CHAPTER 5

ARBITRATION OF WAGE INCENTIVES: THREE PERSPECTIVES

I. THE ARBITRATION OF INCENTIVE ISSUES

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As I presume that experience with incentive issues has brought you here, a discourse on the principles and practices of incentive systems would be redundant. Before embarking upon this discussion, I should emphasize the basic theme that the so-called incentive issues arise from pay-for-production systems of compensation. The employer and the union have established this relationship of work and pay by negotiation and practice; it is the function of the arbitrator to decide the issues to confirm and continue the accepted ratio. The standard of work against which production is measured, and by which incentive premium pay is calculated, is the linchpin for the resolution of incentive issues.

For this talk, I define an incentive issue as a dispute and stipulated question that requires for determination the arbitrator's knowledgeable recognition and analysis, and even the actual performance, of work measurement. By this term, work measurement, I include the many different means of determination of work standards by which worker productivity is rated—means ranging from the most elementary intuitive judgment to the highly sophisticated predetermined standard-time techniques.

The measurement by which a work standard is promulgated and against which an incentive worker works is the foundation of all incentive systems, whether a piece-rate system, a standard-time system, or a measured day-work system. Basic work measurement, whether expressed or implicit, is also the prerequisite for the determination of nonincentive issues, such as manning

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and crew size for day-work tasks, assembly and other linear production lines, and any group operation. In addition, the determination of the competency of an employee, such as with the typical discharge case offering incompetency as just cause, should depend upon the gauging of the assigned task—often by time study as well as by comparison with other tasks—to decide its reasonableness and feasibility.

Relatively few incentive-work-measurement cases are reviewed in the reporting services. This condition may be for the better today because it prevents me from seeking refuge in a mere review of the awards and opinions from which I may infer unintended trends. This paucity should not be misunderstood, however, to be the true picture of the number of such issues arbitrated in this country. The few reported cases may reflect the lack of interest of the subscribing practitioners who avoid incentive issues. In arbitration circles, ignorance and fear of the issue have been cloaked by its relegation as a "technical" matter shunted off to "technical" arbitrators. This may be for the better.

This stance stems from the fear that a knowledgeable and clear opinion may divulge trade and production secrets. This is understandable. An opinion culminating in a decision of what a work standard should be will describe the operation in detail, listing the elements with their descriptions and respective time values, and the distinguishing conditions such as layout of the operation, equipment, machine speeds, method, material, and quality standards of production. A comprehensive opinion must cover these and other items to describe to the parties the arbitrator's analysis of the operation and his computation of the work standard.

Now for the incentive-work-standard case itself. The conditions in which the hearings for such issues are held make them unique.

Hearings are held on site where the issue arose. This is as it should be. Few, if any, issues can be tried meaningfully without observation of the challenged work. The more efficient use of the time committed to the hearing should include provision for job observation. Hearings are not held in hotel rooms, law offices, or the facilities of the American Arbitration Association. Instead, they take place in or near the plant—in the nearby firehouse, veterans meeting hall, union office, local municipal building, plant manager's office, foreman's office, and even in

the plant cafeteria. The arbitrator cannot reasonably demand that the hearing be held away from work, such as in a convenient airport hearing room.

The formulation of the issue to submit to arbitration is of less concern. The personnel at the hearing are more pragmatic in their focus, with less sensitivity to consequences other than the disposition of the immediate question of the propriety of the work standard. To them the question is whether the standard is loose enough, too tight, or too loose. Should the incentive worker be able to achieve a level of production yielding earnings prescribed by the contract or accepted by practice?

Typically, the issue submitted for determination will ask if the time standard, the piece rate, or however else the unit of work may be expressed, is proper and adequate. Does the standard allow employees to realize anticipated earnings? At times the term "adequate" is construed to confine the arbitrator to determining only if the rate is loose enough, and if not, by how much the standard should be loosened to become adequate. The term "proper" may be construed at times to allow the arbitrator to find that the standard is either too loose or too tight, with the available remedy consisting of tightening or loosening the standard.

I have encountered standards engineers who request that the issue, however worded, be construed as allowing the arbitrator to determine only whether the standard is adequate, taking the position that they stand by the standards they issue though the arbitrator may arrive at a tighter standard. Though this stance may be a ploy adopted by the standards department to avoid criticism from management if the arbitrator should reach a tighter standard, I am impressed by it as mature and responsible, and one that engenders confidence among the incentive employees. The union embraces the limited range of determination left to the arbitrator.

An arbitrator taking his own time study of an operation will not arrive at the identical mathematical conclusion as the grieved rate. Parties typically agree that arbitral findings within five or ten percent either way will be considered to be a confirmation of the grieved standard. On the other hand, however little the arbitrator's standard may be above the management's, accumulation of back pay over a long period of time may move the union to insist that any loosening be applied as a remedy with back pay.

The order and form of procedure at the hearing is of particular importance. Most often, the parties continue their practice gained in the trying of grievances, with the union as the initiating party moving first. If the hearing is viewed as an adversary proceeding adhering to the typical rules of such a meeting, this order may be appropriate. If the hearing of an incentive issue dependent upon work measurement is considered to be a fact-finding procedure, as I do, I suggest that the management move first. Let us consider the reasons which can be offered for the departure from the norm.

First, it is not fixed and required by any rules governing arbitration that the plaintiff move first. For example, Rule 26 of the American Arbitration Association's "Voluntary Labor Arbitration Rules" provides: "The Arbitrator may, in his discretion, vary the normal procedure under which the initiating party first presents his claim, but in any case shall afford full and equal opportunity to all parties for presentation of relevant proofs." Departure from the so-called "normal procedure" is expressly approved by this set of generally accepted rules of arbitration procedure.

The ad hoc arbitrator who appears at the hearing site without any prehearing preparation must be made knowledgeable. This orientation must be complete enough for a knowledgeable and practicable disposition, accomplished in as short a period as the provided time for the hearing will allow. As knowledgeable and as educated and experienced as the local union may be with the incentive system on the site, I suggest that the company will be better able to prepare the arbitrator for his hearing role as the presiding officer over a fact-finding session. Presuming that the hearing is a culmination of a multistepped grievance procedure, the company's moving first will not place it at a disadvantage. On the contrary, I judge that moving first carries an advantage that I would seek were I to try such a case.

An informed and organized exposition of the system, how it began, how it works, the principles and practices of work measurement, the tried and accepted procedures for the calculation of standards, and the procedures for treatment of deviations from norm will educate the arbitrator and give him the means by which he can focus on the problem.

With the arbitrator on site for the first time, the company should err on the side of including rather than excluding material the arbitrator may need. If I were the company, I would take

this opportunity to explain once again, as I should have done in the grievance procedure, the construction of the standard. Whatever material is not offered will probably be requested by the knowledgeable arbitrator who will not be restricted by the "need-to-know" editing of the data. Citing the AAA rules once again, Rule 28, "Evidence," provides: "The parties *may* offer such evidence as they desire and *shall* produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute [emphasis added]."

