Training and support for these consultants has been provided by the Institute.

Other agencies, particularly the voluntary National Council on Alcoholism and its affiliates, have developed and supported occupational alcoholism programs in private industry. The results have been most encouraging, both in the public sector and in private industry. A survey made last summer identified 740 programs. Understandably, most of them are found in large companies, undoubtedly including some for which you arbitrate.

In conclusion, I would like to call attention to a role which you as arbitrators may be able to play in promoting the development of this type of management-control system. I assume that, from time to time, you are involved in disputes between labor and management concerning employee alcoholism. The fact that such a dispute reaches arbitration indicates that something is wrong in the labor-management relations in that company. After the merits of the positions of the two parties with respect to the rights of a sick employee to keep his job are considered and the dispute is resolved, labor and management should sit down together to set up and agree upon a control system that could provide the treatment or help that employee should have received long before his condition required arbitration.

I would like to enlist you as "honorary advocates" of occupational alcoholism programs in industry. While more and more companies are becoming aware that the cost benefits of programs such as I have described are substantial, we welcome all the help we can get in "selling our product."

ALCOHOL AND THE JUST CAUSE FOR DISCHARGE

GERALD G. SOMERS*

Few issues have posed a greater dilemma for arbitrators than discharge of an employee for alcoholism or alcohol-related misconduct. Industry's conventional approach to the alcoholic em-

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ployee is to cover up the problem with the aid of fellow workers, union officials, and supervisors. When the cover-up can no longer be maintained because of "intolerable" misconduct, excessive unexcused absence, and/or an accumulation of "final" warnings (which frequently omit mention of alcoholism), the employee is discharged. And the discharge is likely to be submitted to arbitration if, as is often the case, the alcoholic has achieved many years of seniority.

The modern approach is to consider alcoholism as an illness, and many arbitrators apparently are convinced that it should be so regarded. But collective bargaining agreements seldom spell out this approach. On the contrary, the contract, if it mentions alcohol at all, is more likely to provide the specific penalty of discharge for the possession or drinking of intoxicants on the job and for such alcohol-related behavior as insubordination or excessive absenteeism. This poses the arbitrator's dilemma that is discussed in the remainder of this paper.

I. The Growth of Occupational Programs

There is now a general recognition of the value of programs at the workplace for identifying and treating the nation's alcoholic population. This view has recently been authoritatively reiterated in *Alcohol and Health,* issued by the National Institute on Alcohol Abuse and Alcoholism (NIAAA): [1]

> "The special value in identifying problem drinking among employed persons is that work settings provide unparalleled potential for early and effective intervention. The employed problem drinker can be helped before his problem progresses to a point of deterioration where he becomes unable to do productive work and may need extensive in-patient care.
>
> "Experience has shown that successful early-identification programs for employed problem drinkers are based on five essentials:
>
> "1. *A written policy* which specifies the procedures for identifying and confronting employees who may have drinking problems, and including explicit recognition by the organization that alcoholism—more usefully called "problem-drinking" in the employment setting—is a health problem, and that employees with such problems will not be penalized for seeking help;
>
> "2. *Specific channels* within the organization, including explicit designation of a program coordinator, where identified problem-

[1] *Alcohol and Health: New Knowledge* (Washington: U.S. Department of Health, Education, and Welfare, ADAMHA, NIAAA, June 1974), pp. 169-170.

drinker employees are counseled and, if necessary, referred to appropriate resources in the community for help in dealing with their problem;

"3. *Training of managerial and supervisory personnel* regarding their responsibilities in implementing the program;

"4. *Education of the entire work force* concerning policy, procedures and the provision of help-without-penalty for problem drinking;

"5. *Cooperation between management and labor unions* and other employee organizations in providing support for the program, its implementation and its continuity."

Although need for union-management cooperation has been noted, most of the existing programs have been initiated by the employer. The National Council on Alcoholism (NCA) and state and local agencies have urged employers to develop occupational programs, and since its establishment in 1971, the alerting of employers to this need has been a primary goal of NIAAA.

Due in large part to these efforts, the number of employer-initiated occupational alcoholism programs has grown "from a handful thirty years ago to a total of 621 reported to be in some stage of development by mid-1973." [2] But relatively few of these programs are fully functional, and efforts are being made to find new approaches that will give an impetus to industrial action in this field.

II. Collective Bargaining Approaches

Collective bargaining has been seen by some as a means of expanding the occupational approach to alcoholism. Projects in which unions have taken the initiative in negotiating the establishment of occupational programs provide for a direct attack through collective bargaining. One of the most notable of these initiatives is that launched in Missouri under partial funding by NIAAA. Its approach is best summarized in the words of its director:[3]

"The program has three major aspects:

"The ability to bargain collectively on a company-by-company, industry-by-industry basis for the formal establishment of joint labor/management programs within employer/employee units.

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[2] *NIAAA Information and Feature Service: Special Report: Occupational Alcoholism* (December 23, 1974), p. 1.

[3] Jerry R. Tucker, "A Worker-Oriented Alcoholism and 'Troubled Employee' Program: A Union Approach," *Industrial Gerontology* (Fall 1974), pp. 20, 22-23.

"The staff capability and skill to counsel and refer alcoholically troubled people to appropriate treatment facilities and community resources.

"The positive inclination and commitment to work in conjunction with other agencies and community resources toward the overall improvement of the health delivery system in this field; to participate fully in heightening social and community awareness regarding alcoholism and substance abuse."

Although the Missouri project provides experience with a functioning broadscale, union-initiated approach to occupational programs, there are numerous other examples of collective bargaining interest in this subject. In a resolution passed at the 1974 Constitutional Convention of the United Automobile Workers, the UAW pledged to intensify its efforts to encourage the adoption of alcoholism-recovery programs through cooperation with management, to further educational programs on alcoholism, and to encourage the development of community facilities. Among the international unions, the United Steelworkers of America has also played a leading role in negotiating contractual provisions for alcoholism-recovery programs.

In July 1974, it was announced that George Meany, AFL-CIO president, and James Roche, director and past board chairman of General Motors, would serve as cochairmen of the National Council on Alcoholism's new and expanded Labor-Management Committee. In a joint statement, they called for all unions and employers to join them in "declaring war on alcoholism." [4] The committee is composed of a number of leaders of major international unions and corporations. In the spring of 1975, the NIAAA announced the funding of a $2.5 billion grant to the Labor-Management Committee in NCA to foster joint alcoholism programs in 10 cities initially. Fourteen additional cities are being considered for union-management programs in a three-year period.

The AFL-CIO's lengthy interest in alcoholism prevention and treatment can also be seen in addresses on this subject throughout the past two decades by Leo Perlis, director of the AFL-CIO Department of Community Services. Mr. Perlis notes that the AFL-CIO was the first to propose union-management committees on alcoholism in every organized plant, insurance coverage for al-

[4] *N.C.A. Bulletin: Special Labor-Management Edition* 1 (September 1974), pp. 1-2.

coholism, and that "company discharge and union coverup of the alcoholic must make way for a rational program of recognition, referral, recovery, reemployment and readjustment." [5]

A number of other unions, at the national, regional, and local levels, have shown their interest in occupational alcoholism-recovery programs. Among these are the pioneering PAR program (Program for Alcoholic Recovery) of the American Postal Workers' Union and the U.S. Postal Service and those regularly described by C. E. "Chuck" Johnson as part of "The Labor Scene" in NCA's *Labor-Management Alcoholism Newsletter.*[6]

An experimental project in Baltimore, run by the Johns Hopkins University School of Hygiene and Public Health and funded by the U.S. Department of Labor's Manpower Administration, provides still another approach to union-management cooperation in the field. In close relationship with a number of major corporations and a council of local unions, the project established one of the first multi-employer and multi-union counseling and treatment programs in the United States.[7]

A Canadian version of a union-initiated approach, known as "Lifeline," operates through the United Steelworkers union. This approach concentrates on the establishment of agreements between management and the local union in the plant concerning specific employees who are in danger of losing their jobs because of drinking problems.[8]

The programs initiated by labor unions, often involving some negotiated agreement with management, are distinguished from the larger number of programs initiated by management. However, any successful alcoholism program will involve union cooperation and participation in organized companies, as has been emphasized in NIAAA's recent statement on occupational programs: [9]

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[5] Leo Perlis, "Labor's Role in the Prevention and Treatment of Alcoholism," address given at the Fourth Annual Alcohol Conference sponsored by NIAAA, June 13, 1974, p. 3 (mimeo).

