INDUSTRIAL RELATIONS RESEARCH ASSOCIATION

Proceedings of the 1978 Annual Spring Meeting

May 11-13, 1978

Los Angeles, California

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Edited by

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Industrial Relations Research Association
Spring Meeting

May 11-13, 1978 Los Angeles, California

PREFACE

Industrial Relations Research Association Series
Proceedings of the 1978 Annual Spring Meeting

A number of important and diverse industrial relations topics were highlighted at the IRRA's spring meeting in Los Angeles.

Wayne Horvitz's dinner address on the role of mediation in reaching a settlement in the recent coal negotiations was complemented by a meeting session on the use of arbitration in resolving union-management disputes.

Other sessions featured various viewpoints on the administration of OSHA; evaluations of CETA by people concerned with its operation at the national, state, and local levels; and critiques of the literature of industrial relations as it appears in books, articles, doctoral dissertations, and arbitration decisions.

In his luncheon talk, Bernard Anderson described the present status of black Americans with regard to jobs and incomes.

The Association is grateful to the Los Angeles committee on arrangements for the meeting, to the authors and discussants of the papers for their prompt submission of manuscripts, and to the LABOR LAW JOURNAL for publishing these Proceedings in their August 1978 issue.

BARBARA D. DENNIS
Editor, IRRA

What's Happening in Collective Bargaining?*

By WAYNE L. HORVITZ

Director, Federal Mediation and Conciliation Service

I WOULD LIKE TO TALK ABOUT TWO THINGS that are of concern today, and talk about them as we would informally among friends.

One of the things I want to talk about is the recent coal negotiations. I thought you might be interested in some comments from someone who was there. There's an awful lot being written about those negotiations, and none of the people who have been writing have talked to me or, as far as I can tell, anyone else who was involved in it. I would also like to talk about collective bargaining in the U. S. today as I have observed it in the last few years, and particularly as I see it from my present vantage point.

The development of the industrial relations system in this country—the more recent history rather than the ancient history—begins in the 30's, in the aftermath of the great depression. It was then that the great trade union movement, helped along by a facilitating government which made the decision to write legislation that would be an underpinning for the development of this, came forward. All of us are proud of that heritage. During that period, there was an acceleration as a result of the demands of World War Two, which brought out the best of the innovative kinds of developments that have made our industrial relations systems in this country a uniquely American experience and, with all due regard to our Canadian friends, perhaps a uniquely U. S. experience.

It is unique when you look at the kinds of things that we've all been a part of, when you look at the development of our labor legislation, and the development of our grievance and arbitration machinery, that the labor movement in this country has essentially accepted a role in the existing structure. In other countries that have similar systems of government, the labor movement has become much more a part of the political party process.

You are aware of our uniqueness, also, when you look at our friends in England and the experiences they are going through, where they have not installed our kind of contract grievance and arbitration machinery, for example, which has contributed to the kind of industrial stability in this country that we have come to expect.

* This article was taken from a transcription of remarks made at the IRRA Spring Meeting, and was not from text.

This contribution largely goes unrecognized. I think one of the reasons that it is unrecognized is that it is never really talked about until you participate in meetings like this. It has always been there. We accept it as part of the scene.

We also accept the idea that the parties have voluntarily reached agreements. We accept the idea of no strike during the life of the agreement. We accept the idea of a broadly based system by which the parties really decide their own fate. And although there is always much discussion and much controversy on the legislative side and the administrative side of the underpinning, the plain fact of the matter is that it *is* a voluntary system of the parties and that most of the legislation historically has been enabling legislation that recognizes this fact.

The Voluntary System

Sure, we have regulation in our legislation. We have all kinds of regulatory legislation. But basically we have built an industrial relations system on a voluntary decision-making process, in which the parties themselves decide what they are going to do with their lives, or, as an old friend used to say, "We should have the right to go to hell in our own way."

This evolving system has been so much a part of the way we acted, all of us, including all of the people in this room, that it went along, and it worked.

Sure, there were problems; there were strikes; there were controversial laws; the NLRB would get in your way once in a while; but it worked. And it worked because everybody worked at it.

It worked during the post war years of the 40's into the 50's and really up into the 60's. It was in the 60's, I think, that we began to see a change. I think the reason we began to see a change was that the larger society was being affected by changes which the plant society was trying to absorb.

The plant society is, after all, only a reflection of the larger society. The bilateral arrangement of collective bargaining and the attendant tripartite arrangements of arbitration and mediation and so on were beginning to be asked to do things that perhaps the system was not designed to do. People found it incompatible with the system which they had created.

And so we saw the kind of thing that began to emerge in the 60's: the thrust of minorities with many demands for jobs, for improvement of jobs, for acceptance into the system, and so on. Accompanying this were new attitudes, new mores, a change in the value system of younger people coming into the work force. And with all of this the collective bargaining system was being tested in a variety of ways.

What I think has been happening and what concerns me, and the thing that I want to get across to you is that really starting with that period, it seems to me, the system began to withdraw. That is, the collective bargaining system began to develop a kind of rigidity; a way of resisting the problems that it was unable to absorb and which perhaps it never should have been asked to absorb.

Resisting Change

The kind of system set up the way collective bargaining is probably shouldn't be asked to do that kind of job. So we find that union and management joining forces in resisting questions of equal employment opportunity, resisting questions of changing health and safety practices, pension practices—jointly resisting institutional change.

Irv Bernstein made an interesting remark to me the other day. We had been listening to Eula Bingham. He said, you know, I find on this health and safety stuff that workers are very concerned about the impact of regulations because they fear that their jobs will disappear or the plants will shut down.

So all of this has created a kind of tension which has been very difficult for the traditional system to adjust to. As a result, it appears that the system is developing rigidity as it becomes more and more withdrawn. People like yourself and like myself, and particularly representatives of labor and management are reverting to traditional ways and methods of dealing with these kinds of problems. And these traditional ways—screaming at each other is one of those ways—aren't going to help solve them. So they are getting further and further apart from what is going on in the larger society.

I don't mean to exaggerate this as if it were calamitous, but I think these developments are giving us warning signals. I find the following:

I have been concerned for some time with what I considered to be management's response to many of these problems as if they wanted to return to the old days, if you will. And I have a name for that on the management side. I call it Dover's Law.

George Dover was a production superintendent I worked with years ago in New Jersey, and George had a theory about life. He thought that if he was good to his wife and children and he went to church on Sunday and he came to work every day at 8 a.m. and left at 5 p.m., or even later, and was diligent on the job, he'd come in next Monday morning and the union would be gone. The only trouble is that George was wrong, and the union wasn't gone.

He got more and more frustrated, and he became more and more distant and less and less able to relate to the very problems with which he had to deal. I think there is a kind of a return to Dover's Law that has many corollaries; it has corollaries on the union side, too. I think the unions have developed a kind of institutional rigidity of their own, in which, for example, they find it most important to preserve the institution than to accept risk in a way they did 20 or 30 years ago in establishing their piece of the world.

Filling the Vacuum

What concerns me about this is that I think that the parties have created a vacuum. And what has happened is that the vacuum is being filled by the government.

When you really look at the kind of things that are being discussed in your meetings today, what do you see? A tension is developing and growing between the private sector and the government over such things as ERISA, OSHA, and equal opportunity.

The government has filled the vacuum and the parties sit out there, be they companies or unions, and they simply say, "Those sons of bitches down in Washington, you know, they try to run our businesses, they try to tell us how to run our safety programs, they are telling us what's healthy and what's not healthy."

The parties talk of the government as an entity which simply got up one morning and said, "Now, let's go get 'em". It just doesn't work that way.

For anybody who's ever spent a minute in Washington, you know perfectly well, if you start to examine it, that politicians respond to their constituencies. They are not unwitting victims of the philosophical left. They are not sitting around Washington reading Marx. They are getting messages. That's the only thing they're concerned about. They're getting messages. You know what you are told to do when there is an important bill in Congress. You are told to send a telegram, make a phone call.

And the fact of the matter is that the politicians respond. And when somebody says to me it is absolutely impossible the way they are administering ERISA, I have no doubt of that. I have no doubt there is a difficult problem. I happen to know a little about that problem through the retail food industry and the maritime industry.

What happened in the maritime industry, and what's happened in a lot of industries, is that we went for years and years and years negotiating arrangements that were totally unresponsive to the real problems that ERISA was then set up to solve.

I can remember the day that Lee Pressman came in to a meeting on the maritime industry asking for an increase in the pension plan, an exorbitant demand relative to where pension plans were at the time. He said, "You know you don't have to fund the past service. All you have to do is fund the interest on the past service and IRS will give you a deduction for that." And that's what everybody did. And that's what they've been doing for years, and that's one of the reasons we're in the mess we're in.

Then the government comes along, because of the pressures that have developed, to solve some of these problems. I'll tell you that from my own personal knowledge of this pension thing you've only seen the tip of the iceberg. It's a mess, and there's going to be a lot more before we're done.

In the coal negotiations we discovered that there were 80,000 coal miners covered by the 1950 Pension Plan. This became an enormous issue with respect to the question of how their liabilities were going to be funded in the future.

The unfunded liability is 1.4 billion dollars for that plan. Now they can terminate that plan under the law. There are certain provisions for multi-employer's plans, single employer's plans, and how you can terminate them if you go in. They can even go to the Pension Benefit Guaranty Corporation.

The Pension Benefit Guaranty Corporation is a worthy little institution; it has seven million dollars in the bank. And the next move after that is to go after corporations that have a major interest in the pension plan, and you can get up to 15 percent of their assets. So that's going to become the Lawyers' Full Employment Bill.

Now the fact of the matter is that we created that situation. When I say we, I mean the parties. The parties in this business helped to create that situation. They did it by certain kinds of what has to be manifestly looked at now as irresponsible action. They did it sometimes with their eyes open, sometimes with their eyes closed. But you look at any of these problems, and you look at the relationship with government, and what you find is that government has responded to the vacuum.

Different Approaches

And the thing that interests me most, and the thing that I talk to our mediators about, is in what ways can he be helpful to the parties other than in the normal mediation process, which we do as a matter of law. And the challenge I would throw out is whether the parties themselves are prepared now to begin to talk about different kinds of approaches, different kinds of solutions to these problems, or, failing that, are you ready to accept the fact that the government is simply going to decide the question for you.

And it's going to be a hell of a battle, because it's always a battle to maintain that kind of freedom in the market place with the kind of complicated industrial system that we have and the pressures that are on legislators to do something.

I'd like to give one example of the kind of thing that I'm talking about, and some of the good things that happen as a result of it, and also some of the bad things.

Prior to becoming FMCS Director, I was Chairman of the Joint Labor-Management Committee of the Retail Food Industry. This committee met once a month and included all of the labor unions in the retail food industry—teamsters, retail clerks and meatcutters—and all of the major supermarket operators on the other side of the table. We began to look at some of the problems of the industry that didn't come off as normal collective bargaining, and one of them turned out to be OSHA regulations.

The meatcutters raised the question one time about an OSHA regulation which simply made no sense. The regulation involved requirements to wear certain kinds of protective equipment. It was established originally for wholesale meat markets and not for retail—there are striking differences in those operations—and then they were administered very strictly. At the time we were discussing, there were a whole lot of lawsuits pending, mostly by companies, some by unions, that were resisting the administration of this particular regulation.

We went and we talked to OSHA about it, and they said, "Well, there really isn't very much we can do about it. It's on the books, and we would have to change it—this particular to go through and that particular to go through. We figured there wasn't much going on there that was going to help us. And so we made them a proposition. We said, what would you folks say if we could agree on a regulation that makes sense to both sides, that was acceptable to both sides and was considered to be practical and workable? What would you do then? Would you negotiate with us? No, we don't negotiate with anybody.

They don't negotiate, they discuss, because a regulatory agency is not allowed to negotiate anything.

Well, we agreed to discuss. It took us months, but we appointed a joint committee, and with their full cooperation we crossed the country, we went into meat markets, we got them to agree to a selected group of stores representative of conditions which would reflect all the possible things that could happen under this regulation.

Agreement

And then we got an agreement. It took us nine months to get that agreement. We negotiated our agreement within the committee, with a lot of help from store managers, and we got an agreement, and we went to OSHA and we said, "Will you buy it?" And they said, "Well, we can't buy it," and we talked a little bit more and we finally got a final agreement, and we got it done. And they issued a new regulation. Now, it's their regulation. It is not a negotiated regulation. But all the lawsuits disappeared. Overnight, lawsuits went down the tube.

I'm sorry for the lawyers, but I'm not sorry for the industry. This committee only represented 30 percent of the industry. But the 30 percent that it represented is about 80 percent of the production, because only 30 percent of the industry is organized. But it's 80 percent of the sales of the industry, because you've got the big supermarket chains.

So nobody else was bound by the agreement. They could have protested it. Interestingly enough, they didn't.

Now, we felt that was a major triumph, reflecting some of the ideas that John Dunlop had when he was Secretary of Labor, about approaching regulation, about getting into consultation with tne people who matter. One of the things that's happening in these safety regulations, of course, is that the people who were supposed to be benefitting from the regulation were the first ones to violate it, not the management. Management may violate it by looking the other way, but it's the guys who won't wear the safety shoes. And, it's the guys in the meat market who weren't going to wear gloves, because it didn't make sense to them the way the thing was being administered.

When they had a say in the decision-making process, they accepted it, and they wore the shoes and gloves. They cooperate because they are not asked to wear them when it doesn't make any sense, and they wear them when it does, and they have been a part of the decision-making process.

Now, that sounds great. There are two things wrong with it. One is, it took nine months to do this. There were thousands and thousands of examples of regulations you have in this kind of an area, or if you begin to get into the EEOC, or you begin to get into some of the ERISA problems, and so on. We do get this kind of consensus. It often seems that you just don't have that much time to spend. But once you get the hang of it, you can speed up the process. There's no question about it.

The other thing that distressed me about it is that this committee never did it again. There are some reasons for this.

One is that the management people and some of the union people are still very suspicious of having anything to do with those government people. They don't want to talk to them. But if they don't talk to them, the government people are going to go ahead and make regulations anyway. Somebody's got to get in to begin to talk in this kind of tripartite way with the kind of people who are in the decision-making process, in the same way that we tried to involve, unhappily and unsuccessfully, the consumers in discussions that we had in the retail food committee about the application of price marking in the universal product code.

You know, that's the little symbol on the packages that go through check-out stand scanner and computer and all of a sudden numbers appear up there. People going to the supermarkets say, "I want to know what the price is. How do I know what you're putting in the goddamn computer?" And a big fight developed about that, and they tried to fight it out in the state legislature. We thought it would be appropriate to bring them in and begin to talk about this. So we invited members of the Consumers Federation of America and other consumer organizations to come in and sit down with the company representative and with the union representative to see if we could come out with something Well, we never really got involved with the consumers, but we did get a decision within the industry that the union could support and that, in many states, satisfied the consumer movement.

Without those kinds of things you are going to find the continuing development of the rigidity in the collective bargaining relationship that concerns me, this unwillingness to take risks, the fear of government, all of which is going to lead to more and more of the very things that we fear.

Take a look at the system you're working under, the structure you're working under in collective bargaining. The kinds of problems that are not solved are not going to be solved at crisis talks. They are going to be solved in the day-to-day relationships and in the day-to-day ability of the parties to begin to take back some of the initiative, which I think they haven't lost to the government, but which they think they have lost to the government. And that concerns me much more, because this administration has been widely criticized, and I, for one, as a member of the administration, have been criticized that in the longshore situation and the coal situation we didn't do enough. And the same people who were criticizing us are the ones who are constantly complaining about government interference. What we are saying is let the system work. We let the system work in coal, but it broke down, and I would like to talk to you a bit about that.

The Coal Strike

Some of this has implications of what I have been talking about, and some of it is uniquely confusing to this particular industry and to its very, very amazing history. Let me tell you a little bit about the parties. The disarray on the union side arose as a result of the murder of Jock Yablonski and the coalescing around Arnold Miller as president and the factionalism which developed out of that. The problem was to put together a union bargaining structure which would on the one hand be able to negotiate an agreement which could be sold in the field, and on the other hand to reach an agreement internally within the negotiating committee and within the structure of what they call the bargaining council.

But the widely publicized condition of the union has many more segments to it, and much more of its roots in history than it does in the personalities of the present leadership. This has clouded what was an equally difficult situation, and in some ways more difficult on the management side. Not much has been said about that particular problem, but it is a force which we face in trying to accommodate anything out of this situation.

In the "factionalism" of the Bituminous Coal Operators Association—"factionalism" in quotes because they had a united front—was essentially an economic one. It was not one of personality, at least not in the beginning, and it certainly has nothing to do with the collective bargaining position except to the extent that each one had special axes to grind, and they had to work these out at the highest level of intensity rather than at the modest level of compromise. I think that the feature of this that was most important to understand is that the economics of the industry creates this and sets up automatically three kinds of groups with different motives.

There is one group, which is the old-time coal operators. They operate mines to produce coal and sell coal to customers such as the utilities. They sell steam coal and some metallurgic coal to the steel industry. Their interest, if course, is in the efficiency of the mine, which is reflected in the price and the profitability of coal.

The steel industry, of course, has a somewhat different point of view; obviously one point of view which is completely in their self-interest. They mine coal to make steel. They are not interested in the price of coal in the coal market. They're interested in the price of coal as it affects the price of steel and what is the demand and the price profitability of steel in the steel market.

The third group, although not brand new, is the group we came to call the new breed. These are largely multinational oil companies. They're in a different ball game. They're interested in alternative uses of capital. They own and control many, many coal properties. They not only control many that are presently being mined and many that haven't been developed yet, they also own wide strip mining interests as well as underground interests, and so do some of the other operators.

So their question is, well, is this going to be a viable investment for us? If not, we'll put our money somewhere else. Their concern with respect to the coal negotiations was, when all those mines are shut down by a strike, am I going to want to develop those properties or am I going to do something else? With that kind of structure of varied interests around the bargaining point of view, the industry had to find a common denominator which all of them could join forces on. They found it in the question of wildcat strikes.

The wildcat strikes are a serious issue. There were 9,000 wildcat strikes in the coal fields between 1974 and 1977, when negotiations began, and the picketing issue is fundamental to an understanding of that problem. The best story on that is the kid who was hitchhiking to New York from West Virginia, and a truck dropped him at the access road to the mines. The kid jumped off and put up a sign that said New York. An hour later the mine manager wondered why nobody had come to work. What happened was the miners drove down the road, saw the kid with the sign up, and they just turned around and went home because they thought he was a picket. This cultural kind of thing is endemic, and nobody's very surprised by it.

Employer Problems, Union Problems

That kind of problem is one in which the employers could get a common feeling. If you examine the wildcat strike situation, you will find it is largely concentrated in Southern West Virginia, and it isn't the same problem in Illinois or Indiana as it is in West Virginia, but nonetheless these companies operate in many different areas, and they made a determination that this year they were going to get that straightened out.

The union, on the other hand, has an equally serious problem. The question of the right to strike is not a collective bargaining question in West Virginia. It is a cultural question. It's the legacy of John L. Lewis. The most significant statement that was made on that during the entire negotiations was a miner in West Virginia who said, "I don't understand what they're talking about up in Washington. They're arguing about whether we have the right to strike or not. What they are going to put in the contract doesn't make a damn bit of difference. If we want to strike, we're going to strike." And that's exactly right.

But there was a determination made by the management, as a result of the history of the 54% settlement in 1974, that in the 1977 contract they were going to get this wildcat strike problem settled by writing into the contract the kinds of procedures and a kind of commitment with the union that they would behave pretty much the way other workers in other industries behaved. They would use the grievance procedure, they would use the arbitration procedure, there would not be sympathy picketing, and so on.

The union, on the other hand, had a different problem. The problem that the union had is funds: Lewis' legacy on the funds, and Lewis' legacy on the leadership. So unions do not look as good today as they did to some of us who saw John L. Lewis as a hero in the 30's, although the history of the 30's probably justified exactly what happened. We're living with some of that legacy today. We're living with the legacy that there isn't enough leadership developing—there wasn't the opportunity for leadership developing in the structure underneath—and we're living with the legacy of these funds which have been in trouble for some years.

And the difficulty with that is, and the thing that has to be understood is, that when we went into the negotiations on the 28th of November, eight days before the strike deadline, there had not been one negotiation meeting of any consequence from the time they started in October. The reason we went in as early as we did was partly because these funds were threatened the day they went on strike.

They had gone partially broke the previous summer when there was a ten week wildcat strike because the trustees introduced a 25 year deductible for the first time in the history of the mine workers, and on the 6th of December there were 800,000 people in Appalachia without health care benefits. If a working miner died or a pensioner died on the 7th of December, there was no insurance. Now, why were there 800,000 people? You take 160,000 working miners, 90,000 pensioners and all the families and all the people in Appalachia who are dependent on the clinics and your hospitals that are supported through the mine workers fund, which is funded through a man-hour assessment, which disappears during the strike, then you have 800,000 people. And if you cut off those funds you have, in effect, threatened the whole health care system of Appalachia—the entire health care system for everybody.

You work out there and you are not in the mines at all. There is no other hospital than ones supported by those funds. There is no other clinic to go to. All of this is supported by these funds. And the funds are in trouble. So the question became: could it possibly be that you could develop a quid pro quo between the need to restore the funds, and the willingness on the part of the management to invest in the restoration of those funds to bring stability into the funds, if they could get a quid pro quo of stability within the work force. It was that program that we began to try to put together. We labored on this for weeks.

It was a big jigsaw puzzle: you put the absenteeism thing in here, and you stuff funds in here, or some of the funds in here, and then you build in something else. We came to call it the stability package. Then, if we could get this, we'll push that, and so on. What happened was that each element of the jigsaw puzzle leaked out, some of you will remember from reading in the press. The whole business of "they're going to penalize us if we wildcat. We'll have to contribute back to the funds" leaked out. The whole concept of the stability fund and the price that the union membership would have to pay for this became poison, because no one was able to deal with it on a complete basis.

Agreement

We never had the time to develop it on the whole basis, but we did bring in an agreement. And the bargaining council, which is 39 members, including 6 members of the negotiating committee, which is a structure that is set up within that union and has to approve any agreement before it goes to the rank and file for ratification, turned it down 33 to 6. We got 6 votes: 6 guys that were on the negotiating committee. The 33 members were not on the negotiating committee.

It was at that point that we decided that the only way that it was possible to get an agreement that would go to the field and be passed would be to get it from the bargaining council. It was at that point that we developed the strategy of getting an agreement with one small company by using members of the bargaining council to negotiate that agreement. We took the agreement back to the bargaining council, and we said, will you pass this agreement and offer it to the whole industry? They did it and the industry turned it down. That was when we got all the publicity about the so-called White House intervention, which eventually led to the settlement—the second settlement, which was then turned down 2 to 1 by the membership.

Now in that kind of situation you have a breakdown of the bargaining structure. There is no way you can get a complete agreement in the normal sense, if we can use that word. And somebody said to me at the time—a professional friend of many of ours—"Why are you people pressuring these companies to accept that agreement?" I said, "Why not?" He said, "Why aren't you pressuring the people responsible who are unable to complete an agreement and get it passed? Why aren't you pressuring the union?" I said, "What union do you have in mind?" The normal relationship which we count on as mediators or as arbitrators or as negotiators for either side had disappeared. You could not get a single agreement on anything with any certainty that would then be passed.

It was at that point that we decided that the government would have to do something. I'd like to talk a little bit about the role of government in this thing, using this as an example. I think that what has been badly stated is the idea that somehow the President of the United States, or the Secretary of Labor, or the Director of the Federal Mediation Service—although I'm kind of immune from this because nobody can deny that I went in on the 28th of November and came out on the 10th of April, so I couldn't have gotten in too late—I might have gotten in too early. But the President has been accused of getting in too late and too early. And the Secretary of Labor has been accused of getting in too late and too early.

But in this kind of a situation, the emphasis shifts out of collective bargaining. By the time the rank and file of that union has rejected the second agreement by a vote of two to one, there was no longer a question of collective bargaining, of normal collective bargaining. In fact, those of you who believe in collective bargaining really ought to give us a helluva lot of credit for waiting that long. It was almost three and a half months that the strike went before we made any move other than moves that are normally made by federal mediators. And at that point the process changes.

Not Bargaining

It is no longer collective bargaining. There are now political questions and the political determinations are what then determine the next moves because what you've said in effect is "the collective bargaining process isn't working—what do you do instead?" And the pressures then become ones on which people like you and I don't necessarily make the best judgments. They become the question of whether the President is under a kind of political pressure from governors, from popularity polls, from all of the measurements that politicians look at so that he has to "do something." And that's the most wonderful phrase because it can mean anything.

"Do something"—what's he supposed to do?

I learned one thing in this business: under certain conditions the President has enormous powers, and under other conditions he hasn't got any. Nothing that he can do really that makes any sense. And I think that this was one of those situations. They took a look at his options. He's under political pressure now. He's already been through the process of pleading with the companies and the unions to make sense, and he has already been through the process of letting his federal mediators take their best shots and they brought in two agreements—that's not a bad record, most people only bring in one agreement—and neither of them were acceptable to the rank and file. And so he finds himself in a completely political decision.

The discussions that went on at that time didn't have anything to do with the merits of the bargaining. What they had to do with was what kind of political decision can the President of the United States make with the least risk of his political standing. It was interesting, because when he decided to invoke the Taft Hartley Law which everybody said, "Oh my God, what a mess. It's not going to work. They won't go back to work." In fact, the companies were afraid they would go back, by the way. The plain fact of the matter is that the next week's polls, the Gallup Polls, the President's ratings went way up.

"Now he's doing something. See?" And that kind of political decision is endemic to that process. I spent years with the maritime industry and I was on the receiving end of three Taft Hartley injunctions because of the State of Hawaii, and I can tell you that not one of those had anything to do with collective bargaining. In every one of those it was a political decision with respect to the Hawaiian Islands and I remember in one instance where the union came in before the judge and said they'd been looking at the question of shortages in the Hawaiian Islands and the only thing that they could find was that there was a shortage of cocktail napkins at the Royal Hotel. And that was exactly right.

But in this situation, the political judgment was "do something." Seizure of the mines was an option which seemed equitable and unworkable. Then the leadership came down from the Hill and said, "Mr. President, let me tell you something. Don't get into this seizure business because you got a law on the books and you'd better use it. If you don't use it we aren't going to entertain any talk about seizure."

And so we went Taft Hartley, and the Taft Hartley injunction didn't get anybody back to work, but moved non-union coal. And I hate to state it that way, but that's exactly what happened. It was important at that time to move some coal and what the miners began to realize was that 160,000 working miners are not 400,000 miners of 25 years ago. Now, 160,000 working miners in this country only produce 50% of the coal and there's a lot of coal produced by operating engineers and a lot more produced by non-union operators. The union had picketed the non-union miners and closed them down. And by enjoining all of the local union leaders, people began to withdraw the pickets and people got brave. Bravery goes up with the price of spot coal, that's something else I learned. People got awfully brave—they weren't so brave at 25 bucks a ton; at 50 bucks a ton they got a little braver and by the end of the strike at $100.00 a ton, the stuff was running out of our ears. I don't mean to be cynical about this, but this is exactly the kind of process that was going on and it is exactly the kind of calculations.

The Future

Now what's the future? We sought nothing, unhappily. The future of the coal fields lies in whether the union can bring back its structure, and I think it can. They are already talking to us about the Kaiser Health Programs that we can do out there. We are beginning to get people to understand the process and to understand how they should operate in collective bargaining, how they should operate in the grievance and arbitration machinery. The mediation service has some credibility out there, because we did help the union with some training programs in the past, and that credibility helped us in this situation.

The initiative is going to have to come basically from the management. The management in this situation is being dragged, kicking and screaming, into the twentieth century, in the industrial relations sense. One of the largest coal companies in the United States hired its first vice president of industrial relations within the last two months. That's a step in the right direction. It sure seems a long time in coming.

And I think if those managements decide that they are going to be part of the energy program, that there is a future to the coal industry and if this kind of situation should not, and cannot, be repeated, they should take the responsibility to begin to let it be known, out there, that they are not the people that they were 25 years ago, because the tradition of bitterness and of hatred runs very deep. The union is probably not structured at this time to take the initiative and so the management will have to.

