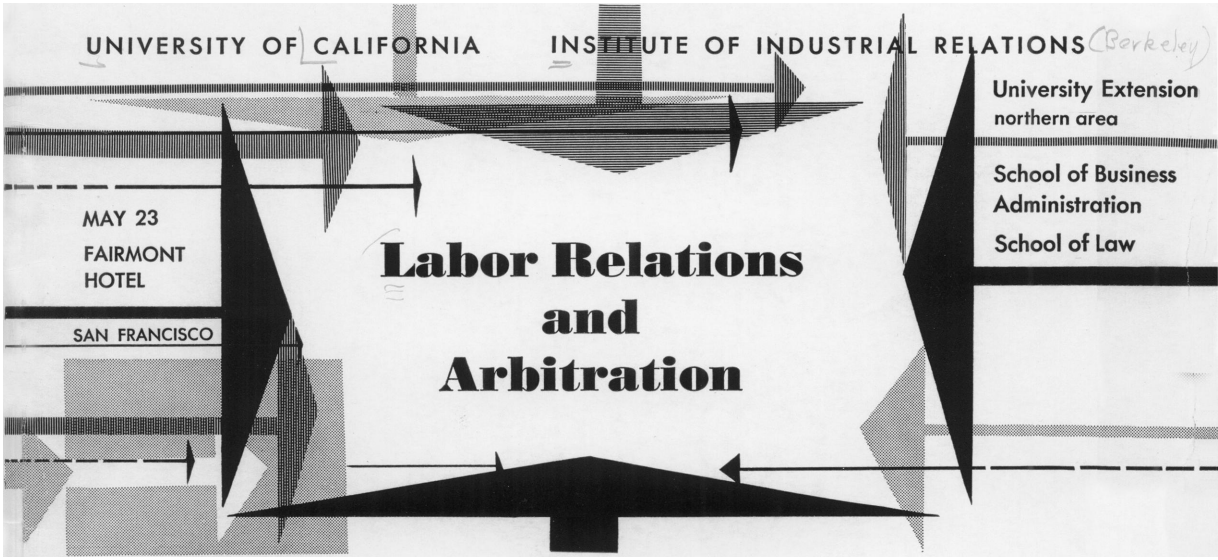

$1.00 the copy

PROCEEDINGS

for a conference on

LABOR RELATIONS AND ARBITRATION

at the

Fairmont Hotel, San Francisco
May 23, 1956

presented by:

Institute of Industrial Relations (Berkeley)
Graduate School of Business Administration
School of Law
University Extension

of the

UNIVERSITY OF CALIFORNIA
Berkeley

in cooperation with:

American Arbitration Association
California Metal Trades Association
Central Labor Council of Alameda County
Conference of Junior Bar Members
Distributors Association of Northern California
Federated Employers of San Francisco
Greater Alameda County CIO Council
National Academy of Arbitrators
San Francisco CIO Industrial Union Council
United Employers, Inc.

Conference Coordinator: Virginia B. Smith
Coordinator of Public Programs
Institute of Industrial Relations

TABLE OF CONTENTS

J. Hart Clinton

Executive Vice President
Distributors Association of Northern California
San Francisco

THE YEAR AHEAD IN COLLECTIVE BARGAINING

A management representative is in a unique and embarrassing position making predictions about collective bargaining in the year ahead. There is always the danger that not only the arbitrators here but also my adversaries in the collective bargaining field will seize upon my statements as an indication of concessions which management is prepared to make during the coming year. I have tried, however, not to divide by two so they may multiply by three.

Your Chairman, Dr. Arthur Ross, is in a much better position to make predictions than I am because he has nothing at stake. He has no clients or members who will take him to task if he indicates that there's going to be too high a price paid next year. Mr. Henning, who represents labor's viewpoint on this panel, is also in a much more advantageous position than I am because all he has to do is state what labor's expectations are next year. If he conforms to the usual pattern of collective bargaining, those expectations will be inflated to take care of the concessions which may result from collective bargaining.

I feel that this subject of what the year ahead will bring requires a definition of what the year ahead is. If we take the next twelve months we really run into two seasons, the rest of 1956 and first part of 1957. 1956 is well underway. Some definite patterns, as I will indicate, have been established and we have the rest of the season which runs roughly -- (and I use roughly advisedly --) through June and pretty much into September. The latter part of the year is just a clean-up operation. And then we come to the first half of 1957.

My experience in the collective bargaining field has been primarily in the Bay Area and Northern California, with some contact in the Southern California field, so I am not representing in anything I say what will be done nationally. I am speaking of the Bay Area.

The weighted average wage increase -- and I am going to take up the subject of wages first because I think that's the most important in our discussions here -- the weighted increase up to date in 1956 is said to be 10.6¢ per hour. I take that estimate from the latest issue of Collective Bargaining published by the Bureau of National Affairs. An analysis of the data upon which that 10.6¢ is based reveals that there is no pattern in the country as a whole nor is there any pattern for industry or unions as a whole. It represents a conglomerate group of wage increases varying from small amounts to high amounts and averaging out 10.6¢ per hour.

