CHAPTER 3

UPDATING ARBITRATION

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Arbitration is necessarily conceived of in relation to the collective bargaining process. There is evidence of sorts that while the collective bargaining process is undergoing significant changes, the arbitration process is generally standing still.

To examine this possibility, it is appropriate to review briefly the state of collective bargaining. While there are bargaining relationships at every stage from the most primitive and hostile to those which are substantially sophisticated and constructive, what is pertinent is the degree to which major bargaining relationships have advanced more rapidly than has the arbitration process.

The role arbitration has played during a period of nearly 30 years must be viewed as constructive, if not decisive. It is difficult to estimate the degree to which relaxation of many tensions in collective bargaining relationships has been a by-product of faith in the role of arbitrators. I suspect that many collective bargaining problems and issues have been more or less put to rest or made manageable because arbitrators could be depended upon to make equitable, practical, and competent decisions. Language which might otherwise be fraught with potential perils has been agreed to over the years because the parties were willing to leave interpretation of general provisions to the arbitration process, reasonably confident that common sense would prevail.

The impact of arbitration has been exerted primarily in large organizations by the so-called top-flight arbitrators. At the risk of offending others, let me just acknowledge here that the decisions of Ralph Seward and Sylvester Garrett in the steel industry illustrate such impact. These men, as well as others, have put meat on skeleton-like contract language, influencing much more than the immediate parties. I am sure that other arbitrators have done the same, especially in other industries, but Seward and

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Garrett are men whose work has been closest to my particular activities.

I am certain that for the foreseeable future Sewards and Garretts will remain as essential ingredients to the development of collective bargaining as well as the maintenance of the viability of arbitration. It is encouraging that younger men are emerging who are achieving like status or, at least, are likely to do so. Those relationships having bellwether impact in the collective bargaining arena require skillful direction and guidance from at least their most strategically placed arbitrators. Just so I am not misunderstood, I use two names because they are so universally acknowledged. Many others would be included on a list of those arbitrators who have had great impact in one or more of the major sectors of the economy.

Despite the impact of the top-flight arbitrators on arbitration and collective bargaining, the systems of grievance handling and the systems of arbitration too often reflect the days of industrial warfare. Arbitration too often is adversary in tradition and practice. Arbitration procedures and grievance handling are too often stilted and frustrating. We all have heard countless stories of workers with complaints being advised by foremen, "If you don't like it, file a grievance. Take it to arbitration, but it'll cost the Union lots of money—the Company can afford the costs but the Union can't. You and your complaints; you're just a troublemaker. If you don't like the way we run the plant, get out. The Union and these damned grievances are ruining the place." These were the kinds of sentiments that were often prevalent when the grievance procedure and the kind of arbitration in common use today were evolving.

This atmosphere continues, even though many labor-management relationships are striving toward new conceptual frameworks. The areas of mutual interest are growing and increasingly becoming acknowledged by union leaders and management. The value of the grievance procedure, including arbitration, is increasingly being recognized as a useful communication tool—a means of assuring workers and their supervisors that their sentiments can be heard and can contribute toward fair decisions and fair policies.

The assumption that arbitration represents a confrontation between the union and the company has become an oversimplifica-

tion. This explains, in part, the misconceptions of those who doubt the ability of the grievance process to deal adequately with the rights of individual workers. The fact is that most companies and unions are anxious to give a worker his day in court so long as his case will not do harm to the interests of the rest of the work force.

Arbitration is used by many unions and companies as a means of resolving a dispute over facts, judgments, or rule interpretation in which the real parties are not the institutions but rather people—perhaps a foreman and a worker, a union committeeman and a superintendent, engineer, or labor relations expert. Big institutions cannot review every complaint or even every arbitration case. Even if they could, serious questions arise as to whether they should so centralize institutional authority. Where a case involves a principle with wide and significant ramifications, the institutions may try to retain a degree of control or influence, but the great majority of worker complaints do not have such wide ramifications.

Why do labor and management institutions increasingly doubt the value of centralized control and authority? There are perhaps two major reasons: (1) Such central control stifles initiative, responsibility, and a sense of reality. Complaints take on changing characteristics as they wind their way through three or four grievance steps and possible review by arbitration specialists. The complaint, when it reaches arbitration, often is hardly recognized by either the worker or the foreman who first handled it. This tends to create a feeling of alienation toward the grievance process on the part of the supervisor who made the move or decision and the worker who complained about it. (2) Central control inevitably leads to delay and high cost. Delay frustrates the process. High cost strains not only unions but also cost-conscious companies.

The parties are increasingly aware that alienation, delay, and high costs do them no good; in fact, they hurt employee morale, confuse front-line supervisors, and adversely influence collective bargaining and efficient operations. A worker should feel or know that he has access to his boss, a fair chance of having his complaint considered, and a means of prompt, final settlement. A worker with such knowledge is more likely to have high morale than a so-called job enrichment program can produce.

It is in this context that arbitration must be evaluated. Arbitrators should not be viewed as judges in technical, arm's-length disputes between strangers. In most cases they should be the agents of the parties in resolving issues of fact or in rendering fair judgments. The job of the arbitrator is to see to it that the worker and his boss get a fair hearing. These parties want to be able to tell their story or have it told for them. They want a prompt decision—one they can understand. The worker must be treated with dignity. He is the key to the prosperity and survival of the enterprise. He is not a schoolboy; he is not a faceless commodity; he is not a cell mate; he is not even a private in the Army. He is the indispensable ingredient of the company and the economy.

Although the arbitration process has some judicial aspects, it is more an extension of the labor-management relationship. Its main thrust should be to reassure the worker as well as to decide on the merits of the grievance at hand. When a judge settles a case, it is over; but an arbitrator makes a decision which both parties must live with, particularly the worker who is a necessary, continuing company asset.

Bearing these kinds of considerations in mind, I conclude a number of things. Most grievances must be handled promptly. Elaborate grievance steps and extravagant screening can be counterproductive. Emphasis must be placed on the worker and his immediate boss. The facts should be aired and the issues identified as early as possible and at or as close to the job as possible.

In most instances, the case that cannot be resolved should go to arbitration quickly and without fuss. Of course, we have and will always have big cases representing major institutional confrontations or highly technical, complex issues. These cannot always be speeded through the grievance or arbitration procedure. But these kinds of cases are the exceptions; most cases involve an employee, his complaint, and the actions of his supervisor. Many cases are related to some local custom or practice where alternative courses are not intolerable to the company—or to the union.

These day-to-day complaints, if they go to arbitration, should be handled with certain things in mind:

1. The hearing should be held quickly and the decision should be issued a few days thereafter.

2. The hearing should be informal, with emphasis on worker and foreman participation. The arbitrator's duty is to get all the facts and arguments at the hearing. Briefs and transcripts are costly, time-consuming, complicated, and not pertinent to the purpose of the procedure. Arbitration is not a game; it is not a contest. It should be a good-faith effort to decide a case fairly.