[6] Published bimonthly by NCA's Labor-Management Division. See especially Vol. II, No. 2 (September-October 1972) and Vol. III, No. 5 (March-April 1974).

[7] Ronald E. Jones, "Alcoholism and the Workplace," *Manpower* (February 1975), pp. 3-8.

[8] *Lifeline,* printed by Thistle Printing Ltd., Don Mills, Ontario.

[9] *Occupational Alcoholism: Some Problems and Some Solutions* (Washington: U.S. Department of Health, Education, and Welfare, 1973), Pub. No. (HSM) 73-9060, p. 12.

> "It is not reasonable to consider the creation and implementation of any program for troubled employees in an organized company or industry without complete agreement and participation by the unions represented. Willing and cooperative action by the community services component of the locals or central labor body concerned reinforces and supports both management identification procedures and the community treatment resources. There is no reason to believe that this matter should not be the subject of an agreement clause in the contract under a heading concerned with health and safety."

Two major studies of occupational programs stress the importance of union cooperation as a characteristic of the most successful programs in organized companies.[10] However, the degree of union cooperation and participation in programs established by the employer may vary from a simple union acquiescence (or lack of opposition) to a written provision in the union-management contract and active participation by union representatives in the day-to-day functioning of the program.

At the same time, some of the most celebrated alcoholism programs have been established in companies where unions are either nonexistent or relatively inactive. A survey by the Conference Board has indicated a relatively low level of union participation in the establishment and operation of company-initiated programs even in many organized companies.[11]

At the other extreme, there are some recorded examples of exclusive union action in this field. Such programs appear to be rare, and Trice and Roman feel that they usually reflect "ineffective handling of deviants by management." [12] In a study under the direction of Harrison Trice, George Ritzer and James A. Belasco detected a conflict situation for the union official as he faced the prospect of cooperation with management in an alcoholism program. Central to this conflict is the concept of "constructive coercion." [13] More is said of this below.

In spite of the importance of union-management cooperation, as seen by experts in the field of occupational alcoholism, only a

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[10] See especially Chapter VIII in Harrison M. Trice and Paul M. Roman, *Spirits and Demons at Work: Alcohol and Other Drugs on the Job* (Ithaca, N.Y.: New York State School of Industrial and Labor Relations, Cornell University, 1972), pp. 197-212; and Stephen Habbe, *Company Controls for Drinking Problems* (New York: National Industrial Conference Board, 1969), pp. 29-36.

[11] Habbe, pp. 30-31, *supra* note 10.

[12] Trice and Roman, p. 206, *supra* note 10.

[13] Reprinted in Habbe, pp. 34-35, *supra* note 10.

very small proportion of the major union-management contracts in the United States currently include provisions for identification, counseling, and/or treatment along the lines espoused by NIAAA, NCA, or the major union-management spokesmen. In a recent survey of 500 union-management contracts, each of which covered 1,000 or more workers in 1973, it was found that only 6 percent contained any reference to alcoholism, and most of these placed greater stress on discipline than on rehabilitation.[14] Thus, the recent thrust toward union-management programs of counseling, treatment, and sympathetic follow-up has made little impression on the contract language that is to be enforced by arbitrators in disciplinary cases.

III. Alcohol and Discharge Cases

In spite of growing union-management cooperation, discharges of problem drinkers continue to occur and frequently result in grievances. One major pitfall in appraising the extent of grievances and arbitration in alcohol disputes arises from identification of a discharged employee as an alcoholic or problem drinker. The most serious cases of alcoholism develop over a period of time. A problem drinker is likely to have accumulated lengthy periods of unexcused absence and unexcused tardiness and to have suffered productivity decline long before the overt act of misconduct or the "breaking point" of absenteeism that brings about discharge. Moreover, an overt case of drinking on the job, insubordination, or violence is easier to prove as a contractual infraction than the more subtle loss of productive contribution that characterizes the developing alcoholic. Even excessive absence will be hard to prove as an employment infraction since physicians are often as willing as spouses to play their part in the cover-up. All of those close to the alcoholic appear eager to provide an excuse for absence—an excuse that does not bear the stigma of alcoholism. In addition to illness, a variety of other excuses will be used. The following alibi pattern of an employee finally identified as alcoholic is typical of that found in a number of arbitration cases. Experts in the field note that the syndrome is so clear

[14] Carl J. Schramm, "The Development of Language Pertaining to Alcoholism in Collective Bargaining Agreements," Working Paper, Employee Health Program, Johns Hopkins University, October 1974.

that they could readily identify an alcoholic by an examination of personnel files: [15]

Year	*Periods of Absence*	*Total Days Absent*	*Reasons and Alibis Given*
1959	6	6	Teeth pulled, family trouble, cold, AWOL.
1960	5	19	Death in family, sore arm, auto accident, car trouble, cold.
1961	3	4	Sore back, car trouble.
1962	7	7	Sick, car trouble, car accident, headache.
1963	8	9	Out of town, car trouble, sore feet, sick, weak, AWOL.
1964	11	26	Car accident, sick, family trouble, stomach trouble, nervous condition, in jail, sore back, car trouble, AWOL.
1965	13	50	Sore back, car trouble, wife died, sick, in jail, child to hospital, AWOL.
1966	5	19	Car trouble, sick, death in family, suspended.

Even when an employee accumulates a formidable series of warning slips for absenteeism and tardiness, the written record prior to discharge is likely to omit reference to a drinking problem. In one typical case, the company presented the following written record: [16]

1/5/68	Suspension one (1) day. Refusal to do assigned work and poor work performance.
1/8/68	Written warning. Excessive absenteeism and tardiness; reporting to work in poor physical condition.
10/4/68	Suspension, indefinite. Excessive absenteeism.
6/16/70	Written warning. Tardiness.
5/3/71	Written warning. Absenteeism and not reporting off from work.
9/29/71	Written warning. Absenteeism and tardiness.
10/13/71	Suspension, indefinite. Excessive absenteeism and tardiness.

(In addition to the above, your poor attendance record dates back to 1962; however, for the purposes of this letter, we have only gone back to 1968.)

[15] Louis Presnall, Kemper Insurance Co., March 1974 (mimeo).
[16] Case provided through the courtesy of Eli Rock; not available for publication.

The employee involved in this case was terminated because he failed to attend AA meetings as promised after his second suspension and because his absenteeism continued.

Although evaluation of the costs of industrial alcoholism and the benefits of rehabilitation are still based on too limited a sample of companies, the most widely used data indicate that the absenteeism of alcoholic employees before treatment averages 16 times that of nonalcoholic employees and that effective rehabilitation can reduce their absenteeism to that of the plant average.[17] Thus absenteeism is central to the costs of alcoholism as well as a principal criterion for identification of the alcoholic.

