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A Dissertation

Presented for the

Doctor of Philosophy

Degree

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ABSTRACT

The purpose of this study was to provide managers and unions with information concerning the use of wage arbitration as an alternative to the strike. As criticisms of wage arbitration might be based on outdated or erroneous information, a reevaluation of the process was in order.

The cornerstone of published knowledge about wage arbitration is Irving Bernstein's The Arbitration of Wages. This study follows Bernstein's case study approach. The period of analysis extends from the end of Bernstein's study in mid-year 1950 through the end of 1974. Two primary sources of case data were used: The Bureau of National Affairs' Labor Arbitration Reports and Commerce Clearing House's Labor Arbitration Awards.

The study questions several common myths concerning wage arbitration. First, the myth that wage arbitration tends to destroy collective bargaining is unsubstantiated by the reported cases. Evidence of repeated use by particular firms and unions was not found, so there is no proof of a narcotic effect.

Second, it is frequently stated that the declining number of reported wage arbitrations is evidence of the failure of the process. The study finds no clear evidence concerning the number of wage arbitrations, most of which go unreported, and argues that such a statistic is not an appropriate measurement of success in any event.

Third, it is often argued that wage arbitration is too radical and risky. Examination of the cases indicates a consistent arbitral

application of the same criteria introduced in collective bargaining. There was a slight preference for the employers' positions and intra-industry wage comparisons were the most frequently applied standards. Application of the intraindustry comparison criterion generally leads to maintenance of relative wage rates among firms within an industry over time.

The fourth myth proposes that the parties have such a great fear of wage arbitration that they will generally turn to a tripartite board when utilizing it. Contrary to this myth, it was shown that all-neutral panels were the overwhelming (71.8 percent of the cases) favorites of the parties.

The last myth is that arbitrators split the difference between the parties. Only five cases were found where the arbitrators either consciously or unconsciously split the difference.

Recent events such as the signing of the "Experimental Negotiating Agreement" in the basic steel industry, the arbitration of professional baseball players' salaries, and the wage arbitration clause in the most recent contract (1976) between National Airlines and the Air Line Employees Association indicate a role of growing importance for wage arbitration in the United States.

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CHAPTER I

INTRODUCTION AND RESEARCH DESIGN

I. RELEVANCE OF THE STUDY

Strikes affect workers, employers, and the general public. Private and social costs of varying magnitudes are imposed on these groups via the strike mechanism. Private costs to the workers involve the loss of wages and skill deterioration, while employers are faced with potential sales losses and reduced output. Social costs may be represented by a reduced GNP. In addition, workers and employers may not be able to heal the wounds of a strike immediately.

Public disfavor with strikes inhibiting the flow of goods and services in the United States has grown in recent years. Organized labor is no longer generally viewed as an underdog, as evidenced by the passage of Taft-Hartley in 1947 and Landrum-Griffin in 1959; therefore, the public is less tolerant of work stoppages. Harold W. Davey attributes this change in the public's attitude to widespread public acceptance of collective bargaining. Public acceptance places a greater responsibility on the union to avoid the use of economic force when possible.[1] Public rejection of the private use of economic force invariably brings pressure on the parties to collective bargaining to settle the dispute in some manner other than the strike.

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[1]Harold W. Davey, Contemporary Collective Bargaining. Third Edition (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1972), pp. 195-196.

Pressure is applied through the print, and/or electronic media and generally encourages government intervention if a strike is not terminated. Public opinion, therefore, encourages the parties to seek alternatives to the strike as a means of dispute settlement. One proposed alternative is contract arbitration—arbitration of disputes over the terms of a new contract.

Public opinion is not the only factor that has encouraged development of alternatives to the use of economic force. The parties will often realize the potential costs of economic warfare and will seek less costly solutions. One surmises that this development is most likely to take place in situations where there has been a maturation of the collective bargaining relationship. For example, the United Steelworkers of America and the ten major, basic steel firms signed an "Experimental Negotiating Agreement" in the spring of 1973, which provides for the arbitration of all unsettled contract disputes.[2] I. W. Abel has summarized the Steelworkers' position in the following statement:

> We believe this unprecedented experiment will prove there is a better way for labor and management to negotiate contracts. The new procedure will not only relieve both sides of the pressures of a potential shutdown, but will also offer us a genuine opportunity to achieve results equal to those obtainable when the threat of a strike exists . . . . Fourteen years of uninterrupted industrial peace in the steel industry have gradually established the maturity and respect for each other that justified this sort of an advanced step in our collective bargaining relationship.[3]

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[2] I. W. Abel, "Steel: Experiment in Bargaining," The American Federationist, LXXX (July, 1973), p. 3.

[3] Ibid., p. 6.

A maturation of the collective bargaining process does not take place in an environment devoid of market influences. Both parties to the "Experimental Negotiating Agreement" were aware of the high costs imposed by the 116 day strike of 1959. Foreign competitors made significant gains in U. S. steel markets to the detriment of steelworkers and steel firms. In addition, the industry had followed a boom and bust cycle prior to each negotiation after the 1959 strike. This boom-bust cycle imposed irregular employment on the steelworkers and stock-piling and plant closures on the firms.[4] One can conclude from the steel industry example that private decision making in a market environment may lead to the development of contract arbitration as an alternative means of dispute settlement.

Prior to 1950, small firms in highly competitive industries or firms operating in industries "affected with the public interest" have sought peaceful means to settle contract disputes because competitive pressures and/or public opinion have required such action.[5] One will very often find that firms which operate in such environments will choose to arbitrate contract disputes rather than undergo the costs involved in economic warfare.

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[4] I. W. Abel, "Basic Steel's Experimental Negotiating Agreement," Monthly Labor Review, (September, 1973), pp. 39-40.

[5] Irving Bernstein, The Arbitration of Wages (Berkeley, California: University of California Press, 1954), pp. 15-17.

A final factor influencing the decision to search for alternatives to the strike is statutory law. This element is more prevalent in the public sector where there are many laws which ban the use of strikes by public employees. With the growth of public sector unionism over the last fifteen years and the parallel growth of public employee strikes, there is a growing need for viable strike substitutes.[6]

It is readily apparent that employers and employees often seek alternatives other than strikes to settle their differences over wages and other contract issues, but the focal point of most contract disputes is wages. For this reason, a careful analysis of the process of wage arbitration is both useful and desirable from the viewpoint of employers and employees.

Jules Backman has written that,

> What happens to wages is of critical concern to everyone. To the worker, wages represent income; to the businessman, they represent costs; and to the government, they represent potential taxes. Wages are the largest source of purchasing power; hence changes in labor income have an important bearing on the level of economic activity. At the same time, payments for labor are the most important element of cost in our economy and thus influence the level of prices and of profits.[7]

Wage arbitration as a strike substitute is often misunderstood by employers and employees. Historically, the criticisms of wage arbitration have

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[6]See Michael H. Moskow, J. Joseph Loewenberg, and Edward Clifford Koziara, Collective Bargaining in Public Employment (New York: Random House, 1970).

[7]Jules Backman, Wage Determination, An Analysis of Wage Criteria (Princeton, New Jersey: D. Van Nostrand Company, Inc., 1959), p. 1.

focused on the lack of clear guides for the arbitrator. Critics propose that there are no generally applied criteria on which the arbitrator can base a decision, risks incurred by the parties are therefore extremely great.[8] This criticism presents a need for examination of the various criteria utilized in wage arbitrations and the manner in which they are applied.

The importance of the study is that it provides the parties with additional information concerning the use of wage arbitration as an alternative to the strike. The process can be and has been applied in both public and private sectors. In addition, the "Experimental Negotiating Agreement" in the basic steel industry is one of several variables that may change the general trend of wage arbitration being confined to small firms in highly competitive industries or firms directly "affected with the public interest." Professional baseball is one service industry that is a newcomer in the application of the wage arbitration process. These new dimensions merit close scrutiny. This study can possibly shed light on the positive as well as the negative aspects of the wage arbitration process and thereby eliminate some unjustified criticisms. It may likewise indicate the strengths and weaknesses of wage arbitration so that it may be improved in the future.

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[8]Morrison Hansaker, "Arbitration and Contract Disputes," in Challenges to Arbitration—Proceedings of the Thirteenth Annual Meeting National Academy of Arbitrators (Washington, D. C.: Bureau of National Affairs, Inc., 1960), pp. 84-85.

II. RESEARCH DESIGN

Statement of the Problem

At this point in time, there appears to be an insufficient amount of information concerning the process of wage arbitration. This lack of information creates misunderstanding and mistrust of a valuable process that could provide an alternative to the strike under varying conditions.

The study centers on the economic variables introduced in wage arbitration and the arbitral application of these often conflicting wage criteria. How do arbiters of wage conflicts reach their decisions? Are the same criteria applied widely by arbitrators of wage disputes? Is the application of each particular wage criterion a function of the economic environment in which it exists? Do arbitrators apply particular criteria under certain economic conditions, such as periods of rapid inflation, and not under others?

A final problem to be considered is whether or not the procedural and institutional aspects of wage arbitration have changed since Irving Bernstein's study, The Arbitration of Wages. To be included in this analysis is a determination of those factors that influence the frequency of occurrence of wage arbitrations.

The Bernstein Study

In his study, Bernstein analyzed the criteria utilized in decision making in reported wage arbitration cases from 1945 to the middle of 1950. He also examined the institutional and procedural aspects of wage arbitration as practiced in the United States.

Bernstein found that the single most important wage criterion was that of comparison. Intraindustry wage comparisons were favored over interindustry comparisons by arbitrators, unions, and employers. Two additional criteria were found to be significant in terms of the frequency of usage by the participants in reported wage arbitration cases; they are cost of living and ability to pay. Arbitrators and unions tend to cite the cost of living criterion frequently, whereas employers usually cite the ability to pay criterion.[9]

Bernstein found that public utilities used wage arbitration more than any other industry grouping. A more specific industry breakdown revealed that urban transit was the industry most frequently using wage arbitration. Historically, the textile and printing industries frequently arbitrated wages, while the Street Railway Employees Union was by far the union that arbitrated wages the most.

Other institutional characteristics were noted. All-neutral arbitration boards were favored by the arbitrating parties by a two to one margin. The arbitrators, on the average, granted wage awards approximating 43.7 percent of the monetary differences between the parties, which indicates a slight preference for the positions of the employers. Lastly, Bernstein concluded that the number of wage arbitrations was positively correlated with price level changes.[10]

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[9]Bernstein, The Arbitration of Wages, pp. 106-114.

[10]Ibid., pp. 14-26.

Scope and Methodology

The period of analysis chosen for the present study is from mid-year 1950 to the end of 1974. This period was chosen to cover the time span from the end of Bernstein's study, The Arbitration of Wages, to the present. Selection and analysis of wage arbitration cases that occurred in the United States are undertaken to provide a basis for comparison with the Bernstein study. This comparison is useful for several reasons: many changes have occurred in the economy and in the realm of collective bargaining since the Bernstein study; new trends and approaches in wage arbitration may be evident over the longer time period; and various types of economic situations will be contained in the time span of the present study which were not present in the period of Bernstein's analysis. Comparison with the Bernstein study is central to answering the questions posited above.

As this study is comparative in nature, Bernstein's methodology is followed. The present study parallels the Bernstein research in some respects and moves afield in others. Where methodological changes reveal more information, they are instituted.

Bernstein's sample was drawn from the only general source available at that time—The Bureau of National Affair's (BNA) Labor Arbitration Reports. Sample cases in the present study are drawn from Commerce Clearing House's Labor Arbitration Awards as well as BNA's Labor Arbitration Reports. These two sources do not publish all wage arbitration cases, but they do provide the most comprehensive collection of cases, and both sources actively solicit wage arbitration cases for publication.

Cases included in the present analysis must involve a general wage change as one element in dispute, and the award must be binding on the parties. Fact finding, final offer arbitration, and advisory arbitration cases are not included in the study. Public sector arbitrations and cases arising in industries covered by the Railway Labor Act are excluded from the study. Local transit cases are included, as many of the firms in this industry were privately held during the study period.

Cases are examined in the aggregate as well as individually. Observable trends can be distinguished from the aggregate approach, and specific case analysis can provide illustrative detail. Applications of wage criteria are made from an industry perspective to generate a better understanding of the influence of market competition on wage arbitration.

In addition to the primary case sources of data, selected works in the general economic and industrial relations literature are used for supportive purposes. One continuing source of related materials is the Annual Proceedings of the National Academy of Arbitrators.

Strengths and Limitations

The cases themselves are the primary weakness of the study. Bernstein wrote, "For unions and management, then, standards of wage determination often constitute the rationalizations to justify rather than the reasons for reaching positions."[11] To the extent that criteria cited by the parties and the arbitrators were not the means by which decisions were reached,

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[11] Ibid., p. 52.

the analysis is weakened. However, this citation of criteria may reveal much of the parties' and arbitrators' intentions and approaches to wage arbitration. Another weakness arises from the divergent case reporting procedures used by arbitrators. Some cases provide all needed data, while others are cryptic in nature. Uniform reporting procedures would benefit future studies of this type. At present, analysis of cited criteria appears to be the only means of studying the decision making processes in wage arbitration cases.

In addition, it has been estimated that only 25 percent of all wage arbitration cases are reported.[12] If there is a systematic bias in the reporting of particular types of cases to the exclusion of others, then the results of the study are less general. However, there appears to be no visible reason why the reported cases would not be representative of the group as a whole.

Another problem arises because relative bargaining power is not readily seen in wage arbitration cases, even though it underlies most decisions.[13] Its importance in an arbitrator's decision is not diminished by the fact that it is not included in the case report.

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[12]Jack Stieber, "Voluntary Arbitration of Contract Terms," in Gerald G. Somers and Barbara D. Dennis, eds., Arbitration And The Expanding Role Of Neutrals—Proceedings of the Twenty-Third Annual Meeting National Academy of Arbitrators (Washington, D. C.: The Bureau of National Affairs, Inc., 1970), p. 77.

[13]Bargaining power enters arbitration cases and awards through the offers and demands and through criteria introduced by the parties in support of their respective positions. It is through the criteria that the parties signal their power and willingness to pursue their real goals.

Lastly, the weight which arbitrators assign each specific wage criterion utilized is not quantifiable, as the criteria do not lend themselves to such analysis. Therefore, the author must often subjectively evaluate, from the case text, the arbitrator's allocation of relative weight to each criterion. This involves problems of interpretation of the arbitrator's written comment, which is sometimes unclear and contradictory.

Strengths of the study also revolve around the cases. Case examination provides a richness of detail and background. Aggregate quantities are enriched by the availability of specific arguments and conclusions drawn from the cases. Therefore, the analysis is based on the arguments and conclusions of the participants, which have been applied in a pragmatic manner as a basic extension of the collective bargaining process.

The study is likewise strengthened by the fact that it covers a wide range of macroeconomic situations from price stability to recessionary inflation. It also spans a time period that involves a changing microeconomic environment for specific industries utilizing the wage arbitration process. Variety in the economic environment should bring out many facets of the process that might remain hidden under periods of stability.

Organization of the Study

Chapter I is the introduction and research design. Chapter II presents a statistical analysis of the wage arbitration process. Chapters III and IV examine the comparison and pattern criteria in concentrated

and unconcentrated industries respectively. Other wage criteria are studied in Chapter V. Chapter VI looks at the record and the implications for the future.

CHAPTER II

WAGE ARBITRATION IN PERSPECTIVE

I. INTRODUCTION

Wage arbitration, like grievance arbitration, is an extension of the collective bargaining process that begins when the parties agree to arbitrate a wage dispute and continues until the award is rendered by the third party neutral or neutrals. The parties must maintain their working relationship with each other under the award for the duration of the contract.

Historically, wage arbitration has occupied a secondary position relative to grievance arbitration. Best guess estimates on the number of wage arbitrations as a percent of all arbitrations indicate that from 1 to 5 percent involve wages.[1]

There are certain characteristics that are unique to this particular type of arbitration. A better understanding of the process and the end results is obtained through an analysis of the relevant characteristics of wage arbitration.

II. INDUSTRY DISTRIBUTION OF CASES

The distribution of reported wage arbitration cases reveals interesting results. Over 50 percent were concentrated in five industries.

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[1]Jack Stieber, "Voluntary Arbitration of Contract Terms," in Gerald G. Somers and Barbara D. Dennis, eds., Arbitration And The Expanding Role

Table 1 presents the distribution of cases by industry grouping. The printing and publishing industry was the most frequent user of wage arbitration. This continues the historical trend in this particular industry dating back to 1901.[2]

Printing and publishing utilized wage arbitration frequently during Bernstein's study period but only held a rank of five as compared to a first place ranking in the present study.[3] The apparent increase in usage in this industry is somewhat misleading, as there was a decline of 56.4 percent in the annual average number of reported wage arbitrations since the Bernstein study. In the same period the annual average number of reported cases in all industries declined by 86.6 percent. The differential impact on printing and publishing is primarily attributed to the existence of the International Arbitration Agreement in the newspaper industry which requires signatory local unions and employers to arbitrate unresolved contract issues.[4]

Several factors account for the overall decline in the annual average number of cases in the other industries as well as in printing and publishing. First, increases in the average duration of contracts

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Of Neutrals—Proceedings of the Twenty-Third Annual Meeting, National Academy of Arbitrators (Washington, D.C.: The Bureau of National Affairs Inc., 1970), pp. 85-86.

[2]Bernstein, The Arbitration of Wages, p. 2.

[3]Ibid., p. 15.

[4]Thomas S. Adair, "The Arbitration Of Wage And Manning Disputes In The Newspaper Industry," in Barbara D. Dennis and Gerald G. Somers, eds., Arbitration Of Interest Disputes—Proceedings of the Twenty-Sixth Annual Meeting, National Academy of Arbitrators (Washington, D.C.: The Bureau of National Affairs, Inc., 1974), p. 34.

TABLE 1

INDUSTRY DISTRIBUTION OF WAGE ARBITRATION CASES, 1950-74

Industry	Number	Percent
Printing and Publishing	24	17.4
Urban Transit	17	12.3
Apparel	13	9.4
Services	12	8.7
Food and Kindred Products	12	8.7
Wholesale and Retail Trade	11	8.0
Furniture and Fixtures	10	7.2
Heat, Light, Power, and Water	9	6.5
Textiles	8	5.8
Water Transport	3	2.2
Construction	3	2.2
Other	16	11.6
Total	138	100.0

Source: Labor Arbitration Reports (Washington, D. C.: The Bureau of National Affairs, Inc., 1950-74) and Labor Arbitration Awards (Chicago, Illinois: Commerce Clearing House, Inc., 1960-74).

beginning in the 1950's reduced the opportunity to arbitrate wages. The typical three-year contract reduces the opportunity to arbitrate wages by two-thirds. Secondly, a combination of increased use of automatic adjustments with a decline in the number of contracts having wage reopeners

has also diminished the opportunity to arbitrate wages.[5] It should be pointed out that these structural changes in labor agreements may not necessarily reflect dissatisfaction with the wage arbitration process.

Urban transit cases rank second in frequency of occurrence in the present study compared to a first place ranking in the earlier period, but rankings may be somewhat misleading, as is shown by the presentation in Table 2. The annual average number of reported cases in urban transit declined from 7.4 to .71. Each listed industry recorded dramatic decreases in the annual average number of reported cases, but some industries were affected less than others. Services, like printing and publishing, were affected less than the other industries. Bernstein found that cases were infrequently reported in the services group, but this classification ranks fourth in the more recent study. Table 2 shows that services experienced the smallest percentage decline in the annual average number of reported wage arbitrations from the Bernstein study to the present.

Historically, the services classification has not been a frontrunner in the wage arbitration field, hence, there is little history to draw on. Because over 40 percent of the cases in the more recent period are in medical services, it is instructive to view changes that have taken place in this particular subsector. Although collective bargaining between hospital employee unions and hospitals predates this study, it was not until the 1960's that the practice became commonplace. From 1961 to 1967, "The percentage of hospitals with negotiated agreements has more than

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[5]Stieber, "Voluntary Arbitration of Contract Terms," pp. 79-81.