And they'll have to make a basic decision about this. They'll have to make a basic decision about whether they want United Mine Workers, as an entity, to survive. I think they have made it—most of the big ones have made that decision. I think they made it before this strike, in spite of what the union thought—they did want the United Mine Workers to survive. The United Mine Workers should survive, but if this present situation continues, the alternative will be the road they will take and they will go into non-union operations, they will increase their strip-mining operations, they will get out of their underground operations and there will be a great danger of disintegration to some kind of regional relationships.

But I don't think they are out to do that and the discussions we've had with them indicate to me that they intend to pursue what I hope will be, of course, modern industrial relations. Had they done that in the past, they would not have found themselves in the position that they were in this year of saying, "The union doesn't trust us, the union will only answer us by wildcatting."

There has never been a really serious effort to communicate with a people who are unique in the sense that they are culturally isolated and in many respects have no sense of community that goes beyond the immediate area where they live. One of the most interesting features of this strike was the theory people had that somehow if things got bad enough, if people were cold enough, if other workers were put out of work, that the miners would then realize that they had to make a quick and responsible settlement. This never materialized.

Their whole orientation has been to their own regional understanding and their regional history, and in that sense, the only way that they will be brought out of this will be by direct contact down there—not from headquarters, not from absenteeism, not from Washington—but by people going into those regions working with the people at the mine level. If that happens, out of that there may grow a structure which will then feed back up into a new kind of top leadership for the union and for the companies, and hopefully, not a repeat of what happened this past year. [The End]

SESSION I

New Developments in Labor Arbitration

Expedited Arbitration Experience in the U. S. Postal Service

By FREDERIC W. FROST

U. S. Postal Service

AS YOU MAY KNOW, with the passage of the Postal Reorganization Act in 1970, unions representing our bargaining unit employees were given the right to negotiate collective bargaining agreements containing procedures for the resolution of grievances, including binding third-party arbitration. The first such labor agreement negotiated in 1971 contained a provision for the usual formal-type arbitration procedure.

By the time the parties were ready to begin negotiations of their second labor agreement under postal regulations, the number of pending arbitration cases had built up to a point where the unions and the Postal Service faced an almost insurmountable task of finalizing the arbitration cases that had accumulated under the first, two-year agreement. The trend clearly indicated that, unless major modifications were made to our negotiated grievance/arbitration procedure, the arbitration caseload would become unmanageable.

A review of pending arbitration cases indicated that the vast majority involved minor disciplinary actions. We also learned through experience that the inordinate delay in hearing these cases served as a deterrent in recapturing the fact-circumstances that precipitated the disciplinary action in the first place. Witnesses and grievants alike had little or no recollection of what had occurred. Therefore it became very questionable whether a fair hearing could be held. Needless to say, the buildup of unheard arbitration cases increased the pressure from Congress on both the union and management to seek a solution to this problem.

With the union and the employer being adversely affected by the backlog of pending arbitration cases, the Postal Service and the unions signatory to the 1973 agreement negotiated, on an experimental basis, an expedited arbitration system for hearing certain types of disciplinary cases. When we—the unions and the Postal Service—first established this system, we had some concerns whether this program would be successful. It was felt, however, that both parties had no real alternative because of the caseload and the cost of arbitration.

Our experience during the life of our 1973 agreement indicated that our expedited arbitration program showed some success and illustrated that we had hit upon a feasible means of handling the ever-growing arbitration caseload. The parties carried forward the expedited arbitration procedure in the 1975 negotiated agreement.

To further illustrate why it was necessary to continue the expedited arbitration procedure, I should point out that the Postal Service has approximately 570,000 employees under collective bargaining agreements. This represents a little more than 87 percent of our total Postal Service workforce. Under the current three-year agreement, over 5,500 contract interpretation/application cases will be appealed to arbitration. During the same time period, over 10,000 minor discipline cases will be appealed to arbitration, and it should be remembered that the 10,000 discipline cases do not include major disciplinary actions such as removals or suspensions of over 30 days.

Obviously, all of the cases certified for arbitration will not go all the way to the hearing stage. However, thousands of cases will actually be heard before an impartial arbitrator. Just the size of the caseload requires the utilization of an expedited arbitration procedure.

With the expedited system really becoming effective in late 1974 and early 1975, we began to make substantial progress in reducing our backlog of disciplinary cases, and at present we are what one could consider current. An expedited discipline case is generally heard in arbitration within three to four months from the time it is appealed to arbitration.

In early 1977, the parties became concerned over the number of older, nondiscipline-type contract cases remaining unheard in our system. The majority of these cases involved factual disputes under the provisions of the collective bargaining agreement rather than broad interpretive issues. Again, it was not possible to have this large number of cases heard under our normal arbitration procedures due to the sheer numbers—in the thousands—and the substantial costs involved. The parties then proceeded to screen these cases to determine those grievance cases which involved noninterpretive issues. These cases were then assigned to members of the expedited panels for hearing.

Crash Program

Another use that the Postal Service and the unions have made of the expedited procedure is to "crash program" certain locations where large buildups of arbitration cases have occurred either due to a poor management-union climate or for some other reason. Our experience showed that to permit these cases to accumulate unheard only seemed to encourage more grievances to be filed. We entered into agreements with our two largest national unions to give both union and management local representatives one last chance to settle these cases, which numbered more than 400 at one location. At the same time, we agreed to make arrangements for an entire week of expedited arbitration hearings using six expedited arbitrators each day.

The hearings were scheduled to be held one month from the date the local parties were to commence their last effort to settle the cases. On the morning of the first scheduled arbitration hearing, the 400 plus unsettled cases arising at this particular location had dwindled to 40, and by the afternoon of the first day, only five cases remained unsettled. That was the number of cases actually heard by the arbitrator.

Our expedited procedure is not unique; it is similar to one used in the steel industry. We have incorporated certain ground rules in our labor agreement as to how the hearings are to be conducted—such as the hearings will be informal—but they are hearings, not mediation sessions. Briefs are not filed, transcripts are not taken, and formal rules of evidence are not applied.

Most important is the fact that expedited arbitration decisions are not precedential and cannot be cited. Also, if the arbitrator or either party concludes prior to or at the hearing that the case involves complex or interpretive issues, that party can remand the case to either a regular regional or national level of arbitration.

Arbitrators under the expedited arbitration rules may issue bench decisions, but we prefer that they do not. If they do, however, we require that they also subsequently give a short written explanation of the basis for their decision.

The great majority of our expedited arbitrators prefer not to issue bench decisions and instead write single-page awards. Expedited arbitrators are paid their normal hearing-day fees rather than a standard fee schedule which, I believe, is the system used in the steel industry. We do not pay for writing or study time; however, we do compensate for any travel time or expenses involved in holding the hearing.

When we initiated the expedited procedure, we did not attempt to select young attorneys in local practice or on university faculties or orient them as the steel industry did when they implemented their procedure. Instead, the Postal Service and the unions selected the panel members from American Arbitration Association and Federal Mediation and Conciliation Service rosters. We had little difficulty in staffing our panels with relatively experienced arbitrators and continue to find few problems in using this method.

Cases on which the parties jointly agree, or which by the specific provisions of the labor agreement are to be heard in expedited arbitration, are listed by the parties with the Federal Mediation and Conciliation Service or the American Arbitration Association for assignment to individual arbitrators. They, not the parties, select the arbitrator for the cases. We currently use over 200 expedited arbitrators who are members of 31 geographically constituted panels spread throughout the United States and Puerto Rico. Once the case is listed with the appropriate agency, that agency then assigns it to an arbitrator on a panel pursuant to a rotation system. The arbitrator then schedules the hearing date for the case with the parties.

During the last 32 months, approximately 2,000 Postal Service cases have been actually heard by expedited arbitrators, and at least that number were settled or withdrawn after being scheduled but prior to actual hearing. As to results in expedited arbitration, after several years' experience we have found little difference in the percentage of expedited awards sustaining management's position compared to arbitrator's awards upholding management in cases heard under our more formal procedures.

Under our expedited procedure, we avoid the built-in delays involved in awaiting transcripts and filing of post-hearing briefs. Further, our expedited arbitrators are required to hear up to three cases per hearing-day, while under our other arbitration procedures, only one case per hearing-day is normally scheduled. Certainly the cost of arbitration per case is substantially less under the expedited system than under our other procedures.

Problems Encountered

We and the unions encountered some problems in implementing and expanding this expedited procedure. Initially we had a high casualty rate, both voluntarily and involuntarily, among the members of the expedited panels. Score-carding of awards was prevalent. This decreased as the national parties matured in their relationship and required that their local representatives substantiate to their national offices each claim that an arbitrator should be removed rather than base opinions solely on the number of adverse decisions. Also, the number of arbitrator resignations decreased as they became more aware of what was expected of them, such as only brief written decisions and the fact that accepting membership on our panels entailed hearing more than one case per day.

As our volume of hearings increased, we were also faced with a shortage of trained professional management advocates to present these cases in arbitration. In conjunction with the American Arbitration Association, we designed and implemented an arbitration advocate training course for U.S. Postal Service representatives. The candidates selected for this training had very little, if any, experience in arbitration, but they were generally involved with handling grievances in the lower steps. They received a week of intensive advocate training, including night sessions, conducted by the American Arbitration Association at our Washington, D. C., training facility. This was not a seminar-type course, but rather a working course, including the use of mock arbitrations with actual arbitrators, currently used by the parties, hearing the cases and supplying critiques of the presentation of the trainees.

A week after completing the course, these management representatives were assigned actual expedited cases to present before an arbitrator. The Postal Service trained 140 advocates in this manner. While the individuals completing this course could not be assigned complex interpretive-issue cases, experience has proven that they could capably present the type of case we were placing in our expedited procedure.

We also found that we could not leave the determination of whether a case should be heard in expedited arbitration or whether it was so complex, or involved interpretive issues, solely to the judgment of the expedited arbitrators or the local field representatives presenting the case. Certain cases were being heard that appeared to be local in nature, but which actually had hundreds of companion cases arising at other locations throughout the country. In an attempt to rectify this problem, we established a national screening committee at the headquarters level whose function it is to decide the level of arbitration—expedited, regular, or national—appropriate for each case appealed to arbitration.

In summary, the Postal Service and, we believe, the unions and the employees they represent are of the opinion that the installation and expansion of an expedited arbitration system in our organization has worked. It was the vehicle that enabled us to clear a vast backlog of discipline cases, and it is making progress in reducing our contract-arbitration caseload. We feel that the expedited system in our organization will have to be further expanded by substantially increasing the number of panels and arbitrators assigned to these panels. We see this as the most effective means by which the parties can reduce their arbitration costs, yet meet their goal of prompt resolution of grievances. [The End]

The Bituminous Coal Experiment

By ROLF VALTIN

Arbitrator, McLean, Virginia

WHEN CHARLES KILLINGSWORTH called me last December asking me to do a paper on coal, nothing more on the topic needed to be said. Charles knew that I had not been in coal prior to my appointment as Chief Umpire under the 1974 Agreement, and he also knew that my association with coal had come to an end. Hence, his request for a paper on coal was a self-defining request for a paper on the grievance procedure and arbitration under the 1974 Coal Agreement.

But then, when the program came out, the paper had the title "The Bituminous Coal Experiment." I don't know whether Charles himself or some other IRRA person should get the credit, but it is the perfect title. For the grievance procedure and the arbitration system under the 1974 Coal Agreement indeed represented the chartering of new courses and, given the skepticism with which it was received in many quarters on both sides, is indeed aptly described as having been of experimental character. And, to answer the central question at once, the results were mixed. Neither failure nor success can legitimately be given as the current verdict, just as I suspect would be true of institutional experiments in other areas of human affairs.

Given the space limitations imposed on the meeting's papers, a choice as to coverage has to be made. As I see it, the choice is between a fairly complete review of the new arbitration mechanism without development of the surroundings in which it operated, on the one hand, and providing some background and thereby leaving room for mere sketching of the arbitration mechanism on the other. I have chosen the latter alternative, believing that the discussion of an arbitration system without discussion of its environment reflects undue egotism and is bound to be uninformative.

Historical Antecedents

I begin with identification of some historical antecedents. Following a fierce power struggle, Arnold Miller and his associates took over at the union's international headquarters during the life of the 1971 Agreement. The 1974 Agreement was the first to be negotiated by this group. The new leaders not only sought to make a strong showing of disassociation with the assertedly autocratic ways of prior leaders, but were philosophically inclined to be responsive to, rather than challenge the wisdom of, the miners' demands. The grievance procedure became one of the affected Agreement areas.

On the employers' side, the foremost historical fact is the lack of unity and, as recent events have shown, sometimes even the lack of a unified front. The employers' association is the Bituminous Coal Operators' Association, known as the BCOA. BCOA is at the apex of industrial relations on the employers' side in the unionized part of the bituminous coal industry, but the association is no more than a loose federation, and the conflicting interests among its members are substantial. On many an issue, the BCOA has as formidable a task in bringing its members together as it does in reaching an agreement with the UMWA. The story in coal cannot be understood if it is assumed that BCOA speaks with the same authority in coal as does, for example, Detroit in autos.

Little was done for some two decades by way of professionalizing labor relations. The need for providing training in the proper operation of the grievance procedure seems not even to have been perceived. Coal, it is to be remembered, was long in a depressed state. The nation cared little about the efficacy of coal's grievance procedure. Despite their commonplace nature, wildcat strikes and the attendant production losses were of no public concern in the fifties and sixties.

The energy crisis brought an abrupt end to the atmosphere of neglect. Suddenly, as the 1974 Agreement was being negotiated, there was an urgent need to cure wildcat strikes and to bring about an effective grievance procedure and an effective arbitration system. Surgery was required, and surgery was used. But it could not, and should not, have been expected quickly to overcome an old malaise wrought by traditions, lack of training, and lack of sophistication.

There continued to be hundreds of employers who were wholly without labor-relations specialists. There continued to be many other employers whose labor relations representatives were schooled in the antagonistic and combative ways of yesteryear and who repeatedly came up with jaundiced readings of Agreement terms.

There continued to be union representative after union representative who chose political expediency over seriously devoting himself to the settlement of grievances. A fundamental and sad fact under the 1974 Agreement is that some 25-30 percent of grievances filed went to arbitration, clearly much too high a ratio for a healthy system.

Arbitration had never fully taken hold and had not gained general acceptability in coal. I would identify the following as the underlying causes. There were frequent and untoward delays in the selection of arbitrators. Arbitration in most parts of the country was previously on an ad hoc basis. There was a lack of visibility of the process. Many, perhaps most, arbitrations proceeded on the basis of shipping records and briefs to the arbitrator, rather than holding a hearing. Skepticism existed on both sides about the soundness, fairness, and even honesty of arbitral determinations. Finally, but most importantly, there was the endless presence of conflicting decisions on the same issues coupled with the endless arbitration of the same issues and thus with widespread lack of finality.

I conclude the section on historical antecedents by emphasizing the industry's multitude of environmental disparities. I have already made the general point that the employers are anything but a monolithic group. Additionally, there are hundreds of employers who, though signatory to the Agreement, are not members of the BCOA and thus are without compulsion to seek its advice, follow its guideposts, or even comply with interpretative or supplementary agreements promulgated by the BCOA and UMWA during the life of the Agreement.

But there is a great deal more by way of disparities. Recent times have seen a substantial infusion of young miners, who frequently have different objectives and outlooks compared to the old-timers. There are strip mines and underground mines. There are vast differences in working conditions from one underground mine to the next—gaseous mines and nongaseous mines, dry mines and muddy mines, mines with ceilings of reasonable height and mines with ceilings so low as literally to require crawling to extract the coal.

There are miners who work in wholly isolated and sometimes mountainous areas and miners who work in flat terrains near pleasant towns. There are miners from Appalachia, with one set of values, and miners from Illinois, Missouri or Colorado, with another. There are miners who work for multimine companies, with seasoned labor-relations specialists and with modern maintenance and mining equipment, and miners who work for single-mine enterprises of which the opposite is true, and which have owners seeking quick and huge profits.

The Grievance Procedure

I next give a brief description of the grievance procedure short of arbitration. In giving the description in the past tense, I am merely respecting the fact that the 1974 Agreement expired on December 5, 1977. I do not mean to suggest that drastic alterations were brought into the new Agreement.

The 1974 Coal Agreement directed itself, separately, to three areas of potential disputes: safety and health, discharges, and all other subjects. Stringent time limits applied to each area.

With respect to safety and health, there were three steps preceding arbitration. The time limits, respectively, were 24 hours, 4 days, and 4 days. Failure to reach agreement at the third step required the referral of the dispute to arbitration within 5 days.

With respect to discharges, there was initially a 5-day period of suspension, within which the dischargee had the right to meet with the mine's superintendent. If management's decision at the end of the 5-day period was to go through with the discharge, the dischargee had the choice of pursuing his protest either through the regular grievance procedure or through what was known as the "immediate arbitration" channel. This channel bypassed steps 1 through 3 of the grievance procedure and called for the immediate assignment of an arbitrator, the holding of the hearing within 5 days, and the making of a bench decision at the conclusion of the hearing (followed by a written opinion within 10 days thereafter).

With respect to all other subjects, there were three steps preceding arbitration. The first was oral, between the aggrieved employee and his foreman, and was to be completed in 24 hours. The second was between the mine committee and mine management, called for reducing the grievance to writing if there was no settlement, and was to be completed in 7 days. The third was between a district representative of the union and an appropriate representative of the employer and was to be completed in 10 days.

The average time, for all three areas, in which the processing of a grievance short of arbitration was to be completed, was 14 days. I know of no other Agreement which calls for anything even approaching this speed. As I understand it, the stringent time limits were the result of pressures on all concerned to find a disputes-settling machinery which the miners might accept as preferable to resort to wildcat strikes.

My opinion is that promptness was pushed to unreasonable extremes. I think it is true to say that the 1974 Agreement saw an endless running from crisis to crisis and not enough well-considered resolution of issues. Far too many parties on both sides in the coal fields seemed to operate on the assumption that, so long as the promptness requirements were fulfilled, the job had been properly done—almost as if promptness were itself a cure-all.

The ironical fact is that, relative to the three years under the prior Agreement, the three years under the 1974 Agreement saw a substantial increase *both* in the incidence of wildcat strikes *and* in the incidence of arbitrations. The trick is somehow, some day, to persuade the miners that their own best interests are not served by relentless insistence on quick answers—that justice in the rest of American society and among the rest of American workers is simply not achieved at the enormous speed which the miners demand.

These observations, of course, are to be put alongside my earlier references to the serious attitudinal problems which exist on the management side. The attitudinal problems are particularly acute under an Agreement containing many ambiguities, as was true of the 1974 Agreement. As we all know, disputes which are generated by ambiguities will not be overcome when there is a need to prevail rather than a spirit of openmindedness and reasonableness. And, so long as the attitudinal problems on the management side persist, miners are not going to become convinced that the civilized way of settling labor disputes is the better way and that restraint and patience are the fair price for allowing justice to run its course.

Arbitration

I now turn to the arbitration system. Arbitration under the 1974 Agreement was of two levels. They became known as the panel level and the review level. I will proceed in that order.

The 1974 Agreement had 18 UMWA Districts within its coverage. Established for each of these districts was a panel of arbitrators to be used on a rotating basis. The selection as well as the removal of panel arbitrators was by action of the President of the UMWA and the President of the BCOA. Selection was via a particular nominating-striking system. Removal was by unilateral action of either party, on 10 days' notice to the affected arbitrator.

The administration of the panel system was turned over to the Arbitration Review Board. Consistent with the distrustful and game-playing atmosphere of the industry's labor relations, many a squabble arose on such questions as whether a particular case was ripe for arbitration, whether the arbitrator assigned to the particular case had in fact been the "up" arbitrator, whether a reassignment should be made in the light of the fact that the assigned arbitrator was seeking a hearing date somewhat beyond the specified time limit, etc. I believe that the parties' decision to turn the administration of the panel system over to the Arbitration Review Board was a wise decision: it facilitated administration on a national basis, insuring uniformity of rules and regulations rather than differences from one District to the next.

Supplementation and changes in the composition of panels was a frequent event. In part, this was due to the fact that the casualty rate among the panel arbitrators was quite high. My estimate is that nearly half of the starters were not around at the end. In much more significant part, however, repeated supplementations were needed because the caseload was far bigger than had been anticipated.

The expectation had been that, nationally, there would be 500-700 panel arbitration cases per year. In actuality, it was about 2,500 cases per year. Nor was the excessive caseload confined, as some had naively hoped, to the initial trying of new Agreement provisions. The pace in requests for arbitrators remained quite the same from one stage of the Agreement to the next. From September, 1975 until December 1977, the 26-month period in which the Board administered the panel system, more than 6,000 assignments were made.

Toward the end of the Agreement, there were about 150 arbitration posts or an average of about eight posts per district. Because some of the arbitrators served on more than one panel, the 150 posts were held by about 75 arbitrators. Even with this large a corps of arbitrators, many of the panel arbitrators were overworked and relentlessly squeezed under the pressures of unrealistic time limits. Cases not settled in Step 3 were to be referred to arbitration within 10 days of *arrival* at Step 3 (not upon exhaustion of discussions at Step 3). If there was to be a hearing before the panel arbitrator, the hearing was to be held within 15 days of the time that the case was assigned to the arbitrator (which was normally within 24 hours of the time that the case was referred to arbitration). The arbitrator was to decide the case "without delay."

In the face of the enormous caseload, of course, some of the arbitrators fell badly behind. But I was once told that 3-4 months was the average elapsed time between the filing of a grievance and its determination in arbitration. This is extraordinary speed, and I frequently wished, as I received the recurring complaints about delays, that the complainers would realize how much faster than in other industries their disputes were being determined.

The caseload is the basic story of arbitration under the 1974 Agreement. The arbitration machinery was clogged, and its atmosphere was one of perpetual rushing. Until there is a far more responsible conduct in the resolution of grievance, arbitration in coal is more a treadmill than a respected vehicle of last resort. And so long as this is so, confidence in the arbitration process—one of the 1974 Agreement's prime objectives—will be lacking.

The Review Level

I now turn to the review level. As Step 5 of the grievance procedure, and as something brand new, the 1974 Agreement established a system allowing the appeal of panel arbitration decisions. Created was an Arbitration

Review Board, which soon became known as the ARB. It was of tripartite composition: one UMWA member, one employer member, and one neutral member. The neutral member was given the title of Chief Umpire.

The Agreement said very little on how the Board was to function. Should it hold hearings and write opinions? If so, should there be dissenting opinions? Should the affected panel arbitrator be consulted in disposing of the appeal? Should the Board rigidly stick to the record in deciding appeal cases? Were appeal cases to be subjected to full review and determination on their merits or rejected in certiorari-denied fashion? In what manner were appeal cases to be processed by the parties and in what order were the cases to be taken up, etc.? These were matters to be disposed of through the formulation of ground rules covering the appeal mechanism.

The Agreement, on the other hand, was clear in its specification of the three grounds justifying the appeal of a panel decision. (1) The Decision of the panel arbitrator conflicted with one or more decisions on the same issue of contract interpretation by other panel arbitrators. (2) The decision involved a question of contract interpretation which had not previously been decided by the Board, and which in the opinion of the Board involved the interpretation of a substantial contractual issue. (3) The decision was arbitrary and capricious, or fraudulent, and therefore must be set aside.

The right of appeal was given, not to the President of the UMWA and the President of the BCOA (or a designated staff at each headquarters), but to "either party to an arbitration." No one ever questioned that "either party to an arbitration" meant the particular local and employer involved in the panel arbitration. And therein lay a major stumbling block to the effective operation of the appeal system. In formulating the ground rules under which it would function, the Board requested the establishment of a screening mechanism at each headquarters. Neither side, however, believed that it could either politically or legally go along with the request.

Both parties later found ways for effecting withdrawals of appeal cases in considerable numbers. Formally, however, screening bodies were not established and the right of appeal continued to be recognized and respected as residing with either of the parties involved in a panel arbitration. The effect was that appeals could be brought, and were brought, without scrutiny from the top as to their worthwhileness and without concern as to whether the appeal volume might be such as to unduly strain the system.

Heavy strain is what in fact developed. On one side of the coin, there was the Board's insistence on fulfilling what it considered the requisite conditions of doing quality work. This meant, essentially, the study of the record in the appealed case, holding a hearing at least in those instances in which reversal or modification of the panel decision was being entertained, and writing opinions rather than merely announcing results. On the other side of the coin, however, there was the fact of the Board's huge caseload. As shown, the anticipated 500-700 panel arbitrations per year became 2,500 panel arbitrations per year. About 10 percent of them were appealed (the rate of appeal remaining quite constant throughout the life of the Agreement). The Board thus had an annual caseload of about 250 cases.

Nor did the Board's caseload dilemma stem from this fact alone. The additional handicap was that, because it took the parties until the latter part of 1975 to have all three Board members in place and because the initial task at that point was to formulate the ground rules, the Board was a year late in going into operation. The right of appeal, however, was not deferred. Appeal cases were allowed simply to pile up.

About half-way through the Agreement, in the face of the continuing existence of a huge backlog, the Board was strongly urged by one of the parties to adopt a certiorari approach. It was urged, in other words, to make a preliminary determination in each instance as to whether to bother actually to deal with the appealed case. The idea was for the Board to zip through dozens and dozens of cases, disposing of them on general "not worth it" grounds. The Board rejected the approach as not permitted by the Agreement's appeal language. The Board observed that it was, in effect, being asked to do the very screening which the parties should have been doing and which they had said they could not do under the "either party to an arbitration" language.

The Board thus adhered to the approach with which it had started, and it stayed with that approach until the end of the Agreement. Each case was studied for its merits under the invoked appeal ground. An opinion was written whenever the panel decision was reversed or modified. Explanatory comments were written wherever the panel decision, though affirmed in result, was seen as embodying faulty rationale. Appeals were dismissed in outright fashion (without an opinion) where either none of the appeal grounds had been met or the panel decision was seen as without important flaws.

This resulted in reversals or modifications in about 40 percent of the cases. Explanatory comments were prepared in about 20 percent of the cases. "One liners" (as the outright dismissals became known) were issued in the remaining 40 percent of the cases. In all, the Board issued 126 Decisions (disposing of about 150 appeal cases) in the 22 months of its appeal operations.

I think it is correct to say that the biggest single problem and the chief source of the parties' displeasure with the new system lay in the Board's inadequate output relative to its caseload. The ultimate question, therefore, is whether the Board was right in clinging to its approach. Considering the fact that there was a backlog of about 400 appeal cases when the Agreement expired, the answer is no. In relation to the fact that the Board was constantly deciding fewer cases than it was receiving, the answer is also no. And in view of the fact that the Board was constantly deciding cases which had been logged about a year earlier (in an industry which makes speed in the resolution of disputes a primary objective) the answer once again is no. But to pose these premises is obviously only to address one side of the question and to ignore the age-old dilemma between quality and speed.

Workload Dilemma

There was simply no escaping the dilemma created by the size of the workload. Keeping up with the workload and doing quality work could not both be accomplished. And, in my opinion, an even more severe price would have been paid had the Board agreed to break the dilemma in favor of speed.

It was not a tried and accepted system in which the Board was functioning. It was not piddling issues that the Board was asked to pass on. And it was not an environment holding esteem for the arbitration process which created the Board.

I am convinced that there would have been at least equally vehement expressions of dissatisfaction with the Board had the Board consented to a process lacking openness and visibility, with three men sitting in seclusion and making unexplained pronouncements. Particularly in coal, how would there have been confidence in the honesty of the process?

And, to come back to the approach which the Board did take, it is to be noted and stressed that the Board's decisions not only were recognized as being of precedent-setting effect as intended by the Agreement but were in fact accepted in the coal fields as the last word on the affected Agreement areas. In the areas in which the Board spoke, the endless arbitration of the same issues came to a halt.

I want to close with my support for the architects of the idea of an Arbitration Review Board. It is obviously true that a permanent umpire system of the kind which exists in steel and autos would be preferable. The basic problem with an appeal system is that there is lack of finality even after arbitration has taken place. But at this stage of the development of labor relations in coal, the caseload is too big for any one umpire (even with three or four assistants) to handle.