Published arbitration cases tend to give much greater emphasis to overt acts of misconduct than to absenteeism. For example, in their excellent review of 102 published arbitration awards "which deal with emotionally disturbed or alcoholic employees" as of the early 1960s, Harrison Trice and James Belasco report that absenteeism was cited as the reason for the discharge in only 8 percent of the cases, while "intoxication on the job," "drinking on the job," and "possession of alcohol" were given as the reason for 75 percent of the discharges.[18] Thus, published arbitration awards, classified by the reporting services under "alcoholism" "drugs," or "emotional disturbance," are prone to miss discharges that stem from alcoholism but are actually classified under "excessive absenteeism." Given the stigma of alcoholism, not only are these cases frequently classified under other headings in published reports, but they also are likely to be unpublished.

Unpublished awards of arbitrators who are asked to recall cases involving alcohol and alcoholism provide a more realistic pattern of reasons for discharge. However, they lack the precision that can be obtained from analysis of awards classified by the principal reporting services. My research approach to the question sacrifices precision in favor of reliance on information about awards from the arbitrators themselves and from a variety of sources in addition to the major reporting services.

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[17] See, for example, "Prevalence of Alcoholism Among Employees in Business, Industry and Government," National Council on Alcoholism, March 18, 1971 (mimeo); and data provided by such companies as Oldsmobile Division, General Motors Corp., Kemper Insurance Co., Kennecott Copper Co., and Kelsey-Hayes Co., 1974-1975.

[18] Harrison M. Trice and James Belasco, *Emotional Health and Employer Responsibility* (Ithaca, N.Y.: New York State School of Industrial and Labor Relations, Cornell University, May 1966), p. 20.

IV. Illness Versus Disciplinary Infraction

Experts in the field of alcoholism increasingly stress their view that alcoholism is an illness and that an alcoholic employee should be handled as one would handle a diabetic, a tubercular, or a person with cancer. Companies with alcohol-rehabilitation programs endorse this view, and those with union-management agreements in the modern vein spell out this approach. Many of the arbitrators asked to decide discharge cases stemming from alcoholism also accept the view that alcoholism is an illness, and they make their feeling on this point explicit in their awards.

Yet many of these same arbitrators have sustained the discharge of an alcoholic employee. It is clear that collective bargaining contracts and those asked to enforce them often see alcoholism as an illness that is crucially different from diabetes, tuberculosis, and cancer. Unlike other illnesses, alcoholism may be associated with on-the-job use and possession of intoxicants or associated with intoxicated behavior, and these are often specified as a contractual "just cause" for discharge. Just as significant, the alcoholic, unlike the diabetic, is prone to deny he or she has any such ailment and, therefore, refuses treatment. The resultant excessive absenteeism is unexcused or faultily excused and thus becomes another contractually stipulated "just cause" for discharge. Finally, alcoholism differs from other illnesses because there is less agreement on the appropriate measure of "recovery." Whereas the alcoholic is usually expected to abstain as a vital step on the road to rehabilitation, management personnel cannot be sure of self-reported abstinence. They are more inclined to look at such overt behavior as attendance at AA meetings, absenteeism, and/or job performance. Arbitrators have shared management's lack of agreement on the recovery measure that would serve to justify reinstatement of an employee who has been suspended indefinitely for alcoholic behavior.

Trice and Belasco have indicated that 55 percent of the emotionally disturbed and alcoholic employees in their sample were reinstated by arbitrators after their discharge. The reasons given by arbitrators for reinstatement were similar to those with which we are familiar in other cases of discharge—primarily "insufficient evidence," "mitigating circumstances," and "lack of a consistent policy." The major departures from the common patterns

of reinstatement were found in the larger percentage of alcoholic employees who were reinstated because of "insufficient evidence" and the smaller percentage who were reinstated because the discharge penalty was considered to be excessive.[19]

A review of recent arbitration awards indicates a continuation of this pattern of reasons for reinstatement. They are consistent with our foregoing discussion of the problems of identification and assessment of recovery. The discharge is frequently precipitated by an overt act, but management is really concerned by a lengthy period of excessive absence. An elaborate alibi structure has often defused the absenteeism as a just cause for discharge, and even the overt act of drinking or intoxication is not easy to establish as a justification for discharge. On the other hand, a review of recent arbitration awards reveals that once the overt misconduct of the alcoholic employee is clearly established and identification as an alcoholic is admitted, the previous record of absenteeism and warnings makes discharge easier to justify. Even when discharge is rejected as "too severe a penalty," given the "mitigating circumstances," it is common to award reinstatement without back pay.

Justification for discharge of an alcoholic employee is further complicated by the question of rehabilitation and the measurement of steps toward rehabilitation. In a number of cases, the justification for discharge was based on the employee's failure to attend AA meetings or to take other steps toward recovery. Frequently such rehabilitative measures were agreed upon by the employee, the union, and the company in the grievance procedure following an earlier suspension.

For arbitrators who are strongly convinced that alcoholism is an illness—a treatable illness—the steps taken by an employee toward recovery are crucial in the arbitration awards. When the company has taken unusual steps to direct the employee toward treatment, without success, even the most sympathetic arbitrators are likely to sustain discharge. Arbitrators, like most companies and unions, support the concept of progressive and corrective discipline, and the series of warnings and urging of treatment that often characterize the discipline of alcoholic employees is fully in

[19] *Ibid.*, p. 26.

keeping with the application of progressive discipline. The employee's failure to be "rehabilitated" by the earlier disciplinary steps is generally seen as a justification for discharge.

The following opinion on this point is typical of many others. Arbitrator Louis A. Crane was asked to decide the discharge of an employee who was abusive and belligerent, smelled of alcohol, and admitted that he had been drinking. In sustaining the discharge, the arbitrator noted: [20]

> "Furthermore, March 29, 1974, was not the first time H had come to the plant after he had been drinking. It was the third occasion in the less than two years he had been employed. He came to work with a strong odor of alcohol on his breath on November 11, 1972 and was told at that time he should not come to work after an excessive amount of drinking. However, 11 days later H did the same thing. He came to work with alcohol on his breath again on November 22nd and was unable to work because of his drinking and some medication he had taken. After this second episode, H was issued a written warning which was subsequently reduced to a verbal warning. Nevertheless, his coming to the plant on March 29th, after he had been drinking and when he had no business being there raises a serious question about H's amenability to corrective discipline.
>
> "The Union explains that H has a drinking problem, but he did not realize it until after he was discharged, and it asks that he be given another chance because [it] is now trying to persuade H to join Alcoholics Anonymous. While H was still in the plant, he would have none of it. As a matter of fact, H did not join Alcoholics Anonymous until about three weeks before the arbitration hearing and some seven or eight months after he was discharged. Even so, he did not attend the last meeting prior to the hearing on December 13th. H's efforts can best be characterized as too little too late."

On the other hand, Arbitrator Richard Mittenthal has recently changed a discharge to suspension with loss of back pay in spite of failure of the grievant to attend AA meetings. His position has been summarized as follows: [21]

> "Discharge of an employee for absenteeism and failure to heed prior corrective and progressive disciplinary action is changed to a suspension with loss of back pay, where the employee's attendance record had been very bad and he failed to join Alcoholics Anonymous as required by a prior grievance settlement under which he had been reinstated. However, his attendance record had improved markedly during the nine-month period after his reinstatement and

[20] Rockwell International Corp. UAW arbitration files, December 27, 1974.
[21] Great Lakes Steel Corp., *Arbitration Newsletter*, United Steelworkers of America, February 28, 1975.

his recent absences appear to have been caused by a heart attack. Failure of grievant to attend AA meetings did not prove that he was drinking during the nine-month period."

V. The Arbitrator's Dilemma

The record indicates that an arbitrator asked to decide the just cause of an alcoholic's discharge is faced with two basic dilemmas, if the arbitrator is persuaded that alcoholism is a treatable illness.

First, should specific contractual provisions covering overt misconduct take precedence over the discharged employee's willingness to enter the recognized treatment, therapy, and follow-up prescribed for alcoholism?

