

ARBITRATION of Labor-Management Grievances

**Bethlehem Steel Company
and
United Steelworkers of America**

1942 - 52



Bulletin No. 1159

UNITED STATES DEPARTMENT OF LABOR

James P. Mitchell, Secretary

BUREAU OF LABOR STATISTICS

Ewan Clague, Commissioner

ARBITRATION OF LABOR-MANAGEMENT GRIEVANCES

**Bethlehem Steel Company
and
United Steelworkers of America
1942-52**

Bulletin No. 1159

**UNITED STATES DEPARTMENT OF LABOR
James P. Mitchell, Secretary
BUREAU OF LABOR STATISTICS
Ewan Clague, Commissioner**



Letter of Transmittal

UNITED STATES DEPARTMENT OF LABOR,
Bureau of Labor Statistics,
Washington, D. C., April 29, 1954.

The Secretary of Labor:

I have the honor to transmit herewith a study of 10 years of grievance arbitration under the collective bargaining agreements of the Bethlehem Steel Company and the United Steelworkers of America (CIO). This study of the experience of a large company and union in the peaceful adjustment of grievances, as revealed in the examination of approximately 1,000 decisions of mutually appointed arbitrators, illustrates standards of employer-employee relationships which are increasingly becoming a part of American industrial life.

This study was prepared in the Bureau's Division of Wages and Industrial Relations by Kirk R. Petshek, Solomon Shapiro, and Joseph W. Bloch, with the assistance of Dorothy R. Kittner. Thomas H. Paine and Willmon Fridle participated in the analysis of the decisions.

The Bureau is especially grateful to Mr. James C. Phelps, Assistant to the Vice President, Bethlehem Steel Company, for his generous cooperation and suggestions.

Ewan Clague, Commissioner.

Hon. James P. Mitchell,
Secretary of Labor.

Preface

Unions and management have felt increasingly that labor-management relations can be improved if, after a collective bargaining agreement is signed, there is an accepted way of resolving disputes which may arise. Disagreements emerging from the existing relationship clearly can be most efficiently and equitably handled if well-defined procedures are established to facilitate settlement by the parties or, where agreement cannot be reached, by a mutually approved outsider. A large proportion of collective bargaining agreements now provide for arbitration as the final step in the grievance procedure.

The type of arbitration discussed in this study is concerned with disputes over grievances arising under existing agreements, rather than with the terms of new agreements. The arbitrator's function in cases of this type is to interpret and apply the contract, or to evaluate the evidence if the dispute hinges on questions of fact. The arbitrator may be named in the agreement, which makes him the permanent "umpire" for the period specified. The parties, on the other hand, may agree on a procedure through which the arbitrator will be named when the case arises (so-called "ad hoc" arbitration); or they may agree in advance on a small panel of names, from which one will be chosen as needed. Sometimes a tripartite board rather than a single arbitrator is established. Whatever the procedure, the important point is that management and union have agreed to submit to a third party disputes arising out of the daily application of the terms of the document setting forth the employment relationship.

No collective bargaining agreement, no matter how carefully drawn up, can provide a clear-cut answer to all of the problems that might arise in its administration. Although only the parties themselves can attain a full understanding of the problems of the particular plant and the employment relationship, an arbitrator must to some extent acquire such an understanding in order to fulfill his function.

The wording of provisions differs among collective bargaining agreements and may change, for the same plant, as each new agreement is negotiated. Hence the interpretation of apparently similar clauses varies. The facts of each case, moreover, may determine the application of these clauses and guide the arbitrator's judgment. While arbitrators generally are not bound by precedent, some similarity frequently can be distinguished among different decisions, and over time some general principles may be observed.

The purpose of this study is to analyze the arbitration decisions in one company. While this study is confined to the experience of an individual company and union, it can be useful beyond the particular circumstances from which it was derived. The decisions and the reasoning behind them must be viewed in the context not only of the agreement and of the company and union practice but also of other decisions rendered previously. The arbitrator is limited by the terms of the written agreement, which are often not specific. Agreement clauses are determined through the give-and-take of collective bargaining, hence neither party may be entirely satisfied with the provisions as negotiated. Moreover, although accepting the award neither party may subscribe fully to the arbitrator's interpretation and his opinions regarding the validity or shortcomings of any action. This dissatisfaction, in the long run, may lead either to the settlement of a greater proportion of grievances at the intermediary levels, or to changes in agreement terms, or even to a change in arbitrators.

Preface - Continued

The Bethlehem Steel Company was selected for study for several reasons. In the first place, it operates in a basic mass-production industry and employs a large number of workers. Secondly, labor-management relations in this company were relatively harmonious for a number of years. A detailed and carefully planned and nurtured grievance machinery took care of most of the disputes that arose; those that required arbitration were only a small percentage of the grievances formally advanced by employees. Finally, the procedure for the selection of arbitrators was quite varied in this situation: For the first 5 years of contractual relationships, the arbitrators were selected "ad hoc" from a panel of names, none of whom was chosen too frequently; between 1947 and 1952, arbitration in rotation among a panel of three arbitrators (consisting of a lawyer, an economist, and a professor of labor relations) was used.¹

This study analyzes all arbitration awards of the Bethlehem Steel Company under its master agreements with the United Steelworkers of America (CIO), from the inception of the collective bargaining relationship in mid-1942 through June 1952. The relatively small number of disputes (about 1,000) decided by arbitrators, out of about 20,000 formal grievances arising during this period, would appear to indicate the existence of well-working grievance machinery.

¹ With the advent of the 1952 contract the parties agreed on a single arbitrator. An increase in caseload during 1953, however, necessitated the appointment of three assistant arbitrators.

Contents

	Page
PART I.—TYPES OF GRIEVANCES	1
Grievance procedure and arbitration	1
Classification of grievances reaching arbitration	3
Scope of the study	3
Grievances by subject	3
Grievances by type of action	3
Grievances by plants	4
Grievances by contract	4
Grievance issues	5
Wages or job classification	5
Wage rates or job classification	5
Basis of wage payment	6
Premium pay	6
Nonproductive pay	7
Other wage grievances	7
Seniority	7
Discipline	9
Job assignment	9
Work force assignment	9
Work schedule	10
Bargaining unit	10
Vacation	10
 PART II.—DISCIPLINE AND DISCHARGE	 11
Employee actions which justified penalties	11
Improper work performance	11
Improper job attitudes	11
Improper personal conduct	11
Union activity in violation of agreement	12
Rights and responsibilities of the parties	12
Management prerogatives and responsibilities	12
Standards of penalty imposition	12
Standards of company administration	13
Assignment to appropriate jobs	14
Employees' rights and responsibilities	14
Union responsibilities	16
Selected standards of job performance	17
Negligence	18
Inability to perform the job	19
Insubordination	19
Other problems in discipline cases	20
Purpose of discipline	20
Considerations for fixing penalty	21
Past record of the worker	21
Seriousness of the charge	21
Amount of damage	21
Customary practices	21
Reasonableness of the penalty	21
Other considerations	21

Contents - Continued

	Page
PART III.—SENIORITY	23
General interpretation of the seniority clause	23
Interpretation of "relative ability"	24
Measurement of ability	25
Employee rights in seniority cases	26
Seniority rights of returning veterans	26
Seniority rights of wartime women employees	27
Other seniority rights	28
Other seniority problems	28
Seniority units	28
Posting of vacancies	29
Variations of seniority rule for temporary and new jobs	29
 PART IV.—WAGE RATES AND JOB CLASSIFICATIONS	 31
Wage grievances, 1942-47	31
The 1947 job classification plan	32
Wage and classification grievances, 1947-June 1952	33
Job classification grievances	35
Employee classification grievances	36
Basis for denial of classification grievances	37
Incentive rate grievances	38
Loss of earnings	38
"Unreasonable and unfair" rates	40
Change from time to incentive rates	41
Question of time or incentive rate	42

TABLES

1. Plants covered by agreements between the Bethlehem Steel Company and the United Steelworkers of America	1
2. Distribution of grievances on which arbitrators rendered decisions, by subject and final determination, Bethlehem Steel Company, 1942-52	4
3. Distribution of grievances on which arbitrators rendered decisions, by plant and subject, Bethlehem Steel Company, 1942-52	5
4. Wages or job classification: Distribution of grievances on which arbitrators rendered decisions, by issue and final determination, Bethlehem Steel Company, 1942-52	6
5. Seniority: Distribution of grievances on which arbitrators rendered decisions, by issue and final determination, Bethlehem Steel Company, 1942-52	8

Arbitration of Labor-Management Grievances: Bethlehem Steel Company and the United Steelworkers of America, 1942-52

PART I — TYPES OF GRIEVANCES

Bethlehem Steel Corporation is the second largest producer of iron and steel, as well as the largest fabricator and erector of structural steel and a leading American shipbuilder. The corporation functions through operating subsidiaries, chief of which are the Bethlehem Steel Company and the Bethlehem Pacific Coast Steel Corporation.

In 1953 the average employment of the subsidiaries of Bethlehem Steel Corporation was approximately 157,000 workers.¹ More than half of these workers were covered by collective bargaining agreements with the United Steelworkers of America (CIO). The steel plants and fabricating works of the company are located in Illinois, Maryland, New York, and Pennsylvania. The largest plant, with an annual capacity of 5,750,000 net tons, is located at Sparrows Point, Md.

After a considerable period of dealing with employees through an Employee Representation Plan, the Bethlehem Steel Company signed its first contract with the United Steelworkers of America (CIO) in August 1942. Since then contract negotiations have been held on seven different occasions.

Four successive master agreements have been concluded between Bethlehem and the Steelworkers, effective 1942, 1945 with later amendments, 1947 with later amendments (including 1949), and 1952. The operation of the arbitration machinery under the first three agreements (up to July 1, 1952) is covered by this study.

The 1942 and 1945 agreements covered 16 and 17 plants and works, respectively (table 1). In early 1946 the 5 West Coast plants were taken over by the Bethlehem Pacific Coast Steel Corporation leaving 12 Bethlehem Steel Company plants under the 1947 agreement. Eleven plants (the Chicago Wire Plant had been closed) plus two warehouses represent the Bethlehem Steel Company's operations under the August 1952 agreement. This agreement also covers four other subsidiaries of the Bethlehem Steel Corporation—Bethlehem Pacific Coast Steel

Corporation, Buffalo Tank Corporation, Bethlehem Supply Company (California), and the Dundalk Company.

TABLE 1.—Plants covered by agreements between the Bethlehem Steel Company and the United Steelworkers of America

Plants and location	Contract period		
	1942-45	1945-47	1947-52
Alameda Works, Calif. -----	x	x	(1)
Bethlehem, Pa. -----	x	x	x
Chicago Wire Plant, Ill. -----	x	x	x
Chicago Works, Ill. -----		x	x
Coatesville, Pa. -----	x		
Johnstown, Pa. -----	x	x	x
Lackawanna, N. Y. -----	x	x	x
Lebanon, Pa. -----	x	x	x
Leetsdale Works, Pa. -----	x	x	x
Los Angeles, Vernon, Calif. -----	x	x	(1)
Los Angeles Works, Calif. ----	x	x	(1)
Pottstown Works, Pa. -----	x	x	x
Rankin Works, Pa. -----	x	x	x
Seattle, Wash. -----	x	x	(1)
South San Francisco, Calif. ----	x	x	(1)
Sparrows Point, Md. -----	x	x	x
Steelton, Pa. -----	x	x	x
Williamsport, Pa. -----	x	x	x

¹ These plants became part of the Bethlehem Pacific Coast Steel Corp. in 1946.

The bargaining unit in terms of type of workers covered generally remained uniform for all four contracts. Specifically included were the production and maintenance employees; specifically excluded were executive, salaried, office, supervisory, and guard categories.

Grievance Procedure and Arbitration

The grievance machinery provided by the four agreements covered disputes regarding the meaning or application of the agreement or disputed matters relating to wages, hours of work, and other working conditions. There was to be no suspension of work because of such disputes. If an employee believed he had a justifiable request or complaint he could discuss it orally with his foreman, with or without the presence of a union steward. Failing a satisfactory settlement of the matter, he could then enter upon the formal steps of the grievance procedure outlined in the agreements. The four formal steps prior to arbitration

¹ Bethlehem Steel Corporation, Annual Report, 1953.

were described as a general standard which could be modified at any plant by agreement of both parties.

Step 1: The formal procedure required the written presentation of the grievance by the employee or the union steward to the foreman. If not settled, appeal to the department superintendent (Step 2) was to be made within a specified number of days. If not appealed within this time limit, the case was considered closed.

Step 2: The procedure provided for discussion between the department union steward and the department superintendent as the next step. If the grievance was not settled at this level, appeal to the plant management's representative—the person handling industrial relations problems at the plant—was to be made within a specified number of days. Again, unless the appeal was made within the specified time limit, the grievance was considered settled.

Step 3: If no agreement was reached at the preceding step, discussion was held between the management's representative, the plant grievance committee, and a plant union representative (designated by the union, generally not a plant employee). If an opportunity for such discussion was not provided by the management's representative within a specified number of days, the grievance could be appealed to the fourth step, unless the period was mutually extended. A grievance not processed properly through the first two steps was referred back to the proper supervisory officials unless the grievance related to a general matter which could not be settled by such officials. Minutes of the proceedings were prepared by the management's representative and signed by the latter and the grievance committee chairman. If the grievance was not settled at this step, it was appealed within a specified number of days to the fourth step. A grievance not appealed within a specified number of days to the next step was considered settled.

Step 4: Grievances not settled in the first three steps were discussed between two union representatives and two company representatives. Written notice of the intention of either party to take up a grievance under this step was to be given to the other party within a specified number of days after its disposition in Step 3.

Meetings as necessary under Step 4 and any other procedures required to settle a grievance were agreed upon by representatives of the company and the union. Minutes of the discussion meetings under this step

were to be prepared in prescribed form by the company representatives and signed by them and by the union representatives within a specified number of days after such meeting.

If a grievance, after being presented through this step, remained unsettled, it could then be appealed to arbitration. This had to be done within a specified number of days after final meeting or after the union representative's receipt of a draft of the minutes, whichever period was longer.

The 1942 and 1945 agreements provided that any union steward or any grievance committee member, upon making a request to his foreman, was to be granted time off without pay for the purpose of investigating and settling grievances with which he was concerned. The 1947 and 1952 agreements, however, were more specific with respect to this subject. They provided that any union steward, upon making a request to his foreman, was to be granted time off without pay to investigate and settle grievances in Step 1 or 2 presented by an employee in his department; whereas a grievance committee member at any plant was to be granted similar privileges to handle grievances in Step 3 or 4 with which he was concerned. In this connection the 1947 and 1952 agreements also provided that the grievance committee member, upon request to the management's representative, was to be permitted to visit other departments. The 1947 and 1952 agreements further provided, in connection with the processing of grievances at a particular plant in Step 4, that an outside representative of the union, so certified to the company, was to be permitted to visit the plant.

All 4 agreements provided that grievances were not subject to the grievance procedure unless they were presented within 30 days after the date of origination of the facts or events upon which the grievance was based.²

² Provisions relating to discharge of employees included a procedure for hearings that differed, in its early stages, from the regular grievance procedure. Within 5 days after receipt of discharge notice, the employee presented his written request for a hearing to the management's representative. A hearing was held by a company official with the employee who may have been represented by plant grievance committee members. If the case remained unsettled after the company's decision, the grievance was to be presented to the plant management's representative within 10 days after receipt of such decision and then processed under the regular grievance procedure beginning at Step 3 and proceeding, if necessary, through arbitration.

Under all agreements a single arbitrator acted upon the cases reaching the final step in the grievance procedure. During the period covered by the 1942 and 1945 agreements a panel of several arbitrators was suggested by one of the parties, from which the other party was to select one person. If none of the proposed arbitrators was acceptable, the process of submitting names was reversed, which in all cases led to agreement on the arbitrator. During the term of the 1947 agreement the parties agreed on a panel of three men, who arbitrated in rotation. The fees of the arbitrators were shared by the company and the union.

The arbitrator had authority only to interpret and apply the provisions of the agreement to a particular case and had no authority to alter any provision. All decisions were final and binding insofar as the case in dispute was concerned.

Classification of Grievances Reaching Arbitration

Grievances reaching arbitration represented only a small portion of those formally presented at the first step of the grievance procedure. This is strikingly illustrated by the data available up to January 1, 1951. These data indicate that an overwhelming proportion of the grievances were taken care of by the parties themselves. Almost 17,000 grievances were submitted to the first step of the grievance procedure. Over 15,300 of these were denied; in over 900 the "grievant's" request was granted; and in almost 400 a compromise was effected. Of the less than 14,800 grievances previously denied and presented at the second step, about 1,100 were granted; about 600 compromised; and about 12,600 denied. At the third step approximately 11,600 cases were handled of which over 7,300 were refused; 1,200 granted; and less than 500 compromised. Of the more than 5,300 grievances brought to the fourth step, more than 3,800 were denied; less than 200 granted; and less than 150 compromised. Of the disputes remaining unsettled at the fourth step, about 2,000 were appealed to arbitration in the period 1942-January 1951. Many of these were withdrawn or otherwise disposed of before the arbitrator received the case or rendered an award.

Scope of the Study

This report encompasses all disputes referred to arbitration and on which some type of action was taken during the

period from August 1942 through June 1952 under the master contracts negotiated with the United Steelworkers of America (CIO). During this period, almost 2,400 disputes arising in 15 plants of the company (identified in table 3) were submitted to arbitration. Of these, over half were disposed of prior to the arbitrator's rendering a decision—more than 1,150 were withdrawn by the union, and about 100 were settled by the parties. In over 100 cases, an arbitration hearing had not yet been held by July 1, 1952.

The following sections deal with the classification and analysis of the 1,003 cases on which the arbitrator acted, either in the form of denying or granting the grievant's request in whole or in part, or by referring the case back to the parties for further negotiation or additional information. They are treated according to the subject involved, action taken, plant origin, contract under which they arose, and the basic issue and its justification outlined in the grievant's claim.