For those of us who have been representing management this year I believe it has been uniformly our experience that as the year progressed bargaining got much tougher. Let me give an illustration:

We settled last year in one industry -- which I represent -- for 7¢ per hour, a very peaceful negotiation. This year the union came in with a demand of 22 1/2¢ an hour, amplified health and welfare benefits, and a sick leave plan, with the total package running somewhere around 30¢ per hour. About a month ago I offered 10¢ per hour at the bargaining table, which would usually be a pretty fair offer, as the median is 10.6¢, however, I was advised by the union that 10¢ was not even a fair counter-proposal. This particular union, through its International, had determined to arrive at a national settlement pattern in the neighborhood of 20¢ per hour. Finally the breakthrough came about 10 days ago when several companies in the East agreed to 18¢ per hour, with other benefits, bringing the total package to around 22¢ per hour.

In the year to date, there hasn't been any great amount of strikes, as we have known strike years in the past. That might be interpreted to mean that collective bargaining is more intelligent. It might on the other hand be interpredted to mean -- and I think this is as fair an interpretation as the other -- that the employers have been a lot softer and that the unions have been a lot tougher this year.

Here we are in this late day in May, with steel negotiations coming up and other June first negotiations in the offing. The question in which I take it you are primarily interested is what will take place in the balance of 1956. It is my opinion that contracts will continue to be settled on an industry by industry basis and that there will be no uniform pattern on 10¢, 18¢, or any other figure. But it is safe to assume that there will be increases in varied amounts throughout industry in the balance of the year, based upon what has gone on to date. I would suggest also that the resistance of employers to union demands on wages for the rest of the year will depend on what the next quarterly statements show in the way of profits, on how inventories shape up, and that employers' attitudes will be based primarily on a short-range financial outlook rather than the long-range picture. If the next quarter produces substanially decreased margins you'll see quite a bit of stiffening up on the part of employers.

While I am on the subject of decreased margins I might ask, although I am not an economist, how anyone, whether he is on the union's or the employer's side of the fence, is going to accurately appraise what's going to happen in the balance of this year or the beginning of next

when we have this series of predictions coming from economists in the last week or two. On the financial page of yesterday's Examiner the heading: "Bankers Meet. Belt Tightening. Warning Sounded." In today's Examiner, "Bankers Told: Business Good -- To Stay Good and Improve," but on the same page, "Stocks Slump. Business Outlook Jitters Chief Factor." There, within the range of 24 hours, you have two widely diverging predictions. I checked Business Week also. Last week's issue states, "The boom has two soft spots," then it goes into the excessive inventories in farm equipment, the piling up of inventories in automobiles, and they really paint a gloomy picture. Here is a different prediction, that business in general is almost bound to be propped up by a huge capital spending.

Now, gentlemen, with those predictions by noted economists, I dare say that it would be very hazardous for me to make any categorial predictions of what business is going to do for the balance of 1956-1957. I would state this generally: that I do not expect in the first six months of 1957 that there will be the large wage increases that there have been in this year of 1956. I would state also that if labor pushes for wage increases which are comparable at all to what they have been pushing for this year, we are due for another inflationary spiral. I think labor leaders in general -- those with whom I have discussed the subject anyway -- do not want an inflationary spiral. They are much concerned about what the effects will be of continuous big wage increases, passed on in increased prices, which in turn bounce back to increase the cost of living again. If the year-end statements for 1956 show, as I suggest they will, a tightening of margins due to the increased wages that have been given this year you may expect considerable resistance to any substantial wage increases next year, and I would expect some moderation by the union themselves on their wage demands.

I would like to turn next to the matter of the terms of the contract. There was a time in bargaining where only long-term contracts were thought to be advantageous; then we went through an era where unions did not want to be tied up by long-term contracts; now we have apparently entered the era of long-term contracts again. Automobile, electric, and other major industries are entering into two, three, and five year contracts with automatic wage increases, with most of the short-term contracts being confined to the smaller industries which are not pattern-makers. Where patterns are being made by the major industries and major concessions can be woven into a long-term contract, both sides seem to be agreeable about keeping labor peace for a substantial period of time.

On the subject of health and welfare, the principle seems to have been pretty well accepted in contracts to date. Last year saw the mopping up of most of the health and welfare contract proposals. In the coming year I expect there will be more demands for additional coverage where plans are skimpy. I would expect where plans are adequate they will be left alone and other fringes will be requested. I would expect some spotty demands for major medical coverage in health and welfare. There seems to be an increasing interest on the International level of the AFL-CIO in the subject of major medical coverage, but to date most of the local unions seem to be primarily interested in getting the base coverage up and leaving the matter of major medical coverage for future negotiations There also seems to be a trend developing, where pensions are in force, to request health and welfare coverage for retired pensioners. I would

expect that that would be very substantially resisted by employers because of the severe impact that that coverage will have upon their experience-rating because those who are retired have much more time to give attention to the subject of health and welfare and in addition they are getting to the age where they need more care.

This year in the Bay Area is a pension year. The Teamsters Union throughout the West Coast has been spreading its Western Conference Teamsters Plan wherever it can for a contribution of 10¢ per hour. We in the Distributors Association are presently negotiating pensions with the International Longshoremen's and Warehousemen's Union. We are basically at the demand stage now, but anything such as the ILWU is requesting in its pension proposals would cost substantially in excess of 10¢ per hour.

