CHAPTER VI

IMPARTIAL UMPIRESHIPS: THE GENERAL MOTORS-UAW EXPERIENCE

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This monograph is one of a series sponsored by the National Academy of Arbitrators under the proposed general title "Umpire Systems of Arbitration in Mass Production Industries." For convenience in making comparative analyses, the Board of Editors of the volume has asked that all of the monographs be organized and presented along the same outline, the major divisions of which are as follows: I. History of arbitration at the subject company, showing (A) the course of arbitration prior to establishment of permanent arbitration system, (B) the establishment of the system, and (C) subsequent changes in it. II. The operation of the system, such as (A) grievance and arbitration procedures, (B) substantive issues brought to arbitration, and (C) the umpire's philosophy of arbitration. III. Appraisal or evaluation of the system. And IV. Summary and conclusions.

The present paper is generally in that form. It constitutes the work of the author, who while acknowledging his debt to many persons for their assistance,[1] accepts full responsibility for

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the accuracy of the facts asserted, and for the soundness of any judgments expressed. The information relied on was obtained from both published and unpublished writings, from interviews with representatives of General Motors Corporation and the United Automobile Workers, who graciously gave their assistance to the extent permitted by time and circumstance, and from the past and present incumbents of the office. The author has also relied on his own experiences.

I.

History of Arbitration between General Motors Corporation and the United Automobile Workers.

A. The Pre-Umpire Stage: 1937-1940.

It will be recalled that the United Automobile Workers came into existence in August 1935, by consolidation of several federated locals under a charter issued by the American Federation of Labor. Shortly afterwards, there occurred the schism in the AFL which led to the establishment of the CIO. The May 1936 convention of the UAW elected Homer Martin as president. By year end in 1936, the union had embarked upon its drive to organize General Motors employees and started the historic sitdown strikes. After weeks of struggle and maneuvering, an agreement was entered into between the corporation and the union dated February 11, 1937, in which recognition was extended to the union as bargaining agent for "employees of the corporation who are members of the union," and promises were exchanged to commence negotiations towards an agreement upon various demands which had been specified by the union in a letter to the corporation dated January 4, 1937. The parties also agreed that during the life of the contemplated Collective Agreement "all opportunities to achieve a satisfactory settlement of any grievance or enforcement of any demand by negotiators shall be exhausted before

there shall be any strike or other interruption to or interference with production by the union or its members."

The negotiations contemplated by this strike settlement resulted in a collective agreement dated March 12, 1937. That agreement established a grievance procedure, the final step of which was described as follows:

> "Any case not satisfactorily settled at this point will be reviewed jointly by the vice president of the corporation in charge, and the highest officer of their organization, with such additional representatives as either party may desire. If the matter is not satisfactorily settled by them the case may be referred to an impartial umpire by mutual consent of both parties.

It is apparent from this clause that General Motors and the UAW contemplated resort to third party decision as a possible means of finally resolving grievance disputes as early as 1937, but neither party committed itself in advance to do so.

Operation of the Grievance Procedure during the years from 1937 to 1940 as well as the entire structure of their relationship was not to the satisfaction of either the union or the corporation. Voices within the union complained against the refusal of supervision and management to give prompt answers to grievances. Corporation spokesmen criticized the union and its members for engaging in work stoppages. Wildcat strikes were plaguing management,[2] and there was evidence of increasing concern about them by high union representatives.

During this period factionalism was rife in the union, and internal discipline was weak. In 1939 the strife culminated in a special convention held at Cleveland, Ohio, in which Homer Martin was displaced from the presidency by R. J. Thomas, after a series of moves in which the parent CIO's influence was made felt, principally through the efforts of Sidney Hillman

[2] The *New York Times* of June 18, 1937 reported 170 stoppages from February to June. Heliker notes 300 stoppages in 1938. G. B. Heliker, "Grievance Arbitration in the Automobile Industry," 1954 Doctoral Thesis, Univ. of Mich., unpublished, page 98.

and Philip Murray, who had been designated by the CIO as "Receivers" of the UAW. About this time Martin led a group back into the AFL, and there followed a period during which both factions claimed bargaining rights. As a result General Motors for a time refused to recognize either the AFL or the CIO group in the plants covered by the 1937 Agreement. This impasse was resolved by NLRB certification of the UAW-CIO in 1940.

In view of the conflicts within the union, and the limited recognition that General Motors had extended to the union, it is not surprising to discover that there was negligible use of the 1937 Contract provision for resort to an umpire. Only twice was there agreement to use this procedure. One instance, known as the "Tar Barrel Case," may be found in a published opinion by Willard Hotchkiss, at 2 Labor Arbitration Reports at Page 491.[3] The other was a case submitted to Professor I. L. Sharfman, and decided by him on February 2, 1939. It concerned penalties for engaging in a sitdown strike at Chevrolet Flint Division.[4]

B. Establishment of the "Office of the Umpire," 1940.

The General Motors — UAW "Office of the Umpire" was created substantially in its present form by the Collective Agreement between the corporation and the union dated June 24, 1940. In that agreement the corporation for the first time contractually recognized the UAW-CIO as the exclusive bargaining agent for all production and maintenance employees in the plants where the union held National Labor Relations Board Certifications.

The structure of the 1940 Agreement insofar as it related to the umpire's function was clear cut, remarkably so in view of the fact that the parties were then without extensive experience in the administration of a Collective Agreement. The umpire was given jurisdiction to decide certain specified griev-

[3] See also 2 *Arbitration Journal* 37, January 1938.
[4] Not published.

ance disputes, and was prohibited from ruling upon others, notably those concerning general wage rates, and production standards. Coupled with the grant of power to the umpire was a union promise that its members would not engage in unauthorized strikes or stoppages, and a concession that the corporation had the right to discipline employees for violation of that promise. As to disputes concerning production standards and general wage rates, the corporation acknowledged the union's right to authorize strikes during the term of the Agreement, subject to some procedural limitations as to the extent of prior grievance processing and notice.[5]

It is thus clear that the "quid pro quo" for the no-strike promise was the right granted to the union to go to the umpire for final disposition of a grievance, and vice versa. The scope of the umpire's jurisdiction was substantially equated with the scope of the no-strike promise. This equation has subsequently been generally recognized as a sound foundation upon which to build a grievance arbitration system. The question that comes to mind is: what were the circumstances that led General Motors and the UAW voluntarily to agree to it so early?

As has been noted, the period 1937-1940 was marked by many wildcat strikes. By 1940, international union representatives servicing General Motors locals were aware of the difficulties resulting from attempts to resolve grievances by such methods. As early as 1938, according to McPherson,[6] Walter Reuther, then head of the Union's GM Department, recommended to the UAW Executive Board that it seek the appointment of a permanent arbitrator to decide grievances. The recommendation was not adopted. In 1939, Mr. Reuther was designated head of the General Motors Department of the union, and shortly thereafter commenced talks with company

[5] Paragraph 2, Strikes and Stoppages Section, 1940 Agreement.

[6] *Labor Relations in the Automobile Industry*, p. 55. (Brookings Institute, 1940).

representatives about a permanent arbitration system. In that activity he was assisted by Sidney Hillman. On June 10, 1939 Mr. Reuther spoke out strongly against wildcats to the recently created General Motors Council of the union. A union report issued on that date read in part as follows:

> ". . . The international and the GM Department will use all of its resources and power to win a just and fair settlement of all legitimate grievances. When we are right we shall *fight* with all our might. Just as we shall fight to protect the membership from any harmful action on the part of the management, so we shall fight any individual or group of individuals who feel that they can initiate unauthorized stoppages or other such action with complete disregard of the best interests of the membership. We shall not tolerate an attitude on the part of the individual who feels that he may enjoy special privileges at the expense of the union.
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> "The international union and the National Department is unalterably opposed to, and will not tolerate any unauthorized strikes or stoppages of work. We have established grievance procedures to be followed in the handling and adjusting of grievances. In the past, company provocation caused many stoppages. Some were the result of the failure of the Martin Administration to carry out its responsibility and others were the work of individuals who acted in complete disregard for the best interests of the union and their fellow workers.
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> "The National GM Department takes its position on the matter of unauthorized strikes without hesitation or qualification. We who claim the right to strike must assume the responsibility of striking when it is right to strike."

Opinion was also expressed within the union that not every grievance was meritorious, and that the union ought not support by strike action every member who claimed to be personally aggrieved even though his local union representative thought the grievance was meritorious. Speaking to GM Council members on this point, Mr. Reuther is quoted in the minutes of a June 1940 meeting as follows:

"First of all when you accept the principles of an impartial umpire, you have to accept it. You cannot strike General Motors plants on individual grievances. One plant going down will affect the 60 other plants. You have to work out something to handle individual grievances. We are building a union and we have the necessary machinery to build it. On individual grievances we have the shops down to where they are not going to discriminate against our workers. When you reach the stage of an impartial umpire, I think that you have reached the stage of building up. The Clothing Workers have the impartial umpire and they have made more gains with an impartial umpire, more gains without a strike than any other group of workers in America. Out of 12,000 workers in Chicago, they have had only four or five cases. I think that we must be prepared to accept the umpire. I don't want to tie up 90,000 workers because one worker was laid off for two months. That is a case for the umpire. Let's accept the umpire in his true sense. That means in these specific phases of the agreement where it says it is going to be binding, that we have got to go by it. It will be binding for us and the company too."

Supporting him along these lines are the following remarks by another.