TABLE 2

PERCENTAGE DECLINE IN ANNUAL AVERAGE NUMBER OF CASES, BY INDUSTRY, 1950-74

Industry	Percent Decline	Annual Average Number of Cases	
		Bernstein	Hall
Printing and Publishing	56.4	2.2	.96
Urban Transit	90.4	7.4	.71
Apparel	56.7	1.2	.52
Services	52.0	1.0	.48
Food and Kindred Products	60.0	1.2	.48
Wholesale and Retail Trade	88.4	3.8	.44
Furniture and Fixtures	66.7	1.2	.40
Heat, Light, Power, and Water	90.5	3.8	.36
Textiles	85.4	2.2	.32
Water Transport	96.5	3.4	.12
Construction	90.0	1.2	.12

Source: Labor Arbitration Reports (Washington, D. C.: The Bureau of National Affairs, Inc., 1950-74) and Labor Arbitration Awards (Chicago, Illinois: Commerce Clearing House, Inc., 1960-74) and Irving Bernstein's The Arbitration of Wages.

doubled."[6] The increased number of collective agreements in medical services has provided an increased opportunity for wage arbitration, which offsets the overall decline in the frequency of arbitration in the services group in general. When the medical services cases are removed from the overall services total, the decline in the annual average rate of wage arbitration is in excess of 70 percent, which is comparable to the decline in the majority of the other industries. Another offsetting factor that affects the trend in this industry is the large increase in the number of establishments. The 1967 Census of Manufactures reports that the number of establishments in the services category has increased by 78.5 percent since 1947. An increase in total establishments may provide an increased opportunity for wage arbitrations to take place.

Noticeably absent from the list of industries using wage arbitration are primary metals, automobile, rubber, and chemical industries. Those industries requiring wage arbitration are characterized by numerous small, highly competitive firms or firms "affected with the public interest." The industry composition has varied little from the previous study to the present.

Since 1956, the apparel, textile, and furniture industries experienced only one wage arbitration among them. One might readily conclude that wage arbitration was rejected by these three industries due to dissatisfaction with the process. Rejection of the process may contribute in part to this decline, but another very important factor is that all three industries moved from a highly unionized region of the nation to the

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[6]Dennis D. Pointer and Harry Graham, "Recognition, Negotiation, And Work Stoppages In Hospitals." Monthly Labor Review, Vol. 94 (May, 1971), pp. 54-58.

sparsely unionized South.[7] The absence of unions would most certainly eliminate the possibility of arbitration.

III. UNION DISTRIBUTION OF CASES

Forty-two unions arbitrated wages in the one hundred thirty-eight cases reported from 1950-74. Nineteen of the forty-two reported only one case during the period, while nine others experienced only two arbitrations.

Bernstein found that two hundred eleven unions had submitted wages to arbitration from 1945-50. Table 3 presents the union distribution of reported cases for those unions arbitrating five or more cases from 1950-74. The seven unions listed in Table 3 participated in 54 percent of all reported wage arbitrations.

The Teamsters arbitrated wages more frequently than any other union, averaging one case per year. They participated in 18.1 percent of all reported wage arbitrations during the period. Ten unions averaged one or more arbitrations per year in the Bernstein study, but the Teamsters union alone did so in the more recent period.

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[7] Leonard W. Weiss. Economics and American Industry. (New York: John Wiley & Sons, Inc., 1967), pp. 133-136. Wickham Skinner and David C. Rogers. Manufacturing Policy in the Furniture Industry. Third Edition (Homewood, Illinois: Richard D. Irwin, Inc., 1968), pp. 2, 3, 5, and 6. Neil W. Chamberlain and Donald E. Cullen. The Labor Sector. Second Edition (New York: McGraw-Hill Book Company, 1971), p. 76. F. Ray Marshall. Labor in the South. (Cambridge, Massachusetts: Harvard University Press, 1967), pp. 66-67.

TABLE 3

UNION DISTRIBUTION OF REPORTED ARBITRATION CASES, 1950-74

	Number Of Cases	Percent
International Brotherhood of Teamsters	25	18.1
Amalgamated Association of Street, Electric Railway, and Motor Coach Employees	10	7.2
International Brotherhood of Electrical Workers	10	7.2
Textile Workers Union of America	10	7.2
Printing Pressmen and Assistants Union	8	5.8
United Furniture Workers of America	7	5.1
Newspaper Guild	5	3.6
Total	75	54.2

Source: Labor Arbitration Reports (Washington, D. C.: The Bureau of National Affairs, Inc., 1950-74) and Labor Arbitration Awards (Chicago, Illinois: Commerce Clearing House, Inc., 1960-74).

With the exception of The Newspaper Guild, all of the unions listed in Table 3 were prominent in Bernstein's study. It is apparent that those unions that have arbitrated wages in the past continue to do so but at a reduced annual rate. Familiarity possibly contributes to a continuation

of the historical use of wage arbitration by particular unions. It is evident that those unions not having a working background with wage arbitration in their past have been reluctant to experiment with it since 1950 or have been unable to introduce these procedures successfully to their bargaining adversaries. There is also the possibility that the published awards are not a representative sample. Arbitrator J. Fred Holly reported in a personal interview that only three of fifteen wage cases arbitrated by him during the study period were reported. A complete survey of all arbitrators is, however, beyond the scope of this study.

IV. DISTRIBUTION OF CASES BY THE APPOINTING AGENCY

Table 4 presents the distribution of cases according to the agency that appointed the arbitrator. The parties to arbitration jointly selected and appointed their own arbitrator in over 50 percent of the reported cases. When the parties utilized one of the national panels of arbitrators, the Federal Mediation and Conciliation Service and various state mediation boards were their most frequent choices. The top three ranking of appointing agencies has not changed from Bernstein's study to the present. The most significant factor to note is that the parties selected their arbitrators in 28 percent of the cases in the Bernstein study without utilizing an appointing agency, and the comparable figure in the present study is 54.3 percent.[8] The heavier caseload burden on

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[8]Bernstein, The Arbitration of Wages, p. 22.

TABLE 4

DISTRIBUTION OF CASES BY THE APPOINTING AGENCY,
ALL INDUSTRIES, 1950-74

Agency	Number of Cases	Percent
Parties	75	54.4
FMCS	26	18.8
State Mediation Boards	21	15.2
New Jersey 10		
Connecticut 9		
Wisconsin 2		
Secretary of Labor	1	.7
American Arbitration Association	11	8.0
Governor	1	.7
National Wage Stabilization Board	1	.7
Other	2	1.5
Total	138	100.0

Source: Labor Arbitration Reports (Washington, D. C.: The Bureau of National Affairs, Inc., 1950-74) and Labor Arbitration Awards (Chicago, Illinois: Commerce Clearing House, Inc., 1960-74).

arbitrators during the earlier period may have forced the parties to turn to agencies more frequently than is necessary today in order to secure an arbitrator. An alternative explanation is that the large

number of cases in which Bernstein was unable to determine the appointing agency included primarily cases in which the parties selected the arbitrator without assistance.

V. ORIGIN OF CONFLICT

Table 5 presents the distribution of cases by the origin of the conflict leading to wage arbitration. Only five reported cases arose due to a conflict over the terms of an initial agreement. Approximately 47 percent of the cases were a result of conflicts arising under wage-reopening clauses, and 36 percent occurred during contract renewals. Wage reopeners have become less important since Bernstein's study, as the parties now fix wages for three year terms, and escalator clauses are often included to protect workers against cost of living rises.

As 12.4 percent of the cases failed to yield sufficient information for classification purposes, any or all of the frequencies may be understated. However, it is apparent that initial contract negotiations provide at most a limited number of wage cases. This indicates that the parties must generally be familiar with each other before embracing interest arbitration as an alternative to economic warfare.

VI. DISTRIBUTION OF CASES BY STRUCTURAL FORM OF PANEL

Arbitration panels may be composed of neutrals or tripartite members. An all-neutral panel may consist of one member or as many as the parties designate. Likewise, a tripartite panel may take many forms. It may

TABLE 5

DISTRIBUTION OF CASES BY SOURCE OF CONFLICT, ALL INDUSTRIES, 1950-74

Source	Cases	Percent
New Contract	5	3.6
Contract Renewal	50	36.2
Contract Reopener	66	47.8
Unknown	17	12.4
Total	138	100.0

Source: Labor Arbitration Reports (Washington, D. C.: The Bureau of National Affairs, Inc., 1950-74) and Labor Arbitration Awards (Chicago, Illinois: Commerce Clearing House, Inc., 1960-74).

consist of one neutral, one management, and one union representative, or various combinations of the three groups. Table 6 presents the distribtuion of cases by the structural form of the arbitration panel.

The all-neutral panel was chosen in 71.8 percent of the cases. The single neutral is by far the most favored form of the parties. Next in importance is the tripartite board with one neutral and one representative from each of the parties. Bernstein wrote that 36.4 percent of the awards came from tripartite panels, whereas the present study shows only 28.3 percent tripartite awards.

It is evident that the parties who have arbitrated wages preferred the single neutral or all-neutral panel, which is contrary to the opinion

TABLE 6

DISTRIBUTION OF CASES BY THE STRUCTURAL FORM OF THE PANEL, 1950-74

Structure			Number	Percent
All Neutral				
1 Member			88	63.8
3 Members			11	8.0
Tripartite				
Neutral	Union	Company		
1	1	1	28	20.3
1	2	2	6	4.3
3	1	1	1	.7
2	2	2	1	.7
1	3	3	2	1.4
Other			1	.7

Source: Labor Arbitration Reports (Washington, D. C.: The Bureau of National Affairs, Inc., 1950-74) and Labor Arbitration Awards (Chicago, Illinois: Commerce Clearing House, Inc., 1960-74).

frequently expressed in the industrial relations literature.[9] Perhaps so few extreme awards have been rendered that unions and companies attach

[9]Morrison Handsaker, "Arbitration And Contract Disputes," in Jean T. McKelvey, ed., Challenges To Arbitration—Proceedings of the Thirteenth Annual Meeting, National Academy of Arbitrators (Washington, D.C.: The Bureau of National Affairs, Inc., 1960, p. 85.

little probability to the likelihood of an award that they could not live with, hence, the more costly and cumbersome tripartite panels are infrequently used.

VII. CYCLICAL VARIATION OF CASES

Bernstein suggested that the number of wage arbitrations is "positively correlated with price movements."[10] He pointed out the sharp decline in the number of wage arbitrations during the postwar recession of 1948-49. He failed to pursue the question further due to the small sample he had to work with. Table 7 presents the annual distribution of awards from 1950-74. Contrary to Bernstein's hypothesis, the annual distribution of cases since 1950 does not reveal any apparent cyclical influence, either positive or negative. The annual average number of cases has not varied in a consistent manner during the five recessions and recoveries covered in the study. A changing industry specific microeconomic environment appears more important than macroeconomic variables in determining the frequency of arbitration in the unregulated industries.

VIII. DISTRIBUTION OF THE DIFFERENCE BETWEEN THE ARBITRATOR'S AWARD AND MANAGEMENT'S OFFER AS A PERCENT OF THE DIFFERENCE BETWEEN THE UNION'S DEMAND AND MANAGEMENT'S OFFER

Participants, practitioners, and the public are generally curious about which party is favored in arbitration proceedings. Wage arbitration

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[10]Bernstein, The Arbitration of Wages, p. 20.

TABLE 7

ANNUAL DISTRIBUTION OF CASES

Year	Number of Cases
1950 (July - December)	12
1951	13
1952	16
1953	12
1954	15
1955	4
1956	12
1957	6
1958	1
1959	1
1960	4
1961	3
1962	4
1963	4
1964	5
1965	4
1966	0
1967	4
1968	3
1969	0
1970	2
1971	3
1972	2
1973	2
1974	6
Total	138

Source: Labor Arbitration Reports (Washington, D. C.: The Bureau of National Affairs, Inc., 1950-74) and Labor Arbitration Awards (Chicago, Illinois: Commerce Clearing House, Inc., 1960-74).

lends itself to scrutiny on this particular question, provided that one is aware of certain pitfalls.

One can assume, as Bernstein did, that any award where the difference between the award and the offer is less than 50 percent of the monetary

difference between the two parties is an award that is favorable to management. The reverse is assumed to be true for the union. The difference between the parties is based on the last offer and demand. To compute the measure, management's offer is subtracted from the actual award. The amount by which the arbitrator's award exceeds management's offer is divided by the difference between the demand and offer to determine the percentage.[11]

It is easy from an outsider's perspective to view an arbitrator's award as being favorable to one party or the other based on the above technique, but one must recognize that the parties themselves may in no way consider any award deviating more than a fraction from their proposals as a victory. They may live with and accept the award, but one or both may consider it unfavorable.

Table 8 shows that ninety cases provided the information necessary for calculation of the percentages. Arbitrators chose one or the other parties' position in twenty-two cases which is approximately one-fourth of the total number of cases. Arbitrators simply split the difference between the two in only five cases, which should dampen somewhat the criticism that this is a frequent practice.

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[11] Example:

Management's last offer	= 20¢ = M
Union's demand	= 40¢ = U
Arbitrator's award	= 25¢ = A
Difference between union's demand and management's offer	= 40¢ - 20¢ = 20¢
(A - M)/(U - M)	= (25¢ - 20¢)/ 20¢ = 25%

TABLE 8

CASE DISTRIBUTION OF THE DIFFERENCE BETWEEN THE ARBITRATOR'S AWARD AND MANAGEMENT'S OFFER AS A PERCENT OF THE DIFFERENCE BETWEEN THE UNION'S DEMAND AND MANAGEMENT'S OFFER

Difference Between the Award and Offer As a Percent of the Difference Between the Demand and Offer	Number of Awards
0	17
1-10	2
11-20	6
21-30	12
31-40	11
41-49	9
50	5
51-60	11
61-70	4
71-80	4
81-90	2
91-99	2
100	5
Total	90

Source: Labor Arbitration Reports (Washington, D. C.: The Bureau of National Affairs, Inc., 1950-74) and Labor Arbitration Awards (Chicago, Illinois: Commerce Clearing House, Inc., 1960-74).

Figure 1 presents the data in graphical form. Excluding decisions wholly in favor of one or the other, very few awards were made on the upper and lower extremities of the scale. Over 53 percent of the awards rendered fell in the four classes extending from 21 to 60 percent of the differences. Sixty-nine percent of the awards lie in the class intervals from zero to 50 percent of the differences.

It is apparent from Figure 1 that there was a tendency to favor the management position. A simple average of all ninety cases of differences between arbitral awards and managements' offers as a percent of the difference between the unions' demands and managements' offers yields an average of 36.0 percent. This is slightly less than Bernstein's average value of 43.7 percent. This likewise indicates a preference for the employer's position over the twenty-five year period.[12]

Figure 2 indicates that there are very few cases in which the difference between the parties exceeds thirty cents per hour. Eighty-three percent of the ninety cases involved differences of thirty cents or less. The class interval involving differences from eleven to twenty cents contained the largest number of cases (27).

IX. WAGE CRITERIA

The criteria that are cited and used in wage arbitration are important to all concerned. The criteria form the bases upon which logical arguments

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[12]The above procedures are reasonable from the parties' vantage, but from an outsider's perspective, it is equally tenable to expect that the average award would be less than 50 percent of the difference given the firms' use of micro data and the unions' reliance on macro data.

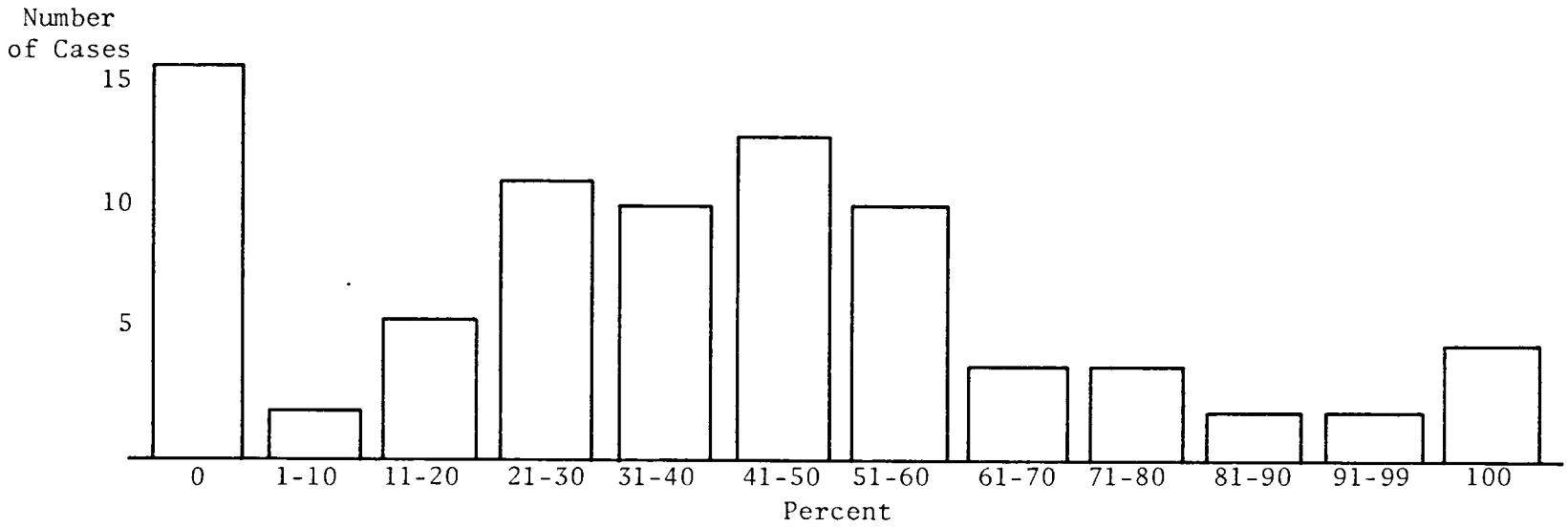


Figure 1. Distribution of Cases by the Difference between the Arbitrator's Award and Management's Offer as a Percent of the Difference between the Union's Demand and Management's Offer, 1950-74.

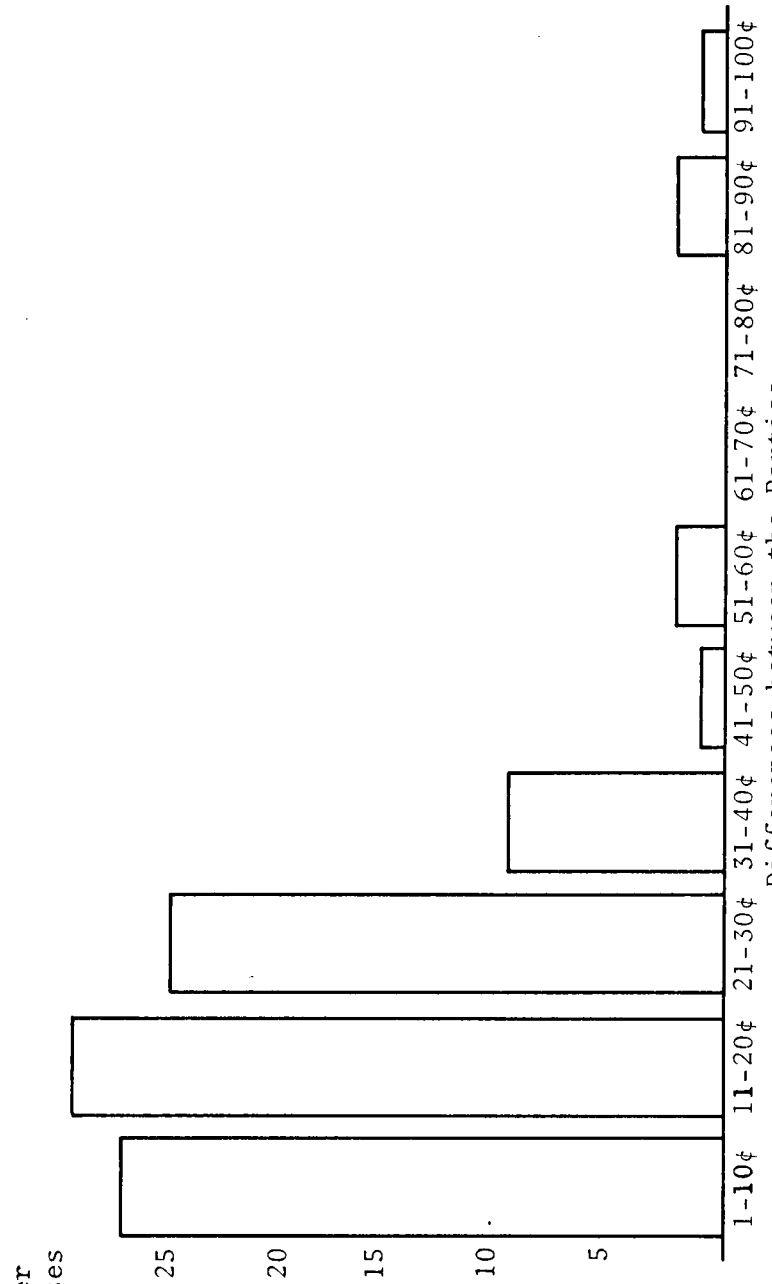


Figure 2. Distribution of Cases by the Differences between the Union's Demand and Management's Offer, 1950-74.

are founded and on which decisions may be reached. It is assumed that the parties cite particular criteria in support of their positions in a pragmatic manner. The task of determining which criteria are relevant in each particular case belongs to the arbitrator except in those cases where the parties stipulate the criteria to be utilized. The true test of the arbitrator's skill is the determination of weights to be assigned to the relevant wage criteria.