What the appeal system does is to drastically reduce the number of cases to be considered at the national level. And, so long as the choice is between an appeal system (even with all its handicaps) and a corps of 70 or 80 arbitrators going off in various directions without some central authority to resolve the conflicts between them, my vote is in favor of an appeal system.

This parallels what those who created the Board had in mind. Their purpose was to pull arbitration together on a national scale and thus to make a cohesive force out of arbitration. Given the fact that the Coal Agreement is a national industry-wide Agreement and that there had long been little by way of its national administration, this was an eminently sound idea.

Consider some of the areas which the Board dealt with: contracting-out of various types of work, eligibility for personal or sick leave, bargaining-unit or nonbargaining-unit status of certain jobs (existing in practically all mines), eligibility for holiday pay under various circumstances, the proper calculation of vacation pay, the permissibility of the introduction of new classifications, the required presence of helpers on various pieces of equipment under various circumstances, the authority of panel arbitrators to modify the discharge penalty, the effect of a violation of an employee's predischarge procedural rights, the difference between a voluntary quit and a discharge, the burden-of-proof rule in discipline cases, the seriousness of the offense of picketing and whether or not an employee of Employer A is subject to discipline if he pickets a mine of Employer B.

The importance of forging uniformity from multiplicity in areas such as these need hardly be elaborated upon. Stating it otherwise, if the Coal Agreement is indeed to stay as a national industry-wide Agreement, the day must come—if there are ever to be stable labor relations in coal—when there will be sameness in rights and obligations under the Agreement.

[The End]

Recent Development at the American Arbitration Association

By MICHAEL F. HOELLERING

American Arbitration Association

I AM GRATEFUL for the opportunity to discuss some of the recent activities at the American Arbitration Association, for there are a number of important developments which would be of special interest to members of the Industrial Relations Research Association.

The last few months have been particularly active ones at the Association. A record of 47,066 controversies were filed with AAA tribunals in 1977, as more and more disputants in every segment of our society made use of arbitration and other private methods of dispute settlement as an alternative to the increasingly congested public court system.

In addition to the many thousands of voluntary arbitration agreements, no less than 20 statutes, one insurance regulation, three ordinances, and one rule promulgated by court order now provide for AAA administrative services.[1] Our labor grievance caseload has reached about 15,000 cases annually, and an even larger number is anticipated for the future as a result of the growth of collective bargaining in the public sector, especially in the federal service.

New Rules for Title VII-Type Cases

To help overcome the delays encountered by employees and job applicants seeking to process claims through government employment and discrimination agencies and the federal courts, AAA President Robert Coulson will shortly announce the availability of new procedures under which claims of individual employees may be submitted to an imparital arbitrator for an expeditious hearing and decision.[2] Attorneys for the parties will be able to stipulate to these procedures by means of a legally binding submission agreement which, in addition to specifying the issues, applicable law, and other criteria, will provide for arbitral finality and a waiver of the right to submit such claims to governmental agencies or the courts.

Unique features of the procedures will be a right of discovery equal to that available in court, resort to the federal rules of evidence as a guide for the arbitrator, the right of the arbitrator, within the submission, to grant any relief that would be available had the claims been filed in court, including a determination as to whether the employer is liable for the prevailing claimant's reasonable attorneys' fees. Under these rules, the AAA's administrative fee of $100 will be shared

[1] "Legislation Naming the American Arbitration Association," *AAA Lawyers Arbitration Letter,* vol. 1, no. 19 (September 1977).

[2] Robert Coulson, "The Polarized Employee: Can Arbitration Bridge the Gap?" in *Southwestern Legal Foundation 24th Annual Institute on Labor Law* (Albany, N. Y.: Mathew Bender and Co., Inc., 1978), pp. 111-127.

equally by the parties, and the compensation of the arbitrator borne by the employer.

Pension Arbitration

Many employee welfare and pension plans currently provide for arbitration of benefit-claims disputes in their collective bargaining agreements. For those that do not, the AAA in cooperation with the International Foundation of Employee Benefit Plans, in early 1977 developed two dispute-resolution services consisting of Employee Benefit Plan Claims Arbitration Rules and of Impartial Umpire Procedures for Arbitration of Impasses Between Trustees of Joint Trusts and Pension Funds.[3] An appropriate panel of arbitrators with requisite expertise has been assembled, and we are beginning to process arbitration cases in both categories.

A present difficulty, in the absence of a clear statement from the Department of Labor (DOL) which is charged with the enforcement of the Employee Retirement Income Security Act of 1974 (ERISA), is the absence of certainty that benefits-claim and impasse arbitrators are not liable as fiduciaries when acting in their official arbitral capacity.

A recent decision of the U. S. District Court for the Eastern District of Pennsylvania in *Cutaiar v. Marshall,*[4] now being appealed by DOL, may provide some clarification of the relationship between ERISA and the powers and liabilities of arbitrators serving in pension disputes.

Cutaiar involved the Philadelphia and Vicinity Welfare and Pension Funds. The former had a serious cash-flow problem in 1974 and 1975. In June 1975, the Welfare Fund trustees voted to borrow $4,000,000 to pay accumulated claims with the fund's free-and-clear building and securities portfolio serving as collateral. The Pension Fund trustees then deadlocked on the proposed loan to the Welfare Fund. Pursuant to the pension trust documents, a Section 302(c)(5) Taft-Hartley Act umpire was selected to break the deadlock. His award provided that (1) ERISA did not "countermand or modify" the Taft-Hartley provision so that the dispute was arbitrable, and (2) ERISA did not prohibit the pension fund loan through the welfare fund on terms incorporated in the award. The loan was made.

In 1977, DOL made inquiries concerning the loan, and in August wrote the trustees of both funds that they had, in its opinion, engaged in a prohibited transaction. At an August meeting with the funds' administrator, the department stated its opinion was final and that there was no administrative appeal procedure. Later in the year, the trustee's fiduciary and liability insurance carrier notified them that it would end their coverage on December 30, 1977, and efforts to obtain another carrier were unsuccessful.

The trial court found that Title I of ERISA did not except Section 302 (c)(5) of Taft-Hartley so that the latter was not altered, amended, modified, invalidated, or superseded by it. The court also found that the transaction was "fair" to both funds and the trustees of both funds had acted in "good faith" and "lawfully." The court then declared the DOL opinion letter null and void.

The uncertainties now faced by pension arbitrators and by the AAA and

[3] "Two Dispute Resolution Services," sponsored by the International Foundation of Employee Benefit Plans, Effective January 1, 1977, administered by the American Arbitration Association, pp. 1-16.

[4] *Richard Cutaiar, et al. v. F. Ray Marshall,* C. A. No. 77-3274, E. D. Pa.

the Federal Mediation and Conciliation Service (FMCS) in appointing and guiding arbitrators and umpires in ERISA-related matters remain. We are hopeful, however, that the resolution of the policy issues raised by *Cutaiar* will bring about a much needed clarification.

The concept that arbitrators are immune from civil liability and protected from testifying for purposes of impeaching their awards has taken on added significance at a time of growing post award litigation in the public sector, and our Office of General Counsel has been giving increased attention to this area. Pursuant to a special arrangement with the National Academy of Arbitrators (NAA), our legal department has been providing legal services to academy members and other AAA arbitrators who find themselves involved with post award and arbitration-related litigation. The result of these efforts so far has been to adequately protect such panel members and the arbitration process as a whole, and to strengthen the legal doctrines that arbitrators are immune and need not testify to impeach their awards.[5]

Expedited Arbitration

The AAA's labor grievance caseload indicates that expedited arbitration, too, is gaining as more employers and unions, both public and private, become aware that great savings of time and money can be achieved through expedited procedures tailored to their needs. Fred Frost has ably described how expedited arbitration works with regard to postal grievances. And I do commend their program to your attention for it succeeds admirably in providing expedition, in curbing costs, and in producing decisions of a uniformly high quality.

As a result of a survey conducted by Martin F. Scheinman,[6] we now also know how expedited arbitration is perceived by the arbitrators serving in major expedited systems administered by the AAA. Each such arbitrator was asked to compare his or her experiences with regular and expedited arbitration with regard to the perception of their role, the degree of formality or informality in the conduct of the hearing, the degree of activism at same, the use of evidentiary rules, the standards of weighing arguments, and the arbitrator's satisfaction with the process in terms of being able to produce a high quality award.

The answers indicate clearly that, on the whole, arbitrators do not perceive expedited arbitration any differently than regular arbitration, and that the use of expedited procedures has not changed, in any fundamental way, the basic jurisprudence of labor arbitration. To quote one arbitrator "In expedited arbitration, I do exactly what I do in so-called regular arbitration, with the possible exception that I decide more rapidly and write shorter opinions (in one instance a single paragraph). Otherwise, as my old army sergeant would say, 'I treat it identical, the same.' "

There are those who urge that the growing involvement of the courts in arbitration, the impact of external laws, and the duty of fair representation require the optimum of safeguards and arbitration procedure in the resolution of grievances. In this connection, it might help to recall what Walter Gellhorn, following a lifetime as a law professor and labor arbitrator, had to say about expedited arbitration:

"What is called 'expedited arbitration' of a grievance should instead be iden-

[5] "Arbitrator's Immunity from Civil Liability-Deposition of Arbitrators," *AAA Lawyers Arbitration Letter*, vol. 1, no. 20 (December 1977).

[6] Martin Frank Scheinman, "Expedited Arbitration: Does It Change the Fundamental Jurisprudence of Arbitration?" (Ithaca, N. Y.: Cornell University, 1976).

tified as 'normal arbitration,' in my opinion. The cumbersome kind, with a transcript, briefs, and all the trimmings, should be denominated 'protracted arbitration' or, even more cuttingly, simply as 'the lawyer's friend.'

"Few grievances generate evidential problems of such complexity as to becloud the arbitrator's mind. Few arguments about the meaning of contract terms are so subtle that they cannot be grasped unless what has been said orally is repeated in writing. Few controversies are comfortable for the parties to continue living with while the arbitrator's decision is postponed because he must await the delivery of the transcript and post-hearing briefs. Few matters worth taking to hearings deserve to be so imperfectly prepared that the parties' representatives cannot speedily and succinctly state their case, present factual data, and make closing arguments. So I am all for expedited procedures. It serves the basic purpose of grievance arbitration because it encourages an economical, quick, and understandable decision."[7]

Arbitrator Development and Training

In the important task of labor arbitrator development, we have been working closely with the FMCS, the NAA, IRRA, and the American Bar Association (ABA), leading educational institutions, and the entire labor-management community.

The GE/IUE Arbitrator Development Program, with which you are all familiar, is in its final phase, with each participant being assigned to GE/IUE cases as arbitrator of record. A number of the participants have already demonstrated their acceptability by being selected as arbitrators by other AAA users.

A similar program under ABA sponsorship is under way. Arbitrator training for a group of qualified women, under a program jointly sponsored with the Cornell School of Industrial and Labor Relations, was initiated at our New York offices in May. And you will already know about the arbitrator-training program being planned for California this fall by the Los Angeles chapter of IRRA. And, due largely to the promptings of Larry Schultz, the AAA and FMCS together have been training nationally panel members who will be serving as fact-finders and arbitrators in difficult public-sector interest disputes.

The AAA's Department of Education and Training, under the direction of Arthur King, has been busy with skill-building programs in arbitration advocacy, the art of negotiation, and contract administration. Some recent customers included the National Institute of Corrections, the U. S. Postal Service, the Hawaii judiciary, state and town officials in Nevada and in Georgia, and a good number of union and management representatives in public education. It is also interesting to see how traditional and proven techniques of labor-management relations, such as mediation and conciliation, are taking hold in such nonlabor areas as the adjustment of no-fault insurance claims, to resolve community disputes, to settle warranty claims of homeowners against homebuilders, and to provide dispute settlement machinery for large construction projects.

Conclusion

These then, with emphasis on the labor-management aspects of our work,

[7] Michael F. Hoellering, "Expedited Arbitration," in *Proceedings of the New York University 28th Annual Conference on Labor* (New York: New York University, 1976), pp. 319-335.

are some of the recent developments at the AAA. With newly opened offices in Atlanta, Georgia, and White Plains, New York, there now are 24 AAA Regional offices which continuously strive to provide the best possible administration to the users of AAA services. A good part of our energies is also devoted to the creation of new procedures and systems that will help parties in all areas of our society resolve their disputes promptly, economically, without undue technicalities, and with justice and fairness to all. [The End]

Arbitration Trends: An Agency Perspective

By L. LAWRENCE SCHULTZ

Federal Mediation and Conciliation Service

THE OFFICE OF ARBITRATION SERVICES, Federal Mediation and Conciliation Services, came into being in August 1973. This distinct break with the past may best highlight the realization within the Service that its responsibilities in the arbitration process have been changed by events, time, circumstances and needs.

This action was a clear signal that a rising case load, even standing alone, was seen to bring about other departures from the past. Among the factors believed to have affected the process were the greater impact of statutes and court decisions on the private juridical system established by contractual agreements; the increased demands of labor and management on the arbitrators; the internal pressures faced by union leadership; and public sector problem areas.

The Office of Arbitration Services accepts as one of its prime responsibilities the determination of its function in relation to the needs of the arbitration process. The diagnosis-prognosis step enables OAS to make modifications or introduce new procedures with less likelihood of missing the target.

For the purpose of this paper, a number of actions and reactions are discussed as separate points: (1) case processing procedures; (2) OAS responsibility for screening, selection, and retention of arbitrators; (3) the continuing arbitrator-OAS relationship; (4) related functions of OAS.

Case Processing Procedures

In carrying out its arbitration function from its inception in 1947, the Federal Mediation and Conciliation Service prepared panels from its arbitrator roster by a manual process. This means easily handled requests. The case load reported in the Annual Report of 1951 was 540 panel requests. For the next nine years, the total number of requests during any fiscal year remained under 3000. The Sixties were marked by a rapid escalation. The Services was responding to over 10,000 requests by 1970.

It became evident additional personnel would not be the sole answer to a sharp rise in activity. A decision was made to put the processing of requests and other functions performed by the arbitration unit on a computer. The major impetus for moving from a manual effort was the need to (a) minimize the time from receipt of a request for a panel of arbitrators to submission of the panel to the parties and (b) decrease the time gap between selection of the arbitrator by the parties and notification to the arbitrator selected.

Case processing by mechanical devices was in part satisfactory and in part had its limitations. Ultimately, just several years ago, the Service made the decision to restructure its case processing to improve the advantages of working with a computer system and the greater flexibility available from a manual operation. The decision was apparently a sound one.

The statistics published in the Annual Reports of the FMCS reveal the number of days between receipt of a request and panel submission. When the computer was relied upon, the time varied from approximately six days to slightly over ten days. At present, the time spent is between two to four days. Letters of appointment—the official notification to the arbitrator—are being dispatched with an elapsed time of one to three days. This feature of the OAS case processing was aided through the creation of specialists within the Operations Unit of OAS. The alteration, resulting in advantage to the parties, was possible by placing less dependence on the computer system.

There are still innumerable instances when labor and management representatives will directly notify the arbitrator of selection. A letter of appointment cannot issue from OAS unless parties make known their selection. We continue to urge unions and managements to promptly complete their responsibilities for selecting from a panel of arbitrators *and* notify the Service of the selection. After the selection procedure has been completed by the parties and we are given notice, little time is lost in assigning the arbitrator.

One aid in moving a case more promptly through the procedure has been the introduction and ultilization of a very simple "Request for Arbitration Panel" form. The form is a one-page instrument. It was adopted to obtain immediately the information vital for speedy and complete service. Though its use is not mandatory, we are hopeful most parties will find it convenient.

Roster of Arbitrators

OSA assumes that parties requesting our assistance are expressing confidence in the members of the roster. This confidence is shown when a choice is made from a panel or authorization given to us to make a direct appointment. This assumption on our part carries with it grave responsibility.

In recognition of such responsibility, the Service has established strict criteria for screening, selecting, and retaining arbitrators. Too frequently, in discussing the addition of arbitrators, attention focuses solely on the initial inclusion. Overlooked is the critical decision of retention on the roster. Establishment of criteria for remaining on the roster is only a portion of the effort to maintain a highly acceptable cadre of practitioners. Criteria is constantly being reviewed to make certain its application is fair, meaningful, and in keeping with our objectives.

Aware of increasing case administration and simultaneous focus of attention on the roster, Director Wayne L. Horvitz, established an Arbitrator Review Board late in 1976. The Board is chaired by a person not regularly employed by FMCS who is appointed by the Director. The Board consists of three persons selected by the Director. Both the Chair and the Board report directly to the Director.

The initial contact of applicants and arbitrators is with the Office of Arbitration Services. The preliminary steps in processing and answering initial inquiries and subsequent applications to the roster are handled by OAS. The same is true of preliminary review of arbitrators' records and questions of retention on the roster.

After an initial evaluation by OAS, in both instances, a matter is moved forward to the Arbitrator Review Board. The Board in its deliberation is guided by criteria in 29 *Code of Federal Regulations* 1404 and the *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes*.

The ARB is at present considering the establishment of annual or biennial review of the entire roster. The purpose of a review is to obtain a reading of the roster. Application of established criteria will forewarn the review body of lack of acceptability by the parties. As of this date, the specific criteria has not been formulated. A study is underway. The study is primarily focusing on the available statistics revealing the number of times arbitrators names have been submitted on panels and the number of times arbitrators have been selected.

It appears the "selection quotient," derived from these two figures, will serve as a preliminary indicator to the OAS and the Arbitrator Review Board. Arbitrators generally do not receive all their cases through FMCS. A "selection quotient" below a minimum standard to be established would only be an indicator, not the final determinent of whether an arbitrator is retained on the roster or is removed. There are a number of variations of criteria for retention to be considered before an ultimate standard is prescribed.

The Service appears to have decided that a lengthy roster does not necessarily offer better service to the parties. This preliminary conclusion is based on the assumption that the arbitration process would be served better if apparently unacceptable arbitrators were removed from the roster. The alternative is to continue to retain arbitrators by-passed repeatedly in the selection process.

Assuming there will be constant review and deletion of names on the roster, there must be an ongoing search for persons satisfying the entry criteria. Such procedure, properly carried out, suggests a roster eventually listing very qualified arbitrators. It will make the process of screening—addition and retention—a dynamic and constant function. This concept and the establishment of the Arbitrator Review Board have been major steps of recent date.

Continuing OAS Relationship with the Roster

Significant occurrences stumble over one another today. Their impact is much too great to allow only for a routine relationship between OAS and the arbitrators. The agency's procedures are altered, and these affect the arbitrators. Other impact forces have been previously mentioned. The agency's perception of its responsibility to the roster and the parties has undergone changes. Several years ago, arbitrator symposia were set up on a regular basis throughout various geographical areas of the country. Attendance is limited to members of the roster.

A symposium is a one-day session with its site in one of the cities with an FMCS regional office or a large field station. Discussions are held on current problems as seen by the OAS and suggestions are solicited from the arbitrators invited to attend.

Discussion leaders may be selected for particular topics. They point out broad principles and concepts of a problem. The presentation serves only as a backdrop, and is limited to no more than 15 minutes. Its purpose is to provoke discussion among conferees.

The professional staff of the OAS, and at times members of the Office of the General Counsel, also participate in the symposia. This activity has been well received by the arbitrators and appears to be a fixture. It is an available channel for an exchange of experiences between members of the roster and the agency.

Another feature that has been encouraged by OAS, but used with less frequency, is arbitrator workshops. These differ from the symposia by limiting participants to a single geographical area. The workshop offers no presentations. Generally, a member of OAS will serve as chairman to introduce a topic. Workshop attendees, in a round-table discussion, will explore the topic until a group consensus concludes it is enough. Workshops are popular, but have not been held with the frequency of the arbitrator symposia.

A third form of ongoing relationship is the special seminar. Several have been held, more are being planned. Immediately ahead are seminars for interest arbitration in the public sector and grievance arbitration in the Federal Services. One special seminar on interest arbitration in the public sector was conducted in Washington, D. C., during the latter part of 1976, in cooperation with the American Arbitration Association.

Through these avenues of symposia, workshops, and seminars, the OAS believes it can add to the body of information helpful to arbitrators.

Another feature we would like to add to our continuing relationship is a regularly published arbitrator newsletter. Several efforts have been made to maintain a communications link with arbitrators. Time and staffing have not allowed our efforts to be sustained. We hope that a renewed effort will establish a regular bi-monthly newsletter.

Related Functions

Concern for maintaining a roster of qualified arbitrators suggests equal concern for entry into the profession. The Service accepts a role in this respect. Among other possible avenues, it supports Labor Arbitrator Development Programs. Such a program is planned, structured, coordinated, and supervised to combine relevant employment experience with an educational curriculum and association with practicing arbitrators.

If a measure of a successful Labor Arbitrator Development Program is the selection of graduates, two leading examples in recent years are the efforts in Western New York and the program conducted at the University of Michigan in 1976. Both suggested a model for the effort presently led by the American Bar Association. Another program at this time, in an advanced planning phase, is in Los Angeles, California.

A Labor Arbitrator Development Program requires the spirited cooperation of a number of institutions. The cooperative effort commences with the recognition of the need for such programs by labor and management, preferably those exercising the selection of arbitrators for their respective principals. The "grass-root" concern is essential. While the ABA and the University of Michigan programs have national scope, both must be looked upon as atypical. The local program, intended to benefit a specific geographical area, is the more generally proposed activity.

An LADP requires union and management practitioners to sense, and express, their concern. In addition to the parties, an educational institution must be involved, one experienced in planning and conducting an academic curriculum for less experienced arbitrators.

The academic curriculum is linked to "field" experience—sitting as an observer with an established arbitrator. The faculty of the university and the arbitrators critique the simulated decisions written by program participants as part of their training requirements. Thus, we note (a) interest by labor and management representatives, (b) an educational institution, and (c) experienced arbitrators to assist in the field training phase.

Chapters of the National Academy of Arbitrators, and seasoned arbitrators who are not members of the Academy, have been willing partners. The NAA Committee for Arbitrator Training has been most helpful. Through its chapters, the IRRA has been involved. It was one of the moving forces in the program in Western New York in the early 70s and is one of the prime movers in the program in Los Angeles. Within the next few weeks, a public announcement will be made about the local activity to which I have just referred.

The American Arbitration Association, both at the national level with the cooperation of Mike Hoellering, Vice President of Case Administration, and at the regional level throughout the country, has always joined with FMCS in rounding out the consortium of cooperating institutions.

There are difficulties associated with such an undertaking. There must not be an impression this is a simple push-button operation. To the contrary, the past has demonstrated preliminary work is drawn out and may consume from six to twelve months. Screening criteria must be established, though suggested criteria is available as a base.

Each program has its own approach. For example, there is a program now being discussed in Madison, Wisconsin. The State of Wisconsin, in January of this year, established med-arb as an available procedure in dispute resolution in public sector negotiations. The Wisconsin Employment Relations Commission, the University of Wisconsin Industrial Relations Research Institute, and the Wisconsin Center For Public Policy joined with public sector unions, employers, and related associations to discuss the possibility of a training program bolstering the new statutory procedure to more effectively serve disputants.

Even in this relatively specialized program, criteria had to be determined. A selection procedure was developed, an application form devised, a selection committee structured, and an academic curriculum drafted. An educational unit was selected to conduct the academic curriculum, and an institution was chosen to serve as the coordinator to draw it all together.

Moving to the more routine, assistance by the Service takes the form required to meet a circumstance. Our most recognized role is providing panels of arbitrators, or making direct appointments of arbitrators, in the conventional *ad hoc* procedure. We also assist in the administration of expedited arbitration procedures.

A leading example of such assistance is the expedited arbitration procedure in the United States Postal Service. Other assistance includes: structuring procedures for labor contracts that set up pre-selected rotating panels; aiding in setting conditions for permanent umpireships; and screening arbitrators for multi-location employers and unions with whom they bargain. OAS has also developed national panels of arbitrators serving on a permanent rotating basis for public and private sector contracts.

One of the hallmarks of arbitration is its adaptability. This fact, in turn, demands that we be innovative in our reaction to needs that may not be ordinarily met by the conventional *ad hoc* arbitration structure.

Summary Note

As the title of this paper suggests, the Federal Mediation and Conciliation Service has an institutional perspective of what is required by the arbitration process today. What has been brought to this assembly are responses by the Service to that changing environment. Our efforts can only be sound and to the point if our self-evaluation is constant and objective, and our alertness never wanes.

[The End]

SESSION II

The New Look At OSHA: Vital Changes

The Responsibilities of OSHA

By EULA BINGHAM

Assistant Secretary of Labor for OSHA

I THINK IT WOULD BE HELPFUL at the start for me to outline several basic premises which have characterized OSHA under this administration. This is the first time in the seven year history of the agency that OSHA has enjoyed the pronounced and active support of the President of the United States, who has publicly referred to the Occupational Safety and Health Act of 1970, which established OSHA, as one of the most significant and potentially beneficial pieces of legislation ever passed. There is little indication that previous administrations believed in the OSH Act or wanted to see business and industry comply with it to a significant extent.

It is also important to understand that the OSH Act is not just some more well-intentioned labor legislation, or an extension of the Mediation and Conciliation Act. The OSH Act is progressive *public health* legislation. OSHA does not exist to mediate between labor and management on health and safety issues; the agency is not here to try to negotiate a settlement on how many employees will be subjected to health hazards and how many will be protected. We exist to limit human suffering and to protect working men and women.

There are some fundamentals in this administration's approach to the Occupational Safety and Health Act. We believe that a worker should not have to lay his or her life on the line just to have a job. American workers should never have to choose between their health and their paycheck. And we believe that workers have the right to know the nature of the substances in their workplace environments, and to know just how effectively their employers and their government are acting to protect them.

As most of you are aware, OSHA has had some rough sledding in the past few years. Due to a sometimes unfortunate selection of administrative priorities, the agency has succeeded in generating pervasive resentment and disappointment. Business and industry have criticized OSHA for nit-picking and the stringent enforcement of so-called nuisance standards which were irrelevant to worker health and safety. Organized labor has complained that OSHA has been excruciatingly slow in adopting major health standards to protect large numbers of workers from widespread threats to their health. While in its first months, OSHA swiftly adopted about 5,000 consensus safety standards—most of which were never intended to be broadly enforceable. In its first six years, OSHA promulgated only three major health standards and a fourth one covering 14 carcinogenic substances. OSHA inspectors were citing violations of regulations on everything from coat hooks to split toilet seats. The press had a field day, OSHA critics ran rings around the agency, and Congressional support began to erode.

Compliance Not Enough

In the past year, OSHA has dramatically shifted its priorities. We are operating on the premise that we are not going to make major improvements in workplace health conditions solely by seeking compliance with our standards and regulations through inspections. OSHA's Congressional mandate covers 65 million workers in nearly five million workplaces—90 per cent of which have 25 or fewer employees. Federal OSHA and the state OSHA programs have fewer than 3,000 inspectors, which means that the average business can expect an OSHA inspection about once every 75 years. We know that inspections alone are not going to get the job done. We are going to have to get the word out about the seriousness of the health problems in our workplaces. We are going to have to educate both labor and management to acknowledge the problems and take the responsibility for acting in their own self-interests. For in the case of workers' safety and health, these self-interests coincide.

There can be no denying the impact of occupational disease and injury on America's health care system, on workers' compensation programs, on the Social Security disability program, on the insurance industry—indeed, on the entire national economy. It is not surprising that the nation's most heavily industrialized areas also are the areas with the highest rates of cancer. Heart disease, lung disorders, vascular problems, hypertension and a number of other modern cripplers and killers now are being linked to the nation's workplaces. Despite modern medical and scientific advances, in the years before passage of the Act the occupational illness and injury rates had been climbing.

In the years since OSHA was created, there are indications that the injury rate increase has been abated—but we still do not know whether we have stemmed the tide of workplace diseases. A minimum of 100,000 deaths each year are now believed to be related to occupational causes, and that figure may be conservative.

We are familiar with the impact of cancer on our society, and no one disputes that the threat of cancer is already widespread in our workplaces. OSHA finds the relevant statistics to be deeply disturbing. The American Cancer Society estimates that 25 cent of the U. S. population in their lifetime will develop some form of cancer. Second only to heart disease, cancer kills more than 370,000 Americans each year. More than a million Americans are now under treatment for the disease, and each year 900,000 new cases are diagnosed—two-thirds of these potentially fatal. The annual cost of cancer to our society has been estimated by the General Accounting Office to be around $15 billion a year—three to five billion for direct hospital care and treatment, and the balance attributable to losses of earning power and productivity.