"Fifty percent of the grievances coming in from all over the country are not worth a damn. The reason I go for this formulation is because basically we've got to educate our committeemen to do a job in the first place. I think that we should be men enough to judge a grievance on the strength of the contract and not try to make a grievance that does not exist. The more we complicate this thing, the more we are going to be lessening the speed of the grievances. Hillman and Murray have advised us that this set up has worked well after years of experience in their organization."[7]

It is apparent from these and other sources that there was a

[7] GM Council Minutes, June 1 and 2, 1940. Not published.

union need for a system of disposing of individual grievances other than by strikes.[8]

A similar need was felt by the corporation. The high incidence of work stoppages previously mentioned was a matter of grave concern to it, and during the period 1937-1940 it had repeatedly sought assurances from the union that it would eliminate such activity. Although the corporation had previously announced a policy of opposition to unlimited "arbitration," some of its officials made an early start to study the implications of establishing a permanent "umpire" as the terminal point in the Grievance Procedure. The distinction between an "arbitrator" and an "umpire" has an ancient legal background.[9] To General Motors, however, the word "umpire" signified a specific and limited form of arbitration by a single person.[10]

As early as 1934, a high ranking General Motors representative drew a distinction between submission of "true long term interests" of a business to arbitration, and the submission of a "debatable question of fact" to an impartial agency. He vigorously opposed the former, while advocating the latter as one of the elements of a sound labor relations policy.[11]

In July 1935, General Motors published a "statement of . . . basic policies governing its relations with factory employees," which also makes that distinction in the following words.

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[8] Heliker, *op. cit.*, p. 98. See also remarks of T. A. Johnstone in University of Pennsylvania, November 1948 "Labor Arbitration Conference Proceedings," pages 3 and 4.

[9] "The term umpire is sometimes used to designate a presiding arbitrator or an arbitrator selected by other arbitrators. . . . More correctly it should designate a person selected to make a sole decision despite nonconcurrence of others acting as co-arbitrators," Updegraff and McCoy, *Arbitration of Labor Disputes,* pp. 2-3. (Commerce Clearing House, 1946).

See also Sturges, *Cases on Arbitration Law,* chapter 3. (Matthew Bender & Co., 1953).

[10] *The Detroit News,* June 18, 1940, reporting the General Motors Agreement on an umpire system said, "The company spokesman stressed that the umpire will not be an arbitrator or an impartial chairman, but rather a judge in that he cannot make new regulations but can only decide questions under the rules and regulations agreed on between the corporation and the union."

[11] "Authority and Responsibility in Industrial Management," an address to the Institute of Public Affairs, University of Virginia, July 14, 1934. S. M. DuBrul. Unpublished.

> "Management is charged with the responsibility for promoting and maintaining the best long-term interests of the business as a continuing institution. Therefore, while management should exhaust every means in endeavoring to settle all problems of employer-employee relations that may arise, it cannot agree to submit to arbitration (which is a surrender by both sides to the authority of an outside agency) any point at issue where compromise might injure the long-term interests of the business and therefore, in turn, damage the mass of employees themselves.
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> "This does not in any way mean that impartial or judicial agencies have no place in collective bargaining. On the contrary, controversial questions of fact, such as discrimination cases and questions of layoff, may frequently be more amicably and speedily settled through an impartial, competent, fact-finding agency having the confidence of both sides.
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> "It is important to insure compliance with the corporation's policy governing those questions which, when necessary, may be submitted to outside arbitration or mediation, as distinguished from those questions resting essentially upon managerial responsibility. Therefore, instructions are hereby laid down that no case is to be submitted to the determination of any outside agency without the specific authorization of the Executive Committee."

The Collective Agreement between General Motors and the UAW dated March 12, 1937 reflected this policy, in that the corporation reserved the right to decide on a case by case basis what grievances it would submit to decision by a neutral third person.

In the year or two prior to 1940, corporation representatives began to look closely at the experiences of others with permanent grievance arbitration systems. Of particular interest to those concerned, were the experiences of Charles P. Neill who for many years had functioned as an "umpire" in the Anthracite Coal Industry. Dr. Neill's views appear to have strongly influenced the corporation's attitude. About 1939, I am informed, the corporation demonstrated interest in the activities

of Dr. George W. Taylor, then impartial chairman in the Hosiery Industry. I am informed that it also concerned itself with the arbitration procedures in the Men's Clothing Industry where Harry A. Millis had served.[12]

I have not found any contemporaneous notes or minutes describing the exact course of the 1940 negotiations on the question of creating a permanent grievance arbitration system, but from interviews, union communications, press releases and other sources, I venture the following reconstruction as being a reasonable supposition:

Having been made aware of the union's interest in a permanent arbitrator, the corporation had prepared itself to take an affirmative position on the subject. I have found no evidence that the union ever submitted to the corporation a definitive statement of what it wanted by way of arbitration procedure. The draft clauses on the subject seem to have been devised by the corporation, and submitted to the union for its consideration. The union's reaction to the draft was that the umpire's defined powers were too narrow, and it attempted to persuade the company's negotiators to broaden them. The corporation stood firm on the substance of its draft, however, and ultimately the union accepted it, substantially as first proposed.

Compared with other collective agreement clauses providing for a permanent arbitrator, the wording of the General Motors —UAW agreements should not strike one as being abnormally restrictive in the light of present day standards. It is more explicit than some, to be sure, and it emphasizes that the umpire is an officer with only limited powers. But its tenor is consistent with the concept of grievance arbitration as it has come to be accepted generally throughout the United States.

[12] Corporation spokesmen subsequently acknowledged that they were influenced by Sidney Hillman and his accounts of experiences with the permanent arbitration systems in the Men's Clothing Industry. Heliker, *op cit.*, p. 97. General Motors proceedings of "Fourth Educators Conference" (1948), p. 6. See also, Fredman, "Umpire System—a High Court for Grievances," *Commerce Magazine*, vol. 44, January 1948.

The point to be noted, however, is that the language was adopted without significant external pressures in 1940, six or seven years prior to the post-war rapid expansion of arbitration as the terminal point of a grievance procedure, and at a time when grievance arbitration was largely untried. Whether General Motors' early opposition to an "arbitrator," as distinct from an "umpire," was necessary in the light of subsequent developments in the field may be left in the realm of speculation. The fact is, as the corporation and the union have frequently announced, that they "pioneered" the umpire system in the automobile industry. Their courage and efforts in so doing have had effect in many quarters since those early days.

C. Developments since 1940.

1. *Changes in the scope of the umpire's jurisdiction:* While the 1940 Agreement, and all subsequent agreements, explicitly limit the scope of the umpire's jurisdiction and forbid him to make decisions on cases as to which he has no power to rule, that jurisdiction was not confined to only a few sections of the Agreement. Paragraph 19 of the Grievance Procedure Section of the 1940 contract stated:

> "It shall be the function of the umpire, after due investigation and within 30 days after submission of the case to him, to make a decision in all claims of discrimination for union activity or membership and in all cases of alleged violation of the terms of the following sections of this Agreement, and written local agreements supplementary to this Agreement on these same subjects: Recognition; Representation; Grievance Procedure; Seniority; Disciplinary layoff and Discharge; Call-in Pay; Working Hours; Leaves of Absence; Union Bulletin Boards; Report of Physical Examinations; Strikes and Stoppages; and of any alleged violations of written local or national wage agreements that may be hereafter executed between the parties."

Subsequent changes in the powers of the umpire have been few. The most significant ones in terms of overall impact upon employees and the responsibilities of the umpire had to do with

penalties in discipline cases. The 1940 Agreement restricted the umpire to a finding of guilt or innocence in discipline cases. As to that, Paragraph 20 of the Grievance Procedure section said:

> "(20) In disciplinary layoff and discharge cases the umpire shall have the power only to adjudge the guilt or innocense of the employee involved. If the umpire shall adjudge the employee innocent of the offense for which he was disciplined or discharged, the corporation will reinstate the employee in full with accumulated seniority, and in case the employee was penalized by loss of working time, will pay him back wages, less any unemployment and other compensation from any source that he may have received during the period of his separation from the payroll of the corporation. If the umpire shall adjudge the employee guilty of the offense for which he was disciplined or discharged, the corporation shall not be requested by the umpire or the union to modify the penalty imposed by the management."

In the 1941 Agreement that clause was omitted, and the following was included, in Paragraph 47,

> "The corporation delegates to the umpire full discretion in the cases of violation of shop rules, and that in cases of violation of the strikes, stoppages and lockouts section of the Agreement the umpire should have no power to order back pay . . ."

This change, it has been said, was brought about in part at least by Umpire Taylor who indicated to the parties that in some cases he had found employees "not guilty" rather than "guilty," although on the facts he would have preferred to impose a modified penalty if he had the power to do so.[13]

The phrasing of the 1941 Agreement on this point uniquely asserts that it is "*the corporation*" which "*delegates to the umpire*" the discretion. This reflects the corporation's attitude that the maintaining of discipline was a management function. The power to award back pay was withheld in work stoppage penalty cases. The 1941 Agreement provided for immediate

[13] Heliker, *op. cit.*, p. 107.

umpire hearing of such cases, however, if the penalty imposed was two week's layoff or more. Such early hearings permitted some modification (without back pay), without forcing the employee to bear a great loss of time. In the 1950 Agreement this remaining restriction against back pay was removed, and since then the umpire has had full discretion as to penalty in stoppage cases as well as other discipline cases.[14]

One other change in the umpire's jurisdiction deserves passing comment. As previously indicated, the umpire had "no power to establish or change any wage." This was never taken to mean that he could not rule on issues of proper job classification within *existing* wage agreements, and many cases of that nature were submitted. Upon a finding by the umpire that a contested job was a "new job" not susceptible to classification within the scheme of an existing wage agreement, the case was regularly returned to the parties for negotiations for a *new* classification and rate.

In the 1948 Agreement,[15] the parties expanded the umpire's jurisdiction to permit him to establish rates for such "new jobs," if the parties themselves were unable to resolve their differences on that point, but they limited him to the "area of dispute," and required that he be guided by "specific criteria stipulated and agreed to in writing . . . in each individual case." They also agreed that either party could, after "one year of experience," terminate the expanded jurisdiction. That expanded jurisdiction clause was never invoked, and no case involving the setting of a rate for a "new job" was ever presented to the Umpire. The clause was carried into the 1950 Agreement, but was rescinded by the union by a letter dated February 10, 1954. The inference which I draw from this is that if the parties are able to agree on the "criteria" for setting a rate, they are likely to agree on the rate itself. Inability to agree on the criteria precluded resort to the umpire.

