CHAPTER 11

ARBITRATION IN SPECIFIC ENVIRONMENTS

I. THE STEEL INDUSTRY

1. ALFRED C. DYBECK*

This is a somewhat unique session because I have the privilege of being both moderator and speaker. I started arbitrating as an assistant to Syl Garrett at the Board of Arbitration in the steel industry, and I've been associated with that umpireship ever since. In January 1979, I became chairman of the board. We have two commentators here: Jared Meyer of United States Steel and Robert Kovacevic of the United Steelworkers of America. Since 1981 Jared Meyer has been General Manager, Labor Relations, Arbitration and Administration, for what is now the USS Division of USX. Robert Kovacevic is head of the department that manages wage, coordinated bargaining, and arbitration for the United Steelworkers.

We're talking about permanent umpireships in the steel industry. The other day we had a session on problems in permanent umpireships. Aside from the oxymoronic nature of the term permanent umpireship, one of the speakers divided umpireships into minor and major umpireships. Most of the time we'll be talking here about a major umpireship, but I have held a minor umpireship. In 1968 when I had an opportunity to hear cases outside the U.S. Steel-Steelworkers relationship, I got a call from a company in Tupelo, Mississippi. Both parties were on the phone asking me whether I would be permanent umpire under the contract. I was delighted, but I feared that this would be such a major undertaking that it might interfere with my obligation to the steel industry umpireship. So I asked them how many cases they arbitrated in a year, and after a long silence one of them said, "Well, maybe four," and the other one said, "No, maybe

---

*President-Elect, National Academy of Arbitrators; Chairman, United States Steel-Steelworkers Board of Arbitration, Pittsburgh, Pennsylvania.

three." And I said, "OK, write me in." Three years passed and I never went to Tupelo, but I got another phone call, and they asked me if I would mind being written into the contract again as the permanent arbitrator for their relationship. I don't know what has happened to this umpireship because I haven't heard from them since. Either they're now writing me in without asking me or somehow I lost my acceptability without ever hearing a case.

My experience has been with only one of the companies in the steel industry, namely U.S. Steel, but for many years there have been permanent umpireships involving the Steelworkers and other steel companies, such as Bethlehem, LTV (which should be divided into the J&L and Republic relationships), Inland, Armco, and since 1978 the iron ore industry. Of the major companies that were last in the coordinated collective bargaining relationship, only National Steel has not had a permanent umpireship arrangement (although it did have one at its Great Lakes facility and may still have one there).

At U.S. Steel the parties first established their umpireship in 1945. Prior to that there may have been some arbitration (nobody's very sure), but if there was any, it was on a purely ad hoc basis. In that year the parties established the Board of Conciliation and Arbitration, composed of three members—one designated by the company, one by the union, and the third member (the chairman of the Board) selected by the parties. The Board was authorized to obtain suitable offices in Pittsburgh, Pennsylvania, and to employ the necessary personnel to meet its requirements. Since 1945 the Board offices have been located in Pittsburgh, Pennsylvania, separate from either the company or the union.

When the parties included the term "conciliation" in the Board's title in 1945, they meant exactly that. The Board was expressly instructed in the agreement to "endeavor to conciliate the grievance in a manner mutually satisfactory to the parties." Should such effort fail, the Board was to proceed to arbitration of the grievance. So much for the concept of "med-arb" being some sort of new idea. I am told by reliable authority that the Board took the conciliation duty seriously, so seriously in fact, that the initial Board members agreed among themselves that, if conciliation should fail, all arbitration decisions would be unanimous.

Within a relatively short period of time, however, this attempt at statesmanship failed. The 1947 agreement contained no instruction to conciliate and, indeed, by the early 1950s the Board seldom, if ever, attempted conciliation. In essentially every case, one party representative or the other dissented, many times with written dissenting opinions. (I don't believe, however, that the system reached the point where the neutral wrote a decision and both parties dissented, as I have been informed occurred in a tripartite system at one of the coordinating steel companies.) I should note that the parties have moved so far from the original conciliation concept that strong objection has been voiced when any of the arbitrators overtly attempted mediation of a grievance dispute.

In 1951 Sylvester Garrett was selected as chairman of the Board, a post that he ably filled until the end of 1978. Shortly after his appearance on the scene, the parties decided to remove the partisan representatives from the Board concluding apparently that, since the neutral chairman made the decision in any event, no need existed to continue the tripartite arrangement.