3. Participants should be helpful and knowledgeable, primarily about the plant, the job, what goes on, and what makes sense. Perry Masons are not needed; in fact, they do harm.

4. These decisions should be designed for the interested parties, not for posterity or for high-priced reporting services. The loser, be he the worker or the supervisor, wants to know how the arbitrator reached his conclusion—nothing more.

5. Costs should be reasonable. There is a distinction between the technical, complex, or widely significant case and the run-of-the-mill case. For the usual case, a fee per case or per day of hearing is all that is called for. Parties—certainly unions—will not look kindly on bills for days and days of study time and writing time. If the arbitrator insists on getting the story straight at the hearing and then writes his decision for the actual parties, big fees for arbitrators, attorneys, and court reporters will be entirely unnecessary.

6. Awards in all cases must be acceptable to reasonable-minded union members. Grievances can be denied, of course, but the value judgments cannot reflect the master-servant doctrines of the distant past. That day is over. Unions have just about reached the point where they will not tolerate arbitration proceedings and discussions which reflect aloofness, hyperlegalism, and an essentially upper-class bias which is still all too common in current arbitration.

Too many arbitrators—even the best—fail to consider the impact of current culture, social values, and managerial realities in making their decisions. What was considered insubordination 20 years ago cannot still be measured with the same ruler. The position of boss does not per se command respect in the America of the 1970s. The need for orderly operation, for someone having

the right to give orders as a matter of necessity, is something I understand. It is an outmoded notion that disrespectful language or profanity used by a worker in speaking to his boss is an industrial felony. The refusal of a worker to follow an order is another matter, quite different from his use of profane or disrespectful language. I urge arbitrators—and managers—to get with it. Yesterday's values cannot govern today's work force, and efforts to force such values on a new generation will fail. Workers will fight back in their own ways, and they will succeed.

It is in the context of at least some of these observations that we participated with steel industry leaders in developing important changes in the grievance and arbitration provisions of the 1971 steel agreements. These changes were made as a result of unanimous recommendations from a high-level, intercompany joint task force. These recommendations were preceded by extensive study and field consultation, including in-depth discussions with the permanent arbitrators for the five major steel companies, four of whom are former presidents of the Academy.

In fact, my own thinking was strongly influenced by Ralph Seward's notable luncheon speech at the 1970 Academy meeting when he indicated the need for the parties to develop a dual grievance procedure, one for the day-to-day type of complaint and another for the more far-reaching contract disputes.

Pursuant to the 1971 steel negotiations, the parties have set up 12 panels of arbitrators in the key steel areas. The panels are made up of relatively young men and women, almost all of whom are lawyers. They are from the local area in every case and are assigned to handle local disputes by strict rotation. They have heard some 250 cases, and we expect an increasing rate of utilization as the parties overcome fears, timidity, and misunderstandings as to what kinds of cases can go to the panels. The panels include many blacks and women; the total number of panel members is approximately 200.

The elapsed time from the decision of the local parties to arbitrate to receipt of the award ranges from one to three weeks, depending exclusively on the desire and availability of local union personnel and the local management. Higher level representatives of the parties can veto referrals if they feel that the cases are too broadly significant or too complex. In general, dis-

charges are not referred to this procedure; most of our major contracts already provide for priority handling and expeditious arbitration of discharge cases through our traditional permanent systems.

The cases arbitrated through the expedited procedure vary in type. The largest concentration of cases concerns discipline disputes, but there are a host of other types of cases, depending in large measure on the attitude of the local parties as to how to use the expedited procedure.

There appears to be considerable satisfaction with the expedited arbitration device, especially where it has been used frequently. It has relieved pressure and helped to restore confidence in the practicality of arbitration and the grievance procedure. It probably has encouraged a greater sense of responsibility and power among local people—both union and management. It has not yet dramatically relieved the pressure on permanent arbitrators resulting from crowded dockets. In one company such relief has been discernible, but that relief is due more to changes in the grievance procedure than to expedited arbitration.

It is assumed by many that expedited arbitration in steel is a substitute for regular arbitration. In fact, it is supportive of regular arbitration since it relieves the regular process of some of its burdens. In a greater sense, it relieves the international union-corporate level of many grievance burdens which are time-consuming and often result in as much delay as arbitration itself. It also helps to free this top step for emphasis on the type of complex and broad problems which should command its attention.

Other effects cannot yet be adequately assessed. I suspect that eventually expedited arbitration will help encourage quicker grievance settlements because it tends to avert the buck-passing which leads to overloaded dockets of unresolved grievances and pending arbitration cases.

The quality of decisions is hard to assess. We know that there have been goofs, but we regret to note that even our most distinguished arbitrators goof. The expedited procedure goofs at least do not set precedents, a source of some small comfort. All of the decisions are without precedent and cannot be cited. My union colleagues who monitor the expedited procedure think that the

quality of hearings and decisions is good, perhaps very good. We do not refer to box scores because we keep none. We refer to simplicity, lucidity, and a sense of competence that seems to charcterize most of the decisions.

In some plants we have had little use of the expedited procedure because our 1971 changes in the grievance procedure have been so successful in achieving resolution of cases before they ever get to arbitration. We suspect that the availability of quick arbitration—or the threat—can impel settlements which might otherwise be long delayed.

A notable result of the expedited procedure has been its impact on the major portion of our union not covered by it. The nine companies involved represent less than 30 percent of our membership, but our other members are keenly aware of its advantages. Ironically, some of our largest locals now have less costly arbitration available, while thousands of our small ones must go the traditional, more costly route if they want to arbitrate. Greater cost not only strains local union treasuries, but it frustrates local leaders who hesitate to arbitrate because of the substantial expense. The result is denial to employees of an adequate forum for their complaints.

Interestingly enough, many companies have expressed an interest in expedited arbitration. The reasons are many, ranging from cost consciousness to a conviction that prompt resolution of employee complaints is good for the enterprise. In fact, several companies have latched on to the existing panels, using them pretty much on the same basis as in steel. These are, necessarily, companies located in the 12 areas of steel concentration.

President I. W. Abel has faced up to the opportunities afforded by expedited arbitration. We have been active in AFL-CIO efforts with the American Arbitration Association to promote improved arbitration. President Abel has sought the interest of the Industrial Union Department of the AFL-CIO, of which he is president. More recently, he designated a special committee of the international executive board of the Steelworkers to see what we ourselves can do.

If I were asked to guess, I would predict that we will make an effort in many industrial areas throughout the country to set up panels on much the same basis as was done in steel and

seek agreement with just about all employers with whom we deal to use such panels for most cases. As we get away from the large multiplant companies with master agreements, the inhibitions against expedited arbitration should diminish because issues tend to have narrower ramifications.

There are tough problems in setting up a steel-type system in the nonsteel centers. Here are just a few:

1. Who selects the panels?

2. Who administers the rotation and assignment? In steel we are dealing with an organized, coordinated group of companies. How can a comparable center for administration be found for an array of diverse, unrelated companies and industries?