The following excerpts, taken from an award by Arbitrator Thomas Rinaldo, are typical of the decision-making process of one who resolved the issue in favor of alcoholism as a treatable illness: [22]

"B has been employed by the City for 15 years. Except for her drinking problem, B has been a commendable employee. The evidence established that when B was not drinking, her work was always satisfactory. The employer and B's Union have been extremely tolerant in assisting B to correct her problem. A leave of absence was provided for B to attend a hospital in Rochester with a view toward eventual rehabilitation.

"Persons undergoing a program consisting of regular attendance could successfully rehabilitate themselves after a period of years. It is not uncommon for an alcoholic to have periods of remission, a falling off the wagon, as it is referred to, before eventual rehabilitation.

"B admits that she is an alcoholic and indicates a desire to rehabilitate herself. Since attending the hospital in Rochester, she has attended Alcoholics Anonymous at least three times a week."

Decision

"Based upon a careful review of all of the evidence, it is the opinion of this arbitrator:

"1. That the employer submitted sufficient evidence to sustain its burden that B engaged in misconduct in her employment by being in a drunken condition on March 30 and April 5.

"2. Taking into consideration B's employment and her willingness to faithfully attend Alcoholics Anonymous and group therapy with the Alcoholism Clinic, the penalty of discharge is too severe.

"3. That in accordance with the Collective Bargaining agreement and the Civil Service Law Section 75, Subdivision 3, B be suspended for two months without pay."

[22] City of Buffalo and Civil Service Employees Association, August 1972. AFL-CIO Community Services.

Other arbitrators have given precedence to the contractual infraction, especially when there is less evidence of past efforts at rehabilitation, even though it is recognized that rehabilitation might be possible in the future. For example, consider the following excerpt:

> "Whether this man could still rehabilitate himself is now out of my hands. Certainly his prior disciplines have never had that effect; but this is not the first time in which he has been discharged. It is at least possible that the latter will sufficiently jolt him so that he may now, for the first time, be willing to admit his 'problem' and do something really basic about curing it. Certainly this is something to be hoped for, and there was mention at the instant hearing of a new type of government-sponsored alcoholism program, with funding for the employee, which certainly might warrant looking into. Should such a recognition and willingness now take place on the grievant's part, the Company and the Union could readily agree to hold the present ruling in abeyance, pending the outcome of such an effort. This is, however, up to them. On the present record, I, as arbitrator, can regretfully do little else but to find that there was just cause for discharge at this time."

The second dilemma is even more complex. "Coercive" or "constructive" confrontation is frequently recognized as a necessary measure to force an alcoholic to recognize his or her illness and take steps toward rehabilitation. The threat of loss of job is one crucial form of coercive confrontation. If the arbitrator reinstates a discharged alcoholic, without assuring that rehabilitative treatment is a condition of reinstatement, has the cause of the employee, company, or union been advanced? Trice and Belasco, pointing to the high percentage of "troubled employees" who were subsequently discharged again after reinstatement, make a strong case for the negative. They note that corrective discipline procedures, without the clear offer of therapy, are not likely to be effective.[23]

Some arbitrators have gone so far as to imply that discharge may be the *only* way to bring an alcoholic into therapy. They appear to have been motivated by this view in sustaining discharge. Others indicate that a discharge is to be sustained, but that if the "grievant, within one year from the date hereof, furnishes the company with a qualified physician's statement" indicating that the alcoholic has recovered, then he will be reinstated to his former job. Still others have expressed a desire to follow this proce-

[23] Trice and Belasco, pp. 24-28, *supra* note 18.

dure but question their jurisdiction over the case once they have sustained the discharge. In this vein, Arbitrator Walter Gershenfeld has stated: [24]

> "After careful review of the record, the Arbitrator finds that Mrs. R was absent on numerous occasions without adequate substantiation for her absences. The Company applied progressive and corrective discipline. The Arbitrator notes that Mrs. R has made a courageous and apparently successful attempt to rehabilitate herself. Mrs. R deserves commendation for her effort. Under the Agreement, however, the Arbitrator finds that reinstatement for actions taken after a discharge for just cause is beyond the authority of the Arbitrator. The grievance is denied."

VI. Conclusion

The summary and conclusion can be pithy: Alcoholism in industry poses serious problems not only for the alcoholic employee, his company, and his union, but also for the enlightened arbitrator.

Comment—

JERRY R. TUCKER*

I am pleased to be able to spend this time talking about one of the subjects I'm concerned with and that my union and all of labor in this country are concerned with. Being brief, I hope, is going to be my long suit.

I'd like first to respond to a couple of the comments that were made earlier by previous speakers—references to labor's increased role in addressing the problem of occupational alcoholism in the State of Missouri. What happened there, in very brief terms, was that the labor organizations in the state began to take an activist role in the formulation and formation of what we'll call a project. The first thing that happened was that the various labor organizations were able to disregard minor differences and form a United Labor Committee in Missouri. The AFL-CIO unions, the Teamsters, the United Mine Workers, and the UAW all participate for the purpose of pursuing social, political, and legislative goals of common concern. The United Labor Member Assistance Program is one of the first tangible developments of that effort.

[24] In a communication with the author, March 13, 1975.

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In addition to in-kind contributions that labor could bring to this type of project, we applied for and received funds from state agencies and, of course, from HEW—the Institute that Don Godwin represents. We received this funding to demonstrate what our ideas and concepts would look like when a staff to carry out the role of this project was appointed.

Very simply, that role is to take the initiative, through the existing labor vehicle—the local union, the joint council, the area or district apparatus of the various unions—not only in planting the seeds of awareness regarding alcoholism, but in actively negotiating with the employers contractual and/or supplemental-agreement provisions that recognize several basic facts: (1) that alcoholism is an illness and should be treated as such; (2) that most employers carry group medical health insurance, and that if that insurance does not currently cover treatment for alcoholism as it does for other illnesses, it should be adapted to do so; (3) that active joint committees should be established in the workplace; (4) that anonymity should be maintained so as to best protect the worker, the client, and the overall elements of the program; and (5) that the technique of constructive confrontation should be utilized where, in a nonadversary relationship, the parties have demonstrated significant and sufficient ability to establish a functioning joint committee whose goal is employee rehabilitation.

This kind of nonadversary relationship is a departure from the traditional roles for both management and labor, but it allows both parties to pursue their primary functions. Through effective rehabilitation and eventual reemployment of alcoholically troubled workers, the company is involved in a cost-saving process that will enhance the overall goal of greater profits. For labor unions, whose primary function is to provide service to the membership, this kind of programming is not only logical but, if handled right, capable of streamlining the grievance procedure by removing an appreciable number of the traditionally difficult discipline and discharge cases that are alcohol-related.

Dr. Somers mentioned in his paper that 621 occupational alcoholism programs under which some kind of assistance is provided now exist in this country. In one year's time in the State of Missouri, we have developed more than 200; the 621 programs must have been developed over a much longer period—some 10

or 15 years. I think it is safe to assume that you are going to see more and more programs of this type in industry. What overall impact they may have on the arbitration process is beyond my scope of speculation.

There are a couple of other things that might be said regarding the existence of a joint labor-management committee, one that is perhaps even supported by contract language. Arbitrators very likely will have the additional responsibility of probing deeply into the ingredients and nature of this so-called joint committee, in the industrial setting, in order to understand fully how it operates. You may well encounter a situation where an employer and a union have agreed, for one reason or another, to establish a joint committee, and cosmetically there it sits. To an extent it is a matter of public relations and serves limited purposes for both parties. But it does not exist as a fully functioning program because the joint committee members may not have been sufficiently trained or may not be sufficiently committed, and, accordingly, the committee may not be doing the job it was intended to do.

