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Arbitration Provisions in Union Agreements

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DIVISION OF INDUSTRIAL RELATIONS
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Letter of Transmittal

UNITED STATES DEPARTMENT OF LABOR,
BUREAU OF LABOR STATISTICS,
Washington, D. C., April 19, 1944.

The SECRETARY OF LABOR:

I have the honor to transmit herewith a report on arbitration clauses in union agreements in selected industries. The report is based on a study of 1,254 agreements in 14 major industries. The project was initially undertaken at the request of the National War Labor Board, which expressed a need for detailed information on existing arbitration arrangements in major plants throughout the country. In order to serve a wider purpose, this report includes arbitration provisions for the smaller, as well as the larger, plants in the 14 industries.

This report was prepared by Abraham Weiss under the general direction of Florence Peterson, Chief of the Industrial Relations Division.

A. F. HINRICHS, *Acting Commissioner.*

HON. FRANCES PERKINS,
Secretary of Labor.

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Bulletin No. 780 of the
United States Bureau of Labor Statistics

Arbitration Provisions in Union Agreements

At the time an agreement is adopted, the employer and the union, through collective bargaining, mutually determine the working conditions to be maintained for a specified period. Specific disputes may, however, arise during the term of the agreement which the parties are unable to settle themselves. To resolve these disputes, the parties, as a last resort, may accept arbitration by an outside party. The inclusion of an arbitration clause in an agreement establishes a fixed policy and procedure for the duration of the agreement, although, of course, the absence of such a clause does not preclude an employer and union from mutually deciding to have a specific dispute arbitrated at any time.

Prevalence of Arbitration Provisions

Three out of four union agreements in 14 important industries, covering about 83 percent of the workers under the agreements analyzed, provide for arbitration as the terminal point in the grievance machinery.[1]

In some industries almost all the agreements provide for the arbitration of disputes arising during the terms of the agreements; in other industries this means of settling grievances is less common. In the petroleum production and refining, steel (blast furnaces and rolling mills), and textile industries, over 90 percent of the agreements provide arbitration, whereas such provisions are contained in only about 40 percent of the agreements covering automobile and parts plants and in about 60 percent of the agreements covering plants manufacturing machinery (other than electrical). Between 60 and 70 percent of the agreements in the aluminum, rubber, and steel products industries and between 75 and 85 percent of the agreements in aircraft, industrial chemicals, electrical machinery, and meat-packing industries have arbitration provisions.

On the whole, agreements with large companies tend to have arbitration provisions more frequently than agreements covering smaller plants.[2] This tendency is particularly marked in the aluminum, electrical-machinery, steel, and steel products industries. In the in-

[1] This study of arbitration provisions is based on an analysis of 1,254 agreements, all of which were in effect in January 1944. See appendix A for the industry distribution of these agreements and the number of workers covered.

[2] In this study, the agreements are classified into two groups; namely, those for major or large companies and those for small companies. Since the relative sizes of companies in the several industries vary widely, the line of demarcation differs for each industry. In the automobile industry, for example, agreements for companies employing 2,000 or more workers are classified as major, while in the cotton-textile industry, agreements for companies employing 250 or more workers are so classified.

dustrial chemicals and the woolen and worsted textile industries the proportion of smaller plants with arbitration provisions is larger than the proportion of major plants. (See table 1.)

TABLE 1.—*Arbitration Provisions in 1,254 Union Agreements in Selected Industries*

Industry	All companies			Major companies			Small companies		
	Total	With arbitration	Without arbitration	Total	With arbitration	Without arbitration	Total	With arbitration	Without arbitration
	Percent of agreements								
All industries	100	73	27	100	79	21	100	71	29
Aircraft, excluding parts	100	77	23	100	77	23	100	77	23
Aluminum	100	66	34	100	68	32	100	50	50
Automobiles and parts	100	42	58	100	46	54	100	41	59
Chemicals, industrial	100	86	14	100	81	19	100	89	11
Machinery, electrical	100	77	23	100	88	12	100	74	26
Machinery, other	100	59	41	100	65	35	100	57	43
Meat packing	100	81	19	100	85	15	100	79	21
Petroleum production and refining	100	95	5	100	97	3	100	93	7
Rubber	100	69	31	100	73	27	100	67	33
Steel—Blast furnaces and rolling mills	100	92	8	100	100	-------	100	89	11
Steel products	100	65	35	100	76	24	100	63	37
Textiles:									
Cotton	100	98	2	100	100	-------	100	98	2
Silk and rayon	100	94	6	100	100	-------	100	93	7
Woolen and worsted	100	93	7	100	90	10	100	94	6
	Percent of workers								
All industries	100	83	17	100	85	15	100	76	24
Aircraft, excluding parts	100	79	21	100	75	25	100	89	11
Aluminum	100	80	20	100	81	19	100	24	76
Automobiles and parts	100	83	17	100	87	13	100	36	64
Chemicals, industrial	100	75	25	100	67	33	100	90	10
Machinery, electrical	100	87	13	100	96	4	100	73	27
Machinery, other	100	61	39	100	66	34	100	51	49
Meat packing	100	89	11	100	89	11	100	83	17
Petroleum production and refining	100	94	6	100	95	5	100	84	16
Rubber	100	53	47	100	50	50	100	70	30
Steel—Blast furnaces and rolling mills	100	99	1	100	100	-------	100	95	5
Steel products	100	79	21	100	83	17	100	77	23
Textiles:									
Cotton	100	99	1	100	100	-------	100	97	3
Silk and rayon	100	99	1	100	100	-------	100	98	2
Woolen and worsted	100	98	2	100	99	1	100	97	3

As is to be expected, from the fact that arbitration is more common in large than small companies, the proportion of workers under agreement covered by arbitration provisions is larger in most industries than the proportion of agreements with such clauses. For example, although less than half of the agreements with major automobile companies provide arbitration, 87 percent of the workers employed by these companies have recourse to arbitration, owing largely to the presence of arbitration in the multiplant agreements of the Chrysler, Ford, and General Motors companies. In industrial chemicals the reverse is true, reflecting the fact that the small plants have adopted arbitration provisions more frequently than the larger companies. In

the rubber industry, although a larger proportion of major plants than small plants provide for arbitration, the proportion of workers covered by arbitration provisions is smaller, because a few of the agreements with larger companies (such as Goodrich and Goodyear Akron plants) do not provide for arbitration.