"Common Sense Priorities"

Problems of occupational disease and injury have become so widespread in America, after so many years of neglect, that OSHA had to sit down and set priorities, focusing its attention on the major acute health hazards, the most common workplace dangers, and OSHA's most troublesome administrative problems. We have established what we term our "Common Sense Priorities." Basically, this means three things: First, getting serious about serious dangers. Second, helping America's industries and businesses to save money and lives. And third, simplifying regulations while eliminating unnecessary rules. When we announced this redirection for OSHA, Secretary Marshall aptly emphasized that we were going to "stop fishing for minnows and start going after whales."

It makes common sense for OSHA to shift its emphasis to the major health hazards in our workplaces: the chemicals and substances which cause cancer, nerve damage, irreversible lung disease, kidney disease and leukemia. Ninety-five per cent of our inspection efforts now have been concentrated on the serious health and safety risks found in high-hazard industries such as construction, manufacturing and the petro-chemical industry.

Obviously, no single agency has the enforcement or educational capability to fully control the hazards created by the toxic substances. That's one reason why OSHA has joined with the EPA, the FDA and the Consumer Product Safety Commission to begin common approaches toward regulating these hazards. Many hundreds of new toxic substances are being introduced into our marketplace each year; the rate lately has been about 14 new substances by brand name each *day.* For years there have been countless American victims of dust-related diseases which result from the processing of substances found in nature. But the rapid introduction of synthetic substances into our workplaces since World War II now has raised the spectre of disease induced through factory-produced chemicals. In this sense, we have been synthesizing disease.

We know that occupational diseases do not stop at the factory gates. We have learned that some children of lead workers have high levels of lead in their blood. The wives and children of Kepone workers in Virginia and elsewhere also are ill. Communities surrounding certain smelters have alarmingly high lung cancer rates. So we see this as not solely an occupational issue—it has all the markings of a national environmental health tragedy. And OSHA's job is to help prevent that tragedy.

We also have recognized that OSHA has neither the time nor the resources to continue a substance-by-substance approach to preventive occupational health. Even though in recent months we have promulgated standards covering benzene, acrylonitrile, the pesticide DBCP and arsenic—and will be setting standards in the near future covering cotton dust[1]—this has proven itself to be an extremely costly approach toward regulation, costly in terms of time and human health. Accordingly, OSHA developed the concept of generic standards applicable to classes of chemicals or to various health hazards and certain work practices.

Carcinogens

It is our statutory obligation, as we see it, to establish a systematic approach for determining which toxic substances require emergency attention by OSHA, and how we should regulate the substances. Trying to control carcinogenic substances on a case-by-case basis is like trying to put out a forest fire one tree at a time. OSHA and other government agencies have been plagued by the backlog of unregulated carcinogens, the time-consuming studies and debates, the almost endless arguments on the scientific, economic, social and political implications of every decision.

OSHA has a long road ahead in its efforts to effectively regulate workplace cancer threats. On March 7th we closed the public comment period on our carcinogens proposal. More than 250 public and private groups—companies, labor unions, trade associations, public interest groups—have filed separate briefs amounting to many thousands of pages, commenting on our proposal. Public hearings on the proposals will start May 16th and they are expected to be the lengthiest in the history of the agency.

As one would expect, there is great corporate concern over the potential impact of our proposal. One measure of this concern, according to a recent *New York Times* article, is the $1 million put up by 40 companies, many of them in the chemical industry, to establish what they have named The American Industrial Health Council. The Council is challenging our proposal, urging a more narrow definition of carcinogens and that a select panel of scientists should decide, instead of OSHA, which substances actually cause cancer.

We are making progress in establishing a dialogue with the business community, and I believe that the days of a stolidly adversary relationship are in the past. We recognize that OSHA will be unable to fulfill its responsibilities without assistance from all levels of business and industry.

OSHA is beginning to fulfill its part of the bargain in an enlightened and flexible fashion. We intend to do everything we can to help business meet the requirements of the law while we shift our focus to the most serious hazards facing workers. We have been listening to the complaints of employers about OSHA's performance, which included allegations that OSHA inspectors have been uninformed about the technologies and operations of the workplaces they are citing for violations. My staff and I are working to clear up these problems and we are hoping that we can prompt a shift within the business community toward more understanding and cooperation, rather than skepticism and resistance.

Reviewing Standards

For the past several months, OSHA has been reviewing its health and safety standards and we are deleting those which are outdated or inconsequential. Already we have proposed to revoke more than 1,100 provisions of the general industry standards. The remaining standards are being honed, line by line, to assure that

[1] Filed June 19, 1978.

their meaning is clear, especially to the small business which must function without the benefit of corporate counsel to translate government regulations. We believe that by simplifying and clarifying our standards, we also increase the probability of compliance. It is our premise that most knowledgeable employers and workers will find and solve their own health and safety problems before we get into the act.

OSHA also has improved its effectiveness by greatly expanding the use of what are called "de minimis notices" following inspections; these carry no citation or penalty for insignificant violations that have no direct bearing on worker health or safety. In addition, requirements for employer record-keeping have been streamlined. We have been able to reduce the number of forms which companies must complete to provide injury and illness data, and to simplify those forms we must keep. The Commission on Federal Paperwork reported that our initiatives were the first major reduction in paperwork by any federal agency and should save American industry and business some $100 million annually.

Many companies have already started their own corporate health and safety programs for their employees, competing quite successfully, I may add, with us for the handful of qualified industrial hygienists who enter the job market each year. OSHA is about ready to start dispersing federal grants to various trade associations, universities, labor unions, citizen groups and others—so that they, too, may develop self-sustaining programs. And perhaps most significantly for the business community, OSHA is now funneling federal funds to the states so that local inspectors can conduct "on-site consultation" to educate employers—free of cost and free of citations. As our dialogue and coordination with the business community improves in the coming months, there will be other programs to promote our mutual interests.

Education

We know that education is going to be the key to OSHA's success, since it is the one tool we have which will eventually enlist in our cause the millions of workers and employers without whom we will be spinning our wheels. We were astonished to discover that our predecessors at OSHA had budgeted only seven-tenths of one per cent of their annual resources for the education of workers and employers. We have substantially increased next year's budget for health and safety education. While a number of labor unions are doing a creditable job in educating their members, the fact remains that only one in four American workers belongs to a labor union; the remaining 75 per cent is unorganized. OSHA must also reach these men and women.

In view of the fact that workers' knowledge of what substances they are working with is essential to the improvement of occupational health conditions, OSHA is preparing a regulation concerning the labelling and identification of all potentially hazardous substances in American workplaces. Our staff has been instructed to develop effective materials spelling out, clearly and concisely, how workers may act on their rights under the OSH Act. We will be educating workers—through printed materials and public service announcements on radio and television—as to how they may report job hazards and counter any job discrimination from their employers. These educational materials will address not only situations in which employers are not complying with the law, but also instruct workers how to help OSHA improve its own performance.

We are also trying to educate management, not only in the day-to-day preventive mechanisms they should adopt to protect their employees, but in the general common sense of investing in preventive health care in the workplace. We are urging corporate decision-makers to invest in new technology which prevents hazardous exposures. We are encouraging business leaders to consider the short-term costs of this protection—which can be substantial—within the perspective of long-term benefits. If they try to cheap things out today—such as by dispensing ineffective personal protection devices when fundamental engineering controls would contain the causes of a disease—they may have to pay much more tomorrow to cope with unsolved workplace health and safety problems. We believe that the pound of cure is more expensive than the ounce of prevention.

Each of you can do much to help OSHA fulfill its responsibilities. We need help in receiving the raw data on the nature of workplace hazards. We need help in determining the true economic costs of our major health standards and the capability of business and industry to bear the costs of technological improvements to protect their employees. We need help in devising methods to improve work practices and improve medical surveillance of worker health over the years. We need help from insurance companies to persuade their corporate clients that they should not wait until the workers' compensation awards start skyrocketing, along with the corporate insurance premiums, before they invest significantly in employee preventive health care.

We need help in reaching the American public and each of the individual forces which comprise America's workplaces in explaining OSHA's programs and our goals. And we need help in drastically reducing the massive impact which occupational diseases and injuries continue to have, every day, on our national health. There can be no sensible national health policy which assigns to this impact the slight recognition it has been accorded in the past.

[The End]

A Management Viewpoint

By DOUGLAS SOUTAR

ASARCO Incorporated

AS A MANAGEMENT REPRESENTATIVE, I will reflect in my comments management advocacy and therefore may sound repetitious to those of you familiar with what might be called the continuing OSHA debate. Lest some of us forget, management is made up of people, as in OSHA, in unions, in academia, the public, and, of course, stockholders, who cross all lines.

I am also a management representative who, over a period of some 40 years, has been a union member, a government employee, an arbitrator, a speaker at numerous academic institutions, a member of academic advisory boards for three universities, a member of the legal committee and trustee of the Industrial Health Foundation for almost 20 years, as well as a past president of IRRA's largest local chapter and IRRA nationally. Those years as a management representative included participation in the formation and administration of numerous management groups both nationally and internationally, and thus the acquiring of a rather broad view of my peers' activities. This background will, I hope, serve to lend perspective and objectivity to my comments. As a quadrapartite organization since its inception, IRRA has always been a hospitable forum for the expression of positions by its constituents.

Secretary Bingham's remarks, as in the past, convey an aura of enthusiasm for her cause, compassion for her fellow human beings and workers, but unfortunately no great compassion for the problems of employers. Yet without employers there would be no workers and no OSHA! Let us hope that in pursuit of her goals she does not inflict such restraints on industry that it will wither away through inability to compete at home and abroad. This assumes of course that Secretary Bingham feels our system of private enterprise is worth preserving, and that OSHA does not become a Trojan Horse, useful in accelerating the eventual nationalization of our business system. If, as in the *Coke Oven* case, courts feel they have very limited authority to review technological or economic feasibility, then employers must exert all possible pressure to change the OSH Act. Such decisions will permit a form of economic dictation not contemplated by Congress, and if the courts are unable to adequately protect industry then industry must turn to Congress if it is to survive in its current form.

A number of employer spokesmen, especially of scientific bent, embraced OSHA's original passage in 1970, yet have belatedly rued the results. As one who helped lead a vigorous employer lobby against OSHA, I can only join those who say "I told you so!" for we saw OSHA as a super agency which would drastically impair industry's prerogatives and freedom to manage, its ability to generate capital, to borrow, to earn an adequate return on investment, and that in overall effect might be counterproductive.

Abuse of OSHA

We also predicted what now seems to be taken for granted, i.e., the Act would be as much a labor-management act as one of safety and health, and this has become excruciatingly the case. Hardly a day goes by, even in my own company, without some disturbance in our labor-management relations because of OSHA. Its abuse has produced bitter confrontations and consequences over such matters as rate retention, walk-arounds, alleged discrimination, refusal to work protected by the "smoke screen" claim of unsafe conditions, "calling in the Feds" (or state agencies) in retaliation against employers' direction of the workforce, and generally obtaining through OSHA and the Act what normally should be subject to collective bargaining. Also, as predicted, the health aspects of the Act are having a far greater impact than the safety side even though the latter produces about 95 percent of reportable incidents.

Despite references by labor and its friends to the inadequacies of past OSHA administrations, employers never noticed any lack of administrative zeal or progress on their firing lines as Messrs. Guenther, Stender, and

Corn girded their loins for battle. Employers do feel that Messrs. Guenther and Corn (and probably Stender) personally had a wholesome respect for the day-to-day problems of industry and we live in hopes that Secretary Bingham's own perception of these problems will measure up to her past statements to the media, i.e., that actions will speak louder than words.

At Secretary Bingham's nomination hearing on March 5, 1977, Senator Javits said "The administrator is a decisive factor who can make or break the program." Secretary Bingham responded that "It is a compassionate Act intended to save lives and prevent illnesses." Unfortunately employers, as I noted, have experienced little of this compassion, nor have our stockholders. We also recall her words in the *Labor Law Journal* of March 1978, "We intend to do everything we can to help business meet the requirements of the law while we shift our focus to the most serious occupational hazards facing workers."

Management Misgivings

I would like to illustrate management's misgivings over OSHA by quoting from a speech recently by a leader in this field worldwide, Kenneth W. Nelson, ASARCO's Vice President Environmental Affairs, given in Hawaii on February 6. (Incidentally, Secretary Bingham was on this same panel.)

"In the pleasant surroundings of this 50th State, it would be nice to say, and I should like to say, that OSHA's impact on my company has been favorable, that all is well between company and agency, that cooperative efforts of both parties are proceeding smoothly toward the common objectives of better health and safety for the worker. I regret I can't say that. The fact is that we in ASARCO often feel harassed and frustrated by OSHA actions. As a result, we have vigorously contested many of the citations issued to us by OSHA offices.

"What has gone wrong? Why do we feel put upon? Our plant managers who are responsible for worker health and safety—OSHA is not—feel unfairly attacked by some of OSHA's citations and compliance orders. Our industrial hygienists and I feel indignant about some of OSHA's enforcement actions and proposed standards. As health professionals, we should be seeing eye-to-eye with our government counterparts. Instead, we find ourselves opposing them repeatedly.

"Before the Occupational Safety and Health Act was passed in 1970, AIHA spokesmen testified in its favor at Congressional hearings. I wonder if they would have done so if they could have foreseen how complex, legalistic and political the workings of the Act would become.

"It may be that the language of the Act makes inevitable the complexities, the legalities and the politics. But I don't think so. I remember very well that the language of the Act did not trouble me at all in 1970. It merely stated objectives we had sought for many years. It provided for industrial hygiene attention to industries and companies that may not have had industrial hygiene services. And it provided for research on a scale unimagined by the pioneer industrial hygiene engineers of the Public Health Service of the 1930's and 40's.

"No, I don't think the difficulties between industry and OSHA have been caused so much by the Act itself as by the way the Act has been administered. One point, and an important one, is that a principal goal of the Act, the protection of worker health, is lost sight of as OSHA presses its regulations upon us, regardless of whether or not those regulations make good sense. Instead of allowing industry flexibility in achieveing health protection, the government has attempted to compel industry to do things only one way—the way prescribed by armchair government experts and lawyers."

An Unexpected Critic

I must emphasize that Ken Nelson is known throughout the world both as a leading expert and a moderate in his approach to such matters. Perhaps his rather strong remarks can be cast in sharper focus by my stating that they represent a cross-section of, and consensus of, scores of other industry leaders and groups in the environmental and industrial relations fields. Most recently employers seem to have been joined, and in scathing words, by an unexpected critic of OSHA's and government's efforts to issue carcinogen standards, i.e., Barbara Franklin, former Vice Chairman, Consumer Product Safety Commission, in the May 1, 1978, issue of *Industry Week*.[1]

Last February, eight eminent scientists in this field issued a strongly worded letter to Secretaries Califano and Marshall, triggered by January's beryllium hearings, in which they said studies cited by OSHA "... are shocking examples of the shoddy scholarship and questionable objectivity utilized in making important national regulatory decisions."[2] Not only are employers critical, but they feel bypassed in favor of labor, and rarely are asked for their advice, i.e., to consult and sit down and reason out problems. Rather, the approach has been to ignore industry representatives, and take what might be called the bargaining approach of holding management's feet to the fire until a court finally casts the die one way or the other. This seems to us the hard way.

Unfortunately the economic costs of this game plan are stifling industry! For instead of concentrating our efforts and resources totally on improvement of safety and health programs, we are constantly distracted, diverted, and financially drained in our confrontations with OSHA, NIOSH, and EPA. In fact, management's organizational structure, style of management, and priority of issues have been substantially reoriented to accommodate new regulatory challenges, as Robert Leone points out in his introspective article in the December 1977 *Harvard Business Review.* Query as to whether this corporate reorganization and diversion from entrepreneurial emphasis to administrative and defense priorities properly fulfills industry's role in our society, or best employs our national assets and capabilities.

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[1] "Confusion over Carcinogens—Criticism from Unexpected Corner," p. 60.

[2] Bureau of National Affairs, *Occupational Health and Safety Reporter*, February 16, 1978. The scientists: Merril Eisenbud, professor of environmental medicine, New York University Medical Center; Leonard J. Goldwater, professor emeritus of occupational medicine, Columbia University; Ian Higgins, professor of epidemiology, University of Michigan School of Public Health; Brian MacMahon, Walcott professor of epidemiology, Harvard School of Public Health; Adrianne E. Rogers, senior research scientist, Massachusetts Institute of Technology; H. Daniel Roth, statistical consultant, Potomac, Md.; Irving R. Tabershaw, professor emeritus of occupational medicine, University of California, Berkeley, consultant in occupational medicine, Rockville, Md.; and Howard S. Van Ordstrand, head, section on environmental health, Cleveland Clinic Foundation, Ohio.

Coupled with other federal and state regulations under the heading of a score or more of acronym agencies with which you are all too familiar, we are slowly losing the race for corporate survival. Possibly this is what some regulatory buffs would like to see occur! We hope not, but wonder in view of the intensity and lack of understanding we have experienced all too often. Yet management and others ask if the national resources allocated to stringent environmental controls are counterproductive in the total economic and social picture.

The Punitive Approach

Is there too much reporting for reporting's sake, and filling out the ship's log while the ship sinks, or while the crew is studying the log when it should be manning the pumps? Is a punitive approach, concentrating on the means rather than the end, accomplishing as much as a reasoned, negotiated, and a mediated approach could, given the expertise and atmosphere conducive to success? Former Secretary Dunlop's efforts in this direction may well have borne fruit had he been able to pursue his views, and while Secretary Marshall has voiced approval of a similar approach, we have yet to see evidence of its application. Possibly this is because of objections from certain strong unions, such as the USWA.

Our experiences with rationing, wage-price controls, prohibition, and compulsory arbitration, not to mention traffic laws, shed considerable light on the chances of ultimate success in the safety and health field through the punitive and compulsory approach. However, due credit should be given to the governmental resources employed under OSHA in more widespread and effective education in the field, and in greatly expanded research.

My own company, as well as our nonferrous industry, has had more than its share of environmental regulation, and of environmental impact decades before such regulation. ASARCO has been a leader in the field of "in-plant and out-plant" environmental research and application well before most of us here were born, and a good many of the studies, data, and tools which environmentalists and government rely on originated in our efforts. Yet it all seems for nought!

There apparently is no way to satisfy the zero-based demands for protection by the new regulators, who insist on a risk-free environment and perfection, as witness the new arsenic standard of 10 micrograms per cubic meter, which in most simplistic terms, is over 310 times as stringent as the vinyl chloride standard of 1 part per million issued in 1974, 310 times the proposed benzene standard issued in 1978, and 435 times the proposed acrylonitrile standard. For further perspective consider a 5 gram aspirin equals 324,000 micrograms in relation to the size of this room. The scientific underpinnings for this extreme arsenic standard are open to considerable question, which must be tested in the courts. One might conclude that OSHA's solution to traffic accidents would be to ban the automobile!

As in the issuance of all standards, OSHA seems to automatically assume that affected employers will promptly go to court to challenge new standards. There seems to be something inherently wrong in this sequence! Recently two major employers—Shell and Dow—simply gave up production of DBCP, a pesticide, rather than go through the time, expense, and trauma of challenging the extreme standard of one part per billion even though they might well have been successful. In the process, hundreds of jobs were lost. Still, DBCP is being imported at approximately the same sales levels from countries without such stringent standards. As an asbestos producer, we have had an asbestos standard since 1972, an arsenic standard since last week, and face future lead, cadmium, sulphur dioxide, noise, and heat standards, a generic standard covering numerous chemicals, and probably one covering stress. The outlook is dim indeed, even without regard to EPA air and water problems.

Yet the nation cannot function without the products of our nonferrous industry, the companies of which have almost without exception been saddled with record debt in very substantial part due to environmental financing, and they have been operating in the red. A pollution abatement expenditure survey of 11 U.S. industries noted that in 1975 the nonferrous industry was leading all others as to percentage of total capital invested in environmental controls.[3] For those who might say we can pass the cost along to consumers, our major products are priced as commodities in world markets over which we have little control.

Solution: Compromise

It must be obvious that some solution in the form of compromise is indicated. The OSH Act itself could be modified, and there are studies under way through the Bergman task force, in part dealing with tax incentives, which may make recommendations in this direction.[4]

Other considerations should include more sophisticated administration of the Act which takes into account the real world on the shop floor, the proper role of personal protective devices rather than prohibitively costly and frequently unattainable engineering controls, as well as the record of positive accomplishments of most responsible employers in the environmental field. For those without the know-how and resources, Secretary Bingham has made suggestions. For the rotten apples in the barrel, the Act has sanctions aplenty. Also, greater attention should be paid to restrictions on, and the role of, smoking, which, according to some experts, substantially masks and negates much of the basic data on which many studies rely.

In particular, management feels that OSHA should not be an arm of the international labor unions, or vice versa, no matter how specious the appeal in terms of administrative simplicity and willing assistance. It should also be recalled that approximately 75 percent of the nonagricultural workforce is not unionized, yet may have little voice in these matters. For a recent sample of OSHA's call to arms against employers through unions, I refer you to Secretary Bingham's first edition of a suggested column for labor's media use, forwarded by Special Assistant Frank Greer on March 17. We are almost afraid to look at those issued April 15 and this month. Labor should be encouraged to participate in reasoned discussions and deliberations under the OSHA process, without the trump card of legislation and regulation which gives it far more through the Act and its administration than might reasonably be expected through collective bargaining.

[3] U. S. Department of Commerce, Bureau of Economic Analysis, *Survey of Current Business*, July 1976.

[4] Interagency Task Force on Workplace Safety and Health, created by President Carter August 5, 1977. Richard I. Bergman, executive director.

Management experienced more than enough of this phenomenon in industrial relations changes during War Labor Board days, and as a product of numerous subsequent government interventions over the years at various levels. Naturally, labor's representatives will not agree with such observations but they are distillations of broad management reactions and therefore not to be ignored. And, I might suggest that historically unions, as organizations, profit from and thrive upon such bread-and-butter legislation as OSHA. Yet there is a middle ground, through a mechanism akin to the Dunlop approach noted earlier, which the statesmen in labor should most seriously consider as an alternative to present usage of the Act. Certainly we have heard enough public complaint lately from labor over alleged abuses of the NLRA, where it feels the shoe is on the other foot!

Also, your attention is directed to the impact of excessive governmental regulation, both environmental and otherwise, on our international competitive position, i.e., the "macro" aspects in contrast to the "micro" single-industry and company perspective. Increased costs of production, without lower unit costs and greater productivity, add up to both inflation and a noncompetitive position as against both developed and lesser developed countries.

Concern over this threat to our economy is reflected in such legislative efforts as that of Representative Henry Reuss recently in proposing worldwide standards to protect responsible countries against unfair competition resulting from more lenient or nonexistent environmental restrictions.[5] Few if any other economies in this world are trying to keep up with the environmental Joneses as are OSHA and our other governmental regulators, with the potential for ending up with an unusable, nonsalable model which may go the way of the Edsel. Perhaps Secretary Bingham and Mr. English have a ready answer for these risks, but it is a task I doubt can be met without the exercise of vastly greater temperance in our approach, as a nation, to long-range environmental objectives.

In conclusion, as far as my own company is concerned, we may have our differences with OSHA and NIOSH, but our differences lie in means and methods, not in the ultimate goal of preventing occupational illnesses and injuries to the maximum extent possible. [The End]

[5] House Concurrent Resolution 591. *Congressional Record,* May 1, 1978, H. 3386.

A Union Viewpoint

By JAMES D. ENGLISH

United Steelworkers of America

MANY OF YOU are already familiar with the role of the United Steelworkers of America in the development of arbitration as a principal method of resolving labor-management disputes during the term and at the expiration of collective bargaining agreements. But the United Steelworkers of America has also been very active in advancing the cause of safety and health on behalf of its members both during the term of and following the expiration of collective bargaining agreements.

A key focus of our activities has been the Occupational Safety and Health Administration. Based upon our analysis of the last eight years of administration of the Occupational Safety and Health Act, it is clear that a new look is now present at OSHA. We will discuss that new look briefly below. Before we do so, however, a few preliminary comments seem in order.

The Occupational Safety and Health Administration recently issued a standard governing worker exposure to arsenic. Industry representatives have compared the levels to which workers are exposed to a tablet of aspirin. I am sure, however, that no industry representative wishes to suggest that the inhalation or ingestion of a tablet of aspirin is in any way comparable to the inhalation or ingestion of a similar quantity of arsenic. There is no proof that aspirin causes cancer. There is, however, clear and convincing proof that arsenic does. Indeed, while everyone might feel comfortable in inhaling the fumes from an aspirin tablet, I would suggest that no one would want a tablet of arsenic inhaled into their lungs.

Mr. Soutar has suggested that management may have to turn to Congress to obtain relief from the burdens imposed upon it by the regulations of the Occupational Safety and Health Administration. We would hope that when industry seeks relief from Congress, it will be seeking financial support to clean up the workplace rather than legislative support exempting it from cleaning up the workplace.

We realize that the cost of compliance with OSHA regulations may be substantial. Such costs should be borne by the consumer if the costs can be passed on to the consumer. If not, the costs should be borne by the public at large through federal subsidies.

It is unconscionable to expect that individual workers should pay with their lungs and their health so that members of the public may enjoy lower prices for the products which they consume.

The Steelworkers believe in negotiations. We believe we are first-rate practitioners of the art of collective bargaining. But we feel that there is a difference between, on the one hand, asking for wages at a certain level and accepting something less and, on the other, asking that workers be permitted to toil in an atmosphere free of exposure to carcinogens and agreeing to exposure to carcinogens at some compromise level. Wages we can compromise on; health is quite another matter.

The New Look at OSHA

In the union's judgment, there is a new look at OSHA. That new look is not in policies or programs but rather in personnel—Eula Bingham, the new head of that agency. The new policies and programs reflect the breath of fresh air which has been brought to that agency by Dr. Bingham. The new policies and programs are being implemented by new personnel—not "young kids" who want to destroy the system but rather young pragmatists who are very much against hypocrisy and are committed to work for worker health.

So far as I know, none of these new workers attend party meetings or are attentive to any party line. They do, however, believe firmly that the economic system can provide jobs for all workers free of exposure to carcinogenic and toxic substances. These individuals are turned off by companies which preach the gospel of safety and health while doing little themselves to advance it.

Not surprisingly, the fresh breath at OSHA is constantly being revitalized by new and exciting developments. As with any agency where new ideas are constantly being injected, the excitement tends to spawn new events rather than simply react to them.

One of the truly exciting qualities of this new look is the openness to new ideas, whether they be ideas from unions, management, or other segments of our society. OSHA is now open to and willing to accept pragmatic solutions to problems rather than a simple dogmatic regurgitation of academic industrial-hygiene doctrine. An excellent example of this is OSHA's recent rulemaking in connection with lead.

OSHA's traditional approach where workers were injured because of overexposure was to require removal of the workers from their jobs with any economic consequences suffered thereby being assigned to the realm of "collective bargaining." In fact, what this has meant is that where workers are overexposed, they and not the company suffer the economic consequences unless and until the bargaining agent was able to negotiate (and pay for) an earnings-protection system.

The new OSHA approach suggests that the employer should pay for the removal of the worker from the poisonous environment as a temporary control measure while the employer is in the process of cleaning up the environment. The new approach also suggests that the existence of this issue as a collective bargaining matter does not, by that very fact, rule it out as an OSHA consideration.

The New Look in Unions

The new look in OSHA corresponds with a new and developing look within unions themselves. Most major unions began a number of years ago to staff up in the health and safety area. As a result of this new hiring, many bright, dedicated young men and women are being brought into the labor movement—not unlike the influx of technical and professional help which the labor movement was able to obtain in the 1930s and 1940s. This new influx of talent will show itself quite strikingly, in my judgment, in another five to ten years.

Another part of the new look of labor unions is increased worker awareness of the problems of health. Gradually, it seems to me, there has been a shift away from the emphasis on compensation for injury (in the form of workers' compensation, job classification, and early pensions) to prevention (through safety and health committees, environmental monitoring, refusal to work in unsafe areas, and use of OSHA and EPA).