Although the term Board of Arbitration (note the dropping of the word "conciliation"), has continued to be used to this date it has not been a tripartite board and all authority has rested with the chairman of the Board. At about this time in 1952 the relatively new chairman, Sylvester Garrett, was aware that shortly he was about to face extremely difficult and complex issues, such as incentive issues, problems involving the application of the local working conditions provision, and job description and classification problems under the new CWS system. Resolution of these issues, Garrett concluded, required practical input, which only the parties' representatives could provide but which might not always be revealed at the arbitration hearings.

This type of consultation could, perhaps, be provided by a tripartite system. Remember, however, that the parties had just removed the partisan representatives from the Board. This resulted in Chairman Garrett's consulting with the parties and receiving their agreement to what was then a unique procedure in arbitration. The parties agreed that, before any award issued, it could be submitted to a designated representative of each party for comment. These designated representatives were also available for consultation with the chairman prior to the preparation of a full opinion. This procedure worked so well that a tentative draft on virtually every case was being submitted to the

designated representatives shortly thereafter. Since 1979, however, the parties have agreed that discipline and vacation scheduling cases are not to be entered into the procedure unless a given case involves a unique question of law or contract. More recently, after the parties agreed in 1987 to new contracting-out provisions, including a very expedited procedure for the processing of such cases, we have not yet utilized the review procedure in such cases, largely because of the time constraints.

The introduction of the review procedure in effect preserved one of the attributes of a tripartite system—namely, the limited participation of the parties in the decision-making function—while discarding the much less beneficial aspects and even detriments of the system.

Over the years the steadily increasing caseload required the chairman of the Board, with the parties' agreement, to use special arbitrators on an ad hoc basis to hear and decide cases subject to his approval. In the early 1960s the parties agreed to hiring the first full-time assistant to the chairman, and within several years two more full-time assistants were employed. In the mid-1970s the complement rose to four, and in 1980 a fifth assistant was employed. Through the 1980s the complement has remained at five. Nonetheless, the caseload remained at such high levels that in addition to the assistants a number of other arbitrators have been used on a case-by-case or ad hoc basis.

Early on, it was concluded by the parties that the assistants hired at the Board need not be experienced arbitrators. Initially at least, all of the assistants were trained from scratch at the Board. After the advent of expedited arbitration in 1971, three of the assistants subsequently hired at the Board had some experience in expedited arbitration.

Several significant patterns have been followed:

1. All the assistants employed are lawyers.
2. Their employment is agreed upon in writing by the parties for a fixed term at a negotiated salary.
3. For at least the first two years of employment, the assistants are expected to devote all of their time to the Board.
4. After two years they may negotiate with the parties the right to hear a limited number of cases outside the Board, subject to the discretion of the chairman.

In terms of grievance resolution output, the Board, from January 1, 1979, through the first quarter of 1989, has averaged 95 grievance resolutions a quarter or about 380 resolutions a

year. But this is not the only service provided by the Board. It is involved in a grievance from the date it is appealed to arbitration. Under the agreements administered by the Board, the union has 30 days to appeal a grievance to arbitration from the date of receipt of the company's written answer in third step. This appeal is made directly to the Board, where it is docketed and subsequently scheduled for hearing. An administrative assistant handles the docketing and scheduling, and arranges for hearing rooms in the vicinity of the plant involved, reporter services, and the like. Over half the cases appealed are withdrawn prior to hearing. There are postponements. All of this paperwork is handled by the Board, not by the parties. These services, the arbitrators' salaries and expenses, and the maintenance of a Board staff cost the parties about $900,000 a year.

I have attempted to evaluate the system in a neutral fashion, while admitting to a bias in favor of an umpireship. While the system established by the steel companies, particularly USX, and the Steelworkers is not viable for all relationships, in part at least, it has survived over the years because of the sheer pressure of grievance numbers appealed to arbitration. In the 1980s over a thousand cases a year were appealed to arbitration. Can you imagine the administrative problems the parties would incur if they attempted to handle this number of cases on an ad hoc basis? Even the use of a rotating panel without the administrative work being handled by a third party would be an administrative headache. Thus, I am under no illusion about why the parties have been forced to continue the type of umpireship I have described.

However, there are other reasons for continuing the system. First and foremost is predictability of results. Each party wants to have fairly firm guidance from the Board of its interpretation of the contract. The Board is expected to follow the precedent established over the years. Indeed, I would expect that it is in that context that they negotiate new or changed provisions of the agreement every three or four years. The opinions of arbitrators outside the Board are not considered as precedents, although it is not unheard of that one party or the other will cite an outside case, depending on whose ox is being gored at a given time.