In the following sections the differences among the 915 union agreements that have arbitration provisions are discussed as regards the permanency of the arbitration machinery, the requirements for initiating arbitration proceedings, the composition and method of selecting the arbitration agency, time limits for establishing arbitration machinery, and the finality and scope of the decisions.

Permanent Versus Ad Hoc Arbitration

Most arbitration agreements provide that the person or persons who are to serve as arbitrators are to be selected whenever a particular need arises. On the other hand, 5 percent of the agreements provide for permanent arbitration machinery. Of the 915 agreements with arbitration clauses, 43 stipulate permanent arbitration machinery and 872 ad hoc arbitration. The limited number of agreements providing permanent arbitration machinery, however, cover 28 percent of the workers employed under arbitration agreements. (See table 2.)

PERMANENT ARBITRATION

Permanent arbitration provisions occur most frequently in the agreements of the aircraft, automobile, meat-packing, and rubber industries, although they are found in some agreements in each of the other industries considered, except petroleum.[3] In the automobile and meat-packing industries, 88 and 73 percent, respectively, of the workers under arbitration clauses are covered by permanent arbitration. Although agreements with the larger plants in the above-named industries tend to have permanent arbitration clauses more commonly than agreements with smaller plants, the proportion of workers covered by such clauses in the aircraft and rubber industries is far less than in the automobile and meat-packing industries. In the electrical-machinery, basic-steel, and cotton-textile industries, none of the agreements with major plants provide permanent arbitration.

The General Motors, Ford, and Chrysler agreements establish permanent arbitration and account for the high proportion of workers in the automobile industry and for most of the workers in the aircraft industry under permanent arbitration machinery. Similarly, the high proportion of meat-packing workers with permanent arbitration is explained by the master agreements of the Armour, Swift, and Wilson companies, which contain such provisions.

The Ford and General Motors agreements contain specific references to the termination of the permanent arbitrator's services. In the former agreement the arbitrator may be dismissed at any time on 30 days' notice by either party to the arbitrator and to the other party.

[3] For examples of permanent arbitration clauses, see Examples A and B in appendix B.

TABLE 2.—*Ad Hoc and Permanent Arbitration Provisions in 915 Union Agreements in Selected Industries*

Industry	All companies			Major companies			Small companies		
	Total	Ad hoc	Permanent	Total	Ad hoc	Permanent	Total	Ad hoc	Permanent
	Percent of agreements								
All industries	100	95	5	100	90	10	100	98	2
Aircraft, excluding parts	100	89	11	100	85	15	100	95	5
Aluminum	100	95	5	100	94	6	100	100	------
Automobiles and parts	100	91	9	100	64	36	100	100	------
Chemicals, industrial	100	96	4	100	88	12	100	100	------
Machinery, electrical	100	96	4	100	100	------	100	95	5
Machinery, other	100	98	2	100	96	4	100	99	1
Meat packing	100	87	13	100	73	27	100	97	3
Petroleum production and refining	100	100	------	100	100	------	100	100	------
Rubber	100	90	10	100	79	21	100	97	3
Steel—Blast furnaces and rolling mills	100	96	4	100	100	------	100	94	6
Steel products	100	96	4	100	92	8	100	97	3
Textiles:									
Cotton	100	98	2	100	100	------	100	98	2
Silk and rayon	100	97	3	100	83	17	100	100	------
Woolen and worsted	100	96	4	100	89	11	100	98	2
	Percent of workers								
All industries	100	72	28	100	65	35	100	97	3
Aircraft, excluding parts	100	78	22	100	67	33	100	99	1
Aluminum	100	99	1	100	99	1	100	100	------
Automobiles and parts	100	12	88	100	9	91	100	100	------
Chemicals, industrial	100	91	9	100	88	12	100	100	------
Machinery, electrical	100	95	5	100	100	------	100	84	16
Machinery, other	100	98	2	100	97	3	100	99	1
Meat packing	100	27	73	100	23	77	100	97	3
Petroleum production and refining	100	100	------	100	100	------	100	100	------
Rubber	100	88	12	100	85	15	100	98	2
Steel—Blast furnaces and rolling mills	100	99	1	100	100	------	100	99	1
Steel products	100	98	2	100	98	2	100	98	2
Textiles:									
Cotton	100	97	3	100	100	------	100	94	6
Silk and rayon	100	95	5	100	92	8	100	100	------
Woolen and worsted	100	98	2	100	98	2	100	98	2

In effect, however, the arbitrator's services may be terminated without notice since the party requesting his dismissal has the privilege of specifying that the arbitrator shall not render decisions in cases pending at the date of notice. Likewise, while the General Motors umpire is employed on an annual basis, he actually serves only so long as "he continues to be acceptable to both parties."