3. If the scope of issues is wider, do we need some guidance for the panel members from prestigious, widely acceptable arbitrators to reassure interested but hesitant companies and local unions?

It is possible that if we do succeed, we will excite the interest of other unions in the areas in which we establish expedited panels. If so, I presume that we could attempt cooperative interunion arrangements for use of such panels.

Assuming our steel setup, now only experimental until this coming August, turns out to be successful and permanent, and assuming further that efforts extending far beyond steel are made and are successful, we will then have added some new dimensions in arbitration. Permit me to cite a few.

There will be no shortage of arbitrators. We will have found a mechanism for recruiting into the arbitration field many hundreds of the most talented of the new generation of lawyers and others suitable for this work. If this sounds risky, remember that the War Labor Board and National Labor Relations Board alumni had little specialized training or background. They were able people; they were interested; they had whatever mystic traits create acceptability in this field. Some fell by the wayside; some turned to other interests. All of them faltered and goofed at times and, in most cases, sweated blood to achieve knowledge and touch.

The new recruits are not inferior. Perhaps these younger people have better training. This may be debatable, but may not be

discounted out of hand. The newcomers have one tremendous advantage—they have behind them as background and reference the years of work of many distinguished arbitrators. They also have more sophisticated parties, thanks in part to the influence of experience and the impact of a generation of arbitrators.

Also, the new breed will have the advantage of the broader perspectives of labor and management. Every challenge of a management decision is not quite heresy, as it once was. Every denial of a worker's grievance is not necessarily a sellout. And the Academy no longer debates that ever elusive will-o'-the-wisp—management's rights.

Why the emphasis on the training of new arbitrators we hear so much about? Aren't many of us like doting parents, determined that our children not make the mistakes we made and anxious that they absorb our superior ageless wisdom?

Perhaps we need a new breed that is allowed to do its own thing rather than merely carry on. I suspect that training arbitrators means teaching them what the teachers would do, even though our traditional institution is a bit rusty and currently the subject of widespread challenge. The trouble with our traditional ways is that an arbitrator must get experience to achieve acceptability and must become acceptable to achieve experience. The dilemma is all too obvious to all too many who want to be arbitrators.

In steel, we sought out arbitrators rather than passed on applicants. In steel, it was the parties who did the screening and not some outside agency. We relied mainly on law school deans for submission of candidates, though we did get helpful assistance from several AAA regional directors. But the evaluations, interviews, and decisions were by the parties, reflecting what we wanted and not what some third party thought we needed. The few deans who told us what we, in their superior judgment, really needed made no contribution to our panels.

In steel, those of us from both union and management who made the selections of the expedited panels were unique in that we all had wide experience in arbitration and in grievance handling, but none of us was significantly involved in these activities any longer. We were not selecting judges in cases we would try. (As an aside, I question the wisdom of the actual disputants'

selecting their own judge, but perhaps there is no other way in ad hoc arbitration, given the practical aspects of the institutions involved.) The result of the combination of experience and current relative detachment helped with both the selection process and the important orientation programs which preceded the launching of each panel.

Success in expanding this program beyond steel will require some mechanics for selection of arbitrators combining both knowledge and detachment not usually found in adversary selection procedures. The Steelworkers Union can do its part; whether the management community can or wants to is still to be ascertained. If the adversaries control the mechanism, they will be tempted to lose sight of relative values. Urgency, informality, and low cost must be weighed against predictability. A top-flight operating executive will usually opt for an efficient process. An adversary type concerned with the number of notches on his belt may not.

This brings me to my conclusion. I appreciate this opportunity to address the Academy and its distinguished members. I suggest that the real responsibility for updating arbitration belongs to management and labor. The so-called War Labor Board alumni did not invent arbitration, package it, and then sell it. The parties created the institution and sought out the men they were willing to turn to as arbitrators. I commend the Academy for its efforts to improve the system. I applaud the AAA programs which seek means for expediting arbitration; I even clap mildly for the Mediation Service computer, even though I don't understand it. But it is still management and labor that must measure up to its challenges. If arbitration is not good enough, we must fix it. If arbitrators are in short supply, we can't complain at the hiring hall (there is none), but labor and management must go out and recruit people to fulfill our requirements. If the process has become so specialized that it is losing some of its purpose, then it is up to us to bring it back to the shop floor—or at least a lot closer than it has been.

I would be remiss if I did not acknowledge that other companies and unions in some cases have updated arbitration and have tailored it to carefully determined needs. I know the AAA is trying to do some of the things I have suggested here; this I applaud. I know also that arbitrators have helped specific parties

fashion specific mechanisms for arbitration appropriate to their situations. I know that what we have done in steel may need many revisions—perhaps reconsideration at some point. I offer our story for what it is worth. I project some of the hopes of many members and leaders of my union and have tried to report on some steps we have taken and further steps we are considering.

The next few years are likely to be exciting ones for those who believe that the effective handling of grievances and of arbitration cases is essential to achievement of sound labor-management relations and much needed high morale among the nation's industrial workers. Somehow, I feel we will make progress because unions and companies increasingly want progress in their crucial relationships and, indeed, if there is a will, there will be a way—in fact, many ways toward achieving needed programs in labor-management relations.

Comment—

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Obviously, Ben is advocating a rather drastic general overhauling of the traditional arbitration process. I am relieved, however, to learn that he does not advocate going as far as a Steelworker staff man once told me the employees in the then new steel industry in India had gone. This particular staff representative had visited India for the purpose of attempting to educate the new breed of Indian steelworkers about the workings of the traditional American grievance and arbitration procedure. When he had finished doing so, one of his listeners commented that the procedure was far too slow and ineffective, and then he proceeded to tell how a dispute had recently been settled in one of India's new steel mills. It seems that two open hearth employees had had a disagreement with their foreman and had discussed it with him on the floor of the open hearth. Being thoroughly dissatisfied with the foreman's answer, they picked him up bodily and heaved him into the open hearth furnace. Needless to say, that quickly ended the dispute with minimal delay and cost—at least to the satisfaction of the employees. Fortunately, even with his accustomed zest for new ideas, Ben has stopped short of advocating that extremely fast and inexpensive method of disposing of troublesome disputes.

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The basic theme of Ben's presentation was, I believe, set forth by him at the outset when he stated that, whereas the collective bargaining process is undergoing significant changes, the arbitration process is generally standing still.

With due respect to Ben, I think that his premise, applied as it is to the entire arbitration process, is too broad. I agree, however, that what Ben has had to say may have had some merit insofar as it is applicable to the highly formalized grievance and arbitration procedures typified by those found in the basic steel industry. That type of procedure is, of course, the type with which Ben and I are most familiar. As an aside, one of the great by-products of that procedure is that it has produced the Sewards and the Garretts and others to whom Ben has alluded. The present disadvantages of that type of system are not the fault of those men, but the fault of the evolution of the system within which they must work.