Notwithstanding the foregoing, however, it is likely that employer liability through workers compensation, negligence suits, and third-party litigation will increase during the near future until such time as it has brought a positive reaction from employers in the form of greater commitment to workplace clean-up.

In this context, it is my belief that unions will move at all levels to stay in front of their members by seeking new collective bargaining provisions in the health and safety area, innovative enforcement of current collective bargaining clauses, and greater and more sophisticated utilization of government agencies as well as private resources.

The Old Look in Management

Against this backdrop of new OSHA personnel and new union pressure in the safety and health area, the old look of management continues. Company doctors, hygienists, and lawyers spend much of their time combating workers' compensation cases, playing an essentially negative role in standard-setting proceedings and defending against OSHA citations. Such personnel are also used to defend against the actions of the Environmental Protection Agency and related environmental agencies.

The company message to the government is the same as it was ten years ago. Company myrmidons assert that there is no health problem and, if there is a problem, it is ascribed to poor worker-hygiene practices. (Thus, lead workers suffer not because of their high exposure to lead but because of their propensities to pick their noses and bite their fingernails.) Further, company representatives suggest that these matters are new and should be studied more, that the problem is not nearly as bad as it would seem, and that it should be solved through the use of respirators rather than the implementation of financially burdensome engineering controls and work practices. Further, companies argue that engineering solutions are technologically infeasible and that where they are feasible they are too costly. In summation, as we all recognize, the real objection to cleaning the workplace is cost.

There is no denying the fact that high costs are involved. There is no denying that those costs eat into profits and eventually into dividends. But the failure to commit money results in more workers contracting, suffering, and eventually dying from cancer and other illnesses because of their employment.

But let me pass over the moral question and look at the balance sheet for a moment. In my judgment, resistance-judgments represent shortsighted and incomplete balance-sheet determinations. The question is not *whether* to clean up the workplace but *when*. Corporations can pay now or pay at inflated prices later—but sooner or later the price will have to be paid. Short-range balance-sheet economies overlook a number of not so hidden costs including the following:

(1) Resources expended to delay now cannot be recouped later. They are not capital investments.

(2) The waste of talented personnel utilized to delay could have been

directed in some other more profitable endeavor.

(3) The employment cost of noncompliance must be measured in more than workers' compensation payments; it must include increased absenteeism, increased sickness and accident costs, increased medical care costs (and we all know how such costs are accelerating lately), and increased disability costs.

(4) Workers cynicism because of company hypocrisy on the issue will lead to decreased productivity because of wildcat strikes, slowdowns, and other involuntary and even imperceptible employee reaction.

(5) There will be a loss in public image as disclosures from new studies occur and past company resistance is placed in the perspective of these new disclosures.

(6) Companies which feel that they cannot afford the big investment now ought to consider the consequences that flow from the possibility that they might be even less able to afford it in the future.

(7) For those who have a generally negative attitude toward lawyers, I would suggest that you consider the fact that there are a lot of lawyers deprived of income because of no-fault laws. Corporate shelter because of workers' compensation laws is not likely to survive the imagination and ingenuity of personal-injury lawyers.

I would respectfully suggest that if corporations themselves engaged in the kind of complete cost-benefit analysis that they so vehemently demand of OSHA, their decisions to resist and delay might be different.

A New Look in Management

There is a new look in OSHA. A new look is evolving in unions. What is needed now is a new approach in management. However, a simple decision to invest a substantial amount of cash is not nearly enough. What is needed as one element is a completely integrated industrial relations approach. That approach should include the following elements: (1) Recognize and internally communicate the existence of a health problem. (2) Advise and sensitize employees in an effective manner to the health problem. Respirators will be used more frequently if the company says there is a health problem than if the company says OSHA and the union require that respirators be worn. (3) Elicit employee and union cooperation by showing commitment in a concrete way. At one plant of U. S. Steel (Fairfield, Ala.), management did just this. The result was such a dramatic and substantial improvement in the coke-oven-work enforcement that the Occupational Health and Safety Administration based a substantial part of its coke-oven standard on the Fairfield experience. The Fairfield experience is a triumph of good industrial relations by persons who are not practitioners in that art, but who were sincerely interested in saving their plant and worked together to accomplish that objective. (4) Invest funds in controls—not in lawyers. (5) Call the small business lobby off of OSHA's back, or you will suffer in the long run. **[The End]**

Another Viewpoint

By RUTH O. ROBINSON

Occupational Safety and
Health Review Commission

IT IS AN opportune time to discuss with you on behalf of the Chairman, Timothy F. Cleary, the prospect of new Commission rules that could dramatically affect the enforcement of safety and health in the workplace.

The Act's legislative history states clearly and court rulings contemplate that Commission procedures should provide for speedy but fair proceedings. We know more speedy adjudication can be accomplished. The purpose of assuring safe and healthful working conditions can be achieved only if litigation is conducted fairly and expeditiously. Formal procedures need not be followed in every case contested before the Commission. By "formal," I mean the potpourri that we now have combining the formal adjudication requirements of the APA, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence.

The Commission has, for some time, toyed with various means and pressures to reduce the time in processing cases. Due process does not have to be excessively rigid. There should be a quicker resolution of the easy issues so more time can be given to the hard issues.

We believe that at least two procedures are needed. First, a procedure for the hard cases, requiring time for full discovery, extensive testimony of competing experts, and perhaps copious documentary evidence. This may be needed for health or safety cases having complicated fact situations. The second, or simplified, informal procedure is needed for simple cases in which the issues are clearly defined and the operative facts are uncomplicated. Now let me summarize our current rules so the Chairman's proposal can be appreciated.

Current Procedure

The Commission's jurisdiction in a safety case is invoked when an employer contests an OSHA citation alleging violation of a statutory duty, usually a breach of specific regulations. All cases are handled by the rules published in Part 2200 of Title 29 C.F.R. These are the formal provisions of the Administrative Procedure Act (5 U.S.C. sections 556 and 557) with some additional trappings, such as most of the Federal Rules of Civil Procedure.

Upon receipt of an employer's notice of contest, the Secretary of Labor immediately advises the Commission, which dockets the case and notifies all parties. Within 20 days of receiving the notice of contest, the Secretary must file the complaint containing his allegations. The employer then has 15 days to answer. Any allegations not denied are deemed admitted.

After the Commission dockets a case, the parties will be notified of the time and place of a hearing before a Commission Administrative Law Judge (ALJ). A prehearing conference may or may not be held. There are usually some settlement efforts, and we note a growing use of discovery.

As for discovery, requests for admissions can be filed as a matter of right. However, discovery depositions and interrogatories are not allowed except by an order of the ALJ or Commission.

Subpoenas may also be obtained subject to a motion to quash. After the filing of pleadings, the prehearing conferences, and completion of discovery procedures, the ALJ assigned to hear the case issues a notice of hearing.

Any hearing is held as close as practical to the scene of the alleged violation. This is the plain sense of venue.

Because of the trappings that I have mentioned, the hearings resemble routine trials in the federal district courts. In fact, our hearings are as close as you can get to a civil trial in a federal district court.

Upon conclusion of the hearing, the parties may, of course, submit proposed findings of fact, conclusions of law, and supporting briefs.

The judge then issues a decision, consisting of findings of fact, conclusions of law, and an order affirming, modifying, or vacating the citation or proposed civil penalty or directing other appropriate relief. The judge's decision must include the reasons for the disposition and subsidiary findings of fact must be made if they are crucial to the resolution of broader factual issues.

These procedures no doubt provide for a fair and impartial hearing. But there is not an adequate balance between the need for procedural due process and the need for the swift adjudication that Congress plainly contemplated. Too often the work being done and alleged to be hazardous is completed, or almost completed, before the adjudication is completed.

Safety compliance must be timely in order to be most effective. We are not just paper-shuffling. We are deciding cases involving human beings just like yourselves.

Proposed Procedures

Simple cases involving uncomplicated facts should be handled more swiftly. Consequently, the Chairman intends to revive a proposal for informal adjudication that he initiated some 3-4 years ago. Under his proposal, the parties would be encouraged to waive rights to a full formal hearing.

The informal procedure would differ from existing procedure in the following ways: (1) All pleadings would be oral rather than written and would be stated at the beginning of a conference-hearing. (2) The use of a verbatim transcript would be optional. A summary of evidence, made by the Judge, could be used in lieu of a transcript. (3) The judge's decision would be issued promptly after the end of the proceedings. (4) The filing of proposed findings of fact and conclusions of law would be waived.

Informal hearing procedures would apply only when all parties had waived their rights to a hearing under the Commission's rules of procedure. The contesting party would waive his right to a formal hearing either in his notice of contest or by later filing a notice of waiver directly with the Commission's executive secretary.

If a party files a waiver notice, any other party would be deemed to have waived his right to a formal hearing unless he files a written intention not to waive this right.

Parenthetically, we note that the cost of litigating would be reduced in many cases by having no transcript. While legal fees are high, a party may want legal counsel in deciding whether to go the formal or informal route.

Under the informal procedure, relevant evidence would be offered and the parties could submit a deposition based upon an agreed statement of facts or could agree to admit as evidence any pertinent information regardless of its form or the manner in which it is submitted.

Under this proposal, parties would cross-examine and be given a reasonable opportunity to present oral arguments, unless these rights were waived. Upon agreement, the parties could accept a summary of the oral testimony that would be made by the ALJ.

These changes in Commission procedures can hasten decisions that are crucial to the goal of occupational safety and health. Adjudication would also be less costly and therefore attractive to small employers and employees alike.

We are excited by the prospect of proposing rules along these lines and I trust you will think about these ideas and share your thoughts with us.

[The End]

Jobs and Income for Black Americans*

By BERNARD E. ANDERSON

University of Pennsylvania

DURING THE PAST YEAR, several developments directed public attention to the economic status of black Americans. In his opening statement to the National Urban League Annual Convention, Vernon Jordan reviewed the social and economic progress of blacks and triggered a sharp exchange with President Carter over federal efforts to reduce unemployment.

Shortly after this incident, the July 1977 unemployment statistics were released, revealing a serious deterioration in the labor market position of blacks, while white unemployment declined significantly.

Early this year, a spate of articles appeared in national newspapers and magazines recognizing the passage of 10 years since the release of the 1968 Kerner Commission Report on civil disorders and the death of Dr. Martin Luther King, Jr. Most of the articles traced the economic and social progress of the black community during the past decade and attempted to place current developments in historic perspective.

These developments sparked a debate about the extent of economic progress among blacks and the role of the federal government in correcting the present effects of past discrimination. There is a growing perception among white Americans that black advancement has become self-sustaining and needs no further assistance. This attitude is reflected in the increasing resistance to affirmative action programs, and even in decisions of the federal courts which established many legal precedents protecting black progress during the 1960s. In several significant cases, the courts have shown increasing concern for the potential damage to the interests of white males when remedies are designed to correct discrimination.

Many blacks view these developments with growing alarm. They know the degree of progress in employment and income is far less than commonly assumed. And they also know that many of the gains are tenuous and uncertain at best. Black leaders, in particular, are not at all convinced that black economic progress is secure; instead

* These remarks were prepared for and presented as a luncheon address before the IRRA Spring Meeting.

they believe continued and expanded efforts on behalf of blacks are necessary if the nation is ever to achieve economic equality.

In order to place this issue in perspective, it might be useful to trace the major trends in the employment and income position of blacks during the past decade, and to review the more important developments of the last several years. Such a review can serve as the backdrop for an assessment of current public policy requirements to further reduce economic inequality in American life.

In 1974, there were 10.3 million blacks in the labor force. This was a rise of about one-third since 1960, a rate of increase somewhat faster than for the total labor force. During the 1960 decade, employment among blacks rose 34 percent to 9.3 million compared with 31 percent to 85.9 million for the total labor force. Thus, while blacks represented about 11 percent of the total civilian labor force in both 1960 and 1974, their share of gains in employment during the decade was somewhat larger: they accounted for nearly 12 percent of the employment growth, although they held just over 10 percent of the jobs at the beginning of the decade.

Occupational progress was also noticeable among blacks during the 1960 decade. This was especially true of the improvements in the highest paying occupations. Between 1960 and 1970, the number of blacks in professional and technical fields increased by 131 percent (to 766,000) while the total employment increase in such occupations was only 49 percent (to 11.1 million). Blacks had progressed to the point where they accounted for 6.9 percent of the total employment in these top occupational fields in 1970, compared with 4.4 percent in 1960. They got just over 9 percent of the net increase in such jobs during the decade. At the same time, the number of black managers, officials, and proprietors (the second highest paying category) rose two-thirds (to 297,000) compared to an expansion of 17 percent (to 8.3 million) for all employees in this category.

In the 1960s, black workers left low-paying jobs in agriculture and household service at a rate two to three times faster than did white workers. Largely because of these trends, blacks accounted for about 11 percent of employment in agriculture in 1970, less than their share in 1960 when the proportion was 16 percent. Movement of blacks out of private household employment and unskilled labor jobs was even more rapid.

But the accelerated movement of blacks out of the positions at the bottom of the occupational pyramid did not flow evenly through the entire occupational structure. For example, in 1970, blacks still held about 1.5 million of the service jobs outside private households—most of which require only modest skills. This represented about the same proportion of such jobs they held in 1960. Moreover, the number of blacks holding semiskilled operative jobs rose by 42 percent during the decade. Many jobs in this group are especially vulnerable to technological change and competitive threats from foreign imports.

Thus, although blacks made substantial progress during the 1960s, many remain concentrated in positions requiring little skill and offering few opportunities for further advancement. It is clear that blacks who are well prepared to compete for the higher-paying positions in the occupational structure have made measurable gains. Nonetheless, there continues to be a major disparity between the occupational status of blacks compared with other workers in the American labor force, and the occupational gap continues to generate higher unemployment and lower income among blacks.

Blacks and the Business Cycle

The economic gains registered by black workers during the 1960s were shaken by the two economic recessions experienced since 1969. During the 1969-70 recession, blacks bore a major share of the increased burden of unemployment, but shared to a lesser extent in employment gains during the 1971-72 recovery. For example, blacks lost 300,000 jobs between 1969 and 1971, at a rate double that of whites. After two years of recovery, however, unemployment among whites was 378 thousand lower than before the recession, while unemployment among blacks was 109 thousand higher.

Before blacks could fully recover from the 1969-71 recession, the cycle dipped again and the nation entered the worst economic decline it experienced in the past 40 years. During the 1973-75 recession, blacks lost over one-half million jobs—accounting for more than 18 percent of the recession-induced decline in employment. For the economy as a whole, the total unemployment rate averaged 8.5 percent in 1975; but for blacks the average for the year was 13.8 percent.

The recovery from the last recession has been uneven in many respects but was characterized by a sharp rise in employment during 1977. More than 4 million jobs were created last year—the largest annual increase in employment in any 12-month period during the postwar years. The vigorous employment expansion encouraged many blacks who were not in the labor force to seek jobs. Unfortunately, these persons failed to obtain jobs at a rate commensurate with their labor force growth, and the unemployment rate among black workers increased during the year, while that among whites declined. The deterioration in the unemployment experience of blacks during 1977 was not concentrated in any sector of the economy, but was widespread across a wide range of industries. Thus, today in the 36th month of the recovery from the worst recession in four decades, blacks still find their unemployment rate (11.8 percent) double that of whites (5.2 percent) and substantially above the level existing at the time the recession began.

Black Youth

Perhaps the most seriously disadvantaged group in the black community is black youth. Their unemployment rate has been in the neighborhood of 40 percent for more than a year. Indeed, the unemployment rate among black teenagers has been above 25 percent for two decades and has steadily worsened relative to white youth and to the labor force as a whole, in both good times and bad.

An increasing number of black youth have simply given up the search for work and have withdrawn from the labor market. If the discouraged youth were added to the unemployment, measured by the standard definition, the black teenage unemployment rate would be closer to 60 percent than to the reported rate of 37 percent.

Many factors help explain the difficult labor market experience of black youth. Increased school attendance certainly helps explain their reduced labor force participation, and many of the teenagers counted as unemployed are seeking part-time jobs. But school attendance does not explain why black teenage unemployment has worsened steadily over time and remains more than double the rate among white teenagers.

Some economists say the minimum wage is the major contributing factor, but the effect of minimum wages on youth unemployment is not clear. The econometric studies of this question are inconclusive because they fail to separate out the unique effect of the minimum wage on youth unemployment rates compared with factors such as increased labor supply, school attendance, general wage increases, and the impact of locational variations in the youth population.

Finally, discrimination against youth, and black youth in particular, undoubtedly contributes to youth joblessness, but discrimination is not the full explanation for the difficulties. Few would argue that discrimination is more serious today than three decades ago, yet black youth unemployment today is substantially higher than during the earlier period.

Whatever the reason, the evidence clearly shows a major gap between the job-seeking and job-finding activity among black youth. Between 1976 and 1977, for example, the black teenage labor force grew by 3.0 percent compared to 3.2 percent among white youth. But employment of white youth grew by 5.0 percent, while employment among black youth grew by less than 1 percent. As a result, white youth unemployment declined by 6.0 percent, while unemployment among black youth increased by 6.4 percent.

Black Income

The persistent problems of unemployment among black workers have adversely affected the growth of income in the black community. From 1974 through 1976, the median income of black families, when adjusted for inflation, remained at $9,242, while the median income of whites increased from $15,478 to $15,537, an increase of 3.8 percent. Thus, blacks have lost ground since 1969 when their real income, at $9,315, was 61 percent that of the average white family.

But not all blacks have fared poorly during this period. The proportion of black families with incomes above $25,000 (in 1976 dollars) rose by 22 percent from 1969 to 1976. Similar gains were recorded by black families earning between $15,000 and $25,000 per year. It should be noted, however, that the higher income earners (i.e., families with $25,000 or more per year) represented only 6.8 percent of all black families in 1976, less than half the proportion of white families with similar incomes.

At the opposite end of the income hierarchy, deterioration in the status of blacks was reflected in the number of families with incomes less than $5,000 per year. The proportion of blacks in that income group increased by 4 percent during the six-year period, while the proportion of whites in the lower income group declined by about 11 percent. These trends have led to a widening gap within the black community between those in the middle-income position and those with incomes below the poverty level. Ironically, the increasing inequality of income distribution among blacks has occurred at the same time that income distribution among whites has moved toward greater equality.

Policy and Progress

This review of labor market trends bears out our major conclusion: black economic gains are closely tied up with the state of the general economy. But economic growth alone is not enough to insure economic equality. In many respects, the black community is like a caboose on a train. As the train speeds up, so does the caboose, and as the train slows down, the last car does also. But in the nature of the case, the caboose never catches up with the engine.

This analogy has its limitations, but the point is that two ingredients are necessary to achieve economic equality: (a) a vigorous and healthy economy, and (b) special efforts to ensure that blacks and other minorities enjoy the fruits of economic progress.

In accomplishing that objective, it is important to recognize that different economic policies might have different effects on various groups. For example, the major economic policy question today is whether our major emphasis should be on further reductions in unemployment or constraint to reduce inflation. There is a pervasive fear that if the economy moves ahead too fast, the result will not be balanced growth, but worsening inflation. Much of the attention in economic policy formulation is shifting from ways to hasten the decline in unemployment, and toward ways to restrain inflationary pressures. Whatever their merits, I believe such policies will exacerbate racial inequality in economic life.

There are many doubts about the validity of the trade-off between inflation and unemployment, and in recent years, some economists have played down the significance of the trade-off as a device for assessing domestic economic policies. But to the extent that a trade-off might exist, the key questions are "Who gains and who loses from the inflation?" and "Who gains and who loses from the unemployment?"

An assessment of past economic trends shows that minorities and the poor gain relative to others when labor markets are tight and the demand for labor is high, even if those conditions are accompanied by a somewhat higher rate of inflation than has been customary. That is not to suggest that the solution to the employment problems of blacks and other minorities will be found in worsening inflation. Instead there must be a more determined effort to deal with the inflationary pressures in the economy while attempting to stimulate growth necessary to reach full employment.

Recent experience has shown that policies that sacrifice full employment in the hope that they will generate price stability usually result in both higher levels of unemployment and inflation. Such policies are especially harmful to the economic interest of the black community.

A much better solution to the distributional imbalance of unemployment is targeted labor market policies, including the use of public service jobs as a device for reducing structural unemployment. Manpower programs have been maligned as ineffective and wasteful, despite the fact that every careful study of such programs has shown benefits exceeding costs to both society and to the individual participants. The problem with manpower programs is not that they do not work, but that those with a record of success have been hardly tried. Evidence shows that training programs emphasizing the acquisition of skills pay off in terms of increased earnings and greater job stability for disadvantaged workers. Yet most of the emphasis under Title I CETA programs has been on part-time work experience which has little skill content.

Efforts to reduce inflation should include a greater commitment to targeted labor market policies designed to remove labor market bottlenecks. In fact, the expansion of such efforts would be better than a generalized tax cut if the goal of economic policy is both balanced growth and greater economic equality.

Equal Employment Opportunity

Race and sex discrimination continue to perpetuate employment and income inequality between blacks and other members of American society. Despite legal protection for equal opportunities, the black worker is still the last to be hired and the first to be fired, and although discrimination is less pervasive today than in the past, there are numerous deviations from full equal opportunity in the labor market.

Many majority group persons think their employment opportunities will be jeopardized by affirmative action for minorities and women, and they have turned to the courts for protection. The courts have shown increasing willingness to listen. Uncertainty about the impact of affirmative action on white males undoubtedly reflects an awareness of limited opportunities in the labor market, stemming in part from the increasing competition among legally protected groups for good jobs that offer promotion opportunities. Prospects for limited economic growth, coupled with slower upgrading, will continue to exacerbate competition among minorities, women, and others through 1978.

But, affirmative action should continue to be a major device for equalizing labor market opportunities. Unfortunately, there is much confusion about what affirmative action really means. The confusion stems from concern over the use of quotas.

Often the courts have imposed numerical quotas as a remedy to correct the present effects of past discrimination, but only after the facts of the case indicated clearly that equal opportunity was unlikely to occur in the absence of a precise numerical hiring requirement. Many legal scholars have noted the long tradition with such remedies in American jurisprudence. In cases where no discrimination has been found, quotas are neither legal nor necessary.

Affirmative action is not synonymous with quotas, but rather involves a broad set of procedures designed to insure that recruitment, selection, promotion, and other personnel processes provide an equal chance for minorities and women to compete. When affirmative action is effective, more members of the minority and female groups will be hired and upgraded without the need for specific quotas. The goals and timetables of most affirmative action plans are guideposts to performance assessment, not fixed requirements limiting managerial decisions. Effective affirmative action plans are likely to exceed the established goals as often as they reach them. But without affirmative action requirements, it is unlikely that continued progress will be made toward increasing the relative labor market position of minorities and women.

Blacks and the Urban Crisis

The labor market position of blacks is closely tied up with the urban crisis. Much of the continuing malaise of black unemployment and reduced income can be explained by the heavy concentration of blacks in hardship cities. About 60 percent of the nation's unemployed blacks live in the central cities and are concentrated in the low-income areas of the cities. Whites are much more dispersed geographically, and far fewer are located in depressed central-city areas.

The failure of black unemployment to decline more in line with the expansion of jobs is due in large part to the failure of the cities to bounce back sharply from the 1973-75 recession. Many cities, especially those in the North and Midwest, still have unemployment rates substantially above the national level two years into the recovery. These cities, such as New York, Philadelphia, Chicago, Cleveland, and St. Louis, have lost large numbers of semiskilled, manufacturing jobs that long represented the backbone of employment for urban blacks. The recovery has seen the service industries grow rapidly, but not the manufacturing industries located in the urban areas.

Few proposals for improving the economic status of blacks are more important than the development of a national urban policy. The black unemployed are seriously disadvantaged by their disproportionate concentration in areas where jobs are declining and the prospects for economic development are dim. Such communities deserve special attention in national policy in order to produce more balanced growth in economic progress.

But in shaping a national urban policy, the needs of urban minorities must be kept uppermost in the minds of policymakers. Whether considering an urban development bank, tax credits to the private sector to stimulate job creation, or fiscal relief for municipalities, it is important to ask: "What short-term impact will the measures have on urban unemployment?" Proposals that do not hold promise for narrowing the job and income gap between minorities and others will not contribute significantly to the advancement of the economic well-being of the urban communities as a whole.

In conclusion, the main requirement for eliminating economic inequality in American life is for the nation to develop a vision of what it might be in the absence of racial discrimination. If anything, the absence of such a vision may be the major obstacle to the pursuit of public policies and public and private behavior that would ameliorate economic inequality.

But some have expressed a vision of what the nation might be like with equal opportunity for all. One such person is Charles W. Bowser, a black attorney in Philadelphia and former Director of the Philadelphia Urban Coalition. During his campaign for mayor several years ago, Bowser wrote a poem based on the standard "America the Beautiful." He recalled that as a boy, he enjoyed singing:

"O beautiful for spacious skies/ for amber fields of grain/for purple mountains majesty/above the fruited plain . . . ."

But the song did not relate to his experience in the North Philadelphia neighborhood where he grew up. In order to make the song more meaningful, he amended it in the following way:

"O beautiful for spacious skies/ for asphalt streets of joy/ for decent homes and decent schools/for every girl and boy.

"O beautiful for spacious skies/ for jobs and health and hope/for an end to crime, and end to lies,/and an end to devil dope.

"O beautiful for spacious skies/ for justice fair and true/for an equal chance to all who try/to make their dreams come true.

"America, America, God shed his grace on thee/and crown thy good with brotherhood/from sea to shining sea." [The End]

SESSION III

CETA After Four Years: Achievement and Controversy

Current Program Developments and New Initiatives

By ERNEST GREEN

Assistant Secretary of Labor for Employment and Training

THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT of 1973 (CETA) has largely succeeded in its original objective of adjusting the delivery of employment and training services to the realities of local labor markets. It has done so in the face of numerous unexpected developments: recession which hit soon after it came into being, the consequent need to switch from emphasis on combating structural unemployment to emphasis on emergency countercyclical measures, and CETA's use as a key tool in this Administration's economic-stimulus package. Expenditures for CETA have gone from $3.1 billion in FY 1975 to $5 billion in FY 1976 to a requested $11.4 billion for FY 1979. The increase from FY 1976 to 1979 would be 130 percent, and enrollment opportunities would have doubled to 1.5 million.

There are many signs that the economy is accelerating its turnaround and that the $21 billion economic-stimulus package (about half of which has been administered under CETA) has had some very beneficial effects:

Four million jobs were created last year and the employment level is the highest it has been since World War II.

The number of unemployed dropped by a million people, bringing unemployment down to its lowest level since 1974.

There have been employment increases in manufacturing, construction, and services.

CETA enrollment accounts for 25 percent of the increase in total black employment since 1977.

Between the second quarter of 1977 and the most recent few months, the number of employed minority youth went up 11.5 percent (against a gain for employed white youth of 3 percent) and the number of employed minorities went up 4 percent (against a gain for employed whites of 2.5 percent).

Time to Attack

All of these promising developments only make more glaring the structural disparities which still exist, and they underline the need for a massive attack on structural unemployment. Total unemployment is still higher than it should be in order for us to have economic strength and steady growth, and the problem is particularly critical for minorities, youth, women, and other specific segments of the workforce.

The black/white differential is undeniably our worst unresolved problem. The black unemployment rate is 12.4 percent, which is more than twice the jobless rate for whites. The abysmal unemployment rate for black teenagers actually increased slightly over the last year. For all teenagers, the unemployment rate is 17.3 percent, and for teenage high-school dropouts—of whom there have been at least 700,000 in every year of this decade—the jobless rate is 20 percent overall and 41 percent for minorities.

What we are seeing in many cases is that improvements in the employment situation are bringing many discouraged workers back into the labor force. While this means that statistics will not reflect very rapid gains and that we should not have overinflated expectations, it also means that we must maintain improvement so that those who have been attracted back to the workforce will not get discouraged all over again.

The case for a massive attack on structural unemployment is clear, and our proposals for CETA reauthorization are designed to make the act a vital force in the attack and to correct the deficiencies which have become apparent in the course of CETA's development. Public-service employment (PSE), while it is expected to phase down after FY 1979, will remain as an important weapon against countercyclical unemployment.