Then the union should have the opportunity to state, with whatever support it can muster, the grievance it has against the standard. Whether its case is no more than the grievant's claim that he "can't make out," or a more sophisticated presentation with technical assistance supplied by its international, the evidence must be received as part of the fact-finding process which the arbitrator must undergo before embarking upon the judicial stage of determination and issuance of an award and opinion.

The award should not reflect the comparative case presentations of the parties, but the sum of the evidence received by the arbitrator.

When work measurement is involved, the arbitrator must observe and study the operation. Whatever the means of setting a standard—whether or not a floor time study had been used to set the grieved standard—I believe that the arbitrator should appear at the job site to view the operation. The arbitrator should have with him the description of the operation, the observation sheets, and the derived time values used by the company to set the grieved standard. My requests for such material have always been granted. The parties' concern that the arbitrator may be unduly influenced by this material should be outweighed by their concern for an expeditious disposition of their dispute. Without this material, the arbitrator may well have to remain at the job site for many days before accumulating enough data on which to base a finding.

Incidentally, I view the job observation and study to be an open part of the fact-finding procedure. The arbitrator should try as much as he can to be visible in everything he does on the site, and in the presence of and with the understanding of the grievants and the representatives of the parties.

I have encountered abbreviated time studies more often than not. This short cut toward the setting of standards, however, need not be subject to criticism. Time-study personnel with

experience in the plant may be so familiar with the operation that few studies of cycles need be taken by them. But, I have encountered with distressing frequency unwarranted short periods of time devoted to the study. This impression is confirmed by my frequent detection of unrecorded, time-consuming, noncyclical elements missed by time-study personnel who have not remained long enough at the operation.

The arbitrator should observe many cycles—many more than is typically taken by plant personnel. The more cycles observed, the greater the base on which the arbitrator may arrive at his conclusion for the rating of the studied subject. The longer the span of time for the study, the greater the opportunity for the appearance of time-consuming factors.

At some time while on the floor, the arbitrator should be offered orientation on shop practices to help him arrive at a standard of leveling or rating of performance so that his gauging of the grieved operation can be consistent with those that have been accepted. I have asked the parties to suggest the operations I should observe for comparison purposes, and have resolved differences about which jobs I should see by observing all.

This responsibility strains not only the time which the arbitrator can devote to the study, but may challenge him physically. For example, if noncyclical elements such as the positioning of raw material and other stock occurs at the start of the shift, and the grievant stresses these as being interruptive and costly to him and not credited in the construction of the standard he grieves, the arbitrator should be on site at the start and end of the shift, even though it may be at 6 A.M. or at 11 P.M.

A number of experiences come to mind. A standard for order-picking in a large warehouse was in issue. The parties decided that I should observe the operation, which consisted of pickers walking miles of aisles, pushing order carts, and selecting various items from shelves at different heights. When I complained that I would not be able to last the day, I was supplied with a small golf cart and chauffeur. Of course the parties' representatives then insisted on watching me, which could be done only by their riding their carts. A grand time was had by all, ending with the realization that the average time per unit—set some time before—no longer reflected the typical placement of the stock. The shelving had changed, the mix of the inventory had changed, and the sizes of the orders had changed—all of which

affected the average time encountered by the order-picker in the two-week payroll period.

A similar operation of order-picking under sharply different conditions comes to mind. The picking of ice cream orders in a massive refrigeration room with more square yardage than a football field was the source of this challenge. Two crews worked alternating half-hour stints at temperatures of below zero. Incidentally, one bench decision in this hearing—of which I have made very few—set the right atmosphere for my appearance on the job with a stopwatch. One grievant observed in the hearing that the order-pickers should be given free toilet tissue. When I observed that I had never had to pay for it, it was explained that the tissue was used to wipe running noses. I ruled that the running nose should be considered a necessary and unique job condition for which tissue should be supplied free of charge.

Everyone thereupon agreed that I would enter the refrigeration room with the pickers to watch the operation. The company supplied me with survival boots, which I still have, and a hunting outfit with gloves—and the tissue with which to wipe my nose. However, my watch froze and I could not take studies. I did the best I could and found that the company's demands for the number of orders with the average number of items picked was feasible. However, I observed that at least one quarter of that time—remember that each crew worked only four hours per shift because half-hour stints were shared alternately—was lost on entering and leaving the storage room. Only one door was opened for the exchange of the pickers, who had to wait their turn to enter and leave. On opening a second door for leaving, with the first door confined to entering, much time was saved and production increased measurably.

I vividly recall taking a man-lift up the side of a pulp storage silo five stories high. I was advised that I would not mind the height if I did not look down. I did not.

Also, observing the initial scraping and cleaning of raw hides in a tannery was not conducive to my holding down my last meal. Keeping my equilibrium was made more difficult by the employees offering to share their danish and coffee during the morning break while sitting on the raw hides. I managed, however, to stay the course.

I particularly recall observing for a number of days the group-incentive operation of counting and placing small pieces of

hardware in plastic bags. All items were challenged, and I had to be on site to time them when they appeared. Basically, the operation for the packers consisted of taking pieces from chutes fed by hoppers, counting them, placing them in plastic bags, and sealing the bags with heat. Service was supplied by a floor man.

I completed my five-day stint on Friday, but was not allowed to leave until after lunch. The packers, mothers and grandmothers all, had a weekly luncheon party on Fridays, when they shared their celebrations of events occurring that week. The christening of a grandchild and a daughter's audition with the Metropolitan Opera were the occasion for a meal of pasta with sausage, topped by the singing of arias from Italian operas, and ending with the sextet from "Lucia di Lammermoor"—the alto singing the tenor part and the floor man supplying the baritone.

Though a member of the school of arbitral restraint, believing that the arbitrator should mind his own business, I have intruded at times. I have refused to time operations which I considered to be unsafe, though performed according to prescribed method. It is unsettling enough for the operator to perform under the observation of the arbitrator, let alone having to contend with hazardous conditions. For example, I refused to continue my study of an operator who wore overshoes to protect herself while walking on sawdust mixed with oil leaking from a lubrication pan. I have also refused to study punch-press operators and guillotine paper-cutter operators who did not follow prescribed procedures in using machine guards. To have seen one accident was enough for me to be actively conscious of this factor.

I have also intruded when I realized that a particular operator wasn't fit for the operation, and when operation layouts were egregiously inappropriate. For example, a left-handed operator moving toward his right in a multistep press operation was in trouble. My comment to the committee was enough to change the work assignment. The operator had bid into this operation and had rejected a transfer until I pointed out that he was hurting himself. Another example was an obsolete layout with which a new employee could not cope, and so he grieved. In both instances, putting a freeze on the conditions until the grievance and arbitration were completed delayed the implementation of suitable corrections.

Not all job observations include time study. Work standards are installed without the benefit of the application of formal

methods of work measurement. In these situations the arbitrator should try to use the same approaches and techniques as have the parties. This is essential in those instances when agreements expressly prohibit the use of time study and any method of work measurement.

