been rejected. Also rejected have been arguments that relief cannot be granted for past employer conduct, or that unions lack authority to demand benefits on behalf of non–bargaining unit members. Such arguments fail on the grounds that the proper remedy "restor[es] the parties to the position they would be in," but for violation of the agreement through failure to extend contract protections to contingent workers performing bargaining unit work.[25]

I do not mean to condemn all contingent work force arrangements. Especially when novel work force arrangements are effected as a product of worker and union involvement, there may be great benefit to both the enterprise and the employees. But when done with an intent to undermine contractual worker protections or weaken bargaining units themselves, contingent work force arrangements frequently yield short-term efficiencies at best. Indeed, even when such outcomes are not intentional, their effect on long-term efficiency and productivity can be equally damaging. And you, the arbitration community, are often our protectors of last resort.

Thank you.

V. INDUSTRY BREAKOUT SESSIONS*

SESSION I—STEEL
ARBITRATION AND RESTRUCTURING IN THE STEEL WORKPLACE

SHYAM DAS**

Changes in the steel workplace designed to enhance efficiency have come before arbitrators in several contexts. Arbitrators have ruled on grievances protesting that changes made unilaterally by management violate existing contractual obligations covering subjects such as local working conditions, seniority, and contracting out. In deciding other grievances, arbitrators have fleshed out the

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[25] *See, e.g., Kingsbrook, supra* note 19, at 18.

Editor's Note: Seven industry-specific breakout sessions followed Professor Shaw's and Mr. Hiatt's respective presentations: (1) steel, (2) transportation, (3) communications, (4) public utilities, (5) education, (6) state and municipal government, and (7) health care. Each session was moderated by a member of the Academy, accompanied by management and union representatives. The format and formality level of the sessions varied. As a result, some sessions did not lend themselves to publication. Presented here, in various formats, are those that did.

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meaning and application of new contractual provisions intended to improve efficiency while also protecting bargaining unit interests. In addition to conducting traditional grievance arbitration, steel arbitrators have been called upon on several occasions to play a more active role in the restructuring of work. A brief discussion of one such instance follows.

In the early 1990s, Northwestern Steel & Wire Company, located in Sterling and Rock Falls, Illinois, and the Steelworkers entered into a Restructuring Agreement designed to reduce the work force by 400 jobs, or 20 percent of the work force, while maintaining the same level of production. This was to be accomplished through attrition over a four-year period, thereby avoiding layoffs. Due to the age of the work force, it was anticipated that at least 400 employees would quit or retire during the four-year period, and the goal was to restructure the work so that those 400 employees would not have to be replaced. In return for this commitment, the company agreed to provide increased wages and benefits and to make capital investments in the plants.

The parties did not agree to specific restructuring changes. Rather, they established a procedure under which 50 jobs were to be eliminated every six months over the four-year period. Joint management-union committees were formed in each department and charged with determining optimum manning levels. To accomplish that goal, they were authorized to change work rules and duties, working conditions, and local departmental agreements. A plantwide Joint Oversight Committee (JOC) was created and given overall responsibility for administering the restructuring program.

The parties pledged to implement the Restructuring Agreement in good faith on a "non-adversarial, problem solving basis." They also committed to the following provision:

> In the event that the J.O.C. or J.D.C. [Joint Department Committee] is unable to reach the agreements and understandings necessary to accomplish the In Place Agreement Deadlines, or the implementation of those In Place Agreements, in accordance with attrition, the Company shall, no later than 60 days prior to the target date, provide the Union Chairperson of this Committee [JOC] with its plan to accomplish these results, and likewise, the Union Chairperson of this Committee shall, no later than 60 days prior to the target date, present the Company with the Union's plan to achieve these results. Any disagreements shall be promptly submitted, at least 45 days prior to the target date, to an impartial umpire who shall have the authority to determine how these results must be reasonably achieved. The umpire shall render his final and binding decision within 15 days of the hearing. The impartial

> umpire shall not have the authority to reduce the target numbers or modify the In Place Agreement Dates or in any way consider local working conditions, practices, or other agreements in reaching his decision. He shall determine whether the work can be performed without creating unsafe working conditions . . . or creating onerous and burdensome work requirements on the part of the employees.

During the first four of eight restructuring "rounds," the parties met the required job reduction target without the need for arbitration. But in three of the final four rounds, they were unable to reach agreement on all the required job reductions, and I was appointed as the arbitrator. In part, my role under the Agreement was similar to that of an interest arbitrator, as I was charged with determining how the necessary job reductions "must be reasonably achieved" on the basis of the plans submitted by both parties. For the most part, however, the parties' disagreements were contractual in nature. The company contended that the union proposals it had rejected did not really constitute job restructuring. The union, in addition to pressing for adoption of its proposals, argued that some of the company proposals were invalid because they created unsafe working conditions or onerous and burdensome work requirements, or otherwise were inconsistent with the Basic Labor Agreement.