Nevertheless, what Ben has had to say with respect to arbitration within the heavily case-loaded permanent umpireships of the sort found in steel and other comparably complex industrial relationships is not necessarily true for all. I am mindful of the fact that the audiences at the annual meetings of the Academy are made up of both guests and members whose experience lies with arbitration in fields far removed from that in steel and other heavy industry. While I am certain that this audience is keenly interested in learning of the faults in the system in steel and the steps we have taken to cure them, I do not think that it is fair to attribute those faults to the arbitration process generally. In many instances I am certain that the process is working fine in less complex employer-union relationships and, where this is the case, there is no need for it to undergo significant change. It need not be embarrassed by the charge that it is "standing still."

Even in an industry such as steel, where the arbitration process has been the object of recent innovative changes, there has not been a substitution of another process. The change in steel was brought about not because it was discovered that there was a better system for the ultimate solution of industrial disputes, but because the operation of the system had become too costly and time-consuming. The parties recognized that they still had need for the high-quality merchandise being dispensed at the established stand. What the parties did was to open up an arbitration

do-it-yourself supermarket, dispensing the same sort of commodity on a quick, high-volume, lower cost basis. The customers simply came to the conclusion that, for their daily fare, they were willing to accept something less than the custom-made product resulting from extensive deliberations in the interest of saving time and money, as long as the established alternative procedure was still in business and available when it was needed.

As I indicated a short while ago, I am confident that in many ad hoc arbitration relationships and in the arbitration systems in companies and industries smaller and less complex than steel, the time-tested arbitration process is working well and is meeting the goals established for it by the parties. Indeed, it is probably meeting the criteria which Ben enumerated. Those criteria may be summarized as follows: (1) The hearing should be held quickly and the decision issued promptly. (2) The hearing should be informal. (3) The participants should be helpful and knowledgeable. (4) The decisions should be designed for the interested parties. (5) Costs should be reasonable. (6) Awards must be acceptable to reasonable-minded union members.

Ben's last point displays a degree of insularity unusual for him. Needless to say, I firmly believe that awards must be acceptable to reasonable-minded supervisors as well as reasonable-minded union members. To put it another way, the quality of being reasonable minded is not unique to union members.

In addition to Ben's six criteria, I would add a seventh, namely, that awards must be bottomed on the agreement. This is a quite fundamental concept which is sometimes lost sight of. In my experience, I have found that where awards are solidly anchored to the agreement, they generally will be acceptable to reasonable-minded people, be they supervisors or bargaining unit employees.

I must confess that I do not share Ben's view that today's awards reflect an "essentially upper-class bias." In my view, those who arbitrate for us in steel and with whom I am most familiar are more than cognizant of the need to avoid this pitfall. In defense of Ben, let me say that I am certain that he did not level that charge against the Sewards, the Garretts, and those others whom he equates with them. Frankly, in my view, the system itself has a way of culling out those who display bias, be it "upper-class" or "lower-class."

While I am in the process of disagreeing with Ben, let me also say that I am not in complete agreement with his statement that "It is an outmoded notion that disrespectful language or profanity used by a worker in speaking to his boss is an industrial felony." At the same time, he says that he understands "the need for orderly operation, for someone having the right to give orders." In my opinion, the existence of an orderly operation cannot exist in an atmosphere of exhibited disrespect. Perhaps the crime is not always a felony, but it oftentimes must be found to be, at least, a misdemeanor. The fact that a vocal minority in today's society believes in almost total permissiveness does not require that we "relate" (to use their word). At the risk of being accused of exhibiting "upper-class bias," I must say that I feel that there are situations where our vocal, dissident friends must relate to those who operate the enterprise, however much of a "bummer" that may be to them.

Returning to the question of whether arbitration is standing still—that is, aloof from constructive change—I would think that Ben has solidly laid that issue to rest by his own description of the innovative expedited arbitration procedure adopted by the steel industry. This procedure has many advantages, among the most important of which are speed and low cost; it was designed for that purpose, and the grievances which are channeled to it are the relatively simple and routine ones. In contrast, the procedure was not designed for consideration of complex issues requiring considerable deliberation time. The fashioning of a custom-made product must necessarily require the consumption of more time than is allowed to the arbitrators under the expedited procedure. That consumption of time must, perforce, entail more cost. Grievances which involve novel problems and extensive contractual significance or complexity still follow the traditional route. Expedited arbitration is, therefore, an adjunct to the traditional arbitration process.

As Ben has indicated, the expedited arbitration procedure was born of a real and present need in the steel industry. It is serving that need well, and its use by our plants and local unions is expanding. In fact, at Bethlehem we have been sufficiently enamored of the procedure to push for its introduction at two of our East Coast shipyards where the employees are represented by the Industrial Union of Marine and Shipbuilding Workers of America. As a consequence, officials of that union have agreed to an

expedited arbitration procedure comparable to that in effect at our steel operations. Coincidentally, that procedure was put into effect in the shipyards on Monday of this week.

Although the expedited arbitration procedure is still in the experimental stages, nonetheless I think it is fair to say that we in management have tentatively concluded that it is serving the need which created it. In any event, it is an example of innovative thinking and action by the parties engaged in the process of arbitration.

The arbitrators who are, of course, an integral part of the process are not the ones to design the procedure under which and within which they must operate. The procedure is conceived in a collective bargaining process of which arbitrators are not a part. When the process comes full term and is delivered, it is handed to the arbitrators with its birth defects. That delivery is accompanied by the injunction: "Here is the procedure within which you must operate. Depart from it at your peril." Nevertheless, as Ben has noted, it was Ralph Seward who said to the parties, in his luncheon talk at the Montreal meeting of this Academy, that it was time for some innovative thinking—that the baby who was so lusty in the 1950s was weakening at the knees under pressures being exerted in the complex relationships which had developed in the larger industrial areas. I say that the parties accepted that challenge and moved ahead to "get with it" as Ben is now urging be done in other areas.

However, we are not unmindful of the fact that the expedited arbitration procedure has within itself the built-in capabilities of abuse. Because it is fast and inexpensive, it is capable of being used by the parties at the initial steps of the grievance procedure as a device to avoid the necessity of making mature judgments which should be made at those levels—by that I mean judgments requiring either the withdrawal or the settlement of grievances. I am not, however, saying that that abuse has developed; in fact, to date quite the contrary appears to be the case. Nonetheless, I am of the opinion that the capability for its development is inherent in the system. Indeed, I have heard a union international representative say that he welcomed the procedure because it would enable him to tell a stubborn shop steward that he must present his own case in expedited arbitration. Obviously, the case to which he referred was one which that international representa-

tive felt lacked merit and should have been withdrawn. I believe that that representative was saying, in a short-handed way, that the case would be disposed of by the belligerent steward who would suddenly become too meek to be a hearing room advocate. However, this example does serve to illustrate that the system is capable of abuse. This point is also illustrated by a remark made by one of the steel industry's umpires to the effect that the system would not cause a substantial reduction in the number of cases to be *heard* by him because it would take care of what he called the "dropouts." By "dropouts" he meant cases which are appealed to arbitration, scheduled to be heard, and then disposed of on the threshold of the hearing room. In other words, the expedited arbitration system is vulnerable to abuse by the parties if they choose to avoid mature and responsible action.