AD HOC ARBITRATION

Among the major agreements which provide ad hoc arbitration [4] are those with the following companies: Boeing Aircraft Co., Consolidated-Vultee Aircraft Corporation (San Diego, Calif.), Curtiss-Wright Corporation (Buffalo, N. Y.), Aluminum Co. of America (all agreements),[5] General Electric Co., Westinghouse Electric & Manu-

[4] For examples of ad hoc arbitration clauses, see Examples C, D, E, F, G, H, and I in appendix B.

[5] A directive order of the National War Labor Board on November 28, 1942, rendered after the effective date of the current agreement covering the Cleveland, Ohio, plants of this company, provides a permanent arbitrator to be appointed by the parties "to make final determination of all grievances which are not settled in accordance with the existing grievance procedure."

facturing Co., Caterpillar Tractor Co., International Harvester Co. (all agreements), United States Steel Corporation and its subsidiaries, Wheeling Steel Corporation, Richfield Oil Corporation, Shell Oil Co., Sinclair Refining Co., and American Woolen Co.

Initiation of Arbitration Proceedings

An arbitration clause may provide for arbitration at the request of either party, at the request of the union, at the request of the aggrieved employee or his representative, or by mutual consent of both parties. (See table 3.)

AUTOMATIC ARBITRATION

Arbitration at the request of either party—sometimes referred to as compulsory or automatic arbitration [6]—is specified in 93 percent of the arbitration agreements, covering a similar proportion of workers. Aluminum is the only industry considered in which a substantial proportion of the agreements do not provide for arbitration at the request of either party. In the basic-steel industry and in the silk- and rayon-textile industry, all the arbitration agreements empower the employer or the union to refer an unresolved dispute to arbitration.

In most industries, provisions allowing either party to request arbitration appear somewhat more frequently in agreements with small than with large companies; but in the automobile, steel-products, and cotton-textile industries a larger proportion of the major agreements have such clauses.

TABLE 3.—*Provisions for Initiating Arbitration in 915 Union Agreements in Selected Industries*

Method of initiating arbitration	All arbitration agreements			Ad hoc arbitration			Permanent arbitration		
	All plants	Major plants	Small plants	All plants	Major plants	Small plants	All plants	Major plants	Small plants
	Percent of agreements								
At request of either party	93	86	96	93	86	96	95	93	100
At request of union	2	6	1	2	5	1	5	7	-------
At request of individual employee or his representative	1	2	-------	1	2	-------	-------	-------	-------
By mutual consent	4	6	3	4	7	3	-------	-------	-------
Total	100	100	100	100	100	100	100	100	100
	Percent of workers								
At request of either party	91	89	96	88	84	96	99	99	100
At request of union	3	3	1	3	3	1	1	1	---
At request of individual employee or his representative	(1)	(1)	-------	--	(1)	1	-------	-------	-------
By mutual consent	6	8	3	9	12	3	-------	-------	-------
Total	100	100	100	100	100	100	100	100	100

[1] Less than 1 percent.

[6] While such arbitration is compulsory in that both parties must be willing to accept arbitration for all unresolved disputes during the life of the agreement, it is not compulsory in the sense that the Government has imposed arbitration. More accurately, it is voluntarily adopted compulsory arbitration. (See Examples A, B, F, G, and H in appendix B.)

A few arbitration agreements (2 percent), chiefly with the major plants in the aircraft, rubber, and cotton-textile industries, specify that the union may initiate arbitration; and an additional 1 percent, almost all of which are with major petroleum plants, permit arbitration at the request of "an individual or his representative." [7] Since these agreements fail specifically to state that the employer also has the right to ask for a hearing on grievances against the union, they could be construed to prohibit appeal to arbitration by the employer. In practice, however, the employer's superior strategic position in the positive steps which he can take when he has a grievance against the union or any employees—such as the right to discipline or discharge any employee for alleged violation of the agreement—tends to throw the burden of protest and appeal to arbitration upon the union.

PERMISSIVE ARBITRATION

About 4 percent of the arbitration agreements, covering a slightly higher proportion of workers, permit arbitration only when both parties mutually agree to arbitrate a dispute.[8] This arrangement, sometimes referred to as permissive arbitration, allows either party to veto a request for arbitration, thus forcing the party desiring adjustment either to accept the other's terms or to resort to economic pressure by way of a strike or lockout. In a few agreements, specified disputes may be arbitrated at the request of either party, but other disputes require mutual consent.

Requirements for mutual consent to arbitrate are found in about one-third of the arbitration agreements in the aluminum industry—all negotiated by the Aluminum Co. of America and covering about 90 percent of the aluminum workers under arbitration agreements [9]—and in about one-tenth of the agreements in the machinery (other than electrical) industry. The General Motors and the Westinghouse Electric & Manufacturing Co. agreements with the United Electrical, Radio and Machine Workers (C. I. O.) and the International Harvester Co. agreements with the United Farm Equipment and Metal Workers (C. I. O.), covering three Chicago plants of this company, also require mutual consent for arbitration.

None of the agreements providing for permanent arbitration machinery require the mutual consent of both parties before an issue may be referred to such arbitration; and none of the ad hoc arbitration agreements in the meat-packing, petroleum, basic-steel, and cotton-, silk-, and rayon-textile industries contain such restrictions.

Composition of Arbitration Agency

About half the union agreements analyzed designate as the arbitration agency a tripartite board consisting of an equal number of employer and union representatives with a neutral member acting as chairman. In most cases the neutral member functions with the com-

[7] See Examples D, E, and I in appendix B.
[8] See Example C in appendix B.
[9] In a decision issued November 27, 1943, involving the Torrance, Calif., plant of the Aluminum Co. of America, the N. W. L. B. disallowed a company request that the agreement covering this plant include arbitration by mutual consent and ordered instead "compulsory arbitration"; i. e., at the request of either party.

mittee from the beginning,[10] but in about one-fifth of the cases the impartial chairman is added only in the event of a deadlock.[11] In contrast with this tripartite arrangement, some agreements call for committees or boards composed exclusively of outside impartial persons or establish a State agency to serve as arbitrators.