The existence of a joint committee may be brought to the attention of someone hearing a discharge or discipline case, and this arbitrator might be led to believe that the very existence of this committee—good, bad, or indifferent—is itself partial justification for sustaining the discipline or discharge of someone who had been "processed" and not fully "rehabilitated" as a result. Therefore, I would caution you to develop an understanding of what constitutes an *active* committee—a committee that does go about the business of trying to refer an alcoholic worker to treatment, to rehabilitate him, and then to get him reemployed as a primary function rather than as a superficial operation.

The final thing I would say is that I think there will be many more projects of this type and program efforts in other states. Other labor coalitions are being formed and are receiving much attention. The perfected techniques that are coming out of efforts such as this Missouri project will be finding their way into contracts all across the country. There are several contracts right now in Missouri that have four or five subsections tied to an entire section on the matter of alcoholism and/or substance abuse. Accordingly, my suggestion to you as arbitrators would be that you follow these developments as closely as possible.

Comment—

HARRISON TRICE*

Back in the early 1960s I used to be on what is called the "Summer School of Alcohol Studies Circuit," when a number of universities and states in this country had such schools. I went from Utah to Texas to Wisconsin and everywhere, and for some odd reason—I'm sure it was the fickle finger of fate—I always followed the drunkometer on the program. If any of you know about this vicious machine, which has now become the "breatholyzer," you know that to demonstrate it, you have a very dramatic performance. You get a burly state police surgeon to stand up on the platform, and he demonstrates this thing for the benefit of the audience. You can imagine what it was like to follow *that* act.

As a matter of fact, the third time it happened to me, I decided that if I couldn't lick it, I would join it. The policeman always selected someone sitting in the front of the audience to act as the guinea pig—to get drunk for science's sake. So I sat in the front of the audience that time and I volunteered—and I can tell you that we had an unforgettable lecture on alcoholism in industry that day. So I'm not exactly unfamiliar with following difficult acts.

I am intrigued with the speakers' comments about being the objects of cracks and humor because of their identity with the alcohol problem. I don't want to upstage them, but at the same time I cannot help but observe that that has been going on for me for 20 years at Cornell University. I'm known there as the alcoholic professor. I get mail addressed to "The Alcoholic Professor" without even my name on it. As a matter of fact, I was at a cocktail party recently where the hostess, thinking I was a member of Alcoholics Anonymous, came up to me and said, "Please don't slip at my party. Please go somewhere else to drink." So I can sympathize very much with the chairman and the other speakers who feel that they have been stigmatized simply because they study this problem.

As I listened to Barbara Hill, I was deeply gratified that she emphasized the dramatic change in attitudes toward alcoholism in the past few years. As an observer of this phenomenon over a long period of time, I can tell you that there has been a genuine

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revolution, and I don't use that word lightly. It has been amazing, and I've been unable to keep up with it.

I would also like to underscore her comment about the troubled-employee approach that is emerging, as well as Don Godwin's emphasis along the same line. Recently we surveyed the major reasons for impaired work performance. The first major reason is the job setup and the company organization itself: Organizations and jobs can drive people crazy. The second major reason is the presence of those emotional illnesses that produce impaired job performance.

All of these programs the speakers are talking about around the country hinge on the exhibition of impaired performance, and factors responsible for impaired performance include more than alcoholism. There is a whole series of behavioral disorders. As industry and unions take to this impaired-performance orientation—the troubled employee—you arbitrators are going to be dealing more and more frequently with the emotional disturbances of the workforce and the extent to which the company can exercise certain kinds of disciplinary action regarding them.

I was very happy that Mr. Godwin emphasized the fact that the most effective locale in which to intervene is the work world. I won't take time to justify that statement, but in terms of prevention, there is no question about the fact that the work world provides the greatest opportunity for intervention that I can think of. But I must quarrel with these people slightly over their statistics. I am a statistician with some training, and I must confess that I always get concerned about notions of $25 billion or penetration rates. I feel that we cannot put much confidence in such statistics.

Professor Somers is basically saying what I had long hoped someone would say and what I have been trying to say for a long time, namely, that there is a substantial difference between being intoxicated at work, on the one hand, and suffering from alcoholism or a behavior disorder, on the other. I am really deeply grateful to hear someone point out that dilemma.

I think the important thing that we need to deal with as far as Professor Somers's paper is concerned is two dilemmas, because I believe they form the basis for effective discussion here this morning. Let me read you his first dilemma: "First, should specific

contractual provisions covering overt misconduct take precedence over the discharged employee's willingness to enter the recognized treatment therapy and follow-up prescribed for alcoholism?" That is a dilemma indeed, and the reality of the situation from the standpoint of industrial and labor relations needed to be formulated.

Many people working in this field have simply overlooked the factor of union participation and the ever-present possibility that arbitration would be involved. These persons are oriented to an extreme toward getting the health notion of alcoholism written into the contract. The UAW is now writing it directly in its contracts. The Steelworkers union is approaching that position. The AFL-CIO has a model contract provision. All are directed toward triggering the idea of poor or impaired performance into the contractual relationship between management and labor.

But I would go a step beyond Professor Somers and insist that you arbitrators are going to be directly involved in attempting to detect whether impaired performance exists and, if so, to what extent. I think you are probably some of the most pragmatic determiners of that question at this very moment. But should these alcoholism and troubled-employee programs increase, and I am quite convinced that they will, you are going to become more and more involved in attempting to decide the extent to which impaired performance has occurred, and on the basis of that determination you will be making decisions as to the first dilemma.

I think that this dilemma can be resolved. An academician can stand back from the action people like you and expostulate about ways of approaching it. I would approach it on the basis of the fact that many of you are flexible in your philosophy. You are flexible to the point that I believe you can shift your orientation between the quasijudicial approach and the problem-solving approach.

In my studies of arbitration, I have found those polar-opposite approaches. The primacy of the contract as a major governing instrument is the judicial approach. The problem-solving approach seems to view arbitration as an extension of the bargaining process. The latter approach tends to encourage the notion that the arbitrator will also at times mediate; it is more freewheeling; and it tends to rewrite the contract through the decisional process. I

can assure you that that is exactly what I believe you will be doing as you try to resolve Professor Somers's first dilemma.

In all probability you will have to confront the partially schizophrenic nature of your own role. Shall you be primarily judicial? Shall you be a strict constructionist or a more liberal constructionist? If you accept the disease-of-alcholism concept and you have some contract language, even if it relates only to being intoxicated on the job, then the resolution of that dilemma is in the direction of exercising your problem-solving and mediating abilities. Having observed a number of arbitrators and having been involved in the process myself in arbitrations involving alcoholism, I am convinced that arbitrators, through their interpretation, tend to alter the content and meaning of contracts.

I would also like to suggest in this regard that it may be well to look at some of the fundamental principles that are involved in selecting arbitrators in the first place. It would seem to me that the parties have a right to decide what kind of arbitrator and arbitration they want. Do they want arbitrators who are more in the judicial category, or do they want arbitrators more in the problem-solving category?

I would strongly suggest that where there is the possibility of arbitration, unions and managements dealing with the alcohol problem think in terms of deciding in advance, and even writing into the contract itself, the type of arbitration they wish. This is not an area in which strict construction and strict interpretation will best serve the health and welfare of those in the working population who suffer from alcoholism.

The second dilemma that Professor Somers poses is extremely difficult to resolve. It goes to the very heart of the nature of the disorder called alcoholism. The alcoholic is an extremely able manipulator. He is a Robert E. Lee and a Ulysses S. Grant combined. He can play the union against management very well, and, above all, he uses the job as a rationalization that there is nothing wrong with his drinking as long as he can perform. Nearly all of the policies and programs today have clauses in them indicating the extent to which the alcoholic individual may have to be "crisis-precipitated," so to speak. He may have to be put into a situation in which his job is threatened in some fashion, not necessarily by discharge but by a series of potential job losses. This is

absolutely essential in most therapeutic efforts if the person does not respond to constructive confrontation.