Thus there are potential pitfalls to an otherwise progressive, far-sighted concept. If these, or other, disadvantages surface, then those responsible at the top levels of union and management must make a value judgment as to whether the advantages of the system outweigh its disadvantages; if necessary, they must devise a way to curb its disadvantages.

In addition to the expedited arbitration procedure, a whole new field of arbitration has just been opened up in the steel industry as recently as last week. I refer, of course, to the agreement between the Coordinating Committee Companies in the Steel Industry and the Steelworkers Union to embark on the sea of interest arbitration—that is, the voluntary arbitration of unresolved contract issues resulting from collective bargaining negotiations. This represents a basic change in the philosophic approach to collective bargaining on the part of both management and labor in the private sector of our economy.

One does not have to be too old to remember that it was a commonly used negotiating ploy by unions to propose that a stiffly resisted union demand be submitted to arbitration. The proposal was made with full knowledge that it would be rejected, but the rejection would leave the monkey sitting upon the back of management. It was also common knowledge that the proposal was advanced only because it was known that it would be rejected and would never have been advanced by a union had there been any possibility that it would be accepted. Acceptance of such a proposal was as much anathema to unions as to management.

Now the thinking on both sides has changed. Again, this change is a product of the times and the economic environment in which we live. This change was the result of a recognition that the survival of an industry and the union in that industry may be dependent upon it.

The preamble to this historic agreement (which is called the Experimental Negotiating Agreement, or ENA for short) recognizes that it is desirable to provide stability of steel operations, production, and employment for the benefit of the employees, customers, suppliers of steel companies, and of the United States of America. It recognizes that the achievement of this objective requires the avoidance of industry-wide strikes, lockouts, and government intervention. The preamble recites the hope that the ENA will avert a strike-hedge steel inventory buildup and that it will also reduce foreign steel imports into the United States. Therein is set forth the philosophical basis of the ENA—not only philosophic but economic. In the past, steel strike hedge buying and foreign competition, both of which have spawned upon strikes and the threat of strikes, and crisis bargaining have been sucking the life blood of the steel industry. Needless to say, in most industries sophisticated union leaders recognize that the health and welfare of unions and their members depend upon the economic health of the industries in which the unions have their members. As George Meany, president of the AFL-CIO, said in his 1970 "state-of-the-unions" report, unions increasingly are finding that "strikes really don't settle a thing." When asked what he had in mind when he said that people in the highest levels in the trade union movement were thinking of other ways to advance without the use of the strike weapon, he responded, "Voluntary arbitration, for instance." [1]

Although interest bargaining was not invented in the steel industry, I think that those of us in this industry, both management and labor, can take pride in the fact that this breakthrough in the private sector has occurred in our industry—a breakthrough achieved, from an industry standpoint, primarily through the perseverance and hard work of two men in the top negotiating committee. Believe me, the Experimental Negotiating Agreement was not easy to bring about, but it happened. Both sides have agreed, within carefully drawn limitations, to put

[1] *U.S. News and World Report*, Sept. 7, 1970.

their faith in the process of arbitration—in a field long considered beyond the range of arbitrators, be they permanent or "odd hacks." The fact that it has happened may be proof of the old adage that necessity is the mother of invention.

Let no one remind me at this point, however, of the other old adage that fools rush in where angels fear to tread. I assure you that the ENA was not born in haste. A great deal of mature and careful thought on both sides produced this reversal of the traditional approach to collective bargaining. For a solution to a problem of staggering proportions, the parties turned to an institution which had served them well in other areas. They agreed to bring the influence of arbitration into a field previously closed to it. That being so, can arbitration truly be said to be standing still? I believe that the question answers itself.

So, in closing, let me say again that I think that Ben's charge that the arbitration process is standing still is far too broad. On the contrary, I believe that it, like Jacques Brel, "is alive and doing well."

Comment—

W. C. STONER *

I am placed in a somewhat awkward position by being a discussant on Mr. Fischer's paper. As a member of the Joint Committee on Grievance and Arbitration Procedures, which was created by the Steelworkers and the Coordinating Committee Steel Companies late in 1970, I was a party to the committee's report and recommendations which were made to our principals in 1971 prior to the steel negotiations.

As Mr. Fischer has noted, the committee's recommendations were unanimous, and one of the novel features of the recommendations dealt with expedited arbitration procedures. At that time I was wholeheartedly in accord with that recommendation, and the experience by the various companies of the steel industry, including my company, since its inception has reinforced my initial belief that expedited arbitration would be a valuable supplement to the other phases of the grievance procedure.

Now that I have gone on record as being an advocate of expedited arbitration, as Mr. Fischer is, I can proceed to point out

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some areas of agreement with Mr. Fischer, some areas of disagreement, or perhaps a difference of emphasis.

In developing his subject, Mr. Fischer reviews the role of the normal arbitration process in collective bargaining. No one can quarrel with his observations that arbitration has been an essential adjunct to the negotiations by the parties on the terms and conditions of their labor agreement and the operation of that agreement in the day-to-day relationship between the parties. Even the most experienced negotiators cannot anticipate all the conditions and variations which can arise under a particular provision of the labor agreement, and often arbitration is the only way to fill in the gaps to arrive at a reasonable interpretation of the contract language.

I do get a bit disturbed, however, when Mr. Fischer says that arbitrators can be depended upon to be "practical," "equitable," and reflect "common sense." The problem here is that it often depends on who benefits or who is affected adversely by the arbitrator's use of these elusive factors. I cannot resist referring to one arbitration case in our company where an individual was artful enough to contrive a set of circumstances to enable him to claim a certain benefit entirely beyond the scope of anything the parties had contemplated. Notwithstanding the acknowledgment of the inequitable nature of the grievance, it was asserted that the strict application of the language supported the claim. The arbitrator ruled in favor of the grievant. A more inequitable result would be hard to find, but the arbitrator properly applied the contract language and ruled as he had to do, regardless of the equities of the case.

In a similar vein, what might be considered "practical" by one side or the other and by the arbitrator could well be considered as most impractical by the losing party. No one can deny that in permanent umpire relationships, such as Mr. Fischer referred to with Ralph Seward or Syl Garrett, or as our company has with Bert Luskin, where the arbitrator has the advantage of knowing the collective bargaining history of the parties over many years, the decisions are written with concern for the "practical" effect on both parties. Unfortunately, all arbitrators cannot have the opportunity to have had this long relationship, and I would have some reservations about their always knowing what is "practical" to the parties.

Mr. Fischer points out the two-fold purpose of arbitration: The first is well known—to have a terminal point to resolve a dispute between the parties on an interpretation or factual question or a combination of both. The second point Mr. Fischer makes is not always thought of as a major reason for arbitration. Mr. Fischer refers to the need of an employee to have his "day in court" and the effect on employee morale if the resolution of an employee's grievance is long delayed in the grievance procedure. The practitioners in the field of labor relations often refer to this as the "therapeutic value" of arbitration. Mr. Fischer proceeds to build on this theme and states, in substance, that the need for an employee to have a forum to air his sentiments and be assured of a fair hearing and a fair decision is of greater importance than the exercise of centralized control and authority.