For example, a piece-rate system for a man-paced operation has been effective on a property with an agreement that time study shall not be used for the setting of rates, but that rates will be negotiated by comparison with other jobs. Though this prohibition has not been construed to prevent the company from using time study for other managerial purposes, the trying of the rate grievance in arbitration takes the form of testimony on the rates of other operations offered as comparable. More than ever, the arbitrator must see the many cited jobs to compare with the grieved operation.

On another property, the agreement expressly prohibits the promulgation of any work standard in a day-work operation, and expresses the understanding that each employee will provide a "fair day's work." Management warns and eventually disciplines employees for not producing enough to satisfy its "fair day's work" standards, with the resulting grievances coming to arbitration. If the management is prevented from even expressing the amount of work it expects from able and competent employees, how can the arbitrator decide if the employee was disciplined for good reasons? On this property, I intruded enough to enable myself to compare many other operations performed by accepted employees so that I could compare the rate of effective work performance by the grievant.

One more observation on the fact-finding phase of the arbitration of incentive issues: It is my experience that the arbitrator has to take a more active role; he must intrude as much as he considers it to be necessary so that he can conclude the hearing with enough facts to enable him to issue a knowledgeable award. In the hearing stage, he will have to ask more questions and request more data than he would in a typical grievance hearing. When observing the job, he often will have to request information of the parties and ask for the observation of other operations so that he can comprehend and apply the parties' concepts of norm and anticipated levels of incentive-work performance coupled with incentive earnings. Generally, I do not encounter reluctance on the part of either party in responding to my requests for additional evidence. I prefer to err on the side of

obtaining more evidence than I may need rather than to have insufficient evidence and have to call for another hearing. An arbitrator of an incentive issue based upon work measurement must quickly comprehend sufficient fact for practicable and final disposition of the issue.

All of this is preliminary to the arbitrator's taking on the judicial role based upon his finding of fact and issuing a determination which will reflect the negotiated exchange of work for pay. The arbitrator, one hopes, has learned from the parties in the evidentiary stage of the arbitration proceeding enough of their method of work measurement to apply it to the grieved operation. Though ad hoc arbitrators are seldom informed if they have successfully performed this function, success can be inferred from repeated appointments, indicating that the awards have placed the standards, rates, and other work requirements within the area of practicable acceptance.

I stress again, for emphasis and clarity, that the arbitrator must adopt the parties' methods, principles, and practices and apply them to the issue submitted to him. Whatever the industry and the individual operation, the form of work standard (piece rate, time standard, or measured day work), the form of work measurement (time study, standard rates, predetermined standards, or negotiation), the practiced pace of work, or the form of incentive system, the arbitrator must learn from the parties and reflect his learning by applying these practices to the determination of the propriety of the challenged standard. The arbitrator must adopt the practices, the method, and even the vocabulary peculiar to the operation and the industry to explain his analysis and conclusion in terms comprehensible to the parties. The arbitrator must express his concept of what he has decided the standard should be, within the range of propriety negotiated and practiced by the parties.

This is often not easy. The practiced ratio of work for pay, and the reverse, is not the same within any unit of examination. The standard expressed in the contract—e.g., that incentive employees should realize a premium equal to 30 percent of base rates—will probably be different from the practiced level, which may be higher. Old and obsolete standards often yield higher earnings. The arbitrator must decide which level reflects the parties' "deal" and try to apply it in his analysis and construction of the standard.

The ratio of work and pay will vary within a plant depending

on the operation, supervision, shift, and employees. The arbitrator should recognize the practiced understanding existing in each job site and try to use this ratio in his determination of work-standard propriety. The arbitrator should try not to be the tool by which incentive management attempts to recapture lost control. The arbitrator learns of the practiced standard of productivity accepted as the norm by as long a job observation as a practical proceeding permits.

No one will argue that accepted work standards do not differ among industries; surely we acknowledge that the level of accepted work pace, the norm, is different, for example, on the mechanical floors in the newspaper industry than on the assembly line in the automobile industry, the casting operation in the pottery industry, or in the garment industry. Also, there will be sharp dissimilarities in different areas in the same industry. Despite the presence and use of predetermined standard times obtained from central sources for use in different plants and industries, I propose that acceptable work standards differ more than they coincide.

The arbitrator—like the chameleon—must in each case adopt the standard of practice and contractual prescription from the parties and apply it to that particular question arising on their property.

On reaching his determination, the arbitrator on incentive issues encounters another challenge that distinguishes this kind of case. The opinion presents the challenge of exposition in a form that sets forth his finding of fact, consisting of the nature of the incentive system, its application to the operation in question, his observations, and his calculation of the standard. The art of exposition of fact, including the expression of job method and mathematics in prose form understandable to all of the participants, is demanding and time consuming. In this type of arbitration, the competence of the arbitrator and his grasp and analysis of the standards issue submitted to him becomes evident in his opinion. The arbitrator cannot hide behind obtuse language.

This particular type of issue, which requires training and competence to comprehend and cope with so-called "technical" questions, demands arbitrators with demonstrated training and experience. Parties have recognized this need. Arbitration provisions in some agreements include the qualification that the arbitrator be an industrial engineer. More often, the provision

stipulates that the arbitrator be qualified to cope with an incentive issue, without insisting upon the academic credential of an engineering degree. In addition, the parties advise the designating agencies of the nature of their dispute and the need for an arbitrator competent to handle incentive issues.

In this field, the parties have developed their own roster of qualified people to help them resolve their disputes. Also, the parties have learned that it is much the better to continue using the same arbitrators. The permanent arbitrator, whether by placement in the agreement or by repeated designation, requires less preliminary introduction to the particularity of the property and becomes more knowledgeable and competent for that particular site. The continued use of the same arbitrator for as long as the parties may find him acceptable makes for a much more efficient arbitration. I suggest that the scarcity of such qualified individuals increases the tolerance of the parties in their acceptance of decisions that are not always welcome.

In final comment, I want to express my appreciation for the opportunity my service in incentive issues has given me to learn shop lore. During the times of job observation, I have learned of the concerns of the employees, their approaches to their jobs, relations with each other, their union representatives, and their supervisors. I have learned to recognize and appreciate the concerns and pressures with which an industrial engineer must cope. The means by which a foreman meets the demands of his superiors affects employees. And now, the presence of potential conflict arising from heterogeneous labor groups, and their own resolutions, has given me cause to understand and appreciate the individuals and groups I have met. This experience contrasts with the protected and insulated hearings and issues determined by trial in board rooms and analysis of language in a printed document.

One more point to be made is that the concept of incentive issues is expanding to encompass other developing issues in labor relations. The concept of productivity bargaining cannot avoid the development of a standard and means of measurement of work. Productivity bargaining resulting in pay dependent upon increased productivity presents challenges in the white-collar and professional field and in public employment. Other challenges are offered by job-enrichment programs based upon varied rather than repetitive assignment. The appearance of the flexible-hours programs and the four-day work week, for

example, challenge the tried formulas for incentive-issue resolution. The training and disciplines brought by "technical" arbitrators from their experience with incentive issues may be the source for the arbitral determination of these disputes looming on the horizon.