As indicated earlier, another benefit to the parties is the administration of the arbitration system. The Board receives all the appeals, dockets the cases, and schedules the hearings. The particular arbitrator to hear the case or cases is usually selected

by the Board from among the assistants or associates at the Board or from the agreed-upon ad hoc arbitrators. Here again continuity is significant. As the arbitrators hear more and more cases, they become acquainted with the steel operations at the plant. All the arbitrators presently at the Board have visited the company's steel-making plants on numerous occasions. So the parties know that, if a case involves a blast furnace operation, the full-time arbitrators know what it is all about and, more importantly, the parties know that the arbitrator knows.

I have observed that it takes about twice as long to hear a case where a relatively new arbitrator is involved compared with an experienced arbitrator at the Board hearing the case. If the parties feel that the arbitrator understands their operation in the mill, they can more efficiently present their case. We also, of course, do not hesitate to engage in a plant visit on a given case, sometimes at the suggestion of one party or the other but sometimes when neither party makes a request.

In a permanent umpireship the parties, in conjunction with the umpire, can by agreement put into place procedures that might not be feasible in an ad hoc relationship. At the Board the parties have agreed to rules of procedure that are available to all staff personnel presenting cases. Aside from some of the purely administrative matters discussed above, these rules require, for instance, prehearing briefs filed 14 days prior to the hearing. In its brief the company is required to include as an appendix the complete record of the handling of the case through the grievance procedure. This record is highly beneficial to the Board, enabling the arbitrator to be apprised before the hearing of the critical facts and issues that gave rise to the grievance. Many times as a result of this knowledge, it is possible to arrive at stipulations at the hearing, reducing the need for receiving evidence that would merely repeat the facts that the record reveals are agreed upon. Only in exceptional cases do we have posthearing briefs.

I would be remiss if I did not also read to you what I believe to be one of the most statesman-like procedural provisions ever agreed upon by competing parties in dispute resolution. This provision deals with the conduct of the hearing as follows:

> A. Hearings will be conducted in an informal manner. The arbitration hearing is regarded by the Board as a cooperative endeavor to review and secure the facts which will enable the Board to make equitable decisions in accordance with the requirements of the

provisions of the labor agreement. The procedure to be followed in the hearing will be in conformity with this intent.

B. Consonant with the dignity and order of the hearing, minimum use will be made of formal and legal procedures. The Board will have a liberal policy in entertaining evidence.

It may be that most arbitrators, in fact, proceed on the basis set forth above. There is a clear advantage, however, when the parties themselves agree to such procedure.

I am not going to claim that the Board is always current in scheduling, hearing, or in deciding the appealed cases. However, with the responsibility placed on the Board for scheduling the cases appealed, there is a constant flow of grievances on the docket into hearing. We normally try to schedule 80 to 100 cases a month depending on arbitrator availability. This means that as many as 15 to 20 cases a week may be scheduled for a given plant. Obviously we cannot hear all of these, but most times, if the plant is not scheduled this heavily, inefficiencies arise because there is at least a 50 percent withdrawal rate before the hearing dates.

The problem with scheduling and hearing arbitration cases where companies with a relatively high grievance load are appointing arbitrators on an ad hoc basis is exemplified by the iron ore experience. In the Masabi Range and northern Michigan there existed in the late 1970s some eight companies or partnerships in the business of producing iron ore pellets, whose employees were represented by the Steelworkers. In 1978 these companies all agreed with the union to establish a permanent umpireship, termed the Iron Ore Industry Board of Arbitration. For some seven months in 1979 I was chairman of that Board. Prior to 1978 seven of the companies and local unions had used ad hoc arbitrators and seldom, if ever, scheduled a series of cases for a given week.

You can imagine the cultural shock that occurred when the IOI Board scheduled as many as eight cases in one week. It was unheard of in those relationships. But, over a period of time the IOI Board convinced the representatives that it was possible to hear two grievances in one day and hold more than one day of hearing in a week.

Obviously the arrangement described above is not viable unless a large caseload demands it. It is expensive, but I am not sure the caseload we experience could be handled efficiently in any more economical fashion under any other dispute-handling

system. It has occurred to me that perhaps the very existence of the Board may tend to generate the caseload. I have no way of proving or disproving this thesis. Certainly cases are appealed to the Board that should not be appealed. Many of these, however, are currently being withdrawn or settled after appeal but before hearing. There remains the possibility that were it not for the permanent umpireship making it relatively easy to appeal cases to arbitration and rendering unnecessary the selection of arbitrators on an ad hoc basis, fewer cases would reach arbitration. But that is for the parties to decide, and I am now going to turn the session over to Jared and Bob for their comments and reactions.