I believe that it is from this premise that Mr. Fischer sets forth six elements an arbitration procedure should contain if it is to satisfactorily serve the parties in handling "day-to-day complaints" which do not involve complex or technical matters. To the extent that the parties could control the process, the Experimental Arbitration Agreement, which was adopted by a number of the major steel companies and the Steelworkers in their August 1, 1971, labor agreements, was designed to accomplish these objectives.

The hearings are held within a short period of time after the complaint originates. They are usually handled by local representatives of the union and of the company. The proceedings are informal, and normally a case can be handled in about an hour and a half to two hours. A brief decision is issued within 48 hours after the hearing. The fees are reasonable and generally average about $37.50 per case to each of the parties.

Mr. Fischer reports that there appears to be considerable satisfaction with the expedited arbitration procedure by those who have used it. I agree with his evaluation that in the majority of the locations using expedited arbitration, the local parties seem to be exercising a high degree of responsibility in their handling of grievances. Mr. Fischer does point out that we have had too short a period of use to assess fully the total effect of expedited arbitration, but he believes it will tend to end buck-passing. I hope his prediction will turn out to be correct, but it is on this point that I feel we must have much more experience before we can draw that conclusion.

Over many years the principals on both sides in contract negotiations in the steel industry have been trying to write into contract language procedures on handling grievances which would call for a high degree of responsibility by the respective parties for the proper functioning of the procedure. With due credit to many of the local unions and local plant managements who have accepted such responsibility, there were many other situations where this was not the case and where relatively few grievances ever were resolved in the lower steps of the procedure. Backlogs of grievances at all levels of the procedure, including arbitration, became so large that the procedures no longer could function efficiently. In some of these situations, it was not unusual for a grievance to take as much as seven years from date of filing to date of arbitration decision. Only by special efforts and programs by the international union officials and corporate officials were some of these situations brought under control.

It has been said by knowledgeable people in the labor relations field that, regardless of the type of grievance procedure—whether it has one step or five steps—it takes responsible people to make it work. Conversely, if the people who are responsible for the processing of grievances, from the departmental steward to the top local union official, and from the front-line supervisor to the plant manager or plant labor relations official, fail to accept their responsibility, expedited arbitration, instead of being a valuable supplement to the grievance procedure, can become a "five and ten cent" method of letting the arbitrator make the decision which should have been made by someone else.

I do not find it too difficult to conceive of a grievance committeeman who, to avoid the distasteful and unpleasant (and possibly politically damaging) task of telling a constituent that his grievance is without merit, when for $37.50 some arbitrator can do it for him, elects the latter alternative. In a similar manner, some supervisor who has made a mistake regarding the rights of an employee might find it easier to let an arbitrator grant the appropriate relief to the employee than to reverse himself and grant the grievance.

I am not suggesting that these possible abuses of the expedited arbitration process detract in any way from the advantages that the process offers for the resolution of bona fide disputes of the appropriate type. I am suggesting, however, that the ready avail-

ability of the process at a low cost might result in cases being arbitrated which, under the former procedure, would have been resolved without arbitration. While we tend to emphasize the virtues of expedited arbitration when used properly, we must also be alert to possible abuses of the system. I might say in passing that either of the parties could do the same thing in the full-blown arbitration process, but one would be less inclined to pay the greater expense where he could reasonably anticipate an adverse decision.

Mr. Fischer touches upon a secondary benefit which could flow from the establishment of the expedited arbitration panels. The representatives of the Steelworkers and of the Coordinating Committee Steel Companies who interviewed the applicants for the panel have reported, almost without exception, that these people had a sincere desire to become part of the arbitration process and have the opportunity to get some experience and attain "acceptability." As Mr. Fischer so aptly stated, the problem for an aspiring arbitrator has always been that he had to have experience to achieve acceptability and had to have acceptability to get experience. In one single move, both hurdles were overcome. The parties simply declared, "You are now an arbitrator, and we shall make it possible for you to get experience."

It is far too early to give an in-depth evaluation of the capabilities and potentials of the individuals on these panels. Too few cases have been heard by most of them to arrive at more than a preliminary and superficial opinion. Reports by those who are directly involved in the hearings generally are favorable with respect to the way the hearings are conducted. Mr. Fischer has stated that his union associates who monitor expedited arbitration think the quality of the decisions range from "good to very good." Inasmuch as each company receives only those decisions from its own cases, the number I have reviewed is rather limited, but from our company experience I would not be quite as generous with the "A" and "B" ratings. Although there are some in those categories, I would also rate some as "C" or "D."

Notwithstanding the fact that all of these new arbitrators do not write with great clarity or always display the most logical rationale, I still agree with Mr. Fischer that the expedited arbitration panels will prove to be one of the principal sources of future arbitrators for regular arbitration in the steel industry and

in other industries. I am not sure that I would draw a parallel between the War Labor Board or the National Labor Relations Board alumni and these new arbitration panels, but I believe a significant number of these new arbitrators will survive the ordeals of arbitration and graduate into the "big time" and one day join the honorable and prestigious ranks of this National Academy of Arbitrators.

One remaining observation by Mr. Fischer should not be left without comment. He states "urgency, informality, and low cost must be weighed against predictability." This clearly suggests that as long as a complaint is disposed of quickly and for a few dollars, the decision is of relatively little importance. I believe that this concept can do considerable damage to the employee-employer relationships which have existed over long periods of time.

Any industrial organization, to function efficiently, must have "laws" to govern the conduct and actions of the employees and of the company. To a large extent, these "laws" are set forth in the labor agreement between the company and the union. In addition, there are separate rules or practices covering specific matters such as absenteeism, bad workmanship, and drinking on the job. Whatever they may be, in most mature industrial establishments there has evolved a code of "shop law" which defines those matters which are to be considered as offenses and penalties which are appropriate. Past arbitration decisions have accelerated this process. Arbitrators have emphasized that an employee should know that if he commits a particular offense, he will receive a penalty of *X* number of days. Arbitrators are quick to rule that it would be "arbitrary and capricious" for a foreman to issue a one-day discipline in one case and five days' discipline in a like case on another occasion. It is, therefore, most essential that "predictability" be an ever-present factor in the day-to-day relationship of the employee and supervision.

If the arbitrators under expedited arbitration disregard this mutual need for stability and predictability, it can do only harm to the expanded use of this procedure. If they substitute their judgments, their philosophies, their values of social justice, for criteria which have been well established by many years of collective bargaining history and by arbitral precedents, the further development of this process can only be weakened. A significant

departure from the predictability that the parties should expect from a certain set of facts or situation could only encourage the lack of exercise of responsibility and judgment and the shopping for a small fee for a possible favorable ruling. Mr. Fischer has said (but I suspect with tongue in cheek) that "perhaps we need a new breed that is allowed to do its own thing." I suspect that Mr. Fischer would readily agree that when the parties engage an arbitrator, under *any* grievance-arbitration procedure, they want a trier of facts or an interpreter of contract language. The last thing they want is an arbitrator who decides to "do his own thing."