From your standpoint, it would seem to me that if you could possibly consider the fact that crisis-precipitation produced by union and management regarding the man's job security is therapeutic, and if you wish to make some basic contribution to his health and welfare, then see if it's possible somehow in your consideration of his case to give serious thought to the crisis-precipitation strategy that almost all of these policies and programs contain. It is absolutely essential in most instances to knife through the alcoholic's rationalization, his denials, and his ability to excuse and set up a variety of justifications for continuing to drink. The central existence of alcohol, or any other kind of drug, in this man's life is paramount. We have to realize the extent to which he is absolutely dependent on alcohol and will do anything to continue to use it.

In our previous research, we were startled to discover the extent to which the individual drank even more following reinstatement by an arbitrator. Why? Because he had had the ultimate laying-on of hands. A well-known, allegedly judicious arbitrator, a person who was detached and viewed all the facts, had decided that he should be reinstated.

In the final analysis, if we read Professor Somers's dilemma, I think we can reach a conclusion. Let's take a moment to read it again because I think it is genuinely intriguing: "If the arbitrator reinstates a discharged alcoholic without assuring that rehabilitation is a condition of reinstatement, has the cause of the employee, company, or union been advanced?" No, it has not. As a matter of fact, everybody loses except, perhaps, the arbitrator, who gets paid. But in terms of the major activities, everybody loses. It may well be that, given the nature of the circumstances and the nature of the evidence, you should definitely go to the extreme of discharge. Support it as a therapeutic device. It may be the one and only way to break through the barrier that characterizes the developing alcoholic.

There are many other points I could make. I think one final one that should be touched upon is that there are many unions and many organizations that believe that alcoholism problems should never become a matter of arbitration at all because taking

such a case to arbitration turns it into an adversary situation in which legalisms destroy the very spirit of the action itself.

I would conclude by saying that unless a health-orientation policy jointly agreed to and not of the lip-service type is written into the contract, arbitration becomes a blind alley. Our review of published awards does not indicate whether it is possible for you to engage in crisis-precipitation if you want to. Insufficient evidence, mitigating circumstances, the lack of a consistent policy—all of these principles of fair and just arbitration often force reinstatement and give the alcoholic justification for continuing to drink.

Discussion—

CHAIRMAN MYRON L. JOSEPH: Without further comments from me, let me move to the audience and invite you either to address questions to the panel members or to make any comments you would like to place on the record—agreeing, half-agreeing, disagreeing, building on, or adjusting their remarks.

MR. ISRAEL BEN SCHEIBER: My question is not directly concerned with the problem of alcoholism, but it's one for which Mr. Tucker might have an answer. Some while back I had a problem which arose out of the fact that while the union had not objected to the inclusion in the contract of a provision against the use or possession of alcohol in the plant, when the company thereafter tried to insert the same provision regarding the use or possession of drugs in the plant, the union objected. The union's position at the time of the hearing was that unless they agreed to a new shop rule, it should not be included. Apparently, years before there was no objection at all when the company inserted the rule against the use or possession of alcohol. But this time, when the company wanted to broaden it to the extent of including a prohibition against the use or possession of drugs, the union said, "No, you can't do that. We don't agree to it." My question is: Is there any general policy on this? Have unions in general taken the position with respect to the possession or use of drugs in plants, as apparently they have taken with regard to alcohol?

MR. TUCKER: I think this is a body of experience or a growing area that does not have as clear a definition as the alcohol area has. Within industry, there is more and more incidence of drug

use, and there are more and more unions having to take a position basically similar to the one they have taken in the past on alcoholism. That doesn't answer the question of whether I think unions will be more cooperative in the future in terms of shop rules on this issue, because the thrust we're taking is to consider substance abuse as a total category and incorporate that into the type of joint management-labor employee-assistance programs I'm talking about.

The project that I defined earlier has received a fairly large number of drug users, given normal industrial situations. Out of the 468 clients in the last year and a few months, there are some 20 heroin abusers referred by joint committees of company and union that exist in the State of Missouri. That doesn't mean that the company and/or union is willing at this point to accept drugs in any kind of separate fashion. I think the tendencies are still to weed out a known drug abuser and to try to move quickly toward discharge, whereas with alcohol it isn't happening nearly as often as it had in the past.

MR. PETER SEITZ: I was very much enlightened by Mr. Somers's paper, and I'm very grateful for it. I think it's very helpful to arbitrators. But he was so ingenious in constructing dilemmas that he gives us two dilemmas, and it's very difficult to go through the horns of two dilemmas. There are four horns, and I'm not quite sure I know how to go through them.

I have no real problem in my own mind with respect to the person who is addicted to alcohol and in the workplace performs some outrageous act, which might be arson or pinching the girl in aisle 3 in the warehouse on the midnight shift. There we have the application of the question of just cause. We're not therapists there; we perform a quasijudicial function. We listen to the testimony. We evaluate the quality of the act and the man who performed it in the light of his personality characteristics, and we decide whether or not there is just cause for the kind of discipline the employer has imposed.

Where you do not have any blatant, outrageous conduct, but where you have alcoholism—that has been called a sickness here—it seems to me you have a problem of an entirely different character and dimension. There, it seems to me, we might approach it from the question of whether the man still has the physical capac-

ity to perform his job duties. An overhead crane operator who has cataracts and needs an operation, but who doesn't want to have them removed because he's afraid of the operation or for some other reason, or someone else who needs some kind of medical treatment in order to rehabilitate himself into the physical condition he was in when he was originally hired or promoted into his job, seems to me to be more like the alcoholic. There it is a question of whether the man is going to be able to attend work regularly and in a condition that will enable him to perform his job responsibilities properly.

I haven't heard that kind of approach used in connection with alcoholism. It seems to me that the traditional approach, even of the experts in the field, is just to lump everything together and say, "The man is sick." So the man is sick. So what? This doesn't answer the questions for arbitrators. We get all kinds of sicknesses. When I get a case of a man's having been discharged because of persistent absenteeism, I want to evaluate that absenteeism mainly for the purpose of knowing whether in the future, if he gets the proper kind of treatment, he is likely to be able to attend work regularly as it is his duty to do.

I think alcoholism, if it is considered as a sickness, should be treated the same way. If a person has some kind of organic medical problem, you don't discharge him because he can't do his work with that medical problem. What you say is, "You take a medical leave of absence, and you correct the problem if it is correctable by medical or some other means." It seems to me that we should try to both analyze and develop some sort of approach that would perhaps result in the termination, not the discharge, of an employee because he no longer possesses the physical qualities and capabilities that would enable him to perform his duties. If he takes that leave, if he goes to a clinic, and if he gets recertified, then perhaps management can retain and take advantage of its investment in this long seniority employee.

Mr. SOMERS: The dilemma that I was trying to point out is somewhat similar to the case of a person committing murder because of insanity, and you come to the question: What is the proper remedy? Similarly, when a person commits some gross act of misconduct because he/she is an alcoholic, some contend that act of misconduct is a result of sickness. If you admit that, you do not treat it as just another act of misconduct. You have to decide

whether the appropriate remedy is, as in the case of the murderer who was insane, to hang him or to get him into a hospital.

In treating alcoholism as an illness, there is another dilemma. It is not like other illnesses. One of the aspects of this illness is that the person may not admit that he/she is ill, and that makes it different from the case of a diabetic or a cancer patient or a tubercular. Then what does management do? How do you get the employee into treatment? And what does an arbitrator do when the employee will not go into treatment unless he/she is discharged? That is what makes for the double dilemma.

MR. SEITZ: I am an arbitrator. I am not a therapist. I am not a diagnostician. And it is extremely unusual for me to have competent medical people testifying in these alcoholism situations, or in any kind of illness situation, in the arbitrations that I find myself conducting.