Grievances by Subject

More than three-fourths (788) of the 1,003 cases were related specifically either to wages or job classifications, or problems concerning seniority (table 2). Most of the wage grievances were over hourly or incentive rates established for a specified job or requests for adjustments in hourly or incentive rates. Almost two-thirds of the seniority grievances reaching arbitration resulted from layoff, downgrading, or "bumping," and an additional 20 percent concerned promotion problems.

Next in prevalence were those grievances concerning discipline or work force assignment. Combined, these categories accounted for almost 15 percent of the total number of grievances reaching arbitration. Disagreements over such issues as job assignment, vacation rights, work schedule, or jobs excluded or included in the bargaining unit, were the causes of most of the remaining grievances.

Grievances by Type of Action

The arbitrator's disposition of a dispute depends to a great extent upon his interpretation of the clause of the collective bargaining agreement under which the grievance arose and his evaluation of the evidence submitted by the parties. Before considering the substantive issues, however, the arbitrator has to decide, first, what types of grievances he can arbitrate and how far his jurisdiction reaches, according to the terms of

TABLE 2.—Distribution of grievances on which arbitrators rendered decisions, by subject and final determination, Bethlehem Steel Company, 1942-52

Subject	Total	Granted	Partially granted	Denied	Dismissed for lack of jurisdiction	Dismissed as untimely	Referred back to parties for further negotiations or added information	
							Settled or withdrawn	Pending or disposition unrecorded
Total	1,003	200	121	503	31	57	35	56
Wages or job classification	485	95	71	248	26	21	10	14
Seniority	303	71	20	143	1	22	20	26
Discipline	89	16	15	54	-	3	1	-
Work force assignment	53	7	9	24	1	1	4	7
Job assignment	14	5	-	9	-	-	-	-
Vacation	6	1	1	2	1	1	-	-
Work schedule	6	-	1	5	-	-	-	-
Bargaining unit	5	-	-	4	-	1	-	-
Transfer	4	1	-	3	-	-	-	-
Other working conditions ¹	23	4	4	11	2	-	-	2
Subject not indicated	15	-	-	-	-	8	-	7

¹ Grievances over the furnishing of work clothing without cost to the employee, installation of bulletin boards and pay telephones, and plant improvements for safety reasons were among the subjects included in this group.

the agreement. Secondly, he must determine whether the specific time limitations, between steps of the grievance procedure and after the final step, have been observed. Both, lack of timeliness and of jurisdiction were sometimes charged by the company. In all, 57 cases were dismissed for untimeliness, and 31 were dropped because the arbitrator ruled that he lacked jurisdiction (table 2).

The grievants' requests in about 50 percent of the cases were denied by the arbitrator; in 20 percent of the cases they were granted; and an additional 12 percent of the grievances were partially decided in favor of the grievant. The arbitrator referred about 10 percent of the disputes back to the parties for further negotiation or for additional information. Of these cases, more than half were pending at the time of the study or their disposition was unknown to the Bureau of Labor Statistics; the remainder were either settled by the parties or withdrawn.

In terms of subjects, less than half of the seniority and work assignment grievances were denied, while in virtually all other classifications 50 percent or more of the grievances were denied. Approximately 23 percent of the seniority grievances and nearly 20 percent of the wage grievances were granted in full.

Grievances by Plants

The prevalence of the various types of grievance cases differed to some extent from plant to plant. At Lackawanna, where 23 percent of the total number of cases arose, wage grievances predominated, constituting more than 60 percent of those that arose at this plant (table 3).

The most prevalent type of arbitration case arising at the Sparrows Point plant arose out of an unusual situation relating to seniority. Women employees, although relatively rare among the production and maintenance workers of the company as a whole, constituted almost the entire working force of one of the small units at this plant. A single layoff action involving women employees accounted for 80 of the 115 seniority cases; the separate cases, however, were handled simultaneously by the arbitrator. Almost 40 percent of the cases from this plant dealt with wages and job classification.

An equal proportion of seniority and wage grievance cases (40 percent) arose at the Bethlehem plant. The seniority grievances, in a large number of cases, resulted from returning veterans being granted "superseniority" rights. Ten percent of the remaining grievances at the plant concerned disciplinary action.

At the Lebanon and Johnstown plants, wages or job classification cases predominated, whereas at Williamsport two-thirds were seniority cases, the majority of which involved veterans' "superseniority" rights. Approximately 40 percent of the cases arising at the Steelton plant pertained to wages or job classifications.

Grievances by Contract

More than two-thirds of the 1,003 grievance cases arose under the agreements in effect from August 1942 to April 1947, and less than one-third under the agreement in effect from April 1947 through June 1952, the termination date of this analysis. The proportion of grievances by subject varied among these contracts.

TABLE 3.—Distribution of grievances on which arbitrators rendered decisions, by plant and subject, Bethlehem Steel Company, 1942-52

Plant	Total	Wages and job classification	Seniority	Discipline	Work force assignment	Job assignment	Vacation	Work schedule	Bar-gaining unit	Trans-fer	Other working conditions ¹	Subject not indicated
All plants	1,003	485	303	89	53	14	6	6	5	4	23	15
Bethlehem	199	80	79	20	6	2	-	3	1	1	7	-
Chicago (2 plants)	5	3	-	1	-	-	-	-	-	-	1	-
Johnstown	158	88	35	19	4	2	1	-	2	-	1	6
Lackawanna	234	141	26	12	38	9	1	-	-	-	7	-
Lebanon	62	38	14	3	-	1	1	1	1	-	3	-
Leetsdale	3	1	-	2	-	-	-	-	-	-	-	-
Los Angeles ²	2	2	-	-	-	-	-	-	-	-	-	-
Pottstown	3	2	-	1	-	-	-	-	-	-	-	-
Rankin	1	1	-	-	-	-	-	-	-	-	-	-
Seattle ²	1	1	-	-	-	-	-	-	-	-	-	-
South San Francisco ²	6	6	-	-	-	-	-	-	-	-	-	-
Sparrows Point	254	98	115	20	5	-	3	1	-	2	4	6
Steelton	43	17	13	9	-	-	-	-	-	1	-	3
Williamsport	32	7	21	2	-	-	-	1	1	-	-	-

¹ Grievances over the furnishing of work clothing without cost to the employee, installation of bulletin boards and pay telephones, and plant improvements for safety reasons were among those included in this group.

² Covers period when plant was in Bethlehem Steel Company.

Under the 1942 agreement, effective until April 1945, the most prevalent type of arbitration case concerned wages or job classifications. The factors which may have contributed to the relatively large number of wage cases during this period are discussed in Part IV of this study.

Under the contract effective from 1945 to May 1947, the most prevalent type of grievances handled by the arbitrator were those relating to seniority. Most of these occurred as a result of "bumping," downgrading, or layoff actions which jeopardized the aggrieved employees' rights to a particular job. A very influential factor contributing to the cause of these grievances was the problem of returning veterans, both those exercising their reemployment rights and those being granted so-called "superseniority" rights. In a considerable number of seniority grievances, the grievants were women hired during World War II and then, after the war, laid off.

Work force assignment, job assignment, and discipline grievances occurred more frequently under the agreement effective in 1947 than under previous agreements. Other types of grievances did not show significant variations among contract periods.

Grievance Issues

The rest of this chapter is devoted to a discussion of the types of grievances included in the main categories of issues in which the arbitration cases were divided. In Parts II, III, and IV of this report, the

major categories are reexamined in the light of the arbitrators' problems and decisions.

Wages or Job Classification

Wage rates or job classification.—All agreements gave management the right to establish new rates and to change old rates in specified cases of changed or new methods, processes or equipment, etc., provided that the prescribed procedure for putting new rates into effect was followed. These rates could be challenged through the grievance procedure. The 1945 agreement referred to the Directive Order of the National War Labor Board of 1944 which ordered the company and the union to negotiate for the elimination of intraplant inequities by reducing the number of job classifications, placing the jobs in their proper relationships, and assigning rates to the classifications in accordance with jointly acceptable standards. With the completion of this process, actually accomplished in 1947, changes of hourly rates were to be made through methods described in the agreements.

Approximately two-thirds of the cases relating to wage problems dealt with wage rates or job classification grievances (table 4). The nature of the grievances, at least insofar as they related to hourly rates or job classification, were markedly changed by the 1947 agreement on the elimination of wage rate inequities. In brief, grievances alleging a wage inequity, which constituted a serious problem under the 1942 agreement, became inadmissible with the rationalization of the wage structure. This development is discussed in detail in Part IV of this study.

TABLE 4.—Wages or job classification: Distribution of grievances on which arbitrators rendered decisions, by issue and final determination, Bethlehem Steel Company, 1942-52

Issue	Total	Granted	Partially granted	Denied	Dismissed for lack of jurisdiction	Dismissed as untimely	Referred back to parties for further negotiations or added information	
							Settled or withdrawn	Pending or disposition unrecorded
Total	485	95	71	248	26	21	10	14
Wage rates or job classification	326	59	59	160	19	11	9	9
Basis of wage payment	40	4	2	23	1	7	1	2
Premium pay	21	7	1	12	1	-	-	-
Pay when temporarily assigned	19	4	-	13	1	1	-	-
Nonproductive pay	15	3	1	11	-	-	-	-
Report pay	13	8	2	3	-	-	-	-
Back pay	8	1	-	3	2	1	-	1
Down time	8	1	-	4	2	1	-	-
Short-hand pay	17	6	4	6	-	-	-	1
Method of wage computation	10	1	2	7	-	-	-	-
Daily minimum guarantee	3	-	-	2	-	-	-	1
Miscellaneous	5	1	-	4	-	-	-	-

Many of the wage rate or job classification grievances involved a request for an adjustment in incentive rates. These grievances fell into two groups—those objecting to a changed or new rate set by management, and those requesting an increase in the incentive rate.

In the former group, the grievant's claim of inadequacy and unfairness of the changed or new incentive rate set by management was generally based on the contention that workload, job responsibility, or time requirement for performing the job had increased, or at least had not decreased; the new-challenged-rate had often been set because of technological changes such as a change in process, operation, method of production, equipment, or change in product. The charge of inadequacy was also occasionally based on the contention that the changed rate was causing a reduction in earnings, did not compensate for the additional job functions involved, or was not warranted by the technological change involved. It was also claimed in some cases that the disputed rates had been set illegally and that the company had failed to use the correct techniques in making time studies in order to set the proper rate.

In the other group of incentive rate cases, an increase of the rate was requested for reasons such as increased workload or job requirements. Additional reasons mentioned included reduction in size of crew, handling of heavier materials, no relief period, or a change in the method of computing earnings. Grievances were also occasionally based on the claim of the performance of duties similar to the duties of other employees receiving a higher rate.

Basis of wage payment.—A number of disputes over the basis of wage pay-

ment—hourly or incentive—and the method of wage computation had to be arbitrated (table 4). In many of these cases, hourly rated employees claimed that they should be placed on an incentive wage plan because of their contribution to increased production and/or the installation of new equipment; because others were working under such a system and they themselves had worked on an incentive basis in the past; or in order to eliminate wage differentials.

The type of pay an employee should receive when working on a repair turn was involved in a few grievances. In these cases it was contended that an employee should be paid on the basis of his past average earnings or the earnings received on the next operating turn rather than straight hourly rates.

The method used in computing an employee's earnings was in dispute in 10 cases. Grievances of this type included requests that the company use its old method of computing piece-rate earnings because the new method caused the grievant to suffer a loss of earnings; or that the company change the method used in calculating average hourly earnings in order to determine the proper wages for experimental work. The grievants in some of these cases also charged that they were never informed of the method of computation used.

Premium pay.—Some cases were based on a claim by the worker that he had not received premium pay to which he felt entitled (table 4). Such cases involved either the sixth or the seventh consecutive day of the employee's workweek, which were premium days, with the grievant protesting that he had not received the proper rate or that he had not been permitted, or called, to work on a premium day when his week's schedule led him to expect it.

Nonproductive pay.—The issue of whether employees should be paid for non-productive time such as time spent meeting with the superintendent, lunch periods, rest periods, holidays not worked, or time not worked due to an alleged lockout, was in dispute in most of the cases dealing with nonproductive pay (table 4). In several grievances over pay for time spent meeting with the superintendent the grievants claimed that they were entitled to premium pay because the meetings were held or continued after working hours. The holiday pay requested by employees not scheduled to work on a holiday was based on the fact that employees who did work received premium pay. Women employees requested pay for rest periods that were required by a State statute. Another grievant claimed he should have been paid for time lost while waiting for a closed truck after he had refused to ride in an open truck because of inclement weather.

In a few grievances reaching arbitration, report (call-in) pay allegedly due under the terms of the agreement was claimed. The reason in most of these cases was the unavailability of regular work due to such factors as weather conditions or machine or equipment breakdown, which resulted in an employee being sent home without working or completing work for the specified number of hours, or being assigned to other than his regular work. In one case, the telegram notifying the grievant not to report did not reach him until after he had reported to work.

Other wage grievances.—Most of the wage disputes arising from temporary assignments were the result of an employee's claim that he was improperly paid at his regular rate when temporarily assigned to work on a higher rated job. The reasons for this claim were previous receipt of the higher rate, past practice, or performance of the same duties as a higher rated employee.

Delays due to machine breakdown, setting up of new jobs, defective material, or change in process, caused employees in some cases to lose time and production which resulted in a reduction in earnings. These employees requested either reimbursement of earnings lost, pay for delays in excess of one hour, or the establishment of a schedule of allowances for earnings lost due to machine breakdowns.

In most of the grievances concerning short-hand pay, workers asked that the

wages of absent members of their crew be divided among those working. This claim was based on the production of the same amount of work although they worked short-handed.

Back pay was asked for in a few grievances resulting from the settlement of a previous grievance, a reclassification, or a denial of a temporary assignment. In many of the other wage grievances, as well as those concerning subjects such as discipline, seniority, etc., back pay was asked for in conjunction with the primary issue involved. In many other grievances the employee asked that the award be made retroactive.

Seniority

The same criteria for promotion to nonsupervisory positions, layoff, and recall were provided for in all of the agreements: If ability to perform the work and physical fitness were relatively equal, length of service was to govern. Each agreement provided that the seniority units were to be negotiated on a plant-by-plant basis.

The 1947 agreement was the first to specify the method to be used in filling temporary vacancies. In such cases, the company was to consider length of service only to a degree consistent with efficiency of the operation and the safety of employees.

Each agreement contained a clause guaranteeing reemployment rights to returning veterans. Veterans were also permitted to count the time spent in the service as time worked for seniority purposes. The 1947 agreement also included a provision that the company would endeavor, as job vacancies became available, to move any employee who was reemployed under the military clause to or toward the job that he might have attained if he had not entered the Armed Forces.

Most seniority grievances reaching arbitration resulted from curtailment of plant operations due to lack of work, or technological changes causing abolishment of jobs or elimination of specified machines, which required the laying off or downgrading of surplus personnel (table 5). The other large group of seniority cases dealt with promotions made or vacancies filled as a result of normal employee turnover or the creation of new jobs due to increased production or plant expansion.

TABLE 5.—Seniority: Distribution of grievances on which arbitrators rendered decisions, by issue and final determination, Bethlehem Steel Company, 1942-52

Issue	Total	Granted	Partially granted	Denied	Dismissed for lack of jurisdiction	Dismissed as untimely	Referred back to parties for further negotiations or added information	
							Settled or withdrawn	Pending or disposition unrecorded
Total	303	71	20	143	1	22	20	26
Layoff, bumping, or downgrading	194	51	6	78	1	14	18	26
Promotion	61	14	5	36	-	6	-	-
Temporary vacancy	12	4	1	6	-	-	1	-
Procedure	7	-	4	2	-	1	-	-
Transfer	7	-	1	5	-	-	1	-
Length of service credit	5	-	1	4	-	-	-	-
Seniority list	5	-	-	5	-	-	-	-
Reassignment	4	1	-	2	-	1	-	-
Recall	2	1	1	-	-	-	-	-
Miscellaneous	6	-	1	5	-	-	-	-

In the cases studied, the grievants generally maintained that their greater seniority (length of service), or greater seniority and relatively equal ability, entitled them to be promoted to a vacancy that existed, or not to be downgraded or laid off. It was also claimed, in a few instances, that experience, skill, or physical fitness, in addition to greater seniority, entitled the grievant to the promotion or, in the case of a reduction in force, to retention on his job.

In addition to greater seniority, claims of improper promotion, layoff, downgrading, bumping, or recall were based on various other reasons. For example, one grievant's claim to a promotion was based on the fact that he had greater seniority by virtue of having previously accepted temporary assignments which the promoted employee had refused. Another claimed promotion to a job and also demanded a trial period in order to demonstrate his ability to perform the higher rated work.

Seniority grievances involving the "bargaining unit" also were submitted to arbitration. In a few of these pertaining to promotions, the grievant maintained that because of his greater unit seniority, in accordance with past practice, he should have been promoted to the job outside the bargaining unit; or that the job was a non-supervisory one, therefore within the bargaining unit. In a few cases, the union objected to supervisory employees being permitted to "bump" employees in the bargaining unit.

The type of seniority unit—in the plant, in the department, or on-the-job—that should govern in filling vacancies or in laying off or downgrading employees was

the issue in a number of grievances. The failure to establish a seniority unit for a new department gave rise to a few of the disputes involving promotion. In these cases, it was claimed that plant seniority should govern the filling of jobs in this new department. Other grievances involved the problem of which seniority unit should govern; e.g., a grievant claimed that, although he had less job seniority, he should not have been downgraded because of his greater departmental seniority.

A number of grievances arose over filling temporary vacancies occurring in a higher rated job or in a job with promotional opportunities. Among such cases was the claim of a worker which was based not only on his seniority but also on an alleged company rule that gave him the right to fill a vacancy on a specified machine.

The right of an employee with greater length of service to be transferred to a job of equal or lower pay that had promotional opportunities, or that was considered a promotion by the claimant because of its desirability, including work on another shift, was the cause of several grievances.