2. JARED H. MEYER*

As Al [Dybeck] said, I assumed my present responsibilities in 1981. I therefore had nothing to do with establishing the Board of Arbitration; I inherited it, so my function today is more like that of a fiduciary or trustee, having received from my forebears, like John Stevens, Webb Lorenz, and Bruce Johnston, this institution to manage for a period of time. At some time I will turn it over to other people. I accordingly can take no credit for this institution, for which I have the highest regard. The best I can hope to do is use reasonable care as a fiduciary to preserve the institution, improve it, and pass it on.

As a company man (and I am most comfortable as an advocate), what can I say about the Board. First, you need some necessary preconditions to have a Board of Arbitration. Every business or every company could not efficiently utilize this mechanism. Some of these are up-side attributes of a Board of Arbitration, and some are down-side.

First, you need a high case load. As Al said, the Board costs the parties about $900,000 per year. This is not a large amount of money, when you consider that a continuous castor will cost you $220 million, but it is a significant amount of money. Remember that U.S. Steel is not in the arbitration business; it is in the steel business. Therefore, the Board represents pure cost. From a business point of view no operation can be efficient and sustainable unless it has a high throughput. Your fixed costs eat you up.

---

*General Manager, Labor Relations, Arbitration and Administration, U.S. Steel Division of USX, Inc., Pittsburgh, Pennsylvania

Regretably we do, and that in turn gives us efficient output and reasonable costs per case.

The second prerequisite is that you have to have a stable of good arbitrators, because you're married to these folks for some significant period of time. It has to be a stable group of arbitrators. That means that you are asking professionals to tie their careers for some period of time, either short or long term but essentially full time while they do it, to only two parties. In many cases that means that the arbitrators' professional career development might suffer because they will have to forgo professional, academic, or other party representation, or other tasks that might be assumed as ad hoc arbitrators.

Although I have criticized decisions of our arbitrators and will no doubt do so in the future, I can say that we have been blessed at U.S. Steel, both before my time and during my time, with an exceptionally able group of arbitrators. I think these people are at the very first rank among Academy members. I feel much more comfortable saying that, having just renegotiated all of their contracts, knowing they won't be asking for salary increases.

Third, you need a large number of plant sites, all of which are union represented. If you don't have that precondition, you cannot maximize the efficiency of the Board, because you cannot schedule in depth. By scheduling in depth I mean that if you have six arbitrators, you don't want to schedule one arbitrator each week for six consecutive weeks. You want to use three or four during the same week. To do that, you need three or four locations that require their services. If you have only two plants, you cannot efficiently use six arbitrators.

If you lack these three preconditions, this seminar is not for you, and you won't hurt our feelings if you move to another. Those are the prerequisites you have to have. There may be others, but in my judgment those are baseline requirements.

In U.S. Steel we have a high caseload; we have multiple union-represented locations (although by a strange coincidence, ever since I arrived in U.S. Steel, we've been shutting down more plants than we've been opening), and we have a stable of arbitrators who I think are in the first rank.

What are the advantages of this arrangement to the company? First, the Board, by reason of its stability, creates precedents that the company can rely on in making its business decisions. That's very important. We don't like to manage in a sea of uncertainty.

We're much more comfortable managing where we know what's going to happen. It's a lot easier to do business. So certainty is very important. The Board provides predictability. In fact, in our labor agreement there are whole sections which are really codifications of arbitration decisions. Syl Garrett in effect wrote our vacation scheduling language. The quality of predictability has actually flowed into the labor agreement, and that's an advantage to the parties.

Second, the Board has the ability, on short notice, to dispatch arbitrators where they are needed if we need to put out a fire. We don't have to call a member of the Academy and be told we can have a hearing date in three months. These arbitrators work for us. We used this asset recently when we had to dispatch an arbitrator to Fairless because there was a fire down there that got into federal court. So you have a resource here that you can command rather than persuade, cajole, or purchase.

Third, the Board provides an opportunity, one that is highly unusual, for executive level review by both parties of proposed decisions, permitting us to head off gratuitous or bad advice. We can address that issue without affecting bottom line results.