I would like to direct to your attention a trend in pension negotiations which is showing up in some spots. In general most pension contracts are pretty soundly financed because they have been either underwritten by insurance companies that insist upon sound funding condition, or they are the outgrowth of previous company plans which are soundly financed. On several occasions during the past year we have been faced with demands by the unions in the local area for unsoundly financed pension plans, the object of which is to get high benefits within a price range they think they can extract at the moment. In some instances I was told quite frankly, when I questioned how they expected such a plan to stand up, that they were not at all concerned; if the well ran dry they would be back for more. So that with that trend showing up I think you can expect some substantial conflict in the collective bargaining field on the issue of sound financing.

During the balance of this year the trend on pensions will continue, with an attempted mop-up by the unions not now having pension plans. There also seems to be a substantial pattern of non-contributory plans in pension bargaining and a move away from the earlier pension plans which tied into Social Security. In the early days of the automobile contracts and a good many of the national contracts, pension benefits were agreed upon as a total amount, such as $100, $125, or $140 a month, including Social Security or including some percentage of Social Security. Present negotiations seem to have departed from that basis and the pension benefits being negotiated now are generally over and above, and separate from, any Social Security benefits.

On the subject of hours of work, there has been some move toward a reduction of hours of work in the printing fields but during the coming year, particularly with the high employment peak and the lack of unemployment, any demands for reduction of hours of work would be primarily to maintain the union position for future negotiations. Any push for a lower work week will probably come when unemployment sets in.

On the subject of vacations, the trend toward the third week of vacation will continue, with unions proposing, where they have a third week of vacation, to reduce the eligibility requirements from 15 or 20 years of service down to 10 or down to 5 years, and in some cases down to 3 years. In some spots a fourth week of vacation has been showing up, where employers apparently think they can swing a deal and

buy a contract by throwing that in. Generally, however, the fourth week of vacation has been resisted. Employers generally are finding that longer vacations, when held to a 15 or 20 year requirement, do not embarrass their operations too much but that where three weeks vacation occurs after three to five years of employment it creates a severe shortage of employment during the months of May through September. That in turn, of course, is contributing to the labor shortage.

The guaranteed annual wage is still not a factor in business in general in this area. It has appeared where you have automobile contracts for branch operations of the eastern factories. C & H Sugar here recently negotiated a modified guaranteed annual wage but that contract is the exception in the Bay Area. I am advised by unions in general that they do not consider the seasonal layoff problem which exists in the Midwest in the automobile industry such an important problem here as to require any negotiations on that subject. There are much more important things in their minds at the present time.

On automation, which has been the subject of some national concern, the trend of management toward automation to meet increased unit labor cost will continue. As they find these labor costs creeping up they will look for labor-saving machinery and other means to reduce the labor force. Labor, of course, is concerned about this trend but at the present time, anyway, the old-fashioned featherbedding approach does not seem to be their policy. In general they are trying to maintain jurisdiction over improved automation methods and to get sufficient compensation to offset what they consider to be the increased productivity resulting from these methods.

One issue which is creeping into the collective bargaining field, particularly here on the West Coast, is the growing lack of local control over bargaining. This has showed up in several spots during the past year. It was probably the major cause of the rock, sand, and gravel strike in Los Angeles where the employers there resisted the efforts of the unions to dictate a pension plan on a general West Coast basis rather than on a local basis. The rock, sand, and gravel strike in Los Angeles continued for three or three and a half months on that issue. I believe there is growing concern in the rank and file over this trend because, of course, it takes out of the hands of the local business agents the authority they previously had to negotiate on the local level.

I was asked by Dr. Ross to comment briefly on the effect of the AFL-CIO merger on collective bargaining. The assumption of some employers that the merger will not work is in my opinion, wishful thinking. This merger has been overdue and the way it has been developed, I think, has probably contributed to stability in collective bargaining. It has taken away, so far as the professional negotiator can see, a good deal of the jurisdictional troubles with which management was faced before. I would not expect any adverse impact on collective bargaining as such. The most immediate impact will be in the political and legislative fields. Mr. Meany, the president of the merged unions, has handled the problems of the merger intelligently and in a statesmanlike manner. He has gained the respect of management representatives as well as the unions which he represents.

The much-publicized organizational drive of white collar workers seems, to date in any event, to be mainly something to keep the editorial writers in the labor publications busy. The gains which will be made in this field will probably be initially those fields which are vulnerable to organizational picketing, such as factory clerks who are working in the same plant as the unionized workers. The same goes for transportation. But in the major white collar fields such as insurance and banking the coming year will not see any great amount of progress -- labor's predictions to the contrary.