Veterans returning from World War II could exert their reemployment or their seniority or "superseniority" rights. This resulted in some nonveteran employees being bumped, downgraded, or laid off. In grievances occurring as a result of this, the affected nonveteran usually based his claim on greater seniority.

Most of the cases in which the veterans were the grievants involved the claim to promotion to jobs filled while they were in military service, by virtue of their

having greater seniority than the nonveterans promoted. In one case, however, a nonveteran with less seniority than a veteran whose length of service included time spent in military service claimed the right to a promotion based on his ability and willingness to do the work.

The cases involving the laying off of women hired during the war period have already been mentioned. These employees, claiming that they were covered by the seniority provisions of the agreement, felt that their seniority rights had been violated when they were laid off and men with allegedly less seniority were retained.

Another group of grievances involved the union's request for posting and publishing of pertinent seniority data, and for consultation with the union in seniority cases. In one case the union requested such consultation to be held prior to the company adopting "week-about" scheduling,³ because senior men felt that they had been adversely affected by the scheduling.

Discipline

The right to discharge, suspend, or otherwise discipline an employee for just cause was guaranteed to management under the terms of the agreements in effect since 1942. "Just cause" for disciplinary action was not defined in any of the agreements except with reference to the strike prohibition provisions, the violation of which specifically gave the company the right to suspend and later to discharge.

Disciplinary action of the company was the cause of 89 disputes brought before arbitrators (table 2). In more than a fifth of the discipline grievances, charges of negligence were cited. In another fifth of the cases, insubordination or violation of company rules was charged. Poor workmanship and violation of the no-strike provisions were the causes of disciplinary action in slightly less than a fifth of the cases.

Discharge, the most severe disciplinary action that the company could impose upon an employee, was challenged as unjust and improper in 17 of the 89 cases. Demotion, less severe than discharge but a more severe disciplinary action than sus-

pension, was contested as unfair in only six of the grievances. Suspension was involved in the bulk of the remaining disciplinary grievances. The type of penalty imposed on an employee usually depended upon the seriousness of the offense as well as the employee's past record and the surrounding circumstances. As a result, the grievant in some cases, although admitting his guilt, contended that the degree of disciplinary action was not warranted. Usually the grievant, claiming that the disciplinary action was improper or excessive, requested reimbursement of wages lost.

Job Assignment

Job assignment fell within the prerogatives of management. In most of the 14 cases arising in this area (table 2) the employee objected to performing specified duties and requested relief from performing them. In one case, the grievant requested alternatively an adjustment in his wage rate. Generally, claims were made that certain duties exceeded the scope of the employee's job classification or description, were not being performed by others on similar jobs, or were included in his job description but excluded from the job description of other workers.

In a few cases, the employee objected to being required to perform his regular duties when assigned to perform others; to being required to perform outside duties during slack periods; or to having his duties performed by others. Objection by the union to the performance of production and maintenance work by an employee outside of the bargaining unit was the basis of one arbitrated dispute.

Work Force Assignment

No specific clause governing work force assignment was included in any of the agreements with the exception of the clause defining management's rights, which granted management the exclusive right to increase or reduce the working force, as long as other provisions of the agreements were not violated. However, the so-called "local practice" provision included in the 1947 agreement provided that should management change or eliminate any local practice or custom then in effect and not covered by any provision of the agreement, the employee affected by such change could seek recourse, if warranted, through the regular grievance procedure.

³ An arrangement under which, during a period of temporary work shortage, half the work force was scheduled full-time 1 week and the other half the following week.

Problems dealing with the size of the work force were the cause of 53 disputes reaching arbitration (table 2). Excessive or increased workload, and safety and health measures were the most common reasons cited by the employees in their claims for relief. Loss of earnings, length of relief period (spell-out time), or increased production was cited as justification for requesting an increase in the size of the crew in several disputes.

In about a fourth of these cases, objection was made to the company's reducing the original size of the crew, on the basis that operation changes, change in equipment or in plant, or in the type of work performed, did not warrant a reduction, and that the reduction caused an excessive or burdensome workload and endangered the safety and health of the crew.

Work Schedule

All the agreements required that management attempt to schedule 85 percent of the employees at any plant on a normal workweek of 5 consecutive days. The earlier agreements provided for as much notice of schedule changes as possible; the 1947 agreement specified that weekly work schedules be posted or made known, in accordance with prevailing practices at the respective plants, not later than Friday of each week. Thereafter, changes were permitted only if the cause was beyond the company's control or because of the requirements of the business.

In some of the few disputes over work schedules that required arbitration (table 2) it was claimed that the work schedule of the company was illegal in terms of the agreement. In one of these cases the grievants requested that the schedule be changed to permit them weekends off, particularly Sundays. Another dispute involved a request for a mandatory workweek of Monday to Monday, with the first 5 consecutive days as workdays and the next 2

consecutive days as rest days or premium days if worked. Establishment of rotating shifts was the cause of one grievance.

Bargaining Unit

All the agreements defined the bargaining unit and specified which employees were to be included or excluded from it. They also provided that any questions concerning this clause could be referred to arbitration for final settlement.

Only 5 of the cases studied involved merely the question of whether or not a job was included in the bargaining unit or the right of management to remove a job from the bargaining unit (table 2). In one case the union objected to the elimination of a job in the bargaining unit and the creation of a new position outside the bargaining unit with allegedly identical duties. In another, the union objected to management's permitting supervisory employees, outside the bargaining unit, to perform production and maintenance work which caused employees in the bargaining unit a loss in earnings. The question of whether a supervisory job which required working with tools was included in the bargaining unit was the basis for one of the grievances.

Vacation

Grievances involving questions relating to vacations were referred to arbitration infrequently. In the 6 arbitrated cases, no single grievance was outstanding. In 2 cases, the dispute concerned an employee's eligibility for a paid vacation. In one of these, the employee claimed that his absence for virtually an entire year due to illness should not deprive him of a paid vacation. One grievance occurred when a resigning employee maintained that he was entitled to vacation pay since he had completed the necessary work and service requirements for it. In another instance, the employee felt he should have received 48 hours' vacation pay instead of 40 because parts of the plant were on a 48-hour schedule during his vacation period.

PART II — DISCIPLINE AND DISCHARGE

Orderly plant operation based on proper behavior and work performance of the employees is essential to efficient production. Management's duty to conduct such an orderly organization requires authority to impose discipline for a breach of good behavior or work performance.

Bethlehem's agreements with the Steelworkers reserved to the company the right to discipline and discharge its workers for cause; at the same time the agreements safeguarded certain rights of the employees. Article XIII¹ of the contracts read as follows:

The management of the plants and works, . . . including the . . . suspending, discharging or otherwise disciplining of employees, . . . are the exclusive functions of the management; provided, however, that in the exercise of such functions the management shall observe the provisions of this agreement and shall not discriminate against any employee or applicant for employment because of his membership in or lawful activity on behalf of the union.

Employee Actions Which Justified Penalties

Causes for disciplinary action, except for illegal strike activity were not enumerated in the agreements. An analysis of the arbitration decisions revealed a wide variety of employee actions which have been upheld as "just cause" for discipline. For purpose of analysis, the disciplined actions were classified into four categories: Improper work performance, improper job attitudes, improper personal conduct, and union activity in violation of agreement.

Improper Work Performance

The right of the employer to expect a fair day's work in return for fair wages generally carries with it the right to penalize

when it becomes certain that work is inadequately or improperly performed. Inability or unwillingness to do the job properly has been held by the arbitrators in a number of Bethlehem cases to be justification for penalties.

Disputes involving demotions for incompetence in the technical performance of the job were few among those arbitrated. Several cases of discipline of workers in more responsible jobs were based on poor judgment or lack of leadership qualities of the incumbents. Intentionally limiting production was another cause for penalty. Most of the cases relating to work performance were those in which negligence or lack of "due care" on the part of the worker were alleged to have been responsible for damage.

Improper Job Attitudes

Several of the Bethlehem arbitration cases involved employee actions which may be grouped as "improper attitudes toward the job." Irresponsibility, evidenced in horseplay which endangered fellow workmen, was cause for discharge. Refusal to perform a reasonable assignment and refusal to work overtime in an emergency were other reasons for discipline. A relatively large number of cases involved actions classed as "insubordination," which ranged from refusing to obey specific orders to arguing with supervisors. Irregular attendance without justifiable explanation has been accepted as a valid reason for discipline. Falsifying records relating to the job also has been held to justify disciplinary measures.

Improper Personal Conduct

Company authority over personal conduct is generally limited to employee behavior during working hours and to those actions which affect general morale and discipline. Obviously, fighting on company property cannot be tolerated, and the participants may be punished. Abusive language which may affect plant discipline has also been considered by arbitrators as cause for discipline.

Deliberate and repeated infractions of the rules of good conduct have been held by the Bethlehem arbitrators to warrant punishment. The abuse of freedom of speech, for instance, as in the case of an individual who made himself obnoxious to his fellow workers, was considered justification for penalty.

¹ Contract clause numbers applicable to the cases cited are those of the 1945 and 1947 contracts, covering most of the cases reviewed. Numeration was slightly different in the 1942 contract but the clauses themselves were substantially similar.

Union Activity in Violation of Agreement

Bethlehem's agreements with the union provided: "No employee may engage in union activity on the property of the company in any manner which shall interfere with production or engage in any union activity on company time." In several Bethlehem cases involving such actions the right of the company to discipline was upheld.

When employees engaged in illegal strike activity, the contracts gave the company the right to discharge. Arbitrators upheld this company right in a number of cases.

Rights and Responsibilities of the Parties

Present-day employer-employee relationships are based on a pattern of rights and responsibilities beyond those required by the law. Thus, in union-management situations, management's right to discipline is typically restricted to actions taken for "just cause" and may not be exercised in an arbitrary manner. Article XI of the Bethlehem contracts provided a means, through impartial arbitration, for employees to appeal what they considered unjust or discriminatory disciplinary treatment after other steps in the grievance procedure had been exhausted.

Management Prerogatives and Responsibilities

Standards of penalty imposition.—The opinion of the arbitrators in the Bethlehem cases on management's right to discipline has been clearly expressed. As one arbitrator put it, ". . . it is clear that management ordinarily has the exclusive right to decide on the disciplining of employees. Though its decisions may be challenged in arbitration, the burden is on the union to prove that the discipline imposed was arbitrary, unreasonable, discriminatory or a contract violation."

The scope and limitations of management's rights in imposing penalties was commented on by the arbitrator in another case. In his words:

An elaborate and apparently fair and successful procedure has been developed to cover discharges in order to protect the rights not only of the man but also the company. By this procedure a chain of evidence is established prior to discharge. In this way the employee is warned regarding the attitude of management toward him. Since any one of these

warnings can be challenged by the employee, he may through this procedure protect his rights. Similarly the rights of management are fully protected since failure to successfully challenge a discipline is very strong presumption of guilt.

These observations are not intended to imply that management may not have the right to demote, even without prior warning, if the situation fully justifies it. In such a case, it is believed that the company must show that the degree of personal responsibility would be quite high or that some physical or mental impairment had occurred which disqualified the man thereafter.

In the exercise of its authority to discipline employees, management must observe certain proprieties. Arbitrators have held, for example, that discipline may not be imposed where the employee had no warning of, or could not be expected to have knowledge of, the consequences of his wrongful action.

In one case the grievant was discharged for the repeated infraction of the "no smoking" rule in the plant. The union argued that the rule was frequently violated and fire hazards were not serious. The facts of the case indicated that the danger was real. There was no question of knowledge of the rule; signs were conspicuously posted, and penalties for infraction were posted on the bulletin board—suspension for the first two violations; and discharge for the third. A large number of men had received penalties for first and second offenses but the grievant was the first employee to be discharged. Actually, the grievant had been caught in his fifth violation, having been penalized for the third and fourth offenses without being discharged. In upholding the discharge the arbitrator stated, "The rules have been formalized and known for years; they established the succession of penalties for successive violations; Mr. H certainly knew what might be involved for him since his narrow escape in 1945. I see, accordingly, no basis for intervention between him and the known consequences of his own breaches of the rules . . ."

Lax enforcement of rules had a bearing on the penalty where violations were frequent and unpunished. In one case an employee left the plant, without permission, to engage in union activity in a neighboring warehouse. Since the prohibition against leaving the plant without permission had been enforced only casually the arbitrator ruled that

a verbal warning would be more appropriate than suspension. Discipline for the improper union activity was held to be appropriate.

Rules need not be formally stated and posted if the employee is expected to know them because of customary practice. In one of the cases reviewed, an employee refused an assignment which he considered unjust and asked his foreman for his time card, indicating he wanted to go home. The foreman tried to dissuade him but, failing to do so, signed the time card and the employee left the shop. He was suspended for 2 days when he reported for work the next scheduled workday. In his appeal, the employee indicated that he considered the fact that the foreman signed his card as permission to go home. At no time did the foreman warn him of penalties. But the arbitrator did not consider that explicit warning of penalty for walking off the job was necessary. "Certainly customary practice in this matter . . . establishes for every employee at least a fore-knowledge that he does not return to work from such a walk-off in good standing."

At the same time it was recognized that it may be difficult for an employee to have knowledge of an alleged wrong-doing if previous practice had been condoned, unless the employee was properly notified. This principle was recognized in a case where an employee who was not aware of a new ruling was not penalized for the accumulation of "banks" (incentive work not turned in).

Management's right to discipline was further restricted, on the basis of decisions in the cases under review, by the requirement that the penalty imposed must be fair. The penalty not only must bear a reasonable relationship to the offense, it was held, but must be imposed in like manner upon all employees without favoritism or discrimination.

Discrimination between workers was the basis for the mitigation of penalty in the case of 2 employees who had 42 minutes pay deducted for quitting early and were suspended for 3 days for being away from the work area without authorization, both penalties applying to the same period of time. At the same time several other employees also had 42 minutes pay deducted for stopping work before official quitting time. The arbitrator found that the time the penalized employees were away from the job was relatively short and ordinarily would not be noticed. "The difference between the offense of S and S, who dawdled five or ten minutes

away from the work area, and the other employees who were penalized by a 42-minute deduction for dawdling on the job, is not great enough to justify the rather stringent extra penalty."

Another aggrieved employee, S, was suspended for 6 days for falsifying his daily timesheet for September 12 by reporting 24 center sills punched, which were not punched on that day, although he was warned on September 14 that this practice was a violation of the rules. He was suspended for the false report of September 12 when he failed to report on his timesheet for September 18, six center sills which he punched that day. The penalty against S's helper for his false report of September 12 was suspended because on that day he had not been notified that the practice was a violation of the rules. The arbitrator declared that at that time S stood in the same position as the Helper and should therefore have been given the same treatment.

Even an employee's past record, while important in judging the severity of the penalty, does not justify different treatment in the plant than would be given other employees. An employee, K, whose previous record was not good, was penalized by being sent home for throwing a cigarette on the floor and then refusing to pick it up. When K reported to work the next morning, he was called into the superintendent's office and asked to promise that if again caught throwing cigarettes on the floor he would pick them up if ordered to do so. K said he would have to think it over and was again sent home. The arbitrator stated that K was justified in feeling that he had been singled out for special treatment. "He presumably paid the consequence of his past improprieties. He is entitled to the same treatment henceforth as all other employees, no more, no less."

Standards of company administration.—The right of management to set the standards for administration of the business was expressly stated in Article XIII of the contracts (p. 11) and was reiterated by the arbitrators. Management set safety rules for the protection of workers and property and established other rules pertaining to production. These were seldom questioned by employees, unless they were involved in infractions. Company rules and policies affecting employees must be made known to the employees, as mentioned earlier. Safety rules were generally posted and no question of knowledge of the rules was ordinarily raised.

Management's right to schedule overtime to meet an emergency snow situation was accepted by the arbitrator without question. Disciplinary action against an employee who refused to accept overtime in the snow emergency was upheld. In another case, where an employee refused to load shells, when his regular job was tied up because of a breakdown, the arbitrator stated that the company had the right to assign workers to other tasks.

Where the supervisor tacitly accepted working arrangements among the men, other than those formally set by management, he must make proper allowance for such team codes in disciplinary actions, it was held. In one case, one of the men was operating a "charge car," although his job was a different one. This was an infraction of the safety rules, but one which had been tolerated in the interest of practical working arrangements. A further violation of the rules was caused by permitting the charge car to move unattended. The arbitrator considered that the second practice deserved a penalty but since the company had tolerated the first infraction of rules, the penalty imposed was considered too severe.

Finally, company orders had to be reasonable if discipline for violation was to be upheld. An arbitrator held that a superintendent's action in canceling an employee's vacation 2 days before it became effective was unreasonable when the request had been made several months previously. Suspension of 2 days when the employee did not show up for work at the date of his scheduled vacation was reversed.

Assignment to appropriate jobs.—The company's right to assign workers to appropriate jobs, implied in Article XIII of the agreements, must be exercised in a fair and nondiscriminatory manner. Several of the Bethlehem arbitration cases indicated such limitation on this prerogative of management.

In the case of an employee who refused an assignment to load shells, which was not his regular job, the arbitrator stated that the right to assign workers is "limited on the one hand by the factor that the company may not, under color of it, violate any provision of the Agreement, nor, on the other hand, use it for discriminatory or other unfair purpose."

In the case of five cranimen who were penalized for refusing to "make a lift," the arbitrator felt that the company was unfair. The incident arose from the fact that

the operator on a certain crane on the "3-to-11" shift had been taken off the job and another employee on that shift had refused to make the lift. Each of the crane operators on the "11-to-7" shift also refused to make the lift, claiming that his immediate job should take precedence. Each man, as a consequence, was sent home. After conferring with the shop steward, however, each operator offered to do the job. In the meantime the lift had been removed by hand. The arbitrator felt that management had created an issue out of proportion to the seriousness of the situation. "Wise management would never have made an issue over a load so light that two or three apprentices were able to move it by hand, particularly in view of the fact that the Cranimen in question were apparently working on an emergency job. To suspend all of a crew for the major part of a turn because each refused to move a single lift of such insignificance certainly gives the appearance that management was going out of its way looking for trouble." The penalty was cut in half.