I want to make it very clear that this is not a way for the international union and management to get together to conspire against the working man or the plant manager. It's simply that many writers don't follow Lord Chesterton's admonition: "I wrote a long letter because I didn't have time to compose a short one." On occasion, we help the Board with its composition so that the resulting award will serve our needs with minimal damage. That is not the result we are likely to achieve if the first time we see an award is when we open our mail and say: "Oh my God, what are we going to do about this!"

Fourth, a Board is especially effective if the parties have a high withdrawal rate. I assume all Academy members are confronted with this cancellation problem. You commit yourself to time, you schedule a hearing, and one week before the hearing the parties call and say they've settled the case. We in U.S. Steel have a 50 percent withdrawal rate on a thousand grievances a year, so just handling *not arbitrating* would be a very difficult task without an administrative office to manage that for us. This mechanism serves a very good purpose because, if that activity was not going on at the Board, it would be going on at my desk. I have enough to do now.

Those are what I call the distinct advantages of a Board. I commend them to any industry that has the preconditions to use this mechanism.

Now, are there disadvantages? In my judgment there are. Al and I disagree on this. In theory, if I take 1,000 grievances to 1,000 different members of the Academy, I could win 1,000 straight cases because each of you would be deciding one or two cases without knowing what your colleagues were doing in other isolated cases. Realistically, this outcome is not possible with a Board. There is an institutional dynamic which requires both parties to win some cases. That doesn't mean that Fairless can't lose all its cases, but what that plant wants to do is to dump Fairless' losers on Gary or some other location. Within the closed system, however, there's an institutional necessity for this mixed result to occur. In theory, that tendency would penalize the party that is more faithful to the contract because, although sometimes we lean toward the margin of the contract and sometimes we walk down the middle, the net results don't necessarily even out in both directions. I'll leave it to your judgment as to which party benefits from this dynamic.

In addition, as the reciprocal of predictability, but on the down-side, when we get error into the system, we are stuck with it. In U.S. Steel, we adhere to the minority view that we cannot discharge somebody merely for not coming to work, no matter how infrequently that employee comes to work. We have kept some employees that were literally coming to work 50 percent of the time. One of our problems in health care is that we have a few employees who are unique. When one gets sick, usually one of two things happen—one recovers or one dies. In U.S. Steel we have some employees who just stay sick. Yet we were told we could not remove such an employee from employment without just cause, which means you have to catch the employee at the hockey rink, or tending a bar (and we have done just that on occasion) to get rid of them, but on occasion that has been insufficient.

Steel is a very craft-oriented business with work jurisdictions set by arbitration. Our basic labor agreement is about 260 pages. You could take it home to your nine-year-old child, and he could read the whole thing, and he won't find anywhere in that agreement anything about craft jurisdiction. (In the future he will because we had to reverse some of the Board decisions through negotiation.) But in the past craft jurisdiction was not in there.

It's solely an arbitral doctrine. It may even have been a good doctrine back in 1950, but it's a terrible doctrine in 1989.

These are just a few examples of problems which can be aggravated by having a permanent umpireship—once you get a ruling, you're stuck with it. We have been required to change the basic labor agreement to deal with these and some other problems as a vehicle to get us out of some doctrines that we were only into in the first place as a result of arbitral decisions.

Finally, it can happen that any one arbitrator going to any one location can sustain or deny a string of cases at that one location (and I sympathize with the arbitrator on this one), thereby becoming very unpopular at that location through no fault of his own even though he is thoroughly acceptable at all other plants. This does not happen much in the ad hoc world because there an arbitrator sees a party maybe once or twice a year and is gone. Our arbitrators are very capable, as I have already stated, and I have an institutional responsibility as well as a desire to protect them insofar as I can from unwarranted criticism that they are pro-company or pro-union or crazy or what have you. Nevertheless, I think, to the degree that this occurs, it occurs more often in a permanent system because with permanent umpires you have people who have been five to ten years with one relationship, and over time are bound to alienate some people. We have arbitrators who have been with us longer than many people stay married these days.

Some arbitrators long for the good old days, but no one can turn back the clock. With that as background it's very difficult for any manager to tell you that anything in today's world will be permanent. Those born and raised in Pittsburgh, as I have been, can remember when steel mills were permanent. There was no such thing as an employee quitting the steel industry. That was unheard of. It was assumed that when a person got a job with a steel company, it would be permanent. Recently all but 6 of 31 electricians we recalled from strike at Fairless quit the steel industry. That would have been unheard of in the old days.