I would like to conclude this presentation by suggesting that during the coming year we will see labor continuing to demand more wages and fringe benefits, unless the economy goes completely sour, which seems unlikely in this election year. Secondly, in many cases these demands will be against the better judgement of the union officials because another round of substantial wage increases will cause another inflationary break-through and they know it and fear it but don't know how to handle it, particularly in view of the rank-and-file pressure and the competition within union ranks for position. Thirdly, management will offer more resistance to cost demands in the coming year because profit margins are shrinking and many businessmen fear that any substantial reduction in sales volume will throw them in the red. Fourthly, there will be no uniform pattern of bargaining; in most cases management and labor will settle their differences according to the economics of the industry involved. While the coming year is a potential major strike year, present indications are that it will be a year of tougher bargaining, with some increases in the number of strikes and with a much more moderate settlement pattern -- unless we have a major inflationary break-through.

John F. Henning

Research Director
California State Federation of Labor
San Francisco

THE YEAR AHEAD IN COLLECTIVE BARGAINING

As my good friend Hart Clinton indicated, there are certain hazards in the realm of prophecy. I do think that Mr. Clinton enjoys a unique advantage in this area; he is a newspaper publisher and as you know, publishers have special gifts of prophecy. Editorially they may be wrong, but they are never in doubt. It is a little different in the industrial relations sphere, however, as Mr. Clinton indicated, and I qualify my estimates with the same reservations that he suggested.

For your information, the California State Federation of Labor, which is the state unit of the AFL and which is now negotiating with the state CIO on terms of merger, does not concern itself with collective bargaining policies as such. Collective bargaining policies properly remain the prerogative of the affiliated unions of the American Federation of Labor. And so I speak not, then, on union policy as such in collective bargaining.

I confronted the same problem that Mr. Clinton did in estimating what is in the year ahead. For purposes of order I will discuss the calender year 1956. One additional point in an area so vast: one must be selective in the interests of time, so I will not discuss many points touched upon by Mr. Clinton. This does not mean that I regard them as unimportant, but rather that one must be selective and we have not time for discussion of the merger or of other aspects he touched upon, such as the role of the International in bargaining. So now, with these reservations in mind, I will give opinions on the trends that are apparent at this time.

As 1956 nears the mid-way point there is every indication that the upturn in bargaining settlements, so marked in 1955, will be sustained throughout the present year. You are aware, I am sure, that increases negotiated in wages and benefits in 1955 were significantly larger in

almost all industries than in the preceding year of mild depression. The factors which made possible the uptrend in 1955 still obtain in the first five months of 1956: the general health of business activity, the remarkably high profits gained by most industries and the substantial increases in productivity. It is true in 1956, as it was last year, that consumer prices have remained relatively stable, but this does not -- and will not -- deter the negotiation of wage advances. Wage increases are required to maintain a proper standard of living and to promote the expansion of the economy.

The trend of continuing wage gains in 1956 was in part assured by the fact that at the year's opening at least two and three-quarters million workers were covered by long-term contracts which specified the amount of wage boosts they were to receive in 1956. According to the U. S. Bureau of Labor Statistics, nearly one and a half million of these employees were in metal working -- primarily in automobiles, farm equipment, and electrical goods -- and over 350,000 were in transportation, largely in trucking and local transit. Pay increases for 1956 had also been previously negotiated in bituminous coal mining, where a ten cent an hour increase became effective April 1, and in building construction, in which an estimated half million workers are now getting previously won pay boosts during these first six month of the calendar year. Most of the workers affected in manufacturing are getting their deferred wage increases in this present second quarter of 1956. Another large group in manufacturing will obtain their increases in the July to September quarter. About two-thirds of the transportation workers receiving such deferred increases got them in the first quarter of the year, although some will receive an additional increase in the third quarter. The deferred rate adjustments previously agreed to in the construction trades are largely being realized in the current second quarter.

Let us consider the amounts which featured these deferred wage increases which have tended to serve as at least minimum guide posts for 1956. In manufacturing they amount to at least six cents an hour. In trucking they range from eight to eleven cents an hour. In construction they hit at least ten cents an hour. Typically, contracts with such deferred increases specified the same amount of general wage change for 1956 as for 1955. However, in most instances the 1956 deferred boosts are not being accompanied by the supplementary revisions which identified 1955 gains.

As to newly negotiated contracts which may have an impact on agreements in the remainder of the year, let us quickly consider two major western states settlements effected in March. These settlements involve the aircraft manufacturing companies negotiating in California with the International Association of Machinists and the United Auto Workers, and Western Air Lines negotiating with the Brotherhood of Railway Clerks. The aircraft manufacturing industry settled with the IAM and the UAW for a 26 cents per hour package, with 7 cents of the total deferred until February, March, or April of next year. The package included basic scale increases of from 15 to 17 cents per hour or four to six percent of current rates, an increase in shift differentials, improved vacation benefits, and higher health and welfare benefits. A five-year agreement on a pension plan, with details to be worked out, was negotiated at Douglas, and an agreement to establish a committee to

achieve such a plan by December 1956 was reached at Lockheed. The settlement by Western Air Lines called for an average increase of $30 a month for clerks and was followed by the completion of negotiations with the Air Line Pilots Association and the IAM. The pilots received a four percent pay boost retroative to May 1, 1955, and a supplementary pension plan. The machinists got pay boosts of 9 cents an hour retroactive to October, 1955. An additional increase of 9 cents will become effective November 1.