In a somewhat similar case, an employee refused to assist an Electrical Repairman fixing the motor on the employee's edge planer. He was penalized 1 day's work for going home after refusing the assignment. The employee claimed that he was afraid of electricity and thought his job was going to be changed. The foreman had made no effort to determine the reason for the employee's refusal to perform what he (the foreman) considered a reasonable assignment. In the arbitrator's view, both parties were at fault; he held that the foreman should have made an effort to determine why the assignment was refused.

Employees' Rights and Responsibilities

An employee's rights are, of course, the converse of the company's obligations. He has a right to be forewarned of company standards and penalties. He has a right to be treated like other employees, and to be treated fairly. While the contracts did not specifically mention fair and impartial treatment, the arbitrators' decisions have been based on generally recognized principles of equity.

For instance, in one case the grievant claimed that the way he had been disciplined constituted double penalty. There was no question that a double penalty could not be imposed. The question was whether a double penalty had actually been levied. The facts were established as follows:

Two employees received a 1-day disciplinary suspension for infraction of the company rules, and were told not to report for work the following day which was Thursday. It rained that day, and all employees in the shop were sent home when they reported for work. On the following day, all employees, including the two grievants, reported to work and worked all day. During the day the foreman informed all the employees except the two grievants that they would be permitted to work Saturday to make up the day lost because of rain on Thursday.

The union contended that since the employees had already been penalized by having to stay away on Thursday, denial of work on Saturday constituted a double penalty. The company asserted that the grievants did not, in fact, serve the 1-day suspension which management had intended for their infraction. The arbitrator agreed with the company. "To say that this particular Thursday, as such and irrespective of whether there be work on that day, was the penalty day is far too strained and technical an answer. The true spirit, purpose and understanding of the parties was rather that the grievants be denied 1 day's work, Thursday, if there be work on that day, or if there be none, then another day. That was implied, if not expressed, in the foreman's instructions to the grievants that they not report for work on that Thursday. One day's loss of work was the intended penalty. And until the grievants did serve that penalty by incurring a 1-day loss of work, it cannot, in truth, be said that they satisfied that penalty."

In general the discussion in the previous section which relates to management responsibilities in employee discipline is also applicable to employees' rights in the matter. In addition, the subject of freedom of speech as an employee right deserves mention. When appropriately exercised, it was held, freedom of speech may not be restricted by the employer. In one case an employee was penalized for saying to the superintendent that he was not required to work overtime. The arbitrator reversed the company penalty saying, "The expression of his views in the superintendent's office, no matter how erroneous those views may have been, can hardly be considered a punishable offense."

That liberty of speech in the plant may not be abused, however, has been emphatically held by arbitrators in several other cases. In one case, an employee was discharged by making himself obnoxious to his fellow workers by persistently pressing "anti-religious, anti-clerical and his economic and

political views upon the employees in the department to the point where a highly explosive and dangerous condition prevailed there." The arbitrator's "only interest and concern here," he said, "is as to the effect which the vocal espousal and urgency of these opinions and beliefs may have had upon the employees working with M, their ability to continue to work safely, undisturbed and with full peace of mind, and for Management's part, its ability to continue to carry out its obligations to maintain safe and proper working conditions and efficient operations. . . ."

"If his course of conduct was not a calculated pattern of action intentionally aimed to disrupt the peace, harmony and efficiency in the department, it is, to say the least, a manifestation of a complete and utter disregard of the rights of his co-workers and of his employer. . . . It is sheer presumptuousness on M's part to seek shelter in his constitutional right of free speech."

Similarly, no insubordination, interference with the conduct of the business, or slowdown of production may be encouraged by employees, and such action cannot be justified under cover of freedom of speech.

The worker's responsibility with respect to discipline is, of course, to avoid any action which may be the subject for discipline. He must observe the recognized rules of plant behavior and must perform his job with due care and appropriate competence.

The employee's obligation to perform his job properly was clearly illustrated in the case where an employee was charged with intentional slow and poor work. His performance on the day in question was far below that on previous days. He had been penalized for insubordination the previous day, and the company alleged that he was intentionally doing poor work because of ill-will. The arbitrator rejected the employee's excuses for the deterioration in his work and could find no valid reason for it.

In another case, an employee, when observed quitting early, used abusive language when informed of the time rules. He was later found reading comic books and not attending his job and after that was found sleeping on his job. He had previously been reprimanded for quitting early, and now was suspended for 3 days. In the opinion of the arbitrator, the employee "definitely showed a predisposition to disregard the rule and an intention of not complying with it. His disciplinary suspension cannot, therefore, be disturbed."

The use of abusive language in general was improper use of personal freedom and justified a penalty, the arbitrators have held. In the case of an employee who was suspended from work for 1 week for the use of abusive language in an argument with the foreman, the arbitrator stated, "Except when provocation is so severe as to justify the waiving of individual responsibility, the use of abusive language of such a personal nature by any one, as was admitted in this case, is difficult to excuse. Any other conclusion would lead only to a breakdown in shop discipline and ignoring the grievance procedure."

It was a basic requirement that an employee should use the grievance procedure of the contract to protest when he feels that he has been subjected to unjust discipline. He must not take action in his own way, such as walking off the job. An employee who was a chronic absentee was demoted and then stayed away from his job for 2 weeks. When he returned he pleaded for his old job and was shown leniency by being reinstated. Subsequently, he reverted to his old practice of absenteeism. The umpire could find no legitimate reason for the employee's being away from his job so frequently. The absence of 2 weeks in protest against his demotion was considered by the arbitrator to be completely indefensible. "It was a matter strictly of his own doing. If C felt his demotion was unjustified, his proper course of action was to file a grievance and not leave his job. The purpose of the grievance procedure of the Agreement was to avoid the very thing that C did here."

Union Responsibilities

Union responsibilities with regard to matters of discipline are generally those which relate to union activity in the plant or strike activity in violation of the contract. Union activity must not interfere with production. As company employees, union officers were required not only to observe contract provisions relating to prohibition of strikes but to take affirmative action to avoid such stoppages. Union officials guilty of encouraging illegal strikes may also be subject to union discipline, but this was an internal union matter outside of the authority or jurisdiction of the arbitrator.

Arbitrators have, on a number of occasions, pointed out the responsibility of the union to see that the grievance procedure is used and not the illegal strike. A "sympathetic" walkout was engaged in by the employees of a department over what they considered to be an unfair disciplinary action

involving a fellow worker. The arbitrator's comment was to the effect that "such action can only serve to tear down the very grievance machinery of the Agreement. If employees are to resort to self-help or pressure through 'sympathy' walkouts, what purpose and respect can there be had for the grievance machinery including arbitration, all of which the company and union carefully worked out in the Agreement? Sound labor relations under the Agreement requires employee self-control and their full adherence to the peaceful and orderly disposition of their grievance through the processing of it under the grievance steps of the Agreement."

Article XVII of the agreements between Bethlehem and the union provided that the company may suspend and later discharge any employee who shall

- (a) engage in or in any way encourage or sanction any strike or other action which shall interrupt or interfere with work or production at any of the Plants or Works or
- (b) prevent or attempt to prevent the access of Employees to any of the Plants or Works.

Most of the cases of discipline for union activity involved union officials. These employees, the company has apparently felt, and the arbitrators have expressly stated, have a duty to take positive action where the likelihood of a work stoppage has developed. While participation in an illegal work stoppage by the rank and file union member was generally overlooked by the company, the union officials taking a leading part have frequently been subject to discipline.

In an early case involving the discharge of G, an Assistant Shop Steward, the arbitrator concluded on the basis of his evaluation of the evidence that G had encouraged and sanctioned a work stoppage in violation of the agreement, although it was not established that he had initiated or engaged in it. The union argued that this provision of the agreement must be read in conjunction with one which prohibited the management from exercising its disciplinary powers in such a manner as to discriminate against any employee because of his lawful activity on behalf of the union. To this the arbitrator replied that a work stoppage was not a lawful activity within the meaning of the contract.

The arbitrator elaborated:

The union has pledged itself in this contract to refrain from strikes and work stoppages. This pledge goes to the heart of the contract. Upon its observance the future stability of relations between the company and union depends . . . Viewed in this light, it is clear that the contractual pledge is more than a mere negative agreement to keep 'hands off' when a stoppage threatens. It is an affirmative obligation, binding upon all union officers and representatives, to do their utmost to prevent strikes and stoppages and put a speedy end to them when they occur. . . . G was not discharged because as a union representative he carried out his duty in presenting a grievance to the management; he was discharged because he failed to carry out his duty and by his failure violated the agreement.

In another case, T, a grievance committeeman, was discharged for violating Article XVII of the agreement in that "he engaged in, encouraged and sanctioned" a work stoppage. The stoppage involved more than half the work force of the department.

When T arrived at his machine on the day of the walkout, he found a number of the men discussing certain extra or unscheduled size changes which were to be made. Without stopping to change into his working clothes he proceeded to try to obtain an "explanation" from various supervisory officials for these "excessive" size changes. T and the chairman of the grievance committee conferred with the superintendent, after which T went back to his work area where the other employees were congregated. After some discussion in the area, the wire drawing machines began to shut down. The foreman and later the superintendent asked the grievance committee chairman to try to get the men to return to work, which he did both times. Some employees returned, but most of them did not, and the walkout continued.

The arbitrator found that the stoppage was definitely attributable to T by his action in setting the spark for the walkout and by his seeking, not an "explanation," but a change in operations. ". . . his action constitutes a bold, open defiance of the grievance adjustment procedure of the Agreement and a resort to force and self-help in violation of the no-strike provisions of Article XVII. It then becomes mandatory upon the umpire to

sustain the discharge." The fact that the employee was a grievance committee member gave him no liberty to do what he did. "An employee is not relieved of his duty and obligation to live up to the Agreement by his appointment to a union office . . . On the contrary, he assumes an even greater responsibility by his acceptance of a union office, a responsibility that he exert every effort to secure employee adherence to the grievance procedure of the Agreement for the disposition of a grievance and not to foment, incite, and induce a strike or work stoppage as did T in the instant case."

In another case a work stoppage occurred after two employees were sent home for allegedly slowing down their wire drawing machines. The company charged that shop steward B, who left the plant shortly after these two workers, had signalled to them, thus contributing to the slow-down and the subsequent walkout. B claimed that he left the plant to call the local union president about the stoppage which appeared to be developing, but admitted he was in the group congregated at the plant gate for the next few hours. He denied that he took any action or otherwise induced or encouraged the day-turn men not to report for work but, on the contrary, stayed to see that the stoppage did not spread. He was new as a shop steward, he said, and may not have fully performed his duties for that reason.

The arbitrator ruled against him. "The evidence may not be altogether clear and certain of overt affirmative acts on his part of inducing or encouraging this regrettable work stoppage or of extending and expanding it into the day turn. But, if there be no specific, concrete evidence of such direct malfeasance, there most certainly is ample proof of gross non-feasance on his part. The role and duties which the office of Shop Steward place upon B in the particular situation were not so complex but that he should not have known them and could have fulfilled them far more efficiently than he did . . . His standing near the gate with the group, some of whom were hailing other employees, could have had but one effect under those circumstances. It was to give his silent approval of and sanction to the stoppage. Being the Shop Steward, such sanction and approval was the inevitable effect of his presence . . ."

Selected Standards of Job Performance

The most frequent types of discipline cases going to arbitration related to the

charge of improper work performance. Such cases covered negligence, incompetence, or deliberate slowdown of production. Almost half of the discipline cases arbitrated were related to some phase of work performance, with charges of negligence accounting for almost one-quarter of the total.

Negligence

The basic principle of employee negligence for which discipline could be imposed was that the employee had not exercised "due care" in the performance of his job. "Due care" was best described as that type of attention and performance which a reasonable and prudent worker would give to the job in the circumstances.

A typical case of alleged negligence involved an employee, Z, who stopped his machine, a 60-inch lathe, and left to attend to personal needs. The machine was engaged in turning a roll to varying diameter sizes. When he left the machine it was nearly finished with one diameter, an inch or so from the shoulder of the next larger diameter. When Z returned, the machine was again in operation, the cutting tool going beyond the first diameter and into the second one, causing expensive damage. Evidently the control lever did not stop the machine with absolute certainty. The company charged that Z should have made sure that the control was in a position where the machine would stay stopped, or he should have thrown the master switch when leaving the machine.

The umpire did not agree with the company that Z should have used the master switch or disengaged the feed. "It must be assumed that this lever control instrument which Z used was placed by management on the machine so that these other more extreme measures would not have to be resorted to. A reasonable, prudent man in Z's circumstances would have done just what he did—use the control, set the lever at the 'Stop' area, and when the machine stopped, assumed that it would stay that way." The question of knowledge of the defect could not be blamed on Z since the evidence showed he had reported the faulty condition of the control before the accident, and supervision had sent a man to inspect and repair. He had every reason to assume that the condition had been remedied.

The degree of negligence in the particular circumstances of the incidents involved was, of course, considered. In one case the employee, M, was suspended for overcutting a main cylinder on which he was

performing a boring operation. The union claimed the machine was old, not in top condition, and difficult to control, having a milling and not a boring head. M had never operated such a machine and reminded the foreman of this, but was told to go ahead. After the machine started he noticed that the head had shifted and the tool was digging in. He stopped the machine and notified the foreman.

The arbitrator's opinion was that he "finds himself unable to conclude that the overcutting was entirely chargeable to negligence on M's part. He sees far too many other factors then existing which could have contributed in whole or in part, to the work not being right. This includes the size of the product, the fact that it was, at least, a relatively new job for this machine, the rather make-shift nature of the head for the size of the job, and the age and condition of the machine. Any one or more of these elements could well have been a contributing, if not a complete cause of the mishap. M might have been clearer in reporting to his foreman the difficulties he encountered. Be that as it may, the fact still remains that it cannot be concluded with certainty that the overcutting was due solely to negligence by M." In the light of all these circumstances the umpire felt that a warning would have been the fair disciplinary procedure, rather than suspension.

Not only the physical circumstances of machine and surroundings were considered, but also the age and physical condition of the workers. In one case the company charged negligence because an employee, B, did not stop a lift in time to avoid a serious accident. "It must be recognized," the arbitrator said, "that our reflexes do not react with equal rapidity in all of us. What may constitute prompt stopping of the roller line for a much younger man may not be so with B. The standard of due care to be used must be one that takes into consideration the age and condition of the man involved and all the surrounding circumstances. In this connection, the umpire is convinced that B did not ignore N's signals. He believes it was rather one of mistake or misunderstanding and that once B grasped the full meaning of the situation, and with it, saw that the flag was up, he stopped the line as promptly as he could. It should not be overlooked that everything occurred in a matter of minutes."

Negligence meriting discipline need not be premised exclusively on direct responsibility, as long as it contributed to causing the damage, the arbitrator in another Bethlehem case held. Even when another employ-

ee's negligence caused the damage, an employee may be subject to discipline if the damage would have been avoided if he had done his job properly. The case in point involved considerable loss of steel because of a ladle failure. The employee on whose shift the accident occurred had taken over the ladle only a short time before the failure occurred. Both the employee on duty and the one who had been relieved were disciplined, the latter protesting the penalty.

The arbitrator agreed with the company that the employee on the first turn was negligent since the hole in the ladle had evidently developed during his shift and he had not detected it. The fact that the second employee did not examine and detect it did not relieve the first from responsibility. "And as in our law of torts and negligence, our courts do recognize that we may have two joint tortfeasors, each negligent and each, therefore, individually responsible for the accident." The employee on the first turn, who had many years of experience, should have been mindful of the need for careful inspection, the arbitrator stated.

Inability to Perform the Job

While the problem of incompetence may have played a part in many cases, it was rarely singled out as the sole cause for discipline in the cases arbitrated. Charges of discrimination or questions of relative versus absolute ability also were involved. The one or two simple cases of alleged incompetence which were not complicated by the circumstances of the situation were decided on the basis of the facts as the arbitrator saw them.

Counter-charges of personal dislike by supervisors or retaliation for union activity were made in a number of cases of alleged incompetence. Thus, in one case, the employee was demoted to laborer because of "long and continued" poor workmanship, of which the company cited 12 specific instances. The employee had been reprimanded on a number of occasions and once disciplined for the quality of his work. The union countered with the charge that the employee was being demoted because of his activities as a shop steward—that the foreman had indicated his intention to get rid of him, and blamed him for the defective work of others in the department. The arbitrator concluded that the employee's mistakes were relatively minor and appeared to have been the result of sheer carelessness. The company, said the arbitrator, had not taken sufficient previous measures to correct his shortcomings. Since most other employees in the department had

received reprimands similar to those given this employee, he had no way of knowing that his work was worse than the average. Hence demotion, the arbitrator held, was too drastic a penalty.

A group of cases relating to job performance were concerned with inability to perform properly more responsible jobs requiring leadership and judgment. In one case, the employee was demoted from Rigger Leader for alleged "indifference, lack of judgment and safety mindedness," which culminated in an incident where his gang damaged a doorway while moving end trucks. The union contended that no previous disciplinary action had pointed to any shortcomings and hence his present demotion came "out of the blue." The arbitrator, establishing the absence of previous discipline, found the damage which was the immediate cause for the demotion to be "trivial." Furthermore, an analysis of previous incidents failed to disclose any serious enough to justify the penalty imposed. The present incident was apparently due to a failure of one of the other men to carry out an order which the grievant gave. Nevertheless, there was some evidence, the arbitrator found, that the employee was "slipping" in his qualifications as a Rigger Leader, due apparently to his attitude, not his ability. In view of his past good record, the arbitrator felt that he should have been given a disciplinary suspension which would serve as a warning to improve his attitude.

Insubordination

There were two main categories of insubordination that warranted discipline—refusal to obey orders, and abuse of supervisors. The disputes involving discipline for insubordination generally reached arbitration with complicating factors raised by the grievant: e. g., orders were disobeyed because they were considered unreasonable; the supervisors' provocation brought on the abuse.