Cases reported to The Bureau of National Affairs and Commerce Clearing House generally contain the arguments of the parties, an evaluation of those arguments by the arbitrator, and a brief statement from the arbitrator on how the decision was reached. The wage criteria cited by the parties can be tabulated from the cases.

Bernstein excluded rebuttal arguments from the list of recorded citations so that all citations would ". . . constitute affirmative arguments to justify a particular wage policy . . . ," and the present study does likewise.[13] Careful attention is paid to those cases where arbitrators clearly point out the criterion that is most important in reaching the decision. One hundred thirteen cases were found to include sufficient information for a determination of the arbitrator's primary criterion in those cases. As it is the arbitrator's decision that is important to the disputants and to the public, the study focuses on those criteria which the arbitrators have found to be most relevant.

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[13]Bernstein, The Arbitration of Wages, p. 28.

In Table 9, the frequency of citation is presented. From Table 9, answers to certain questions may be found. Do the parties generally use the same criteria? What are the most favored criteria? Are the criteria cited by the disputants the same as those cited by the arbitrators?

The parties typically rely on more than one wage criterion, as evidenced by the fact that there were 826 individual citations of criteria recorded in the 138 cases reported. Unions cited 294 criteria, arbitrators 287, and companies 245. Bernstein classified criteria cited in his study into ten different categories. This study recognizes only nine categories, and they are defined as follows:

1. Comparisons—wage changes are justified by comparison of absolute wage levels with the wages of other firms in the industry, other industries, other plants in the company, other locals of the union, or with the wages of other unions.

2. Cost of living—wage changes are justified on the basis of a movement of some index of consumer prices.

3. Financial condition of the employer—the firm's ability to pay, price, or competitive position supports a positive, negative, or zero wage change.

4. Differential features of the work—wage changes are based on the existence of special conditions of employment, such as regularity of overtime, minimum hours guarantee, and special fringe benefits.

5. Substandards—wage increases are justified because existing wages are below national standards of a "living wage."

6. Productivity—wages should be changed as output per man hour has changed.

TABLE 9

CITATIONS OF CRITERIA, 1950-74

Criterion	Union		Company		Arbitrator		Total		Arbitrator's 1st Ranking	
	Number Citations	Percent	Number Citations	Percent	Number Citations	Percent	Number Citations	Percent	Number Citations	Percent
Comparisons	122	41.5	76	31.0	99	34.5	297	36.0	46	40.7
Intraindustry	87	29.6	58	23.7	81	28.2	226	27.4	41	36.3
Interindustry	17	5.8	11	4.5	9	3.1	37	4.5	2	1.8
Intracompany	5	1.7	2	.8	6	2.1	13	1.6	2	1.8
Intraunion	10	3.4	1	.4	1	.3	12	1.5	0	0
Interunion	3	1.0	4	1.6	2	.7	9	1.1	1	.9
Cost of Living	51	17.3	19	7.8	55	19.2	125	15.1	21	18.6
Ability to Pay	17	5.8	101	41.2	46	16.0	164	19.9	13	11.5
Differential Features of the Work	11	3.7	1	.4	2	.7	14	1.7	0	0
Substandards	15	5.1	0	0	3	1.0	18	2.2	0	0
Productivity	17	5.8	8	3.3	7	2.4	32	3.9	0	0
Manpower Req.	5	1.7	2	.8	1	.3	8	1.0	0	0

TABLE 9 (Continued)

Criterion	Union		Company		Arbitrator		Total		Arbitrator's 1st Ranking	
	Number Citations	Percent	Number Citations	Percent	Number Citations	Percent	Number Citations	Percent	Number Citations	Percent
Patterns	37	12.6	21	8.6	48	16.7	106	12.8	29	25.7
Other	19	6.5	17	6.9	26	9.0	62	7.5	4	3.5
Total	294		245		287		826		113	

Source: Labor Arbitration Reports (Washington, D. C.: The Bureau of National Affairs, Inc., 1950-74) and Labor Arbitration Awards (Chicago, Illinois: Commerce Clearing House, Inc., 1960-74).

7. Manpower attraction—wages should be changed in order to attract sufficient numbers of employees or because existing quantities are sufficient.

8. Patterns—wage changes are justified on the basis of percentage wage changes secured by a wage leader in the industry, in other industries, in other locals of the union, or in other unions.

9. Other—this category includes all citations which are unclassified due to insufficient information or infrequency of citation.

The present study includes the pattern classification which was not recognized as a separate classification by Bernstein. Patterns as defined in this study were included in the general comparison classification by Bernstein. The frequency of citation in the present study is sufficient justification for a separate classification. Two other categories recognized by Bernstein, hours-of-work and union behavior, were not included in the present classification as no cases were reported in these categories.

Wage comparisons were the most frequently cited criteria by the combined participants. Individually, this was true for the arbitrators and the unions, but not for the companies. The companies cited ability to pay in 41.2 percent of their total cases as compared to 31 percent for comparisons. Next in the frequency of union citation is cost of living and patterns respectively. Arbitrators also cited cost of living changes frequently enough to place it second in frequency of citation. Patterns and ability to pay tied for the third position in the arbitrators' frequency of citation. The pattern category was third in the companies' citation ranking.

It is apparent that the participants in wage arbitration generally cite the same criteria but apply them or interpret them in different ways. Otherwise, one would expect that arbitration would not be necessary, as the parties would agree on the criteria and how they should be applied. Exceptions are that ability to pay is rarely cited by unions but heavily relied upon by companies, and cost of living is not frequently cited by companies, whereas unions have relied on it greatly. Arbitrators, however, have accepted and applied both criteria.

Analysis of the arbitrators' first rankings of criteria reveals the following: intraindustry comparisons were ranked first in importance in 36.3 percent of the 113 cases; patterns were ranked first in 25.7 percent of the cases; and cost of living changes were ranked first in 18.6 percent of the cases. In addition, ability to pay was found to be the most important criterion in 11.5 percent of the cases. In the other four classifications combined, none were given a first ranking.

Chapter II has included a brief survey of the institutional characteristics of wage arbitration. Subsequent chapters present the analysis of each wage criterion. Chapter III presents a study of the wage comparison and pattern criteria.

CHAPTER III

WAGE COMPARISONS AND PATTERNS—CONCENTRATED AND REGULATED INDUSTRIES

I. INTRODUCTION

The presentation of data in Chapter II clearly establishes the importance of comparisons in the wage arbitration process. The data show that comparisons are viewed as relevant and important to the parties and the neutrals. Each party has different reasons supporting its use of comparisons in collective bargaining and wage arbitration.

Unions present comparisons in arbitration hearings for several reasons: a standard rate of pay for similar work is viewed as equitable; the political nature of unions is such that the leadership must respond to membership comparisons of their wages with those of others in the area, industry, or region; and the standard rate will help to insure that low-wage firms in the industry will not underbid their competitors in the product market and force down prices and wages in the industry.

Employers likewise turn to comparisons, but for different reasons. In industries that consist of small, highly competitive firms, employers will apply comparisons with their unionized competitors as a means of placing a floor under competition. In addition, employers who pay wages comparable to those of their competitors in an area expect to have no relative disadvantage in the continual attraction and maintenance of a

labor force, ceteris paribus.[1] Larger employers may introduce comparisons as a means of maintaining the company image within the industry or with the public as well as to standardize rates of pay.

It appears only natural that arbitrators turn to a criterion which employers and unions use and advocate in their normal bargaining relationships. If one adheres to the position that the arbitrator should attempt to reach a settlement close to that which the parties would have achieved in the absence of the impasse, then the reliance of arbitrators on the comparison criterion is easily understood. Arbitrator Neil Gundermann wrote, "The standards selected to serve as guides in arriving at appropriate wage rates are most valid when they approximate those standards traditionally used by the parties in collective bargaining."[2] However, the existence of a commonly used and accepted criterion does not lessen the arbitrator's task, as the need for arbitration generally arises when one negotiating party desires to change the existing basis of comparison. This chapter focuses on the arbitrators' application of the comparison criterion in the decision making process.

The study follows the basic classification system developed by Bernstein, which recognizes five separate comparisons: intraindustry, interindustry, intracompany, interunion, and intraunion. The system is accepted because it will facilitate comparison with the Bernstein study,

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[1] Lloyd G. Reynolds, Labor Economics and Labor Relations, Sixth Edition (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1974), pp. 441-449.

[2] 39 LA 249.

although a number of problems with respect to overlapping structures exist. For example, an intraindustry comparison could involve an inter-union or intraunion comparison as well. Bernstein recognized the overlapping of the firm and union structures but proposed that both employers and unions generally base their comparisons on the e mployer and reasoned that this classification system was as workable as any alternative.

There is one exception to the Bernstein classification system; the pattern standard is truncated from the general comparison criterion to show its independent importance. So in addition to the focus on absolute comparisons, the chapter examines the pattern criterion. Patterns are included in the present chapter for two reasons: first, the pattern classification is represented by comparisons of wage changes over time—it is in fact a comparative technique; and second, absolute comparisons and patterns are often introduced by the parties as reciprocal and/or supportive arguments. Applications of both criteria are studied in this chapter and the following one to facilitate the understanding of their individual applications and how they relate.

Table 9, page 35, indicates that over 40 percent of the arbitrators' first rankings were comparisons with the intraindustry comparison accounting for 89 percent of all comparisons. Combination of absolute comparisons and patterns emphasizes the importance of all types of wage comparisons even more—absolute comparisons and patterns combined accounted for 66.4 percent of the arbitrators' first rankings of criteria. Several reasons account for the reliance of arbitrators on the comparison criterion as the most important determinant in wage arbitrations. First, the printing and publishing industry, which was the most frequent user of wage

arbitration, has a long history of accepting and applying intraindustry wage comparisons as the most important element in wage arbitration. The key is that comparisons have not only been introduced by the parties and applied by arbitrators, but that decisions based on them have been acceptable. Arbitrator Harry H. Platt wrote:

> . . . For it is almost axiomatic that if arbitration is to function successfully as a dispute-settling process, it must not yield substantially different results than could be obtained by the parties through bargaining.[3]

Arbitrator George Savage King noted that, "The most significant factor and the one most consistently relied upon in wage arbitrations is inter-city comparisons of the rates of newspapers in comparable cities."[4]

Secondly, the urban transit industry has a history of relying on comparisons as a major element in the wage arbitration proceedings. Arbitrator Donald A. Crawford wrote,

> Standards for arbitration in the transit industry are also well established . . . . Wage comparisons of dominant companies serving populations in cities of a comparable size, and trends in these wage levels are next only to cost of living in determining the amount of increase to be considered.[5]

Finally, arbitrators apply the intraindustry comparison simply because it is acceptable to the parties. The probability that one or both parties will be seriously harmed by an extreme award appears to be quite low when the award is based on comparisons with competitors in the

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[3] 16 LA 749.

[4] 49 LA 433.

[5] 45 LA 58.

area, region, or nation. Even though the parties to arbitration may be in agreement that comparisons should be used to determine the appropriate wage rate, they may disagree as to which type of comparison to apply. However, agreement on the type of comparison does not completely solve the problem, for then the particular method to be applied must be resolved.

Chapter III presents an analysis of the application of the wage comparison and pattern criteria in industries that are highly concentrated in the relevant market: newspaper printing, local transit, utilities, and others. Chapter IV continues this analysis in the relatively competitive industries. The separation of cases by product market characteristics will provide a clearer picture of the applications of the criteria.[6] It is assumed that the economic characteristics of the product market will dictate or influence the arbitrator's application of each specific criterion. Lloyd G. Reynolds stated:

> . . . In local-market industries there is a tendency toward wage equalization within the city, though there may be considerable variation in wage levels from one city to the next. In manufacturing industries where employers compete on a regional or national basis, there is a tendency toward leveling up of wages throughout the country.[7]

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[6]The separation of industries by the concentrated and competitive (unconcentrated) classifications is based on the research of a few industrial organization experts. See F. M. Scherer, Industrial Market Structure And Economic Performance (Chicago: Rand McNally and Company, 1971), pp. 52-66. Joe S. Bain, Barriers to New Competition (Cambridge: Harvard University Press, 1965). Weiss, Economics and American Industry.

[7]Reynolds, Labor Economics and Labor Relations, pp. 543-544.

From Reynolds' statement, one can deduce that union strategy is likely to be different depending on the nature of the product market of the particular firm. Varying union strategies should bring a similar response from companies and should be reflected in criteria proposed in bargaining. Arbitrators would be expected to weigh accordingly those criteria which the parties have historically used in bargaining.

Therefore, the application of a particular criterion by arbitrators is best analyzed from the individual industry perspective within a specific market structure. After viewing the applications of a particular criterion industry by industry in each market classification, some generalizations can be drawn for purposes of comparison between the two market structures: concentrated-regulated and competitive.

II. PRINTING AND PUBLISHING

The printing and publishing industry has a long history of wage arbitration, as local agreements to arbitrate wages predate 1900, and the first International Arbitration Agreement in this industry was signed by the American Newspaper Publishers Association and the Printers, Pressmen, and Stereotypers in 1901.[8]

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[8]Thomas S. Adair. "The Arbitration Of Wage and Manning Disputes In The Newspaper Industry," in Barbara D. Dennis and Gerald G. Somers, eds., Arbitration Of Interest Disputes—Proceedings of the Twenty-Sixth Annual Meeting, National Academy of Arbitrators (Washington, D. C.: The Bureau of National Affairs, Inc., 1973), pp. 33-36.

Local unions and companies sign the International Arbitration Agreement voluntarily to provide an alternative means to settle interest disputes. The agreement provides an appeals procedure for local interest arbitrations. The International Arbitration Board, created by the agreement, is composed of seven members: three members from the American Newspaper Publishers Association, three from the international union, and a neutral selected from a panel of arbitrators previously chosen by the two parties.[9]

The importance of the appeals procedure lies in the fact that, ". . . local arbitrators are bound to apply to the facts before them the principles decided by the appellate board in other cases."[10] John S. McLellan has quoted the international board in some early cases as stating:

> The decisions and opinions of the international board of final jurisdiction may be considered authorities and precedents upon questions of identical similarity to those passed upon by local board and should have great weight in succeeding arbitrations. They should be certainly followed by local boards if the circumstances of the local case do not differ from those in the authorities cited. Thus, unlike ordinary arbitrations where the awards of other arbitrators are generally suggestive and may be disregarded at will, the parties have agreed to a type of procedure by the nature of

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[9]John S. McLellan, "The Appellate Process In The International Arbitration Agreement Between The American Newspaper Publishers Association And The International Printing Pressmen," in Barbara D. Dennis and Gerald G. Somers, ed., Arbitration Of Interest Disputes—Proceedings of the Twenty-Sixth Annual Meeting, National Academy of Arbitrators (Washington, D. C.: The Bureau of National Affairs, Inc., 1974), p. 54.

[10]Ibid., p. 57.

> which local boards are required to pay attention to what the superior tribunal has done and to follow the superior tribunal upon principles which are applicable to a factual situation previously considered and decided by the appellate board.[11]

The most frequently used criterion in this industry is the intercity intraindustry wage comparison, hereafter called the intercity comparison. The comparison is generally one of an absolute nature, but occasionally the intercity pattern is awarded some weight. A series of cases beginning in 1962 illustrates the application of the intercity comparison and the impact of the subsequent review of such cases.

In an arbitration between Atlanta Newspapers Incorporated and the International Printing Pressmen and Assistants Union, Arbitrator J. Fred Holly was presented with several wage criteria by the parties, all of which were found inappropriate except for the intercity comparison. Each party presented lists of comparable cities for the Arbitrator's consideration. The Arbitrator wrote:

> . . . Thus, the Arbitrator is faced with two basic issues as follows: (1) the determination of the appropriate basis for comparison, and (2) the determination of whether historical differentials should be continued.[12]

Each list of cities was found to have certain deficiencies, so Arbitrator Holly was faced with problem one above, which was solved by taking those cities from the two lists having a population within 10 percent of

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[11] Ibid., pp. 56-57.

[12] 39 LA 207.

Atlanta's, having a comparable percentage of total circulation in the city zone, and having similar manning requirements.

This effort yielded eight cities on which a comparison could be based. A simple average of the basic hourly wage rates of the printing pressmen in the eight comparison cities indicated that their wages exceeded those of the Atlanta pressmen by 9.5 cents in 1960 and 9.4 cents in 1961. The absolute difference in 1962 between the Atlanta employees and the average of the eight cities jumped to 21.6 cents.

Existence of the differential which was closely maintained from 1960 to 1961 created problem two for the arbitrator. A simple intercity comparison indicated an increase of 21.6 cents, but the existence of the historic differential limited the actual increase to 12 cents per hour. Arbitrator Holly presented his reasoning for examination of the historic differential,

> . . . In the first place, the Arbitrator is cognizant of the fact that this differential was established by the parties in free collective bargaining. The standard of comparison chosen by the arbitrator indicates that in the past two negotiations this differential has been closely maintained, being 9.5 cents in 1960 and 9.4 cents in 1961, Since it is known that the parties have been following industry practices since 1957, it can be presumed that this differential has been evident since then.[13]

Holly then summarized by stating that to change an historic differential, the party desiring the change must present those variables on which the original differential was based and show how those variables have changed. No such evidence was presented in this case.

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[13]Ibid.

This case provides several important points: (1) current intercity comparisons set the outer limits for a wage increase, (2) past negotiations are heavily weighted, (3) historic intercity differentials can limit the actual amount of the wage increase if it is below the current differential, and (4) factors such as population, newspaper circulation, and manning requirements are important in a determination of comparable cities.

In a review of the above case, the International Board, chaired by neutral Harry H. Platt, found that, "Industry wage comparisons is the controlling factor in the case upon which to base a wage increase."[14] However, Platt did not accept continuation of the differential and wrote,

> An inter-city comparison of Pressmen rates show conclusively that the Pressmen employed by this publisher occupy a grossly inequitable position in relation to Pressmen in comparable cities performing comparable work. Such gross inequity requires correction.[15]

The International Board accepted Holly's determination of the comparable cities but reasoned that the entire historic differential represented an inequity that should not be maintained unless evidence was presented justifying its existence.[16] The International Board ruling provided

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[14] 41 LA 400.

[15] Ibid.

[16] Ibid. It should be pointed out that in an appeal, the parties cannot present additional evidence. The record established in the original case is all that's considered.

that the employer must introduce data to justify the continuation of a differential.

Arbitrator Lawrence E. Seibel followed the precedent established in the Holly award (39 LA 207) and the Platt review (41 LA 400) in a 1964 case involving Atlanta Newspapers, Inc. and the Atlanta Web Pressmen's Union. Seibel quoted the Holly opinion and the Platt review at length. The force of intercity comparisons was such that it overwhelmed the idea of continuing an historic differential. Seibel wrote:

> . . . if a differential is to be maintained, it must be based on differences in manning requirements and other matters of the Publisher-Union agreement which go to the 'real' or 'actual' wage cost and not to geographic or historic differentials as such.[17]

Seibel's comparison involved the eight cities previously selected by Holly plus four others. As the differential resulting from his comparison was quite large, the Arbitrator felt that it was too large to be eliminated in one step and wrote that if the company was unable to justify the differential "the Arbitrator should take a first step towards its elimination."[18]

Seibel's award was sustained by the International Board in 43 LA 407. The International Board once again accepted Holly's method of comparison in addition to Seibel's rejection of a continuation of differentials unless supported by manning or other negotiated factors.[19] This illustrates

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[17] 43 LA 413.

[18] 43 LA 410.

[19] 43 LA 407.

the practice that arbitrators have consistently followed in this industry when dealing with large differentials, for it is rare for a substantial differential to be eliminated in one step by an arbitrator.

Intercity comparisons also play a role in the determination of intraplant inequities in the printing and publishing industry. In 42 LA 548, Arbitrator Harry J. Dworkin found an intraplant differential between the paperhandlers and the other crafts in the plant based on intercity comparisons. The paperhandlers asked for a $12.75 increase per week to eliminate the intraplant inequity. The inequity was presented by a comparison of the Atlanta paperhandler's wages as a percentage of the simple average of the other crafts' wages in the plant to an average of 37 cities paperhandlers' rates relative to the other crafts.