A considerable number of the arbitration agreements (about 36 percent) provide for single arbitrators[12] and a few additional ad hoc arbitration agreements specify that the agency may be either a board or a single person.[13] The remaining agreements studied, all of which are of the ad hoc type, do not specify the composition of the arbitration agency. Among these are a few which refer the choice of arbitrator to a State or Federal agency but fail to specify whether this agency itself is to act as arbitrator or is merely to appoint an arbitrator. (See table 4.)

TABLE 4.—*Composition of Ad Hoc and Permanent Arbitration Agencies Provided in 915 Union Agreements in Selected Industries*

Composition of arbitration agency	All arbitration agencies			Ad hoc arbitration agencies			Permanent arbitration agencies		
	All companies	Major companies	Small companies	All companies	Major companies	Small companies	All companies	Major companies	Small companies
	Percent of agreements								
Single arbitrator	36	35	36	35	32	36	60	63	56
Board with impartial chairman [1]	40	36	42	41	38	41	16	11	25
Bipartisan board, with odd man added only if board fails to agree	11	12	11	12	13	12	2	4	-------
Single arbitrator or board	3	6	2	3	7	2	-------	-------	-------
State agency [2]	1	2	(3)	-------	-------	-------	22	22	19
Other	9	9	9	9	10	9	-------	-------	-------
Total	100	100	100	100	100	100	100	100	100
	Percent of workers								
Single arbitrator	61	68	40	51	55	40	89	91	34
Board with impartial chairman [1]	24	17	47	30	22	48	9	8	51
Bipartisan board, with odd man added only if board fails to agree	5	5	6	6	7	5	1	-------	-------
Single arbitrator or board	4	5	1	6	8	1	-------	-------	-------
State agency [2]	(3)	(3)	(3)	-------	-------	-------	1	1	15
Other	6	5	6	7	8	6	-------	-------	-------
Total	100	100	100	100	100	100	100	100	100

[1] Includes a few agreements which require the members of the board to have no connection with either party.

[2] Includes only those agreements which specifically state that the State agency itself shall act as arbitrator. Agreements which fail to specify whether this agency or an appointee is to serve as the arbitrator are classified under the subsequent heading.

[3] Less than 1 percent.

Agreements which provide for permanent arbitration tend to designate single persons or a State agency to serve as the arbitrator. About

[10] See Example G in appendix B.
[11] See Example F.
[12] See Examples A, H, and I.
[13] See Example D.

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60 percent of the permanent arbitration agreements refer to single arbitrators; while about 22 percent, which cover plants in Massachusetts, establish the Massachusetts State Board of Conciliation and Arbitration [14] as the arbitrator. Ad hoc agreements, on the other hand, provide for the appointment of arbitration boards more frequently than they designate single arbitrators.

Single arbitrators are designated by all the permanent arbitration agreements in the aircraft and automobile industries, except the agreement with the Chrysler Corporation, and by most of the permanent arbitration agreements in the meat-packing industry. The agreements of the Chrysler Corporation and the George A. Hormel Co. each establish a tripartite arbitration committee, headed by a permanent chairman.

Among the ad hoc arbitration agreements, boards are established by about 90 percent of the agreements in the meat-packing industry, by over 70 percent in the chemical and petroleum industries, and by over 60 percent in the aircraft, electrical-machinery, and rubber industries. In about half of the petroleum agreements, the impartial member of the board is not appointed until after the bipartisan representatives have failed to agree. Single arbitrators are provided in about 80 percent of the ad hoc arbitration agreements in the steel industry (including all the major agreements), and in over half of those in the machinery (other than electrical) and steel products industries.

The ad hoc agreements with the following companies specify arbitration boards or committees: Curtiss-Wright Corporation (Buffalo, N. Y., and St. Louis, Mo., plants); Texas Co. (Port Arthur, Tex., plant); Union Oil Co. of California (California plants); General Tire and Rubber Co.; United States Rubber Co. (Chicopee Falls, Mass.; Detroit, Mich., and Los Angeles, Calif. plants); and Hood Rubber Co. Single arbitrators are provided for in the agreements of the Carnegie-Illinois Steel Corporation and other United States Steel Corporation subsidiaries, the Caterpillar Tractor Co., several plants of the International Harvester Co., and the Wheeling Steel Corporation.

The choice of either a single arbitrator or a board, which appears in a few ad hoc agreements, is found chiefly in the rubber and cotton-textile industries. Such a provision is also contained in the national agreement of the Westinghouse Electric & Manufacturing Co.

The composition of arbitration agencies established by agreements with large companies does not differ markedly from the composition of those established by agreements with smaller plants.

Selection of Arbitrators

In the case of ad hoc arbitration the problem of selecting an arbitrator or board must be faced each time arbitration is requested, whereas

[14] This board has functioned, as a part of the Massachusetts Department of Labor, for many years as an arbitrator when requested by employers and unions. Like the U. S. Conciliation Service, labor-mediation activities in most States are concerned mainly with conciliation, or with the appointment of arbitrators at the request of the disputing parties. (See Example B in appendix B.)

under permanent arbitration the individual or board, once chosen, usually serves continuously throughout the life of the agreement.