Issues stemming from the pairing of pay with production—in whatever form—are here to stay.

II. ARBITRATION OF WAGE INCENTIVES FROM THE PERSPECTIVE OF THE STEEL INDUSTRY

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In a sense I feel a little like Robert Benchley, the noted wit, author, actor, and father of the author of "Jaws," "The Return of Jaws," and "Son of Jaws." I understand that when he attended Harvard he had a less than distinguished academic career. He managed always to schedule long weekends, concentrating all classes on Tuesday, Wednesday, and Thursday. One course he managed to so schedule was the Diplomatic History of the United States. One of his final examination questions was to discuss in detail the dispute in the nineteenth century between the United States and Great Britain over fishing rights off the coast of Canada and Newfoundland, from the viewpoint of each of the two nations involved. His paper commenced as follows: "I know nothing about the fish controversy from the viewpoint of Great Britain; my knowledge is sketchy with respect to the viewpoint of the United States; I shall, therefore, discuss in detail the controversy from the viewpoint of the fish."

I speak here from the viewpoint of an arbitrator trained in the law, but not in industrial engineering; and I hope to afford you some insight into the approaches taken by arbitrators in the basic steel industry in avoiding industrial engineering concepts urged upon them by the parties. In this respect, I hasten to add that I was not around when many of the basic principles were established. I want to express my gratitude to Syl Garrett who assisted me in the preparation of this paper; he was very much around at all relevant times, having been chairman of the Board of Arbitration from 1951 to January 1 of this year. (References throughout this paper will be made to the Board which is the permanent umpireship agreed upon by United States Steel Corporation and the United Steelworkers of America.)

I feel safe in asserting at the outset that in no industry has there been more controversy and, as a result, more arbitration on the issue of wage incentives than in the steel industry. Because of that, there is a huge body of law on the subject—much more than can or should be discussed in this forum. All I can

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do in the time allotted is to provide an overview of the historical background and of the contractual rights and obligations as they exist today. Within the steel industry there are similarities in the contractual provisions relating to incentives, but also significant differences not only in the contracts, but also in approaches taken by the parties to the problem. I hasten to add that some of these differences were reduced substantially with the issuance of the award of the arbitration panel on August 1, 1969, between the Coordinating Steel Companies and the United Steelworkers of America. The provisions of this award have since been incorporated in the agreement between the Steelworkers and employers other than the Coordinating Companies. My presentation, however, will limit itself largely to the experience of United States Steel and the Steelworkers because I am again in Benchley's plight of knowing little of the details in other relationships.

To paraphrase for a moment, in the beginning there were incentives, and the company looked upon them as good. The union looked upon them in a different light, but could see no way to get rid of them. Thus, the March 13, 1945, agreement between the Carnegie-Illinois Steel Corporation and the Steelworkers required that "[h]ourly, tonnage, incentive and piecework rates" shall remain in effect. Notably, the contract made no provision for job classification, and the concept of a "standard hourly wage rate" that since has become the base for the application of most incentive rates simply did not exist. In 1945, however, the parties were under a November 25, 1944, Directive Order of the War Labor Board to negotiate the elimination of existing intraplant wage-rate inequities. This order was the end result of a myriad of inequity claims that had been presented to regional War Labor Boards throughout their existence—resulting from the fact that there existed no system for providing any rational relationship among the jobs within a given plant, much less among the various plants in a given company. Under this directive, the parties negotiated, adopted, and agreed to a series of inequities agreements providing for a uniform system of job description and classification which ultimately resulted in agreement to an industry-wide Job Description and Classification Manual.

A significant feature of the first inequities agreement, dated October 23, 1945, was that of establishing the "standard hourly wage scale" through a job-classification system. The parties agreed as a "fundamental principle" that an employee is entitled

to a fair day's pay in return for which the company is entitled to a fair day's work. As related to incentives, the parties agreed as a "fundamental principle" that when regularly required on an incentive job to perform work over and above the requirements of a fair day's work, an employee was entitled to receive equitable extra compensation over and above a fair day's pay—that is, the standard hourly wage. Subsequently, in a May 8, 1946, agreement, the parties agreed that the term "equitable incentive compensation" would be understood to mean extra compensation over and above the rate of a fair day's pay for the job in proportion to the actual performance required over and above the performance rate of a fair day's work on the job. The "zinger" or "Catch 22" in all this was that in an agreement to a Manual for Job Classification, dated August 10, 1945, a fair day's work was defined as "that amount of work that can be produced by a qualified employee when working at a normal pace and effectively utilizing his time where work is not restricted by process limitations." Normal pace was defined as being "equivalent to a man walking, without load, on smooth, level ground, at a rate of three (3) miles per hour."

Prior to the negotiations leading to the April 22, 1947, agreement, the union found it could not live with this definition and sought to modify the principles enunciated in the prior agreement relating to "fair day's work." It successfully negotiated language requiring the parties to complete the program of elimination of all wage-rate inequities, including specifically the task "of developing the principles for determining a fair day's work. . . ." As noted by the Board of Arbitration in A–372,[1] this provision was especially remarkable in that the May 8, 1946, agreement itself had included a specific definition of a "fair day's work."

The net result of all of the above is that the test of "equitable incentive compensation" was included in the April 22, 1947, agreement, but without the definition of "fair base performance," that is, "fair day's work," set forth in prior agreements. In A-372,[2] the Board of Arbitration rejected the company's efforts to utilize this essentially industrial engineering technique to determine base performance. Likewise, it rejected the union's theory of comparable pay for comparable performance, based

[1] 2 Steel Arb. 859 (1952).
[2] *Ibid.*

on the local working conditions clause. It refused to assume the role of being another industrial engineer, "testing the technical validity of the various judgments applied in developing new incentive standards." Rather, it adopted a case-by-case approach, taking into account all evidence relevant to whether the incentive compensation is fair, just, and reasonable.

In another lead case decided in 1953,[3] the Board found no authority in the agreement affording it the right to dictate a program for management to follow in developing and administering incentives, so long as equitable incentive compensation is afforded. Nor, said the Board, would it modify or set aside any particular engineering method applied. It reiterated the ultimate test as one of "equitable incentive compensation," and only if the particular engineering method were found to frustrate the attainment of this goal would the methods be questioned.