In Atlanta, the paperhandlers were earning only 54.5 percent of the average of the other crafts' rates, whereas the paperhandlers of the 37 comparable cities earned an average of 73 percent of the average wage rate of the other crafts. It would have been necessary for Arbitrator Dworkin to have increased the basic hourly wage rate by 33 cents per hour to eliminate the intraplant inequity, but he took a partial step toward this end by awarding 22 cents.[20]

Atlanta Newspapers, Incorporated appealed the above case, arguing that intercity comparisons were not proper, as the firm did not compete with the firms in the other cities in the product market, nor did they compete with each other for labor. Saul Wallen, neutral member of the International Board, responded:

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[20]42 LA 548.

> . . . What people in the same business pay for work of like skill in other places, especially ones with characteristics common to ones own, can be of inordinate importance in determining the current worth of the same jobs locally even though the separate locations serve non-competing customers and draw on separate labor markets.[21]

With respect to the intraplant inequity, the company had argued that the spread between the paperhandlers and the other crafts was long standing, and that the rates compared favorably with area rates for similarly skilled employment. Dworkin did not accept this argument, nor did the International Board. Dworkin reasoned that the burden was on management to justify the continued existence of an inequity, and that they had failed to do so in this case.[22]

When intercity differentials are very large, arbitrators take care not to create intraplant inequities with their awards. Arbitrator J. Fred Holly was faced with this particular type of situation when arbitrating a 1971 case for the Houston Chronicle Publishing Company and the Houston Paperhandlers and Warehousemen's Union. Holly's award was appealed by the firm on the grounds that he violated ". . . a generally accepted principle that in wage reopening arbitration great weight must be given to the historical practices of the parties."[23] The Arbitrator accepted the union contention that changes in the local economic environment and increases in area population were such that historical practices must be set aside. The Houston Chronicle argued for acceptance of

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[21] 43 LA 1099.

[22] 43 LA 1094.

[23] 56 LA 487.

the pattern of wage increases, but Holly based his award on intercity differences with one qualification. Holly noted that the intercity differential was so large that to take a very significant step toward elimination of the differential would create an intraplant inequity which ". . . would tend to destroy the morale of the craft employees and would tend to create serious labor problems."[24]

John T. Dunlop affirmed the position generally taken by arbitrators with respect to awards and intraplant equity in a decision for The New York Times and the American Newspaper Guild:

> A salary increase by arbitration should provide a minimum change in the salary structure negotiated by the parties. The relative differentials in dollar terms among employees in the same group, since such differentials also reflect the results of past bargaining, should likewise be generally preserved by the arbitrator.[25]

The pattern criterion is generally applied by arbitrators in this industry in three basic situations: (1) the use of intercity comparisons indicates that the company is a wage leader, or (2) the existence of an intercity-intraindustry wage differential is justified by the company, or (3) the company and union have historically followed a particular pattern. In (1) and (2) of the above situations, the intercity comparison alone would possibly yield no change in wages. This approach could significantly alter negatively the workers' relative position in the industry and/or within the company and, thereby, seriously harm worker morale.

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[24] 56 LA 489.

[25] 15 LA 332.

When firms are wage leaders, unions pragmatically turn from the use of intercity comparisons of the absolute level of wages. Arguments may follow absolute interindustry comparisons or national patterns. Employers are likely to propose intraindustry comparisons or area patterns in the above situation if they foresee some wage increase as being necessary.

Arbitrators also turn to area or national patterns when intraindustry comparisons yield no substantial differences and there appears to be a developing pattern in the area or in the industry itself. Arthur Lesser, Jr. used both the industry pattern and the area pattern to determine the amount of a wage increase in a dispute involving The Jersey Journal and the Office Employees International Union. Lesser commented that,

> Although present wages are "roughly comparable" to those paid by other newspapers, evidence shows that a number of newspapers recently granted increases and that wages of white collar workers generally in [the] area increased from three to six percent in [the] past year.[26]

In a similar case, Byron R. Abernethy discerned that the Dallas, Texas Newspaper Publishers were regional wage leaders. The arbitrator accepted the national industry pattern as setting the outside limits for a wage increase and other factors, such as the rate of change in the cost of living and the general business climate in the Dallas area were limiting principles.[27]

Two cases were reported where intercity intraindustry wage differentials were justified by employers. In the first case, involving the Waxide Printing Company and the International Printing Pressmen and

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[26] 15 LA 76.

[27] 22 LA 91.

Assistants Union, the union established that the plant's wages for pressmen were below those of other plants in the area. The company responded that the employers of other pressmen in the area were in a totally different industry from their own and were, therefore, not comparable. The arbitrator noted this fact and accepted the company's evidence showing that the differential between the two employments of pressmen in the area was less than the national differential between these two employments. The arbitrator turned to the intraplant pattern after resolving the question concerning interindustry comparisons involving similar jobs.

The Birmingham News Company's paperhandlers were found not to be generally comparable with others in the industry, therefore, a differential in wages between them and other paperhandlers in the industry was deemed acceptable by Harold T. Dworet in the second reported case. Dworet asserted that,

> . . . Changes that affected the employees such as changes in the cost of living and changes in wage scales of other employees in the plant are the pertinent factors warranting consideration in this case. Changes in cost of living affects the employees directly and changes in wage scales of other employees in the plant must be considered because an increase to one group and not to another would cause a balanced wage structure to get out of balance and create intra-plant inequities.[28]

The intraplant pattern was applied in conjunction with the cost of living criterion.

Historic use of patterns in bargaining will generally result in an acceptance of this criterion by arbitrators, unless extenuating circumstances can be established by one of the parties. The Dallas Publishers

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[28]23 LA 639.

and the Printing Pressmen's Union followed the pattern established between the company and the other crafts in the plant from 1952 to 1968, when the union desired to change the basis of wage determination to the intercity comparison. Arbitrator Frank Elkouri partially accepted the union's plea due to the rapid economic growth in the Dallas area but reasoned that the past history of reliance on the intraplant pattern must be controlling.[29]

In a similar case where an intraindustry area pattern had been followed by the Oakland Tribune Publishing Company and the Editorial Employees Association, the union pressed for interindustry wage comparisons as the foundation for a wage determination. Arthur M. Ross responded to the union's proposal thusly:

> . . . To say that parties should negotiate "on the merits" without regard to what others are doing is to beg the question somewhat, for the 'merits' of a case cannot be viewed in isolation from the surrounding environment.[30]

In other situations where intraplant patterns are argued but with no historical foundation, and the company is not a wage leader, one can expect arbitrators to treat these arguments lightly, as George Savage King did in a 1967 case with the Pensacola News-Journal and the Printing Pressmen and Assistants Union.[31]

As the comparison criterion is relied on so greatly in the printing and publishing industry, other criteria are apparently reconciled to

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[29] 50 LA 367.

[30] 28 LA 480.

[31] 49 LA 434.

obscurity. On the face of the issue, this may be so, but in reality, it is not. Arbitrator Whitley P. McCoy provides some insight in a case he arbitrated in 1957. He writes:

> . . .It is interesting to note, however, that the total increase awarded, 25 cents, on the basis of comparisons, is almost precisely the increase that would be arrived at by adding the exact cost of living increase to date to an annual improvement factor of one per cent, and then adjusting the hourly rate to preserve weekly pay upon the reduction of the workweek.[32]

The germane point in the award is that the comparison criterion allows one to consider all of the relevant factors without having to arbitrarily assign specific weights. Rather, the weighting has been completed by those parties to collective bargaining agreements that were included in the comparison matrix. The criterion weighting issue is less imperious when the intercity comparison is applied.

III. URBAN TRANSIT

Like the printing and publishing industry, urban transit has extensive experience with wage arbitration. The Amalgamated Transit Union's International Constitution requires that each local union offer arbitration to management prior to any International sanction of a strike.[33]

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[32] 29 LA 12.

[33] Herman Sternstein, "Arbitration Of New Contract Terms In Local Transit: The Union View," in Barbara D. Dennis and Gerald G. Somers, eds., Arbitration Of Interest Disputes—Proceedings of the Twenty-Sixth Annual Meeting, National Academy of Arbitrators (Washington, D. C.: The Bureau of National Affairs, Inc., 1974), p. 12.

In this way, the International encourages the use of arbitration and discourages the use of economic power. With the blessing of the International, most locals of the Amalgamated Transit Union include a provision to arbitrate all disputes.[34]

Comparisons also play an important role in the reported wage cases in the urban transit industry. Arbitrator Albert I. Cornsweet indicates the realm of appropriate comparisons in the Rochester Transit Corporation case of 1950:

> One of the major criteria in determining a fair wage is, of course, wage comparisons—comparison with wages paid for similar skills and responsibilities, comparison with other transit systems in cities of similar size and comparison with other transit systems in nearby cities.[35]

The opinion and award in this case denote a reliance on the intercity comparison. Even though Cornsweet mentions "similar skills and responsibilities," examination of the reported cases shows little acceptance of interindustry comparison of wages. Primary responsibility for failure of most interindustry comparisons lies with the inability of the proponent in each particular case to establish the comparability of job content across industry lines. Neutral Harry Platt provided what appears to be a statement representative of most arbitrators' opinions in this industry concerning interindustry comparisons:

> The Board considered but found slight significance in a comparison of the Pittsburgh operator's hourly wage rate with wage rates of workers in other industries in the Pittsburgh area because of non-comparability

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[34] Ibid., p. 13.

[35] 15 LA 270.

> of the content of most transit jobs with jobs in other industries. Clearly, rates paid for jobs in other industries which are performed under different working conditions and require different skills and duties do not afford a proper basis for comparison.[36]

The Pittsburgh Railways case of 1951 provides interesting insights with respect to intercity comparisons involving transit employees. The union pressed for a wage increase based on a rise in the cost of living and the traditional national and regional intercity comparisons. Pittsburgh Railways proposed that no wage increase should be granted, because the firm's wages were so far above those of bus line employees in the area, that it simply could not afford the increase. The arbitrator ruled that the firm's position as a wage leader in local transit had not affected its competitive position, hence, the union had made its point by following its historical practice of intercity comparisons. There was no evidence presented to indicate that jobs in rail transit were comparable with those in other forms of transit.[37]

Arbitrators are most likely to accept comparisons with other employees working for the same type of employer within the transit industry. It is rare that rail wages would be readily acceptable as a basis of comparison with bus line wages. Intercity-intraindustry comparisons are actually intercity comparisons of wages in a particular subgroup of the industry, therefore, industry wide comparisons are no

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[36] 50 LA 1113.

[37] 17 LA 152.

more acceptable than interindustry comparisons. It should be noted that the phrase, intraindustry comparison, is strictly a reference to a particular subgroup in this industry, unless clearly stated otherwise.

According to Arbitrator John J. Flagler, cities should be evaluated for comparison purposes on the basis of the following guides:

> . . . The selection should be one that minimizes differences based on population density, size and location of central business district, peculiarities of population distribution and other such geographical and demographic variables. The basis should further minimize differences in cost of living, community wage structures and other historical and institutional wage factors.[38]

City size and proximity to the instant company and its employees are the most prominent variables in a determination of the cities to be included in wage comparisons in this industry.

If a clear inequity is shown by the intercity comparison, then arbitrators will take steps toward elimination of the intercity wage differential subject to certain limitations. If the particular firm can establish that the differential is justified, then the arbitrator is likely to consider other factors, such as the cost of living or the current intercity intraindustry pattern, hereafter referred to as the intercity pattern, to reach a decision. The Nassau Bus Lines case provides an example of the justification of a large intercity differential on the basis of a guarantee of more hours of work than the average and a guarantee of more overtime hours. The basic wage rate comparison did not reflect the impact of the two factors on earnings of Nassau employees,

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[38] 62-2 ARB 5077.

therefore, the arbitrator accepted to a large extent the existence of most of the wage differential.[39]

In a wage leadership case involving the Des Moines Transit Company in 1962, the company was found to have an average straight-time hourly rate that was 12 cents above the average straight-time hourly rate of other transit firms in ten midwest cities. After the differential was found, the arbitrator examined the intraindustry pattern of increases over the three year period prior to the arbitration in the ten other cities, and this investigation yielded an average annual increase of 8.9 cents per hour. The firm's financial losses were such that the arbitrator ruled the company could not be expected to maintain its position as a wage leader in the region, hence, a seven cent increase was awarded. The arbitrator accepted the firm's inability to pay as a limiting factor in reaching the wage decision. As the firm was a wage leader, the arbitrator was encouraged to use the intercity pattern of increases subject to the ability to pay limitation.[40]

Harry Platt, in a similar case, reasoned that a current pattern ". . . is a significant factor in the determination of future wages" in an inflationary period. He proposed that arguments to "hold the line" have no force in the face of a negotiated pattern in the industry. He continued his analysis with the following:

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[39] 23 LA 4.

[40] 62-2 ARB 8555.

> In addition, such evidence has significance because it is of settlements made through collective bargaining by experienced bargainers who may be presumed to have taken into account all the wage-influencing factors in order to arrive at a fair and equitable wage adjustment.[41]

Intercity comparisons may be found even more compelling by arbitrators when the current intercity pattern of increases is large relative to the existing differential between a firm's employees and those in other comparable firms. This proved to be the situation in the Twin City Rapid Transit case of 1951, where the intercity comparison that was accepted by the arbitrator was approximately equal to the current pattern of increases in the industry.[42] This approach gives more strength to the intercity comparison.

If the absolute differential between a firm's wages and the average of a group of comparable firms is large, reported cases indicate that the minimum increase in this industry is likely to be the national or regional intraindustry pattern, ceteris paribus. However, wages may rise above the pattern under certain conditions identified by Arbitrator Albert I. Cornsweet:

> Now if this pattern had the effect of freezing a sub-standard level of wages in this region, the Board would, . . ., be obligated to give it serious consideration and should have no hesitation in discarding it, despite the compelling reasons for adhering fairly closely to the framework of collective bargaining of the parties themselves.[43]

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[41] 50 LA 1114.

[42] 16 LA 749.

[43] 15 LA 271.

Cornsweet proposes that an absolute wage inequity will not be maintained simply due to the fact that the current intercity pattern is smaller than the differential. Patterns apparently place a minimum under a likely wage increase, ceteris paribus.

IV. HEAT, LIGHT, POWER, AND WATER

Wage arbitration is nothing new in public utilities. Bernstein pointed out that utility managers and union representatives long ago recognized the impracticality of strikes in this sector.[44]

A case involving the Public Service Electric & Gas Company of New Jersey and the International Brotherhood of Electrical Workers illustrates the methods of applying comparisons in this industry. Initially, an intraindustry comparison involving strictly New Jersey firms was rejected outright by the arbitrators, as most of the plants in this comparison were smaller than the instant plant, and they served primarily rural as opposed to urban areas.[45]

An interindustry comparison in the area yielded the following comment from the three neutrals:

> The work and skills of the lineman involved in these proceedings are different from those employees in other industries, as e.g. the steel industry or the mass transportation industry, and there is no factual basis for a comparison between his wage rates or earnings and those of a steel worker or bus operator.[46]

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[44]Bernstein, The Arbitration of Wages, p. 17.

[45]15 LA 496.

[46]Ibid., p. 502.

The rejection of the interindustry comparison returned the neutrals to the regional intraindustry comparison.

The company suggested twenty-seven comparable cities, most of which were rejected by the arbitrators. The arbitrators based their selection of comparable cities on ". . . those serving the populous areas, and those with large operating revenues, financial resources, capital assets and number of employees."[47] These selection criteria yielded seven comparable utilities which were paying an average hourly wage rate above that of the firm's employees. The panel awarded an increase sufficient to all but eliminate the intercity differential.[48]

Several important points are gleaned from this award: (1) interindustry comparisons are given little weight; (2) intraindustry comparisons must involve plants serving populations of approximately equal size and geographic dispersion; and (3) the financial aspects of the comparison firms must be similar.

Large differentials do not always result in the award of substantial wage increases if the parties fail to provide data sufficient for historical analysis of such differentials. William H. McPherson, Arbitrator, was faced with a case in 1952 that involved a sizable current differential, but no historical data were presented in the record. McPherson's summary of this situation is very instructive as to the

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[47]Ibid., p. 504.

[48]Ibid., p. 496.

arbitrator's approach to an evaluation of current differentials. The Arbitrator wrote:

> Data submitted by the Union indicate that current average straight-time hourly earnings in this Company are roughly 16 cents less than the national average and 23 cents less than the state average in the industry. The arbitrator finds little help in these figures, since there is no information regarding the past relationship between hourly earnings in this Company and the national and state averages. Obviously, a small firm, located in a community of less than 10,000 inhabitants and having some forty employees in an industry dominated by large-scale enterprise would not ordinarily equal the industry averages. A gap of 16 or 23 cents, by itself, gives little indication of whether the 3 cent request should be denied.[49]

This analysis follows the general rule that arbitrators do not wish to disturb the relative position of wages among plants without properly substantiated reasons. The parties' failure to present evidence of historical wage relationships invalidated the wage comparison criterion in this case.

A change in the basis of comparison requires strong evidence from the party desiring the change. For example, the Lincoln County Electric Membership Coop sought to alter the basis of comparison that they had traditionally used with the International Brotherhood of Electrical Workers in a 1962 case. Arbitrator J. Fred Holly capsuled the case with the following written comment:

> The parties agree that Article 7 of the contract, in its reference to the labor market, makes reference to the Central District of the Tennessee Valley. The union insists, however that it refers to organized cooperatives only. The company urges that all of the cooperatives in the District are to be considered. On this point, the facts lend more support to the Union than to the Company. In the first

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[49] 18 LA 290.

> place, the Company's offer exceeds the average of the ten (10)co-ops. Secondly, both parties agree that the spread of wage rates between the organized co-ops and Lincoln County has remained substantially the same over the years. Hence, the parties, in their negotiations, have given consideration to the organized employers.[50]

Holly used the historic intraindustry data to settle the issue of which current intraindustry comparison to apply. This case supports the conclusion that the introduction of nonunion firms in the comparison matrix is rarely, if ever, achieved through arbitration.

Another case involving a desire to change the basis of comparison was arbitrated by Joseph Shister for the Arizona Public Service Company (APSC) and the IBEW. The primary difference between this case and the previous one is that the union sought a change in the comparison makeup. The IBEW proposed that the comparison should be made with utilities in one other state. The company replied that the traditional comparison involved both intra and out-of-state companies. The union's argument was backed with a presentation showing that a differential existed between Arizona and the proposed single comparison state, and this differential had been narrowed in the most recent years.[51]

Shister failed to see any evidence of an historic relationship between the APSC's employees and the union's proposed comparison. The mere existence of a wage differential between one group of employees and another created independently and unbeknown to the parties to a collective agreement is not sufficient evidence to merit a wage change.

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[50] 62-3 ARB 8800.

[51] 61 LA 111.

If the relationship exists unchanged for a number of years, then some argument can be advanced for consideration, otherwise, there must be some documented economic changes necessary to warrant a change in the basis of comparison. In this case, past history overruled the poor evidence of the IBEW, and the comparison which was traditionally used in bargaining was applied.[52]

Patterns are often acceptable when a comparison of absolute wage levels indicates that a company is a wage leader. The Connecticut State Board of Mediation and Arbitration offered the following advice concerning wage leaders in a 1956 case:

> . . . Although a comparison of the wage levels of competing companies is generally accepted by arbitrators as one of the most reliable standards for guidance in decisions on wage disputes, the application of this standard must respect established inequalities between such companies.[53]

Connecticut Power had proposed a straightforward intraindustry comparison, but as the Board noted above, such a comparison may not tell the whole story if historical data are not provided. The board discovered that the current differential was .004 cents, whereas the historically maintained differential was ten cents. Connecticut Power stressed the intraindustry comparison in this arbitration due to its position as a wage leader. The neutrals could find no mitigating circumstances to justify a change in the company's position as a regional wage leader in the industry. The board concluded:

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[52]Ibid.

[53]26 LA 906.

> . . . In the absence of such unusual circumstances neither the relative economic position of the employees nor the relative competitive position of the Company should be greatly altered by the arbitrator from these positions as established in free collective bargaining.[54]

The award was based on the regional pattern, which was sufficient to restore the historic differential.[55]

When companies and unions historically follow area, regional, or national patterns in collective bargaining, arbitrators are reluctant to alter this practice through arbitration. Neutral William S. Lynch wrote, ". . . that the breaking of the pattern by awarding a wage settlement greater than six percent was not a proper function for arbitrators."[56] The union was trying to break the past practice of following a regional intraindustry pattern on the foundation that Montaup Electric Company was unique in the industry. Arbitrator Lynch found that jobs in this company were comparable to those in other utilities, even though the company had a unique financial and corporate structure, and he therefore ruled that the pattern controlled.[57]

A local union's settlement with an employer is generally not heavily relied on in arbitration when that union bargains with other employers. A noted exception is presented in an arbitration between Pennsylvania Power Company and the Utility Workers of America involving one plant

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[54] 26 LA 904.

[55] Ibid.