According to 70 percent of the permanent arbitration agreements, the arbitrator was selected at the time the agreement was negotiated and is designated by name or title in the agreement. Included in the group are those which designate the Massachusetts State Board of Conciliation and Arbitration as arbitrator. In about 25 percent, including most of the permanent arbitration agreements with large plants, the arbitrator was to be jointly selected, subsequent to the signing of the agreement, to serve for the duration of the agreement. Most agreements in the latter group—covering over 80 percent of the workers under permanent arbitration—fail to provide for breaking a deadlock in case the parties fail to agree on the selection of the arbitrator. A few permanent arbitration agreements state that the arbitrator is to be appointed initially by a designated outside agency or individual. (See table 5.)

In 80 percent of the ad hoc arbitration agreements the selection of the arbitrator is left to mutual agreement of the parties. While half of these provide no automatic means for breaking a deadlock, at least half stipulate an outside agency which is to appoint a neutral arbitrator if the employer and union fail to agree upon a selection.[15] Less than 35 percent of the ad hoc agreements in the meat-packing, petroleum, steel, and steel-products industries empower an outside individual or agency to select an impartial arbitrator when the two parties fail to agree. The proportion of agreements with major plants providing such safeguards against deadlocks in the selection of a neutral arbitrator is slightly larger than the proportion with small plants.

About 16 percent of the ad hoc arbitration agreements specify that a designated governmental or private agency or individual shall appoint the neutral arbitrator whenever the need for arbitration arises,[16] while a few, principally in the aluminum industry, contain no information on how the arbitrators are to be selected.[17]

The agencies most frequently specified to appoint an arbitrator under both permanent and ad hoc arbitration arrangements, either initially or after the parties have failed to agree upon the selection, are the U. S. Conciliation Service, the National War Labor Board, various State labor boards or mediation agencies, and, principally in textile agreements, the American Arbitration Association. The U. S. Conciliation Service most frequently appoints as arbitrators special members of its own staff, although sometimes it appoints arbitrators who are not on its staff.[18] The American Arbitration Association, a private agency, has established a tribunal which offers a panel of arbitrators from which the two parties may make a selection, or from which the Association, when requested, may appoint an arbitrator or arbitrators.

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[15] See Examples D, F, G, and H in appendix B.
[16] See Example I in appendix B.
[17] See Examples C and E in appendix B.
[18] The services of these arbitrators may be invoked in the following ways: By, a joint request from the parties, directed to the Washington office of the Service; by a joint stipulation to arbitrate, signed by the parties while a commissioner of conciliation is on the scene; or by a request from labor and management (or either if the agreement so provides), when an agreement exists providing for arbitration by the Service.

TABLE 5.—*Method of Selection of Ad Hoc and Permanent Arbitration Agencies in Union Agreements in Selected Industries*

Method of selection	All arbitration agencies			Ad hoc arbitration agencies			Permanent arbitration agencies		
	All companies	Major companies	Small companies	All companies	Major companies	Small companies	All companies	Major companies	Small companies
	Percent of agreements								
Designated in agreement	3	6	2	-------	-------	-------	70	59	88
Selection by mutual agreement; outside agency or individual to make choice if parties fail to agree	40	42	38	41	46	39	4	4	6
Selection by mutual agreement (no reference to outside party should parties fail to agree on choice)	39	33	41	40	33	42	21	33	-------
Appointed initially by outside agency or individual	15	12	17	16	13	17	5	4	6
No mention	3	7	2	3	8	2	-------	-------	-------
Total	100	100	100	100	100	100	100	100	100
	Percent of workers								
Designated in agreement	5	5	3	-------	-------	-------	16	14	92
Selection by mutual agreement; outside agency or individual to make choice if parties fail to agree	30	22	57	42	34	58	1	(1)	7
Selection by mutual agreement (no reference to outside party should they fail to agree)	52	59	29	40	44	30	83	86	-------
Appointed initially by outside agency or individual	5	4	9	7	7	10	(1)	(1)	1
No mention	8	10	2	11	15	2	-------	-------	-------
Total	100	100	100	100	100	100	100	100	100

[1] Less than 1 percent.

Time Limits

In order to avoid the possibility of delay in settling disputes, and to prevent obstruction of arbitration by either party, time limits are specified in over half the arbitration agreements. Time limits may be established for any one or all of the several stages in the arbitration process—the selection of the arbitrator or arbitrators, the conduct of hearings, and the rendering of decisions.[19] The largest proportion (over 70 percent) of the time limits are confined to the selection of the arbitrators—an indication that unnecessary delays are not anticipated once the arbitration proceedings are under way.[20] When the arbitrator or arbitration agency is designated in the agreement, or when the selection of the arbitrator is initially referred to an outside agency, agreements do not, of course, contain time limits for selecting arbitrators.

Of the total agreements that provide for selection of arbitrators by mutual consent, including those providing for reference to an outside agency for selecting the arbitrator if the parties fail to agree on one, slightly over half fix some time limits on the selection process. The proportion of agreements providing time limits in the joint selection of arbitrators was about the same for ad hoc agreements as for permanent, and was greater for large than for small plants.

[19] See Examples A, E, and I in appendix B.
[20] See Examples D, F, G, and H in appendix B.

Status of Arbitration Decisions

Since it is the purpose of arbitration finally to settle a question in dispute, it follows that the decision or award must be accepted and binding on the parties involved. This concept is affirmed by 90 percent of the agreements studied, which specifically state that a decision rendered after arbitration proceedings shall be "final and binding" on the parties concerned; some, in addition, specifically state that there shall be no appeal from the decision to a court or "labor board".[21]

The omission of the "final and binding" clause occurs principally in agreements which fail to describe the composition of the arbitration agency and/or which require mutual consent of the parties to initiate arbitration.[22] Since arbitration implies final settlement of disputed matters, an award should be considered binding even though there is no express stipulation to that effect.