Following, then, are our objectives for CETA reauthorization, how we hope to attain them, and how they relate to what has already happened:

(1) *Better Targeting.* Our major priority is targeting our activities to meet the needs of those workforce groups hardest hit by severe unemployment and underemployment. This is exemplified in our proposals by limiting the comprehensive employment and training services title #II (formerly Title I) to the economically disadvantaged. It is also exemplified by provisions for moving rapidly ahead on our job-training initiatives, such as those for youth, veterans, older workers, farm workers, and native Americans.

Upgrading the quality of our job training is extremely important, whether this means more on-the-job training, elimination of occupational stereotyping by race and sex, or openness to new and improved techniques. To better target the training, we have sought to insure a greater role for all segments of a community, particularly community-based organizations and the private sector. The list of CBOs has been updated, and we have increased our outreach efforts and our operational support to CBOs. The private sector will be discussed in a moment.

To facilitate flexibility in our targeting, we propose changing Title III, the national training title, to *authorize* service to specific target groups rather than *requiring* it, and we propose to add such target groups as displaced homemakers and the handicapped. Up to 20 percent of all funds except those for the PSE title (Title VI) could be used for Title III.

(2) *Consolidation of Public-Service Employment.* All PSE, except for a limited amount under Title II, will come under Title VI. Through FY 1979, we propose to maintain the present level of approximately 725,000. Beyond that point, we are seeking a base of 100,000 jobs in high-unemployment areas and another 100,000 jobs for every one-half of a percentage point over an unemployment rate of 4.75 percent. To emphasize the countercyclical nature of this title, we are proposing eligibility for people from families which have been economically disadvantaged for at least three months.

Proposals

Several of our proposals are designed to further eliminate the practice of substitution:

The focus will be on entry-level positions.

There will be a 78-week limit to participation, and we will do everything we can to deemphasize the use of participants for long-term maintenance of state and local governmental services.

While the limit on wages is $10,000 per position, we are aiming for an average of $7,800, and we are recommending that only 10 percent of a prime sponsor's enrollees be allowed to receive wage supplements from the sponsor.

Wage supplementation would be restricted to the amount required to bring the $10,000 wage to the prevailing wage of the appropriate entry-level job.

Substantial reduction of the problem should result from the newly formed special investigation office's efforts to eliminate fraud and mismanagement in CETA.

Our expansion of PSE from 280,000 enrollees less than a year ago to more than 750,000 enrollees in March has been an extremely beneficial achievement. It is expected to be the foundation for the job component of the Administration's Welfare Reform proposals. This component is expected to provide 1.4 million slots by FY 1980, which means that about 2.5 million people annually would be served. This component would be folded into the structural measures of a reauthorized CETA. Pilot projects for the jobs component, involving 50,000 jobs and $200 million, are authorized under Title III.

Our expansion of PSE through specific, constructive projects (an approach we aim to continue) and our focus on expanding participation among those who are at lowest income levels and who have been longest out of work, has paid valuable dividends. Latest figures indicate, for instance, that participation rates for minorities and women have increased 10 to 15 percentage points from the rates in FY 1976. There have also been gains for veterans, AFDC recipients, and other workforce segments.

The latest figures also indicate progress toward another key goal of the expansion: to move participants into unsubsidized employment. More than a third of last fiscal year's participants in CETA Titles I, II, and VI moved into unsubsidized jobs, and more than two-thirds represented positive termination such as unsubsidized employment, return to school, or entry into military service. The increase in transition to unsubsidized jobs was particularly noticeable in Title VI. The private sector contributed much both in terms of designing programs and in providing funding support. We have also largely succeeded in yet another aim of the PSE expansion: to fund at least one-third of the new Title VI jobs through community-based organizations. Experience so far indicates that the CBOs are performing many tasks which would otherwise not be performed and that they are doing so with a high degree of humaneness and sensitivity.

Our emphasis on minimizing substitution in the expansion has brought good results, too. In the recent Brookings Institution report on substitution—a report done for the National Commission on Manpower Policy—substitution was only 8 percent of PSE expansion against an average of 18 percent for CETA job programs in general.

More Objectives

(3) *Consolidation of Youth Programs.* Structural disparities in the youth area are greater than anywhere else. All our new youth programs, except for the Young Adult Conservation Corps (Title VIII) will be in Title IV, in addition to the Job Corps and Summer Youth programs. This Administration's proposal for a $700 million increase in spending for our activities under the Youth Employment Demonstration Projects Act of 1977 would bring the magnitude of new youth programs to $1.2 billion. Nearly $2 billion has been requested for FY 1979—a 260 percent increase over FY 1977. The act creates nearly 200,000 work and training positions for young people.

Our youth outlays represent the largest devotion of resources ever to a long-standing problem area. However, we must recognize the fact that even if we achieve maximum success, the youth area will still present problems—it is estimated that a 4.75 percent unemployment rate in 1983 will reduce teenage unemployment to 11 percent and black teenage unemployment to 22.1 percent.

Under the CETA reauthorization proposals, the eligibility criteria for the youth programs have been made more consistent. For the Job Corps, we propose such improvements as facilitating increased enrollment, particularly of women, and facilitating increased living allowances. To help ensure the maximum use of 5 percent Vocational Education funds and to facilitate the closest possible CETA/VOCED coordination, we propose that these funds be provided directly to prime sponsors.

(4) *Improving CETA Delivery and Coordination.* We will continue our emphasis on eliminating duplication among service deliveries. The reauthorization proposals will increase the coordinative role of governors and will ensure a more active role by substate jurisdictions in balance-of-state sponsorships. In the coordination and special services plan required from each governor, there will be specific procedures for assuring that prime sponsors dovetail their efforts. Prime sponsor planning councils and state employment and training councils will be greatly strengthened.

(5) *Increasing Private-Sector Involvement.* In addition to the private-sector linkages provided for elsewhere in the act, there is a proposal for a new, OJT-oriented, $400 million program to encourage businesses to hire young and disadvantaged Americans. Under this program, which is proposed as Title VII, prime sponsors would establish industry training councils to promote full private-sector participation in all aspects of CETA.

(6) *Consolidating and Simplifying Administrative Provisions.* The pro-

posed new Title I presents the act's organizational structure and general provisions (general provisions were previously in Title VII). The change has the advantage of simplification and of putting right up front in one place administrative provisions and assurances which were previously spread throughout the act.

Organizational structure centers around the prime sponsor's comprehensive employment and training plan, which consists of the sponsor agreement, a Title II supplement, and supplements for any other programs the sponsor wishes to conduct.

(7) *Correcting Deficiencies in CETA Administration and Programming*. Here are some of the proposed changes in this category (in addition to those which have already been mentioned):

Job-search activities—intake, development, and matching—are specifically provided for in Titles II, III, and VI.

To further our emphasis on employability development, PSE and work experience under Title II will be limited to no more than 50 percent of a sponsor's expenditures under the title, and there will be time limits on participation—two years out of five for training, and a year and one-half out of five for PSE. In addition, such activities must be combined with measures directed toward transition to unsubsidized employment.

In addition to the designation of displaced homemakers and of the handicapped as target groups under Title III, there are provisions for victims of disaster/emergency situations, workers in areas of large-scale job losses, and efforts which foster program linkages.

The amount available for consortium bonuses is reduced, and there are assurances that such bonuses be awarded only where consortium-forming is advantageous.

A program to upgrade workers and to retrain workers under notice of impending layoff is established. It would be limited to 5 percent of Title II funds.

Under Title V, the National Commission for Manpower Policy would become the National Commission for Employment and Training Policy. Membership would be expanded to include the Secretaries of Interior, Energy, Transportation, and HUD; the EEO chairperson; the CSA director; and four new public members. Public members would have two-year, overlapping terms.

The act's affirmative actions will be consolidated and expanded, including assurances that minority business enterprises be utilized to the fullest extent possible.

Concluding Remarks

I think our stimulus activities to date have restored public trust, increased coordination among the elements of the attack on joblessness, and brought human resource consideration to the forefront of economic policy-making. Now the nation must redouble its efforts to help President Carter stand by his commitment to a comprehensive economic package linking full employment, urban revitalization, and equal employment opportunity through affirmative action.

The more we succeed, the more we will be ensuring a future where we do not waste America's human resources, but rather where we develop them to their fullest. This is a goal worthy of America's best efforts.

[The End]

The Record Reviewed

By WILLIAM MIRENGOFF

National Academy of Sciences

THERE ARE FOUR things that I would like to do in this presentation: (1) review the background of CETA; (2) assess its performance; (3) identify some key issues; and (4) summarize our recommendations. These observations are based on a four-year evaluation study of CETA conducted by the National Academy of Sciences of 28 prime-sponsor areas.

There has been growing acceptance of government intervention in the processes of the labor market to minimize dislocations and to protect individuals from hazards over which they have little control.

In the 1960s, the emphasis of manpower policy was on human resource development, equal opportunity for minority groups and others with special barriers to employment, and the elimination of poverty. There was a recognition that even in periods of economic growth there are persons who, because of inadequate education, lack of skills, or other structural impediments, have a particularly hard time in entering and competing in the labor market.

The specific design of manpower programs has, from the beginning, been shaped by the prevailing economic, social, and political climate. All of these conditions were, in the 1960s, conducive to a manpower program focused on the structural problems of those most in need of employability assistance. The disadvantaged were "discovered," the civil rights movement was at a peak, the administration was committed to a "war on poverty," and the economy was in a position to absorb additional workers, even those at the margin.

In this propitious setting, a host of uncoordinated and overlapping manpower programs were initiated. These programs were designed and controlled at the federal level and were operated locally by the employment services, vocational education agencies, and various community organizations which were usually outside the local governmental unit.

Dissatisfaction with the tangle of separate programs that evolved, plus the drive of the Nixon Administration toward decentralization of federal programs, laid the foundation for a basic reform of the nation's manpower development system.

In December 1973, after several years of legislative gestation, the Comprehensive Employment and Training Act (CETA) was passed. Program control shifted from federal to over 400 state and local units of government and the separate identities of most programs were decategorized to afford local officials greater flexibility in fashioning programs to local circumstances. This manpower reform appealed to almost everyone —to pragmatic administrators seeking a more rational way to conduct employment and training activities, to those attracted by the grass roots participation features of CETA, and to those committed to a reduction of the federal role.

CETA Objectives

We find that the central strategic objective of CETA, decentralization, has been achieved. Now, for the first time, manpower programs in each community are built into the local government structures under the authority of the elected official. However, the shift from federal to local control occurred without abdication of federal oversight responsibilities. Indeed, the degree of federal presence continues to be a controversial issue. Although 90 percent of the 1978 CETA funds are in programs under local control, there are increasing federal constraints that limit local autonomy. These arise out of new legislation and the increasing emphasis on DOL accountability. Moreover, after the Nixon Administration there was less of an ideological commitment to decentralization.

CETA's second strategic goal was to decategorize 17 separate and independent programs to give the prime sponsor the flexibility to put together a mix of manpower services suitable to the locality. However, prime sponsors generally did not take advantage of the flexibility afforded by Title I. They tended to continue the program they inherited. Moreover, the prevailing inclination of Congress and the administration is to address discrete problems with specifically targeted programs. Categorical programs, which amounted to over half of all CETA resources in 1975, accounted for three-fourths of appropriations in 1978. Indeed, all of the program titles in CETA, except Title I, authorize categorical programs.

Proposals now before Congress would continue the trend towards the recategorization. As federal programs expand in response to the needs of particular groups, their purposes are more narrowly defined, the conditions are increased, the federal presence is extended, and the scope of state and local discretion diminished.

Accomplishments

On the whole, the study finds that the CETA reform, in terms of organization, delivery of services, and local participation, is a more effective way of handling the nation's employment and training programs than earlier centralized and categorical arrangements. The expansion of the PSE program from a 300,000 to a 700,000 level in 1977 might not have been possible without the local administrative mechanisms in place.

Resources. The allocation of resources through formulas is a more objective way of distributing funds than the pre-CETA methods. However, some refinements are necessary to target funds more precisely to persons and areas of greatest need and to measure unemployment and income more accurately.

Planning. The process and substance of local planning for manpower programs has improved, although it is still largely a routine for obtaining funding. A large majority of the local advisory councils are passive. But a significant number are quite active, and there is substantially more local participation in decision-making than there was in the pre-CETA period.

Administration. The administration of programs by local governments, after a shaky start, is improving. There is closer management and accountability. Local staffs are in a better position to keep track of program operations than the relatively small Department of Labor regional office personnel operating from distant locations. These developments were accompanied by a substantial growth in administrative staffs at the prime-sponsor level.

Delivery Systems. The trend toward the consolidation of delivery systems is noteworthy; about half of the local prime sponsors studied were taking steps to streamline intake and placement operations for Title I programs to avoid duplication.

Problems and Recommendations

These achievements must be weighed against five major shortcomings which impair the effectiveness of CETA. These problems and proposals to correct them are summarized below.

Clientele. There has been a weakening of the commitment to the disadvantaged in the structurally oriented Title I program. Title I participants are older, better educated, and less disadvantaged than their predecessors. The principal reasons for this change include: the broader eligibility criteria under CETA legslation as compared to pre-CETA requirements, the spread of resources into suburban areas with lower proportions of disadvantaged persons, and the inclination of program operators to select applicants most likely to succeed. The proportion of disadvantaged persons in the public service employment program (Titles II and VI) has been markedly lower than in employability development activities of Title I. However, these ratios have begun to increase as a result of the tighter eligibility requirements in the 1976 amendments to Title VI.

The committee recommends that eligibility under all titles be restricted to the low-income population (except for some openings in public service employment programs), allocation formulas be revised to direct funds to those most in need, public service employment programs be redesigned to include a continuing program limited to the economically disadvantaged, and prime sponsors supervise the client selection process more carefully.

Quality of Service. The program emphasis of Title I has shifted from activities that enhance human capital to those which basically provide income maintenance. There are also serious questions about the quality of skill-training and work-experience programs. The recent efforts to conduct experimental and demonstration projects to improve the quality of skill-training and youth programs is a step in the right direction.

The committee recommends a more systematic assessment of the content and duration of training programs, experimentation with enriched work-experience models, and closer links with the private sector in developing programs that are relevant to the job market. Combinations of public service employment and skill-training activities should be encouraged and more resources devoted to employability-development programs under Title I.

Program Outcomes. Placement ratios under CETA are lower than for comparable pre-CETA programs. For adult-oriented Title I programs, the ratio of those who entered employment to those terminated was 57 percent. For PSE participants, the figures are 58 percent under CETA and 71 percent in pre-CETA programs. The committee recognizes the special difficulties in a period of high unemployment. There are, however, other underlying problems related to program decisions and the downgrading of the transition objective in public service employment programs in order to speed program implementation.

The committee recommends greater emphasis on job-development and placement activities and restoring the em-

phasis on the transition objective in public service employment programs.

Substitution. One of the major problems with the public service jobs program is the tendency to substitute federal for local funds, a practice that enfeebles the job-creation effort. In the eyes of many prime sponsors, wrestling with fiscal difficulties, all dollars, whatever their program labels, are green. It is devilishly hard to track these fungible federal dollars through the mazes of local budgets. Our best estimate is that the direct job-creation effect of CETA's PSE program averages about 65 percent between mid-1974 to the end of 1975. However, it does not include positions allocated to nonprofit organizations where the job-creation impact is presumed to be greater and, of course, account should be taken of the "multiplier," the indirect job-creation effect. Recent amendments to Title VI limiting most new hires to special projects may tend to constrain substitution.

The committee recommends renewal of countercyclical revenue-sharing legislation to help hard-pressed communities maintain public services, limiting participant tenure to one year, strengthening the auditing and monitoring capabilities of the DOL, amending the definition of projects to preclude activities which are incremental to regular ongoing services.

Institutional Relations. Relationships between prime sponsors and other government and nongovernment agencies continue to be unsettled. This is particularly true of the employment service-prime sponsor relationship. In its desire to reform the fragmented federal-local manpower structure and reduce duplication, Congress fashioned a federal-local system that parallels in several respects the existing federal-state employment service network.

To harmonize this relationship, consideration should be given to several alternatives: (1) "Laissez-faire." Permit prime sponsors and employment service offices to work out accommodations locally based upon local needs, capabilities, and relationships. Or (2), divide responsibilities between the two systems with the ES serving the job-ready and CETA sponsors concentrating on those who need employability-development services. Or (3), mandate the use of the ES as the exclusive provider of intake, assessment, job-development, and placement services. Or (4), consolidate the CETA and Wagner-Peyser statutes and create a new single manpower system.

The committee recommends that studies be conducted of the roles and performance of the employment service and CETA systems and of the advantages and disadvantages of alternative relationships.

Among the additional issues that need to be examined are congruence, balance among programs (structural/countercyclical and employability-development/income maintenance), multiple objectives, and ambiguous legislation.

[The End]

A Local View: Where the Action Is

By JEROME F. MILLER

Community Development Department
City of Los Angeles

I WOULD LIKE to discuss CETA in the City of Los Angeles: the size and scope of our program, the history and operating arena, some of our major accomplishments, and what we have planned for the future.

With the inception of CETA, prime sponsors were designated in order to develop a decentralized and decategorized employment and training delivery system. Decentralization has provided the local control and accountability necessary for timely development of programs responsive to local needs. Decategorization has allowed the flexibility to provide answers creatively to these same locally identified and prioritized needs.

The City of Los Angeles is the third largest of nearly 540 prime sponsors, smaller only than New York City and Chicago. We will receive in excess of $168 million for fiscal 1978 to operate training programs, vocational education programs, youth programs, and public service employment programs. This year alone, we will serve over 55,000 economically disadvantaged, unemployed, or underemployed participants.

Let's take a look at how this all came to be the history and operating arena of CETA. Federally funded employment programs have been in existence, of course, since the early part of this century. Then, in 1962, the Manpower Development and Training Act was enacted to provide immediate aid for the large number of people who had lost jobs due to rapid technological advancements and to prepare for the thousands of additional workers who were projected to fall prey to automation.

It soon became apparent that the skilled workers, the family men with solid work experience, were not the unemployed in most need. The economy was expanding at the time and skilled workers with experience and education were able to keep pace with technological advances. Any training necessary was provided by industry itself.

It was discovered that the ranks of the unemployed were swelled by the disadvantaged, the unskilled, uneducated, inexperienced workers, those who were denied opportunity because of discriminatory hiring practices, the structurally unemployed. To date, even with employment and training programs, the unemployment rate for minority groups is over twice that of whites. For teenagers, and particularly black teenagers, the disparity was, and still is, much worse.

A string of legislative amendments was enacted to keep pace with the economic and employment statistics which were becoming increasingly appalling. The first amendments, in 1963, added basic education and a youth program in direct response to a better understanding of the problems of structural unemployment. Provisions for health examinations and minor medical care were added when it was discovered that poor health interfered with program participation. When it became obvious that the special needs of older workers were not being met, a special program for that group was created by legislation. As additional needs became apparent, additional program categories were invented and enacted: to help workers move from depressed areas where there were no jobs to areas of high unemployment, to provide bonding insurance for individuals who could not qualify under normal commercial standards, and to give prerelease job-training to prisoners in correctional institutions as examples.

What resulted was a rag-tag collection of categorical federal programs, each meeting a specific need determined at the national level. While the attempt to be flexible was laudable, the fact remained that the federal system was unwieldy, untimely, and very inefficient in our city. As an example, vast geographic areas of the city, such as the San Fernando Valley, and demographic significant segments of the population, such as Asian/Pacific islanders, who were not identified as being in need of services by the federal government, received no services.

Out of this experience with incrementally induced chaos, the need for a Comprehensive Employment and Training Act was born. Funding decisions, program management decisions, planning, monitoring, and evaluation responsibilities were shifted to the local level. And, except for the ever-escalating recategorization process that we see occurring again, the local level is where the action remains today.

Implementation

Implementation of CETA at the prime sponsor level began late in 1974. In less than a year, both the nation and the city were hit hard by severe economic recession. In June 1975, unemployment jumped to over 12 percent of the labor force in Los Angeles. Not only did we suffer through the oil embargo, but two of our major employers sustained damaging blows to their workforces. Lockheed nearly went bankrupt before the federal government bailed it out, and Rockwell International was not awarded the contract for the B-1 bomber project. Layoffs between the two amounted to nearly 25,000 individuals.

Termination of the torrential rainstorms has brought a slight upturn in construction and a ripple effect to the allied industries of appliances, carpeting, furniture, and landscaping. Our overall unemployment rate is currently a little over 8 percent, but we must now turn maximum attention to an 11.4 percent unemployment rate among black adult women and a horrendous 39 percent unemployment rate among black teenagers.

Let's look now at some of the achievements of the City of Los Angeles during the first four years of CETA.

We have created a Community Development Department to provide a comprehensive approach to the provision of remedial physical and social services now funded from various federal sources and administered from various organizational structures within the city. Funding for the Department comes from the Comprehensive Employment and Training Act, the Housing and Community Development Act, and the Older American Act. As a consolidated city department, we are better able to comprehensively plan, monitor, and evaluate federally funded programs, thereby maximizing benefits reaped from limited resources. In terms of CETA operations, the Community Development

Department also provides an opportunity to link CETA and Model Cities programs, CETA and senior citizens programs, and CETA and housing programs, something not possible under MDTA.

We have expanded provision of services to all areas of the city. Under MDTA, most, if not all, programs funded were located in only two or three areas of the City of Los Angeles. Those persons in need of services who did not reside in these areas simply did not receive services. Under the decentralization and local accountability provided by the passage of CETA, the City of Los Angeles took steps to provide a locally responsive and geographically balanced allocation of funds. The city was divided into six labor-market-planning areas, and allocation of funds to the six areas was based on the proportionate share, by area, of persons in poverty, ages 18-64.

We funded a mid-decade population, employment, and housing survey to update the allocation formula which had been based on the 1970 Census. The survey revealed: (1) The actual unemployment rate is more than 3 percent over the estimates made previously by both the Census Bureau and the city. (2) The ethnic composition of the city population has changed significantly, particularly with substantial increases in Hispanics and Asian/Pacific islanders. The Anglo population has dropped from 60.2 to 51.4 percent of the population. (3) The number of families in poverty has increased from 9 to 15.6 percent. (4) Unlike other large cities, Los Angeles is not suffering a flight of residents which would leave it an empty center surrounded by populous suburbs. In fact, the general city population has increased by 84,171. And (5) The housing vacancy rate has been nearly cut in half, standing now at 2.5 percent, while the cost of housing has almost doubled and the cost for rentals has increased by 55 percent.

Positive Recruitment

We have adopted an affirmative action program that is designed to promote equal employment opportunities among all recipients of, and staff involved in, administration of CETA funds. Because intensive recruitment of qualified minorities and women is one of the first and most important steps in offering true equal employment opportunities, we strongly committed ourselves to a policy of positive recruitment rather than passive reliance on the normal channels of posting announcements. To ensure that discrimination is not a factor in selection or assignment, we established city-wide significant segments for ethnic/racial and sex composition which serve for both staff and participant goals. Our affirmative action plan was used by the regional Department of Labor office as a model for other prime sponsors to follow.

Although CETA ostensibly decategorized the employment and training system, the Department of Labor required prime sponsors to report and budget on categorical forms. We tempered that requirement for our service deliverers by instituting an innovative funding category to test alternative configurations of training and supportive services delivery and to allow for flexibility, change, and structural improvement in the Los Angeles CETA delivery system.

Examples of the types of innovative programs that we have funded are: English as a second language and job-placement programs particularly for Russian, Eastern European, and Southeast Asian immigrants; a program for females interested in mid-management careers in nontraditional occupations; a counseling and placement program for participants who unsuccessfully terminate from work experience or classroom training programs (we hope to ascertain indicators of why participants terminate unsuccessfully); a program to serve ex-offenders which recruit in the penal institutions prior to release; and a program which will place the ex-offender in a part-time job upon release pending development of an OJT agreement.

We developed a major employer on-the-job training program two years before the national Administration proposed its private-sector initiatives. Over two years ago, when we were just beginning to pull out of a severe economic recession, the majority of our funds had been, of necessity, targeted to classroom training and work-experience activities. Additionally, our on-the-job training agencies had been contracting primarily with small employers.

As the recession was abating and the private sector was beginning to gather strength, we developed the major employer on-the-job training program. The design has been for the city to contract directly wtih firms of over 500 employees for hire-first, train-later activities; to decrease the paper work and red tape which large employers dread; and to be generally aware of, and sensitive to, each employer's individual needs.

What should be noted is that, with the flexibility of local control and decision-making, the City of Los Angeles was able to respond quickly to changes in the local labor market. This year, on-the-job training comprises over 20 percent of our Title I operations; major employer on-the-job training increases that by another 5 percent.

Although we often grouse about the administrative recategorization of what was legislatively intended to be a decategorized system, we have applied for, quite successfully I might add, a number of categorical programs to augment our base allocation.

We have operated a pre-trial intervention program jointly funded by CETA, the Mayor's Office of Criminal Justice, and the Los Angeles City Attorney's Office to demonstrate that the provision of employment and employability services is a viable alternative to current criminal justice system processing for alleged misdemeanants.

We have operated a program that provided on-the-job training in the public sector to moderately and severely handicapped individuals. Following successful completion of training, participants become civil service employees of the City of Los Angeles.

We also are operating a skill-training improvement program to provide low-income unemployed workers with new skills by which to obtain permanent unsubsidized employment, and, where appropriate, to improve the skill levels and career opportunities of currently employed, low-income workers.

We have established linkages with other employment and training entities operating within the City of Los Angeles in order to eliminate wasteful duplication of efforts and to maximize coordination in service delivery. In addition to leveraging non-CETA federal funds, we have made special efforts to utilize community-based organizations as service providers wherever possible. This year nearly 40 of our 54 Title I contracts are with CBOs.

I think the most vivid way to illustrate the success of the City of

Los Angeles as prime sponsor is to look at our performance record. Since the beginning of CETA operations in 1974, we have obligated over $436,-877,664 to serve 160,937 residents of the city. This includes: $110.2 million for Title I training and job development activities, serving well over 45,000 persons (of those 40,000 individuals who participated in employment-related programs, we placed over 20,500 in unsubsidized jobs); $265.9 million for Title II and VI public-service employment projects, serving over 23,000 persons; $60.8 million for Title III projects, including SPEDY and other youth programs, serving over 92,500 persons.

As with all publicly funded programs, the bottom line is performance, and perhaps the key performance indicator for CETA is the indirect placement rate. (An indirect placement is registered when a participant completes training and is placed in unsubsidized employment.) Prior to CETA, the placement rate averaged 50-60 percent. The current national average indirect placement rate is 63 percent. The City of Los Angeles, according to official Department of Labor statistics, maintains an indirect placement rate near 80 percent. We are very proud of that achievement.

What of the Future?

We have discussed the history of the Comprehensive Employment and Training Act, how the many categorical adaptations of the MDTA created the desire and need for a system that allowed comprehensive planning at the local level and that lodged responsibility and accountability with locally elected officials. We have seen that the City of Los Angeles as a prime sponsor has utilized provisions of the CETA to expand service availability to all areas and all eligible residents. We have seen that, given a flexible and decategorized service delivery system, the city as prime sponsor is truly "where the action is," rather than where the reaction was (as was true under MDTA).

CETA is presently before Congress for reenactment. While we differ on a variety of independent details in the latest CETA draft, we are very supportive of reenactment. The City of Los Angeles has adopted recommendations: that decentralization and decategorization be maintained and strengthened, that the current direct relationship between the prime sponsor and the federal government be maintained, that legislation governing public-service employment take into consideration local area wage rates and inflation, and that CETA revisions be planned in concert with reenactment of the Wagner-Peyser Act, the enabling legislation for the same employment services.

We do see moves on the part of the federal government, both in the administrative regulations and the proposed legislation, to recategorize program funding, to change the locus of decision-making, and to initiate restrictions that would hinder local flexibility.

What we want to avoid is the situation where, despite President Carter's plea for simplified and effective programs at the local level, we return to a more complicated, less efficient federal categorical system, and where, despite the continuation of responsibility on the shoulders of local government, we have less authority to design, plan, and develop local solutions to local problems.

[The End]

A State View

By DONALD VIAL

Director of Industrial Relations
State of California

I'M NOT HERE TO present any "official" state view of CETA after four years. The Administration's official views at this point of reenactment of CETA are being carried to the Congress through our state CETA council in close cooperation with local prime sponsors.