In a case which may serve as an illustration of the first category, two Molder Helpers were engaged in supplying the Molders with brick. Observing that, in violation of a standing order, they were using new brick when old brick was available, the foreman instructed them to use the old brick. Thereupon, they began to fill a bucket with old brick. However, one of the helpers, K, directed the Cranemen to lift the bucket containing the new brick to the scaffold after the foreman had left the scene. The general foreman observed the new brick being used and was told upon inquiry that the men had

been warned against using it. He approached the area and requested the second helper, Z, to remove the new brick from the scaffold, which he refused to do. Both men were suspended for refusing to obey orders. The arbitrator upheld the suspension.

In the second group of cases the act of insubordination involved an employee's argument with his supervisor and the use of abusive language in the heat of argument.

One employee was discharged for insubordination involving the use of abusive language to the foreman. The employee, B, a Plant Zone Committeeman and Shop Steward, fell into an argument with the general foreman while presenting certain grievances to him. The case became complicated when, as a result of the employee's suspension, a work stoppage occurred in the plant. Although the company recited a number of previous incidents, the immediate cause for the discharge of B, which followed the suspension, was the argument mentioned above. Said the arbitrator, "Review of all the evidence and testimony on both sides convinces the umpire beyond any reasonable doubt that B's conduct as a Shop Steward and Committeeman leaves much to be desired. It is not incumbent on a Steward to go to management on bended knee and plead as a supplicant. A certain amount of aggressiveness and forthrightness is desirable on both sides of the table. However, when that aggressiveness breaks over all reasonable bounds and becomes intimidation and abuse, the Steward is not only insulting management; he is misrepresenting the Union . . ." The arbitrator ordered the employee reinstated provided the union accepted as a condition of his reinstatement that he was not to serve as a union representative for 6 months.

A second case of insubordination involving abusive language, where the employee said he "swore back at the foreman who was swearing at him . . ." had considerably broader implications, as the entire problem of the authority of foremen seemed involved. In fact, the union based its main argument on the need of "combatting possible foreman dictatorship." The employee, operating an engine on the floor of the plant, came upon a stalled charging machine on his tracks in front of a furnace, where an electrician was working on it. The employee demanded right of way for his engine at the time when the furnace was about ready to be tapped, although he later testified he was not aware of this or he would not have insisted on passing. The foreman apparently told the employee to stop, since he could not expect to cross when a

furnace was about to be tapped. The arbitrator, ruling in favor of the company, concluded that under the stress of the situation the foreman might have become impatient when J persisted in coming on the floor. "Even if he expressed this impatience in something less than Chesterfieldian language, or even in something more than the usually purple prose of angry men, the explosion does not pass beyond the familiar reaction patterns of steel men at work together. When H ordered him to stay off, in whatever language or by whatever gesture, he should have guessed the order had good mill reasons . . . An employee does not abuse a foreman for long minutes on end before his crews gathered about him to tap a heat. . . . His whole behavior, in refusing to keep off the floor when ordered so to do by proper mill authority and then abusively addressing that authority in an exchange that at least originated in his own insistence upon 'right of way' seems just cause for his discipline."

Other Problems in Discipline Cases

Purpose of Discipline

Arbitrators tend to view discipline in industry as having the same purpose as enlightened punishment in society; that is, it is not punishment for its own sake, but is used to correct the individual's shortcomings and to act as a preventive so that others do not commit the same acts. As the arbitrators stated in one case ". . . it is coming to be recognized as a basic principle in union-management relations that the primary purpose of disciplinary action is to correct the employee's shortcomings, if possible, rather than to inflict punishment. Discharge (or its equivalent) should be resorted to only when other appropriate measures fail. An exception must be recognized, of course, in the case of offenses that are in themselves sufficiently serious to merit discharge without a specific prior warning."

A somewhat different emphasis on the purpose of discipline was given by another arbitrator: ". . . all discipline of continuing employees, like S, possesses a twofold purpose. It is not only punitive in terms of a past offense but also preventive in terms of a spur toward more careful and responsible shop performance and behavior in the future. That is why so much weight is frequently placed upon an employee's general record when assessment of discipline upon him for a given offense is under consideration."

Considerations for Fixing Penalty

The considerations which the company should take into account, the arbitrators have stated, are in general those which a court judge would use in sentencing an offender. Factors which the Bethlehem arbitrators often mentioned are discussed below:

Past record of the worker.—A good worker who made an occasional misstep was entitled to have his past good record taken into account. This was probably the most frequent consideration in setting the degree of the penalty. Undoubtedly, it was taken into account in most of the cases although not always expressed. The following quotations from arbitrator's decisions indicate the consideration given the worker's past record:

. . . his record contains no similar prior errors. In view of his loyal and devoted service, he would seem certainly to merit a chance of showing that April 8, 1947, will mark his last as well as his first failure of this kind in his responsibility as a roller.

* * *

F should be given another chance and if he were to be returned to his old job which he has held down so satisfactorily these many years, it is safe to anticipate that he would give no further cause for complaint.

Seriousness of the charge.—The seriousness of the wrongful act was one of the considerations in fixing the degree of penalty. Personal misconduct, such as fighting, justified discharge, the arbitrators have held. Falsifying records relating to the job has likewise been recognized as a serious offense. Demotion was usually the penalty for the more serious types of offenses related to job performance, and suspension was the penalty for most other offenses.

Amount of damage.—In cases of negligence, severity of the penalty was usually judged in relation to the extent of damage caused. The amount of steel lost as a result of negligence, for example, was an objective measure of the number of days suspension which could be imposed.

Customary practices.—The amount of penalty may be based on what the company has established as the practice in similar cases. In one case where the grievant was protesting a 5-day suspension for negligence resulting in the loss of 110 tons of molten steel, the arbitrator asked, "Was the penalty unduly severe?" His answer was, "The company's policy in such cases as this has been to vary the penalty according to the amount of steel lost. Men have been given a 1-day suspension for a loss of as little as 400 to 600 pounds. In view of this practice, a 5-day suspension for a loss of 110 tons is not unduly severe."

Reasonableness of the penalty.—It was generally accepted that the punishment must not be excessive in relation to the misconduct. When the penalty appeared to be greater than warranted, arbitrators have reduced it. In some cases the penalty was reduced in the better interest of industrial relations.

Other considerations.—When the surrounding conditions contributed to the employee's wrongful action, arbitrators have taken such mitigating circumstances into account and have reduced the penalty. As previously indicated, the principle that employees must be appropriately warned was taken into account; where an employee had been unaware that his actions were subject to penalty, the arbitrators have lessened or set aside the penalty. Although one employee was not to be penalized more severely than another for a similar type of offense, past performance and the amount of damage caused were taken into consideration in assessing penalties.

PART III — SENIORITY

Preference in promotion, downgrading, layoff, and recall by order of seniority (length of service) is based on the principle that the individual with the longer service in the firm merits the greater reward and job protection. Agreements between union and management formally provide for seniority rights.

Application of a straight seniority rule, whereby length of service always governs, is the simplest procedure. It rules out questions of personal bias or favoritism which may arise under contract clauses in which relative ability or other factors have to be considered along with seniority. It poses fewer problems of interpretation. However, straight seniority is mechanical in operation and may result in the promotion or retention of less qualified employees.

Bethlehem's contracts with the United Steelworkers (CIO) recognized a principle of seniority limited by the factors of ability and physical fitness. The contract clause (Article X, Section 1 of the 1945 and 1947 Agreements) read as follows:¹

In the promotion of Employees to nonsupervisory positions and for the purpose of layoffs in connection with the decreasing of the working force and of the recalling to work of men so laid off, the following factors shall be considered, and if factors (b) and (c) are relatively equal, length of continuous service shall govern:

(a) Length of continuous service in the applicable unit determined as provided in Section 2 of this Article;

(b) Ability to perform the work; and

(c) Physical fitness.

The desirability of some restriction on seniority rules was expressed by the arbitrator in one of the Bethlehem promotion cases as follows:

¹ The 1942 Agreement contained an additional provision in the seniority clause that family hardship resulting from layoff would be considered in individual cases by mutual agreement between the company and the Grievance Committee.

The provisions as found in the Agreement represent a sensible working compromise. An extreme union position would be imposition of straight seniority. An extreme employer position would be promotion based only on ability. Without attributing to the parties advocacy of either position, it is manifest that the provisions, as found, represent a consensus that, generally speaking, length of service shall be rewarded with opportunity for promotion, and that the Company shall not be bound solely by that in cases where ability and physical fitness are not relatively equal.

The provisions as stated here assure to the Company maintenance of efficient operation, so that mere length of time will not compel promotion to superior jobs. At the same time, the worker is protected, in that his length of service will be recognized initially when promotions are considered.

General Interpretation of the Seniority Clause

The application and interpretation of the Bethlehem seniority clause by different arbitrators were not uniform. The differences have been largely matters of emphasis on the importance of seniority as contrasted with ability and physical fitness and have developed out of the language of the provision and the relatively large areas of judgment established thereby.

Length of service was the factor given the greater emphasis by one of the arbitrators: "Whichever way the conditions be stated, it is clear that the starting point for promotion is length of service. The other two factors become viable only subsequently. In effect, they serve as the basis for nondecisiveness of length of service. They are thus exceptions to what seems to have been the intent of the parties, to wit, that in the absence of these exceptions, length of service shall govern."

On the other hand, ability and physical fitness were the more important factors in the opinion of another umpire: "Only if two candidates for a promotional vacancy

possess ability to perform its work and physical fitness that can be deemed 'relatively equal' does the man with longer continuous service acquire title to the job. The factors of ability and fitness, accordingly must be given first consideration. . . ."

There was some agreement among the arbitrators that the relative importance of ability as a factor will vary, depending on the nature and skill of the job. One arbitrator commented: "Thus where the vacant job is an unskilled or semiskilled one, some of the elements of the ability factor such as training, past experience and the like, might well have less force and effect than where the vacant job is a highly skilled one. . . ." As stated in another case: "In lower rated jobs seniority may be almost the controlling factor, but for jobs of this type (first helper) management's appraisal of ability must be given considerable weight. . . ."

Interpretation of "Relative Ability"

In the application of the seniority clause, the principal issues reaching the arbitrators centered about the interpretation of "relative ability" in the various circumstances. The measurement of length of service presented no special problem (aside from the question of seniority units), because of the availability of the company's employment records, and the matter of physical fitness, which was rarely an issue, could usually be decided on the basis of medical evidence. But the determination of "relative ability" involved the evaluation of the abilities of two or more individuals for a particular job. For this, there were seldom any objective measures which could be used, and subjective comparisons were not conclusive.

According to the contracts, ability and physical fitness must be "relatively equal" before length of service becomes the sole deciding factor. What does "relatively equal" mean? Various decisions of the Bethlehem arbitrators have defined and narrowed the meaning of the phrase.

Absolute equality, it was held, is not necessary. As pointed out by one of the arbitrators: "The words are 'relatively equal.' Is it not clear then that the parties have in mind some degree of inequality, the mere existence of which will not suffice to compel disregarding length of service?"

Average ability is not sufficient where the junior employee has demonstrable greater ability. "If the particular employee

who though junior in length of service, is above average, the standard for comparison is then fixed at that above-average point, and if the complainant does not reach that relative above-average ability, his claim must fail."

Ability just adequate to do the job, it was held, is not enough. ". . . it is obviously not enough to show that the senior employee has merely qualifying ability . . . i. e., that he can perform the minimum job requirements satisfactorily. If that is the extent of the senior employee's ability and the junior employee has demonstrated ability that can be classified as superior or excellent, he can be promoted in preference to the senior employee. If the junior employee has ability that can be classified as only average, then he can be given preference only if the senior employee has glaring deficiencies."

Differences in ability must be substantial and minor differences are not sufficient to override greater length of service. As expressed by one of the arbitrators: "We thus arrive at the conclusion that mere ability to satisfy the minimum requirements of the job is not enough to compel observance of strict seniority. On the other hand, minor differences in ability or physical fitness are not enough to justify departure from the order of seniority."

The ability in question must be in existence at the time of the promotion. Capability of learning is not sufficient and the arbitrators have held in a large number of cases that the company has no contractual obligation to offer the senior employee a trial period. Thus, to give an illustration, a veteran was passed over for promotion even though he had greater seniority, counting his military service. The union claimed that the veteran could perform the higher-rated job, even though he had never worked at it. In his decision the arbitrator stated, "Capability in connection with a job is not the same as ability to perform the work. It does not give a man a claim to a job under Article X. He must have demonstrated his ability to perform the work, either by having successfully worked on the job or upon one so closely similar that his ability cannot be questioned. Neither of these tests have been satisfied in this case."

In another case, an employee with 15 years of seniority was passed over in promotion in favor of one with only about 1 year of seniority. The union disputed the company's claim of superior ability on the

part of the junior man and insisted that the senior man should be given a trial period on the higher rated job. "(the union) does not argue," said the arbitrator, "that such a trial period is required by the Agreement, but it contends that this is the only way that the Company could accurately judge S's ability. I am unable to accept this contention. The Company testified that the Union proposed such trial periods in contract negotiations and the proposal was rejected. The Umpire obviously has no authority to write into the Agreement a provision that was discussed and rejected in collective bargaining negotiations."

Ability acquired outside the seniority unit may be taken into consideration. In a case where an employee was demoted from Annealer A to Annealer B while another with less continuous service was retained as an Annealer A, the junior man was found to have greater ability because of previous experience as an Annealer in another department. In commenting on experience outside the unit the arbitrator said, "The Umpire notes that L's greater experience, training and ability for the Annealer A job over that of M did derive in some large measure from work outside the seniority unit. Although service outside of the bargaining unit may not count for unit length of service purposes, it may come into play in considering the relative ability factor. Ability is ability regardless where it be derived from. . . ."

The ability which an employee must demonstrate is the ability applicable to the particular job. Where a job is unskilled and requires no particular ability, possession of outstanding ability in other directions is not enough to override seniority. In a case of this nature, the arbitrator stated, ". . . The Company admitted that the Rougher Helper's job requires but little skill and ability, and it did not demonstrate that L's greater mill experience and his ability on the Assistant Roller's job would give him a substantial advantage over C in the performance of the duties of the Rougher Helper. Since it was not demonstrated that L has substantially greater ability for the job in question than C, it is necessary to conclude that the job should have gone to C on the basis of length of service. . . ."

Ability to perform the work pertains to all the requirements of the job and not just parts of it. In this connection, physical fitness may be a determining factor. Thus, in one case a Laborer was laid off because he refused to do the heavier jobs, alleging a kidney ailment. In sustaining the

layoff, the arbitrator stated: ". . . There is no obligation upon the Company to keep an employee at work who can do only selected and limited work when it is able to retain in his place a worker who has no physical disabilities and can thus do all the work rightfully expected of him. . . ."

Measurement of Ability

The most frequent and often the most important problem which had to be resolved by the arbitrator was the measurement of "relative ability." While in some cases there were objective measures of ability, there was almost always present a subjective element based on the judgment of other employees or supervisors.

Regardless of the measurement of ability, the burden of proof in seniority cases was on the company. If the senior employee was retained in a layoff or selected for promotion the company had to show that he had ability "relatively" equal to the junior who challenged the action. In the choice of a junior employee, the company had to prove that his ability was substantially greater than that of the senior.

Arbitrators maintained this principle in a number of the Bethlehem cases reviewed. Thus: "It is both reasonable and necessary to require the Company to offer finite and definite proof to support its judgment of the comparative 'ability of two or more candidates for a given job.'" Again: "The burden of proving that an exception (to seniority rights) is called for in a particular case must be assumed by the Company."

One objective but partial measure of relative ability was the possession and performance of a job for a long period without complaint on the part of the company. In one case an employee was downgraded during a reduction in force, while junior men were retained at the higher grade. Since the man had performed the job for more than a year prior to his reduction without warnings or disciplinary action, the arbitrator inferred that the company considered that he did have the ability to perform the job. This in itself would not prove ability "relatively equal" to the others, but the employee was the only one of the group who had been selected, a short time previously, to fill a temporary vacancy requiring higher skill. These facts together, the arbitrator felt, pointed to ability at least as great as that of the others.

For the most part, the determination of relative ability had to be based on the

Employee Rights in Seniority Cases

evaluation of supervisors and fellow employees. This was particularly true in the higher rated jobs where intelligence and judgment as well as manual skill are factors in work performance. In lower rated jobs, where work is routine and is largely measured by the number of units produced or worked on, there was a more objective basis for evaluation of ability.

Management's appraisal of an employee's ability was given considerable weight by the arbitrators. In a decision where two senior employees were passed over, the arbitrator stated: "In each of the above cases the provisions of this decision do not permanently disqualify S and C for promotion to First Helper jobs. However, the Umpire does not intend to upset what appears to be the considered judgment of Management that S now lacks some of the necessary qualifications of skill and independent judgment required for as important a job as regular First Helper. Nor does the Umpire reverse Management's judgment that at least at the date of the hearing C was not yet ready for promotion to a regular First Helper Job. In lower rated jobs seniority may be almost the controlling factor but for jobs of this type Management's appraisal of ability must be given considerable weight. Since this is so it places a heavy responsibility on Management to be impartial and judicial in its weighing of the ability factor in promotion."

In attempting to evaluate the relative abilities of the competing parties, however, arbitrators have considered the appraisal of supervisors as evidence, but not as conclusive. As the arbitrator said in one case: "He (the arbitrator) treats the judgment of these supervisory employees as honest and sincere, but limited only as testimony that he must consider along with all other testimony. Under no circumstances may this premise, that the judgment of supervisory employees be decisive, be accepted."

Hence, there was no single standard by which an employee's ability could be judged in seniority cases. The rule was stated in a promotion case as follows: "The standard of ability for comparative purposes is not a fixed one in all seniority cases. It might well vary from job to job and even between the same jobs. Thus in one seniority case, the standard of ability may be of the highest. In another, it may be marginal. And still in another, it may be in between both. The standard of ability is fixed by the employee whom the Company has preferred over the aggrieved employee with the greater length of continuous service."