Scope of Arbitration

Definitions of the precise scope of arbitration vary from agreement to agreement, ranging from brief but general statements [23] to lengthy itemizations of the specific issues which are or are not arbitrable.[24]

The majority of the agreements analyzed not only authorize the arbitration of disputes involving the "interpretation and/or application" of any of their provisions, but also enumerate specific issues which are subject to arbitration.[25] Disputes over discharges are most frequently listed as arbitrable; a few agreements, however, do not include disputes over discharges that result from participation in work stoppages, incompetency, insubordination and other specified causes, or that involve probationary employees.

Many agreements specify that the arbitrating agency has no power to "add to or substract from or modify" any terms of the current agreement, or that the arbitrator may not "arbitrate away, in whole or in part, any provisions of this agreement." Such safeguards may be considered as restricting arbitration to interpretation and enforcement of the terms of the agreement.[26]

When arbitration is expressly limited to interpretation, the arbitrator may decide only questions over matters already covered by the agreement and must limit his awards to interpreting its provisions in deciding the respective rights and duties of the parties on particular issues. Under such circumstances the arbitrator's scope is, of course, much broader if the substantive provisions of the agreement cover many subjects than if the coverage is limited. The possible need for utilizing arbitration to interpret an agreement is lessened, moreover, if the provisions describing the subjects covered by the agreement are detailed and precise.

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[21] See Examples A, B, D, E, F, G, H, and I in appendix B.
The National War Labor Board on September 10, 1943, issued a statement which in effect stated that it will not review an arbitrator's award except where he has exceeded his authority. Under the wage-stabilization program, however, the Board must review awards involving wage issues. In March 1944, the Board instructed its regional offices and industry commissions not to accept additional evidence or argument from parties when reviewing arbitrator's wage awards, except when specifically requested by the Board.
[22] See Example C in appendix B.
[23] See Examples B, D, E, and F in Appendix B.
[24] See Example A in Appendix B.
[25] See Examples H and I in Appendix B.
[26] See Examples A and H in Appendix B.

The U. A. W.-C. I. O. agreement with General Motors is an example of an agreement which allows the arbitrator to act on issues involving the "interpretation and/or the application of any term of this agreement"; in addition it states that he shall have "no power to add to or to subtract from or modify any of the terms of this agreement or any agreements made supplementary hereto; nor to establish or change any wage; * * *." Although some particular issues are listed on which the arbitrator may act, such as claims of union discrimination and alleged violation of the terms of certain sections of the agreement, since all these matters are included elsewhere in the agreement, the arbitrator's function is limited to interpreting and enforcing the terms specified.

Some agreements provide that any dispute over wages, hours, or other conditions of employment may be arbitrated, without clearly indicating whether arbitration is restricted to the interpretation of wage and other clauses in the agreement or whether any dispute involving these subjects may be arbitrated. About three-fourths of the agreements refer to individual wage-rate disputes, such as controversies over rates to be established for a "bona fide new job," rate changes owing to changes in job content, claims of improper classification, alleged violation of negotiated rates, individual wage rate reviews, etc. Others refer to both general and individual wage disputes during the term of the agreement, or to disputes over general wage revisions only.

Specific references to the arbitration of wage disputes, referring either to requests for general wage changes or to individual wage-rate adjustments, are found in less than half the arbitration agreements, and these generally allow such disputes to be arbitrated, although the proportion of agreements which permit arbitration of general wage disputes is considerably less than those which allow arbitration of individual wage grievances. Among the major agreements which permit the arbitration of individual wage disputes are those covering subsidiaries of the United States Steel Corporation; United States Rubber Co. (Indianapolis, Ind.); Shell Oil Co. (California); and Wheeling Steel Corporation. Agreements with the following companies specifically permit the arbitration of general wage disputes: American Thread Co., American Woolen Co. (North Vassalboro, Maine), and Marshall Field & Co. (North Carolina plants).

Some agreements specifically exclude from arbitration designated management functions such as "methods of production" and the company's "operating policy," use of machinery, and "matters pertaining to the financial status of the business"; while others specifically exclude "the purpose or the inclusiveness of this agreement," the "enlargement or the extension of the scope or status of the union," and "grievance or dispute which arises out of governmental orders, regulations or contracts," etc.

A few agreements state that "any grievance or complaint" or "any difference" may be arbitrated and provide no clue as to whether arbitration is limited to the interpretation, application, and/or enforcement of their provisions, or whether grievances over matters not specifically covered by the agreement are included within the scope of

arbitration.[27] Occasionally, an agreement appears to permit arbitration of matters not specifically covered in addition to disputes involving interpretation.[28]

A small proportion of the agreements studied (less than 1 percent of those providing arbitration), in addition to authorizing the arbitration of disputes over interpretation and/or disputes over certain working conditions, specifically authorize the arbitration of disputes over the terms and conditions of a new or renewed agreement.[29] However, as the parties themselves attempt to settle disputes arising during the term of the agreement before resorting to arbitration, so also, through collective bargaining, do they first attempt to agree upon the terms and working conditions when reviewing or modifying its provisions. An arbitrator who is specifically authorized to arbitrate the terms of a new agreement may not assume jurisdiction until after the parties have tried by collective bargaining to agree on these new terms.

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[27] See Examples B and D in appendix B.
[28] See Example F in Appendix B.
[29] See Example G in Appendix B.