[14] The umpire's discretion has in the main been exercised within the principles of "corrective discipline."

[15] Paragraphs 46 and 102 (c), 102 (d) and 102 (e).

Issues concerning pensions or insurance arising under the Agreements covering those items executed in 1950 were expressly excluded from the umpire's jurisdiction, as were questions as to Supplemental Unemployment Benefits arising under the 1955 Agreement. The Pension Agreement contains its own provision for neutral third party decisions in individual cases.[16] So does the SUB plan.

2. *Procedural Changes.* Since 1940 there have been no changes in the Agreements, relating to umpire procedures. In practice the parties have not since 1944 or earlier, adhered to the language of the Agreement which requires that cases be presented to the umpire in writing in advance of the hearing, and that hearings be held only at the umpire's "option." [17] Almost without exception cases are presented at hearings, in the manner hereinafter described. One significant change in procedure occurred in 1951 as the result of a decision. Prior to that time there had been a few occasions involving testimony of employees in the bargaining unit, when offers were made to produce witnesses in secret, and the umpire interrogated them in the absence of both the company and the union. In 1951 the propriety of this was squarely challenged by the union, and in decision G-13 the umpire ruled that it was contrary to Paragraph 45. The Agreement has always provided that "The umpire may make such investigation as he may deem proper . . ." but only on rare occasions has the umpire made independent investigations of facts beyond those testified to.[18]

3. *Changes in the umpires.* As is rather widely known, there have been comparatively many changes in the incumbency of the office. The first umpire was Harry A. Millis, but he served for only six months before resigning to become Chairman of the National Labor Relations Board. Dr. George Taylor suc-

[16] Section 3 B. The parties here used the title "impartial chairman" to describe the neutral third party.

[17] Paragraph 45.

[18] Decision C-278 is one such occasion.

ceeded him in January 1941 and remained in office until January 1942 when G. Allan Dash, Jr., was appointed. Mr. Dash was succeeded by Ralph T. Seward in July 1944. Mr. Seward left in November 1947, and Saul Wallen was then appointed. The writer, Gabriel N. Alexander, succeeded Mr. Wallen in November 1948, and stayed until June of 1954. Professor Nathan Feinsinger was then appointed, and now holds the office. The number of cases decided by each umpire is as follows: Dr. Millis ruled on only nine. Dr. Taylor issued 245 decisions; Mr. Dash 431; Mr. Seward 439; Mr. Wallen 88; Mr. Alexander 421, and Professor Feinsinger 128 up to the end of 1958.[19]

II

Operations of the System

A. Administrative Procedures:

1(a) *Grievance Procedure:* The National Agreement spells out a uniform procedure for the handling of grievances in all plants covered by it. Basically there are four steps, including the appeal to the umpire. The first step is between a committeeman and a department foreman (and may include a review of the foreman's answer by the same committeeman acting alone or accompanied by another committeeman, and a higher supervisor).[20] Supervision's answers are written on the grievance form. Step Two consists of a referral to the union shop committee for presentation to local management (and in large plants that may include a preliminary half-step to a union subcommittee for presentation to a sub-representative of management).[21] Minutes of step-two meetings are taken by management and copies are given to the union within six days after

[19] These are grievance cases, printed in the bound series. Mr. Dash and Mr. Seward decided additional cases involving maintenance of membership and checkoff issues which were not printed.

[20] Paragraphs 28-30.

[21] Paragraphs 31-36.

the meeting. If the union does not make seasonable objection to such minutes, the umpire will regard them as accurate.[22]

Step Three is designated by the Agreement as "Appeal to the Corporation and International Union" and involves the following: Upon receipt of an unsatisfactory answer from management at Step Two, the shop chairman gives local management a written "Notice of Unadjusted Grievance" and prepares a complete "Statement of Unadjusted Grievance," setting forth the *union's version* of the facts and contentions. Upon receipt of this *notice* management prepares a counter "Statement of Unadjusted Grievance" setting forth the *company's version* of the facts and contentions. These *statements* are then exchanged by the local parties. The shop chairman then forwards both *statements* to the office of the union's regional director who, after review and investigation, decides whether the third step appeal shall be made. The regional director or a staff man may enter the plant to investigate the case (subject to certain procedural requirements as to notice and time of entry).[23] Actual appeal is made by the regional director sending a "Notice of Appeal" to the plant management and the local union. The Agreement provides for third step consideration of the case by a four man board consisting of a regional representative and the shop chairman for the union, and two representatives of local or divisional management for the corporation, one of whom has not previously made a decision on the case.[24] If the case is not adjusted by this four man appeal board, the management gives a written decision to the shop

[22] This is a salutary principle. In the long run it promotes accuracy in note taking and minimizes subsequent disputes as to what was said and done at a meeting.

[23] Paragraph 38.

[24] The 1940 Agreement provided that this four man appeal board consist of the union's regional director or alternate; a representative of the union's General Motors Department and two representatives of the corporation having higher authority, who have not previously negotiated the case. Grievance Procedure Paragraph 14.

chairman and the union's regional director, together with a copy of minutes of the third step meeting.[25]

The fourth and final step in the grievance procedure, for cases within the umpire's jurisdiction is the appeal to the impartial umpire. The Agreement provides that appeals by the union are to be initiated by the regional director by the giving of a "Notice of Appeal" to the local plant management and to the international union at Detroit. In practice, notices of appeal are regularly sent to the umpire's permanent office as well.[26] Timely presentation of such notice places the case on the umpire docket.

Two additional provisions of the grievance procedure sections of the Agreement deserve mention: One, Paragraph 54 (1955), provides that any grievances that the corporation may have against the union shall be presented to the shop committee, and if not adjusted in two weeks, shall go to third step and be thereafter subject to appeal to the umpire. The corporation has avoided bringing to the umpire its complaints against the union, and I have found only two cases of that nature in the decisions of the umpire.[27]

The other provision to which I refer is Paragraph 55 which states that

> "Any issue involving the interpretation and/or the application of any term of this Agreement may be initiated by either party directly with the other party. Upon failure of the parties to agree with respect to the correct interpretation or application of the Agreement to the issue, it may then be appealed directly to the umpire as provided in Paragraph (43)."

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[25] Paragraph 42.

[26] Paragraph 43.

[27] A-41 decided March 28, 1941 involved a request by the corporation that the umpire direct the international union to revoke a strike authorization, and take other action on the ground that it had violated the no-strike clause. The plant involved, however, was not actually included in the National Agreement.

E-202, February 18, 1948, was a management complaint against the union handbilling the plant in a dues drive.

As written, that clause suggests the possibility that either party may raise hypothetical general questions of interpretation, not related to any actual dispute, and appeal such questions to the umpire for what in effect would be an advisory opinion. But the umpires have on various occasions expressed opposition to issuing opinions other than on the basis of an actual set of facts.[28] Accordingly, while there have been a number of cases brought directly to the umpire under Paragraph 55, without being processed through all steps of the grievance procedure, they have without exception been live cases, based on the actual facts of some existing or closely impending dispute.

Once a case has been referred to the umpire, it may not be withdrawn by either party without the consent of the other.[29] In practice many cases are in fact withdrawn, and both parties go to considerable lengths to give consent to a request by the other to withdraw a case. A method frequently used, and one that is recognized by other contract clauses, is that of settling or dropping a particular case "without prejudice." [30]

(b) *Screening of Umpire Appeals.*

Although the National Agreement itself contains no provisions requiring that cases appealed to the umpire be screened before actual presentation, General Motors and the union each engage in careful and effective unilateral screening procedures. I think the union's activities in this respect in particular constitute a remarkable and praiseworthy chapter in the annals of labor agreement administration.

Insofar as the contract itself is concerned, as previously indicated, the Union's decision whether or not to appeal a case to the umpire is the responsibility of the regional director. The union's earliest policy was to permit the actual practice

[28] B-10; D-34.
[29] Paragraph 52.
[30] See paragraph 43. Compare paragraph 34. See UAW Decision G-160. GM-IUE Decision F-156.

in this respect to conform closely to the contract provisions. Although the international union at Detroit, acting through its General Motors Department, was always interested in the umpire procedure, and has always provided representatives to assist in the final preparation and presentation of cases to the umpire, it did not in the first year or two attempt to review the judgment of the regional directors as to the advisability of appeal. By 1942, however, it began to appear that the umpire's docket was being overcrowded, and that too many cases were being appealed without sufficient justification, even from the union's point of view. An early move in the direction of screening appeals was made in February of that year when the General Motors council of the union adopted a resolution:

> "That each regional director have on his staff a person who is qualified to judge the merits or demerits of any case recommended for appeal to the umpire by any shop committee in his region for the purpose of discouraging the appeal of cases without merit."

In August 1942, at the instance of Walter Reuther, then director of the General Motors Department, the International Executive Board created a Board of Review consisting of three Executive Board Members [31] (or their alternates) and gave it power to decide by majority vote which of the appeals instituted by the various individual regional directors would actually be submitted to the umpire. As thus originally constituted, the Board of Review met only in Detroit, and screened appeals on the basis of a review of the written records of the grievances. The Board functioned in this manner for about three years. In 1945, the procedure was changed so as to give the local unions better opportunity to present their views as to the merits of the cases. At that time nine Executive Board Members (or alternates) were designated to function as three-

[31] Executive Board Members were not obliged to, and normally did not sit in review of cases from their own regions.

man Boards of Review. These Boards convened not only at Detroit, but also sat in or near the city of the plant involved, and screened cases not only on the basis of the written records, but also on the basis of oral presentations by the regional representatives assigned to serve the plant, and the statements of local union representatives. The Board of Review operated substantially in the manner described until June 1953. (A minor change occurred in September 1952 when six more men were assigned to function as Board Members, making a total of five three-man boards available for service. The actual work involved in reviewing cases was substantial, and as the Board Members had other union duties as well, they were pressed to the point where additional manpower was deemed necessary.)