Seniority situations generally involve the rights of three parties—the senior and junior employees and the company. Under the Bethlehem agreement the employee with substantially greater ability and physical fitness may be preferred in promotions and layoffs over the senior employee. The company's right to select the best qualified employee was also affected by the seniority clause. On the other hand, if the senior employee had ability and physical fitness "relatively equal" to his junior competitors, he had the right to be selected.

Seniority Rights of Returning Veterans

Veterans returning to their jobs after World War II were involved in problems relating to seniority, out of which grew a number of grievance cases which had to be settled by arbitration. The Selective Service Act guaranteed that if the jobs they had left or those of "like seniority, status and pay," were available, the returning veterans were to be restored to such jobs. Bethlehem's agreement with the union also gave veterans these rights.

The situation was confused, however, when the Director of Selective Service went beyond the wording of the act and issued a ruling that veterans were to be preferred in downgrading and layoff procedures. In the application of this "superseniority" rule, many nonveterans at Bethlehem were displaced by veterans who had less seniority, even after credit for their time on military leave was added to their seniority. A large number of grievances were filed by displaced nonveterans, who complained that their seniority rights as guaranteed them under the agreement had been violated.

Before these grievances reached arbitration, the U.S. Supreme Court ruled (*Fishgold vs. Sullivan Drydock and Repair Corporation*, 328, U.S. 275) that veterans were not entitled to "superseniority" rights. After this decision in May 1946, the company changed its employment practice to conform with the Court's ruling.

The arbitrators, in these veterans cases, held that the company was liable for loss of pay incurred as a result of the application of "superseniority" to returning veterans. There was clearly a contract violation. Even though the company had followed the ruling of the Selective Service Director,

such ruling was not the law. As the arbitrator said, ". . . the Company's plea of not knowing what to do in the welter of confusion is not a legal equitable matter. There is an Anglo-Saxon principle of law in which ignorance of the law is no excuse. It is true that no clear-cut interpretation of the law was available but that does not excuse liability under that law. It is unfortunate that laws are not so written as to exclude the necessity for interpretation, but such a fact does not exclude liability being imposed where such liability can be determined, as in this case."

Another type of seniority situation involving veterans is illustrated in the case of the returning veteran who requested that he replace a nonveteran who had been promoted during the former's military service. The arbitrator argued that if the case had involved nonveterans there would be no basis for the grievance. The veteran's request, said the arbitrator, was ". . . contrary both in spirit and letter to the Selective Service Act and the United States Supreme Court's decision and dictum in the Fishgold case." There is nothing in the act, the arbitrator stated, that grants a veteran the preferred right over the nonveteran that he be promoted to a job which was vacant while he was in service and then filled with a nonveteran employee. Veterans' rights under the act are twofold: "First, he has been afforded job security, i. e., he must be reinstated into the job he left when he went into service. He is thus assured of the return of his former job or one of like seniority, status and pay. He is guaranteed against any loss in that respect. There is then the second phase of his legal rights as a veteran under the act. It is that after such reinstatement to his former job he not lose his 'seniority,' i. e., length of continuous service standing and otherwise enjoy insurance and other benefits available to employees on 'furlough or leave of absence.' Anything beyond these rights as they are set forth in the act cannot derive from the act, and in turn, cannot be claimed thereunder."²

Several cases arising as a result of a returning veteran displacing a senior man involved the rights of junior employees who were "bumped" down the line. Employees

² The 1947 Agreement, which was adopted subsequent to these cases, included a provision in the seniority clause which said that the company would "endeavor, as job vacancies shall become available, to move any employee who shall be reemployed . . . to or toward the job that he might have attained . . . if he had not been absent in such (military) service."

who admittedly were legitimately displaced by senior men protested the displacement of the man at the top which started the chain reaction of "bumping." In the opinion of the arbitrator ". . . seniority can hardly be said to extend beyond the immediate promotion or demotion. Rights are not acquired by seniority in jobs that are two, three, or four times removed from the next step promotion or demotion. For if this were true, every employee would acquire rights through seniority in every other worker's job."

Seniority Rights of Wartime Women Employees

Another group of seniority cases involved a large number of women who were employed by Bethlehem during World War II to fill the jobs left vacant by men who had joined the Armed Forces. After the end of the war, when the men had returned to their jobs, the company terminated the services of those women who did not resign voluntarily or accept work in the tin mill sorting room, which had traditionally employed only women. Eighty-two of the women so terminated filed grievances charging that the company had violated their seniority rights and asking to be reinstated with back pay for the period of their layoff.

In the arbitration hearings, the company contended that the women had been hired on a temporary basis as a wartime expedient and both the union and the individual women concerned were cognizant of the temporary situation. Furthermore, stated the company, women did not have "relatively equal" ability and physical fitness to perform such jobs, which required the strength and stamina of a male work force. The company considered that the employment of these women had been terminated, and that it had no intention of considering them for recall.

In deciding whether or not the women were temporary employees, the arbitrator ruled that the agreement must be applied "regardless of whether or not he feels that the provisions work a hardship on one party to the agreement." Definite limits are placed on the company's right to terminate the job tenure of the employees, said the arbitrator, and seniority, ability to perform the work, and physical fitness must be considered in making layoffs. Nor did the arbitrator consider valid the company's contention that the union and the women involved knew about the temporary status of the war-time jobs.

In ruling on whether or not the women had ability and physical fitness "relatively

equal" to that of the men, the arbitrator rejected the union's contention that the women's capabilities were attested to by the long period in which they held jobs, since the fact that low standards of performance tolerated during the war did not mean that the same level had to be accepted forever thereafter. "Under the present circumstances, the deficiencies of incumbent employees, even if long endured, constitute adequate grounds for dismissal."

The arbitrator ruled that each grievance must be considered on its own merits, weighing the capabilities of each of the grievants against the standards of ability and physical fitness set by the majority of male employees on the particular job. To justify the termination of each of the women, the arbitrator said, the company must be able to prove substantial differences in performance. These women were being discharged, the arbitrator held, not merely laid off, and "since discharge is a much more drastic step than layoff, it is obvious that considerably more substantial differences in ability and physical fitness are required to justify a discharge, particularly when no net reduction in force is contemplated."

Applying the "relatively equal" test to each individual case, the arbitrator granted 25 of the grievances and denied 38, the remainder being withdrawn by the union before the final decision was rendered.

Other Seniority Rights

A number of additional employee rights relating to seniority were pointed out by the arbitrators in the various decisions reviewed. Some of these employee rights are listed below:

The right to a vacancy, the seniority factors being equal, accrues to the man who is available at the time the vacancy occurs. "Availability is an essential and basic element in a promotion, for without it, the seniority provisions of the agreement become meaningless."

An employee may choose to take a layoff rather than be forced to take a downgrading, provided, however, that the employee is not needed in the lower rated job.

The burden is on the company of recalling men from layoff in the proper seniority order.

An employee who quits does not retain any seniority recall rights. "Such rights are reserved only to one whose employee status continues in effect."

Temporary jobs outside the company may be accepted during the period of layoff without affecting the laid-off employees' seniority rights.

An employee with seniority status on leave from his job has a right to return to a particular classification regardless of whether the particular assignment within the classification which he had at the time he left was filled on a temporary or permanent basis.

Other Seniority Problems

Seniority Units

Failure of the union and the company to reach a written agreement with respect to the particular seniority unit relating to the job involved led to a number of grievances which had to be settled by arbitration.

The seniority unit clause of the contract, Article X, Section 2, of the 1947 agreement, provided as follows: "The units within which the seniority rules set forth in this Article shall apply shall be those which have been or shall from time to time be mutually agreed to in writing by the Management's Representative and the Union at the respective Plants and Works."³

In many cases where no written agreement had been made with respect to the seniority unit, the arbitrators decided that past practice must be used to determine the appropriate unit. This past practice rule was based on Article II, Section 3, of the agreement which read, "If the Management at any Plant or Works shall change or eliminate any local practice or custom now in effect at said Plant or Works and not covered by this Agreement, an Employee affected by such change may file a grievance with respect thereto. . . ." The principle was set forth in a case in which the grievant was demoted to a position in another operating unit. This, the umpire found, was in violation of past practice which was for seniority to be applied in each operating unit. In stating the principle of past practice the arbi-

³ Previous contracts did not provide for agreement "in writing" with respect to seniority units.

trator said, ". . . if a seniority unit has by a course of past action by the Company been followed by it with respect to a sufficient number of employees so that with it, a custom or practice has thereby evolved and come into effect, such seniority unit practice or custom must be consistently so pursued by the Company with respect to all of the other employees involved in that unit so established by it, unless and until a change of such established unit is justified and so proved by the Company. . . ."

Pointing to the desirability of having the parties reach a written agreement on the seniority unit, the arbitrator said, "Seniority unit determination should not be left to past practice. To do so is only to invite dispute and disagreement and the hazard that if there be no seniority unit past practice or custom in a particular case, the employees' agreement seniority rights may be prejudiced thereby. . . ."

Seniority was not plantwide, even in the absence of agreed upon seniority units, the arbitrators held. In a case where a new department had been set up and no agreement had been made with respect to the seniority unit a dispute arose over the filling of vacancies. The arbitrator pointed out that in this case past practice could not be used as a guide and that there was "nothing in the Agreement that could possibly be construed to require the application of plant-wide seniority in the absence of agreed-upon seniority units. . . ." In another case, where four employees in Seniority Unit 4 were demoted to Laborers in Seniority Unit 1, and four Laborers in the latter unit were displaced, the latter filed grievances. "Article X, Sections 1 and 2, called for the determination and application of seniority rights 'within' the agreed seniority unit and not on any plant-wide seniority basis, which is essentially what the parties did here. Length of service cannot cut across seniority units," the arbitrator stated.

In several cases the arbitrators have held that past practice with respect to seniority units was no longer effective when units were agreed to in writing. ". . . such local seniority unit practice continues only until a seniority unit has been agreed to in writing by the parties as contemplated by and required by Article X, Section 2. Once they have established such mutually agreed written seniority unit, then such local seniority unit practice merges into the new seniority unit agreement and no longer continues in effect thereafter. . . ."

Posting of Vacancies

Posting of vacancies was required under Section 8, Article X of the 1947 Bethlehem contract which read as follows: "When a vacancy (other than a temporary vacancy) in any job in a seniority unit shall occur which is to be filled by promotion, the Management shall, so far as shall be practicable, post a notice of such vacancy in the department."

Posting was required only for permanent vacancies. Notice could be posted before or after the vacancy was filled. The purpose of posting, the arbitrators have held, was to assist in the administration of the seniority provisions of the contract and to allow for possible complaints. "Its basic purpose and interest is to afford all employees within the seniority unit in which a nontemporary job vacancy occurs ready knowledge of the occurrence of such vacancy so that they may have full opportunity to assert their unit seniority rights to such vacancy. The posting, in and of itself, and without regard to the existence of a job vacancy open to claim by employees in the applicable seniority unit is certainly not the purpose of this Section 8. . . ."

Variations of Seniority Rule for Temporary and New Jobs

In the filling of temporary jobs, length of service was almost always the deciding factor. The 1947 Bethlehem contract clause relating to the filling of temporary vacancies read as follows:⁴ "In the filling of a temporary vacancy within a seniority unit, the Company shall, to the greatest degree that shall be consistent with efficiency of the operation and the safety of Employees, fill the vacancy with the Employee having the greatest continuous length of service in the seniority unit or on the particular turn in such unit in which the vacancy shall occur."

The application of the temporary vacancy rule was illustrated in the case where a temporary vacancy occurred in the position of Motor Inspector. W, with less continuous experience than B, was promoted to the temporary vacancy. B contended that he should have been given the temporary assignment as Motor Inspector in preference to W. Both men were Electrical Repairmen Helpers in the mill.

⁴ There was no specific provision for the filling of temporary vacancies in the previous contracts.

The company argued that the position of Motor Inspector was very important, being responsible for the maintenance of all electrical equipment in an assigned area. Since the position was during the night turn, higher supervision would not be available to provide some assistance to the Motor Inspector in emergencies. Failure to perform properly the job, the company contended, could result in serious delays in production, loss of steel or safety hazards for other employees. Hence, it was essential to assign the best qualified man, W, in order to be "consistent with the efficiency of the operation and the safety of the employees."

In his decision, the arbitrator pointed to the distinction which the contract made between the filling of permanent and temporary vacancies. Ability and physical fitness were the primary criteria to be applied in the case of permanent vacancies, but continuous service was made the primary factor in the filling of temporary vacancies. ". . . length of service may be ignored only in those exceptional cases where the efficiency of the operation or the safety of employees would be endangered by assigning the employee with the longest service. . . . Thus, it is not necessary for the longest service employee to be the most able employee, or even to have ability relatively equal to that of any other contender, in order to be qualified for a temporary assignment. He need have only enough ability to perform the job in question without a substantial reduction in overall efficiency and without the creation of unsafe conditions." In the case reviewed the arbitrator could find no evidence which might establish a reasonable presumption that efficiency might have suffered or that safety hazards might have been created if B were given the temporary assignment instead of W, and B's grievance was granted.

Temporary assignments were to be filled by senior men, however, only insofar

as it was practicable for the company to do so. Thus in a case where an employee was not given a temporary assignment in a higher rated job because there was no temporary replacement available for his job, the arbitrator held the company was not obliged to do so.

Refusal to accept an offered temporary assignment did not affect the promotional status for permanent positions of senior employees. A grievant was passed over for permanent promotion as Craneman in favor of another employee who had refused such temporary assignments. The arbitrator held that refusal of the temporary assignments did not disqualify the successful employee. "There is a clear-cut provision for the filling of temporary vacancies," the arbitrator stated. "Nothing in that provision defines relative rights of employees conditional upon accepting or refusing temporary assignments."

The same seniority rules applied in the filling of newly created jobs. In such cases there was added difficulty in deciding "relative ability" for the senior and junior men because there was no precedent in the progression of jobs. In one case, 6 Assistant Engineers in the Powerhouse Department protested the promotion of 3 junior men to Turbo-Blower Engineers. The union had argued that the company was obligated to give the senior men a trial testing period in these newly created jobs. The company contended, and the arbitrator agreed, that the principal issue was ability to perform. Length of service was of lesser importance since it was not acquired in a position immediately inferior to the job in question, the job having been newly created. On the basis of a review of the background and experience of all the men involved, it appeared to the arbitrator that the men with the greater ability had been selected for the promotion.

PART IV — WAGE RATES AND JOB CLASSIFICATIONS

Procedures for establishing and changing hourly or incentive rates and job classifications, and the circumstances under which disagreements might become subject to arbitration, were fairly specifically stated in the agreements. Interpretation of the contract on these points generally did not present a serious problem for the arbitrators. Rather, the important problems revolved about the establishment of the facts and the application of the contract on the basis of the facts developed. While subjective judgment, to some extent, must always be an element in resolving disputes over job classifications and wage rates, the accumulating experience of the parties provided an increasing number of guides. Nonetheless, the disputes over wage rates and job classifications gave to the arbitrators considerably less scope for defining principles of employer-employee relationships or for applying principles of equity found by experience to be acceptable to both parties than was the case in the types of grievances previously discussed.

Prior to the adoption of the "Agreement on Elimination of Wage Rate Inequities" in 1947, the hourly rate structure in the steel plants of Bethlehem Steel Company was highly complex. Although it did not attempt to cover all wage problems, the 1947 agreement on wage structure worked out with the Steelworkers was an important milestone for industrial relations in the company. Within the area covered by the new plan, notably job classifications and hourly rates, the work of the arbitrators in the cases that arose was generally simplified. Because of this basic change in the method of wage determination, the period prior to 1947 is considered apart from the later period in the analysis that follows. Attention is focused mainly on the arbitration cases arising after the adoption of the more rationalized job and wage structure in 1947.

Wage Grievances, 1942-47

Wage rate inequalities between plants and within plants had long been a problem in the steel industry.¹ Lack of systematic job classification had resulted in a tremendously complicated hourly rate structure. Jobs in the steel industry were extremely diverse

¹ See for example, "The Wage Rationalization Program in United States Steel," by Robert Tilove, Monthly Labor Review, June 1947.

and subject to continuous change because of technological changes in equipment and processes. The variety of incentive wage systems and other methods of wage payment contributed to the complexity of the wage structure. The entire problem was magnified during the war period with the increase in production and employment, change in products, and wage controls.

Grievances relating to intraplant wage inequities, permitted under the 1942 contract, became a serious problem in Bethlehem during the war, as in the steel industry generally. Two methods were provided in the 1942 contract for changing rates to meet specific situations. Article IV, Section 3, provided a procedure for adjusting individual intraplant inequities already in existence. A change in job rate might also be justified under Article V, Section 1, if one of five occurrences changed the content or conditions of the job.

Under the wage inequity provisions (Article IV, Section 3), changes in wage rates might be made for individual jobs "because such wage rate is unreasonably low or unreasonably high" compared with other individual wage rates in effect for similar jobs within the same plant. Employees might initiate a request for a change in rates in such circumstances by following the grievance procedure of the contract. A prescribed procedure was also available for management to initiate a change in individual wage rates by giving the employee involved written notice of the proposed change. If objection was taken by the employee affected, he could use the grievance procedure to protest the change.

Changes in rates as a concomitant of changes in the job situation were covered in Article V. Management might establish a new rate or adjust an existing rate, if thought necessary or desirable, by following prescribed procedure. An employee might initiate a grievance if, because of a change in job content or because management had not complied with the established procedure, he believed his wage rate had become "unreasonable and unfair."

During the decade covered by this study, the greater part of the Bethlehem arbitration cases dealing with wage rates and job classification related to "inequities" under Article IV, Section 3, of the 1942 agreement, or, to a lesser extent, to griev-

ances protesting a lower rate or requesting a higher rate because of changes in job content as permitted by Article V.

The numerous wage rate grievances arising from problems of job and employee classification and the general dissatisfaction resulting from the complicated hourly rate structure in the steel industry added to the difficulties of wage stabilization during World War II. In November 1944, the National War Labor Board directed the company and the union, and other steel companies, to negotiate for the elimination of existing intraplant inequities and a reduction in the number of job classifications.