I would like to focus on some of the institutional problems that have evolved out of our CETA experience —problems which are undermining the ability of prime sponsors to develop effective manpower programs, let alone the kind of comprehensive manpower services outlined by Jerome Miller.

From its inception as a decentralized, decategorized approach to manpower programs (evolving as it did out of a "revenue sharing" context), CETA was a complex concept that had two strikes against it. It has been an uphill battle all the way.

Strike One—CETA suggested to communities that they could do something meaningful about job creation and unemployment problems of the disadvantaged in the absence of a commitment to utilize fiscal and monetary policies in a compatible way. The prescription was planning at the state and local level and continued blunderbuss at the national level. Humphrey-Hawkins, as a means of integrating manpower and fiscal and monetary policies, is still very much a dream.

Strike Two—Once in operation, with prime sponsors in place, CETA became something of a "dumping ground" for make-do, antirecession programs which have diffused (and confused) CETA goals aimed at structural unemployment problems and at breaking down so-called secondary labor markets. In fact, as suggested by William Mirengoff, some of CETA's major successes have been in the reintroduction of categorical programs. Public Service Employment, as an antirecession program rather than a transitional program, is perhaps the best example. It seems to me that decategorized programs with a human capital thrust have been much less effective.

The point I want to make is that some of the institutional problems being spawned by CETA, on top of the above shortcomings, could be "strike three." I am concerned also that the CETA role assigned to states limits what state policy may be able to do to prevent a strike-out. States, I should add, have a real interest in maintaining CETA for the day when it can be used effectively with disaggregated approaches to fiscal and monetary policies which target employment goals and objectives.

What do I mean by institutional problems? Eschewing derogatory connotations, we all know that newly created agencies quickly develop their own constituencies and their own bureaucratic advocates within them, regardless of high purpose. CETA has spawned such agencies across the country and, in the process, has developed and engaged many talented manpower specialists. Like collective bargaining, it has involved unprecedented numbers in the democratic processes of decision-making at the local level—a real plus in manpower planning.

But somehow, dispensing institutions and their constituencies get caught up in their own time frames, which too often shut them off from other, similarly situated agencies with which they need to cooperate. In the case of CETA, the proliferation of titles with mixed, antirecession and structural goals has not helped—nor for that matter, has the imposition of a youth program on top of the CETA structure.

Unresponsive

I feel that in four short years, CETA is already showing signs of becoming institutionally unresponsive to other job training institutions which have a piece of the action and which themselves have become institutionally isolated within their own constituencies and time frames. I see this, for example, in apprenticeship programs which I administer, and in their almost nonexistent relationships with CETA programs. In many instances, CETA prime sponsors are becoming involved in apprenticeship approaches, but usually in splendid isolation from apprenticeship institutions. Too often, CETA programs in apprenticeable occupations are labeled preapprenticeship, not to indicate links to entry into apprenticeship programs, but to avoid any working relationship with apprenticeship institutions. That is a sad state of affairs, and the blame is widely shared.

If we separate apprenticeship from its stereotyped image, it is a remarkably flexible concept that integrates progressive skill development on the job with coordinated classroom training in vocational programs. The glue that holds it together is employment, for apprenticeship must deal with the reality of how skills are actually used on the job, and it must be cost-effective. Apprenticeship is a form of training ready-made for linking CETA-type entry programs with the development of career ladders for mainstream employment in primary labor markets. But this isn't happening on any meaningful scale because of institutional isolationism in the job-training field. And CETA prime sponsors seem to be going the way of apprenticeship institutions.

Only recently, for example, I saw a lengthy catalog of *major* manpower programs in California prepared by the CETA establishment in the state. There wasn't one reference to apprenticeship programs in it. I think that omission speaks volumes, and we are trying to do something about it in California.

We have some 35,000 registered apprentices in California, by far the largest program and perhaps the most successful in the nation. Over 70 percent of these apprentices, however, are in the construction industry, which is a source of only about 5 percent of employment opportunities. We are challenged to find ways of extending apprenticeship beyond the traditional crafts and occupations and to apply its flexible principles to new and expanding areas of employment.

For example, we have many high-technology industries in California which have barely scratched the surface of apprenticeship possibilities for meeting pressing skill shortages in technical classifications. In electronics, virtually all of our two-year community colleges have "generic" programs for training electronic technicians, but leaders in the industry tell us that these programs fall far short of meeting their "job-ready" requirements. They are pirating skilled people from each other and spending much of their time recruiting out of state while CETA programs focus on subsidizing entry programs that lead nowhere. The possibilities of tailoring community college courses to mesh with on-the-job training and work processes are almost infinite, as are the possibilities of linking CETA entry programs with apprenticeship for upward mobility in internal labor markets.

The health sciences are another example where the combination of licensing laws and community college programs geared to licensure have stifled mobility between classifications. Upward mobility frequently means quitting a job to go back to school. If institutional rigidities can be overcome, there is no reason why apprenticeship concepts cannot be used to provide bridges between licensure classifications. CETA funds are needed to enhance the training capability of health facilities which would participate in such upward mobility programs.

New Initiatives

This is to say that we need new initiatives in apprenticeship which:

(1) vastly expand apprenticeship training to occupations which lend themselves to cost-effective methods of integrating progressive skill development on the job with classroom training in community colleges and other vocational education centers;

(2) focus on breaking down barriers between dead-end, low-paid, and unstable jobs in so-called secondary labor markets and entry in primary markets;

(3) eliminate the need to terminate employment and return to school in order to pursue career ladders in a given occupational field or industry; and

(4) combine subsidized training for entry occupations with sequential development of apprenticeable skills (through coordinated on-the-job and classroom training) in order to achieve greater upward mobility in the operation of labor markets which are "internal" to a firm, a group of firms, or an industry.

The Administration's immediate goal in the fiscal year ahead is to achieve greater coordinated use of available job training and vocational funds so that apprenticeship opportunities can be increased by 50 percent (15,000 apprenticeships), as part of a longer-term goal to provide 100,000 apprenticeships on a sustaining basis. A special one million dollar appropriation to the Director of Industrial Relations is being recommended in the new budget to help launch these new initiatives in apprenticeship. To the extent that discretionary job-training funds are already available to the Administration to support these initiatives, maximum use will be made of such support funds to encourage local prime sponsors to provide similar support for the new apprenticeship initiatives in their respective jurisdictions.

As indicated, highest priority in the expenditure of the earmarked funds will be given to training for entry occupations which can be linked through apprenticeship to career ladders. Special attention will be given to major growth industries, such as electronics, which have pressing unmet skill needs in technical classifications, and to health occupations where apprenticeship can contribute to improving the level and quality of health care services in rural areas, long-term health care facilities, and in the field of mental health. Apprenticeship opportunities in agriculture also will be vigorously pursued where new skill development approaches can be linked to evolving collective bargaining relationships and to stabilizing a larger portion of the agricultural labor force in year-round farm jobs.

These are ambitious goals. They require vast reforms in our apprenticeship and vocational education establishments. Above all, they require CETA institutions that don't strike out because of some premature hardening of bureaucratic structures. There can be no new initiatives in apprenticeship without CETA's involvement.

[The End]

SESSION IV

The Literature of Industrial Relations

Directions in Industrial Relations Research

By GEORGE STRAUSS

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UNITED STATES RESEARCH HAS RECENTLY been going through a period of doldrums. It has dealt with small problems, it has lacked focus, and little of it has been interdisciplinary. Fortunately, a younger generation of scholars is coming along who provide hope for a badly needed renaissance.[1]

To place present developments in perspective, it may be useful to look at the past. With considerable oversimplification, the history of IR research in the U.S. can be divided into three periods, with perhaps a fourth one emerging. I call the three definite periods: the Early Days (until the New Deal), the Golden Age (from 1933 to around 1960), and the Doldrums (1960 to almost the present).

Academic industrial relations in the United States had its beginnings chiefly in Johns Hopkins and Wisconsin, with most of the early scholars being institutional economists who were revolting against what they felt were the sterilities of classical economic theory. Men like Commons and Witte were practical reformers whose work had two central objectives: to legitimate the then-struggling trade union movement, and to win passage of reformist social legislation, especially social security. Their writings were atheoretical, frequently descriptive, heavily policy oriented, and dealt with far ranging topics which today would be classified as history, social work, and law—as well as economics.

The period from the National Recovery Act of 1933 to the Landrum-Griffin Act of 1959 was U.S. academic industrial relations' Golden Age. Industrial relations became the focus of national attention as unions spread rapidly. Indeed, during much of the period it was an

[1] For a more extensive discussion of some of these issues, see George Strauss and Peter Feuille, "Industrial Relations Research in the United States," in *Industrial Relations Research in International Perspective*, ed. Peter Doeringer (London: Macmillan, forthcoming). To save space and to avoid envidious comparisons, only a few works and scholars will be mentioned by name.

open question whether labor-management strife could be contained within manageable limits.

The 1930s saw many of the Wisconsin school's dreams realized: the principle of collective bargaining was enshrined in law; one by one, the great manufacturing firms were unionized; and a relatively comprehensive social security program (absent health insurance) was set into being. Many professors were called to Washington and the state capitols to draft, lobby for, and administer the growing body of social and labor legislation. During World War II, under the leadership of such scholars as George Taylor, the War Labor Board did much to shape the distinctive characteristics of U.S. collective bargaining.

Number-One Problem

The immediate postwar wave of strikes made industrial relations the country's number-one social problem. The study of industrial relations was viewed as both intellectually challenging and socially meaningful, and it drew the best students. Responding to student and public demands, schools and institutes of industrial relations were established in many states. Faculties were thrown together from a variety of fields, contributing to industrial relations' interdisciplinary approach and reducing economics' former primacy.

IR gradually increased its domain beyond the Wisconsin group's original interests in labor history, collective bargaining, social insurance, and labor law. Psychologists and sociologists were welcomed to the fold, contributing particularly to the understanding of the internal life of the union. Although few scholars attempted to cover all the subfields in industrial relations' enlarged jurisdiction, there was much notable work bridging two fields: Bakke, psychology and economics; Slichter, economics and law; and Bernstein, history and economics. As jobs in management opened for industrial relations graduates, personnel joined the list of approved courses. A new field, human relations—largely inspired by the pathbreaking Western Electric studies—dealt with noneconomic, primarily social needs of workers.

The leading young labor economists of the period—Kerr, Dunlop, and Ross—had served on the War Labor Board, an experience which taught them the limitations of classical economic theory in explaining institutional reality. But, by contrast with their Wisconsin school predecessors, they did not reject theory outright. Instead they sought to develop "a combination of theory and practice that led to middle-level generalizations that stood between overall principles or ideologies and case-by-case or historical-period-by-historical-period studies."[2] The focus of their concern was the relative importance to be given competitive market forces as opposed to institutional influences in explaining labor mobility and wages as well as the impact of unions on wages, income shares, and inflation.

These studies related to the *results* of collective bargaining. Other scholars were concerned with process and environment of bargaining and especially with what came to be known as the "Conditions of Industrial Peace." There were numerous studies dealing with labor relations at the shop, plant, and company levels, as well as with the still-developing fields of media-

[2] Clark Kerr, "Industrial Relations Research: A Personal Retrospective," *Industrial Relations* 17 (May 1978), p. 133.

tion and arbitration. Much of this research involved field research and case studies; there was litte quantification. Yet another literature, much by nonlawyers, was spawned by the Wagner, Taft-Hartley, and Landrum-Griffin Acts.

The focus of industrial relations during this period was on urgent practical problems. To the extent there was concern with theory, it was with reconciling economic theory to reality. Despite the efforts of Kerr, Dunlop, Harbison, and Myers, there was little need felt to develop a unique industrial relations theory or even in defining the field's boundaries.

The Doldrums: 1960-1975

By the late 1950s, things began to change. Industrial relations research seemed to lose much of its former excitement. Perhaps the main reason for this was that industrial relations problems had become less urgent and the field's reason for existence less clear. Collective bargaining was well established and working. Strikes had not been eliminated—to the contrary—but the system had learned to adjust to them. Details remained to be worked out (especially with regard to public employees), but the main principles were generally accepted. The remaining unsolved collective bargaining problems were not especially attractive to graduate students.

As the sixties unfolded, other issues appeared more pressing and socially "relevant," particularly to the younger generation. These included unemployment, inflation, racial and sexual discrimination, and poverty. Even though most of these "newer" topics had been treated by the old industrial relations, younger researchers were less likely to identify their work as industrial relations and they largely ignored the role of collective bargaining. Further, it was identification with unions that brought many older scholars to the field; by contrast, younger students tended to view unions as bastions of the establishment rather than engines of social reform.

These developments were occurring at a time when the pendulum in most of the social sciences was swinging from interdisciplinary research, raw empiricism, and primarily applied work to theory-making, theory-testing, and quantification (the latter in part the result of computers). But for the highly influential "new labor economists" of the Chicago school, the relevant theory was that of neoclassical economics, and the younger generation played down the significance of "institutional imperfections," including those caused by collective bargaining. There were similar developments in other fields, and as a consequence industrial relations' old interdisciplinary amalgam began to fall apart.

Labor law articles began to be written largely by lawyers, to appear in legal rather than industrial relations journals, and to be technical rather than concerned with broad issues of public policy. Similarly, labor history became more and more the exclusive province of professional historians and to appear in historical journals; it became less the history of unions and more that of working-class life.

The fields of human relations and personnel joined another field, management, to form what is now known as "organizational behavior." This flourishing field has elicited the interest of many psychologists and at least a few sociologists. It deals with a variety of subjects of at least peripheral interest to industrial relations: job satisfaction, motivation, compensation, careers, and leadership.

Nevertheless, organizational behavior scholars write in their own journals, few identify their field as industrial relations, and communications between that field and industrial relations has been minimal.

As these associated disciplines went their respective ways, those remaining in the industrial relations core began a certain amount of not especially productive soul-searching. The early 1960s saw a number of articles concerned with defining industrial relations as a field. Some felt that industrial relations should have a theoretical base of its own. Others concluded that the only appropriate theories were those of the more basic disciplines, such as economics. In 1968, Somers attempted to stimulate further consideration of theoretical issues, but the discussion was desultory. One thing was clear: industrial relations had lost its central focus. Further, many of those who had been leaders in the 1950s moved on, either to other scholarly problems (such as economic development) or to academic administration or public service.

Two Foci

For those who were left in industrial relations, there were two research foci. The first was collective bargaining. As labor relations in manufacturing became routine, interest switched to the public sector. The early research here was concerned chiefly with differences and similarities between the two sectors. Later studies, which became increasingly quantitative, examined the impact of bargaining on wages and personnel policies. More recently, there has been much concern with the efficacy of various conflict-resolution techniques.

There were few studies of the bargaining process itself, either public or private, the chief exceptions being important multidisciplinary works by Stevens and by Walton and McKersie. Unfortunately, these studies failed to set the pattern for other research, and there was little apparent interaction between industrial relations scholars and those studying conflict and bargaining behavior in other contexts.

The other main (and better financed) industrial relations interest was that of manpower and labor market economics (with the distinction between the two fields fuzzy and many labor economists not viewing themselves as industrial relationists). Manpower developed as a result of the interventionist government labor market policies of the 1960s and the consequent liberal funding of studies in this area. Some studies were macro-oriented (e.g., those relating to the Phillips curve); others consisted of micro-, cost-benefit analyses of the effectiveness of specific training or income-maintenance projects. Compared with earlier studies, these tended to be highly quantitative and heavily informed by economic theory, explaining wage differentials, for example, in terms of differences in human capital investment rather than collective bargaining.

Most of this research was designed to have policy implications. Yet Dunlop charges it has had little influence on policy-makers. Others disagree, arguing that while specific studies may not have an impact on specific projects, the net impact of the research as a whole has been to influence the premises upon which governmental decisions are made.

During the Golden Age, labor economists attempted to build bridges between traditional economic analysis and institutional studies of collective barganing. Contemporary manpower studies, however, focus on the unemployed and on low-wage nonunion sectors. In any case, as Dunlop complains, labor economists (except for dual labor market theorists) tend to be uninterested in the institutional "trivia."

Thus, on the one hand, labor economists tend to ignore the institutional complexities of collective bargaining. On the other hand, public-sector bargaining research is less concerned with economic pressures (and more with political pressures) than was private-sector research 25 years ago. So from both sides the gap between bargaining and economic research has enlarged. If collective bargaining constitutes industrial relations' central core, then labor economics has largely divorced itself from that core; if collective bargaining is not industrial relations' core, then industrial relations today has no core. In any case, this lack of focus or central concern may well have contributed to industrial relations' loss of cohesion and dynamism as a field. Recent years have seen numerous useful small studies, but for my taste there has been little of lasting significance.

A Renaissance: 1975-?

The picture of industrial relations research just painted is gloomy. But perhaps it is excessively so, for a new generation of scholars is emerging which has been broadly trained in economics, the behavioral sciences, quantitative methods, *and* the institutional aspects of industrial relations. The work turned out by these individuals is more heavily grounded in theory than the heavily empirical research of the 1940s and 1950s; it makes greater use of quantitative data and more rigorously tests hypotheses; and much of it is interdisciplinary.

A few examples of recent developments may be illustrative. Psychologists have begun to study various forms of union participation, using multivariate analysis. A psychologist joins with two lawyers to study the validity of the NLRB behavioral assumptions with regard to the impact of union-management campaign practices. Beginnings are being made to reconcile the only partly consistent findings of economists, sociologists, psychologists, anl political scientists regarding the incidence of strikes. Economists include job-satisfaction measures in their models explaining turnover. Other multivariate analysis seeks to assess the conditions under which various forms of mediation are most effective. And still other multivariate studies compare the relative importance of external (economic) and internal (structural) factors operating on bargaining outcomes, and do so with the statistical precision impossible in a precomputer period.

A few other examples: Until recently so-called Quality of Work Life experiments (involving job enrichment, etc.) were conducted primarily in nonunion plants. There are currently a number of such experiments under joint union-management sponsorship with careful outside evaluations. The methodologies developed in these experiments may well help bridge the gap between collective bargaining and organizational development. Again, until recently, laboratory studies of bargaining behavior dealt largely with simple problems, ignoring the complexities of multi-item agendas, the need for negotiators to account to their constituencies, and the impact of long bargaining histories. However, recent bargaining games have become more realistic, and we may hope that important breakthroughs may occur soon which will help us understand bargaining in the real world. Already bargaining theory has had a significant impact on practice in the form of final-offer arbitration, now widely adopted in the public sector.

So far much of the research appears to be concerned with developing a method rather than with providing insights or proving broad propositions. As yet little of it is of practical value. The new interdisciplinary wave appears to be affecting collective bargaining studies more than manpower. Yet change is occurring, and after a long period of inertia it is much to be welcomed.

Miscellaneous Conclusions

Researchers should view collective bargaining not as a unique phenomenon, but as merely one of a family of interorganizational relationships. Research on bargaining should draw industrial relations into organizational theory, just as labor economists have drawn manpower studies into mainstream economics. To be sure, disciplinary orthodoxy can be overdone (as Dunlop suggests), but we can guard against this problem when it arises.

There is a danger, of course, that by becoming more quantitative and theoretical, collective bargaining research may lose its policy relevance. This may not be entirely a loss. American industrial relations may have stressed policy too much, seeking immediate relevance rather than basic understanding.

Will U.S. industrial relations research re-enter its Golden Age? Probably (we hope) not. The fact that we have a relatively smoothly working industrial relations system in this country is due to the contributions of the Golden Age's Great Men. Their own skills helped reduce the urgency of the problems which they addressed. Fundamental criticism we need. But the debate will likely remain truly academic unless U.S. conditions get much worse. **[The End]**

Arbitration Decisions and the Law of the Shop

By BENJAMIN AARON

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A DISCUSSION OF ARBITRATION DECISIONS and the law of the shop may appropriately begin with a quotation of the familiar dictum of Justice Douglas in *United Steelworkers v. Warrior and Gulf Navigation Co.*:[1]

"The labor arbitrator's source of law is not confined to the express provisions of the contract, as the industrial common law—the practices of the industry and the shop—is equally a part of the collective bargaining agreement although not expressed in it. The labor arbitrator is usually chosen because of the parties' confidence in his knowledge of the common law of the shop and their confidence in his personal judgment to bring to bear considerations which are not expressed in the contract as criteria for judgment."

[1] 363 U.S. 564, 581-82 (1960).

The extensive commentary on those two sentences indicates that many persons, including representatives of labor and management, as well as arbitrators, disagree with both the proposition that the arbitrator's "source of law" includes not only the contract, but also the "common law of the shop," and the claim that arbitrators are selected in part because of their assumed "knowledge of the common law of the shop." My remarks, however, are directed to two other questions, namely, how do arbitrators define the "common law of the shop," and how do they treat it in their opinions?

"Common law of the shop" can be considered from at least two points of view. From one standpoint it can be regarded as the sum of industrial relations principles that have evolved from countless grievance settlements and arbitral awards and have been accepted and applied by a majority of arbitrators in most enterprises and industries. One such principle is that an aggrieved employee is obligated to submit his grievance to the contract procedures for peaceful and orderly settlement, and is not entitled to seek redress by resorting to self-help. Another is that an employer may not impose arbitrary and inconsistent penalties upon different employees who have committed the same offense. Most examples of this kind of substantive common law will be found in the area of discipline. In matters of procedure, such as insistence upon a variety of safeguards generally subsumed under the heading of "due process," the common law is not rooted in the practices of the shop, but has been borrowed largely from the rules imposed by the Constitution and the courts.

Viewed from this perspective, the body of "common law of the shop" is much smaller than is popularly supposed; indeed, it is relatively meager.

I suspect, however, that most arbitrators, and probably most practitioners, regard the "common law of the shop" in rather a different light; instead of thinking of it in terms of substantive principles of general application, they conceive of it more narrowly in terms of the past practice in a particular bargaining unit or units. Whether and to what extent an arbitrator is justified in relying upon past practice on the theory that, as stated by Douglas, it is "equally a part of the collective bargaining agreement although not expressed in it," has been the source of unending controversy among the participants in the arbitration process, including the arbitrators themselves.

Let me hasten to reassure you: I do not intend to make this occasion an excuse for reentering that particular thicket. Suffice it to say that arguments in favor or against reliance on past practice in the interpretation and application of collective bargaining agreements have stressed a number of relevant or controlling factors, including whether the applicable contract provision is "plain" and "unambiguous," whether the alleged past practice actually exists, whether it has been uniformly followed for a substantial period, and whether both parties were aware of the practice and formally or tacitly acquiesced in its continuance. The substantial body of arbitration decisions in cases involving these questions has certainly not produced any "common law of the shop" of the first type that I described. Rather, it has led, at most, to the law of a particular shop, enterprise, or industry.

With this brief introduction, I want to turn now to the second question I posed at the outset: How do arbitrators deal with the "common law of the shop" in their opinions?

Arbitral Opinions

The title of this morning's program is "The Literature of Industrial Relations." Much of this literature is in the form of arbitral decisions; indeed, in terms of dead weight such decisions probably represent the major portion of industrial relations literature. An analysis of substantive holdings on past practice and the "common law of the shop" in a representative sample of arbitral opinions would take a much longer time than has been allocated to me on this program; moreover, I have no interest in such an undertaking. Instead, I want to talk about the general quality of the style of arbitral opinions. Although the few opinions I shall cite relate to the "common law of the shop," my comments obviously have a much broader application.

But first, hear my confession: I have approached this task without fear and without research. My observations are entirely subjective, idiosyncratic, and unfair to a large number—although I suspect not too large a number—of arbitrators both known and unknown to me. Anticipating the objection that my strictures are based upon insufficient evidence, I plead guilty. I simply did not have time to undertake the major task of reading a large and representative sample of the writings of my colleagues in arbitration; moreover, had I made the attempt, I doubt if I could have survived the grim journey through the Sahara of their literary effusions. In a word, the commentary that follows is, in its modest way, as opinionated, prejudiced, and unfair as that masterpiece of this genre, Judge Paul R. Hays's viperous little book on labor arbitration.[2]

Dismal State of the "Art"

At the outset of his justly famous essay, "Law and Literature,"[3] Justice Cardozo commented that he had been told by friends that a judicial opinion has no business to be literature: "The idol must be ugly, or he may be taken for a common man .... We are merely wasting our time ... if we bother about form when only substance is important." The Justice's characteristically mild response was that this might be true if we only knew "where substance ends and form begins."

The great majority of arbitrators seem to have accepted the proposition that form is unimportant. Indeed, many of the opinions I have read warrant the inference that the writers lacked not only a sense of form, but also a knowldege of the fundamental principles of grammar and syntax. In the wilderness of arbitral rhetoric, one encounters a host of solecisms: misplaced modifiers, dangling participles, and outright misuse of words are only some of the most common atrocities. The landscape of most arbitral opinions is bleak: words such as "hopefully" and "parameters," deformed by radiations from advertising agencies, the government, and academe, grow with the rapidity of a fungus in the arid soil.

Of those who are capable of writing sentences that are at least grammatically correct, many manage to go no further. One can ingest just so many pages filled with simple, declarative sentences, unvaried by an occasional venturesome independent clause or a single felicitous phrase, before

[2] Paul R. Hays, *Labor Arbitration: A Dissenting View* (New Haven and New London: Yale University Press, 1966).

[3] *Selected Writings of Benjamin Nathan Cardozo*, ed. Margaret E. Hall (New York: Fallon Publications, 1947), pp. 338-56.

giving up and turning to what the writer of the opinion might well refer to as the "bottom line," that is, the award.

The stylistic blight I am describing is, for some arbitrators, an occupational disease. The man or woman who writes 200 to 300 opinions a year usually lacks sufficient time to develop or to nourish an acceptable writing style. When opinion-writing becomes a dreary chore, grace and elegance of style cannot survive. But surely, one assumes, a higher literary standard can be expected from the great majority of those for whom arbitration is merely an avocation, and especially from those whose principal occupation involves teaching, research, and writing. Alas, that expectation has not been realized; some of the worst opinions I have ever read were written by my colleagues in academe.

Perhaps you will object that those for whom the arbitrator's opinions are written do not care a whit about the style, and are interested only in the result: did we win or lose? But arbitrators know, perhaps better than anyone else, that winning and losing a particular grievance is often the least important aspect of the case; often, it is the arbitrator's analysis of the issues that is of the greatest interest to the parties. The explanation of why, for example, a line of argument based on past practice is founded on an erroneous premise, or the sympathetic recognition of certain equities, even though in the end they are outweighed by other considerations—these and many other aspects of opinion-writing can help achieve the indispensable "willingness to lose" in the arbitration process; but it is precisely in these situations that the problem of deciding "when substance ends and form begins" becomes acute.

Styles of Opinions

In the essay to which I have previously adverted, Justice Cardozo distinguished between six types of judicial opinions: the magisterial or imperative; the laconic or sententious; the conversational or homely; the refined or artificial; the demonstrative or persuasive; and the tonsorial or agglutinative. No arbitrator with whose writings I am familiar has confined his or her style exclusively to one of these categories. It would seem, however, that opinions in the magisterial or imperative mode are ill-suited to a subject such as the "common law of the shop"; for, as I argued earlier, the large majority of the cases deal with situations existing in a particular plant, enterprise, or industry, and therefore are not proper vehicles for the expression of principles of general application. It is characteristic of the magisterial or imperative style, Cardozo tells us, that "[i]f it argues, it does so with the downward rush and overwhelming conviction of the syllogism, seldom with tentative gropings towards the inductive apprehension of a truth imperfectly discerned."

Yet arbitrators frequently adopt a magisterial tone in disposing of the much debated question whether past practice can modify the "plain meaning" of a contract provision. Thus:

"If there is any one principle of contract interpretation upon which arbitrators are agreed, it is that where no ambiguity exists in the language of the contract, then the obvious intent of that contract language governs and must be enforced . . . and that when the language of the Agreement is sufficiently clear as to enable the Arbitrator to reasonably ascertain the intent of that contract language, that ends the Arbitrator's inquiry and he must enforce the apparent intent of the words of the Agreement."

Or again: "[Established practice] is a useful means of ascertaining intention in case of ambiguity or indefiniteness; but no matter how well established a practice may be, it is unavailing to modify a clear promise."