In June 1953, the union made a further change which brought its screening procedure substantially into its present form. A single permanent board was created consisting of four full-time international representatives, three of whom constitute a required quorum for the consideration of any case.[32] This board operates as a part of the General Motors Department of the international union, and not, as did the earlier Boards, directly as agent of the Executive Board.

The Board of Review functions between the time that a case is noticed for appeal by the regional director, and the time that an umpire hearing is scheduled for cases in the area from which it was appealed. As the notices of appeal to the umpire are filed, they are docketed, and grouped as to plant and vicinity. Before setting the time and place of an umpire hearing in a particular locality, the Board of Review goes to the plant cities and hears and deliberates upon the cases then pending. After consideration, the Board will issue its opinion in each case as to whether it be withdrawn, or be presented to the umpire, or otherwise handled. These opinions are internal

[32] Some minor changes have been made in recent months also due to press of work but they are not regarded as permanent.

union documents and constitute no part of the grievance procedure records of the case.

A decision by the Review Board not to present a case to the umpire has always been subject to appeal within the union's organization. From the inception of the Board until 1949, the course of such an appeal was to the International Executive Board, and from it to the convention. In March 1949, the appeal to the Executive Board was dropped, and since then the step is from the Board of Review directly to the convention.

A more comprehensive analysis of the activities of the union's Board of Review is beyond the scope of this paper. Its operations are viewed with pride by the men in the union who have worked on or with it, and in my opinion such pride is justified by the effort expended and the integrity manifested in and by the Board's activities. Corporation representatives have from time to time expressed their respect for the Board. To a large degree the existence and activities of the Board have been responsible for the paucity of umpire decisions. Its history deserves closer study by anyone interested in reducing the case load in a permanent arbitration system.

The corporation's screening procedures while also highly effective are not as formalized as the union's. Cases on appeal to the umpire have always been investigated, prepared and presented by representatives from the corporation's personnel staff at Detroit. These men travel extensively in the course of their work and are thoroughly familiar with corporation policies and umpire procedures and decisions. If in the course of investigation such a representative concludes that a case should not be defended, he will so advise local management and arrange a settlement with the union.

As the years passed and the union's Board of Review continued to be effective in screening out cases, the corporation tended to frame its own final review actions around it. Thus in more recent years, the personnel staff has tended to defer its investigation and preparation of appeals to the umpire,

until after the union's Review Board finally passed upon them. As the practice has grown, the General Motors Department of the Union advises the corporation which of the docketed appeals have been passed by the Review Board for actual presentation to the umpire. The time and place of the umpire hearing is then fixed, and the umpire's office notified. The corporation's staff men then begin their investigation of those cases. From then on frequent informal contacts take place between the corporation and union representatives as to possibilities for settlement, or referral back to the local plant, or the disposal of problems in connection with presentation to the umpire, such as the discovery of new evidence or the unavailability of witnesses. These contacts take place right up to the eve of the scheduled hearing. One result is that many scheduled appeals are not heard. Another is that those which are heard represent a hard core of carefully screened issues frequently very difficult to decide.

In the years 1950 to 1958 inclusive there were about 10,800 cases appealed to the umpire by the union's regional directors. Of these, only four percent were actually heard and decided by the umpire. About 55 percent were screened out by the union before they were scheduled for hearing as above described. The remaining 41 percent were disposed of by the corporation and union after they were so scheduled.[33]

(c) *Use of "New Evidence" in the Grievance Procedure.*

The National Agreement does not expressly state any rule as to the use of "new evidence" at any stage of the Grievance Procedure. As early as March 1941, however, Umpire Taylor undertook to return to the parties a case where a pertinent fact came to light for the first time during the umpire's hearing.[34] Repeatedly since that time the umpires have opposed the view advanced by some, that if a case seems to be headed

[33] These are fairly close estimates. Precise figures are not available.
[34] Decision A-25.

for arbitration, it is permissible or desirable for a party to keep an "ace up his sleeve" by withholding evidence during the prior bargaining.[35] Presentation to the umpire of important new contentions or evidence by either party has almost invariably resulted either in a return of the case for further negotiation, or in a decision excluding it from consideration. There is at least implied support for this principle in Paragraph 43 of the National Agreement. In Decision E-295 the umpire found that both parties were presenting new claims and stated:

> "Both parties have erred by presenting new contentions at this late date. "The case" which has been submitted to the umpire under paragraph 48 is clearly not "the case" which was considered by the appeal committee under paragraph 39. . . . That it must be, in all substantial respects, is so axiomatic as not to require extended discussion at this time. It is sufficient to point out that there are three steps in the Grievance Procedure ahead of the umpire and that they exist to enable grievances to be settled by collective bargaining. To the extent that new contentions are added at the fourth step, the collective bargaining process is undermined. The issues which may be considered by the umpire without subverting the entire grievance procedure are only those which have been previously negotiated by the parties."

The umpire decisions have not only been consistent and clear to the effect that new contentions at the fourth step are not proper, they also hold that the second step is the place where the facts and issues should be fully developed, and that subsequent shifts of position are improper.[36]

The practice of precluding "new" evidence and contentions at the umpire step occasionally results in arguments as to what constitutes a "new" point, as distinct from the corroboration or explanation of an "old" point advanced at the first or second

[35] See, e.g., Copeloff, *Management Union Arbitration,* page 34, (Harper & Brothers, 1948).

[36] The result is to make the third step essentially a *review* by the parties, and the fourth step a *review* by the umpire. The author believes this to be a very desirable formulation of grievance processing.

step. It also raises some problems of proving what was or was not said by the parties at prior grievance steps. The existence of comprehensive prior written records consisting of the grievance, answers, minutes and statements of unadjusted grievance minimizes the impact of such problems on the main issues before the umpire. My impression is that few companies and unions go so far as General Motors and the UAW do in the matter of recording the facts claimed and contentions advanced at all steps of the Grievance Procedure. The "Statements of Unadjusted Grievance" in particular, afford each party full opportunity to state the case in their own words before it is considered at the third step. Use of such statements minimizes differences as to the meaning or accuracy of minutes taken by one party or the other—a kind of difference that pervades and perplexes Grievance Arbitration in many quarters.

2. Procedures at the umpire step.

(a) *Office Procedures.*

The National Agreement states that "The office of the umpire shall be located in Detroit," and since 1940 a suite of offices has been maintained there. Originally they were located in the Boulevard Building, at Woodward Avenue and Grand Boulevard, a block or two from both the General Motors Building and the union's international headquarters. In 1947, the Boulevard Building was largely taken over by the State of Michigan, and the umpire's office was moved. For a year or so thereafter it was temporarily located in the General Motors Building, and then was moved downtown to the Guardian Building. The Boulevard Building office contained a hearing room; the later locations did not. The case records have been continuously maintained at the umpire's office. Responsibility for routine office operations falls upon the incumbent; the parties do not concern themselves with it. The extent to which the umpires have actually used the Detroit office has varied, depending upon their residence and habits.

The umpire's expenses for rent, travel, secretarial and other services, etc., are paid from a revolving fund created by the parties and replenished by them on the basis of periodic statements submitted by the umpire. The umpire is custodian of the fund.

One full time secretary has always been employed by the umpires to handle the typing, filing, clerical work, and travel arrangements. The secretary is the umpire's employee, and has no independent powers or duties.

From time to time the umpires have employed assistants. William Whittemore was employed in that capacity by Dr. Taylor, and for a time by Mr. Dash. He took notes at hearings and made some investigations, but did not, I am informed, assist in deliberations, or the writing of decisions. During Mr. Seward's term, the parties at various times considered hiring an assistant, but took no action in that respect until the end of 1946. By then it had become apparent that in addition to carrying the regular docket of appealed grievances, Mr. Seward would have to decide about 400 individual disputes over the application of an escape clause in the dues deduction paragraphs of the 1946 Agreement. The parties agreed to provide him with an assistant for that purpose, and the author of this paper was so employed, commencing about January 1947.

I acted much like a hearing officer: That is, I conducted hearings and, after conferring with Mr. Seward as to the issues and evidence, wrote decisions which he signed.

Hearings in the dues deduction cases were largely completed by the summer of 1947. Thereafter, and until Mr. Seward was succeeded by Mr. Wallen in January 1948, I also assisted in the hearing and disposition of cases on the regular docket.

The question of retaining an assistant was under consideration by the parties during Mr. Wallen's term, and again after I was appointed umpire. The case load was increasing at the time, and the parties anticipated that it would continue to rise. In June 1949, Professor Arthur Ross was appointed assist-

ant to the umpire. He obtained leave of absence from the University of California to accept that position, and began to assist me in the hearings and preparation of decisions.

Contrary to expectations, the umpire's case load declined after 1949, and there was little actual need for an assistant. Professor Ross returned to his University post after serving for one year, and since then no assistant has been employed.

As previously indicated, the umpire's office maintains a docket of cases appealed. The Agreement does not require this, but the practice has been followed for many years. Withdrawals, settlements and rulings are accounted for, and at the end of each month the umpire sends the parties a revised list of pending cases. The company and the union compare this list with their own records and any discrepancies are corrected at that time.

The parties jointly decide upon the dates for hearings and the cities in which they will be held. The umpire's secretary then arranges for a hearing room at a hotel, and notifies the parties. The cities where hearings are held are selected on considerations of convenience to all who participate; the local, regional and national representatives of the parties. For example, a hearing scheduled for Indianapolis, Indiana may include cases from plants in Anderson, Muncie, Indianapolis, and Bedford. A hearing scheduled in New York City may include cases from plants in Bristol, Connecticut; Tarrytown, New York; Rahway, Linden, Bloomfield and Trenton, New Jersey.