In a further award, dated May 4, 1954,[4] the Board refused to hold with the union that the agreement required the fixing of equitable incentive compensation at any fixed percent above base. In that case the union sought a minimum of 135 percent. The Board also refused to accept a company contention that a given program for developing incentives inevitably must produce equitable incentive compensation if the program is reasonable and fairly administered or that, if an identical system were used for all incentive installations, it would produce a uniform result in every instance of fair, just, and reasonable compensation. The Board then commented as follows:

> ". . . If such an interpretation of Section 9-C-3 were adopted the Board would have no useful function in determining equitable incentive compensation since it in effect would be embracing a doctrine of engineering infallibility.
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> "No one can successfully contend that the broad outline of the Company's incentive program is not 'fair' in the abstract. So are most of the myriad other types of incentive programs which Management might have elected to adopt. Nor would it be likely that the Company's industrial engineers would fail to do their best conscientiously to carry out their assigned responsibilities in the administration of the program.
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> "But this program—in common with numerous others which have enjoyed widespread use in industry—can produce wide and unexpected divergencies in earnings. The extent to which this is true is

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[3]USC-316, 3 Steel Arb. 1545 (1953).
[4]USC-316, 4 Steel Arb. 2343 (1954).

only partially suggested by the earnings tables of the various Open Hearths in Central Operations in this case—if any demonstration of this elementary proposition be necessary.

"Managements, Unions, employees, and arbitrators alike in substantial measure, thus have come to accept the desirability of testing incentives by their actual yield over representative periods, when there is no question of the competence of the engineers or of the cooperation of those necessary to achieving a satisfactory level of production. Indeed, managements often undertake to review and revise an incentive installation when actual earnings experience demonstrates that the standards do not accomplish what was expected in terms of earnings.

"This is not to say that the basic fairness of the Company's program—and its honest and careful administration—are irrelevant in a case of this sort. Quite the reverse is true. There are basic considerations upon which the Board undertakes its review in any such case. But where, in actual practice, a new installation speedily produces earnings 80 to 100 percent above the standard hourly wage rate in a representative period, where earnings of 25 percent were anticipated, it does not require detailed review of the various steps in developing the standards to ascertain that some sort of *error may have crept into the setting of the standards,* or some other unexpected factor distorted the earnings picture. The major purpose of a detailed review in such a situation would be to ascertain, if possible, *how* the error or distortion arose so as to avoid its repetition in later installations.

"Similarly, when earnings in a representative period under a new incentive run only 5 percent above the standard hourly rate, where earnings of 30 percent above base rate were anticipated, it is legitimate to infer that equitable incentive compensation is not provided —unless some other conclusions can be established by whomever asserts that the standards are set to yield equitable incentive compensation.

"In like vein, when an old incentive which yields very modest earnings, above standard hourly wage rate, is replaced by a new incentive which yields substantially less earnings—even though production and employee effort either have increased or remain substantially unchanged—there is room for an inference that the earnings do not constitute equitable incentive compensation. Such an inference would be strengthened when it also appeared that the earnings under the old plan actually were less than earnings achieved under new installations for similar operations where the old plans have been submerged to the point of yielding no incentive earnings at all.

"Accordingly, the Board must now dispose of the equitable incentive compensation issue in this case as best it can on the basis of all the evidence presented. Since it proceeds on a case-by-case basis as provided in the May 5, 1952, Award in applying the 'fair, just and reasonable' test, it seems essential that the Board refrain from theorizing or rationalizing the decision here announced."

From the middle 1950s through 1969, the basic rules were pretty well established and the problems arising in arbitration quite similar. Under Section 9-C-1, it was in the company's discretion whether to establish new incentives to cover (1) new jobs, (2) jobs not presently covered by incentives, and (3) jobs covered by existing incentives under which the earnings had become submerged. It was obliged under Section 9-F-2 to continue in effect all existing incentive plans, including those installed prior to and after 1947, until such incentives were replaced by mutual agreement or replaced or adjusted under Section 9-C-2. In G-60 and 61,[5] the Board held that the company had the right to make adjustments to incentives required by new or changed conditions that were not sufficiently extensive to require replacement. These cases were decided in 1956 when 9-C-2 of the agreement provided only for the replacement of incentives. Largely as a result of G-60 and 61,[6] Section 9-C-2 was amended in 1962 to provide two approaches to changes in existing incentives. When relevant new or changed conditions occur that are not sufficiently extensive to require cancellation and replacement of the incentive, the company now has the right, and indeed is obliged, to adjust the incentive to preserve its integrity. If changes of greater magnitude occur, the company is obliged to cancel the incentive and install a new replacement incentive.

In either case, the objective was the preservation of earnings opportunity. However, the contractual and arbitral approach is different in adjustment cases than in those involving replacement. The procedure involving the cancellation and replacement of incentives first appeared in the April 22, 1947, agreement and was refined in subsequent agreements. In general, as indicated in USC-719,[7] there are two tests that must apply to the replacement incentive—(1) that it provide equitable incentive compensation, and (2) that it meet the earnings guarantee of Section 9-C-4 which requires that "the incentive earnings (of the replacement incentive) shall not be less than the percentage of incentive earnings . . . received as an average by regularly assigned incumbents of that job under the replaced incentive during the three months preceding its cancellation provided that

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[5] 5 Steel Arb. 3567 (1956).
[6] *Ibid.*
[7] 9 Steel Arb. 6447 (1961).

the average performance during such three-month period is maintained." The Board has held that the guarantee of earnings, when read in light of a proviso in Section 9-C-4, means in effect a guarantee of earnings *opportunity* which may be found on a case-by-case basis to exist even though the actual earnings may not have reached the required level. Section 9-C-2-c provides for an interim rate to be applied during the period between a cancellation and the development and installation of the replacement incentive. This rate is to be based on the same reference period as that set forth above.

In testing the question of whether an adjustment has served to preserve the integrity of an incentive, the Board has not felt bound by any particular reference period, but rather selects the most representative period closest in time to the changed condition. It may look to average earnings over a period of several years or, if portions of the time are not representative, select segments of such period for reference. It should be noted that in determining issues involving preservation of earnings opportunity, the Board looks at the earnings opportunity as it existed before the change. For instance, if an incentive earned 180 percent before an adjustment, that figure becomes the required earnings opportunity after the adjustment. Likewise, if an incentive has had a history of low earnings, the test of its integrity is based on that lower figure.

One of the early issues that came before the Board, and one that continues today, is that involving the application of Section 9-C-1 versus 9-C-2. This issue arises when the company installs new equipment similar or identical to older existing equipment. The company prior to 1969 might exercise its discretion and not install any incentive or install a new incentive having a lower earnings opportunity than that on the older equipment. The union has contended, successfully at times, that under Section 9-C-2 the new equipment is in effect a replacement of the old and, therefore, the old incentive coverage should continue on the new equipment even though an adjustment or replacement of the old incentive may be required. Again, the approach to this problem has been on a case-by-case basis, considering all the relevant factors. I will not attempt to list all such factors, but simply refer you to the Board's decision in USC-1687-1688.[8]

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[8] 12 Steel Arb. 8795 (1964).

One other point should be made. Up to 1965 there existed a single "standard hourly wage rate" for each job class, and this was the hourly base rate or minimum for each incentive job and the rate of pay for each nonincentive job. In 1965 the parties established a lower "incentive calculation rate" to which the incentive performance would be applied, with an additional hourly additive applied after the incentive calculation was made. This base rate today is substantially lower than the standard hourly wage rate and serves to reduce somewhat the real earnings derived from wage incentives.