For 1989 and the foreseeable future, the Board realistically, adequately, and with distinction serves the parties for all the reasons I mentioned. The Board provides us with a service which meets a very real business need. Given U.S. Steel's and the steel industry's other real problems—foreign competition, costs, quality, environment problems—it would be a foolish manager

who would go looking for nonproblems to solve when real problems confront him. I had a Yale law professor who taught me: "If you're going to shoot moose, go where the moose are." Similarly, if you want to solve problems, go where the most problems are. Don't solve the ones that are nonproblems. So, for the foreseeable future, from company perspective, this Board will continue to serve us today as it has served us in the past. I therefore would anticipate that this particular dispute resolution mechanism will survive many more labor agreements. However, that said, nothing would please me more than to use the service less.

3. ROBERT KOVACEVIC*

I was interested in Jared's comment about who was more faithful to the terms of the contract—management or the union. There are thousands of grievances filed by our members against the company, and I can't think of a single one the company has filed against the union. So I leave it to you to decide who has abided by the agreement more.

While Jared's experience has included work with the Iron Ore Industry Board as well as the steel industry Board of Arbitration, I have had a somewhat different experience in that I deal with various systems, even with ad hoc arbitrators, since our union has contracts outside the steel industry. We have different systems in aluminum, tin can, and even in the various companies in the steel industry. U.S. Steel is unique. This is the only Board of Arbitration in which we pay the arbitrators a salary and they work for us. In Bethlehem and Allegheny Ludlum, for example, we have different systems. At Allegheny Ludlum we have no permanent umpire, but there is a pool of arbitrators that we draw from, and we rotate that board. At Bethlehem we have a permanent umpire, and he uses several other arbitrators that we call upon, and he dispenses them wherever they may be needed. At LTV we need only one arbitrator for the Republic side and one for the Jones and Laughlin (J&L) side. It could be concluded that the grievance load is less than it is at U.S. Steel or Bethlehem where we have several arbitrators. This type of system would not be logical for any other company except maybe Bethlehem Steel.

---

*Director, Collective Bargaining Services, United Steelworkers of America, Pittsburgh, Pennsylvania.

For those of you who don't know about the steel industry system, we have a draft system, whereby we review the decisions prior to their issuance. We use that procedure in only three systems—the Iron Ore Industry Board, the U.S. Steel Board of Arbitration, and LTV. At one time we kept that a secret so that nobody would know we were reviewing the cases. We're not reviewing the cases to change the bottom line, although the bottom line may have been changed in one instance. But we review them to make certain that the arbitrators do not issue decisions that could totally disrupt our relationship and the collective bargaining process.

My problems are quite different from those that the Board of Arbitration deals with. I not only have to involve myself in those cases, but I also have to deal with other umpires and with other arbitrators in the other systems and at other companies. Familiarity breeds contempt in this business as in others. That is one of the weaknesses of this type of Board. Arbitrators get overexposed. The Board sends an arbitrator back to a location—particularly one who is able to pump out a lot of decisions, very effective, very efficient—but because of this somewhere down the line I will end up with an irate member or local committeeman, who will say: "Don't send that arbitrator back here again," and I've had that happen. I've heard management people say the same thing. They complain about losing cases because they're violating the contract. When local union people tell me to fire the arbitrator, I tell them that you can't fire the arbitrator every time you're unhappy with the decision. Although some arbitrators say that the union has to win some and the company has to win some, I don't think that you have to play a numbers game. I think that there are cases that can go either way, and when that happens, some arbitrators reflect on whose turn it is today.

The point is that I may not be upset about a certain decision, but that same decision may totally upset the local union people because of their personal involvement, because of political pressures. The company has the same problem. The managers say: We'll violate the contract because you should not have negotiated that provision; if the union files a grievance, you defend our action. When they lose, they want to fire the arbitrator.

I have been fortunate in dealing with a lot of permanent umpireships in that the consistency of decisions are such that we have not been subjected to a lot of the pressures. That's not to say

that some arbitrators do not seem to fall into a pattern. When they do fall into that pattern, hostilities are bound to arise. With mystery novels, I have a habit of looking at the back to see whether the butler did it. Likewise I always look at the award to see whether we won.