The scheduling of umpire hearings is largely influenced by the activities of the union's Board of Review. Currently that Board operates in nine geographical sections of the country, and attends them in regular succession. Umpire hearings are scheduled for each section as needed, to consider appeals not withdrawn or settled. The national circuit is traversed twice a year. Frequently all cases scheduled are disposed of by the parties themselves and the hearing is cancelled. For the past

several years the normal practice has been to set a hearing for every third week, but again, many are cancelled.

(b) *Conduct of the Hearings.*

The actual procedure at a hearing is straight forward and largely devoid of legalistic or coutroom embellishments. The union's presentation is made by, or under the direction and responsibility of one of several international representatives from the General Motors Department, who regularly handle umpire cases. These men are not attorneys. They are assisted by regional and local union representatives. The corporation's presentation is made by or under the control of personnel staff representatives. Some of these men are lawyers by education, but not by practice. They do not function as legal counsel.

Presentations begin by the exchanging of written briefs and the reading aloud of such briefs. In disciplinary action cases the corporation opens and closes. In all other cases the union opens and closes.

As the reading of, and listening to, the briefs is usually the first disclosure to the umpire of the content of a case, he will, as he deems necessary, mildly interrupt and ask questions of the union and corporation, to assure himself that he is grasping the issues of fact and argument that are being raised. When the briefs have been read comments are exchanged. The parties at this time point out errors in the briefs, and these are corrected. Questions as to whether facts or arguments are new may also be discussed. An attempt is made at this point to bring the problem into focus.

If the parties and the umpire are in agreement that there are no disputes as to the facts, they will move at once to a final verbal summary, and the case will be closed.

If it appears that there are disputed questions of fact, or if it appears that the testimony of witnesses is needed for other reasons, the parties will call them and defer their summation until the testimony is in.

Witnesses are not sworn at umpire hearings, and normally no stenographic record is made of their testimony.[37] The umpire expects them to tell the truth neverthless, and on occasion may tell them so, although generally he relies on the chief representatives of the parties to explain the nature of the proceedings to their participants.[38] The witnesses' direct testimony is frequently given in response to a few simple questions put forth either by the representative of the party who produces him, or by the umpire. Each party is permitted to cross-examine, and if an important credibility issue is at stake, such examination may be extended. The umpire participates in the questioning, but attempts to refrain from opening new lines of inquiry. He takes notes of the testimony.

If desired by the umpire, or requested by either party, the umpire will inspect the scene of events disclosed by the testimony. In disputes over job classification he will customarily enter the plant to look at the job of dispute, and at other relevant jobs. Representatives of both parties accompany him on such occasions.

Ordinarily the presentation ends with the final oral comments of the parties. Post-hearing briefs are almost never filed.

The length of presentation varies, depending on the complexity of the case, and the number of cases on the hearing schedule. Prior to 1951 when the annual case load exceeded 100, it was customary for the parties to present four or five cases a day. More recently they have taken more time per case. Seldom, however, does a case require more than half a day to be presented.

An aspect of umpire hearings which deserves comment, is the use that the parties make of them to educate their local representatives. In addition to those persons needed to pre-

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[37] The National Agreement permits each party to make a record of the proceeding, (Paragraph 45) but only rarely has such right been exercised. One instance is noted in Decision F-92.

[38] The union has printed an education outline which sets forth an excellent description of the grievance and umpire procedures.

sent the case, both the company and the union from time to time bring other persons from neighboring plants to the hearing to afford them opportunity to observe how the hearings are conducted.[39]

The hearings are not open to the public, the press, or strangers. On rare occasions an outsider has sought entrance only to be excluded. The parties and the umpires have occasionally brought guests from time to time.

(c) *Awards and Opinions.*

The National Agreement is silent upon the question of written opinions, stating only that,

> "It shall be the function of the umpire, after due investigation and within 30 days after submission of the case to him, to make a decision. . . ." [40]

Nevertheless the umpires have always issued decisions in writing, accompanied by an opinion of varying length. In early years the opinions were stylized into sections, usually under the headings "Facts (or Nature) of the Case" "Corporation Position," "Union Position," "Observations and Conclusions of the Umpire" and "Decision." Starting with Mr. Seward in 1944, however, and continuing since then, the decisions have been written in a more free style, usually without formal subdivision, except that the final decision has always been stated separately.[41]

In earlier years the opinions tended to be longer. Both the corporation and the union, have at later times at least indicated opposition to broad generalized expressions by the umpire, and

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[39] This practice is but a small part of the overall training activities of both parties. The corporation maintains a continual program of foreman training on all aspects of supervisory responsibility including grievance handling. The union similarly attempts to train its representatives, and in more recent years, particularly, has developed a first rate handbook and discussion program for General Motors committeemen.

[40] Paragraph 46.

[41] Since Decision A-12 issued in January 1941, initials rather than names have been used to identify persons.

have preferred that he confine his discussion to the particular facts and issues presented in the case.

One important reason behind this opposition to "obiter dicta" is the fact that umpire decisions are given nation-wide distribution within the corporation and the union. They tend to affect not only the plant where the case arose, but other plants as well. Both parties, I believe, came to be desirous of minimizing the impact of decisions upon situations and practices that were not intended by them to be involved in the dispute ruled upon. Any arbitration decision is likely to raise new questions while purporting to settle existing ones. (This is not peculiar to arbitration decisions; it is a characteristic of published court decisions as well). To some degree at least, such results can be minimized by careful opinion writing. Whether the General Motors umpires have been more successful in this respect than other arbitrators is difficult to discern. My own impression, is that they have, and that since 1945 or so, the GM umpire decisions have been shorter and more concise than the average arbitration opinion.

Umpire decisions are delivered almost simultaneously to the parties. When the company and union offices were nearby in midtown Detroit, delivery was made by messenger—usually the umpire's secretary. Currently, decisions are mailed.

All umpire decisions are printed and ultimately bound by contract series which are lettered alphabetically.[42] Each party prints and binds for itself, but with identical format. The volumes are not indexed.

The corporation has various working indexes of decisions, as does the union. These have been made available to the umpire's office. In addition several indexes have been compiled in whole or part by the umpires. But these are private working tools, not intended for general use.

[42] The "A" series relates to the 1940 Agreement; "B" to the 1941 Agreement; "C" to 1942; "D" to 1945; "E" to 1946; "F" to 1948; "G" to 1950; "H" to 1955 and "J" to 1958.

The umpire decisions are not published in the legal sense; that is, they are not circulated for reading by the public at large, or released to the arbitration publication services. Both parties have, on the whole, regarded the office of the umpire as a private tribunal, and have been reluctant to permit the decisions to influence outsiders, the Corporation more so than the union, I believe.

B. Issues Brought to Arbitration.

During the 18 years of its existence, the office of the umpire has issued about 1,730 separate decisions. In the first nine years over a hundred decisions were issued each year, the average for that period being about 148 a year. During the last nine years there have never been more than 85, the average being about 45. The greatest number was in 1941, when about 215 were issued. The least number for a representative full year is 24, issued in 1957.[43] The trend has been distinctly downward, with occasional mild reversals. The significance of this trend as an indication of increasing self responsibility is enhanced by the fact that employment in UAW Bargaining Units covered by the National Agreement has increased over the 18 years. Despite the increase in the level of employment, and a corresponding increase in the number of written grievances filed, the percentage of grievances carried to the third and fourth steps of the Grievance Procedure has declined. The most dramatic shift in the location of settlements has been at the first step. In 1947 and 1948 about 45 percent of the written grievances were settled there. In 1949 this increased to 50 percent; in 1950 to 56 percent, and by 1954 it increased to about 60 percent. Second step settlements which in 1947 and 1948 amounted to about 40 percent have declined to around 30 percent, since 1953. Third step settlements have declined from about 13 percent in 1947 to 10 percent or less

[43] 1955 shows 20, and 1958 about 15, but those were years of contract negotiations, which tend to reduce the presentation of cases.

in 1956 and 1957. Cases decided by the umpire amounted to 8/10 of 1 percent in 1947, and have declined to 3/100 of 1 percent in 1957, the latest year for which information is available.[44]

As to the kind of cases decided by the umpire, the largest groups are those relating to disciplinary action, seniority, and wage classifications in the order named. Certainly disciplinary action cases comprise the largest single category of cases over the whole history of the office. This is consistent with the pattern in the automobile industry, I believe, but is probably contrary to experience outside the industry. As previously stated, starting with the 1941 National Agreement, the umpire was granted "full discretion" with reference to disciplinary action cases, except for violation of the no-strike clause. Later even this restriction was removed.

Within the area of "full discretion" thus granted, the General Motors umpires have consistently relied on the concept of "Corrective Discipline" to determine the severity of penalties. The earliest mention of this doctrine that I have found in the decisions is Decision B-130, decided by Mr. Dash in March 1942. Space does not permit me to devle intensively into the ramifications of "Corrective Discipline."[45] It may be observed, however, that the doctrine contemplates that for most offenses against the shop rules, layoff penalties of increasing severity should be imposed as preliminaries to discharge, and that discharge should not be imposed until it fairly appears that an employee is incorrigible.

Seniority cases, including problems of layoff, recall, promotion, demotion, acquisition and loss of seniority status, etc., make up the second largest category of umpire decisions. The

[44] The percentages are based upon the number of *written* grievances *settled* (not necessarily *filed*) in calendar years, and are from unpublished data compiled by the corporation.

[45] The concept has been traced to the Chicago Garment Industry arbitration system. See Heliker *op. cit.*, p. 59, citing Kestnbaum, *Study in Management Prerogatives,* p. 96.