[56] 21 LA 496.

[57] Ibid.

and one UWA local. In response to the union's plea to break from an intracompany pattern, Arbitrator Haughton replied:

> . . . Employees of [an] electric utility company which is [a] wholly-owned subsidiary of another company serving [an] adjoining area in [a] different state are entitled in [a] contract reopening to [a] general wage increase of 3.45 per cent, which is [the] same increase negotiated earlier by [the] union for employees at [the] parent company. [The] union's request for [a] greater increase for these employees, which would bring their rates above those of employees at [the] parent company and [the] union has shown no change in circumstances justifying departure from [an] established tandem relationship.[58]

Once again, past practice carries heavy weight in an arbitration hearing and is difficult to change. Haughton concluded by writing,

> If neither party has been able to convince the other to alter an existing pattern during negotiations, there must be more than normally persuasive reasons to show why an arbitration board should do it.[59]

V. OTHER INDUSTRIES

Cases involving firms operating in concentrated markets other than those already presented are limited in number. A few cases were reported involving water transportation firms. These cases indicated a strong reliance on comparisons of absolute wage levels and changes in wage levels between East and West Coast workers.[60]

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[58] 26 LA 124.

[59] 26 LA 132.

[60] 20 LA 75, 28 LA 600, and 35 LA 185.

One additional case of interest was reported in the airframe industry. In this case, the company wished to follow the historical practice of wage comparisons with other Southern California airframe manufacturers. The union proposed an interindustry comparison with automobile manufacturers. The arbitrator rejected the company's historical argument because the airframe industry had changed from a regional to a nationally dispersed industry. The union's arguments were accepted on the following reasoning:

> They [automobile manufacturers] are in the airframe industry, but their wage movements and wage rates have not been subject to the same constricting influence as have those of the airframe companies. This is so despite the similarity in work, the interchangeability of employees and the movement of automobile companies into and out of airframe manufacturing as necessity dictates.[61]

Although this case is somewhat unique, the reasoning is quite consistent with the cases in other industries. The arbitrator accepted the union's comparison and awarded a wage increase on that basis.

VI. SUMMARY

Each of the industries studied in this chapter is represented by a similar path of awards involving comparisons. In all three, intra-industry comparisons are very important in arbitration cases, and inter-industry comparisons of an absolute nature are rarely accepted as applicable.

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[61] 19 LA 76.

The intercity comparison is generally one of a regional nature, unless past practice dictates otherwise. The particular cities, containing generally only one comparable firm, to be included in a comparison are selected from lists presented by the parties on the basis of population, financial size of the firm, and economic viability of the city as measured by various economic indices. The printing industry is more likely to utilize national intercity comparisons, whereas the transit and utility firm cases are more likely to stress geographic proximity of cities of similar size.

The existence of an intercity-intraindustry wage differential, barring certain exceptions, is likely to set the outside possibilities of a wage award. Three exceptions are: (1) if the firm is a wage leader, then arbitrators generally turn to patterns; (2) if past history dictates the following of a pattern, then economic justification must be presented to alter the practice; and (3) if a differential can be historically justified, then the historic differential will set the outside limit. When an award to eliminate an unjustified differential is likely to create an intraplant inequity, the outside range of the award will fall below the current intraindustry differential.

This chapter presents an analysis of comparisons and patterns in the relatively concentrated industries. Chapter IV will continue this analysis in the more competitive industries.

CHAPTER IV

COMPARISONS AND PATTERNS—COMPETITIVE INDUSTRIES

I. INTRODUCTION

This chapter continues the analysis of the comparison and pattern standards begun in Chapter III but centers on those cases occurring in relatively competitive markets. Analysis of the application of each criterion on an industry by industry method is followed.

II. MANUFACTURING INDUSTRIES

Textile Industry

From 1952 through 1955, there were seven reported wage arbitrations in this industry with all involving proposals by management for wage reductions. This industry faced a severe recession beginning in March of 1951, which contributed to the burden of an already declining industry.[1] Six of the seven wage reduction cases were concentrated in the Northeast, and the other was in the Northwest. Geography is important, as the industry was organized in the Northeast where the brunt of the overall decline was felt most, and it was unorganized in the South where surviving firms often migrated. During recessionary periods, it was the relatively high labor cost Northeastern companies

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[1] Leonard W. Weiss, Economics and American Industry (New York: John Wiley & Sons, Inc., 1967), p. 141.

that bore the brunt of plant closures, reduced output, and layoffs. The low wage, newer facilities in the South were somewhat immune to the recessions in the industry, as they were more efficient than their northern counterparts.[2]

Proposals for wage reductions in this industry were not generally met by counterproposals for wage increases by the affected locals of the Textile Workers Union of America (TWUA). The cases indicate that the union may have recognized that wage cuts were inevitable, even though undesirable.

Comparisons were frequently introduced as integral components of the parties' arguments, but they were not controlling in these cases. Disagreement over comparisons generally centered on whether there should be a North-South comparison or an area comparison. Companies argued for the North-South comparison, as it produced a relatively larger differential, and unions pressed for area comparisons.

In the Bates Manufacturing Company case with the TWUA in 1952, the union asked for a comparison with the wages of unionized firms within the industry in the Northeast. When the employer requested a North-South comparison, the TWUA responded that any interregional comparison should be based on unionized firms.[3] Arbitrators in this industry also appear to be reluctant to accept the introduction of nonunion wages in the decision framework.

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[2] Ibid.

[3] 18 LA 631.

In another 1952 case involving the Fall River Textile and New Bedford Cotton Manufacturers Associations, Arbitrator Walter Gellhorn was presented with evidence of an historic differential which had been inadvertently widened prior to the 1951 industry recession. The differential was based on a North-South comparison and had been maintained with the above associations being pattern setters. Wages had been set in 1951 just prior to the recession, which occurred before the Southern contracts were negotiated. The Southern firms failed to follow the pattern, and an even wider differential was created. Gellhorn reduced wages by the amount of the negotiated increase in 1951. He reasoned,

> The result is justifiable, if at all, only as a desperate expedient to save a locality's industry. Wage cutting does not produce prosperity. It may conceivably enable an employer to achieve a position of temporary strength.[4]

Pattern followers in times of prosperity and rising wages may likewise remain pattern followers when wages are being reduced. Israel Ben Scheiber awarded Cheney Brothers of Manchester, Connecticut a 9-3/4 cents per hour wage decrease in 1953, as the New Bedford pattern, which had been traditionally followed, indicated. The union unsuccessfully sought the application of an area comparison.[5]

Absolute wage comparisons are not the controlling factors in this series of cases. The comparisons are simply used as support for other evidence pertaining to an inability to pay. The industry was unique

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[4] 18 LA 776.

[5] 21 LA 159.

in that it was a declining industry throughout the period covered by the wage reduction cases, and data acceptable in that economic climate may not be acceptable in others.

Thomas A. Knowlton's award is instructive on the role of comparison in a depressed economic environment:

> [The] Woolen company is entitled to financial relief in [the] form of [a] wage reduction, where it has suffered considerable financial losses during two preceding years, its losses during [the] first quarter of [the] current year are continuing at a substantially higher rate, its wage rates are well above [the] industry average and are therefore impeding its ability to compete in [the] domestic and foreign market, and it may have to liquidate unless relief is forthcoming.[6]

Even though the absolute comparison is relegated to a supportive criterion rather than a controlling one, patterns may still be acceptable as dominant forces in a declining industry. After a series of key wage reductions, those firms that are traditional pattern followers are likely to reduce wages by the amount of the relevant pattern. In the Portland Woolen Mills case of 1955, Paul Kleinsorge wrote:

> . . . Wage decreases are the "overwhelming rule" in this industry and adjustments awarded here are those made by [a] competitor which has set [the] standard for [the] instant parties in [the] past. [The] company's present relatively high wage scale places it at [a] competitive disadvantage and [a] reduction is justified therefore to bring its rates closer to [the] standard prevailing in [the] industry.[7]

The award granted a 9-1/2 cents per hour decrease in wages, which was the same decrease previously implemented by American Woolen Mills, which traditionally set the pattern for Portland.[8]

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[6] 22 LA 653. [7] 24 LA 38. [8] Ibid.

In 1961, the Textile Workers Union of America proposed a seven cents per hour wage increase to Franklin Woolen Mills, Incorporated on the basis of the current intraindustry pattern which the parties had historically followed. Arbitrator William J. Fallon ruled that in view of the fact that the firm was involved in the process of liquidation, and its wages were equal to the industry average, the pattern of wage increases could not be controlling. The union's request was denied on this basis, and no wage increase was granted. This case represents the extreme exception where there is no doubt as to the future of the company.[9]

Apparel

The apparel industry has no reported wage arbitration cases after 1956. Many segments of the industry were caught up in the same problems faced by the textile industry—the industry was partially organized; demand for some products was declining or rising less rapidly than the ability to produce; many firms were going out of operation; and there was general excess capacity.[10]

Application of the comparison criterion is an often perplexing problem in highly competitive, partially unionized industries. Companies generally propose comparison of union with nonunion wage rates, and unions press for comparison of union rates with union rates. In an arbitration for the Full-Fashioned Hosiery Manufacturers and

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[9] 37 LA 270.

[10] 18 LA 5.

the American Federation of Hosiery Workers, neutral George Taylor responded to the union-nonunion comparison:

> . . . It is nevertheless, not a tenable position (compari-parison of union-nonunion). Granted that collective bargaining affecting a minority of the companies in a highly competitive industry involves considerable risk, that risk of business operation cannot be avoided unless the rights of organized employees to collective bargaining are to be ignored. This should not be and, indeed, cannot be done under the National Labor policy enunciated by Congress.[11]

Although ability to pay was argued, the Arbitrator ruled that the evidence was such that a wage increase was warranted. Perhaps if the economic situation of the firm had been critical, the Arbitrator would have been more amenable to the nonunion comparison or what it amounted to, a North-South comparison.

A case involving the same employer association and the same union in 1952 illustrates the point above concerning union-nonunion comparisons under critical economic conditions in the industry. Arbitrator Ralph T. Seward accepted the union-nonunion comparison as legitimate, but the economic picture in the industry was totally different from that described in the Taylor case above. Seward presented his reasoning in granting the wage reduction:

> Realistically considered, the essential claim of the Association in this case is that "general conditions"— the excess productive capacity of the industry, the resulting intensity of competition, the small percentage of industry production which is contributed by Association mills, the fact that the great majority of non-association mills are

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[11] 15 LA 458.

> unorganized and pay wages substantially below the National Labor Agreement scale, the recent widespread price cuts, and the rise in overhead costs incidental to operation at less than 50% capacity—warrant a reduction in wage rates; indeed require a reduction if the Association mills are to survive. . . . Each separate phase of it—the evidence as to excess productive capacity, the wage differential, the decline in operations, the status of union organization in the industry, the price cuts, the drift of mills from the organized areas of the North to unorganized rural communities and to the South—reveals a different facet of the one basic and inescapeable fact; that the Association mills are operating at such a competitive disadvantage as to threaten their continued existence.[12]

When the economic environment is depressed, the union-nonunion comparison is acceptable and provides the guide for a wage award (a reduction in this case).

Problems incurred with the use of the comparison criterion were listed by Arbitrator John A. Hogan in 23 LA 762:

> . . . (1) sampling bias,—does the sample represent the universe which is relevant to the problem at hand [?] (2) Which companies should be compared? What special factors of product variation or incentive—system variation render some companies incomparable [?] (3) Do differences in productivity mean that wage-rate comparisons do not accurately reflect differences in labor costs and therefore in competitive position[?][13]

Although he pointed out the problems involved with the application of the comparison factor, he did not reject its use.

Hogan found that the Massachusetts Leather Manufacturers Association was a high wage association in the industry with a declining differential existing between the association and many of

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[12] 18 LA 13.

[13] 23 LA 762.

its closest competitors. The Arbitrator turned to the pattern of increases negotiated by the Association's competitors to set the outside limit of the award, which was adjusted due to competitive conditions in the industry.[14]

Arbitrator Louis L. Jaffe illustrated his approach to wage comparisons in a 1953 award; the award states:

> The Company argues for a comparison in terms of its competitors. Were the Company substantially below the area rate there would be some question whether it could urge as the only determinant the low rates of its competitors. On the other hand the rates of competitors are not irrelevant and where as is the case here the rates are well within the area bracket it would be very difficult to condemn them on any comparative basis. . . . There is always a problem in constructing a bracket of representative going rates. If the very lowest are probably of marginal relevance, so perhaps are the very highest.[15]

In the presence of basically the same absolute wage rates for the company and its competitors, the Arbitrator applied the area and national pattern of wage increases.[16]

In a similar case, Arbitrator Lloyd H. Bailer used the New York City and regional pattern to determine the appropriate increase in wages. Bailer turned to the pattern criterion when the employer justified the absolute differential between itself and two competitors with which parity had previously been achieved. The employer justified the differential on the basis of varying job mixes between itself and its competitors. Bailer summarized, "In general, however, the arbitrator

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[14] Ibid. [15] 20 LA 617. [16] 20 LA 616.

should assume that the last bargained terms of employment set a general relationship to area and industry wage levels that should not be disturbed."[17]

John A. Hogan capsuled the apparently parallel thinking of arbitrators in general with respect to patterns in an award for E. Cummings Leather Company and the International Fur and Leather Workers Union; he wrote:

> . . . The normal presumption is that where a plant has bargained increases in the past in line with a so-called "pattern," unless the evidence is strong to the contrary, an increase should be ordered in a wage reopening arbitration which follows wage increase relationships previously established.[18]

In this case, Hogan found the firm's ability to pay due to a deteriorated working capital position, and inadequate equipment maintenance was such that the pattern must be broken. The company's evidence was such that the Arbitrator could not at that time accept continuation of the pattern which had traditionally been followed.[19]

Two cases were reported involving firms that had been organized for two years or less. The cases present the approach traditionally followed by unions in newly organized firms in highly competitive industries as well as arbitral decision making under these conditions. Neutral William S. Lynch wrote,

> It is not unusual for Unions to grant shops in which Unions have recently been organized and from which new benefits have been obtained, a period of transition or

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[17] 20 LA 905. [18] 25 LA 250. [19] Ibid.

> evolution during which the employer can adjust himself and his business to the added costs of operation.[20]

This statement was in response to the Union proposal for application of an intraindustry wage comparison (union firms only). The union's proposal was balanced against the firm's new environment, and the Arbitrator accepted the firm's position as controlling—a slight wage increase was awarded.[21]

In the second case, the employees had not had a wage increase in two years, and Madwed Manufacturing Company asked for a third year of grace. The Arbitrator ruled against Madwed, as they had just had their first profitable year of operation, albeit a small profit. An intraindustry comparison in the state was used to determine the increase in the wage rate.[22] These two cases illustrate that arbitrators may award increases less than those indicated by comparisons for newly organized firms, but that such awards cannot be continued indefinitely at the expense of employees.

III. WHOLESALE AND RETAIL TRADE

Six cases were reported involving the Labor Standards Association and six separate unions representing the employees of the member department stores in the Pittsburgh, Pennsylvania area. In five of the cases, the union is attempting to break from the historical intra-Association pattern by requesting direct comparison of their wages with

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[20] 27 LA 190. [21] Ibid. [22] 20 LA 718.

those of specialty store employees in Pittsburgh, many of which were organized by the same unions. From 1951 through the last reported case in 1971 involving the Association, each union had settled for the same percentage increase.

The separate arbitrators responded in similar fashion in each of the reported cases. In a 1953 case for the Association and the United Brotherhood of Carpenters and Joiners of America, Herman A. Gray answered the Union's request with this statement:

> The union may very well be right in saying that the wages of the workers whom it represents should no longer be tied to the rest of the crafts in the department stores and that they should rather be made uniform with the others who belong to the same union and who perform the same kind of work for the outside shops which, in this area at any rate, are in competition with the department stores. But this would involve a break with the past and the creation of a wholly new pattern. So fundamentally a change should be achieved through a free collective bargaining process when a new contract is being negotiated. It cannot be done within the narrow limits of a wage reopening clause.[23]

Other arbitrators have not been as dogmatic as Gray and denied that a pattern could be broken through arbitration, but rather, others have proposed that there must be strong evidence supporting a break.

The Retail Clerks International Association suggested a number of factors to support their claim for a break from the intra-Association pattern: (1) cost of living increases; (2) wages were below "Workers' Modest Budget" levels; (3) national pattern was greater; intracity comparison revealed an unfavorable differential; and the intracity

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[23] 21 LA 14.

pattern was greater. Arbitrator Benjamin C. Roberts ruled out cost of living increases because the current pattern was greater than the cost of living rise. The "Workers' Modest Budget," the national pattern of increases and comparisons with specialty stores, were unacceptable to Roberts, as none had ever been presented in collective bargaining between the parties.[24]

In an arbitration for the Amalgamated Clothing Workers and the Association, Bert Luskin pondered the problem of requiring one union to continually follow the pattern established by another. Luskin wrote,

> The Arbitrator would not require this Union to accept the same offer made to other unions merely because the majority of other unions had accepted the same offer. To adopt that theory would serve to improperly limit the right of this Union to collectively bargain on behalf of its members and would, in effect, establish an inappropriate concept of "rule by a majority of unions."[25]

Luskin continues his analysis in the award with a statement defining his reasons for imposing the pattern discussed above; he stated:

> . . . The Arbitrator must consider existing relationships and should not lightly disregard the history of bargaining, which has resulted in maintaining the relationship of rates paid to various classifications over a period of many years.[26]

The Arbitrator was concerned that any significant deviation from the historical practice of following the pattern might generate industrial relations chaos for the member employers.

Cost of living increases and a national pattern above the existing intra-Association pattern were both ruled insufficient to merit a break

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[24] 36 LA 171. [25] 36 LA 203. [26] Ibid.

from the pattern by Arbitrator Myron L. Joseph in 1967. Joseph surmised:

> But in any case the relative wages that result from contract negotiations must stand unless it can be shown that the pattern is clearly inequitable or that the underlying forces have changed.[27]

As no inequitable relationship was presented, and the other evidence was ruled insufficient, the pattern was awarded.

The last reported case in this group was arbitrated by Joseph Shister in 1971. The following statement was Shister's response to the union request to break the pattern:

> . . . To demolish the Association tandem relationship after it has existed for over twenty years would create very serious instability in the labor relations between the Association and the other unions. To expose the Association to such labor relations chaos would be both unfair and improper.[28]

Shister, like the other arbitrators, was concerned with disrupting the relative positions of the various unions with which the Association bargained. General consensus indicates that as each individual union was unable to break the pattern in the respective year in bargaining, then the arbitrators would not chance disruption of labor relations by breaking the patterns except under unusual circumstances. The nature of the cases indicates that internal political factors may have initiated the arbitrations from the union side rather than a strong case substantiating union demands.

Association drivers, represented by the General Teamsters, Chauffeurs, and Helpers Union [sic], fared much better than the other unions

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[27] 67-1 ARB 8177.

[28] 57 LA 974.

in a 1956 case arbitrated by John P. Horlacher. The Association presented the internal pattern as the foundation for wage determination. The truck drivers had never been a party to the pattern, and Horlacher was not unaware of this situation. He commented thusly on the internal pattern:

> The trouble with this concept of an internal pattern is that it hasn't existed and the Association is asking the Arbitrator to establish it for the Association, a thing which it has been unable to do for itself. This is an unrealized bargaining objective.[29]

Horlacher ruled out the use of intercity or regional wage comparisons as being of any significance in formulating an award and then turned to the alternative proposal of the intracity intraindustry comparison.[30]

Area wage comparisons showed Arbitrator Neil Gundermann that the Appleton Cooperative Association had paid their employees an average wage rate that exceeded that of most of their competitors, nonunion, by 55 cents per hour. In this 1962 case, Gundermann next turned to the pattern of average increases nationwide, which amounted to approximately 7.7 cents per hour. He stated that,"Any wage increase must be considered in the context of declining profits," so the award was limited by the firm's inability to pay.[31]

A panel composed of Arbitrators Joseph F. Donnelly, Samuel F. Curry, and Warren L. Mottram found that the employees of the Hendel Petroleum Company should receive increases of approximately 40 cents per hour on

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[29] 27 LA 295. [30] Ibid. [31] 62-3 ARB 8842.

the basis of area and national intraindustry comparisons but reduced the actual award due to the firm's competitive position.[32]

IV. SERVICES

Medical

Cases under this heading fall into two logical headings: private hospitals and miscellaneous services. Five cases were reported involving private hospitals and/or nursing homes.