Appendix A.—*Agreements Analyzed for Arbitration Clauses* [1]

Distribution of agreements analyzed, by industry and size of company [2]

Industry	All companies		Major companies		Small companies	
	Agreements	Workers	Agreements	Workers	Agreements	Workers
All industries	1,254	2,684,000	342	2,026,000	912	685,000
Aircraft, excluding parts	61	592,000	35	424,000	26	167,000
Aluminum	29	63,000	25	62,000	4	1,000
Automobiles and parts	110	582,000	24	533,000	86	49,000
Chemicals, industrial	66	24,000	21	19,000	45	6,000
Machinery, electrical	122	229,000	24	138,000	98	91,000
Machinery, other	176	227,000	40	145,000	136	82,000
Meat packing	68	91,000	26	86,000	42	5,000
Petroleum production and refining	76	38,000	30	32,000	46	5,000
Rubber	85	92,000	33	79,000	52	13,000
Steel—Blast furnaces and rolling mills	53	428,000	17	372,000	36	56,000
Steel products	251	207,000	33	72,000	218	135,000
Textiles:						
Cotton	65	57,000	18	30,000	47	27,000
Silk and rayon	34	11,000	6	7,000	28	5,000
Woolen and worsted	58	43,000	10	27,000	48	16,000

[1] Analysis is limited to agreements on file with the Bureau of Labor Statistics which were current as of January 1944. The proportion of all workers under agreement who are represented by the agreements studied varies from 91 percent in basic steel to 30 percent in machinery (other than electrical); for all the industries combined the proportion is about 65 percent.

[2] Since the relative sizes of plants in the several industries vary widely, the line of demarcation between major and small plants differs for each industry. In the automobile industry, for example, agreements for plants employing 2,000 or more workers are classified as major while in the cotton-textile industry agreements for plants employing 250 or more workers are so classified.

Appendix B.—*Sample Arbitration Provisions*

Example A

In the event of failure to adjust the case at this point, it may be appealed to the impartial umpire, providing it is the type of case on which the umpire is authorized to rule. * * *.

The impartial umpire shall have only the functions set forth herein and shall serve for 1 year from date of appointment provided he continues to be acceptable to both parties. * * *.

It shall be the function of the umpire, after due investigation and within 30 days after submission of the case to him, to make a decision in all claims of discrimination for union activity or membership and in all cases of alleged violation of the terms of the following sections of this agreement, and written local or national supplementary agreements on the same subjects: Recognition; representation; grievance procedure; seniority; disciplinary lay-offs and discharges; call-in pay; working hours; leaves of absence; union bulletin boards; strikes, stoppages and lockouts; wages; general provisions; upgraders; trainees; procedures on production standards; employment of laid-off employees; and of any alleged violations of written local or national wage agreements. The umpire shall have no power to add to or subtract from or modify any of the terms of this agreement or any agreements made supplementary hereto; nor to establish or change any wage; nor to rule on any dispute arising regarding production standards. Any case appealed to the umpire on which he has no power to rule shall be referred back to the parties without decision.

The corporation delegates to the umpire full discretion in cases of violation of shop rules, and that in cases of violation of the Strikes, Stoppages, and Lockouts section of the agreement the umpire should have no power to order back pay, but if the penalty imposed by the corporation is 2 weeks' lay-off or more, the grievance machinery must be expedited so that the umpire's decision will come within 2 weeks of the written filing of the grievance. * * *.

No decision of the umpire or of the management in one case shall create a basis for a retroactive adjustment in any other case prior to the date of written filing of each such specific claim. * * *.

There shall be no appeal from the umpire's decision, which will be final and binding on the union and its members, the employee or employees involved, and the corporation. The union will discourage any attempt of its members, and will not encourage or cooperate with any of its members, in any appeal to any court or labor board from a decision of the umpire. * * *.

Any issue involving the interpretation and/or the application of any term of this agreement may be initiated by either party directly with the other party. Upon failure of the parties to agree with respect to the correct interpretation or application of the agreement to the issue, it may then be appealed directly to the umpire. * * *.

Example B

Any difference arising between the company and the union or its members shall be settled in the following manner. * * *.

In the event that a mutually satisfactory settlement of any grievance is not reached within 5 days after the meeting of the grievance committee and management it shall be submitted to the Massachusetts State Board of Conciliation and Arbitration for determination. The decision of said board shall be final and binding on both parties, and may in the discretion of the board be retroactive for such period as may be determined. Failure to submit to arbitration as provided in this article shall be considered a breach of this agreement.

Example C

Should an employee (or former employee within 10 days of his lay-off, dismissal, or discharge) feel that he has been treated unjustly, he or his union representative or representatives may present his grievance to the proper representative of the company, who will give it prompt and thorough consideration. This may include any difference of opinion or dispute between representatives of the company and any employee or union representatives, regarding interpretation or operation of any provision of this agreement. * * *

In the event that the employee or his union representative or representatives are dissatisfied with the explanation or disposition of the matter made by the president or other general executive of the company, the matter shall be submitted to arbitration if both the union and the company agree thereto.

Example D

Should any difference arise between the employer and the union or any employee, the union agrees that there shall be no slowing up or stoppage of work on account of such condition. Both parties agree that in such case an earnest effort shall be made to settle such difference immediately in the following manner: * * *

After a grievance, whether with respect to a wage matter or any other grievance, has gone through the procedure laid down in the local agreement and has not been settled thereunder, the local union may refer it to the international union. If within 20 days after the international union has filed this grievance with the management of the company the grievance has not been satisfactorily settled, the International Union may then ask that the matter be finally settled by arbitration. It shall thereupon be the duty of the management to meet forthwith with the designated representatives of the union, and endeavor to agree upon an arbitrator or arbitrators. If within 3 days no such agreement has been reached, either party may certify the matter to the National War Labor Board, which shall thereupon proceed to appoint an arbitrator or arbitrators whose decision shall be final and binding. The expense of any such arbitrator shall be borne one-half by the Union and one-half by the company.