Having established negotiations for a comprehensive review of the wage rate structure, the company and the union omitted the wage inequity provisions (Article IV, Section 3 of the 1942 agreement) in the 1945 agreement. Individual wage rates were thereby stabilized by the agreement, subject only to changes of the type provided for in Article V of the 1942 agreement, or such changes as might be made pursuant to the Directive Order of the National War Labor Board. The number of wage cases reaching arbitration, and presumably the number of wage grievances, declined during the term of this agreement, freeing the parties for the extensive collaboration and negotiation required in the establishment of the job classification and evaluation program.

The element of judgment in the arbitrators' decisions was much more important in deciding hourly rate disputes under the 1942 and 1945 agreements than in the cases subsequent to the 1947 agreement. Arbitrators in these early Bethlehem cases did not have the benefit of an agreed-upon Manual for Job Classification as a guide and the simplified structure negotiated by the parties in 1947. In interpreting such standards of the contract as "unreasonably" high or low, or "unreasonable and unfair" the arbitrators had little objective guidance apart from the facts of the particular case.

Certain guides were developed by the various arbitrators in these early cases, either as interpretations of the contract or as general matters of equity. The general principles of job evaluation were also available to the arbitrators. The requirement of the contract that the rate shall not be "unreasonably" high or low compared with that of a similar job was interpreted to mean that the difference in rates must be significant. Minor or trivial differences were to

be ignored. A basic principle of wage equity, observed by the arbitrators, was that greater skill and increased effort should yield increased earnings. The job rate should be determined independently of the qualifications of the individual worker then in the job. Comparison of earnings between jobs, the arbitrators held, should be made over a representative period, allowing sufficient time for a proper evaluation of the difference between the rates or earnings. Comparisons should be made with all jobs of similar nature. There must be an approximate "community of tasks and duties" in the jobs compared, but complete equality of jobs was not necessary.

These principles, which guided the arbitrators through the maze of thousands of jobs and job rates during this period, were also implicit in the creation of the job classification plan by Bethlehem and the union.

The 1947 Job Classification Plan

In ordering the rationalization of the wage structure in the steel industry, the National War Labor Board provided certain "guideposts" for the parties. Negotiations were to be directed toward a procedure which would include these requirements: (1) A simple and concise description of each job was to be prepared; (2) jobs were to be placed in proper relationship to each other; (3) classifications were to be reduced to the smallest practical number by grouping those having substantial equivalent content; (4) wage rates for the job classifications were to be established in accordance with the following guides:

(a) The amount of adjustment necessary to eliminate intraplant wage-rate inequities may vary from plant to plant among the various steel companies. The parties could take into account the wage rate relationships existing in comparable plants in the industry.

(b) Maximum increase permissible for any one company shall not exceed an average of 5 cents an hour for all employees covered by the Directive Order.

(c) Increases are to be made solely for the purpose of eliminating intraplant wage rate inequities.

(d) The reduction of an out-of-line wage rate shall not be so applied as to reduce the wages of the present incumbents.

A Steel Commission was set up by the NWLB to assist the steel companies and the union in carrying out the complex rationalization program. The parties entered into studies and negotiations to carry into effect the Board's directive, and continued this project after wage controls were terminated. The task at Bethlehem was completed and the agreement signed in April 1947.

Under the new program, all jobs were classified into 30 job classes with hourly wage increments of 3.5 cents between classes. In the amended contract of 1948 the number of job classes was increased to 32, and wage increases as of the end of 1952 raised the differential in the standard hourly wage rate between the classes to 5.5 cents.

During negotiations preceding the agreement on the wage structure, the parties adopted the Manual for Job Classification of Production and Maintenance Jobs as the standard for classifying jobs. The company prepared job descriptions and classified the various jobs, which were then presented to the union for its endorsement. Disputes over the classification of jobs were brought to the Steel Commission for settlement.

The Manual for Job Classification provided a procedure for classifying jobs by analyzing, and assigning numerical values to, 12 basic factors in the job. The 12 factors were:

1. Preemployment training
2. Employment training and experience
3. Mental skill
4. Manual skill
5. Responsibility for materials
6. Responsibility for tools and equipment
7. Responsibility for operations
8. Responsibility for safety of others
9. Mental effort
10. Physical effort
11. Surroundings
12. Hazards

A numerical value was assigned to each of the above-mentioned factors for each job in accordance with the code de-

scriptions contained in the manual "as applied to the normal requirements and average conditions of the job." The job class to which each job was assigned was determined simply by the sum of the numerical factors, rounded to the nearest whole number (see illustration on next page).

Wage and Classification Grievances, 1947-June 1952

Having reached a settlement on the wage structure, including the proper classification of all employees, the parties agreed, in the 1947 contract, to maintain the level of wages (giving effect to the general wage increase) for the duration of the contract. Grievances alleging a wage inequity were no longer admissible. The wage rate for each job classification was fixed in the contract, and the classification of a particular job might not be changed without a significant change in the content of the job itself. Likewise, incentive rates might be changed only if there was a change in the nature of the job.

Types of occurrences which could be the basis for a change in classification of jobs or incentive rates were listed in Article V, Section 1, of the 1947 agreement, which read as follows:²

The parties thereto recognize that it may become necessary or desirable from time to time at one or more of the Plants or Works that the Management classify new jobs or reclassify existing jobs or adjust then existing incentive wage rates because of (a) the creation of new positions, (b) changes in equipment, (c) changes in manufacturing processes or in methods or standards of manufacture of production, (d) the development of new manufacturing processes or methods, or (e) mechanical improvements made by the Company in the interest of improved methods or products. An existing job

² Article V, Section 1, in the 1947 agreement differed from that section in the 1942 and 1945 contracts in these respects: The first sentence of the earlier contracts read "establish new rates or adjust then existing incentive wage rates," instead of "classify new jobs or reclassify existing jobs or adjust then existing incentive wage rates"; the last clause of the section was not included in the earlier contracts. These changes were desirable after the adoption of the Manual for Job Classification in 1947.

How the point value was determined for each of the factors used in the classification of a particular job is shown below for 1 of the 12 factors—manual skill.

MANUAL SKILL

Consider the Physical or Muscular ability and dexterity required in performing a given job including the use of tools, machines, and equipment.

Code	Job requires ability to:	Numerical classification
A	Use ordinary or heavy tools such as bars, wrenches, shovels, hooks, etc., for performing simple or rough tasks, or where dexterity and pace are not of particular importance. Operate simple on and off switches, valves, and lever controls. Handle ordinary material manually. Use chain or cable slings for simple crane hooking.	Base
B	Use large wrenches, sledges, handtools, and heavy tools at a normal pace for a variety of tasks. Use gauges and small tools in a routine manner. Use torch to perform rough cutting work. Operate variable controls, such as rheostats, and levers, to control movement of machines or passage of material through equipment where jogging, frequent regulation and precision of adjustment is required. Make simple adjustment and repairs to machines and equipment. Make setups to equipment where the use of tools and gauges is simple and routine.	.5
C	Use several handtools or tradesman's tools on assembly work, such as ladle lining, simple carpentry or pipefitting or in making adjustments to machines or equipment where close tolerances are required. Perform simple gas or arc welding. Use hand-cutting torch to burn to precision layout. Set up and operate machine tools for routine facing, drilling, milling, etc. Manipulate controls of complex machines at a rapid pace involving a high degree of coordination. Perform manual tasks such as positioning, assembling, etc., at a steady pace where accuracy and dexterity of high degree are required.	1.0
D	Use tradesman's tools in a wide variety of difficult tasks involving close tolerances. Forge complex shapes without resorting to dies or templates. Finish complex sand molds, cores, etc.	1.5
E	Perform difficult shaping or forming to close tolerances, where precise muscular control and delicate touch are involved, such as making and assembling very small parts, precision instrument repair, etc.	2.0

Source: "Agreement on Elimination of Wage Rate Inequities Including Manual for Job Classification of Production and Maintenance Jobs," Bethlehem Steel Company and United Steelworkers of America, April 11, 1947, pp. 18-19.

shall not be reclassified, however, unless such changes or events shall alter the requirements of such job as to training, skill, responsibility, effort and surroundings to the extent of a whole numerical classification of 1.0 or more.

Under Section 2 of Article V, management could initiate a change in classification by following prescribed procedures when one of the events specified in Article V occurred. The union was to be notified of the proposed change and given an opportunity to accept or reject it. If the new rate was put into effect without union approval, a grievance claim could be initiated in accordance with the usual procedure. Section 3 permitted an employee to initiate a job classification grievance if the requirements of his job had been changed to the extent of a whole numerical classification of 1.0 or more, bringing it into a higher

wage class, by reason of any of the occurrences specified in Section 1.

Section 4 of Article V provided that if, because of any change or event specified in Section 1, management considered it desirable to establish a new incentive rate, the new rate was to be established in accordance with the indicated procedure. An employee could initiate a grievance under Section 5 if he believed that "by reason of any change or other event specified in Section 1 of this Article which shall occur, his incentive wage rate has become unreasonable and unfair. . . ."

Section 6 of Article V declared that the "purpose of the Company's incentive plans and incentive wage rates is to encourage the achievement of maximum production for the mutual benefit of the Employees and the Company." When it was mutually agreed that an existing incentive

plan or incentive wage rate should be changed or a new incentive plan or new incentive wage substituted for an existing plan or rate, management could establish such plan or rate in accordance with prescribed procedure. Where work was not paid for on an incentive basis, management could establish a new incentive plan or new incentive rate when in its opinion the new plan or rate would encourage production. Under Section 7 the company could eliminate an incentive plan when straight-time hourly earnings of the employees affected fell below their standard hourly wage rate.

Thus the role of the arbitrator in wage grievances was substantially circumscribed under the 1947 agreement. The arbitrator could find with a grievant that his job was not properly classified, but the rate for any other classification to which the job might be reassigned was fixed by the agreement. Although the arbitrator could set new incentive rates in cases arising out of changing job content, the agreement specifically withheld this authority from the arbitrator where new incentive rates had been established for a job previously paid on a time-rated basis.

Job Classification Grievances

Two major criteria had to be considered by the arbitrator in determining whether a job classification was to be changed. First, the nature or requirements of a job must have been changed because of the occurrence of one of the five events specified in Article V, Section 1. Secondly, and of more practical significance, the requirements of the job must have been substantially altered by the event. Obviously, if classifications were to be changed, upward or downward, for minor or insubstantial changes a highly unstable wage structure would result. Hence the contract provided that the requirements of the job must have changed to the extent of a whole numerical classification of 1.0 or more, sufficient to bring the job into the next class.

Only a few of the job classification grievances arising under the 1947 agreement satisfied both requirements of the contract and were therefore granted by the arbitrator. In the case selected for illustration, a grievance at Lackawanna was initiated by the union after the company had assigned Job Class 8 for the job of Theisen and Precipitator Operator following the introduction of new equipment into the gas

cleaning division of the blast furnace department. The union claimed that the job should have been placed in Class 11.

New electric precipitators had been added to the existing gas washers which were at the time operated by the Theisen Operators. The duties of operating the precipitators were added to those performed by the Theisen Operator and a new job title "Theisen and Precipitator Operator" was created to encompass both sets of duties.

There was no question raised over management's right to create the new job or its procedure in classifying it. Under Section 1 of Article V management could "classify a new job or reclassify an existing one" when new equipment such as the precipitators was introduced. Management had notified the union of the contemplated change which, being unacceptable, was taken to arbitration. The issue here involved was whether 6 of the 12 code values which the company had assigned to the classification factors of the manual were appropriate.

In considering the issue the arbitrator proceeded to weigh the contentions of each side in support of each of the codes selected for the various factors. Since the manual required a comparative analysis of the job being classified with others whose classification had already been agreed to, each side chose a job which it considered a fair standard of comparison for the new job at Lackawanna. Management assigned code values for each of the 12 factors in the new job similar to those of Assistant Scrubber House Operator at Bethlehem. Company experts had studied both jobs for this purpose and found complete similarity in the factors relating to the two jobs. The union raised certain general challenges regarding the comparison of these jobs, and submitted the job of Assistant Disintegrator Operator at the Johnstown Plant for comparison. This choice, the arbitrator felt, was questionable since there was some difference in the factor codes assigned the two jobs; company experts who studied the Johnstown job had pointed out differences in plant layout as well as other intrinsic job differences which affected the job.

Proceeding to a consideration of the specific contentions offered to support or challenge their respective codings of the job in dispute, the arbitrator accepted the company's position regarding Factors 5, 8, 10, and 12, but accepted the union's contentions on Factors 2 and 9.

The discussion of Factor 5, "Responsibility for Materials," illustrates the arbitrator's reasoning in selecting the appropriate code which gives the numerical value for each of the factors. In assigning a code for responsibility for materials, he pointed out, the degree of care which the employee must exercise to prevent damage to the materials he handles and the monetary loss potential in his failure to exert such care must be considered. Both parties agreed that \$50 fairly represented the maximum potential monetary costs of negligence or error. With regard to the degree of care required, however, the company assigned Code B, "ordinary care," with a point value of 0.3. The union felt the responsibility called for the use of "close attention for part of the turn" with 0.5 points.

In the arbitrator's opinion, the installation of the precipitators did not materially alter the duties with regard to responsibility for materials.

The materials handled remain largely water and gas in transit, over which the operator exercises no direct attention. The correct handling of the materials is determined largely by gauges and machines. The standard job of Assistant Disintegrator Operator at Johnstown does receive a coding of C (0.5 points). But the Disintegrator Operator performs duties related to the actual mixing of the blast furnace gas being cleaned; this 'responsibility for materials' would seem to demand 'close attention for part of the turn' when mixing is under way, in contrast to the cleaning operation as such. The former position of Theisen Operator as well as the currently effective one of Assistant Scrubber House Operator at Bethlehem, which is concerned only with gas cleaning operations, carry a coding of B. The latter position has duties related to precipitators as well as Theisen equipment. The new job at Lackawanna would appear comparable and, so, properly rated under Factor 5.

Employee Classification Grievances

A few of the classification cases which reached arbitration are more properly termed "employee" rather than "job" classification. In such cases the employee claimed that he was performing the duties of a higher rated job and was therefore entitled to the higher rate of pay.

Where such situations did not involve any change or occurrence specified in Section 1 of Article V, the issue arose regarding the arbitrator's authority to change employee classifications. The question was discussed by one of the arbitrators in a case where an employee alleged he was performing substantially the duties of a Laborer, but was classified as a Sweeper (a lower rated job). The arbitrator pointed out that "there is an important difference between reclassification of individuals and the reclassification of jobs. The latter function is reserved exclusively to the parties (with exceptions not relevant here). The former, however, is clearly arbitrable as an application of the established job classification scheme. The Master Agreement specifically provides for the arbitration of grievances involving the 'application of the provisions of this Agreement' (Article XI, Section 2). The provisions of the Agreement on Elimination of Wage Rate Inequities, dated April 11, 1947, are incorporated into the Master Agreement by reference in Article IV, Section 1 of the latter. It follows that a claim like that of B is arbitrable. He is not seeking to increase the Sweeper's pay from the Class 1 rate to the Class 2 rate; instead he claims that he is actually performing the duties of a Laborer, which is already classified as a Class 2 Job."

Another type of employee classification grievance alleged that the employee was improperly graded within the particular craft or multiple rated job. An example is the case of certain Machinists, classified Grade B, who alleged they should have been upgraded to Machinist, Grade A, or relieved of certain Machinist, Grade A, work which they claimed they were doing.

As the umpire interpreted the union's viewpoint, the union's basic theory underlying the grievance was "that there exists three separate and distinct job classifications, each with its own specific work and duties, a Machinist A, B, and C." If this were so, argued the arbitrator, the answer would be clear. ". . . For it is a fundamental, and yes, an elementary principle that an employee is entitled to the job classification that covers the work and duties he is performing. . . (however) this separate classification theory goes completely contrary to the job classification structure agreed to by the parties and set forth by them in their Manual and consistently followed by them ever since it was first put into effect . . ."

The manual, the arbitrator said, was clear in setting up a single, overall, all-inclusive "craft" classification for the various jobs listed. The manual described the craft job as one "that shall reflect the duties which a fully qualified craftsman may be called upon to perform in the department." In line with this concept of "fully qualified craftsman," the parties established a single written description for this Machinist job, the arbitrator stated. The various work and duties were not subdivided and classified as Grade A, B, and C.

"How then is an employee to be assigned to a particular grade within the Machinist craft if not on any theory of classification based on the particular type of Machinist work and duties he is performing?" the arbitrator asked. The answer was also found in the manual, he indicated. "Each craftsman shall be assigned to the appropriate grade on the basis of his personal qualifications and ability." This the arbitrator stated, meant but one thing—"that upgrading must be based on the individual employee's qualifications and ability and not on his particular machinist work, as such." The manual further provided that any craftsman assigned to Grade C could, at regular intervals of 1,040 hours of actual work in the given craft, request and receive a determination of his qualifications and ability and, if qualified, be assigned to the next higher grade.

Basis for Denial of Classification Grievances

Several of the wage classification grievances reviewed were based on changes in the duties of the job which the arbitrator found to have occurred prior to the adoption of the agreement on the general wage structure. Such cases could not be considered by the arbitrator since the agreement which the parties adopted in 1947 precluded the reconsideration of any job classification agreed to, unless by mutual agreement in writing.

An illustration is the case of two furnace men in the 56" cold strip mill who protested their rating because of alleged changes in the job which led to an increased volume of work of one type or another. The arbitrator could not find any change from the time the job was classified that could be considered under Article V, Section 1. The furnaces were being developed at the time of the adoption of the classification and changes in duties had occurred

prior to this. The basis of dissatisfaction was evidently in the fact that the men were required to do more of the same or kindred duties now than before the classification. This, the umpire stated, "is an issue upon which I cannot pass."