I don't like surprises. I can pretty much predict what a particular arbitrator will do in a given case. When I get a decision I can't understand, I try to look for a reason. Arbitrators must have stability. That's the only way the U.S. Steel Board of Arbitration can survive. The day I have to yield to local union people or Jared has to yield to local management to fire an arbitrator under this system will only generate a tit-for-tat attitude: you fired one so now I'll fire one. We can't bend to that. When you start firing people, you have difficulty finding replacements. We have great arbitrators.

My counterpart at LTV once said: "There's no such thing as a good arbitrator." This was said in presence of an arbitrator, and what he really meant was that it depends on what decision comes out; somebody wins and somebody loses. I don't agree. A good arbitrator pays attention to the contract and is consistent.

About five years ago I became somewhat disillusioned about the arbitration process. The steel industry was in such terrible shape, and I began to feel that arbitrators were reading the newspapers instead of contract language. If the steel industry is in bad shape, let the union deal with the concessions that we may have to make at the bargaining table. I don't want an arbitrator saying that it makes good business sense to rule a certain way. I was on the telephone pretty fast about that decision.

You can't dispense your own brand of industrial justice. You must interpret that agreement and render a decision that is logical and that has the proper rationale to be acceptable. I don't mind losing cases. I presented eight cases before an arbitrator and never won one, but in my opinion that arbitrator is a top professional. So I don't look for a won-lost result.

If people ask me whether someone is a good arbitrator, I have to base my answer on the past record. A local union person called me the other day and asked about an arbitrator. I told him I thought the arbitrator was pretty good. The local union person asked, "How is he on discharges?" People expect arbitrators to be different on different types of cases.

I don't agree that arbitrators should make a case for either party, but they have an obligation to get the facts. If that means

asking questions, they should ask them. I don't expect questions because I present a pretty good case, but in our business we have some weaker staff people. If arbitrators know a question should be asked and they don't know the answer to it, but refuse to ask it on the ground that one or other of the parties would benefit, I think they are not performing in a manner that is consistent with the way in which this Board operates. The arbitrator owes it to the parties to get the facts.

Sometimes arbitrators on our Board of Arbitration will interrupt and ask about eight questions, all of which I intended to ask. But at that particular time it may be important to the arbitrator to get those facts in a preliminary manner to help with understanding so that the questions will not be forgotten. That's what I like about the Board. Our arbitrators are trained properly to get the facts. I don't have that opportunity with ad hoc arbitrators or in other systems. We have conferences and get a chance to tell them what we don't like about a proposed decision, which we don't do with other arbitrators.

What do I look for in an arbitrator? Integrity first of all. The numbers game is not important. Integrity is the supreme obligation that arbitrators have to themselves and to the parties. If arbitrators have character and integrity, I won't worry about whether they should be fired. Our arbitrators are very experienced, but at one time they weren't. Maybe they're still learning. Experience is something you can acquire, but intelligence and integrity you are born with. In our system experience is what you get while you're being paid, whereas in some other situations experience is what you have when you're too old to get the job.

In our system the Board reviews every decision, whereas in ad hoc arbitration you send in the decision and somebody says, "Boy, did you blow that one!" and you don't know why. With our system arbitrators get not only the input of the chairman of the Board but also our input. It's pretty much a screened decision-making process, but it's one that we feel we can live with. We get the benefit of more than one mind.

Nothing turns out right unless somebody takes on the job to see that it does. We have been very fortunate in the chairmen we have selected—Al Dybeck and before him, Syl Garrett. They make that board run. Regardless of the quality of the arbitrators under them, if you didn't have someone capable sitting as chairman, the system would fail. We're going to have this system with us for a long time. Jim Wright, former speaker of the U.S. House

of Representatives, said it all when he stepped down, quoting Horace Greeley: "Fame is a vapor; popularity is an accident; riches take wings; and those who cheer today will curse tomorrow. But one thing will endure and that's integrity." As long as we have arbitrators with character and integrity, this system will endure.

Questions from the audience—

Q: Under your current contract, do you have prearbitration screening?

A: What we have is a review procedure. What occurs is that someone from my department and the company representative weed out cases because we have such a heavy caseload. In some plants we have 600 or 700 grievances, but at Fairless we're talking thousands. Once these two weed them out, we bump them up to a neutral arbitrator to review. The neutral will tell the parties who is likely to prevail or that to get the facts will take arbitration. He'll take another shot at getting the garbage out of the system. If it goes to arbitration, however, he will not be the person to hear that case. We've decided on this as a permanent part of the system. It's not a brand new provision; there are similar provisions in other steel agreements, but they have not been implemented.

We're using one person now. If it works well, we may agree on other arbitrators to do it.