When a man does a bad thing—let's say he fights—he may have an illness that is undue belligerency, or he may have some kind of disturbance. We don't go into the question as to why he is disturbed; it's impossible for us to do that. If a man does a bad thing in the plant, he is discharged because he has done the bad thing; he has indicated he doesn't have what it takes to be a responsible employee.

CHAIRMAN JOSEPH: I think you're trying to avoid the horns of the dilemma. Let me try to sharpen them for you. After all, arbitrators have been known to consider extenuating circumstances. Put yourself in the situation where, in fact, the union comes forward with the defense of illness and where they come forward with medical testimony to try to demonstrate that, indeed, the individual has the illness of alcoholism and that it is that illness that explains his behavior. Under those circumstances, how would you view the situation?

MR. SEITZ: It all depends upon whether the individual, in his alcoholism, has punched the foreman in the nose or whether there has merely been a deterioration in his work performance. Now if he punched the foreman in the nose, there's no more reason to go into alcoholism than there is to go into a study of his mental or emotional state—or that of anybody else who doesn't drink and who happens to be a belligerant and truculent character in the plant.

If it's a deterioration in his work performance, then he has a sickness just like the sickness of the overhead crane operator who can no longer perform his work. Then it's a question of leave of absence with the condition that if he straightens himself out, he then has the physical capacity to work. If he cannot straighten himself out through therapy or medical treatment, then he is terminated. He is not discharged because he has performed a wrongful act.

What I am begging for is a new approach—a little more imaginative thinking from the arbitrator's point of view—under a contract. We are not therapists. If we feel a man doesn't have the physical capacity to perform his work, we can say that he can be "terminated" but cannot be "discharged." There is no just cause for discharge. But he can be terminated or not terminated, based upon his fulfillment of the conditions of rehabilitation.

MR. DAVID J. MAHONEY, JR.: For management, I would like to say that if management and the union realize that this problem exists—and it does exist in every plant—and if they have tried to resolve it and have not been able to do so, it disturbs me that an arbitrator can come in and impose such an economic burden upon an employer who has said he does not want to assume this social responsibility. When alcoholism is urged as a defense in a grievance arbitration, I think it is an unreasonable extension of an arbitrator's power to say that because management has refused to assume this burden, it has acted in an unreasonable manner. In my view, the arbitrator clearly has gone beyond the scope of his authority.

MR. SOMERS: I say that alcoholism poses a dilemma—and this is an answer to the previous question—because in reviewing the cases, I find that arbitrators have gone both ways on this question. There are many who have looked at what they call extenuating circumstances, even in the case of an employee who strikes a foreman. They have reinstated him because, they say, he is sick. Others, perhaps like Mr. Seitz, have decided that they cannot be therapists. The employee is guilty of a disciplinary infraction, and obviously the discharge should be sustained. One sees the arbitrators wrestling with the dilemma in their opinions. Those who will sustain the discharge seem compelled to justify the decision at length, using phrases such as "although recognizing alcoholism is an illness" and so on. Similarly, those who decide to

reinstate an alcoholic for an infraction that would usually justify discharge are seen to agonize over the extenuating circumstances stemming from their conviction that alcoholism is an illness.

Mr. Mahoney is making somewhat the same point. In my review of the cases (supported by Harrison Trice's analysis of the published awards for an earlier period), I find that arbitrators have gone both ways on the issue of management rights and responsibilities. Some have taken Mr. Mahoney's position exactly, saying that the arbitrator has no right to deny management's discharge of a chronic "offender," that management need not accept the burden of his/her rehabilitation. Other arbitrators take the view that Don Godwin and Barbara Hill expressed—that alcoholism is an illness, that you should have a joint program of rehabilitation, and that arrangements for rehabilitation should have been worked out with the union beforehand. If management and the union have not done so, then, in a sense, the arbitrator insists on doing it for them.

MR. MAHONEY: The only point I have on that is, if it is the case of a long-term employee, any reasonable management with a good relationship with the union will have worked out the problems with the union at the plant level before getting to arbitration. Normally you don't have a man coming in saying he's an alcoholic, but if you're going to recognize alcoholism as a defense, then we're going to be faced with this problem. I just think arbitrators are getting into an area where they don't belong.

MR. SOMERS: I agree with you, and with Jerry Tucker, that these cases should not go to arbitration at all. They never should reach the arbitration stage. An enlightened union-management policy dealing with alcoholism would solve the problem long before it ever gets to that stage of the grievance procedure or even into the grievance procedure.

I should note one thing about Harrison Trice before he speaks. He is the dean of scholars in the field of industrial alcoholism. I am not sure that this was made clear. He has been very kind to me and to many others—the Johnny-come-latelys. I've been at it for a year; he's been at it for 20 years. His writings and his words reflect that vast experience.

MR. TRICE: I would like to point out that there are two opposing schools of thought. One school says that disputes involving al-

coholism should not be handled in the formal grievance and arbitration procedure, which is an adversary situation. Another school of thought, which is part of this explosion of the past five years that I tried to describe and that Don Godwin and Barbara Hill described, is in the direction of incorporating these things into the written contract. When I say "these things," I mean the actual alcoholism policy and its specific programs. The AFL-CIO has a model program. The UAW actually has written these things into their contracts.

All you arbitrators know fully that once the policy and program are in the contract, the problem that was presented by the gentleman from management becomes a matter of the arbitrator's interpretation of that contract provision, and the extent to which the arbitrator takes into consideration certain kinds of medical and psychiatric impairment and, above all, job impairment. I don't think you are diagnosticians, but I believe you are comparable to line management in being diagnosticians of performance. You can judge performance. You have a right to judge it.

More important, you have to decide what your philosophy is. If your philosophy is to thrash it out in the collective bargaining process and to incorporate policy in the contract, once it's there it is locked in except for variations in interpretation. If you do not agree with that, I implore you to use another approach—that is, for labor and management to get together often and decide a number of issues that are not in the contract.

In a study we just completed of the alcoholism policy in the federal establishment, we discovered, for example, that unions basically were relatively luke warm, were stand-offish, and were not really certain what was going to happen. Now in the instance I'm describing the union people thought they did know what they were doing, but when they got into a dry-run situation, they discovered some problems: What kind of medical advice do we get? How do we make a decision between someone who is performing poorly and someone who is ill? They decided not to go any further with arbitration and instead to try to convince the member that he would be better off if he got medical and rehabilitation help.

So there are two basic philosophies—the philosophy that incorporates an alcoholism policy in the contract and the one that does

not. I can only say that in my experience, if you go one way—incorporating into the contract—then you have to be prepared for the entire sequence of events. But, as Jerry Somers has described with his research and as mine indicates, if you do go all the way to arbitration, arbitrators are hamstrung in the process of making good interpretations and everybody is going to lose. I'm not sure how I feel about it. I think local conditions decide.

MR. DAVID ZISKIND: I'm intrigued by the suggestion that Peter Seitz made—namely, the possibility of disposing of cases by imposing a suspension until there is some kind of professional certification that a man is able to return to work. I gather that Peter is assuming that the arbitrator has the power to deal affirmatively with the case and that his authority may encompass the power to suspend an alcoholic employee for an indefinite period of time or until there is some therapeutic action.

In the few cases in which I've encountered alcoholism, there has been a long history of cooperation between men in the plant and management to help out an unfortunate individual, and it is only after repeated instances, when people are tired of rescuing him, that he does something trivial and is fired. Then discharge is probably inappropriate to the trivial thing that triggered his dismissal, but the basic problem remains. It seems to me that we should in some way take this idea of Peter's, which I think is novel, of saying that because of the underlying problem, we will suspend the man until there is some reliable certification that he is able to perform his job. Would that make sense to you people who have studied the problem?