Now that I have raised some specters about this experimental expedited arbitration procedure, let me bring the whole overlook back into perspective. It is new; it is innovative; it is in its infancy; but we have great hopes for its future. The principal architects from the Steelworkers and from the steel industry (with especial credit to Mr. Fischer for his leading role) who designed this plan are quite sophisticated in the matter of labor relations and arbitration and are aware of the pitfalls which could be encountered in this bold experiment. I am confident that they shall prove equal to the problems which might arise and will be able to cope with them. As with any new or substantially changed procedure, "bugs" are generally present. We recognized this from the outset. However, we also felt that with the expertise of the people from both labor and management involved in undertaking this new concept, we could make it function as we envisioned it should.

Comment—

CHAIRMAN SEYMOUR STRONGIN: Before soliciting questions from the floor, I would now ask Mr. Fischer if he has any response to make.

MR. FISCHER: These expedited arbitrators have been told that they are not expected to disregard the prior arbitration awards made through our regular arbitration process as they relate to that company. We do not permit the citation of awards involving any parties other than the immediate parties; namely, that company and our union. They can't go shopping through the whole industry.

To that extent, of course, predictability is preserved. There is a bit of unpredictability, and this may justify some fears. But we can live with this uncertainty because this is an imperfect world.

We have told these arbitrators that they can't read each other's decisions, nor can they learn what they are. It becomes improper for anybody to tell what was decided in a case last week, and to some extent there is, of course, a built-in lack of predictability. I submit that the parties have accepted this because that's what the system is. I also submit that we have weighed the pros and cons of that situation.

I'm sorry that Tony is offended by my reference to "upper-class bias." I like Tony. He's new; he'll learn; and he has upper-class bias. He will learn a little from arbitrators, but much more from steelworkers.

The expedited arbitration process is a response to a complaint against high cost, a complaint against consumption of too much time, and a complaint against overly remote and perhaps overly technical proceedings. But it reflects a complaint against our distinguished arbitrators.

Let me give you an example of what I'm talking about. If you were to make an in-depth survey of arbitration history in the steel industry, or in almost any other industry, you will find that when a foreman says that it happened this way and a worker says that it happened that way, the chances are about six to four—if not eight to two—that we will lose, because arbitrators conclude that foremen do not tell lies; only workers lie. To me, that's upper-class bias. You call it anything you wish, but the members of our union think they're entitled to as much recognition of their credibility as are the members of management who are carefully trained by their lawyers as to what it is they may or may not testify to, be it true or not.

I do think, very sincerely, that it is very important to management that arbitration be acceptable to reasonable-minded employees. You can tell the foreman what to do; you can tell the superintendent what to do; but you can't tell the worker what to do. If you want him to work, he had better feel that he can get a decent break as a first-class citizen in the course of pursuing his complaints. And I suggest that we're going to come around to the

point where we understand that the essence of sound labor-management relations is to take full account of the sensitivity of the employees who make or do not make the enterprise work.

I just want to add one other thing about what we weren't going to talk about; namely, last week's steel agreement. I didn't want to talk about it because it can't be discussed in two minutes. It isn't just the use of arbitration. One of the reasons the deal was made was because it is innovative, and it's innovative not only because it includes arbitration, but because it includes a few other things.

We start with a few things we're not going to arbitrate. We also start with a guarantee of no less than a 3-percent-per-year increase, but with the right to seek more either through collective bargaining or, failing that, through arbitration. We start with the assurance that we're going to continue the cost-of-living escalator.

And we have listed four or six items which we have called "sacred cows," which are not open for arbitration. The company is not about to relinquish the management-rights clause because an arbitrator doesn't like it, and we're not about to relinquish certain other clauses which I won't refer to here but which many of you who know anything about the steel industry are aware of. We struck for 116 days over one of them, and we're not about to submit this to the tender mercies of arbitration. So there are restrictions.

There is one final very, very interesting thing. Traditionally, in the steel industry, we struck when we did (we haven't struck for 14 years) over great national issues, and we did the best we could with the so-called local issues—thousands of them. Now we've kind of turned the thing around, and we have signed an agreement saying we're not going to strike over these great issues, but our local unions will be permitted to strike over local issues under controlled and specified circumstances, subject to referendum vote and authorization by the union's president. That's a pretty sexy thing for many of our local unions.

So this, indeed, is not only innovative, it is an ingenious agreement and one which is addressed to our problems and our difficulties and our realities. We hope it will work. I can say to all of you that the international officers and the members of our inter-

national executive board, two of whose most distinguished members are sitting in this audience, are very desirous that it work and very determined that it shall. And I'm pretty sure that the steel industry in large measure shares that view. Because we're both determined to make it work, I think that it will work.

Discussion—

CHAIRMAN STRONGIN: We now need some questions from the floor.

MR. WILLIAM E. SIMKIN: Let me say first that I applaud this, and I mean that sincerely. I raise a question, but minor, about the word "innovation," and that leads me to a comment. The words "traditional arbitration," the words "normal arbitration," were used by our speakers. I happen to be old enough to remember one system, which started in 1932, that had most of the ingredients essential to this innovative scheme.

I won't burden you with details, but one of the ingredients was that the decision must be issued within 10 days, and we lived with it. There was no exception, unless the parties agreed otherwise. The parties had the sense to segregate, on an informal basis, the big, critical disputes from the day-by-day problems. On the big, critical disputes we had more than 10 days, by mutual agreement. On the day-by-day problems, we didn't have; if we didn't get those decisions out in 10 days, something was wrong.

I submit that something unfortunate has happened in the intervening years when we reach a point where we can refer to long delays, to excessive costs, and to all the other things that you are seeking to correct—when we can refer to that as "normal" or "traditional" arbitration. I think everybody in this room, including arbitrators, has an obligation to do something—to do what you are seeking to do in steel, but not always by the same methods.

I don't think it is essential, for example, in many situations to create a separate mechanism to do what you are seeking to do. Maybe the existing mechanism can be modified so as to get expeditious treatment on the cases that ought to be treated expeditiously. A whole host of things can be done, and I am convinced they need to be done, so that we will no longer say that the "normal," the "traditional," arbitration is a complicated, formal-

istic, time-consuming, highly expensive system. It doesn't have to be that way.

MR. JAMES M. HARKLESS: It has been made quite clear that the new arbitrators are inexperienced. Would you like to comment on whether any efforts are being made to orient or train the arbitrators at the beginning of these panels?

MR. FISCHER: We met with each panel for about three hours a few days before the launching of each panel. In these sessions our joint task force discussed all the phases of this process that occurred to us and what we expected of the panel members. We answered their questions and outlined the whole procedure. We gave them lunch, and then we took them through a steel plant—not to make them experts on steel, but so that they at least had some understanding of a steel plant, which, to the average young lawyer or to anyone else who has never seen it, is beyond belief. That is all we did, and apparently it took.