In their negotiations leading to the 1968 agreement, the parties addressed themselves to specific problems of incentive administration. A joint incentive group was established by the union and the Coordinating Steel Producing Companies to develop and recommend guides to the parties with respect to:

> "a. Types of jobs: (1) properly subject to coverage by direct measurement incentives, indirect incentives, or other incentives; and (2) not properly subject to incentive coverage.
>
> "b. The definition of equitable incentive earnings opportunities.
>
> "c. The adjustment of incentive standards from time to time so that such standards are properly maintained.
>
> "d. Procedures to be employed after August 1, 1969, for application of guides recommended with respect to paragraphs a, b and c, above, to the then existing incentive situation in each company. Such procedures shall include the requirement that incentive earnings shall be adjusted to conform to such guides."

The task was awesome. In light of the companies' discretion in the area of installing incentives on new jobs or existing nonincentive jobs, there were vast differences among the companies and, indeed, among plants within a company in the extent of incentive coverage. No objective definition of equitable incentive compensation existed, and the earnings under incentives varied from those barely earning above standard hourly wage to incentives averaging 200 percent or more. It is not surprising that the joint committee was unable to agree and the matter was referred to a panel of arbitrators—Sylvester Garrett, Ralph Seward, and Chairman William Simkin. On August 18, 1969, this panel issued an award that (1) defined the jobs to be afforded incentive coverage of a direct, indirect, or secondary indirect type, or no coverage at all; (2) afforded specific equitable earnings opportunity guides for each type of incentive; and (3) pro-

vided guides for the administration of the incentive installed under the award.

More specifically, the panel defined direct incentive jobs as those which directly and substantially affect or control the rate of output or substantially affect the attainment of full utilization of equipment; for such jobs a guide of 135 percent earnings opportunity was established. Indirect incentive jobs were defined as those that significantly, but not as directly and substantially, affect the rate of output or the attainment of full utilization of equipment. An earnings opportunity guide of 123 percent, or 67 percent of the earnings of related direct incentives, was established for indirect incentive jobs. Secondary indirect incentive jobs were defined as those not qualifying for direct or indirect, but which have an opportunity to make an appreciable and demonstrable contribution to production or to efficiency above nonincentive performance. For such jobs, an earnings opportunity guide of 112 percent, or 33 percent of related direct incentive jobs, is provided. Finally, the panel held that jobs lacking any of the above criteria did not qualify for incentive. In each category, the panel included as a factor the ability to measure output economically and with reasonable accuracy, or, in the case of indirect or secondary indirect jobs, the ability to relate such jobs to one or more direct (or indirect) incentives. I note that the category of secondary indirect was a new concept designed to recognize the vast difference in the extent to which "indirect" jobs in the industry contributed to production.

The following language of the award set forth certain principles in the application of equitable incentive earnings that could well be viewed as a restatement of the numerous past awards of the Board establishing such principles. Rather than paraphrasing, I will quote directly from the award:

> "... The above percentage figures are not statements of the actual percentage earnings an incentive must produce consistently to be equitable. They relate not to average earnings but to earnings opportunity. They assume full employee response to the incentive earnings opportunity provided under any given incentive. In addition, due weight must be given to the fact that in actual experience earnings under a properly designed incentive may vary from the applicable Equitable Incentive Earning Opportunities for a variety of reasons, including but not limited to: (a) relative skill, experience and coordination of the crew, (b) relative operating levels and equipment efficiency, (c) changes in product mix, and (d) seasonal and other variations in operating conditions. Further, in weighing the

> equity of any given incentive, weight may properly be given to an inherent and acceptable minus or plus lack of precision in designing incentives and to reasonable and acceptable variations inherent in the particular incentive system.
>
> "Because of the multiplicity of reasons for variation of actual incentive earnings from the applicable Equitable Incentive Earning Opportunities, compliance with Equitable Incentive Earning Opportunities can best be tested on a case-by-case basis, giving due weight to all relevant considerations."

No attempt will be made to review all the issues that arose under the award. Initially, problems arose concerning the category applied for a given new incentive application. One significant line of decisions held that the critical issue in such cases was the extent to which the jobs involved affect the rate of output or the attainment of full utilization of equipment. In some operations shown to be process-controlled rather than employee-controlled, the jobs manning the equipment were held to be properly covered by indirect rather than direct incentives, even though the jobs were of a production nature.

In the late 1960s, the parties and the Board of Arbitration became concerned about the quality of the presentations made in incentive cases. One serious problem was that of inadequate discussion and fact development during the grievance procedure, with the result that contentions and data not developed during the grievance procedure were introduced for the first time in the arbitration hearing. In an attempt to afford the parties with a guide for their use in the grievance procedure, an Incentive Checklist was developed that outlines the types of potential problems the grievance procedure was intended to cover and requires the parties to develop a description of the incentive application involved and a performance history by pay period in terms of measured and pay performance. The checklist also requires, in the case of changed or allegedly changed conditions, for the parties to develop a statement of the facts relied on and their respective positions. In 1971, this checklist was made part of the basic agreement. The Board expects the parties to follow the guides of the checklist during the grievance procedure, and when it finds that they have failed to do so, it will send the case back to the grievance procedure for proper consideration.

In closing, I stress the pragmatic approach taken through the years by the Board of Arbitration to wage incentive issues. It has refused to theorize or rationalize its result in any given case

involving equitable incentive compensation or to espouse any particular industrial engineering approach. The wisdom of the case-by-case approach to such issues as equitable incentive compensation has proven itself through the years, as indicated by the fact that the concept was adopted by the panel and is now an integral part of the basic agreement. The flexibility of this approach permits balancing the many factors that may be relevant in any given case in order to arrive at a sound resolution of the specific problem without boxing the parties and the umpire into any single theory of incentive administration.

III. THE PRESENT STATUS OF ARBITRATION UNDER WAGE INCENTIVE PAYMENT PLANS

WILLIAM GOMBERG*

Although more and more jobs in our newer sophisticated technological industries make the worker a monitor of an automatic process whose effort is unrelated to the level of production, there remain a sufficient number of jobs in the older industries where worker effort and production are related. It is in these kinds of plants that we continue to find the great majority of wage incentive payment plans.

The last time that I participated in a National Academy session on the Arbitration of Wage Incentive Payment Plans was in 1957. I was listed as a labor spokesman, and opposite me was attorney Owen Fairweather of the well-known Chicago law firm that bears his name. Since that time I have become a member of the Academy, and my official status is now redefined as that of a neutral and academician.

As a prelude to an examination of the present status of arbitration of (and under) wage incentive payment plans, I reviewed my own remarks and those of Mr. Fairweather, asking myself what new problems have evolved since then and what old problems remain—a subject for controversy.