Example E

Any individual employee or group of employees covered by this agreement may present in writing any complaint or grievance to the proper representative of the company. All complaints or grievances arising between the company and its employees covered by this agreement shall be governed by and determined under the provisions of this agreement. * * *.

If the decision of the manager or his representative is adverse and the complainant still feels aggrieved, then within 10 days complainant may request that his complaint go to arbitration; such request shall be in writing and set forth the reasons therefor. Where arbitration is requested, the president of the company, or someone designated by him, and the president of the union, or someone designated by him, shall meet at a time and place agreed upon for the purpose of considering said complaint and reaching a final decision thereon. If a final decision cannot be agreed upon, they shall without undue delay agree upon a method and procedure for the arbitration of said complaint.

If the president of the company, or the person designated by him, and the president of the union, or the person designated by him, can agree upon a decision on the complaint, such decision shall be final and binding. If the complaint goes to arbitration, the award of such arbitration shall be binding upon the company and the employees covered by this agreement. The whole course of arbitration shall be completed within 60 days from the date the complaint is referred to arbitration.

Example F

Alleged grievances said to arise out of the operation or interpretation of this contract or concerning wages, hours, or conditions of employment not otherwise disposed of as herein provided shall be settled in the following manner: * * *.

If either party desires, it can notify the other party in writing at this meeting [between national union and company representatives] or within 24 hours following this meeting that it wants the matter referred to arbitration, and name its arbiter. The other party must name its arbiter within 24 hours of receipt of this

notification. The arbiters so selected shall meet within 7 days after the notification of the appointment of the second arbiter, and endeavor to adjust the matter. If unable to reach an agreement, they shall name a third arbiter who shall be umpire and shall be, in the event the matter to be submitted involves job assignment, work loads, or wages, a textile technician. If the two arbiters cannot agree upon the third arbiter within 3 days, either party may request the Director of the Conciliation Service of the United States Department of Labor to name promptly such third arbiter, who shall be a textile technician if the matter involves job assignment, work loads, or wages. The board of arbitration shall thereupon immediately make such investigation, hear such statements, and consider such matters as may be material, and as promptly as possible reach and announce its decision. The decision of any two members of the board of arbitration shall be binding on the parties hereto. * * *.

Example G

Questions which arise under this contract concerning its interpretation or its enforcement shall be subject matters for negotiation or arbitration, and this contract shall not otherwise be reopened or amended except by assent of both parties. Terms of a new contract which cannot be settled by negotiation shall be arbitrated by a procedure mutually agreed upon.

Negotiations regarding all questions, for which provision has not otherwise been specifically made, shall at the request of either party be conducted as [outlined in] the grievance procedure. * * *.

After negotiation under the foregoing procedure, any grievance or question which has not been settled shall be submitted in writing to a board of arbitration whose decision after hearing the parties and their evidence on the question so submitted shall be final and binding on both parties for the period of this contract, unless a different period is mutually agreed upon in writing at the time the question is submitted to arbitration. The arbitration shall be initiated, and the board chosen and paid, as follows: Upon written request for arbitration by either party to the other, each party shall promptly appoint two members; within 5 days after said written request the four members thus appointed shall meet for the purpose of selecting a fifth member; if they are unable to agree upon the fifth member within 10 days after their first meeting the fifth member shall be appointed by the Director of the Conciliation Service of the United States Department of Labor, from his staff. * * *.

Example H

Should differences arise between the company and the union as to the meaning and application of the provisions of this agreement or as to any question relating to the wages, hours of work, and other conditions of employment of any employee, there shall be no interruption or impeding of the work, work stoppages, strikes, or lockouts on account of such differences, but an earnest effort shall be made to settle the matter promptly in the manner hereinafter outlined. * * *.

Whenever either party concludes that further conferences cannot contribute to settlement of the grievance, such grievance may be appealed by either party to an impartial umpire to be appointed by mutual agreement of the parties hereto within 15 days following receipt by either party of a written request for such appointment. The decision of the umpire shall be final. The expense and salary incident to the services of the umpire shall be shared equally by the company and the union. Awards of settlement of grievances may or may not be retroactive as the equities of each case (discharge cases excepted) may demand, but in no event shall any award be retroactive beyond the date on which the grievance was first presented in written form.

An umpire to whom any grievance shall be submitted in accordance with the provisions of this section shall have jurisdiction and authority to interpret and apply the provisions of this agreement insofar as shall be necessary to the determination of such grievance, but he shall not have jurisdiction or authority to alter in any way the provisions of this agreement. * * *.

Example I

Should any difference arise between the company and any employee or group of employees covered by this agreement, as to the meaning and application of this agreement, or should a grievance arise (not involving a change in any provi-

sion of this agreement, or any supplemental agreement) the procedure for settlement shall be as follows: * * *.

Should the decision of the plant manager be unacceptable to the union or to the aggrieved employee or employees, the case may, within 11 days thereafter, upon written notice to the company by the union or the aggrieved employee or employees, be submitted for arbitration. Within 2 days after such notice, the parties to the case shall jointly request either the Director of the Conciliation Service, United States Department of Labor, or the National War Labor Board, for the appointment of a member of the Conciliation Service or of an agent of the War Labor Board, as the case may be, to act as sole arbitrator. The arbitrator when so selected, shall proceed as soon as practicable to hold a hearing and examine into and render a decision on the complaint at issue, which shall be final and binding on all parties. The parties to the case shall share the expenses, if any, incurred in connection with the arbitration. * * *.