The same or similar language can be found in the opinions of many other arbitrators. To be sure, the view expressed is perfectly defensible; the error lies in attributing it, either expressly or by implication, to all arbitrators. I am one, for example, who happens to believe that an established past practice, consistently followed with the full knowledge and acquiescence of both parties, has the effect of amending a contract provision that provides plainly to the contrary.[4]

The master of the magisterial style in the United States was Chief Justice John Marshall. Cardozo said of Marshall's greatest judgments that the "movement from premise to conclusion is put before the observer as something more impersonal than the working of the individual mind. It is the inevitable progress of an inexorable force." Professor Corwin observed that even Marshall's bitterest critics shared this illusion; he quotes John Randolph of Roanoke, reacting to one of Marshall's opinions: "All wrong, all wrong, but no man in the United States can tell why or wherein."

The magisterial style is thus unsuited to arbitral opinions, not only because none of our calling has the prestige, the intellectual power, or the moral authority of a Marshall, but also because our judgments concern contracts of limited coverage and importance which, unlike the Constitution, are easily and frequently amended.

Some of the other styles mentioned by Cardozo tend, as he said, to "run into each other by imperceptible gradations." This is true particularly of the laconic and sententious and the conversational and homely. An excellent example of the skillful combination of these styles is the following excerpt from an opinion of the late Harry Shulman, the first umpire under the Ford-United Auto Workers agreement, who elevated opinion-writing to heights that we lesser mortals have never been able to scale. Here he is distinguishing between different types of past practices, and contrasting those adopted by mutual agreement with those that developed without design or deliberation. Of the latter, he says in part:

"Such practices are merely present ways, not prescribed ways, of doing things. The relevant item of significance is not the nature of the particular method but the managerial freedom with respect to it. Being the product of managerial determination in its permitted discretion such practices are, in the absence of contractual provision to the contrary, subject to change in the same discretion. The law and the policy of collective bargaining may well require that the employer inform the Union and that he be ready to discuss the matter with it on request. But there is no requirement of mutual agreement as a condition precedent to a change of practice of this character.

"A contrary holding would . . . raise . . . questions very difficult to answer. For example, what is proper-

[4] I have discussed this problem in "The Uses of the Past," in *Arbitration Today*, Proceedings of the Eighth Annual Meeting of the National Academy of Arbitrators, ed. Jean T. McKelvey (Washington: BNA, 1955), pp. 1-12.

ly a subject of a practice? Would the long use of a wheelbarrow become a practice not to be changed by the substitution of four-wheeled buggies drawn by a tractor?"[5]

Humor in Opinions

Humor is not considered by Cardozo to constitute a style of its own, and for good reason. He observes that flashes of humor are not unknown in judicial opinions; "yet the form of opinion which aims at humor from beginning to end is a perilous adventure, which can be justified only by success, and even then is likely to find its critics almost as many as its eulogists." This is particularly true in the case of arbitral opinions; for no matter how trivial or amusing the grievance, it is a matter of deadly seriousness to the grievant.

For example, most arbitrators have been called upon, at one time or another, to interpret and apply a contract provision for funeral pay, referred to irreverently in our lighter moments as "layaway pay," "agony allotments," "lamentation lagniappe," "mourning mazuma," or more elegantly, "the monetization of grief." The temptation to treat lightly and humorously a grievance asserting the right of the grievant to several extra days' leave because of the death of his divorced wife's sister during his vacation is strong, but arbitrators who succumb to it do so at their great peril.

This is not to say that no humor can be found in arbitral opinions; unfortunately, it is usually of the unconscious and unintended kind. I cited and quoted at length from such an opinion in an address to the National Academy of Arbitrators many years ago,[6] but it is too long to repeat here.

Once in a great while, however, the arbitrator and the occasion combine to produce an example of genuine humor in an arbitral decision that instructs as well as amuses. Once again we turn to the decision of the incomparable Harry Shulman in the "Case of the Lady in Red Slacks."[7] Although the opinion did not deal with the issue of past practice as such, it can fairly be said to have relied upon considerations not specifically embodied in the collective bargaining agreement and folkways comprising part of the "common law of the shop." The facts were succinctly stated by Shulman:

"A . . . was reprimanded and docked one half hour because she wore slacks described as bright red in color. The objection was to the color, not the slacks; the girls are required to wear slacks. And the objection is based on the safety and production hazards that would be created by the tendency of the bright color to distract the attention of employees, particularly that of the male sex."

Shulman then discussed the need to protect employees from safety hazards by enforcing safety rules; he concluded that if it could be established that certain forms of attire in a "co-ed" plant tended to distract the attention of employees, management would probably have the right to publish rules prohibiting such attire. He concluded, however, that in this case the rule imposed was unreasonable and idiosyncratic.

[5] Ford Motor Co., 19 L.A. 237, 241-42 (1952).

[6] "Presidential Address," in *Labor Arbitration and Industrial Change,* Proceedings of the Sixteenth Annual Meeting of the National Academy of Arbitrators, ed. Mark L. Kahn (Washington, BNA, 1963), pp. 47-49.

[7] *Opinions of the Umpire, Ford Motor Co. and UAW-CIO,* Opinion A-117 (June 30, 1944).

"What color was proper and what color was 'taboo' was apparently a matter depending entirely on the spot reactions of individual . . . Labor Relations officers to particular slacks as they appeared on the scene. . . . Apparently bright green slacks were tolerated. And there was no effort at specification of other articles of clothing, or the fit itself, which might be equally seductive of employees' attention. Yet it is common knowledge that wolves, unlike bulls, may be attracted by colors other than red and various other enticements in the art and fit of female attire."

Shears and Pastepot

I come, finally, to the last of the styles described by Cardozo: the tonsorial or agglutinative, "so called from the shears and the pastepot which are its implements and emblem." The "horrors" of this style are summed up by the Justice as follows: "The dreary succession of quotations closes with a brief paragraph expressing a firm conviction that judgment for plaintiff or for defendant, as the case may be, follows as an inevitable conclusion."

Although the nature of this style precludes the citation of examples, it is, unfortunately, frequently encountered in arbitral opinions. Some arbitrators apparently believe that the long lists of cases cited in the post-hearing briefs of the parties require extended discussion in their opinions, whether in order to show that they have really read the cases or for some other reason. Such an opinion creates the impression that the writer did not trust his or her own judgment, which is what the parties contracted for, but felt the necessity of relying upon the previously published opinions of other arbitrators. This type of opinion is not only dreary, it is self-demeaning and odious.

As has become abundantly clear in the course of these brief remarks, I think the number of useful things that can be said in an occasional paper about arbitral decisions and the "law of the shop" is not very great. Accordingly, I have used the opportunity presented to me to air my largely negative judgments about the quality of arbitral opinions in general. Of course, there are a number of arbitrators whose opinions over the years provide an oasis for the weary reader amid the bleak and arid wastes that surround him. To cite the names of any of them, however, is to risk affronting others, equally deserving, whom I have failed to mention; on that matter, therefore, I prefer to maintain a discreet silence. For all those who disagree with what I have said—and I'm sure there are many—I offer this consolation and hope: if you can accomplish the dreary task of wading through my own arbitral opinions, I'm sure you will be rewarded by the discovery of enough evidence to hoist me on my own petard.

[The End]

The Doctoral Dissertation: Writing Without Fun or Profit?

By LAWRENCE R. KLEIN

University of Arizona

I AM UNIQUELY QUALIFIED to discuss doctoral dissertations, never having written one. On the other hand, I probably have read more cubic centimeters of dissertations than any one else in the world, more than 100 of them for the Employment and Training Administration alone. In addition, as editor-in-chief of 269 issues of the Monthly Labor Review, I reviewed and either published or rejected many times that number of spinoffs.

So much for passing my prelims.

More than 30,000 doctoral dissertations are written each year in this country. They cover nearly every aspect of the physical and social sciences and the humanities. They delve into the recesses of human knowledge and behavior.

Their purpose is twofold. One is to present data and data relationships, validate or challenge old theories and techniques, develop new theories and techniques, and to do these things in an analytical, meaningful, objective, and professionally sound manner. The other is to subject the writer to an academic ordeal by fire, after which rite an admission ticket to academic life is issued. This little demonstration project of scholarly readiness is often a traumatic experience that takes from one to five years of one's life, usually the most penurious years. Some alert social scientist should do a dissertation on the institutional phenomenon of the doctoral thesis.

Once done, what is the dissertation's fate? A lucky few writers can cash theirs in for a journal article or two, and then (to paraphrase Gray) to blush unseen and waste their substance on the desert air of a library, and mayhap become footnotes in other dissertations.

It is fashionable, I know, to poke fun at the writing of social scientists. It is always open season, and although the shooting has been going on for a long time, the targets are still fair and plentiful. Critics pepper away with expressions of horror, ridicule, exasperation, disdain, or even contempt. But there has been, if I may put it in a comfortable and familiar jargon, a null effect. Much of the writing remains murky, obscure, jargon-laden, pretentious, awkward, dull, discursive, humorless, and colorless. Truly, as Louis Wirth put it, "the findings of social science are sometimes regarded as elaborate statements of what everybody knows in language that nobody can understand."

The dissertation writer labors under especially onerous handicaps. He forces his approach and rhetoric and methods into a mold that conforms to the prejudices, predilections, and sometimes whims of a committee. He follows a standardized format.

Writing Problems

My personal concern about these writing problems began many decades ago as an editor of social science writing when I reviewed—recoiled from is a better expression—manuscripts submitted for publication, especially those from universities. My concern has taken on a kind of evangelical fervor, and I have been writing and preaching the gospel about this subject for some time, with about as little success as most preachers achieve with most gospels. In this vein it may be appropriate to lean on both Confucius and St. Paul, to witness the intercultural as well as interdenominational recognition of what I am talking about. Confucius first: "If language is not correct, then what is said is not what is meant; if what is said is not what is meant, then what ought to be done remains undone." And St. Paul: "Except ye utter by the tongue words easy to be understood, how shall it be known what is spoken?"

I don't know how many industrial relations dissertations are done each year, but if you accept a broad definition of industrial relations—an imperialist subject acquisitive enough to include collective bargaining, arbitration, wage theory, manpower, fringe benefits, personnel practices, work environment, industrial psychology, industrial sociology, industrial anthropology, labor legislation, and the like —there are a powerful lot of them. The Employment and Training Administration alone finances about 40 a year.

Well, if Orwell is correct in contending that a deterioration in language and its uses is symptomatic of a political and general social decline, we are in trouble.

All of these somewhat sententious statements lead me to these assertions about industrial relations dissertations:

(1) They suffer from the proliferation of disciplines and overspecialization—what Jacques Barzun calls "minute minorities."

(2) Balkanization has forced the language of research inexorably to multiple jargons, inhibiting interdisciplinary research, and making the Ivory Tower a Tower of Babel.

(3) The eager demand for the product by planners and administrators is often frustrated because it is not geared to real-world, workaday use.

(4) Methodology is becoming an end in itself, and abstruse mathematical models for models' sake are substituted for reflective thought and contemplative wisdom. Regression analysis is the new Hyperion.

Let me call in some support troops for these contentions and then provide some examples.

J. R. Sargent, an Oxford economist, thinks that the difficulties of communication in the social sciences are alarming, "partly from the tendency to specialization, partly from a desire for a rigorous methodology which involves abstractions repugnant to the layman. It is now becoming increasingly difficult for economists even to communicate with each other . . . ."

The late E. R. Schumacher, once economic adviser to the National Coal Board in England, and author of *Small is Beautiful,* went even further, to suggest that in the nonexact social sciences it is an affront to human dignity to imitate the devices of the natural sciences. "Economics . . . is not an exact science; it is, in fact, or ought to be, something much greater: a branch of wisdom . . . ."

No "Special Mana"

Julius Gould, of the London School, 15 years ago warned that "the language of social research shares a common and growing ground with the language of computer programming and cybernetics. . . ." He concedes that if we need the research "we need the precise language within which [people] can operate." But he warns "against the fallacy . . . of believing that this technical or statistical vocabulary, like the tables which it helps to construct, has a special mana of its own: the fallacy which fluctuates between the absurd view that the real is the quantifiable and the yet more absurd view that reality is to be sought in the very instruments and language of quantification."

Lord Ashby, former vice chancellor at Cambridge, fears "we have become parasitic upon computers." And Guy Routh, that fine economic analyst and superb writer at Sussex University, says: "If every one, each time they met an economist, said 'Pardon me, but your model is indeterminate,' the whole airy fabric of models and equations would vanish like mist on a sunny day, and the economic community would be compelled to apply its massed talents to the study of the real world, with heaven knows what results."

Galbraith questions whether economists, in their devotion to mathematical statistics and abandonment of the normal use of language, have not gone "beyond the reach of the intelligent layman [and become] out of touch with reality." Barzun fears that "as specialists multiplied, the proofs by observation gave way to mathematical demonstration [and] science lost communicability through words . . . ." William Foote Whyte speculates on our failure to devise application processes that will help transform theoretical knowledge into socially useful outcomes.

All this adds up to a situation where "Solows speak only to Arrows and Arrows speak only to RAND." But lest it also add up only to empty polemics, let it be emphasized that the above is intended as no vendetta against mathematical models and computerization. Without them we couldn't have modern astronomy, a social security system, high-speed mass production, or good weather prediction. But we might have better industrial relations research were the model not the message.

For example, I recently read a doctoral dissertation on what factors influence the level of wage rates in the building trades. Using very sophisticated mathematical and statistical analysis, employing in part multinomial logit techniques, the author concludes that institutional factors can be ignored; in fact, there is no strike variable in his wage equation. Strikes in construction are dismissed rather airily as—mirable dictu—inconsequential. Try that on a business agent or a contractor.

Or consider the contention, proven beyond a reasonable doubt by working through a model, that the trek of industry from the grime of the central city toward the gardens, greenery, and lower taxes of the suburbs, does not leave stranded black populations—a refutation of the mismatch theory. The blacks who cannot follow the whites out of the city fall heir to an acute labor demand. This will come as a surprise to the blacks.

Or the dissertation which, after leading us through a complex maze of econometrics, tells us that "This study supports the simple argument that the answer to problems created by unattractive, low-wage unstable jobs is their replacement with stable, well-paying jobs in which individuals can develop and express their talents."

Or the dissertation on the economic influences on marital separation: "In addition, the economic model moves us toward an inclusion of women as active participants in the process of marital separation."

One could recite samples of dissertation prose endlessly. I offer a few:

"The doctrines of individual effort and merit underlie our path models no less than they inform our popular myths. Those doctrines, while normatively appearing, do not describe reality. They obscure the capriciousness and randomness which research suggests characterize the economic game."

Or:

"As viewed in this tradition of thought, the self is really a plurality of selves. An individual carries on a whole series of different relationships to different people. We are one thing to one person and another thing to another. A variety of selves exist for a variety of associates in traditionally differentiated situations. There are different sorts of selves answering to different sorts of reactions. What determines the amount or sort of self that will get into communication is the social experience itself."

Burns said it better: "Oh wad some power the giftie gie us/To see oursels as others see us."

Another sample:

"What impresses me first and foremost is that dual allegiance is not really a thing in itself, a piece of mental structure which is either present or absent. It is, rather, a process and it is one that is in a fluid state depending on factors inside the individual, outside of him in the relationships of the two specific groups he has joined, and on factors even further outside of him within the larger society, namely the characteristics and values inherent in the socio-economic structure of our society."

Translation: In a choice of loyalties, a man will be influenced by various factors, depending on the circumstances.

A final sample:

"The elevation of the group on the psychopathic deviate (Pd) scale also bears note. The Pd scale indicated that the business agents, as a group, tended to be personable but to have little emotional depth, and to have not internalized the societal norms.

"The elevation on the hypomania (Ma) scale, indicative of a tendency toward overactivity and enthusiasm, also seemed to be related to the role demands.

"The exploratory nature of this study and the small number of individuals examined make it impossible to arrive at firm generalization from the data presented."

Translation: This one stumped me until I got help from a Teamster business agent who after studying it for a bit opined that it meant "They was nice guys but bums."

Pressure to Conform

Why do the intellectual elite of the nation defile their own language with jargon of this type while fitting into place the capstone of their formal education? Part of the reason can be tied to the formal aspects and dictates of the dissertation mystique and the pressure to conform because of fear and vanity. Fear breeds the circumlocution, the protective coloration generated in the fond hope that no one will notice a crucial point if only a filmy veil is draped over the naked truth.

Vanity manifests itself in the desire to preen oneself before colleagues, to equate the recondite with the profound, to thrill the reader with "exogenous isomorphism" instead of simply "surface similarity" or to write "heteroscedasticity," and be scholarly chic, rather than "unequal variation," and be understood. Vanity also encourages the "smart" use of the vogue word. Currently, one of them is "viable," indiscriminately extended by social science writers from its proper place as a precise concept in biology and zoology to mean in the social sciences "possible," "good," "worthy," "sensible," "true," "strong," "correct," and "credible," and to apply to inanimate objects and even abstractions. Machlup, in his elegant polemic against the word "structure" in *Essays in Economic Semantics,* makes a classic delineation of this point.

Now I can defend jargon as a necessary adjunct to a given discipline. It is a private language. In law, medicine, and the physical sciences, jargon tends to have precise meanings. It is a tentative designation to help delineate a new concept. It frequently achieves a permanent position in scientific language, sometimes spilling over into the language of everyday discourse. But in the social sciences jargon serves many purposes and many conveniences, and it is important to distinguish between jargon and pretension. The temptation to indulge in jargon and the patois of the club might be suppressed if we all paid heed to Hayakawa's warning: You should carry erudition as a gentleman carries his liquor—you may be a better and bolder man because you have it in you, but you must not let others suspect how deeply you have drunk.

Lucy Mair of the London School thinks that jargon often is neither an aid to clear communication nor a badge of professional competence. Often it conceals a lack of mastery which, if possessed, would make jargon unnecessary. "In the physical sciences," she says, technical language "is used to refer to entities not perceived in the course of everyday experience .... In the social sciences we are concerned with the experiences which are the very stuff of language." Professional jargon "invades the minds of readers and drives out the everyday equivalents." A kind of Gresham's law applied to linguistics! Jargon treads a narrow line between honest effort to elucidate a concept and a coverup for lack of concept, between craft discovery and craft protectionism.

Revolutions

If doctoral dissertations in industrial relations, as in all the social sciences, are narrowly conceived, reeking with jargon and strange word inventions, and overgrown in a thicket of abstruse mathematics, do we turn our backs to the problem and abandon the field to the Goths? Two major revolutions and a noble experiment might turn the tide.

It is one of the mysteries of our times that the American educational system, which so effectively teaches matrix, algebra, music, symbolic logic, bookkeeping, physics, football, and French, fails so utterly at teaching students to write in their own language with lucidity if not with grace. The sins of the English teacher, especially at the junior and senior high school level, are egregious, and strain the powers of redemption. The first revolution must start there.

The second revolution must come from within the universities themselves. The Ph.D. thesis should be the measure and very symbol of learning in the classical sense. Yet its characteristics—indeed its required characteristics—bespeak narrowness, avoidance of interdisciplinary interest, and seeming disinterest in the relationship of theme to broad movements of history and social development. It is barren of the "philosophy" that gives grandeur to the symbol. The title doctor of philosophy is becoming a cliche, divorced of meaning and significance, its shining ideal tarnished by the dross of specialization. Is the Ph.D. in industrial relations a truly educated man, or just a finely-honed specialist-technician skilled in regression analysis and the accepted truisms of the profession?

Why shouldn't the bedizened instrument known as a doctoral dissertation reflect the integrative powers and imagination of the candidate? The broader scope might help to improve the writing, interest a larger readership, and enhance its utility. Of course academic practice, with its rigidities and institutional clannishness, would need some stimulus to break the chains of tradition—say the clout supplied by an especially generous grant for the purpose. But suppose a university were offered such funds to allow a group of candidates to write a new kind of dissertation leading to a doctorate in interdisciplinary achievement? The major subject might be industrial relations, but the P, the h, and the D could stand for Pindar, Herodotus, and Dante along with Powderly, Hawthorne, and Diemer. It would not be necessary to prove once again, cloaked in whatever pretentious-sounding hypothesis, that workers' productivity falls as hours over eight increase.

So much for revolutions. Back to reality.

Maybe over the long haul we won't be able to wake up the teachers of writing or convince academics that in many instances the language, form, appeal, or content is worth fussing about. But take heart. The Research and Development Office of the Employment and Training Administration is trying a noble experiment with some of the dissertations it supports financially. It is having 21 of them rewritten in easy, understandable, and very brief style, to be published soon as a small book. All jargon has been translated and all equations removed. What remains is the essence of the dissertation in language that a reasonably bright senior high school student can understand.

Formal titles have been cast to the Philistines and have come back in a way that will not make the authors happy. For example: "And Econometric Analysis of the Unemployment Insurance System in a Local Urban Labor Market" becomes "Magic Eye for UI." Guess what new title is given "The Effect of Employment Decentralization on Job Opportunity in the Central City." It is called "The Two-Way Stretch." For "Economic Security, Professional Values, and Political Ideology: A Study of Engineers and Scientists in California" the exchange is "New Workers of the World, Unite." And "Physicians' Assistants: An Empirical Analysis of Their General Characteristics, Job Performance, and Job Satisfaction" is simplified to "Rx for M.D.s."

We shall see what success this experiment enjoys. Maybe it will help with one of the revolutions.

[The End]

A Discussion

By COLLETTE MOSER

Michigan State University

THE PAPERS IN this session have evaluated industrial relations literature as seen in its major forms, e.g., books, journals, arbitration decisions, other research documents, and in particular, doctoral dissertations. One of the authors was asked to include a discussion of the "law of the shop." Unlike books, journals, etc., the "law of the shop" appears to be more of a literature input rather than output, to use the jargon despised by Professor Lawrence Klein and journalistic-critic Edward Newman.

The Strauss paper, "Directions in Industrial Relations Research," more than the other two, deals with trends in substantive issues which have dominated industrial relations literature. The Klein paper, "The Doctoral Dissertation—Writing Without Fun or Profit?" concentrates on writing style. The Aaron paper, "Arbitration Decisions and the Law of the Shop," also emphasizes writing style; in addition, it directs itself to the "law of the shop" as a particular issue and standard found in arbitration decisions.

Professor Strauss's paper is an excellent straightforward account of the development of industrial relations ideas and industrial relations as a discipline. Since few other authors have drawn together these trends, Professor Strauss's paper is a valuable contribution to the literature.

Strauss's major conclusion is that industrial relations researchers of the golden age (1933 to around 1960), through their writing and personal intervention, made major contributions to the development of a relatively stable and effective system of industrial relations in the United States. With such a system in place, there is now a reduced need or even potential for additional major contributions. This reduction in significant innovations in industrial relations is reflected in its literature.

I concur with Prof. Strauss's major conclusion. Since the late 1960s, I, along with my co-authors Lloyd Reynolds and Stanley Masters, have researched various kinds of industrial relations documents looking for suitable pieces of literature for a readings book in labor economics and labor relations.[1] We found since the mid-1960s a very limited amount of literature which would convey to students new directions or issues in collective bargaining. In fact, even in our recently published second edition, we felt compelled to leave the major collective bargaining section virtually intact, emphasizing the writings of the "Golden Age Boys," e.g., Shulman, Kerr, Harbison, and Dunlop.

In the area of wages, hours, and working conditions, there have been a few major developments since the golden age. In addition to the "Qual-

[1] Lloyd G. Reynolds, Stanley H. Masters, and Collette Moser, eds., *Readings in Labor Economics and Labor Relations* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1974, 1978).

ity of Work Life" experiments to which Strauss refers, issues such as cost-of-living clauses and alternative work hours arrangements such as flexitime appear to be recent industrial relations developments of enduring quality.

I also agree with Strauss's conclusion that industrial relations writing has moved toward the technical and disciplinary rather than dealing with broad policy issues. Such writing is particularly difficult to chronicle and anthologize for students in general labor courses. Contrary to Strauss's assessment that the "manpower field is stagnant," I have concluded that it is actually the labor markets field more than the collective bargaining which has continued to concern itself with broad policy issues. For example, there are continuous and interesting debates and discussions in the literature on topics such as public service employment versus tax cuts and the inflation-unemployment trade-offs of changes in various labor market policies.

Additionally, there is almost a "renaissance" (as Strauss uses the word) in the labor economics-policy field with respect to the area of protective labor legislation. I refer here not just to equal employment opportunity issues and legislation, but to a revived interest in older protective labor laws such as Unemployment Compensation and Social Security. What seems to be emerging is a labor economics literature which increasingly integrates labor market policy instruments with broader macroeconomic policies. I find this trend quite exciting and in some ways a return to the Wisconsin school of labor-policy analysis exemplified by Commons, Perlman, Brandeis, Grove, and others.

While I also accept Strauss's general premise that something of a dichotomy exists between labor markets and labor relations writers, I am not convinced that the "gap between bargaining and economic research has enlarged." Recent journals have included articles reflecting research on the economic impacts of unionization in the public sector; similarly economists have experimented with the application of collective bargaining concepts to a more general theory of the labor market.[2]

Analytical Exotica

I have even fewer objections to the issues raised in the Klein paper. Over the years Professor Klein has read enormous numbers of pages of labor script in the form of U.S. Department of Labor-sponsored doctoral dissertations and articles submitted to the *Monthly Labor Review*. Prof. Klein's paper, however, appears to be based only on his dissertation-reading experiences, because his major criticism of the literature is the obfuscation of issues. *Monthly Labor Review* articles, at least in their final form, are quite straightforward. In my opinion, they could do with a little of the analytical exotica illustrated in the Klein paper.

Klein has extensive criticisms of industrial relations dissertations with respect to their ponderous style, extensive use of jargon, often unnecessary intervention of mathematical and statistical models, and conclusions from models which exclude or diminish common-sense institutional variables. Of the reasons for the ob-

[2] See, for example, Orley Ashenfelter, "The Effect of Unionization on Wages in the Public Sector: The Case of Fire Fighters," *Industrial and Labor Relations Review* (January 1976); Richard B. Freeman, "Individual Mobility and Union Voice in the Labor Market," *American Economic Review* (May 1976).

scurity which Klein offers, i.e., fear, vanity, and the failure of high-school English, I tend to agree with the latter. My conclusion is based on my observation of the same weaknesses in our professional literature from writers far beyond the doctoral dissertation stage. Surely by then the fear and vanity would subside!

Klein also discusses a U.S. Department of Labor project to make dissertations more readable by translating them into English and commercializing the titles. Depending on the audience and within limits, such changes could be beneficial. This process may in fact be comparable to the land grant universities' practice of making scientific discoveries and information available in a form and language understandable to the public. A joint product is the creation of additional jobs for research translators.

As I noted earlier, I have little quarrel with Klein's conclusions. In the course of editing our readings books, we find few articles which don't require the removal of extraneous jargon, paragraphs, math, or statistics. Although a purpose of mathematical equations is to simplify relationships, their inclusion in many articles complicates and obscures the basic issues.

Much of the Aaron paper is also a criticism of writing style as reflected, in this case, in arbitration decisions. Such style often reflects a lack of the basics of writing—form, grammar, syntax. Ironically, however, whereas Klein criticizes the complexity of dissertation style, Aaron bemoans the simplicity of arbitration decision-writing. He refers to "the pages filled with simple declarative sentences." Does a diet of the same food no matter how pure become unpalatable?

Aaron makes a persuasive argument that style in arbitration decisions is important because such decisions contain considerable information beyond who won or lost. Hopefully, some arbitrators will take the time to read Aaron's exhortations on this matter as well as his entertaining and enlightening discussion of Justice Cardozo's observations on the various tones of arbitration decisions.

In summary, I found all three papers thoroughly interesting, insightful and well written. If more of the literature of industrial relations reflected these standards, there would be little need for this critical session.

[The End]

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1964 Solomon Barkin
1965 Edwin Young
1966 Arthur M. Ross
1967 Neil W. Chamberlain
1968 George P. Shultz
1969 Frederick H. Harbison
1970 Douglass V. Brown
1971 George H. Hildebrand
1972 Benjamin Aaron
1973 Douglas H. Soutar
1974 Nat Goldfinger
1975 Gerald G. Somers
1976 Irving Bernstein
1977 Ray Marshall

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