In addition, Ronald Wiggins attempted to bring arbitration of the entire industrial engineering area up to date in his BNA publication, *The Arbitration of Industrial Engineering Disputes* (1970). For the remainder of my analysis I have made use of BNA's *Labor Arbitration Reports* that now total 70 volumes; the Wiggins analysis made use of the first 51 volumes of *Labor Arbitration Reports.* And my own participation in a number of cases, including the Postal Service and the National Association of Letter Carriers, also provides some interesting materials. I therefore intend to cover the following subject areas:

1. A review of the Gomberg-Fairweather exchange (including comments by Ron Haughton and Pearce Davis)[1] and the present status of the issues treated at that time.

2. A review of the production standard principles at stake in

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[1]See Critical Issues in Labor Arbitration, Proceedings of the 10th Annual Meeting, National Academy of Arbitrators (Washington: BNA Books, 1957), 61–97.

the recent series of arbitrations between the National Association of Letter Carriers and the U.S. Postal Service in which Sylvester Garrett acted as arbitrator.

3. A review of the work of the Coordinating Committee set up by the steel companies and the United Steelworkers to resolve the problem of extending incentive wage opportunities to steel workers on time-work jobs. The time workers were chafing at the large incremental earnings of the worker-afforded incentive opportunities.[2]

A rereading of Mr. Fairweather's and my own papers and the reports of the commentators thereon indicates a mixture of issues, some of which have been resolved, but many others that remain a source of controversy.

Mr. Fairweather's definition of an incentive-payment plan as extra pay for extra work was compared with that of Professor Robert Roy, who pointed out that what was extra pay to management was regularly expected pay for workers operating under an incentive plan. I had suggested at the time that these concepts could be accommodated if we defined the two systems of wage payment as time-work and production-work systems of payment. My object at the time was to avoid a clash over so-called scientifically objective concepts of normal effort as against an equity concept of a fair day's work. It is interesting to note that since these papers were published, the industrial engineers who at the time espoused the so-called "scientific" definition of normal have upgraded their understanding of the word "scientific." Mitchell Fein, a vice-president of the American Institute of Industrial Engineers and research chairman of its Work Measurement and Methods Engineering Division, denies any scientific concept of normal. Instead, he states that in his experience, "Managers and industrial engineers throughout the country who are experienced in collective bargaining recognize that a bargain about how hard employees should work is implicit in the vast majority of collective bargaining agreements. . . . The pace-effort bargain is generally a corollary of the wage-bargain. . . . This is the essence of the principle of a fair day's work."[3]

Mr. Fein has gone on to apply this principle by counseling both management and union to bypass the stopwatch or any other work-measurement device. He counsels his "impro-sys-

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[2]53 LA 145–154 (1969).

[3]Paper prepared for the NALC-Postal Service arbitration, Case NB-NAT-6462.

tem" in which management measures direct labor cost initially and then pays a group a bonus for any improvements that reduce that cost.

Arbitrators are not likely to get cases of this nature; they will continue to be called upon to resolve cases based upon conflicts over conventional rating and leveling systems implying a scientifically set measurement of normal effort and an implied reward for extra effort. The same may be said for conflicts over the application of micro-motion systems of standard data. As I indicated in the earlier paper, they imply that the union has accepted the level of normal effort implicit in the development of the data base for this system. Micro-motion standard data systems do not eliminate rating. They simply conceal the rating system from all parties except the "priest experts."

A number of subsidiary problems will arise from the industrial engineering philosophy written into the agreement over how workers are to be paid for delay and down times under a wage-incentive payment plan. If the agreement carries no specific instructions, then the job of resolving this problem will depend upon the arbitrator's sense of equity. If incentive systems imply extra pay for extra effort, then quite clearly workers are paid at base rate for delay and down time. If incentive systems are renamed production-pay systems, then they obligate management to furnish an earning opportunity during the working day in return for which the worker extends a fixed effort. The failure of either party to meet this obligation determines whether the so-called increment is or is not paid for down time.

Mr. Fairweather's enthusiasm for the methods time method of determining production standard received one endorsement prior to the Postal Service cases to which I will be making reference later. This arbitrator imposed MTM-developed standards on the union, arguing that it was an accepted, tried-and-true method approved by the engineering profession that had proved itself by its survival these many years. This may be a tribute to the marketing effectiveness of the MTM association, but as an indicator of scientific validity, it leaves much to be desired.

This arbitrator's argument makes as much sense as the curative claims of the peddlers of the late Lydia E. Pinkham's vegetable compound because of its long market survival. To be sure, if the parties have included the use of the MTM system in their contract, then the application of its rules are justified. It is quite

another matter to saddle the parties with this "pseudoscience" in the name of equity when neither of the parties has included it in his contract.

This was exactly the issue between the parties in what must be considered the most important arbitration over production standards since the arbitration between the United Automobile Workers and the Ford Motor Company over the speed of the assembly line in 1947. It was this arbitration that made the setting of production standards a matter for arbitration even where the subject was barred from the contract. Harry Shulman, it will be recalled, defined management's right to set a production standard as a right to propose a standard that is subject to protest by grievance, in contrast to other absolute rights enjoyed by management, such as the product or service they decide to furnish.

The NALC-Postal Service arbitration arose under Article XXXIV between the parties giving the Postal Service the right to set production standards. The pertinent sections from Article XXXIV read as follows:

> "The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.
>
> "The Employer agrees that any work measurement systems or time or work standards shall be fair, reasonable and equitable. The Employer agrees that the Union or Unions concerned through qualified representatives will be kept informed during the making of time or work studies which are to be used as a basis for changing current or instituting new work measurement systems or work or time standards. The Employer agrees that the national President of the Union may designate a qualified representative who may enter postal installations for purposes of observing the making of time or work studies which are to be used as the basis for changing current or instituting new work measurement systems or work or time standards. The Employer agrees that before changing any current or instituting any new work measurement systems or work or time standards, it will notify the Union or Unions concerned as far in advance as practicable.
>
> "If after initiating a change the Union or Unions concerned believe there is a violation of the above second paragraph, it is expressly understood that the matter is grievable."

The writer was invited by the then-president of the NALC, James Rademacher, to become its expert. My understanding of Mr. Rademacher's request was that this was a mutual problem-solving undertaking in which the Postal Service was ready to cooperate with the union in raising productivity which would

justify future costless wage increases. The first meeting with the postal authorities revealed that they had made a decision to institute the methods time measurement system of setting standards and were not ready to discuss any alternative system of work measurement. Finally, the difference between the parties became the subject for a national arbitration before Sylvester Garrett who issued his award in Case #NB-NAT-6462 on August 6, 1976.

An earlier interim award issued July 8, 1976, instructed the parties to brief the arbitrator on a number of issues, among which were:

(a) Whether there is an "effort bargain" implicit in the national agreement which required the conclusion that the national concepts involved in the LCRES program are not fair, reasonable, and equitable within the meaning of Article XXXIV. (LCRES is an acronym for Letter Carriers' Route Evaluation System—the Postal Service's work measurement and improvement program.)