Now let us review, however quickly, the national building trades experience to date. During the first three months of 1956, the average hourly rate rose seven-tenths of one percent, about the same as in each of the two preceding quarters. Raises of 15 cents an hour were provided in about one out of every four scale changes, and increases of 5 and 10 cents occurred in one out of every five adjustments in a quarterly BLS survey of seven major building trades in 100 cities. Increases during the January-March quarter advanced the estimated average rate for all union construction trades workers to $2.96 an hour -- about 4.1 percent higher than in April 1955.

In the way of regional and local developments, certainly the pact, negotiated just last week and now dependent upon joint ratification, between the Plumbers Union Local 38, which has jurisdiction in San Francisco and adjacent counties, and the plumbing, heating, and pipe industry of four Bay Area counties calls for special study.

The agreement provides for a compulsory savings account as the highlight of a three-year agreement. The deferred increase concept also makes news in this contract, which finds a total gain of 85 cents per hour spread over a three-year period. Under terms of the contract, the plumbers will get, on July 1 of this year, a wage increase of 25 cents an hour. They will also receive fringe benefits of 10 cents an hour July 1, and a 25 cent hourly increase on July 1, 1958. Additionally, management will start depositing to the individual account of each plumber 25 cents an hour, beginning July 1, 1957. The amount may be withdrawn only by the plumber in whose name the account was opened, and then only for emergencies, unemployment, or his leaving the industry. A joint labor-management board will review requests for withdrawals from the savings accounts, but approval will be automatic in the case of illness or other emergencies.

The wage examples thus far cited, with the exception of the last agreement mentioned, suggest the possible course of collective bargaining in 1956.

While official statistical studies are not yet available from government sources on the national experience, it would appear to date, from unofficial statistcs, that unions have been achieving gains extending from 7 to 17 cents per hour, and from four to six percent over previously held levels. These advances -- and this of course is a very important thing to recognize -- have been negotiated against a background of industrial profit almost unparalled in American history.

Federal Reserve Board figures for 1955 show that industry profits after taxes reached the total of $21.6 billions of dollars, the second

highest profit year recorded by the FRB. Only the Korean war year of 1950, with a profit total of $22.1 billions of dollars, enjoyed a higher figure. The first quarter profits figure for 1956, on a seasonally adjusted annual rate basis, revealed the after-taxes net to be $22.7 billions of dollars. This compares with $20.4 billions for the first quarter in 1955. Hence, we have here a corporate profits gain of better than eleven percent over the comparable period of one year ago.

American unions, committed as they are by practice to the survival and advance of the private enterprise system, share in the common satisfaction over such industrial profits. However, Americans unions also assert that unless the wage earner public can adequately share in the profit progress of industry, the economic system will come to a grinding and terrifying halt. Hence, we have here no question of mere self-interest on the part of the millions who comprise the American working class. We have also a recognition that the national economy can function at full capacity only if the consumer public can buy back the products it shapes and forms and makes possible for industrial profit.

There is a related argument for wage increases in the upward swing of labor efficiency, the increase in productivity. American workers, as I am sure all of you know, have long led the world in output per man-hour, and the latest available studies indicate an ever higher productivity. In figures released early this year, Ewan Clague, Commissioner of Labor Statistics for the U. S. Department of Labor, said that output per man-hour in U. S. industry jumped almost ten percent between 1953 and 1955, with more than half the gain occuring in 1955. This represents an impressive average annual gain of nearly five percent, much higher than the 1947-53 increase, which ranged from 3 to 3.6 percent. The same unions which accept the profit system, accept necessarily the concept of increased productivity as being essential to a healthy economy. Once again, however, labor makes the same basic reservation in this related problem. American workers want an adequate share in the increased profit which results from their more efficient production.

No review of present collective bargaining tendencies would be complete, however, without noting briefly two items which Hart Clinton mentioned: the expansion of guaranteed wage plans, and the extension of pension plans negotiations. Both programs reflect the deeply rooted feelings for security held by American workers. The guaranteed wage programs became inevitable because of inadequate unemployment insurance benefits; the pension drive is the reply of labor to inadequate government programs for the aged.

Last year company-financed guaranteed wage programs were negotiated for the first time on a major scale to assure workers of definite payments in the event of layoff, principally in the auto industry, but also in agricultural equipment, canning, and other industries. The plans in the auto industry provide for company contributions of 5 cents an hour to finance payments, which, in combination with state unemployment compensation, will give laid-off workers 60 to 65 percent of their normal wage for a maximum period of 26 weeks.

The inadequacy of unemployment insurance benefits here in California is sharply evident in compensation percentage comparisons

between 1939 and the present. In 1939, during the early years of our state unemployment compensation program, the maximum weekly benefit of $18 equalled approximately 60 percent of the average weekly wage of a little better than $30 in covered employment at that time. Since then average earnings have increased 183 percent to an estimated $85 a week, while the maximum benefit in unemployment insurance has increased only 83 percent to $33 a week. Consequently, the maximum benefit ratio to average wages has dropped from 60 to 39 percent. The average benefit ratio, as distinct from the maximum, shows a similar pattern of decline. And since fringe benefits have risen much faster than wages, unemployment benefits have dropped even more sharply in relation to total compensation.