National Agreement establishes some of the seniority rules, and to the extent that it speaks positively, no local agreement may supersede it. But the National Agreement provides for a wide degree of latitude at the local plant level for the fixing of seniority rules, and almost every plant has its own local written seniority agreement. Many umpire decisions have been issued interpreting and applying the local seniority agreements.

The third largest category of umpire decisions relates to wage problems, including disputed classification of jobs. General Motors has never adopted a formal job evaluation system, either by agreement with the UAW, or unilaterally. Whatever consistency it seeks to maintain among rates for similar jobs in various plants, has been an internal matter, not used as a basis for argument to the umpire. The National Agreement has always provided for the establishment of wage scales by local negotiations.[46] As a result, job classification cases have been presented to the umpire in as variable a frame of reference as the ingenuity of the parties could muster. Factors such as experience, skill, working conditions, etc., have been emphasized or minimized by each party as their interests in particular cases dictated. Almost without exception in such cases the umpire visited the plant, observed the job in dispute and related jobs, and in deciding, evaluated the arguments in the light of what he saw as well as what he heard. The underlying course of reasoning in all such cases is that the umpire seeks to determine the basis of job classification used by the local parties in setting wage rates and to classify the job in dispute on that basis. Past practices are regarded as highly significant in making such determination.

As has been indicated, the umpire has no power to fix a wage rate for a "new" job. He may only decide whether a disputed job properly falls into some existing classification and if so, to direct its placement there. If he finds that the dis-

[46] Paragraph 97.

puted job is not susceptible to being placed into an existing classification, he returns the case to the parties for negotiation for a new classification and rate to cover it.

Looking beyond the significance attributable to the number of cases decided in the three categories mentioned, I find that the following kinds of problems seem to have been of important concern to the parties. The reciprocal rights and duties of union and management representatives in the investigation and processing of grievances was a matter of continuing interest on both sides, and of basic concern to the umpires. The course of decision in this area continually emphasized the necessity of respect for orderly procedures, and the dignity and responsibility of the persons participating in them. Another area became important because General Motors management was jealous from the outset of its right to "deploy the working forces": That is, to transfer men from job to job as they were needed. A number of important cases in early years were those that turned upon the meaning to be placed upon National Agreement clauses affecting the transfer of employees. A third area in which both parties were sensitive, related to the operations of plants at less than full work weeks. These cases arose when production declined. Undoubtedly there are other areas in which various umpire decisions are regarded as particularly significant by one party or the other, but only a comprehensive research project could unearth them all.

No single or dominant reason can be reliably cited as to why cases are appealed to the umpire. Among the various possible reasons suggested by the Board of Editors, each is undoubtedly responsible for some: Thus, *inadequate prior investigation* of the facts has been commented upon by the umpires in some decisions, particularly earlier ones. On the whole, however, this omission does not loom large as a reason for appeals: *contract ambiguity* is certainly an important reason, at least on the assumption that any clause as to which there is disagreement as to meaning is ambiguous. (One sidelight under this

heading which seems worth noting arises from the situations, not infrequently seen, particularly in large corporations, where new people see new meanings in old words. With the passage of time, and changes in company and union representatives and arbitrators the original meanings of agreement terms may be lost to sight. To some extent, but not wholly, the older decisions provided protection against this at General Motors.) *Changes in business conditions* more than *changes in technology* are demonstrably related to the frequency of umpire appeals. The wartime conversion and reconversion periods increased the number of problems raised. Large scale layoffs or rehirings also tended to generate grievances and appeals. *Internal company or union politics* are seldom made known to the umpire, and may not reliably be regarded as causes for individual umpire cases at General Motors. There is evidence, however, that the volume of first step grievances usually tends to increase prior to elections of local union committeemen. But, since 1950 such increases apparently have not resulted in any correlative increases in cases actually heard by the umpire.

C. *Umpires' Philosophy of Arbitration.*

Although, as noted, the office of the umpire has been held by various incumbents, and although there are substantial differences in the personalities of the incumbents, as well as in their education and professional backgrounds, it is true, I think, that on the whole they have all administered the office pursuant to a uniform philosophy or policy, that may be described simply as one of "adjudication." Put another way, the consistent course of approach has been one of self restraint against any tendency to disregard the plain mandate of the National Agreement that:

> "The impartial umpire shall have *only* the functions set forth herein . . . (and) . . . any case appealed to the umpire on which

> he has *no power to rule* shall be referred back to the parties without decision." [47]

The National Agreement does not vest in the umpire any power to mediate. It imposes on him the duty to "make a decision" on the cases submitted to him which fall within his jurisdiction. Accordingly the General Motors umpires with rare exceptions, have functioned as adjudicators, not mediators.

That is not to say that all the umpires have administered the office in exactly the same manner. During the incumbencies of Dr. Taylor and Mr. Dash, for example, the practice was for the umpire usually to advise the parties verbally, in advance of issuing a written decision, what the decision was going to be. That practice was abandoned when Mr. Seward took office, and has not been indulged in since. Since then the general rule has been that there is no contact between the parties and the umpire with reference to the outcome of a particular case after the hearing is closed. It has not been entirely uncommon, on the other hand, for the parties to meet with the umpire to discuss decisions already issued, or problems of general substantive or procedural nature.

But the early practice of holding what were known as "side bar" conferences did not amount to mediation as that function is commonly understood. Dr. Taylor did not conceive the umpire's function to be that of a mediator, or an arbitrator with general powers. In a preface to the first volume of umpire decisions he stated in part:

> "Since the umpire's sole responsibility is to apply terms of the basic agreement to specific cases, he has no right to change or modify this agreement. While the umpire decisions must recognize the fundamental necessities of both parties, even this cannot go to the point of changing agreement terms. As a matter of fact even the errors that might have been incorporated in the agreement are not subject to change by the umpire. Only the parties can change their agreement, for if the umpire

[47] Paragraph 44. Emphasis added.

> should start to change what he considered to be errors, the way would be open to change all the terms of the agreement and thereby to thwart the entire basis of the relationship between the parties." [48]

Similar expressions of philosophy have been uttered by other umpires.[49]. Speaking in 1949, I put the matter this way:

> "When the parties come to the umpire they encounter a pretty rigid kind of realism: that is, what does the agreement say?, and if the answer therein is clear there is no escape from it. Such an answer may not be so good for one side or the other or both. But if the agreement compels it, the umpire does not change it upon considerations of policy, expediency or philosophy".[50]

The question is raised whether the umpire's concept of this role agrees with the attitude of one or both parties towards it. I am not aware of any expression of responsible company or union spokesmen to the effect that the umpires or any of them have misconstrued their function. That is not to say that the parties have always been in agreement as to all facets of the umpires' behavior during the past eighteen years. With referenc to particular decisions, both parties have from time to time expressed dissatisfaction with the outcome, and have on infrequent occasions suggested that particular decisions represented improper exercises of the umpire's powers. In addition, the union, in earlier years, was critical of certain of the agreement clauses which imposed limitations on the authority of the office. Some of those criticisms have been resolved by amendments of the clauses. But as far as I know the UAW has not contended

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[48] Decisions under the 1940 Agreement.

[49] Seward: "Forward" to the umpire decisions 1942 and 1945 agreements. Wallen: 1948 General Motors Educators' Conference, p. 50-51.

[50] General Motors 1949 Educators' Conference, p. 26. A forceful rationale in support of close adherence by a permanent arbitrator to the terms of the contract goes like this: If the parties are confident that the umpire will uphold their rights if they appeal to him, they are more apt to be willing to compromise or disregard the agreement on occasions when it seems expedient. Conversely they are less apt to compromise any case, if the umpire accepts such action as grounds for departing from the contract in later cases.

either that under the agreement as it is written the umpire should mediate, or that the agreement should be changed so as to authorize him to mediate.

My impression is that the union is satisfied with the central notion that the umpire should act in a judicial manner: That is, decide cases on the basis of the facts and his opinion as to the meaning of applicable agreements, but that it would like to broaden his jurisdiction in some respects. Notably, however, the union does not want that jurisdiction expanded to include production standard disputes.

Previous General Motors umpire decisions play a substantial and significant role in the presentation to the disposition of cases, but there is no requirement in the contract that the principle of "stare decisis" be followed, and there are some indications in the decisions that the umpire does not regard himself as bound by a prior decision which upon consideration he finds to be erroneous.[51] Both the company and the union from time to time cite prior decisions in support of their positions, and on rare occasions each has attacked holdings in earlier cases which they think should not be adhered to. The course of decision by the umpires has been highly consistent, on the whole, and a body of precedent has been developed upon which the parties have built their grievance processing.

III.

Appraisal of the GM-UAW Umpire Systems

The absence of widespread agreement as to the proper role of a permanent grievance arbitrator, tends to throw into fundamental dispute any broad appraisal of any umpire system. Fortunately, for the purposes of this paper and its companion monographs in the study of umpire systems, the Board of Editors has advanced several particular questions, the answers to

[51] See E-268, E-313.

which will provide a basis for comparisons among the several systems being studied. Accordingly I refrain from broad generalizations as to what constitute the criteria for "good" grievance arbitration, and turn to the particular questions posed.

The first of such questions is: "To what extent has the system encouraged the parties to settle their own grievances"?

The fact is that General Motors and the UAW have an enviable record for settling their own grievances, and there is good reason to believe that their umpire system is at least one of the important reasons for their success. I say this because, first, the umpire decisions have consistently emphasized the primacy of the collective bargaining process over the arbitration process. Second, the umpires have repeatedly ruled against conduct by any person which in the umpire's opinion interferred with or obstructed the orderly investigation and consideration of grievances. Third, by carefully adhering to the proofs presented, and refusing to accept evidence or argument, not made known during the prior steps, the umpires have encouraged the parties to make careful early investigation and disclosure of their positions. Fourth, by refraining from tendencies to mediate, and by adhering on the whole to precedents, the umpires have established a fairly high degree of predictability as to the outcome of disputes over interpretations. (The outcome of disputes over facts, of course, is not affected by precedents). It would be absurd to conclude that the umpire system itself is the sole cause of the high percentage of direct grievance settlements. But I think that it has been a very significant cause.