The most frequent basis for denial was the finding by the arbitrator that the change in duties was not significant in that it failed to change the sum of the classification factors a whole numerical classification or more. In a case involving cranes in the Annealing Section, the grievance was that the increased height of the furnaces had significantly changed the duties of the job, thus justifying a higher classification. The furnaces were raised in height by 18 inches. The umpire could find no evidence that the greater size of the furnace required a significant change in duties. The claim that the increased height gave the cranesmen less clearance and therefore required a greater exercise of judgment was refuted by the evidence that limit switches on the cranes virtually eliminated the possibility of damage to the crane. The claim that the larger hoods in use were more costly, thus increasing the value of Factor 5, "Responsibility for Materials," was not relevant since there was no indication of likelihood of damage to the hoods. The larger size of the furnaces made Factor 7, "Responsibility for Operations," greater, the union contended; but the union did not deny the company's statement that the size of the units processed by cranes was not relevant to their classification. Under Factor 11, "Surroundings," the union contended that the greater capacity of the cranes meant that the crane man had to remain over the furnace for a longer period and thus was exposed to extreme heat for considerable time. However, the arbitrator found that the crane cabs were well ventilated and the exposure to heat was increased only slightly.

In the arbitrator's opinion the union had not "demonstrated that the change in equipment which occurred after the classification of the jobs has sufficiently altered the requirements of those jobs to justify their reclassification. It is quite possible that the men must now work harder than they did in 1947, but the record does not show any connection between this fact and the criteria which the parties set forth in their Agreement."

This increase in workload, which was the basis for job classification grievances in several other cases, was not sufficient by itself to justify the grievance, it

was held. Increased production had to be attributable to one of the changes specified in Article V and must have resulted in a change in the job factors of at least a whole numerical classification.

Incentive Rate Grievances

Incentive rates were subject to more change than the classification of employees or jobs, with the result that incentive rate grievances were somewhat more frequent. A large proportion of the Bethlehem production jobs were paid on an incentive basis. Such plans were formulated taking into account the product being made, the type of operation performed, and the time required to process a unit of production. Incentive rates included "piece" rates, tonnage rates and other forms of bonus payments.

In setting an incentive rate the usual procedure was to establish a standard production rate based on a time study of the operation. Production above the standard was paid for at the incentive rate, while the employee was guaranteed the basic hourly rate for his job classification.

As in the case of job classifications, incentive rates in general were stabilized for the duration of the contract by the provisions of Article IV. Existing rates were to be maintained without variation, except as permitted under Article V when changes in equipment or operations changed the nature or requirements of the job. According to the agreement, management had virtually unlimited rights to bring operations under incentive plans where only time rates had formerly applied.

Four major types of incentive grievances reached arbitration during the period covered by this study. The events giving rise to these grievances involved situations (a) where management modified an incentive rate to take account of one or more of the changes listed under Section 1, Article V, (b) where an employee claimed that because of a Section 1 change in his job, the old incentive rate had become "unreasonable and unfair," (c) where management established a new incentive plan or rate for work formerly paid on a time basis, and (d) where the definition of incentive work was in dispute. Cases illustrating the arbitrator's handling of each type of grievance are reviewed in the following pages.

Loss of earnings.—The usual grievance in incentive rate cases was that earnings under the new rate established in rec-

ognition of a change in the nature of the job under Section 1 were not as large as those under the old rate. This raised a question under Section 4(a) of Article V which stated that the new rate should "be in equitable relationship to the incentive wage rate which it replaced and provide equitable compensation." In one illustrative case the complainants were Wire Drawers on the 8-inch and 12-inch wet wire-drawing machines. These workers were being paid on an incentive basis involving a rate fixed for each decimal size of wire applied to the amount of wire drawn by each Wire Drawer.

From the date of the establishment of the original incentive rates until about the middle of 1950, the coating on the wire was known as Apex and Lime. About the middle of 1950 the company began to experiment with a new type of wire coating, known by its trade name of "Foscoat." The new coating resulted in a chemical reaction with the wire surface, creating a crystalline surface and a more permanent coating than the former method which provided only a mechanical adhesion to the wire. The Foscoat coating, management found, eliminated much of the inadequacies of the Apex and Lime coating. Less cleaning room handling and reduced wire tangling resulted. Increased rust-resistant qualities and other improved drawing quality of the wire were also obtained, together with longer die life per unit of production and higher machine speeds.

Because of the changes in methods and processes of production, management proceeded to retime the wire drawing operations under the new Foscoat process and to adjust the Wire Drawer incentive rates to reflect these new operating conditions and the increased production resulting therefrom. This action, management claimed, was within its rights under Section 4(a) of Article V. The company insisted that the increased production of wire which occurred after Foscoat was put into use was due to the improved wire drawing conditions and the increased machine speed, and not because of increased employee effort. If there was a minimal increase in employee effort, the company contended, it was adequately compensated for by the increase in the incentive wage standard used in computing the new rate.

The union's position, on the other hand, was that the new process had not materially improved the quality of the wire nor affected a saving in production time. Various Wire Drawers testified that they had

incurred a substantial loss in earnings under the new incentive rate schedule. As a result of the increased speed of the machines, there was increased danger in the work, which was not reflected in the new rate. Most, if not all of the increased production, the union claimed, was due to increased effort on the part of the employees.

It was the arbitrator's opinion that there was no doubt that a "change or event" of the kind specified in Section 1 of Article V had occurred. The company was therefore within its rights in proceeding to make appropriate adjustments of the incentive rates in effect prior to such change. The issue, accordingly, resolved itself to one of determining whether the rate adjustments which management made "meet the standards and limitations laid down by the Agreement for the adjustment of incentive rates" (Section 4(a)). The requirements of the contract were that "Management shall develop such new incentive wage rate in accordance with the usual practice at the time in effect with it for establishing incentive wage rates at such Plant or Works and on the principle that the new incentive wage rate shall, giving due effect to the change or other events by reason of which the new incentive wage rate shall have been established, be in equitable relationship to the incentive wage rate which it replaced and provide equitable compensation. . . ."

The first requirement, that the new rates be developed in accordance with usual practice, was found by the arbitrator to have been followed by the company. The basic theory on which the new rates were set was essentially the same as that used in setting the original rates. This involved the setting of a rate per 100 pounds for each size of wire at the new machine speeds, with certain allowances for inherent delays, as determined from time studies.

The remaining consideration was, therefore, whether the "due effect" and "equitable relationship" requirement of Section 4(a) of Article V had been followed. As stated by the same arbitrator in an earlier case:

This 'due effect' clause sets up a most important standard for these 'equitable' tests, without which they may well be too vague and general for clear and definite application. In substance, what this 'due effect' clause means is that the adjustment of the old rate must be limited only to the increased production caused by and attributed solely

and directly to the 'change or event' involved. In other words, it must be only the production (earnings) windfall caused by the Section 1 change or event (be it in favor of the Company or of the Union, as the case may be) that may be eliminated and nothing else. Then and only then are these 'equitable' tests of Article V satisfied and the new rates truly in conformance with the Agreement stabilization requirements. Should the rate adjustment go beyond that and discount accumulated employee skill, knowledge and experience, or fail to maintain the production-earnings-effort relationship which existed under the incentive rates in effect prior to the Section 1 change or event, then the adjusted rates fail to give 'due effect' and with it, fail to meet the 'equitable' tests of the Agreement, including the basic wage stabilization mandates of Article IV.

Proceeding to examine the evidence presented by both sides, the umpire found that the new Foscoat wire coating did permit increased speed of the machines and greater production of wire. The safety factor, introduced as an issue by the union, was not relevant in setting the incentive rate, the arbitrator felt. However, he did not agree with the company that all of the increased production was chargeable to increased machine capacity or to improved die life and wire quality. Some of the increased production was attributable to increased employee effort. Undoubtedly this was minor, but "is it so negligible or 'de minimus' as the company claims it to be as to warrant it being disregarded?" This, the arbitrator concluded, was not so. There was an extra handling of bundles, the total of which had definitely increased under the adjusted rate schedule. The Wire Drawers operated three machines, thus making the total number of extra bundles three times the increase per machine. The arbitrator held that due effect must also be given to the closer attention to the machine which was required because of the greater speed as well as other extra machine duties. Taken together "the added work and effort does reach a point where, though it be minor with relation to the total increased production, is nonetheless sufficient to be accounted for in the rate adjustment."

Although the element of increased employee effort was small, the umpire stated, it was sufficient to be considered in the rate adjustment. Accordingly, after

reviewing the evidence, wage data, and time studies, the umpire concluded that rates should be adjusted to permit an increase of 5 cents per hour in the Wire Drawers' incentive earnings.

"Unreasonable and unfair" rates.—

While employees, under Section 4, could protest a new rate instituted by management, they could, under Section 5, claim a grievance if, following a Section 1 event, their old incentive rate had become "unreasonable and unfair." A grievance of such a nature was filed by a Weighman Helper in the 134-inch plate mill. The grievant's complaint, on behalf of himself as well as other employees in the mill, was that the volume of "strip" plates (those less than 36 inches in width) had increased and would increase still more. This increase had added to the handling work of the employees involved and had also caused production delays, all of which caused a loss of incentive earnings to the grievant and his coworkers. He asked for additional compensation for the increased work and that a special rate be established for the strip plates.

The company insisted that the rates were in effect for many years prior to the agreement, and that none of the changes or events called for in Article V occurred to give the umpire authority to change the rate. Processing of "strip" plates was not a recent development, the company stated, nor had the quantity substantially increased.

Issue was also taken with the grievant's claim that a substantial reduction in earnings had occurred since the increase in strip processing. Earnings data demonstrated that earnings of the various positions remained relatively stable, with no decrease as alleged by the grievant. The company also denied that the processing of these strip plates caused any production delays and consequent reduction of earnings. On the contrary, if the steel were not used in these strip plates it would otherwise be scrapped, which would have meant less pay tonnage yield. Additional benefit accrued to the employees, the company maintained, since they received the "50 percent pay tonnage" on all strip plates of $\frac{5}{16}$ inch or under.

In considering the merits of the case the umpire stated that it was clear in his opinion that the request was one for a change of an existing wage rate, hence subject to the requirements of Section 5. These rates had long been applied to plates

of various dimensions, both large and small, including the complained-of "strip" plates. The only "extra" included in the existing wage rate was the 50 percent tonnage allowance for plates of $\frac{3}{16}$ inch width or less. The evidence failed to show, the arbitrator concluded:

. . . that any change or event within the true meaning and intent of Article V, Section 1, did occur on or prior to the grievance filing date . . . The fact that the volume relationship between the sizes of the plates processed, including these 'strip' plates, may, from time to time, have varied somewhat is not sufficient to constitute a Section 1 change or event. For, innate in the very nature of the existing incentive wage rate is that plate sizes will and do vary. Indeed, the rates must have been originally established on this very premise, recognizing and accepting the inevitable variations in sizes and amounts of plates and with it, the administrative necessity that the wage rates not be changed with each and every change and variation in plate size relationship. Switching of rates as the volume of relationship of plate sizes changes if followed here would prevent the sound practical application of an incentive rate plan to this operation in the mill . . . In light of the nature of the existing incentive wage rates and the comparability of earnings levels, the proof must be abundantly clear that the variations in plate sizes are of that substantial degree in amount and continuity as to qualify it as a Section 1 change or event and with it, permit of the application of Section 5. Such proof, to repeat, has not been adduced here . . .

In another Section 5 case the arbitrator found that a Section 1 change did occur, making the issue the question of whether the rate had become "unfair and unreasonable." In December 1950 the company installed a new row of automatic pits (No. 41) and converted one of the row pits (No. 20) from manual to automatic operation. The other 28 manually operated pits in the Blooming Mill Department continued without change. The employees had a right to arbitral review of their rate, the umpire held, but any adjustment must be limited to the effect of the change on the rate. "And to the extent only that the Nos. 20 and 41 pits did affect the incentive wage rates of the Mills so as to make them 'unfair and unreasonable' may they be adjusted."

The effect of the Nos. 20 and 41 soaking pits was not the same for the different job classifications in the mills, since their work and duties differed. The effect on the Blooming Mill employees was negligible since the steel from these pits went primarily to the Slabbing Mill. From the evidence submitted, the umpire concluded that these soaking pit changes did not change the earnings-effort relationship of the Blooming Mill employees from that prevailing before the changes.

What was the effect of these changes on the rolling operations of the Slabbing Mill? The umpire concluded that they did not change the effort-earnings relationship which was afforded these employees before the pit changes were made. He rejected the union's claim that much of the steel from the new pits was of poor rolling quality, necessitating closer watching. Furthermore, these two pits represented at most a 25 percent increase in total pits servicing the Slabbing Mill. Although the Slabbing Mill crew might have some increased work, "increased production as such does not constitute a basis for wage relief under Article V, Section 5. Nor should it, for increased production is by the incentive plan reflected in increased earnings to the extent provided for in the plan."

In the soaking pits themselves, the total workload of the employees was increased, the arbitrator pointed out. Offsetting this, however, was the automatic nature of the new pits as well as the extra employee assigned to the pits. He was unable, however, to appraise the net increase in workload for these employees in the soaking pits, and remitted the grievance to the parties for further consideration of this aspect.

Change from time to incentive rates.—Under Section 6 the company and union could agree to change an existing incentive plan or institute a new plan. Management could, on its own initiative, establish a new incentive plan or new incentive wage rate, if in its opinion such action would encourage production. If the work being performed was not at the time paid for on an incentive basis, an incentive rate could be established only if management, believing such a plan or rate would encourage production, was willing to do so. In such circumstances the arbitrator could only decide whether the plan or wage was "fairly and reasonably designed to encourage production." The arbitrator could only accept or reject the plan or rate; he had no authority to alter it.

A situation involving the above issue arose in the case where the company installed an incentive plan in the Scarfing Yard of the 68-inch Continuous Hot Strip Mill. There had been no incentive plan in effect before that time. The plan put into effect, however, was virtually identical with the plan that had been in effect in the Scarfing Yard of the 56-inch mill for some years—except that the tonnage rates and consequently the take-home earnings were lower in the 68-inch mill. Being unable to agree on the question of whether or not the incentive rate was new, the parties submitted the issue to the umpire for a settlement of the jurisdictional question. The plan was clearly a new one, the arbitrator held, and as such Section 6 was applicable.

The only issue was, therefore, whether the plan was "fairly and reasonably designed to encourage production." The fact that the plan yielded lower earnings in the 68-inch mill Scarfing Yard than the one in the 56-inch mill did not necessarily prove that the new plan is unfair and unreasonable, the arbitrator stated. Nor did the fact that production had increased substantially under the new plan necessarily mean that it was "fairly and reasonably designed to encourage production." The issue could not be resolved, however, since the arbitrator had insufficient data to make the necessary finding, and the case was returned to the parties for additional information.

Several of the Bethlehem grievance cases involved the union's request for institution of an incentive plan where none had existed. As an illustration is the case of the Motor Room Attendants in the Blooming Mill who requested that the company place them on an incentive compensation basis instead of the straight hourly basis on which they were being paid. They contended that the increased production in the mill, to which they contributed, warranted increased earnings. They compared their work to that of the Repairmen who were incentive-rated.

The company's position was that there was no arbitral jurisdiction in the case and the grievance should therefore be dismissed. This job had always been hourly rated and there was no authority under the agreement for the umpire to direct the establishment of an incentive rate for work not previously incentive-rated. This, the company maintained, was clearly established by Article V, Section 6.

The umpire's conclusion was that the company was right in its position that the application of an incentive rate in such

a situation remained entirely permissive with the company. "The parties' use of the word 'may' permits only one meaning—a permissive and not a mandatory one. . . . The parties agreed to leave it to Management to decide the matter of the incentive rate of jobs not heretofore so rated. The Umpire may do no more but to give effect to their agreement. He must, accordingly, conclude that there exists no basis under the agreement for the relief requested by this grievance."

Question of time or incentive rate.—

Disagreements also arose over the question of whether a particular job was incentive-rated or not. An illustration is the case of certain Building and Highway Specialty Shop employees, where the company's claim that they were hourly rated employees was denied by the union which asserted that the employees were on an incentive basis. The grievance arose in connection with the application of a general wage increase.

The arbitrator found it necessary, therefore, to go into the history of these jobs and the method of payment used. It appeared that before the adoption of the Inequity Agreement of April 1947, these jobs carried a low occupational hourly rate. There developed a practice, because of these low rates, to pay a fictitious piece rate for the job, not directly related to production but serving to maintain a level of earnings above the occupational rate. With the adoption of the Inequity Agreement, one of the objectives of which was the elimination of all irregular wage rate practices, this fictitious piece rate arrangement was ended.

However, with the elimination of this practice, substantial reduction of earnings resulted, leading to a number of grievances. These grievances were settled and the grievants given "personal red circle" rates equal to their straight-time hourly

earnings for the 15-week period preceding August 4, 1947. This hourly rate was paid until the time of the present grievance. In arriving at a decision, the umpire found that:

. . . notwithstanding the utter unsoundness and fallaciousness of these piece rates, the fact remains and the evidence is clear and uncontroverted thereon, that they were not unconditionally applied but that some relationship between the rates and the employees' effort and production did exist. It appears that the supervisory employee would only apply the piece rate if, in his judgment, the employee's production for each particular day represented a 'fair day's' work and he was not 'laying down' on the job. And if any day's production was not up to some 'standard,' the piece rate would not be applied. Thus some relationship and interdependence between earnings and employee's effort and production did exist, however unscientific and unsound that relationship may have been. The Umpire can thus readily understand why these grievants then considered themselves incentive workers for he believes they were so.

Since these jobs were incentive jobs before the adoption of the Inequity Agreement, they continued to be so after the agreement was adopted under Article IV, Section 3, which stated: "Neither the putting into effect of the standard hourly wage rates in accordance with the provisions of this Article IV, nor any change in job titles made in connection therewith, shall of itself alter or affect in any way incentive rate. . . ." Accordingly, the umpire found that Article IV, Section 1(b) was applicable in calculating the respective wage increases and Section 1(d) in determining their new guaranteed occupational rates.