On the pension plan front there prevails a similar dissatisfaction with social security legislation. Even with the 1954 improvements in the social security law, the old-age benefits currently provided at the age of 65 fall far short of meeting labor's goal of security for retired workers. A regularly employed worker earning $2.50 an hour or $5,200 a year can, at best, retire on an old-age benefit of $108.50 a month, or one-quarter of his earnings before retirement. If he has a wife who is also 65 years of age, he can raise this to $162.80, or less than 38 percent of his earnings. Normally, however, such an employee will have had some period of unemployment, sickness, or part-time work which would have reduced his average wage and thereby would reduce his full social security potential. Moreover, the frightening fact that no benefits at all are payable before the age of 65, even if the worker is totally disabled, only emphasizes the need for greater protection than is afforded by social security benefits.

American unions believe that the social security system should be more comprehensive. However, recognizing the realities, they are now seeking relief through pension plans, as part of collective bargaining agreements, with the employer assuming the entire cost.

It is not surprising, then, to find that more than 8,000,000 workers are now covered by pension plans negotiated across America by labor unions. Pension plans are not as widespread as welfare plans calling for group insurance and health benefits. However, it should be anticipated in 1956 and the immediately ensuing years, that where a welfare plan has been established, a pension plan will follow.

I will close this estimate of the bargaining future with the obvious warning that conclusions must be cautiously drawn in an area as complex as the industrial relations sphere. Nonetheless, we may conclude that American workers in 1956 will continue to seek an increasing share of industrial profits, both as a matter of equity and as a matter of progress. Justice and prosperity alike require the success of labor in this pursuit of a more rewarding standard of living.

Charles F. Prael

Attorney
Pillsbury, Madison & Sutro
San Francisco

STATES RIGHTS AND LABOR LAW;

THE SCOPE AND SERIOUSNESS OF THE PROBLEM

I doubt that anything I or Mr. Tobriner may say will give you a very clear or a very definite answer to the question, "Where does Federal authority to regulate labor relations end and state authority begin?" No matter how expert one is in the field, no matter how carefully he studies the court and the Labor Board decisions, I doubt that anyone today can give a very clear or definite answer to this question. In fact, I am convinced that today no one knows the answer to that question.

The problem is a serious one and it has important practical ramifications for you who are in the labor relations field. I hope I can throw some light on it. I hope I can impress you with its importance, even though I cannot answer the question to your satisfaction.

First, it should be noted that the question of where Federal authority to regulate labor relations ends and state authority begins is but part of a much larger problem -- not limited to labor relations. The conflict between Federal and state authority is very much in the public eye today.

For example, only recently the United States Supreme Court refused to permit the State of Pennsylvania to enforce its state law against sedition -- on the ground that the Federal government by its enactment had pre-empted the field.

Only a few weeks ago there was a report prepared for the President, after a study of some sixteen months, regarding the conflict of Federal and state law in land owned by the Federal government throughout the 48 states. The complexity of the problem is shown by the fact that the

study on which the report was based took 16 months. One of the report's illustrations of the problem was the case of a murderer who was set free because of the conflict of law. He was convicted first in the state court. On an appeal in the state appellate court, the defendant established that the crime occurred on a military reservation under exclusive Federal jurisdiction. The state appellate court freed him. He was then convicted in the Federal court and appealed again. The Federal court found, on appeal, that the particular part of the reservation on which the crime was committed had remained for some reason under the state law; therefore he couldn't be convicted under the Federal law.

In the last several months bills have been introduced in Congress providing that acts of Congress shall not be construed as occupying the field to the exclusion of state laws on the same subject unless such acts contain an express provision to that effect. These bills, if enacted into law, would have a very important effect in the labor relations field.

Before discussing the complexity of the line between Federal and state authority in regulating labor relations, we should have some explanation of the doctrine of pre-emption. Under the Constitution of the United States the National Congress has the power "to regulate commerce among the several states," and it has the power to make all laws to carry out its functions and to regulate interstate commerce. An act of Congress constitutionally passed within the limits of its authority becomes a part of the supreme law of the land. Hence, if the law of a state is in any way in conflict with such supreme law, the state law must yield.

Labor relations has always been recognized as one of those fields in which the state can exercise its power of regulation -- but under present law only until Congress, acting under the Commerce clause of the Constitution, sees fit to legislate on the subject.

Prior to 1937 there was little Federal legislation affecting labor-management relations. For practical purposes the states regulated such relations -- for good or for bad. Then the Wagner Act was passed -- and in 1939 in the Jones & Laughlin case the U. S. Supreme Court confirmed the power of Congress to regulate labor relations under the commerce clause. Since then, the Supreme Court has recognized an ever-expanding basis of Federal power under the commerce clause and hence in the labor relations field. It should be noted that this recognition of Federal power in the labor relations field did not automatically exclude state regulation. State regulation continued to be valid and possible -- so long as it did not collide with the power exercised by Congress.

As a further exercise of Federal power the Taft-Hartley Act was passed in 1947. This brought not only employers but also unions under Federal regulation. Still it was thought that, in the main, state regulatory authority -- not exercised in direct conflict with the Federal statute -- remained effective.