In each of the three rounds that required arbitration, the parties agreed on 60 to 75 percent of the required job reductions. The union's plan for obtaining the remaining reductions typically involved seeking credit for changes it claimed had occurred already, for which the company had refused to grant credit. Under the Restructuring Agreement, the parties agreed that "new employees will not be hired so long as there is a substantial probability that work restructuring improvements are likely to reduce the number of employees needed to perform the work." The union took the position that if the company hired any new workers, that would be the end of restructuring. The company, although disagreeing with the union's interpretation, did not press the issue by actually hiring new employees. As employees left the work force—mainly through retirement—the union then claimed credit for each reduction in the work force on the grounds that the work obviously was being done by fewer employees. The company insisted that a credit was due only if work actually had been restructured so that it could be performed by fewer employees. In a number of cases where this had not occurred, the work either had to be done on overtime or was not accomplished. I agreed with the

company that no credit was due under these circumstances. That may seem somewhat obvious, yet the union was able to point to certain instances in prior rounds where the parties jointly had agreed to give credit under arguably similar circumstances. Ultimately, I concluded that although the parties were free to agree to give credit on whatever basis they chose, the terms of the Restructuring Agreement did not permit me to do so except where there was an actual restructuring of the work.

Theoretically, I might have been faced with an interesting dilemma in certain instances where the union claimed that a company proposal would create an unsafe working condition or onerous work requirements. Under the Agreement, I was charged with making just such a determination, and if I upheld the union's position, then I hardly could approve the company proposal. Yet, I had no authority to reduce the target reduction numbers. Fortunately, the company offered more proposals than were necessary to reach the required reduction, so that I could still meet the target even if I rejected some or all of the union's proposals and found some of the company's proposals invalid or unreasonable.

In one round, the union argued that several of the company's proposals would deprive affected employees of protection they were entitled to under the seniority provisions of the Basic Agreement. If I had upheld the union's position, then I would not have had sufficient other valid proposals to meet the target requirement. I was able to conclude, however, that the challenged company proposals were neither inherently contrary to nor inconsistent with the terms of the Basic Agreement. Rather, they constituted changes in local agreements and practices regarding seniority, work assignments, and overtime distribution, which were authorized under the Restructuring Agreement.

Let me close by mentioning one of the union's more imaginative proposals. The union pointed out that if work in a particular department had been restructured so that 80 employees could accomplish work that previously had been done by 100 employees, it should get credit for not only the 20 job reductions (which was all the company was willing to agree to), but also for the corresponding reduction in the need for vacation fill-ins. Assuming an average of three weeks of vacation entitlement per employee, one vacation fill-in employee is required for every 16 to 17 scheduled positions that must be covered during vacation. So, if 17 such jobs were eliminated, the union was seeking credit for 18 reductions. Because the purpose of the Restructuring Agreement was to get the

same amount of work done with 400 fewer employees in the work force, I agreed that the union should receive this additional credit.

In retrospect, the Northwestern Steel & Wire/Steelworkers Restructuring Agreement seems to have accomplished significant efficiency gains. They were obtained with substantial input from the union, and without resort to layoffs. Moreover, the combination of the JDCs, JOC, and arbitration proved to be an effective process for obtaining the agreed-upon job reductions and encouraging the parties at the plant level to find creative solutions to the inevitable problems associated with attempts at efficiency enhancement.

A STEEL INDUSTRY PERSPECTIVE

JAMES D. GARRAUX*

The integrated steel industry has taken enormous steps over the past 15 years to transform itself into an efficient, productive competitor in a very difficult and often unfair marketplace. Billions of capital dollars have been spent to create modern facilities and improve environmental performance. The United Steelworkers of America (USWA) has also worked hard on behalf of its membership within the industry. Political action, such as the recent "Stand Up for Steel" campaign, has been effective in drawing national attention to the damage being done to the domestic industry by unfairly traded imported steel products.

But from a labor utilization standpoint, which is the measure of how the labor-management relationship participates in productivity and efficiency, the collective performance of the industry and the union has not matched improvements in the industry's equipment and manufacturing processes. Change *has* occurred. However, it has too often come about as a result of disruptive labor disputes. Moreover, productivity-related change has many times come too late to make a difference. This paper briefly explores the history of productivity as an element of the collective bargaining process between the integrated steel industry and the USWA. It will describe the types of productivity-enhancing labor utilization methodologies that have been employed, as well as the circumstances

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