a result of the reduction of the number of hours in the workweek, can not be placed wholly upon the employe." [33] (For similar decisions, see *Charleston Evening Post and The News and Courier* v. *Charleston Typographical Union No. 43;* [34] *News Publishing Company* v.

[26] ITU, 22 *Bulletin* 119 (1934).
[27] *Id.* at 120.
[28] ITU, 24 *Bulletin* 62 (1936), George Black.
[29] ITU, 24 *Bulletin* 193 (1936).
[30] *Id.* at 194.
[31] ITU, 25 *Bulletin* 79 (1937).
[32] *Id.* at 80.
[33] *Id.* at 81.
[34] ITU, 25 *Bulletin* 55 (1937), T. Wilbur Thornhill.

Wheeling (W. Va.) Typographical Union No. 79;[35] and *Spartanburg Typographical Union No. 341* v. *The Spartanburg Herald-Journal Company.*[36]

Thus, during the early 1930s, the Typographical Union, through the use of interest arbitration, had successfully reduced the workweek in the newspaper industry to one of five days and no more than 40 hours. By the late thirties, again through the use of interest arbitration, wage levels were in the ascendancy in the newspaper industry. *In sharp contrast, however, is the fact that in the non-newspaper industry, the Typographical Union was only able to achieve a 44-hour week as the result of a strike which cost it more than $18,000,000.*[37]

A considerable body of case awards, as indicated by those already cited, has been amassed during the 70+ years of newspaper interest arbitration. At this point we will undertake a cursory survey of some of these decisions in order to see the bases upon which wage and manning awards have been reached.

The Basic Principle of Wage and Manning Arbitration

Regardless of how many reams of documentation are submitted by the parties in either a wage or a manning case and, for that matter, regardless of how eloquently an arbitrator may describe how his decision is based upon a thorough examination of all of the data presented to him, it is evident from the cases, whether they expressly say so or not, that there is but one principle involved in all wage and manning cases. Simply stated, that principle is, "What changes have occurred which warrant the altering of the parties' previous bargain?" It is assumed, of course, that the previous bargain itself was generally equitable to both parties. If not, then an award more drastic than would have been suspected on the surface may well be warranted.

Thus, assuming an equitable previous bargain as the starting point, all data which may be submitted in a wage case with regard to cost of living, budgets, intercity comparisons, intraplant comparisons, real wages, ad infinitum, or data on comparative crew sizes or work measurements which may be submitted in a

[35] ITU, 25 *Bulletin* 233 (1937), A. P. Hudson.
[36] ITU, 25 *Bulletin* 235 (1937), C. C. Norton.
[37] MacKinnon, *supra* note 3, at 329-330.

manning case, are all but measures of the *changes* which each party must demonstrate if it hopes to have the arbitrator accept its position as that which is the most just and equitable.

A look into some of the cases will show that the basic principle is, indeed, what changes have occurred, and that, with regard to wages, the best measure of the changes is the intercity industry comparison. The same principle will later be shown to be the key to deciding a manning case.

Wage Arbitration Cases

The earliest case found in which an arbitrator clearly stated that changes are the key to deciding every type of newspaper arbitration case occurred in the 1923 *Milwaukee Typographical Union No. 23* [38] case when Arbitrator M. S. Dudgeon said, in discussing the burden of proof: "In considering the issues before the board, we have assumed that where any rule as to wages, hours, working or other conditions have prevailed for some time, it should not be changed in the absence of definite evidence that some injustice or wrong growing out of the rule may be corrected and remedied by such change. In other words, we have placed the burden of proof on the party urging that the present order of things be changed." [39] (For another statement of the rule, see *Vancouver Typographical Union No. 266* v. *Vancouver Daily Province, Limited, and Sun Publishing Company, Limited.*[40])

Although Arbitrator Dudgeon considered many factors—the standard of living, model budgets, ability to pay, wage trends, cost of living, and intercity industry wage comparisons—apparently he was most impressed with the use of intercity industry wage comparisons (which showed Milwaukee to be below the average) in conjunction with cost-of-living intercity comparisons (which showed that Milwaukee's lower wage was offset by Milwaukee's lower cost of living) in reaching his conclusion that no wage change was warranted because Milwaukee's "real wages" were on par with those of the comparable cities.[41] An almost

[38] 18 *Monthly Lab. Rev.* 99 (1924). This case is exhaustively discussed and reported in full. It is recommended, since the series in which it is reported is found in most libraries, for those who wish to compare the parties' data, and the analysis by the arbitrator of the same, in both an early case and a more recent case as reported by BNA.

[39] *Id.* at 104.

[40] ITU, 24 *Bulletin* 60 (1936), Henry Moskowitz.