However, in 1949 the Supreme Court decided the Briggs-Stratton case. In that case the Court for the first time recognized that, in part at least, the Federal Government had pre-empted the field -- in effect, excluding state interference with certain aspects of labor relations. The holding in the case was that the states could regulate and prohibit "quickie" strikes. But in so holding, the Court adopted the theory that when Congress prohibited employer interference with certain employee rights it also prohibited state interference with those rights.

Since 1949, the Court has continued to apply the pre-emption doctrine -- nullifying first this and then that attempt by the states to regulate labor relations. That is not to say that the states have been driven completely from the field. But the problem grows with complexity with every decision -- to the delight of the lawyers, but to the dismay of our clients.

The question now asked is, "What is the situation today? Where today does Federal authority end and state authority begin?"

The difficulty of the situation was described by Justice Frankfurter only a month ago in his dissenting opinion in a very interesting case -- the case of United Mine Workers v. Arkansas Oak Flooring Co. He said:

> The problem is the recurring difficulty of determining when a federal enactment bars the exercise of what otherwise would clearly be within the scope of a State's law-making power. There is, of course, no difficulty when Congress explicitly displaces state power. The perplexity arises in a situation like the present, where such displacement by the controlling power is attributed to implications or radiations of a federal statute.
>
> The various aspects in which this problem comes before the Court are seldom easy of solution. . . . The Court has heretofore adverted to the uncertainties in the accommodation of these interests of the Nation and the States in regard to industrial relations affecting interstate commerce -- uncertainties inevitable in the present state of federal legislation.
>
> Proper accommodation is dependent on an empiric process, on case-to-case determinations. Abstract propositions and unquestioned generalities do not furnish answers.

In view of that statement by Justice Frankfurter, I think I have good authority for the statement I made at the beginning: that no one today can give you a clear or definite answer to the question before us. We cannot generalize. We cannot proceed on abstract propositions. We cannot give you a simple answer.

In considering where we stand today on the division of Federal and state authority in labor relations, two things must be kept in mind:

When the Wagner Act was passed in 1937, Congress did not know the extent of its power under the commerce clause to legislate in this field. It did not realize, therefore, the extent to which it could push state authority out of the field.

When the Taft-Hartley Act was passed in 1947, Congress did not know the extent to which it had pushed the states out of the field -- under the pre-emption principle -- by reason, as Justice Frankfurter says, of the "implications or radiations of a federal statute."

As a result of these two things we find the Federal act is today construed to cover a much wider field than -- I submit -- it was intended to cover.

The Labor Board created to administer the act has had to set jurisdictional limits to prevent its processes from breaking down under an avalanche of small cases which are in interstate commerce but do not affect the public interest. In this connection, it should be noted that the Board was created to protect the public interest and public rights -- not to redress private injury. When a man in private industry or an individual employee has suffered injury and comes to his lawyer for help, he is most interested in righting or preventing the private injury. But he cannot always get the relief he needs from an administrative board which must measure its authority in terms of public rights and is not concerned directly with private injury. The result is that we have in the labor-management relations field today areas in which rights are recognized but the remedies provided are wholly inadequate or ineffectual. The states cannot act and Congress has not acted. We have cases of serious and sometimes fatal injury, to employees, employers and I will even concede -- to labor organizations. And there is no satisfactory redress.

Now let us look at some of the areas of conflict -- or, I should say, areas of confusion.

The matter of establishing bargaining units and selecting bargaining agents is almost entirely governed by Federal law. This is a case of direct and explicit displacement of state authority. This does not mean there are no jurisdictional problems. A business may not be within the reach of the Federal law because it does not affect interstate commerce. Another business may affect interstate commerce but does not meet the Board's jurisdictional standards. Finally, there is the business which affects interstate commerce and which by reason of size or affiliation satisfies the Board's jurisdictional standards.

In representation matters there is no direct conflict of authority in California because we do not have here a little Wagner Act, as they have in New York, Wisconsin, and some other states. There is, however, something that should be noted; there may be what should be strictly considered a conflict in the representational field insofar as the California Jurisdictional Strike Law is concerned. I shall refer to this in a moment.

Of more concern to us in California is the line to be drawn between Federal and state authority in the case of strikes, picketing, and unfair labor practices.

In 1950 a ruling by the U. S. Supreme Court made it clear that the doctrine of exclusive jurisdiction of the National Labor Relations Board applied to unfair labor practices as well as representation proceedings.

The full effect of the pre-emption principle in this area appeared in the Garner case in 1953. The Supreme Court held that organization picketing, though it violated state law, could not be enjoined by a state court so long as the picketing was peaceful. Previously, in the Briggs-Stratton case, the Court had said that the state may act where a situation is either "governable by the state or it is entirely ungoverned." Peaceful organizational picketing is governable by the NLRB, says the Supreme Court, and is therefore not governable by the state. The fact that the NLRB chose not to govern it -- in spite of its injurious character -- did not justify the state's enforcing its own law to prevent the injury. The Court held that because the picketing might be an unfair labor practice and the wrong might be remedied by the Labor Board the state could do nothing about it. Actually, the Board does nothing about that situation today.