The second question is: "To what extent has the umpire system eliminated wildcat strikes"?

As earlier indicated, prior to the creation of the office of the umpire, General Motors was plagued with wildcat strikes. Desire to avoid them on the part of both the company and

high leaders in the union was an important consideration leading to the voluntary agreement to establish an umpire system. For a few years following creation of the office, the results in that direction were not dramatic. During more recent years, on the other hand, General Motors and its employees have lost very little time through unauthorized strikes. The record of the corporation and the union in this respect is an enviable one.

More difficult to appraise, however, is the extent to which the umpire system itself is responsible for this improvement. May it be concluded for example, that under some other system, there would have been no decline, or a substantially lesser decline, in wildcat stoppages? I am inclined to think not. It seems to me that the direct credit for reduction in unauthorized strikes must be given to the parties themselves, and not to the *system* which they created for final determination of grievance disputes.

But in so concluding, I would not disregard the attitudes toward the system and the umpires, which have been developed by all parties concerned over the years. In other words, to the extent that the GM-UAW Umpire System has commanded the respect and confidence of corporation and union representatives and employees, the efforts of the parties to minimize wildcats have been rendered more effective. There does exist a high degree of respect and confidence for the office, and the system is therefore entitled in my opinion to be credited *indirectly* for the reduction of wildcats.

The third question asks the extent to which umpire rulings have eliminated disputes over particular contract issues.

In all, only about forty cases have been decided in 1957 and 1958. This in itself shows a great decline in cases of all sorts. Of those decided, about half were disciplinary actions cases, about one quarter were seniority cases, and the remaining quarter were cases involving wage questions, grievance procedure questions and miscellaneous contract issues. The long term

averages show a higher percentage of seniority, wage and other contract issues. The recent indication then, is that contract issues of all sorts are declining and at a faster rate than issues of disciplinary action.

Another question posed is the extent to which the umpire system has facilitated the efficiency of the parties as production teams, and in what respect. General Motors production efficiency is universally respected, but in my opinion the direct effect of the umpire system upon it is not readily susceptible to evaluation. Indirectly, it may be reasoned that the decrease in unauthorized work stoppages and the presence of respect for orderly procedures, both of which are concomitants (if not results) of the grievance and umpire procedures, have significantly contributed to the efficiency of the parties.

The fifth question is to what extent has the system facilitated agreement during subsequent contract negotiations? Any reasoned expression of judgment on that point would require careful examination of the course of each of the eight contract negotiations which occurred since the umpire system was established, and a comparison of such course with prior umpire decisions on the various subjects of the negotiations. Lack of time has prevented me from attempting to do that.

Aside from a few isolated instances,[52] the National Agreement contains no clauses which are obviously the aftermath of particular umpire decisions, but I have been informed that the parties do take into account the holdings of the umpire when they bargain new agreements. How much this has facilitated or interfered with the reaching of agreement, I hesitate to say.

The sixth question asks the extent to which the system has perfected the understandings of the parties by establishing precedents or by other means. In this respect the GM-UAW Office of the umpire has, in my opinion, made a substantial

[52] e.g. Paragraph 36, with which compare Decision A-6. See also Paragraph 49 (1948 and later) with which compare Decision E-98.

contribution to the parties. Clear evidence of this can be seen in the decline in the numbers of cases appealed to the umpire, and in the precision with which issues are raised and argued, not only at the umpire step, but in the prior grievance steps as well. No one who is acquainted with the course of contract administration by General Motors and the UAW can fail to be impressed with the overall caliber and competence of the representatives of both sides. Both parties take into account the opinions of the umpire in processing cases at lower grievance steps. But there is evidence that they are not hidebound in that respect, and in varying degree, the local parties demonstrate flexibility in settling disputes.

The seventh and final question asked is what serious problems are still unsettled. Insofar as the basic relationship of the parties *under the contract* is concerned, I do not think there are any. By that I mean that it is my impression that the union and the corporation are both generally satisfied with the system they have established for the final resolution of grievances. I have no doubt that each has reservations as to the wisdom of certain umpire decisions, and would like to get them changed, but I am unaware of any aspects of the umpire system which in the considered judgment of either the company or the union represent serious defects or problems.

I would like to conclude by suggesting one additional question upon which a value judgment might be expressed with reference to various umpire systems, General Motors included. The question is this: does the system satisfy the expectations of the parties who created it? This is a double-barrelled question, in that it involves a measurement of the parties' expectations as well as a measurement of the results of the system. It is a significant question nevertheless, so long as we accept as fundamental the proposition that a company and a union may shape the arbitration process to suit their particular needs and desires.

Insofar as General Motors expectations are concerned, I

think that with minor exceptions, the umpire system has been satisfactory since 1940. From the outset the corporation wanted a tribunal with limited powers which would in consistent and objective fashion decide disputes as to the meaning and application of almost all its *written* agreements with the union.

It is probable, although perhaps not so clearly provable, that at the outset the union wanted more than that, and hoped at least that the umpire would constitute a forum where *all kinds* of disputes could be aired and authoritatively settled, not necessarily by decision. That expectation was not fulfilled, and in earlier years there were some mild union expressions of disappointment in the system. It is my present impression, however, that with the passage of time, the union has abandoned the notion that the umpire should function otherwise than a judicial capacity, and that currently the system, as such, is wholeheartedly supported by the union, or at least by those men in the union who are closely in touch with it.

IV.

Summary and Conclusion

It does not necessarily follow, in my opinion, that what General Motors and the UAW regard as an acceptable system, should be adopted without question or modification by others. I see no merit in a concept of "pattern" grievance arbitration. Whatever aspects of the system appear to others to be advantageous, ought to be examined critically not merely for *what* they are, but more importantly for *why* they have come into being, and what *purpose* they tend to accomplish. The end goal of maximum voluntarism in labor relations is not served by unthinking copying of the practices of others. Related here are the highlights of the history and practices of a prominent corporation and union who largely thought for themselves in the matter of grievance arbitration and how to go about it. The only conclusion which I would urge upon others is that

they too should think for themselves in this area taking into account, but not necessarily copying, the practices of this or any other umpire system.

Discussion—

JOSEPH SHISTER*

The descriptive part of Mr. Alexander's paper, which forms the core of his essay, is extremely well done: it is accurate, objective, and thorough. The analysis, on the other hand, is far too brief. Many a problem in the arbitration experience under the GM-UAW contracts could have been brought into a very meaningful focus had the author devoted considerably more space to an analysis of this experience. For example, it would have been most useful had Mr. Alexander attempted to diagnose and appraise some of the "more significant" awards made over the years. Now, since the analysis is so brief, it would be unfair to the author to assess its validity. For because of the analytic brevity, I would be compelled to read into the analysis quite a few implications if the assessment were to have some meaning. And yet Mr. Alexander may not have had these implications in mind at all.

But brief though the analysis be, it is stimulating and suggestive. And I should like to give a bird's eye view of one of these suggestive themes—namely, the highly diversified character of the grievance arbitration process in this country.

Upon reading Mr. Alexander's paper, anyone familiar with American grievance arbitration is immediately struck by the numerous important differences between the GM-UAW process and that in various other bargaining units on the one hand, and the vast differences in these units themselves on the other. It is unnecessary for me to dwell on these differences before an audience so sophisticated as the one gathered here. Instead, therefore, I shall attempt to indicate briefly some of the more

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important implications of this diversity in the arbitration process.

If one grants that, in large measure, grievance arbitration in any bargaining unit largely reflects the character of the collective bargaining relationship, it follows that the basic factors shaping any relationship are also dominantly causal in shaping the arbitration process. And as I have attempted to show elsewhere,[1] the basic factors are these: technical factors (cost structure, physical aspects of work, size of firm, etc.); marketing factors (structure of the product market, variations in demand, etc.); administrative organization and pressures in the union and the company; managerial and union leadership; political organization and pressures in the union; legal forces; and the relevant historical tradition in the bargaining unit. Since the specific character of these factors, or variables if you will, differs from bargaining unit to bargaining unit, small wonder that the arbitration process is so highly diversified. Or, to put it in simple pragmatic terms: the specific needs of the parties vary from unit to unit.

But what is the practical significance of this diversity? Before turning to this central query, I must make two assumptions which, I believe, most practitioners and students would accept as valid. First, collective bargaining involves a continuous relationship between the parties. Second and largely though not exclusively because of this continuous relationship, the prime objective of an arbitration award should be maximum acceptance by the parties. And I am obviously using the term "maximum acceptance" to mean far more than the absence of challenge of the award in the courts. I mean, rather, that the award is such that it best meets the needs of the parties and therefore contributes, in whatever degree, to the attain-

[1] J. Shister, "Collective Bargaining," in, *A Decade of Industrial Relations Research* (Chamberlain, Pierson, & Wolfson, editors), p. 51 (Harper & Bros., N. Y., 1958).

ment or the continuation of the relationship on a so-called "harmonious" basis.

If one grants the preceding assumptions, some of the more important implications of the diversified character of the arbitration process emerge clearly enough.