Q: One speaker said that craft jurisdiction was not in the agreement but was invented by arbitrators. The parties years ago negotiated the CWS system, and the maintenance operation was then run by management in accordance with those classifications with the custom of using crafts for certain jobs. Didn't the arbitrators merely implement what management had been practicing for years?

A: The CWS system, which was put in before I came with U.S. Steel, was part of a two-pronged process which dealt with wage-rate inequities; the other half dealt with incentives. That process ran aground like the Exxon Valdez. The only part of the process that the parties came to grips with was the CWS half. I view that program principally to create equitable classifications on the job and to replace negotiated job rates. That does not necessarily imply that a welder who does not weld for some period of time cannot be reassigned to welding. We find that we've lost that opportunity because now that's part of the millwright job.

Q: The parties could negotiate into the contract language that would totally take away arbitral discretion. If not, do you factor that in?

A: In 1961 I worked at U.S. Trust Company in New York. I was taught that in drafting there is no gold star for brevity. The gold star is for clarity. I've tried to adhere to that standard. I have tried to draft provisions that are perfectly clear. Of course, in collective bargaining there are times when you have to knowingly leave provisions ambiguous. If I achieve that objective of clarity, however, I expect that language to be applied. Any language is inherently ambiguous and there is obviously arbitral discretion because if it was all that clear, we wouldn't even need the agreement. It is very dangerous for an arbitrator to guess what's going on behind the scenes. You usually will guess wrong, and you may find the case is really one the union wants to lose. When you go too far down the road of arbitral discretion, what you are doing is thinking in terms of what the objectives might be and are acting on incomplete information, thereby producing a result which may be exactly contrary to what the parties intended. With your equitable decision you may cut the legs off a management or union representative, who has told the local people to eat this one but has gotten overruled by much brighter people.

Q: Does the arbitrator like to have decisions reviewed by the parties? Is there any application of this to ad hoc arbitration?

A (Dybeck): Yes, I like it. Not because I'm all that happy about people telling us how wrong we were, but even that's educational. We have a proclivity for sticking our feet in the collective mouths of the parties. On occasion both parties on the same sentence in the draft will say, "Do we really need that to get the same result?" It could be used in ad hoc work only if the parties agree to it. In some tripartite situations you find the advocate members on the board saying, "Just write up the opinion, and one of us will concur and one of us will dissent." But I've seen times when the board really had to work. That way you get input that you don't ordinarily have. I use tripartite boards; I literally ask them to use the system for a constructive purpose.

If I were an ad hoc arbitrator, to maintain acceptability I would try to get the parties to agree to that review procedure because I think it would be in everyone's interest. I don't know how far you can comfortably go in suggesting this, however,

because if the suggestion is not taken, at some point you inevitably have to drop it.

Q: Would you recommend that the parties put that review procedure in the arbitration clause in the contract?

A (Jared): I don't think it should be in the contract. At one time in U.S. Steel this process was quite secretive because if the wrong person found out about it, he could make an issue of it by claiming that the company and the union were getting together and fixing the grievance. That is not what happens, of course, but to put it into the basic labor agreement enhances that risk. In terms of sitting down and negotiating a grievance procedure, however, it is certainly something to talk about. If it fits in with your arbitration arrangement, you could put it in a side-bar letter. We have several side-bar letters with the Steelworkers that are not published but are binding.

Kovacevic: One of the problems of the review procedure is that when the decision finally comes out, whether it's for management or union, people think that we had the power to change the bottom line decision. If they don't like the decision to begin with, they say, "How did you let that decision come out? You're the one who reviewed that decision." The purpose of the system is not to arrive at a decision any different from what the arbitrator would have. It is only to review the manner in which the rationale is handled or to take something out that is not necessary or may be damaging to the parties at a later time. It has to be handled quite delicately, so I would certainly advise against putting it in the contract.

Dybeck: There is another advantage. We don't always have transcripts in our cases. As a matter of fact, there is a rule that we have them only in incentive and discharge cases. I can have them in other cases at my discretion. But the review system is also educational for the parties, primarily for the union, because the representative, in reviewing a case, might find that facts didn't go in or arguments weren't made so that later he can go back to the local people and help them improve their presentation skills.

II. THE POSTAL SERVICE

J. EARL WILLIAMS*

It is an understatement to suggest that the United States Postal Service (USPS) is a large and complex organization. It is one of

*Member, National Academy of Arbitrators, Houston, Texas.