MR. TUCKER: I want to respond to that, not so much to either add to or deny that particular approach, but to illustrate the fact that the kind of joint programs that I attempted to describe a little earlier in this session will eventually produce enough statistics to show that there are a lot of cases that are not going to an arbitrator as a result of the exact same approach at an earlier level that you just described as a possibility at the arbitration level.

In other words, the joint committee that we talked about confronts, and in many cases places on suspension, the individual who has had every kind of job done for him for all of these long years, including the union's traditional knee-pad performance. I've been through it. I know how you can involve the economic muscles of a labor organization on behalf of an individual who is

popular, who not only drinks himself but buys for the other fellow. He's well within the framework of friendship with the foreman as well as the shop steward. He gets a lot of attention this way, and he gets a lot of sympathy.

The unions and the companies I'm talking about now are finding this a workable proposition and are entering into just exactly the same kind of rehabilitation that you defined as maybe being worth an arbitrator's look-see. What I am also saying, though, is that while such a policy parallels the rehabilitation philosophy that you defined, if we implement and pursue that course well at an earlier time and it does turn out to be a responsible course, it will reduce the number of occasions that an arbitrator will have to employ the suspension-pending-medical-help solution. If some cases should reach arbitration, and obviously they will, I personally endorse, and I am sure my own organization and the labor movement also endorse, the sophisticated kind of disposition you describe. The management people at this particular session or all across the country may not agree, but I think we need sophistication in dealing with what constitutes treatment for alcoholism.

Currently we have in the project a number of people—I'd say about 70 right now—who are on medical suspension; for their own purposes, they are terminated. I'll use that term. They are not discharged. By the way, we have never really gone into the question of whether we should use the word "discharge" or the word "terminate" and impose that terminology back down the pipe to the lowest level of our system, the shop steward and the foreman. It may well be in the minds of the foreman and the shop steward right now that the term "discharge" is still applicable.

But I would borrow on that and say that we consider the individual to be terminated or "suspended-pending." The element of confrontation that we have been involved with precludes telling the individual that it is temporary in nature, if we intend it to be that, but presumes telling the individual that termination sticks unless the individual makes the effort to get treatment and to present himself back at the workplace with nonimpaired job performance. That's about the same philosophy you were theorizing here as a method of resolving problems in arbitration.

MR. NEWTON M. LEE: One of the programs that Mr. Godwin cited was an industrial program at Hughes Aircraft. For several

years I was involved in some of the administration of that program. I guess I would have to say that we had extra-contractual understandings with our labor unions as to how the program would work and, if my memory serves me correctly, we never went to arbitration on the discharge of an alcoholic individual after that program was in effect.

The question I'd like to put to the panel is: Where a workable program exists and is understood by the parties—and in our experience the only way it could work is on the basis of job conduct or performance—should not management and perhaps the unions, too, expect a stricter construction of a labor agreement in terms of that performance or conduct, rather than in terms of illness, if a discharge dispute reaches the stage where arbitration becomes necessary?

MR. TRICE: I fully agree. The major index of these phenomena is impaired performance. The major factor on which to concentrate is the basic allegation of impaired performance. That's the reason I tried to mention that a few people are really going to get into the business of deciding whether performance has genuinely been impaired and how you can justify the decision.

MR. SCHEIBER: Having been admitted to the bar in 1913, I've had plenty of time in which to lose all fear and concern about the legal technicalities and the strict rules of evidence, but I cannot overlook the fact that an arbitrator's function includes the obligation to hand down a decision that is not only binding but final. The question in my mind is, if the company raises the issue with respect to the temporary layoff of an employee, whether the arbitrator is doing his duty and living up to his obligation when he makes a decision that cannot be regarded as final.

MR. SOMERS: This is a very good point. It was my second dilemma—the fourth horn thereof.

It's one thing for the parties to get together and say, "Let's make this a suspension and we'll see what happens. If this sick person recovers in a year's time, having taken all the appropriate treatment, we will put him/her back on the job." That is an approach that people in the alcoholism field would endorse: Treat it as an illness, try to get the employee back on the job, give him or her a chance.

However, it is an entirely different matter for the arbitrator to say, "I am not going to sustain this discharge. I don't know what I'm going to call my action. It's a termination or it's a suspension, but I'm going to retain jurisdiction in this case for a year, two years. . . . It's hard to know when an alcoholic has recovered. Then I'll decide, if I'm still alive and still in the area, whether this employee ought to be reinstated, with seniority, back pay, and all other rights."

There is a real question as to whether an arbitrator can retain jurisdiction for such a length of time. And, as I mentioned in my review of the cases, some arbitrators have said, "Absolutely not. It is out of my hands now. I would like to treat this as an illness. I think the employee has finally seen the light now that he's been discharged and I'd like to do the right thing, but I cannot retain jurisdiction. He's discharged and that's the end of it."

This is a very difficult question for arbitrators to decide—truly a dilemma.

MR. MAHONEY: We have our own program, and this suspension item is one the experts have told us we can't use—that our program has been successful because the man is discharged, and it's only after a certified completion of a program that he is then reinstated.

Our program is on an agreed, negotiated basis. The union agrees that if the man does fall into problems later, the matter is not then subject to arbitration.

As to this idea of suspension, we have been told specifically by medical people that the alcoholic has to be told he's fired. No namby-pamby words at all. He's fired. He's discharged. They say this is the only way they can help in the therapy and bring this man back—and this approach has been successful. So our program is based not on termination or suspension, but on discharge. I'd like to have a comment from the experts on that, and I'd like to ask Mr. Tucker whether unions are agreeing to waive arbitration.

MS. HILL: Depending on your definition of the term "expert," you'll find a tremendous variety of opinions on the part of people who work in the field as to what constitutes the motivating crisis. Your experts seem to indicate that actual discharge must be the

initial step in getting someone into some type of constructive rehabilitation program.

Personally, I don't think that someone actually has to be discharged. I think it can be made very clear that if something positive does not happen and his job performance does not improve in a set period of time, discharge will follow. We're talking about employed people. We are talking about people who sometimes do not need intensive, long-term inpatient treatment, but rather need contact with a substance-free environment while they begin to do some serious thinking about themselves. I don't think that discharge has to take place for that type of treatment to begin.

MR. GODWIN: You're saying that you have a set way in which labor and management agree to handle the problem. So you have a program and that's what we want.

Someone was referring earlier to the repeated incidents that occur. I would encourage you to observe very closely the kind of program you have and perhaps begin to focus on the individual long before his problem develops to the extent that he has to be terminated. If the program is working and the supervisors and the shop stewards are discharging their responsibilities, we can get to this individual at a much earlier time—before these kinds of repeated incidents begin to occur—and get him out into a system of care in the community. I guess there will always be those cases that we continue to overlook for a long period of time. I simply think it's unfortunate that you have to wait that long when there is a system that will get to the problem earlier and prevent termination from happening.

MR. TUCKER: No one expects this system to solve all the problems. That's as unwarranted as any other expectations of totality we might have.

On the other question, I'm not going to address myself to your specific situation, but it seems to me that there is a body of law that relates to the right of an employee member to the grievance procedure. I don't think that can be mitigated by a prior-agreement type of situation if the individual chooses to pursue his grievance. I also understand from my own experience that the union, as a collective organization, has certain rights under a due-process procedure with regard to its membership's right to determine how to spend its money in the arbitration proceeding. I think that's where it's at. I think that becomes confrontation.

Perhaps the individual was given a chance and temporarily responded, but he "slipped" and became more intense and alcoholically involved. Then I don't think that action previously taken by the company and the union in any way eliminates this individual's right to proceed with his grievance until stopped by something contained within appropriate labor relations practice, which could be the membership's deciding not to spend the money on arbitration, since the union is the primary initiator of arbitration. I don't even know if you have a right to make that type of prior agreement.