(b) Whether the existing "standards," reflected in typical routes in effect under the policies and procedures of the M-39 Manual when Article XXXIV last was negotiated, must be deemed fair, reasonable, and equitable for purposes of Article XXXIV so as to preclude adoption of the national concepts in the LCRES program. (M-39 is a manual describing in great detail the letter carriers' work and assigning work standards for certain office tasks, but no street tasks.) The origin of these standards is lost in the dim, dark, historical past, but has defined equitable work loads for those activities in the past.

(c) Whether adoption of MTM elemental time values and application of the accompanying national concept of normal pace in establishing LCRES standards contravened Article XXXIV, since not derived from comprehensive work or time studies of carrier's work as actually performed.

Mr. Garrett ruled that "The arbitrator could not review the studies on which the MTM values originally were based and surely could not accept a concept of *'normal' pace* without any knowledge of, or study of, letter carrier work." He went on to state that the Postal Service cannot, absent agreement by the NALC, base work or time standards for the letter carriers upon MTM values instead of the results of adequate time or work standards.

"As far as the impartial chairman is concerned," he con-

tinued, "the words fair, reasonable and equitable have no practical meaning for purposes of developing time or work standards except as they are applied to specific employees or groups of employees performing specific tasks under defined conditions."

On the other hand, Mr. Garrett was not ready to accept engineer Fein's contention, supported by Wiggins,[4] that "The existing pace effort burden is that in effect in the bargaining unit on the date of the contract; mutual satisfaction is assumed on the theory that if the parties had not considered that pace and effort burden 'fair, reasonable and equitable' they would have so stated and made explicit provision for change by negotiation or otherwise."

In reply to this contention, Arbitrator Garrett wrote, then referring to the NALC and the U.S. Postal Service, "Their 1971 Agreement included many provisions which departed from policies earlier applied in the Post Office Department. It thus was no accident that they made clear in Article XXXIV that the Postal Service thereafter could introduce *new* work measurement systems, and establish *new* time or work standards, to effectuate the principle of a fair day's work for a fair day's pay. These detailed provisions preclude any inference that the parties regarded the existing pace or effort of all of the multitudinous individual employees covered by the new Agreement as fair or equitable for purposes of Article XXXIV. The Impartial Chairman, therefore, rules that no 'effort bargain' is implied in the National Agreement so as to require a conclusion that the national concepts involved in the LCRES Program are not fair, reasonable and equitable within the meaning of Article XXXIV."

In short, the rejection of the Fein doctrine was not a rejection of a general principle, but was rejected because the writing of Article XXXIV in 1971 at the beginning of collective bargaining implied an intention to change practices and standards from what they may have been in the past.

Another substantial contribution to the resolution of conflicts over the application of wage incentives to an entire industry was made when 11 steel companies and the United Steelworkers created a three-man panel of arbitrators, consisting of William Simkin, Ralph Seward, and Sylvester Garrett, to set up guide-

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[4]The Arbitration of Industrial Engineering Disputes (Washington: BNA Books, 1970), 265, 281, 284, 286, 291–292.

lines to be used by the parties to extend incentive wage coverage to steel production and maintenance workers at the 11 steel companies who were not at the time covered by wage incentives and to revise incentives that might be termed too low or too high.

When it was determined that a hitherto time-work job would be covered by incentive, the affected employees were given a ten-cent-per-hour increase retroactive to August 1, 1968, to continue until the jobs in question had been placed on appropriately designed incentive opportunities. Their award, released on August 1, 1969, was a model of a pragmatic program escaping ideological constraints of pseudoscientific engineering constraints.

The steel agreement of July 30, 1968, had set up joint incentive study groups for each of the 11 companies, made up of three union and three management representatives. These committees were to determine, among other matters, jobs properly subject to incentive coverage and those not suitable for coverage, the definition of equitable incentive earning opportunities, the adjustment of incentive standards from time to time to maintain equity, and, finally, a set of procedures to implement the above sets of principles. All of these joint committees had reached an impasse. The arbitration panel was charged with resolving these impasses.

There then followed a set of pragmatic instructions in the award, unburdened by an opinion that could be misused to legitimize anybody's favorite industrial engineering ideologies. Some examples of the panel's ingenuity follow.

In addition to the usual classification of direct and indirect incentive workers, they added a third classification: secondary indirect incentive jobs. These, though not qualified for the usual direct or indirect incentives, were defined as those jobs where there was an opportunity normally to make an *appreciable and demonstrable* contribution to efficiency beyond nonincentive performance.

The quantitative criteria to meet minimum coverage specified that not less than 85 percent of the employees in any company must receive incentive coverage.

The individual plant coverage of at least 100 employees must provide no less than 65 percent individual coverage.

These categories include direct, indirect, and secondary incentive designation, with no ratios of one to another required.

The remainder of the award defines guidelines for the joint committees to bargain for the application of these principles to the specific jobs, including the selection of and rate-setting for the jobs. An additional panel award on the same date resolved impasses between the parties over whether certain jobs were included in the procedures outlined above.

The importance of this case does not lie in the specific procedures evolved by the panel applicable to the steel industry, but in the nonideological problem-solving philosophy triumphing over industrial engineering prejudices—a procedure, incidentally, underwritten by Conrad Cooper whom industrial engineers will recognize as the foremost steel industrial engineer of his time. This whole approach is reminiscent of Chester Barnard's approach to sound management; that is, that managers will continue to follow their own pragmatic sense despite injunctive managerial principles that counsel contrary behavior. It is an ideal example of what Professor John R. Commons had in mind when he enjoined the parties to break the tyranny of the experts.

I do note that since the award of the steel panel, its principles have been fleshed out in a number of cases in which Arbitrator Garrett has handed down decisions on specific cases. His former associate and successor, Alfred Dybeck, has described the significant principles that have been therein developed.

Conclusions

A review of some of the principles governing the arbitration of wage-incentive payment plans and production standards since Arbitrator Shulman handed down his historic decision in the *Ford Motor* case follows.

Much of the detail work in the agreement spelling out the determination of production standards uses so many undefined and nonoperational words that they are all but useless, particularly when elastic words like "equitable," "normal," and "fair" are used, so that for all intents and purposes the arbitrator makes his decisions *de novo* with what guidance he can get from past practice.

Where the parties have spelled out the use of some predetermined microscopic motion-time system in the agreement, the arbitrator is obligated to follow the dictates of the system despite his personal disbelief in its efficacy. It should be remem-

bered that the actual application of these systems leaves plenty of room for judgment in the listing of applicable elemental motions and their assigned times.

The choice of an arbitrator can be an engineer, if he has proper regard for the limitation of his own measuring tool, or a layman who can distinguish equity from rigorous authoritarian pseudoscience.

The arbitrator should be aware that facts so emphatically emphasized by management as the basis of its standards are seldom hard and fast. A fact is but a selective description of a total experience.

He can also be reminded that a trade unionist's proclamation of the demand for equity in the setting of standards conceals a technique to gain an incremental wage increase barred by ordinary methods. This approach did yeoman work for trade unionists, enabling them to escape the constraints of wage control during World War II, and there is little doubt that its use as a tool will increase for the same purpose under peacetime stabilization conditions.