A case involving the Paramus Nursing Home Corporation of New York was arbitrated by Morton Singer in 1967. Arbitrator Singer found that the Licensed Practical Nurses (LPNs) were working with an unfavorable wage differential relative to other New York LPNs. However, the amount of the differential was not awarded because Singer foresaw creation of a financial crisis for Paramus under such an award. He did award 56 percent of the differential because Paramus was having some difficulty in hiring and retaining an adequate number of LPNs.[33]

Palo Alto-Stanford Hospital (PASHC) and the Committee for Recognition of Nursing Achievements selected J. Keith Mann to arbitrate a 1968 wage case in which the parties agreed on wage comparisons as the relevant criterion but failed to agree on those hospitals that should be included in the comparison group. A San Francisco Bay area comparison revealed that the PASHC nurses received lower salaries at the lower and

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[32] 27 LA 85.

[33] 48 LA 289.

middle nursing classifications, hence, an absolute increase was awarded at each step to bring the lower levels more in line with those of other hospitals in the area.[34]

Arbitrator Adolph M. Koven presented some interesting and instructive views in an arbitration for the Associated Hospitals of the East Bay and the International Longshoremen and Warehousemen's Union, representing the x-ray technologists. Koven stated:

> . . . He [arbitrator] has to take into account the parties' relative strengths and relative needs. He has to remember not to depart so far from a possible compromise that, consistent with their respective power and desires, one or the other of the parties will be likely next time to prefer warfare to a peaceful settlement. A decision which cannot be carried into effect or which will create lasting dissatisfaction is really no decision at all. "On this account a wage arbitration is not an exercise in pure reason."[35]

The Association chose to present a comparison of x-ray technologists and nurses, and the Union countered with a number of proposals. Arbitrator Koven was impressed with the internal pattern presented by the Union, and he based his award primarily on that criterion.

The Arbitrator replied to the Association's comparison with the following statement:

> . . . In using the prevailing-practice standard, the arbitrator often looks at such matters as skill and training, responsibility, steadiness of employment, hazards and other undesirable conditions of work, geographic differentials, fringe benefits, wage leadership, and historical differentials.[36]

The Association's comparison apparently did not hold up under Koven's examination, or at least it was not controlling in the face of the

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[34] 50 LA 700. [35] 71-2 ARB 8479. [36] Ibid.

internal pattern. Koven made one other comment of interest; he stated,

> . . . Though arbitrators do not often deny a demand exclusively on the ground that it is innovative, they will often require a party seeking a novel change to justify it by strong evidence that it is a reasonable and a sound demand.[37]

In the final hospital case analyzed, the contract between the Licensed Practical Nurse Association of Illinois and the University of Chicago Hospitals and Clincs set forth those criteria that must be considered by the arbitrator:

> . . . Among the guidelines to be used by the arbitrator in deciding an issue (not to the exclusion of other guidelines) shall be like terms and conditions of employment which exist at other Midwest private hospitals; the trend of compensation and benefits of other licensed practical nurses in the Chicago area; wages and fringe benefits enjoyed by other University bargaining unit employees; changes in the cost of living; and the needs of the University for an efficient operation, but the Association has not agreed that the matters listed are more significant than others that it may urge in an arbitration.[38]

The award rendered by Robert J. Meuller was based on the pattern of increases at other area hospitals.

Other Services

A five member tripartite panel, with Edgar L. Warren serving as the neutral, arbitrated a case for the Federation of Jewish Welfare Organizations and the Distributive, Processing, and Office Workers of America in 1950. Arbitrator Warren's comments on intrafirm equity are of particular interest. Warren writes,

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[37]Ibid.

[38]63 LA 825.

> For the most part, however, it is believed that determination can be made with only minor weight being given to this factor, intra-firm equity. The specific weight to be given to this factor will vary, therefore, depending primarily on the degree to which data are available showing rates paid for comparable jobs by other employers and cost of living comparisons.[39]

What Warren is trying to point out is that a case might have been made concerning internal equity, but inadequate and insufficient evidence was presented. This is often the case in other situations where one might see possibilities for an award if the proper evidence were entered in the record, but arbitrators as a rule must render awards based on the record rather than what might have been introduced.

The International Union of Operating Engineers introduced an absolute interindustry wage comparison in a hearing before Arbitrator Arthur M. Ross in 1954. Ross rejected the comparison of watch engineers across industry lines due to variations in job content. He did accept, however, the Union's evidence relating to the pattern of increases for watch engineers in the area. Ross stated that, "While the national trend is certainly worth watching, it is not the best possible evidence of a proper wage adjustment in a local service industry."[40] Ross apparently accepted the idea that absolute wage levels may vary for a particular type of engineer based on job content, but changes in those wage levels reflect all relevant factors in the collective bargaining environment, hence, an award based on the pattern.

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[39] 15 LA 847.

[40] 22 LA 226.

Inability to pay limited an award by Arthur J. Goldberg to the American Federation of Musicians in a case with the New York Metropolitan Opera Association. Arbitrator Goldberg provides evidence as to why he accepted a particular comparison introduced by the Union:

> What gives these other scales [Boston and Philadelphia] particular relevance here is that they were historically LOWER, in general, than the Metropolitan Orchestra scale. That they are now moving past this scale suggest strongly that the Opera musicians are being asked to bear a proportionately larger part of the financial burden of the arts. The fact, too, that the increase in the Metropolitan scale has been, over the past fifteen years, significantly less than the increase in the cost of living bears similar testimony.[41]

The intercity comparison formed the outside basis for the award, and the Association's inability to pay acted as a limiting factor.

Arbitrator Hugo L. Black, Jr. rejected application of a current pattern of wage increases for unskilled laborers in a 1964 case because the employees' wages relative to those of other unskilled laborers in the nation were so drastically low. He awarded an increase far above the going pattern.[42]

V. FOOD AND KINDRED PRODUCTS

In eight of the reported cases in this industry, the employees were represented by the International Brotherhood of Teamsters, IBT, but the food products involved and the spatial distribution of the companies varies widely. Most of the employees represented by these cases are truck drivers.

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[41] 62-1 ARB 8076.

[42] 43 LA 119.

An unusual case was reported between the IBT and the Boller Beverage Company in 1951. The parties agreed that Arbitrator Thomas J. Reynolds should be bound by local intraindustry comparisons, but they went much further than this by stipulating the specific criteria to be applied by the Arbitrator in the process of determining comparable firms. The required evaluative criteria were: (1) size of company by the number of drivers and volume of production, (2) product prices, (3) production techniques, (4) unionization, and (5) structure of competition in the local market.[43] The uniqueness of this case lies in the ability of the parties to stipulate highly specific criteria to be used in determining comparable firms. It is not unusual for the parties to specify rather general criteria in wage arbitration, but to agree on one criterion, local intraindustry comparisons, and those factors which must be used to evaluate it, is unusual.

Arbitrator Reynolds followed the direction of the stipulation and determined that the company was competing directly with two intermediate sized firms in the area rather than with the "big four" as proposed by the union. The Arbitrator ruled that the firm had characteristics that were more comparable to the intermediates than with the larger firms on the basis of the specified criteria. As the firm was a wage leader relative to the intermediates, the Arbitrator chose other factors on which to base the award.[44]

Another case reported in 1951 involving the IBT and Mavrakos Candy Company was arbitrated by Wayne L. Townsend. He found that a

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[43] 16 LA 933.

[44] Ibid.

large, unfavorable differential existed between drivers working for Mavrakos and those working for other employers in the St. Louis area. Townsend stated that the large differential indicated a wage increase was in order, but other factors must be considered to determine how great an increase. The historical position of drivers relative to those of employees in higher classifications was a limiting factor in the determination of the award. The recognized internal wage relationship was deemed controlling over external comparisons of drivers' wages across industry lines.[45]

Emanuel Stein arbitrated a 1952 case for the Pepsi-Cola Metro Bottling Company and the IBT where the firm proposed no increase on the basis of inability to pay, and the union presented evidence of a local pattern to substantiate a 12.5 cent increase. Evidence submitted in the record indicated that the parties had deliberately negotiated an increase in 1950 to achieve parity with the local Coca Cola bottler. In the face of this evidence and the failure of the firm to produce any evidence of a changed financial or economic situation since the negotiation of the parity rates, Arbitrator Stein awarded the pattern recently set by Coca Cola in order to maintain the parity situation.[46]

Emanuel Stein arbitrated another reported case in this industry for the IBT and the Greater New York and Northern New Jersey Labor Committee. Stein found the Labor Committee, an employer association, to be a wage leader in the area, and his comments concerning differentials under this condition are very interesting.

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[45] 16 LA 53.

[46] 19 LA 401.

> The Latter [absolute wage comparisons] I think, shed very little light on what is a reasonable adjustment for a particular industry in a particular labor market. . . .
> . . .But as a general proposition, CHANGES in the differentials seem to me to be vastly more important, particularly in cases involving contract reopenings, than the absolute differentials themselves. It is not unreasonable, I think, to assume that whatever the reason for them, long established differentials are things with which the parties have learned to live; and of course, there are many cases where the differentials are clearly justified by the different economic circumstances obtaining in the several areas. It is when the differentials CHANGE materially that market structures and competitive relationships may have become seriously affected.[47]

Stein apparently adheres to the practice followed by most arbitrators of maintaining historic relationships unless strong evidence of mitigating circumstances is presented.

Arbitrator Stein made another point of import that is implied, but rarely stated, in most arbitral awards and may, thereby, elude the casual observer. Stein wrote,

> I draw no inferences from the failure of the Industry to support its arguments; at the same time, I obviously cannot base an award upon a naked claim which is without evidentiary basis.[48]

The crucial point is that a criterion proposed by one party or the other, supported with evidence, may be a controlling or valuable element in the determination of an award, but without evidence, it is merely an unfounded claim having no bearing on the award, as arbitrators do not develop the evidence for the parties.

Inability to pay may often reduce the amount of an increase in wage rates that would appear proper on the evaluation of other criteria.

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[47] 61-3 ARB 8821. [48] Ibid.

Several cases were reported where inability to pay limited the amount of an award determined on the basis of intraindustry comparisons.

Arbitrators Joseph F. Donnelly, Samuel F. Curry, and Warren L. Mottram wrote,

> A basic factor in such a judgment [over inability to pay], however, must be the obligation of the Company which chooses to operate, to pay reasonable rates to its employees, which obligation, is independent of its ability to pay. It does not follow however, that the standard of reasonable rates during this period of difficulty must be an inflexible application of the area and the industry rates.[49]

Arbitrators accept comparison of wage rates as controlling but not to the exclusion of a firm's inability to pay.

Comparison of union wage rates may yield evidence of a large unfavorable differential for a particular firm's employees, but a substantial increase is likely to be denied if the firm's basic competitors are nonunion. Arbitrators Donnelly, Curry, and W. Stewart Clark arbitrated a case with the above characteristics and summarized with the following statement:

> Although such [an] increase will not bring employees' rates up to those of other unionized drivers in [the] area, [a] greater increase is not justified in view of the small, margin profit in company's operations and company's unfavorable position in competing with nonunionized companies paying substantially lower rates than instant company's.[50]

Comparison of union rates with nonunion rates is wholly confined to the competitive industries in the study. Whether the Arbitrators would have ruled differently if the Company's financial situation had been better is, of course, unknown, but it is unlikely that a substantially

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[49] 23 LA 336.

[50] 23 LA 843.

different award would have been rendered with the continued threat of competition from the nonunion firms.

The Amalgamated Meat Cutters and Butcher Workmen of North America asked for a 45 cent hourly increase in wage rates from the Hull and Dillon Packing Company of Pittsburg, Kansas in an arbitration before Wilber C. Bothwell. The Amalgamated arrived at its figure on the basis of an intraindustry wage comparison which arbitrator Bothwell found to be appropriate, even though it exceeded the current intraindustry pattern. Bothwell wrote,

> . . . and the union is justified in pressing for larger increases in wage rates than are obtained in the industry generally. However, the wage rates at Hull and Dillon should be increased relative to other firms in the area consistent with the earnings and financial progress of the Company.[51]

The firm's inability to pay severely limited the award which the Arbitrator indicated might be appropriate under other circumstances.

VI. MISCELLANEOUS INDUSTRIES

Furniture and Fixtures

The cases in this industry are all concentrated in the period 1950-1956. As the cost of living rose quite rapidly in the Korean War period, most of these cases turn on changes in the cost of living. However, five cases were reported where absolute comparisons or patterns were considered significant in the arbitrator's discussion of the case.

Israel Ben Scheiber awarded the United Furniture Workers of America a 12-1/2 cent hourly increase in wages in a 1950 arbitration with the

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[51] 34 LA 398.

National Bedding and Upholstery Manufacturers. Scheiber ruled that the intraindustry pattern was controlling over the Manufacturers' presentation of adverse competitive conditions, hence, the pattern set the wage rate.[52]

The Furniture Trade Workers [sic] and Chrome Furniture Manufacturing Corporation submitted a case to Maurice S. Trotta in 1952 which was resolved on the basis of inability to pay, but several interesting arguments involving comparisons were analyzed by Trotta. The Union proposed a wage comparison with other furniture manufacturers in the area, and the Company responded with a more specific list of comparison firms. The Arbitrator was impressed with the Company's evidence showing that chrome furniture manufacturing did not require the type nor degree of skill required in other furniture manufacturing. The Company's presentation was deemed sufficient to justify the differential exposed by the Union's comparison, therefore, the existence of the differential would have no weight in the determination of the award.[53]

Arbitrator Arthur Lesser, Jr. awarded the United Furniture Workers of America an increase just sufficient to maintain the workers' real wages when the Union's proposal for following the pattern of increases in the local industry was not accepted as controlling. Lesser rejected the pattern because the firms setting the pattern were vertically integrated from production to retailing, and Built-Rite Upholstery was only in the production phase of the furniture industry. Built-Rite

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[52] 15 LA 394.

[53] 19 LA 361.

introduced absolute intraindustry wage comparisons that showed that they were local industry wage leaders. In this case, the comparison evidence submitted by the Company limits the award to changes in the cost of living.[54]

The International Brotherhood of Teamsters presented historical evidence of wage comparisons to indicate before Arbitrator B. Meredith Reid that an historic differential had recently been narrowed, and that this historic differential should be reinstituted through a current wage increase. Evidence presented by the Furniture Association showed that the differential had been narrowed prior to the date of the last annual reopener in the contract, and that the Union was so unconcerned with the narrowed differential, that it did not reopen the wage issue. Reid accepted the Company's evidence and turned to the pattern of increases negotiated by the Union in other industries to determine the amount of the wage increase because the Association's comparisons showed that the firm was a local industry wage leader.[55]

Construction

Two cases of interest were reported in the construction industry. The first case is unique, as it occurred during a period of government controls. The case was presented to the U.S. Wage Stabilization Board (WSB) in 1952 for a binding determination. The WSB awarded the Alaska Council of Carpenters an increase of 20 cents per hour. The award was based on a pattern set by the Construction Industry Stabilization

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[54] 20 LA 66.

[55] 26 LA 14.

Commission (CISC) in Alaska where the CISC had reduced all wage increases in the industry to 20 cents per hour, unless there was evidence of an intercraft inequity.[56]

An arbitration between the International Hod Carriers and the Billings Contractors' Council followed an intraindustry pattern for a determination of a wage increase, but the increase was limited by the likely creation of an intercraft inequity in Billings.[57]

VII. SUMMARY

Comparison and patterns often appear as important elements in the awards in the more competitive industries, but they often play a supporting role rather than a controlling one. However, where firms were historically pattern followers, or they had historically maintained a parity relationship, only the most severe circumstances could induce arbitrators to break the existing pattern or historical relationship. From the concentrated industries to the relatively competitive ones, there is apparently a general rule that where comparisons or patterns have been applied historically in collective bargaining, arbitrators will not deviate from this practice in their awards except in the most unusual circumstances.

The only notable exception is in newspaper printing, where since 1962 historic differentials have been eliminated one by one contrary to the practice previously followed in that industry and in others. Whereas

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[56] 18 LA 630.

[57] 33 LA 451.

in most industries, and historically (pre-1962) in the printing industry, the party desiring to break from an historical practice was faced with the burden of proof, this practice was altered by the International Arbitration Board's review of Arbitrator J. Fred Holly's award in 62-3 ARB 8889. The International Board ruled in the appeal that the burden of proof was on the party attempting to maintain the historic practice rather than the party desiring the change. Other arbitrators in this industry have followed the lead of the International Board by eliminating historic differentials unfavorable to the respective union unless the respective employer justified continuation of the practice.

Comparison of nonunion rates with those of union employers is much more predominant in the competitive industries. The precarious competitive position of employers in these partially organized industries warrants some consideration of nonunion rates, although some arbitrators openly refuse to do so. Arbitral decisions tend to be more favorable for employers in the relatively competitive industries; the average award as a percent of the difference between the parties is 31.4 percent in the competitive industries compared to 38.0 percent in the concentrated industries. The simple average of all ninety cases providing sufficient information for computing the percentages was 36.0 percent.[58] Employers in competitive industries receive slightly more favorable treatment by the measure. Arbitrators are apparently persuaded somewhat more by the economics of the competitive industries.

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[58]See Chapter II, pp. 26-30.

Local intraindustry or area comparisons predominate in competitive industries, although interindustry comparisons often occur when a firm arbitrates wages with its truck drivers. The arbitrators may apply the local or area rates for truck drivers, no matter what industry is involved.

Chapters III and IV present an analysis of arbitral use of the comparison and pattern criteria in concentrated and competitive industries respectively. Chapter V presents an analysis of the application of the other criteria often invoked in wage arbitrations.

CHAPTER V

COST OF LIVING, ABILITY TO PAY, AND OTHER CRITERIA

I. INTRODUCTION

Cost of living and ability to pay rank third and fourth respectively among arbitrators' first rankings of wage criteria. The cost of living criterion was ranked first in 18.6 percent of the cases, and ability to pay was ranked first in 11.5 percent of the cases.[1] The other criteria proposed by the disputants account for only 3.6 percent of the arbitrators' first rankings. Application of the cost of living criterion will be examined first, followed by ability to pay, and then the remaining criteria will be examined.

II. COST OF LIVING

Introduction

The cost of living criterion has declined in importance from the arbitrator's view since the Bernstein study, where it was ranked first in 34.2 percent of the reported cases. Citation of the criterion as a percentage of all other citations by each respective participant declined for the unions as well as the arbitrators in this study. Union cost of living citations accounted for 17.3 percent of all their citations in the current study compared to 25.9 percent in the earlier

[1] See Chapter II, pp. 35-36.

period. For employers, the change is very slight; 7.8 percent of the recent citations were cost of living compared to Bernstein's findings of 7.5 percent. Arbitrators' citations parallel those of the unions in that a decline was registered from 28.4 percent of their citations in the earlier period to only 19.2 percent in the latter.[2]

Several factors account for the relative importance of this criterion in the earlier period. First, the Bernstein study covered the inflationary postwar period when the price level was visibly rising. Secondly, subsequent to the Bernstein study, there was a decrease in the number of contracts containing wage reopeners, which would tend to eliminate application of the "erosion theory" by some arbitrators.[3] Third, cost of living clauses in contracts became a popular institution in labor agreements in the more recent period and provided automatic escalation of wages for covered employees.[4] And lastly, the latter period contains a long stretch of relatively stable consumer prices which would inhibit union citation and arbitral application of the criterion.

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[2]See Chapter II, pp. 35-36. Bernstein, The Arbitration of Wages, pp. 35-36.

[3]Richard Ulric Miller, "Arbitration of New Contract Disputes: Some Recent Trends," Industrial and Labor Relations Review, XX (1967), p. 251. Bernstein described the "erosion theory" concept as meaning ". . . that the employees should be recompensed for that segment of income which has deteriorated since the contract took effect and no more. . . . . . .By far the most important criterion, [under the erosion theory] of course, is cost of living. In fact, a basic function of reopening is to shield employees against a prospective rise in retail prices." Bernstein, The Arbitration of Wages, pp. 36-38.

[4]Jack Stieber, Arbitration and the Expanding Role of Neutrals, p. 80.

Employers and unions agree that cost of living changes (increases) are important in any consideration of wage changes. When the cost of living criterion is proposed by the parties in a wage arbitration the conflict is generally over selection of a base date and/or selection of a local as opposed to a national index.

Arbitrators appear quite consistent in their determinations of base dates. The general rule is to accept the date the last negotiated wage rate became effective. Arbitrator John P. Egan's summary in an arbitration for the Patriot News Company and the International Typographical Union adequately describes arbitral reasoning in the selection of base dates.