My associate, Tom Spivey, who, with me, is co-chairman of our joint task force and a vice president of U. S. Steel, and Dee Gilliam, who is my assistant and runs this program for the union, are here. They try to ride herd on this procedure, and when something goes a little astray, they take whatever steps seem to be appropriate to correct the situation. We haven't had much of it—three, four, or five situations.

We have visited some 18 of the major steel plants across the country in the past couple of months, and we have met with the grievance people and the management people involved in these various plants. From the direct reports we get from them in joint meetings, we're quite satisfied that somehow either we chose the panels pretty well, or the orientation, brief as it was, was pretty good, or the help that's given by the presentors at the local level is good, or combinations of these things, because the reaction we have received has been that the people on both sides are fairly well satisfied with the performance of these men and women.

CHAIRMAN STRONGIN: Ben, I think it might be well to explain the difference, in terms of advocacy, between the regular and the expedited procedure—with regard to the training required of or expected of those who would arbitrate before these forums.

MR. FISCHER: Virtually every one of these companies, with few

exceptions, uses a lawyer from headquarters in so-called "regular" arbitration. If it is not a lawyer, it's someone who may as well be, but in almost all cases it's headquarters personnel.

The union, in almost every case, uses what we call our fourth-step people—staff people working in the districts where the plants are located. We occasionally use lawyers; we occasionally use representatives from my office or our legal department, depending on the kind of case.

In expedited arbitration we use some plant official, usually the labor relations director or one of his staff at the plant; sometimes even operating people are used on the company side. On the union side we use either the local union president, the grievance chairman, or, in some cases, a grievance committeeman. In one case it was the grievant himself. We do not have outsiders. We do not have higher echelon people who even attend or sit in at these hearings because we don't want that kind of external influence.

MR. SAMUEL RANHAND: Like most people here, I certainly applaud the arrangement, and it seems to me that all the panelists agree with the conclusion that this is a good idea.

There is one thing that puzzles me. You said that in recruiting the panel members for the expedited group, you went to law schools exclusively. I was wondering—not that I want you to consider this a hostile question—why and on what basis did you limit this to law schools, and what particular virtue was there in that?

MR. ST. JOHN: I think, facetiously, that probably one of the reasons was that we were trying to ensure that we continue the employment of young lawyers in the labor relations field. As Ben has so strongly advocated here today, that might not continue much longer except in this area.

MR. FISCHER: I can't really give you an answer to your question, but I'll try.

What happened was that we were in trouble. We had a new clause; we had to implement it; we had made a commitment; we had made some preliminary efforts to round up people; and we were running into all kinds of snags. So four people got together, and one of them came up with the idea that we adopt it; the

other three thought it was a good idea. Three of the four people present were lawyers; I am not.

We just looked at each other and said it was a good idea, and we went ahead and did it. If you want to know why, it was because we were confronted with a problem and we had run into some obstacles and complications—and we thought that this was a good idea. After we made the decision, we began to think of many reasons why it was a brilliant idea.

MR. MARK KAHN: I can understand why these individual cases on the expedited basis would be handled on a nonprecedent basis. As a logical extension of that, I'm interested that these young arbitrators may not even know what each of them is doing and what each of them is deciding. I think that this may give you some problems ultimately in terms of their own development and in terms of appraising their work. But I wonder—are you grouping, as a matter of practice, related cases for hearing before the same arbitrator? For example, with four employees, is each disciplined in connection with an incident in which they all were involved, so that you would at least get some compatible action on the group of four people?

MR. FISCHER: We haven't changed our practices. In every one of these nine companies, we have always taken that kind of situation and considered it a case, so I assume that we are following the practice we have always had. To the extent possible, the steel companies and our union have tried to expedite as well as we could, and we don't try to play games and spread out one case into four cases. I know of no instance in which it has been done in any of the companies in many years. Whatever they have done in the past, which is pretty much what you're suggesting, they continue to do.

MR. WIN NEWMAN: I'd like to follow up in the area Mr. Simkin discussed, in terms of expanding the scope and breadth of the expedited procedure. I don't think anybody commented on the percentage of cases which are now being handled by the present procedure, and I wonder whether the requirement that there be mutual agreement of the parties results in many cases that should go there under objective standards but don't, for one reason or another, because you need the agreement of the parties.

I'd like to have Ben's thinking, and the thinking of the others, as to whether it would make sense either to include all cases or to spell out mandatory areas which must come under the expedited procedure—and perhaps, even as a caveat to that, that the arbitrator would have the power to request briefs in particular cases where he felt they were needed and where he would not just go along with the usual request to the parties to omit briefs, and that he would have the same power with respect to an occasional opinion where he thinks it is needed.

Basically, I'm getting at the concern I have that where you need mutual agreements and where you do not have the good union-management relationship that exists in the companies you're talking about, you're going to need agreement on each case going to the expedited procedure.

MR. FISCHER: I think Tony misunderstood my opening when I indicated that arbitration hasn't kept pace with labor relations or with collective bargaining.

I don't think this system will work if you don't have a good relationship. In fact, I don't think any system will work where you don't have a good relationship. If you don't have a good collective bargaining relationship, then there is only one issue I know of, and that is: How do you get one?

And when you get one, one of the problems then becomes: How do you extend that into the administration of your agreements in your day-to-day affairs? This committee of ours wrestled for days and weeks with the issue you raise; namely, how do you identify what does and what doesn't go?

We tried all kinds of ways, and every one of them proved not possible, not feasible, not one that we could visualize working. So we ended up by saying: After all, local unions and local managements have pretty good people in them; let them make the decision. And we gave them very, very rough guidelines—no novel issues, no incentives, no precedents, and no complex cases.

Where it is not working out, for the reason that they can't agree on cases, the approach we have taken is that we will get appropriate people, from both sides, to go into the particular situation and make it work. We've been doing this for some six or eight months, and we correct one here and one there. The one that's working out best is one where it was not working at all. We

sent a two-man task force in there, and now it's far and away the most successful situation we have.

Whether this is going to expand over a period of time, we don't know. Whether experience will teach us that there are some things we can do to make it more useful, we don't know. Some people have even said: Why can't we handle discharge cases? Well, there are many reasons that I don't want to discuss here, but at the moment we're not doing it. We don't begin to know how far this procedure will extend, and if you look at different plants, the kinds of cases that go are quite different as between one plant and another.

As to whether this procedure could be used more extensively, we have said quite the opposite. We have told every one of these arbitrators that if they run into a case which, as it develops, really doesn't belong here, based on the criteria that appear in the agreement and what we have discussed with them more informally, they are free—and the agreement says so—to decline deciding the case and to tell the parties to put it through the regular procedure. This has been done in two cases.

MR. STONER: I'd like to make one comment. We were asked the same question: How do you decide what case you think is appropriate? I think that there is a simple and clear answer: If it affects only one employee or a few employees and can have no effect on other employees, that is the appropriate case.