[41] *Milwaukee* case, *supra* note 38, at 107-108.

identical analysis is to be found in the 1938 decision of the *Louisville Typographical Union No. 10* v. *The Louisville Times Company* case.[42]

Most of the early cases, that is, those during the 1920s and 1930s, show an inordinate reliance upon cost-of-living changes both by the parties and by the arbitrators. One of the earliest cases to disregard cost-of-living data and to replace them with intercity industry comparisons was that of the 1927 case of the *Denver Typographical Union.*[43] There, Arbitrator Paul H. Douglas relied more upon intercity industry wage comparisons than upon intercity living costs or budget data because he found the latter to be untrustworthy: "... we know little of comparative costs between sections of the country, and more especially between cities. There is a pressing need for such index numbers as will measure differences in living costs between geographical units, but until this is done it seems unwise to hold the Denver printers to a weekly scale which is greatly less than those enjoyed by their fellow workmen in other cities." [44]

By 1937 Arbitrator Douglas totally ignored the publisher's argument in the *Kalamazoo Typographical Union No. 122* v. *The Kalamazoo Gazette* case [45] that a wage decrease corresponding to the decreased cost-of-living index was warranted. He also discounted the union's claim for an increase based on the increased cost-of-living index (each party, of course, had chosen a base year most favorable to its position) and, instead, awarded a wage increase which to the penny reflected the intercity industry average for Michigan.[46]

Within the past 25 years, arbitrators have almost exclusively relied upon intercity industry wage comparisons in preference to cost-of-living data.[47] The former, whether a national or regional area is used as the basis for comparison, more accurately measures the changes which must be shown than do any other criteria

[42] ITU, 26 *Bulletin* 181 (1938), F. N. Pitt.
[43] 25 *Monthly Lab. Rev.* 449 (1927).
[44] *Id.* at 450.
[45] ITU, 25 *Bulletin* 234 (1937).
[46] *Id.* at 235.
[47] A study of cases reported between 1953 and 1965 shows that only 6 percent of the criteria cited by the parties related to the cost of living; on the other hand, over 60 percent of the cited criteria involved wage comparisons. See Richard U. Miller, "Arbitration of New Contract Wage Disputes: Some Recent Trends," 20 *Ind. & Lab. Rel. Rev.* 250 (1967), at 255.

available. The measure of the change is the increasing intercity industry wage average when compared with the average for the same cities at an earlier point in time. Of all of the types of wage comparisons which are available—for example, intercity (national, regional, etc.), intraplant—it is submitted that the most accurate, and most equitable, measure available is that accorded by the national intercity industry wage comparison. The reason for this was succinctly stated more than 50 years ago by the managing director of the New York Employing Printers' Association when he wrote to protest what he believed was a disruptive arbitration award, saying that he could not believe "... that a New York craftsman is worth 10 per cent more than one doing exactly the same work in Chicago. . . ." [48] Most arbitrators in recent times have tended to agree.

For example, in the 1947 case of the *St. Louis Globe-Democrat Publishing Co.*,[49] the union's proposal that night-work editorial employees be paid a premium for such night work was granted by Elmer E. Hilpert, who recognized that the payment of a night-work premium was neither the usual nor the predominant practice in the newspaper industry at that time. In reaching this decision, the arbitrator must have determined that under the facts before him, an intercity comparison of great metropolitan cities was the proper criterion, for he said:

> "[A]fter weighing all the factors involved, the Chairman is of the opinion that (1) the practice in the 'organized' segment of the newspaper industry and *especially,* (2) the practice in comparable cities should be the guiding practice in this proceeding. . . . In the light of the very considerable incidence of the 'night differential' in morning newspapers in cities of a size comparable to St. Louis, the Guild's present demand is not unreasonable. . . ." [50]

That the national intercity industry wage comparison is the criterion of paramount importance for determining the most just and equitable wage increase in the newspaper industry is ably demonstrated by the 1952 *Los Angeles Examiner* case.[51] There, Clark Kerr, after discussing the cost of living and intraplant criteria, awarded an increase which was less than that due if an area criterion had been utilized because: "While the resulting

[48] G. J. Anderson, letter to the editor entitled "Wages and Statesmanship," 47 *Survey* 607 (1922).
[49] 8 LA 488.
[50] *Id.* at 497.
[51] 20 LA 30.

rate falls below levels elsewhere on the West Coast, it does approximately match the average paid in the four largest cities of the United States (other than Los Angeles) and it is customary to make comparisons in this industry by size of city as well as by geographical area." [52]