1. No qualified arbitrator would disagree with Mr. Alexander's assertion that an arbitrator must look to the agreement "and if the answer therein is clear there is no escape from it." But the rub of the matter is that only rarely is the relevant contractual language so clear that an intelligent reading thereof provides the obvious and only logical answer; few and far between would be the arbitration cases were such crystal-clear dictates the rule and not the exception. In most instances the contract is vague or ambiguous; nor does an analysis of intent or past practice provide a meaningful guidepost in most cases. Well then, it is argued in some quarters, the arbitrator should construct the contract as best he can, very much like a judge in a court of law, and come up with a definite answer. Waiving for the moment the implied assumption that all judges proceed in this fashion, something far more important calls for comment here. There is this very fundamental difference between litigants in a court of law and the parties involved in grievance arbitration: The litigants only rarely have to live with each other after the judge has handed down his ruling, whereas the collective bargaining parties do have to live with each other, *and continuously so,* after the arbitrator has ruled. The arbitrator, that is to say, must be concerned with maximum acceptance, while the judge in most instances need not be. It follows that the arbitrator must possess very considerable insight into the parties' needs if the objective in question is to be attained. But since the specific needs of the parties vary from unit to unit, such insight cannot be gained from any so-called general principles that might be elaborated, no matter how operationally these principles are expressed. As a result, a

premium is properly placed on this insight, granted that it is not equally distributed among all practitioners.

2. Given similar ability of insight on the part of different arbitrators, the one with an intimate knowledge of the parties' needs will, in all likelihood, emerge with an award closer to the criterion on maximum acceptance than the one who is totally unfamiliar with these needs. That is obviously one of the more potent arguments in favor of permanent arbitration over *ad hoc* arbitration. There is, however, more: Not infrequently the parties, in the light of their needs, would be willing to grant the arbitrator far broader powers than spelled out in the contract if they did not fear that he might abuse these powers and/or come up with an award which would do more harm than good because of unfamiliarity with the parties' needs. That is more than a mere logical inference; it is the expression of experience. Now, both of these dangers are greatly reduced, if not actually eliminated, where the arbitrator is permanent rather than *ad hoc*.

3. It is obviously most unwise to apply indiscriminately an arbitration award successful in one bargaining unit to a similar problem arising in another one. This is not to argue, of course, that experience in one unit should be completely shoved from the arbitrator's mind when confronting a similar problem in another unit. Such mental obliteration is simply not feasible, for the arbitrator — like other mortals — is conditioned by subconscious as well as conscious elements. But it is to argue that even where the problem is similar, and even where the vague or ambiguous contract language reads almost identically, the arbitrator must still focus on the needs of the parties involved before him.

4. A fourth implication of the diversity of the arbitration process relates to research, an activity in which the Academy is quite properly interested. If one stands ready to accept this diversity thesis together with the assumption of maximum acceptance, it becomes urgent to know just how arbitration

awards affect the parties concerned. Needless to add, such research can be defended on still other grounds. But despite the importance of this research area, we have hardly begun to scratch the surface. The studies by Healy on promotions and Ross on discharges, seem to me to point in the right direction.

The preceding analysis can be easily misinterpreted because of the brevity with which it necessarily had to be presented. Hence, a few safeguarding remarks are in order.

There is nothing in the analysis which is designed to imply that the arbitration process should be an a-rational one, and that the arbitrator should rely on something called "intuition," "feel," or what have you. Quite the contrary. The analysis dictates that there must be knowledge of, and insight into, the parties' needs. That is a rational, and not an a-rational (let alone an irrational) dictate. In fact, it is a much more rational approach — to the extent that one can speak of degrees of rationality — than trying to construe a contract which is so vague or ambiguous that the construction might be a delight to the arbitrator but of relatively little value to the felt needs of the parties.

The requirement of certainty in arbitration is obviously a legitimate one — in fact, an essential one. But there is absolutely nothing in the approach here espoused which suggests that arbitration, like a horse race, should be characterized by uncertainty. To allege that the needs of the parties must be understood, in no way means that the arbitrator's award should be couched in language such that the parties do not know where they stand from one case to the next. And I would argue further that the approach here espoused would provide for greater certainty than the alternative one which dictates that the arbitrator construe the contract regardless of the fact that the contract language is so vague or ambiguous that any construction must of necessity be nothing more than a delightfully challenging exercise in logic. To illustrate very briefly: Where the contract is vague or ambiguous and the award is based

solely on contractual construction, the logic followed by any given arbitrator is obviously not the only frame of logic that can be used. There are relatively numerous feasible frameworks which, in the hands of the expert, can all sound persuasive. Hence, another arbitrator, relying on a different logical framework, might well decide the same case differently. As a result, the losing party in any given case may well be encouraged at some future date to take a gamble on a different arbitrator with the hope that his frame of reference will be more to its liking. By contrast, where the arbitrator recognizes that, because of the vague or ambiguous contract language, any construction thereof — no matter how ingenious — is bound to be sterile and may well react adversely on the relationship, and where he successfully diagnoses the problem and the parties' needs and frames an award designed to meet the criterion of maximum acceptance, there is no incentive on this score for one party or the other to seek rearbitration at some future date.

The preceding remarks bearing on certainty obviously shed light on the question of whether the approach here supported will make for more or less arbitration. There is still another basic reason why the approach in question will not increase, and probably will decrease, the volume of arbitration. Assuming that the award takes proper account of the parties' needs and meets with maximum acceptance, the relationship between the parties is not adversely affected and, in all likelihood, improved. And the better the relationship, the fewer the proportional number of arbitration cases — other things being equal.

The approach here sketched must not be confused with mediation. It is as different from mediation as night is from day, and not solely because the arbitrator is endowed with the power of final determination while the mediator is vested only with the power of recommendation. To begin with, we are in complete agreement with the view that where the contract is clear and the parties do not will otherwise, the arbitrator must limit

himself solely to the clear dictates of the contract. The approach here espoused might well come into some conflict with the so-called "rigorously legalistic" approach only in those instances where the contract is too vague or ambiguous to enable the arbitrator to derive a clear and constructive meaning from an analysis of the contract and of similar guideposts. And where such is the case, the arbitrator is still not mediating, for he is gauging the needs of the parties within the contractual restraints imposed upon his authority, whereas the mediator is not subject to these restraints.

One concluding note: As Mr. Alexander has correctly pointed out, the umpires under the GM-UAW contracts have, for the most part, adapted themselves to the arbitration philosophy espoused by the parties. This is merely another way of saying that the umpires have sought to meet the needs of the parties, since it so happens that, for reasons far too lengthy to elaborate here, the parties have dominantly needed and expected a so-called "legalistic" approach to arbitration. But it is interesting to note that even within so rigorous a framework, there have been cases where the umpires have placed the practicalities of the problem ahead of the logical niceties of the contract. Some would allege that Dr. Taylor's now-famous "head-and-shoulders" promotion award falls precisely into that category.

Discussion—

SYLVESTER GARRETT*

Ever since in the early 50's, when word began to percolate through industrial relations circles about the spectacular success of GM and the UAW in cleaning up their grievances short of arbitration, most arbitrators and parties' representatives alike have watched with awe — and perhaps a touch of envy.

Gabriel Alexander has done a first rate job today in providing us with considerable insight into how the job was done.

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Understandably others, with overloaded grievance and arbitration procedures, will look to the GM-UAW experience in the hope of discovering new techniques or procedures which they might themselves adopt.

A note of caution may be in order on this score, since difficulty may arise unless the true basis for the GM-UAW success is understood. Some might infer, for example, that the basic simplicity of the arbitration process at GM has been a significant factor: No lawyers, no transcripts, very little taking of testimony, and short opinions. Others — with different axes to grind — might stress that the umpire long has been rigid in refusing to listen to new contentions concerning application of the Agreement, not advanced earlier in the grievance procedure.

But these items, standing alone, may well be only of superficial importance. They cannot easily be divorced from the basic context in which they have evolved and been found useful.

That context is one in which the parties — consciously and consistently over the years — have applied maximum and well conceived pressure up and down the line in their own organizations to settle grievances without resort to arbitration.

Thus, as an outside observer evaluating the points that Alexander has developed in his paper, it would be my impression that a rare combination of vision, courage, and hard work by the parties' responsible representatives lies at the bottom of their success.

It must be admitted that such a combination of factors may be difficult to duplicate in other relationships involving different people, different backgrounds of custom, different bargaining problems, and different economics.

Also, perhaps, it might be said that the GM-UAW success was made easier by exclusion of job evaluation, incentive, and work standard problems from the umpire's consideration. In many other bargaining relationships, problems in these areas freely pass to arbitration. Purely by way of illustration of

such a situation, one might refer to the nature of cases arbitrated over the past four years between United States Steel Corporation and United Steelworkers before their Board of Arbitration. Of 433 total decisions, 115 presented incentive problems, and 88 were job evaluation cases — comprising about 47 percent of the case total, and considerably more in terms of the relative time required for consideration and decision.

But this is not to suggest that the GM-UAW experience necessarily would have been less successful over the long range had the problems arbitrated covered a broader scope. Once the parties in a bargaining relationship tackle their mutual problem of effective grievance administration as earnestly and intelligently as GM and UAW have done, it is reasonable to infer (at least until shown otherwise) that over the long run they could attain a like degree of success whatever might be the scope of their problems.

Of course, the most interesting aspect of the GM-UAW experience well might be an analysis of exactly what happened over preceding years which led to the revolutionary improvement which commenced in 1948. What was the long-range interplay of pressures and personalities leading up to the change? What was the catalyst, if any, that triggered the reaction in 1948?

These questions may be of a sort which cannot ever be evaluated exactly — even by the individual participants themselves. It may be noted, however, that for eight years prior to 1948 the parties had been arbitrating grievances systematically, developing ideas and procedures accordingly.

The roster of men who have served as umpires in this relationship — Millis, Taylor, Dash, Seward, Wallen, Alexander, Feinsinger — reads like an honor roll of arbitrators over the past two decades.

One familiar with the interplay of ideas and personalities between a typical permanent arbitrator and the parties he serves will readily appreciate that these men must have played

an important part (even if indirect) in the development and maintenance of the parties' program for grievance administration. One can only speculate, of course, as to the impact of each of the different personalities over the years. But in view of the magnitude of the success achieved, we may at the least agree that all are entitled to some share of the credit for a job well done.