> In considering wage questions, where the parties have had many contracts in the past, it is presumed that in previous bargaining negotiations they considered all matters bearing on the question of wages. The Company's brief shows a steady increase in wages from January 1, 1946 to and including July 1, 1948, the date the last previous contract took effect. In the negotiations preceding the execution of this last contract, it is fair and proper to presume that all factors, including the cost of living at that time, were fully considered in fixing the wage rates that went into the contract. Therefore, in our consideration of changes in the cost of living, we do not intend to go back of July 1, 1948, the date the old contract became effective . . . , we shall take July 1, 1948 as "the proper date from which to examine wage data presented."[5]

Arguments concerning area or national changes in the cost of living index are more likely to arise when the parties agree that the only relevant criterion for determining a wage change is the cost of living variable. Under other circumstances, the additional criteria may

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[5]15 LA 874.

indicate wage increases far above current cost of living changes such that the argument would be moot.

Reported cases are studied according to the structural product market characteristics of the companies involved. Relatively concentrated industries are viewed first with the more competitive industries following.

Concentrated and Regulated Industries

Application of the cost of living criterion in this group of industries is likely to set the minimum acceptable increase in wage rates. Cost of living may dominate other criteria on occasion, but not very frequently. Arbitrators have followed the reasoning of the parties calling for protection of the workers' real wages in the face of a rising price level.

In the concentrated industry cases, the question of cost of living increases is generally introduced to indicate that the trend of wages should be upward; it is a generally supportive criterion, and other factors are more relevant in determining the actual amount of a wage change. Arbitrators often refer to a certain cents-per-hour increase to maintain real wages and then move on to other criteria to determine how much further to go. Two examples illustrate the point. George Savage King justified 10.7 cents of an 18.5 cents-per-hour award for the Pensacola News Journal and the Pensacola Printing Pressmen on the basis of an increase in the BLS' consumer price index. The Company had offered 11 cents, and the Printing Pressmen requested 20 cents. An

intraindustry comparison served as the foundation for the remainder of the increase.[6]

In the second example, Frank Elkouri awarded the Dallas Printing Pressmen an increase in wages of 12 cents per hour. Elkouri stated that a "cost of living increase of 8.6 cents will preserve status quo as to real wages."[7] The increase over and above cost of living changes was attributed to an intraindustry comparison. The Dallas Publishers had offered the Printing Pressmen 10 cents, which would have been sufficient to increase real wages slightly.[8]

The reported cases generate insufficient evidence relative to the importance of projecting future increases in the cost of living in the arbitrators' decision making processes. Arbitrator I. Robert Feinberg wrote:

> . . . While it is true that the parties have not in past negotiations followed exactly the vagaries of the cost-of-living index, and have used it merely as background material, it does not follow that in this proceeding the present acute inflationary spiral should be disregarded or minimized. In the mind of the Chairman, it presents a most compelling reason, even if, the only reason, why a wage increase should be awarded under this reopening clause. . . . Lastly, the Chairman does not believe that in this proceeding under a wage reopening clause, he should anticipate future rises in the cost of living, any more than he should give credit to the employer for that part of the 1950 increase which might be said to have been in anticipation of the subsequent rise in the cost of living.[9]

Feinberg proposes that anticipation of future changes in the Consumer Price Index, CPI, should not be a part of a wage reopening arbitration.

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[6] 49 LA 433.

[7] 50 LA 367.

[8] Ibid.

[9] 18 LA 58.

John T. Dunlop took an alternative stance in an arbitration for The New York Times and the American Newspaper Guild. Dunlop was faced with a situation where the CPI had declined and then risen over the most recent contract period, yielding a minimal overall change. Dunlop made the following comments in the award.

> But in the application of the cost of living standard in arbitration, as in any decision-making process, concern is paid to reasonable expectations and to tendencies and not merely to the records of the past . . .
> . . . Nonetheless, in the light of the firm two year contract awarded in this case some weight has been given to reasonable anticipations as to the trend in the cost of living.[10]

The apparent conflict between Feinberg and Dunlop may be resolved by looking at their respective contract situations in the two cases. Feinberg was operating under a wage reopener, and the award could be altered the following year, whereas Dunlop was arbitrating a contract renewal which would run for two years. Although Bernstein did not address the question of price level anticipation from the standpoint of reopening cases as opposed to contract renewals, he did point out that the standard practice is to base wage changes on past changes in the index.[11] It is important to note that anticipation of price level changes may lead to double counting if the traditional practice of compensation for past price level changes is followed in the next negotiation.

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[10] 15 LA 333.

[11] Bernstein, The Arbitration of Wages, pp. 75-6.

An interesting and unusual case was reported where the cost of living criterion was found to be controlling, but other factors limited the amount of the award. Arbitrator Feinberg's case mentioned above is one that deserves some comments. The News Syndicate Company was a New York City wage leader, and some of its competitors had recently negotiated wage increases. Feinberg decided that an increase in the cost of living warranted a wage increase, but "that such an increase should be tempered by a consideration of the competitive position of this employer."[12] Feinberg feared that a wage increase equal to the cost of living rise would widen the existing differential and damage the Company's competitive status.[13] It seems highly unusual that a differential established through past negotiations would be altered by failing to grant employees a wage increase sufficient to maintain their real wages, but the competitive status of the Company was found compelling in this case.

Often in cases where the cost of living criterion is accorded much importance, a question arises concerning local or national changes in the CPI. The reported cases failed to provide enough information to establish a consensus in this regard, but one reported case provides a frame of reference. The Newspaper Guild of San Jose had proposed application of changes in the CPI in San Francisco rather than changes in the national index, as suggested by the San Jose Mercury and News. Arbitrator Arthur Ross responded:

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[12] 18 LA 59.

[13] Ibid.

> I agree with the Guild that the San Francisco B.L.S. index is more important, for our present purpose, than the national index. It is true that San Jose is outside the San Francisco area as the B.L.S. measures it. It is likewise true that San Jose is one of the cities included in the compilation of the national index. Nonetheless, what we are really interested in is the movement of consumer prices in San Jose. There is every reason to think that this movement has been similar to that in San Francisco, only fifty miles away. Certainly this is more likely than a movement equal to the weighted average of several dozen cities, including St. Louis, Missouri, Evansville, Indiana, Grand Forks, North Dakota, and Sand Point, Idaho.[14]

Ross stresses the local or area change in the CPI, but other cases fail to indicate arbitral preference. It is likely that a conflict of this nature would arise primarily when the cost of living criterion is deemed the most important variable in the decision making procedures. Where other criteria are given greater weight, changes in the CPI may be indicative of the direction for a wage change or could possibly establish a minimum, but nothing more. The cost of living criterion is mentioned frequently in the reported cases, but is not generally a controlling variable.

Arbitrator Whitley P. McCoy explained in part the decline in importance of this criterion in 29 LA 7. He pointed out in the award that the wage adjustment based on comparisons was close to that which would have been awarded had one taken the change in the cost of living plus the traditional annual increase attributed to productivity.[15] The increase in popularity of comparisons contains a built-in decrease in the use of cost of living changes. The study now turns to applications of this criterion in the relatively competitive industries.

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[14] 29 LA 98.

[15] 29 LA 7.

Competitive Industries

There were 14 reported cases in this group in which the arbitrators' first rankings were given to cost of living changes. Eleven of the 14 cases occurred during the inflationary Korean War period governed by the Wage Stabilization Board, WSB. Reasoning in these industries follows closely that in the more concentrated industries in that maintenance of real wages is mutually acceptable to the parties. Arbitrator Edgar L. Warren summarized the prevailing opinion:

> . . . [I]t has become quite customary in labor-management negotiations for wage increases to be granted which maintain "real wages" by eliminating any gap which may have occurred between rising prices and wages.[16]

The prevalence of the cases where the cost of living criterion is ranked first in importance in the early period of this study is explained by two factors. First, Arthur M. Ross has written that,

> . . . Cost-of-living is probably the most significant wage determining factor in a period of rapid inflation. When consumer prices level off or decline, however, cost-of-living should be given some consideration but is not conclusive.[17]

The Korean War period was characterized by a rapid and persistent increase in the CPI, hence, Ross's statement applies. Second, the WSB guidelines provided that workers' real wages could be maintained by granting wage increases equal to the rise in the cost of living without securing WSB approval.[18] Attempts to justify other increases could be rejected by the Board, therefore, it was easier and more pragmatic to stress the cost of living factor.

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[16] 15 LA 847. [17] 22 LA 226. [18] 18 LA 293.

Four cases involve employer contentions of inability to pay higher wages, and the awards are somewhat conflicting. In two of the cases, Arbitrators Harry H. Rains and Adam Abruzzi propose that inability to pay arguments have little or no weight in the face of employee demands for higher wages due to a rise in the CPI. Arbitrator Rains (quoting Joseph E. O'Grady) wrote:

> I am in full accord with the findings of previous arbitrators in this industry, to the effect "that financial ability or inability of an employer to pay a wage increase requested because of a substantial increase in the cost of living, may not be considered by an arbitrator as a determining factor."[19]

In the conflicting cases, the cost of living criterion was deemed controlling, but the actual amount of the award was reduced due to the employers' proven inability to pay.[20] When confronted with the inability to pay criterion, Arbitrator Arthur Lesser, Jr. stated that ". . . the employees are entitled to a cost of living increase of 6 percent to be payable over a period of time so that the employer can adjust to it without too much hardship."[21] Lesser did not accept the Company's request for denial of an increase on the basis of inability to pay, but he did consider it in the award by granting step increases to spread the burden over time.

Whether or not arbitrators should attempt to predict or account for future increases in the cost of living was discussed only in one case in the competitive industries. Neutral Allen D. Schwartz ruled that a cost of living increase should not only account for changes since the

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[19] 19 LA 464.

[20] 63-1 ARB 8282, 17 LA 114.

[21] 17 LA 914.

beginning of the last contract, but that they should also ". . . reflect a projected increased cost of living for . . ." the future contract period.[22]

There appears to be little difference in the application of this criterion from the relatively concentrated to the competitive industries. The only significant difference arises in the content of their respective labor agreements. A number of the cases in the competitive industries indicated that wage reopening procedures could be instituted only upon proof of "significant" changes in the CPI. Under this type of clause, an arbitrator is usually called upon to settle the reopening issue and then render a wage award where appropriate.

III. ABILITY TO PAY

Introduction

In practice, the ability to pay criterion is very often transposed to an inability to pay argument by the employer. The claimant will generally take the position that the company's competitive or financial status is such that any wage increase, or one approaching the union's demands, will pose serious problems for the company. Bernstein wrote that ability to pay,

> . . . shall include these three relatively distinct notions: affirmative ability to pay as justification for an increase, inability to pay in face of a threat to survival, and most commonly, moderation in wage policy reflecting less than satisfactory business conditions.[23]

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[22] 63 LA 159.

[23] Bernstein, The Arbitration of Wages, p. 78.

Bernstein found that only 3.5 percent of the arbitrator's first rankings of criteria could be attributed to the ability to pay criterion. In the present study, 11.5 percent of the first rankings belong to this category. The primary explanatory factor for this notable increase from the arbitrators' vantage is a continual decline in the economic fortunes of industries that traditionally arbitrate wages. The economically depressed industries presented several cases where wage reductions or no wage increases were the basic alternatives to plant closures. These cases will be examined in their respective structural contexts.

Concentrated and Regulated Industries

Reported cases in the concentrated industries revealed no cases where the ability to pay or inability to pay criterion was accorded a first ranking in the arbitrators' awards.

Even though the criterion is not given any controlling weight in these cases, it still plays an important role on occasion as a limiting or directional factor in the wage decision. In this context, one is viewing the employer's argument of inability to pay.

Arbitrator Paul Prasow explained the general arbitral approach to the inability to pay argument in an arbitration for International Panorama T.V. and the National Association of Broadcast Employees and Technicians.

> . . . It is a well-accepted principle in wage arbitration to accord the employer's financial straits some but not decisive weight in arriving at a wage determination. An employer cannot expect indefinite consideration on the basis

> of claimed inability to pay. Where, however, there does appear to be a financial threat to continued survival, it is not unreasonable to offer temporary relief and give the Company an opportunity to weather the adverse circumstances. The Arbitrator would reject any long term solution that would indefinitely permit the employer to pay below scale for comparable work.[24]

From Prasow's award, it is apparent that arbitrators will allow inability to pay to play a limiting or controlling role for only a brief period of time. The argument cannot be extended indefinitely to the detriment of a firm's employees relative to those doing comparable work.

A quote from an award rendered by Robert B. Brecht provides some additional insight on the application of the ability to pay criterion. Brecht wrote:

> It should be obvious that the principle of ability to pay as the sole criterion on which to base a wage determination, carried to its ultimate implications, leads to "sweatshop" wages, shifts the risk of business enterprise from the risk bearing group to labor while protecting the rewards for that group, puts wages at the mercy of inept management, repudiates the function of wages one at least of which is morally to provide "living" standards in a specific area of the economy, and denies in part the needs of an economic society whose enduring success is dependent upon growth and expansion.[25]

Arbitrator Brecht made a point that other arbitrators frequently mention concerning the inappropriate assignment of risks to the workers when the inability to pay criterion is given controlling weight.

Examination of the reported cases reveals several important conclusions concerning application of the criterion. First, in the transit industry, it is rarely if ever given significant weight. Second, it is assigned some weight as a limiting factor in restricting

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[24] 58 LA 346.

[25] 21 LA 358.

wages to an increase indicated by historically applied criteria, even though other criteria might indicate a further increase. Arbitrator Albert I. Cornsweet provides an appropriate analysis for the above situation.

> In determining whether [a] wage increase is justified, [the] question of ability to pay should be given weight in deciding whether to grant [an] increase higher than that indicated by usual criteria, but claimed inability to pay should not deprive employees of fair and just wages comparable with those in effect in [the] industry and area and consistent with duties, skills, and responsibility of work performed.[26]

Third, the ability to pay criterion is given considerable weight when an effort is made to break new ground or deviate from past negotiation practices. Fourth, union proposals of a favorable ability to pay may provide direction for a wage award, but nothing more. And lastly, proof of inability to pay on the employer's part is likely to force more compelling evidence from the union if a given wage goal is to be reached through arbitration, but the burden remains on the employer to prove inability to pay. Although no cases were reported involving the specific issue whereby the employer pleads inability to pay because fares or rates are set by public boards or commissions, it is interesting to view Bernstein's findings in this area. Bernstein reported that arbitrators ". . . unanimously refuse to give weight to the price factor or to grant contingent wage adjustments."[27] The inability to pay criterion is cited frequently in these cases, but is generally allotted little or no weight by the neutrals.

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[26]15 LA 263.

[27]Bernstein, The Arbitration of Wages, p. 85.

Competitive Industries

All 13 of the arbitrators' first rankings of the ability to pay criterion are found in the competitive industries. One must conclude that market factors are given more consideration by arbitrators in the relatively competitive industries, but this fact, however, only serves to illustrate the pragmatic approach of the parties as well as the arbitrators. Cases in the textile industry illustrate well the application of this criterion in a highly competitive industry. Inability to pay was assigned, directly or indirectly, controlling or directional weight in every case but one in textiles. The round of wage reductions in the early 1950's was initiated due to the inability of firms to pay existing wages in the face of economic decline in the industry. After the initial round of wage reductions, arbitral decisions cite absolute comparisons or the pattern of decreases, but these reductions can be indirectly attributed to the firms' pleas of inability to pay.

Arbitrator Walter Gellhorn capsuled arbitral thinking on this topic in a 1952 award.

> . . . Today there are evidences that the textile business is on the verge of a significant revival. In my estimation, however, that revival will not come quickly enough to save Fall River-New Bedford unless, meanwhile, emergency steps are taken to diminish the present competitive disadvantage. This must be done by reducing production costs, among which payroll bulks large. One cannot say with assurance that lowered labor costs will bring business and fuller employment to Fall River-New Bedford; . . . One can only say that failure to lower costs would gravely endanger the Massachusetts branch of the industry . . . .
>
> . . . The result is justifiable, if at all, only as a desperate expedient to save a locality's industry. Wage

> cutting does not produce prosperity. It can conceivably enable an employer to achieve a position of temporary strength.[28]

Arbitrator Gellhorn was cognizant of the high labor cost situation in the industry and its impact on total costs. The inability to pay proposition provided the direction of the wage change, and other factors indicated the amount.

In another textile case, Arbitrator Paul L. Kleinsorge analyzed the inability to pay argument.

> Much of the material presented by the Company in its plea for a reduction in wage rates had to do with its financial ability to maintain the present wage scale. If ability to pay is to be a controlling factor in this case and if the Company is found to lack this financial ability, a wage reduction could be granted without consideration of the other arguments . . . .
>
> The Chairman believes, however, that the ability to pay argument cannot be granted as controlling in arbitration cases. There are many precedents to this effect, and the point was established long ago. An employee is not a partner—he does not share in the profits and should not be expected to share in the losses. Wages of an employee cannot be made to depend upon profits—if they were efficient employers would be penalized with high wages, while less efficient employers would be subsidized with low wages. The Company must pay standard rates for its equipment, tools, and fuel, and other costs. . . .
>
> Situations may occur under which discretion would direct the employees to accept a wage reduction below the standard to help keep their employer in business and to maintain their jobs. But that is a decision for the workers to make. When the employer's plea is based solely on inability to pay, the reduction below standard should be a voluntary sacrifice, and not one forced upon the employees by an arbitrator.[29]

Several points are gleaned from Arbitrator Kleinsorge's award. First, the Arbitrator proposed that if inability to pay is controlling, one

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[28] 18 LA 775.

[29] 24 LA 42.

need not look further to reach a decision. This point overlooks the actual determination of the amount of the award. Second, he concluded that to utilize the criterion as a controlling factor is to shift the burden of risk to the employees. And lastly, he suggested that when employers argue strictly on the basis of inability to pay, any wage reduction should be accepted voluntarily rather than by arbitral award.

In the face of the above reasoning, one might question why the Arbitrator granted a wage reduction. The answer lies in the severity of the firm's economic position and the pattern of decreases already in motion in the industry. The award was based on the pattern set by American Wollen Mills, Inc., but the firm's inability to pay was an indirect factor.[30]

Analysis of cases in other competitive industries substantiates much of the arbitral decisions in textiles. The cases indicate that several conclusions are appropriate. First, where firms are newly organized, temporary relief in the form of below standard rates may be granted on the basis of inability to pay. Arbitrators Joseph F. Donnelly, Samuel F. Curry, and Warren L. Mottram wrote,

> A basic factor in such a judgment, however, must be the obligation of the Company which chooses to operate, to pay reasonable rates to its employees, which obligation, is independent of its ability to pay. It does not follow, however, that the standard of reasonable rates during this period of difficulty must be an inflexible application of the area and the industry rates.[31]

Second, inability to pay often leads to the finding that wage increases, found to be appropriate based on other criteria, be granted

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[30] 24 LA 38.

[31] 23 LA 336.

in steps to lessen the financial impact on the employer. Third, an increase in wages justifiable on other criteria may be limited in amount as a result of inability to pay. Arbitrator Paul Prasow illustrates with the following statement:

> . . . It is a well-recognized principle of wage arbitration that while demonstrable financial hardship may be a crucial and even, at times, the primary consideration, more often it determines the distance that the award will go, rather than the basis of the wage award itself.[32]

Fourth, the inability to pay argument has little impact in the presence of an uncompensated rise in the cost of living index.[33]

Fifth, arbitrators are reluctant to require employees to accept substandard wages from a firm that has little chance of survival. Arbitrator Edgar A. Jones, Jr. gives perspective to this proposal.

> Of course, an economic society organized on a free competitive basis has a constant traffic of business starts and failures. We all recognize that yesterday's small employer becomes today's employee, just as today's wage earner frequently turns up as tomorrows wage payer. . . . Recent studies indicate that this factor [inexperience] alone accounts for the great majority of small-business failures. Within such an economic context, inability to pay—as such and without more—affords no sound reason for an arbitrator to seek to keep a marginal or submarginal enterprise in existence at the expense of its employees and prospective creditors by means of an award of substandard wages and working conditions. Indeed, in a case of unqualified inability to pay, such an effort by an arbitrator may be a misguided disservice to a failing employer by leading him to further wastage of his assets in a futile endeavor.[34]

Lastly, the union presentation of positive ability to pay on the employer's part is rarely given consideration and, if so, it is only to indicate that an increase can be sustained by the firm.

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[32] 27 LA 468. [33] 16 LA 966. [34] 28 LA 40.

IV. OTHER CRITERIA

Introduction

The remaining criteria occasionally cited by the parties play an insignificant role in the decision making processes of wage arbitration. Their individual and combined roles have changed little since the Bernstein study, where the four combined criteria accounted for only four first rankings by the arbitrators. The four criteria—differential features of the work, substandard wages, productivity, and manpower requirements—are discussed in turn.