The national intercity industry average wage comparison has been found applicable regardless of whether the subject city is large or small, northern, southern, or western. For example, in the 1967 case of the *Pensacola News-Journal* [53] George Savage King determined that "[t]he most significant factor and the one most consistently relied upon in wage arbitrations is intercity comparisons of the rates of newspapers in comparable cities." [54] The arbitrator specifically rejected the publisher's argument for consideration of an historical low southern wage differential by noting that even if the claim be true as a generalization, "[i]t certainly does not explain why the rate in Meriden, Connecticut is only $3.075 while it is $3.470 in Macon, Georgia, nor why it is $3.147 in Rome, New York, and $3.400 in West Palm Beach, Florida." [55]

It has thus far been shown that when wages are the subject of an arbitration in the newspaper industry, the appropriate wage generally is determined by studying the changes which have occurred in the instant craft's wages relative to the wages of other similar craftsmen in cities of the same size. It will now be demonstrated that the changes which have occurred is also the determinative factor when either party contends for manning provisions different from those previously in effect.

Manning Arbitration Cases

The raison d'être for the rule that the party seeking an alteration of existing wages, hours, or working conditions must demonstrate "what changes have occurred which warrant the altering of the parties' previous bargain" will be seen more clearly when applied to a manning case than to any other type of case. The "parties' previous bargain" which one party or the other desires to alter is not necessarily found in the present contract. In a manning case, the arbitrator must look back to the time during

[52] *Id.* at 32.
[53] 49 LA 433.
[54] *Id.* at 436.
[55] *Id.* at 435-436.

which the parties originally entered into their bargain. This is the point from which all measurement of the changes which have occurred must be viewed.

The greatest number of manning arbitration cases in recent years have concerned publishers' efforts to support their demands for manning cuts by the use of engineering studies, that is, time studies or work samplings. These engineering studies invariably show that, for example, 10 journeymen *could* run an eight-unit press for which the contractual manning may specify a basic crew of 14 men. A time study, or work sample, quickly reaches such a conclusion because there is a great deal of idle man-hours involved in newspaper pressroom work. Those arbitrators who have been confronted with such engineering studies have, however, reached the conclusion that such evidence misses the point. The point that is missed, as was pointed out by David P. Miller in the *Detroit Free Press and the Detroit News* case,[56] is:

> "the trade and craft nature of the printing pressman's job. Surely it is not contended that his functions are comparable to those of, say, a drill press operator performing a repetitive production operation. His is an apprenticeable craft requiring long training and considerable specialized knowledge. Unlike the work of the drill press operator, his varied responsibilities demand exercise of skilled judgment to determine what, when, how and how much to do to meet the quantity and quality requirements of his operations. During press runs, as overseer of the operations, the pressman must be alert to meet frequently arising contingencies—both predictable and unpredictable. It is in the nature of his craft that he will not always be engaged in physical activity, but his skill is nevertheless employed in watching and listening to the operating press mechanism. It is hardly accurate to characterize his 'standing about' during those times as 'idle time.' " [57]

Engineering studies, at best, measure the *present minimum* manpower requirements for manning a press; they do not, however, provide any evidence as to *what changes have occurred since the previous bargain was entered into.* They also, of course, cannot take into account what was, in fact, the basis of the previous bargain. Manning agreements are not entered into on the basis of how few men can run a press. They are, instead, a compromise between the publisher's wishes for as small a crew as possible and the union's view that it is

[56] American Newspaper Publishers Association (ANPA), Labor Relations Committee Bull. No. 6038, 81 (1966).
[57] *Id.* at 88.

"entitled to believe that considerations of reasonable workload over an entire shift, and adequate opportunity for personal rest and relief, cannot be minimized in the determination of proper manning. The pace of operations, and the presence of noise, dust, heat and fumes in the pressroom are obvious factors for consideration. Nor can a pressroom crew determination ignore the need for required attention and stand-by as well as for planning and directing the work (including instruction and training of apprentices). These and many other relevant factors may be in the minds of the parties when they establish crew sizes for various operating conditions." *Atlanta (Ga.) Constitution and Journal and Web Pressmen's Union No. 10.*[58]

Often the parties' contract will expressly state what changes must occur before the revision of manning can even be raised as, for example, the 1924 New York City Newspaper Pressmen's contract:[59]

"The number of journeymen pressmen now employed on various types of presses shall not be changed during the life of this agreement, except by or through the processes of conciliation and arbitration hereinafter provided. The use of labor-saving devices shall bear a direct relation to the number of men used on presses, and the right is therefore reserved to the employer, or the union, to raise the issue of changing the number of journeymen necessary for the various types of presses, in the event of the future adoption or removal of labor-saving devices." [60]

In the absence of such an express contractual guide as to how to measure the changes, the arbitrator must first ascertain what the conditions were which existed when the "previous bargain" was entered into. For example, he needs to know what equipment was used when the previous bargain was made. He also needs to know what the press speed was, what the newspaper page capacity was, what the volume of newsprint and ink consumption was, what the volume of color work was, what the newspaper's volume of circulation and advertising was, and so forth. Knowing these factors, the arbitrator has determined the basis of the previous bargain and can then commence to determine what changes have occurred which would warrant his alteration of that bargain.

For example, in the *Milwaukee Newspaper* case,[61] the publish-

[58] ANPA, Labor Relations Committee Bull. No. 6211, 405 (1970) at 426, Sylvester Garrett.
[59] 19 *Monthly Lab. Rev.* 1299 (1924).
[60] *Id.* at 1300.
[61] ANPA, Special Standing Committee Bull. No. 5880, 433 (1962), Ralph T. Seward.

er had two pressrooms, the *Sentinel's* and the *Journal's*. Depending on the number of units in the presses, the manning provisions dated from 1944, 1949, or 1952. In the *Sentinel* pressroom, there had been no changes in press equipment since 1948, while in the *Journal* pressroom, the arbitrator found that major equipment changes had occurred since the 1952 manning agreement there. Both parties sought manning changes: the union upward, the publisher downward. The arbitrator wrote:

> "Under the circumstances, it seems to the Chairman that a heavy burden of proof must rest on the party which asks this Board to change the 'basic' manning bargain which the parties themselves made and which has so long been in effect. It is incumbent on that party to show why there should be such a change; what has happened which has rendered a once acceptable set of manning rules unacceptable. To be specific, if the Union is to justify increasing the manning on three through six unit runs, it must somehow show that the workload on such runs which was once considered reasonable and fair, should now be considered unreasonable and unfair. And if the Publishers are to justify decreasing the manning on seven through ten unit runs they must somehow make the same kind of showing." [62]

The arbitrator then proceeded to leave the *Sentinel's* manning unchanged because neither party had proven any change in either workload or added equipment. However, in the *Journal* pressroom he found that major equipment changes which affected the workload justified a manning reduction on certain press runs.

The rule set out in the *Milwaukee Newspaper* case has since come to be recognized by arbitrators as the "law" upon the subject. For example, the rule was adopted in the *Erie Publishing Company* case[63] where the arbitrator determined that "... when the additional work caused by the changes [increases in press speed, newsprint and ink consumption, color work, etc.] that have taken place at Erie over the past years is viewed in its totality there is a reasonable basis for adding to the crew size." [64] (For a detailed discussion and use of the *Milwaukee Newspaper* rule, see also *Courier-Journal and Louisville Times Company*.[65])

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[62] *Id.* at 437.

[63] ANPA, Labor Relations Committee Bull. No. 6149, 726 (1968), Howard Wissner.

[64] *Id.* at 728.

[65] ANPA, Labor Relations Committee Bull. No. 6126, 297 (1968), Peter Seitz.

Hopefully, it has been demonstrated that regardless of the issue in a newspaper arbitration case—wages or manning—the principle which is applied is the same. The arbitrator must reach his decision by measuring the degree of change which has occurred since the parties entered into their previous bargain. It should be stressed, however, that the tools of such measurement vary between a wage and a manning case. Thus, in a wage case the arbitrator uses the externally oriented intercity industry comparisons as the measure of change. In a manning case he looks only for internally oriented changes which have eroded the basis of the bargain between the parties; the use of intercity manning comparisons is not generally favored.[66]

Conclusions

Throughout the history of interest arbitration in the newspaper publishing industry, there has been one principle upon which all of the decisions have been based, regardless of whether the specific issue was wages, hours, or manning. Arbitrators will leave the parties where they found them unless that party which seeks a change in the previous bargain, assuming that it was equitable, demonstrates that sufficient changes have occurred which warrant the alteration of the previous bargain.

In a wage arbitration case, this is generally done through the use of intercity industry comparisons. The arbitrator studies the past relationship of the instant group of employees vis-à-vis similar employees in similar-sized cities with the present relationship in order to determine whether or not, and if so, how much, of a wage adjustment is warranted. He need not, and should not, attempt to second-guess the parties; if the proofs show that the past wage relationship has been altered to a certain degree, then that is the precise amount which he should award. Even if the evidence shows that the instant employees have always been far behind the wages of similar employees in cities of a similar size, this does not necessarily warrant the arbitrator's retention of the differential. Such a differential might evidence the existence of past discrimination and inequitable treatment. If so, then the arbitrator should correct the inequity. To second-guess what the parties might have done would do no more than preserve the past's injustices.

[66] ANPA Bull. No. 5880, *supra* note 61, at 437-438.