Differential Features of the Work

Arbitrators rarely rely on this criterion; the parties likewise place little emphasis on its use. Unions proposed this factor in only 3.7 percent of their citations; companies suggested it in only .4 percent of their citations; and arbitrators mentioned it in only two opinions. Unions have occasionally introduced the criterion to suggest that a particular job was so different from other generally comparable work that a higher relative wage was in order to make up for the differential features. Arbitrators have held that differential features of work are ". . . appropriate for fixing differentials between jobs, [but they] should not influence a general wage movement."[35]

Substandard Wages

Introduction of this criterion in the arbitration hearings by the unions accounted for 5.1 percent of their total citations of criteria.

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[35]Bernstein, The Arbitration of Wages, p. 90.

The companies never utilized it, and arbitrators only mentioned the criterion in three cases. Bernstein pointed out that the concept was a somewhat vague social or ethical proposition that is logically applicable to all workers and, therefore, "should be enforced generally rather than differentially."[36] Minimum wage law and the present day "middle class" status of organized workers tends to place them above so-called "living wages."

Productivity

The productivity criterion was analyzed in detail by Bernstein, and the various procedural problems attendant to its use were enunciated. The percent of the total number of citations of criteria attributable to this element is 5.8 for the unions, 3.3 for the companies, and 2.4 for the arbitrators. All three participants recognize that increases in productivity over time are the source of increases in real wages, but conceptual and methodological problems inhibit application of the productivity variable. It is likewise recognized by all concerned that the use of productivity as the basic determining factor in wage issues would probably produce chaos in industrial relations. Extreme wage differentials, even within a particular plant, could arise under a simple application of the productivity criterion.[37] Moreover, this criterion has been used infrequently by the parties, hence, it has little application in arbitration. For these reasons, arbitrators continue to shy away from use of productivity changes as a basis for

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[36] Ibid., pp. 92-96.

[37] Ibid., p. 99.

wage changes other than to use the data as supplemental information with other factors having controlling weight.

Manpower Requirements

Manpower requirements were cited five times by unions, twice by employers, and only once by arbitrators to account for only 1 percent of their combined citations.

Union citation is generally based on the argument that present wages are inadequate to attract and maintain a sufficient number of qualified workers. The employer argument is transposed to show that there is a long queue at the existing wage, so no further increase is warranted.

Morton Singer accepted this criterion as a supportive element in 48 LA 289. Singer wrote,

> . . . It is apparent that a substantial increase as requested by the Union would create a financial crisis for this employer. But in light of the unavailability of persons engaged in this profession, an attractive base rate must be established to obtain competent LPN.[38]

He did not grant the union's demand, but he did provide a substantial increase in the wage rate. Other comments on this criterion have not been provided in the reported decisions, but this is understandable, however, as the parties have placed so little reliance on the concept.

VI. CONCLUSIONS

This chapter completes the examination of criteria applied in reported wage arbitrations. Cost of living, ability to pay, and other

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[38] 48 LA 289.

miscellaneous criteria were studied in Chapter V. The cost of living criteron is generally used as a supportive element rather than a controlling one with positive changes in the CPI setting the minimum amount for wage increases. When the cost of living criterion is accepted as controlling, questions arise concerning the applicability of local as opposed to national changes in the CPI. The cost of living criterion is applied in a uniform manner in competitive and concentrated industries.

Unlike the cost of living criterion, the inability to pay argument is occasionally given controlling weight in the competitive industries, but never in the concentrated sectors. When inability to pay is controlling, it is always a temporary situation. Arbitrators will not continue a firm's livelihood at the expense of its employees over an extended period of time. Its role in the concentrated sector is primarily one of a limiting nature. The union proposal of positive ability to pay provides nothing more than an indication that a firm is financially capable of sustaining a wage increase justified by other criteria.

Other criteria cited by the parties and infrequently mentioned by arbitrators play an insignificant role in the wage arbitration process.

Chapter VI presents a summary of observations from the study and an evaluation of the current status of wage arbitration. The study's implications for the future of the wage arbitration process are also presented.

CHAPTER VI

THE MYTHS OF WAGE ARBITRATION

I. INTRODUCTION

Participants, practitioners, and students of industrial relations are overly familiar with the oft-repeated caveats regarding wage arbitration. Interest arbitration is often viewed as a hazardous process worthy of consideration only as a last resort. Management representatives propose that the process is too risky, as the arbitrator might formulate particular provisions of a new contract which could jeopardize a company's financial position. Labor leaders in turn argue that interest arbitration is too risky because employees may be awarded substandard wages for the length of a contract. Both parties often assert that there are inadequate criteria to guide the arbitrators in their decision making, which further contributes to the risks involved. Critics state that the process is unworkable in the wage leader case. And lastly, wage arbitration is accused of perverting the collective bargaining process.

As a research topic, wage arbitration has attracted little interest since Bernstein's definitive work. The lack of interest may be attributed in part to the vehemence and repetition of the critics' condemnations and the apparent lack of use of the process, as evidenced by the research of a few scholars.

Recent events, such as the arbitration of professional baseball players' salaries and the "Experimental Negotiating Agreement" in the

basic steel industry, prompted the present study. Wage arbitration cases are analyzed individually and aggregately for purposes of comparison with Bernstein's findings and for determining to what extent the parties' fears of the process are well founded. Results of the study refute several common myths of wage arbitration, which will be discussed after a look at the record.

II. THE RECORD

The same industries and unions that have arbitrated wages in the past continue to do so in the present with the exception of the apparel, textile, and furniture industries. These three industries have reported no wage arbitrations since 1956. All three industries experienced geographic shifts in production facilities from highly unionized sectors of the nation to a relatively nonunion South, which reduces the opportunity to arbitrate wages.[1] It is important for historical purposes to note that the large manufacturing industries, automobile, heavy chemicals, primary metals, and rubber, have never utilized the process. Results show that the historical practice of wage arbitration has continued to the present primarily in those industries having firms characterized as being small and highly competitive or in industries "affected with the public interest."

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[1]Weiss, Economics and American Industry, pp. 133-136; Skinner and Rogers, Manufacturing Policy in the Furniture Industry, pp. 2, 3, 5, and 6; Chamberlain and Cullen, The Labor Sector, p. 76; Marshall, Labor in the South, pp. 66-7.

Unions that were prominent in Bernstein's analysis are likewise important in the present study. It is apparent that familiarity with the process encourages use by firms and unions under given economic circumstances, but familiarity alone is not sufficient.

Most cases arose via the wage reopener route, and the parties chose to select their arbitrators without assistance in over 50 percent of the cases. The cases show that the single neutral was selected in over 60 percent of the cases, and when combined with other types of all-neutral panels they account for 71.8 percent of all reported cases. This result is contrary to the opinion frequently expressed in the literature. The parties have not been afraid to trust the wage decision to a single arbitrator or to a completely neutral panel.

Although Bernstein suggested that the frequency of wage arbitration varied cyclically, there is insufficient evidence to confirm or deny his hypothesis. It is apparent, however, that changes in industry or firm-specific microeconomic variables are more important determinants of short run changes in the frequency of wage arbitration than are macroeconomic variables. The most striking finding is that the annual average number of reported cases declined so greatly after the Bernstein study. Richard U. Miller and Jack Stieber attribute this decline to basic changes in the nature of labor agreements: contracts have a longer duration; automatic adjustments are more prevalent; and wage reopeners are not as common. The availability of only 138 reported private sector cases since 1950 is apparent evidence of the decrease in the frequency of reported wage arbitrations, but one must be aware

that not all wage cases are reported. Table 10 presents the number of interest arbitrations processed by the Federal Mediation and Conciliation Service, and it shows that only a minority of the wage cases occurring in any given year are reported.

TABLE 10

REPORTED WAGE ARBITRATIONS AS A PERCENT OF FMCS INTEREST ARBITRATIONS, SELECTED YEARS

Year	FMCS Interest Arbitrations	BNA-CCH Reported Wage Cases	Percent
1965	24	4	16.7
1970	28	2	7.1
1971	33	3	9.1
1972	29	2	6.9
1973	40	2	5.0
1974	53	6	11.3
Total	207	17	

Source: Federal Mediation and Conciliation Service, Annual Report (Washington, D.C.: U.S. Government Printing Office, 1965, 1970-74).

It is evident that the number of reported wage arbitrations as a percent of the FMCS' interest arbitration case assignments varies substantially, from a low of 5 percent to a high of 16.7 percent with a six year average of 8.21 percent. Table 10 reveals that the number of reported cases does not accurately measure the importance of wage arbitration from a numerical perspective. The reported cases are likewise not necessarily cases handled by the FMCS as is shown in Table 4, page 22.

If a survey of arbitrators were feasible in the present study, it would possibly lend additional support to the contention that the number

of wage arbitrations is vastly understated by viewing only the reported cases. Professor J. Fred Holly reported in a personal interview that he arbitrated 15 wage cases during the study period of which only three were reported. It is not known whether his experience is typical of that of other arbitrators, but the germane point is that the total number of wage arbitrations in any given year is likely to be grossly understated by reference to reported cases only.

Arbitral awards exhibited a preference for the company position, as the average difference between the arbitrator's award and management's offer as a percent of the difference between the union's demand and management's offer was 36.0 percent. This finding should allay somewhat the fears of company representatives concerning extreme or financially devastating awards as well as the tendency to "split."

The comparison criterion is the most frequently invoked and accepted arbitral wage standard. The general case involves an application of the comparison criterion on an absolute basis—a particular firm's wages are compared to the wages of other designated firms. In the wage leadership case, arbitrators often rely on the pattern of wage increases in a specific area, industry, or market. Where employers and unions have historically followed a negotiated pattern, arbitrators are extremely reluctant to alter this relationship, unless there is evidence of severe economic hardship. When there is evidence of a break from a parity relationship intentionally established in the past, arbitrators tend to rely on the current pattern of wage increases to reestablish parity.

Irrespective of the criteria proposed by the parties, maintenance of the status quo in terms of relative wage rates over time is the common rule unless the party seeking change can establish firm and compelling economic evidence in support of the request for a change in the basis of comparison. The force of historical precedent is compulsive in most awards.

The cost of living variable ranks third in importance in the arbitrators' first rankings of criteria. The cost of living standard often sets the minimum for a given wage increase in competitive and concentrated industries and is generally supportive of other criteria.

In competitive environments, arbitrators are predisposed to consider inability to pay arguments in a limiting sense, but rarely so in regulated or concentrated industries.

Other criteria are acknowledged by arbitrators but generally play supportive or insignificant roles in the actual wage decisions in most cases.

III. DESTROYING THE MYTHS

The existing myths of wage arbitration revolve around a misunderstanding of the process by employers and unions alike. Critics who suggest that the diminutive number of reported wage arbitrations is evidence of the failure of the practice have used the wrong criterion in their evaluations. Arguments stating that those parties who previously utilized arbitration in wage disputes no longer do so provide the key to analyzing the importance of this critical type of arbitration. It is

not the number of times that arbitration is used, but rather the success of the practice when invoked. The appropriate criteria for evaluation are: (1) success of the procedures in avoiding the strike; (2) acceptability of the award; and (3) maintenance of the collective bargaining relationship. The first goal of wage arbitration is to avoid the costs imposed by a strike, which neither party foresees as being in its best interests, but avoidance of a strike over wages is a Pyrrhic victory if there is a strike against the arbitrator's award; therefore, acceptability of the award is critical in any measure of success. Lastly, if wage arbitration undermines collective bargaining, the parties may turn to it like a narcotic, and arbitration or some other institution replaces collective bargaining in the industrial relations sphere.

Evidence of strikes against arbitral awards in wage cases is not readily available, but such actions would likely attract much publicity and would, therefore, be highly visible. The negative impact of wage arbitration on collective bargaining appears to be negligible. Ad hoc arbitration does not appear to place any particular strains on the bargaining relationship, and arbitration by prior agreement does not destroy the threat of a strike completely. An agreement to arbitrate wages in the event of an impasse in the future as a tool to settle a current bargaining issue does not eliminate the strike threat in the next negotiation because the issue of whether to continue the arbitration clause is brought to the forefront.[2]

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[2]Stevens, Carl M. "The Analytics of Voluntary Arbitration: Contract Disputes," Industrial Relations, Vol. 7, no. 1, (1967), pp. 75-6.

The cases provide some additional insight on the effects of wage arbitration on collective bargaining. If there is, in fact, a narcotic effect, it apparently does not operate on the union side, for only the Teamsters arbitrated as frequently as one case per year. The cases involving the Teamsters were spread across industry lines, and there was no evidence of repeated arbitrations with a particular firm.

From the employer side, there is evidence that a couple of employers had more than one arbitration in the study period, but this generally occurred with more than one union. Given an average contract duration of three years, an employer could have potentially arbitrated wages with one given union eight times during the study period, hence, a firm with two arbitrations, even with the same union, has apparently not forsaken collective bargaining. The reported cases show no evidence of employer or union addiction to the wage arbitration process. More complete reporting of wage arbitrations could shed further light on this particular myth.

In addition to the general misunderstanding of the process, there is too often a reliance on the quantity of published cases as a yardstick to measure wage arbitration. As shown above, this is an inaccurate approach.

The second myth, which is ancillary to the first, is that the decline in the annual average rate of arbitration is evidence of the parties' dissatisfaction and fear of the process. Richard U. Miller and Jack Stieber have documented the structural changes in contracts to account for most of the decline, but another element is also important.

Disappearance of clauses requiring arbitration in the event of a wage impasse is an indication that those forces, whether market or institutional, that previously mandated arbitration have changed such that reliance on arbitration is unnecessary. Particular attention is directed toward the "Experimental Negotiating Agreement" in the basic steel industry; when the market forces (possible loss of market shares and jobs through innovation and international competition) alter their present status, the agreement may be shelved until another day. The agreement is necessary only so long as it is less costly than its alternatives, and a changing economic environment will alter the relative costs and benefits. One should not expect a company and union to embrace wage arbitration at a particular point in time for every future wage dispute.

The third myth, which breaks down into subsidiary elements, argues that wage arbitration is too radical and risky to be used. From the company perspective, there is fear of an adverse financial impact from an extreme award. Unions propose that substandard wages may be forced on their membership for the duration of the contract with an outrageously low award. Both often argue that there are no clear guides for the arbitrator to follow.

Examination of the results found in Table 8, page 29, indicates that employers certainly have little empirical basis for their fears concerning high awards, but unions are somewhat more justified in their concerns with low awards. Over 53 percent of the 90 cases providing sufficient information for the calculations received awards located in

the class intervals extending from 21 to 60 percent of the differences. The simple average of the arbitrator's award minus the offer as a percent of the difference between the demand and the offer for the 90 cases is 36.0 percent, which indicates a slight preference for the employer position. Unions received 100 percent of their demands in only five cases.

It is erroneous to assume that there are no clear guides for arbitrators to follow in wage cases. From the Bernstein study to the present, there has been a consistent introduction and application of general criteria by the respective participants and arbitrators in wage arbitrations. Arbitral application of the criteria has been generally consistent and uniform throughout the study period. In particular, the intraindustry wage comparison is the most frequently introduced and applied criterion by all concerned. Application of the comparison criterion tends to minimize the risk of out-of-line awards. This criterion generally leads to maintenance of relative wage rates among firms within an industry over time, given no unusual or extenuating economic circumstances. With this criterion, employers would not expect to pay more than their competitors, and employees would not expect to receive less than others doing comparable work. Radical changes are most difficult to introduce when the historical relationships of absolute wage levels are accorded predominant weight. When employees or employers have shown a dire need for change in the basis of comparison due to various economic factors, arbitrators have been receptive to these needs and have acted accordingly to limit or alter some historical wage

relationship. The only exception to the general rule of maintenance of historical relationships by arbitrators is in the printing and publishing industry, where the International Board of Arbitration altered this practice in a 1962 review of 62-3 ARB 8889.

In many cases, the parties reduce their risks by stipulating the use of certain criteria and by requiring arbitrators to render awards between specific maximum and minimum values. For example, arbitral decisions in professional baseball must be determined according to the record based on the following criteria:

> . . . the quality of the Player's contribution to his Club during the past season (including but not limited to his overall performance) special qualities of leadership and public appeal, the length and consistency of his career contribution, the record of the Player's past compensation, comparative baseball salaries, . . . the existence of any physical or mental defects on the part of the Player, and the recent performance record of the Club including but not limited to its League standing and attendance as an indication of public acceptance. . . .[3]

Arbitrators are prohibited from considering the following variables in baseball salary arbitrations:

(a). The financial position of the Player and the Club.
(b). Press comments, testimonials or similar material bearing on the performance of either the Player or the Club, except that recognized annual Player awards for playing excellence shall not be excluded.
(c). Offers made by either Player or Club prior to arbitration.
(d). The cost to the parties of their representatives, attorneys, etc.
(e). Salaries in other sports or occupations.[4]

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[3] Basic Agreement between The American League of Professional Baseball Clubs and The National League of Professional Baseball Clubs and Major League Baseball Players Association. January 1, 1973, p. 8.

[4] Ibid.

The Basic Agreement, therefore, requires application of certain comparative techniques and forbids the use of ability to pay variants and interindustry comparisons among others.

Another example is presented in the agreement between the Lincoln County Electric Membership Coop and the International Brotherhood of Electrical Workers, which provides for application of the following elements:

> (a). The board shall take into consideration the ability of the Employer to pay an increased wage rate, . . .
> (b). It shall take into consideration the wages fixed in the existing agreement for time actually worked as well as wages for time not worked including vacation, holidays, sick leave, and other excused time.
> (c). It shall take into consideration prevailing wage rates paid, and conditions of employment maintained for the same or similar work of workers exhibiting like or similar skills under the same or similar working conditions by cooperative employers in the same labor market in the State of Tennessee.
> (d). It shall take into consideration the fact that the dominant reason for Employer's existence under the law and the purpose of its operations is to make electricity available to all citizens and inhabitants of the area of Tennessee that it serves at the lowest rate possible.[5]

The parties in the two examples have clearly reduced their risks through deliberate stipulation of the criteria to be applied by the arbitrators.

The fourth myth is that the parties are so apprehensive of wage arbitration that they turn to a tripartite board when they find that wage arbitration must be utilized. It was pointed out in Chapter II that all-neutral panels were the overwhelming (71.8 percent of the cases) favorites of the parties. It is possible that the parties overstate their real fears concerning wage arbitration.

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[5] 62-3 ARB 8800.

A final myth is that arbitrators usually just split the difference between the parties. Table 8, page 29, clearly shows that this is not a general practice. There were only five cases where the arbitrator's award, either consciously or unconsciously, split the difference.

Wage arbitration is not in practice the radical process it is often made out to be. The criteria applied in arbitration are generally those used in bargaining. Historical practice is given considerable weight in most cases. Extreme awards appear to be nonexistent or in a clearly definable minority.

IV. IMPLICATIONS OF THE STUDY

The signing of the "Experimental Negotiating Agreement" in the basic steel industry may signal the end of the historical practice of wage arbitration to be confined to those industries characterized by small, highly competitive firms or those firms "affected with the public interest." It is apparent that wage arbitration is being considered in various industries where it has never been practiced before. It is not uncommon in the spring to read in the sports pages of any major newspaper that a particular major league baseball player's salary was determined by a third party neutral. One should expect this practice to become more commonplace in the future in industries having certain types of economic problems. Professional baseball turns to the process because player holdouts over salary issues may cost the industry a loss of market revenues to competing professional sports and a concurrent loss of jobs and rapid skill deterioration for the athletes.

Other factors support the contention that wage arbitration will become more widespread. The proliferation of unionism in federal, state, and local government provides a large potential base for future terms arbitration. Some state and municipal laws already provide contract arbitration as an alternative to the strike, and it is likely that others will follow the lead.

Another important industry that has an apparent proclivity and need for wage arbitration is the airline industry. In March of 1976, National Airlines and the Air Line Employees Association, ALEA, signed an agreement calling for the arbitration of any unresolved economic issues that may arise in 1977 negotiations. ALEA is the largest union that National bargains with, and this agreement may provide the initiative for other agreements with unions that represent National employees. Four of the other industry unions have expressed an interest in the approach and are currently negotiating with National Airlines. In addition, there are indications from some airline industry union leaders that other carriers may follow National's lead. Reasons cited by the parties for their precedent setting step are: constant labor strife, low worker morale, decline in traffic, and a decrease in profits.[6]

Although there have been no wage cases in the steel or airline industries under these new agreements, the significance is that the parties have under their respective market situations decided that

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[6]"National Airlines Finally Finds Labor Peace," Business Week, March 8, 1976, pp. 70-71.

arbitration would be a less costly solution to an impasse than a strike. Other industries, including firms faced with frequent labor conflict and possible erosion of market shares, are likely candidates to arbitrate wages in the future. These most recent trends indicate a role of growing importance for wage arbitration in the United States.

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