A year ago in the Anheuser-Busch case, the Supreme Court reiterated its ruling in the Garner case and carried the principle a step farther. It held peaceful picketing could not be enjoined by the state court even though the picketing was for the purpose of bringing about a violation of the state anti-trust laws.

I must call your attention to a third case of considerable interest: United Mine Workers v. Arkansas Oak Flooring Co., decided just a month ago. It was from the dissenting opinion of Justice Frankfurter in this case that I quoted a moment ago. The union involved was not in compliance with the filing requirements of the National Labor Relations Act, with which you are familiar. It could not seek certification under the act, so it established a picket line to force recognition by the employer. The Supreme Court said the state could not interfere with the picket line. State authority was displaced, not because there was a remedy under the Federal statute, but because of the "implications and radiations" of the Federal statute.

Where these "implications and radiations" lead us no one knows. What further areas will be left ungoverned because they are governable by Federal authority -- though not governed by the Federal authority -- no one knows.

The question of conflicting authority has been raised in an interesting series of cases under the California Jurisdictional Strike Act. Mr. Tobriner participated in many of these cases. Before the Garner decision, it was generally thought that if the activity in question was neither protected nor condemned by the Federal act, the state law could be applied. There was still room for operation of the California Jurisdictional Strike Act. Since the Garner case, the California courts have had to take notice not only of the express provisions but of the implications and radiations of the Federal act, and the applications of the state law have become narrower.

There are certain areas in which it is recognized the state can act:

A case of mass picketing and violence is one of them. In these cases state authority is supported by its police power. A state court may enjoin violence and mass picketing even though the conduct may be an unfair labor practice prohibited by the Federal act. In matters of public safety and order, the state police power is so important it will not be excluded unless it directly conflicts with the Federal law. An instance in which the state exercised such power was in the Sebastopol Cannery strike last fall. The state court, as I understand the decision that was rendered, enjoined mass picketing and violence, and it also enjoined what was alleged to be a criminal conspiracy involving secondary employers: -- common carriers. In both of those instances the state acted under what it thought was an exercise of the police power. The court, however, refused to interfere with peaceful picketing at the site of the primary employer. It also refused to interfere with peaceful activities of employees of secondary employers, because these fields were, as the court said, pre-empted by the National Labor Relations Act. It made a fine distinction between the secondary employer and the employees of the secondary employer. It justified the restraining order that was issued in that case on the basis that the power could be used although unfair labor practices allegedly were involved.

A second category where the state may act is in cases of "quickie" strikes and sit-down strikes. This was decided by the Briggs-Stratton decision which I have mentioned. The court recognized the conduct as injurious, but found it neither protected nor prohibited by the Federal act. Therefore, the Court said, "it is governable by state law or it is entirely ungoverned." It might be noted that the reasoning of the Supreme Court in the Briggs-Stratton case is used in some other situations where it produces just the opposite effect; i.e. the state cannot act because the conduct is specifically prohibited or protected by Federal law.

Third, union security clauses and their enforcement are in a special category because section 14(b) of the Federal act expressly permits state intervention. Congress made it clear that it did not intend to occupy the field exclusively.

Fourth, state courts can award compensatory damages in tort actions, even though an unfair practice is involved. This was decided in the Laburnum case. There is no provision for compensatory relief before the NLRB and there was no conflict in remedies. The Laburnum case involved violent conduct. Can compensatory damages be recovered in a state court in the case of unlawful but peaceful picketing? We cannot be sure.

Now we come to the question presently before the Supreme Court. Can the state court act where the Labor Board has declined to exercise jurisdiction, even though interstate commerce was affected and the Board had the power to act if it chose to do so? This is the Garmon case. I am sure Mr. Tobriner will have much to say about this case because he has participated in it. A union demanded that an employer sign a closed

shop agreement, although none of the employees belonged to the union. The employer refused, contending that to sign such a contract and compel his employees to join the union would violate the National Labor Act. The union set up a picket line. In that case a charge was filed with the Labor Board, which refused to act on grounds that, although it might affect interstate commerce, the employer was not large enough to meet the jurisdictional standard of the National Labor Relations Board. A California court enjoined the picketing and awarded damages against the union. The California Supreme Court affirmed the judgment and it is now before the United States Supreme Court.

This is a clear case of attempting to coerce employees through their employer, in my opinion unlawfully. In my opinion, this is true in every case of organizational picketing and all such picketing should be recognized as unlawful on the same basis. The Board has evolved a wholly fantastic and unrealistic distinction between organizational picketing after the union has asked the employer for a contract with a union or closed shop provision (this picketing is unlawful), and organizational picketing before such a demand is made on the employer (this picketing is lawful). In either case the coercive effect is the same and the injury just as real. As the law stands, it is merely a matter of technique whether the union violates the law in coercing employees to join the union by picketing their employer. In that respect the Garmon decision is not important. Few unions will make the mistake made by the Teamsters in asking for a closed or union shop before they put the screws on the employees to sign up.

The importance of the Garmon case is in the Federal-state jurisdictional question: the Supreme Court must decide whether a state court can act in this area where the NLRB could but has refused to act. Will the Court again say the situation is "governable" by Federal authority and therefore not "governable" by the states, thus leaving us with another area ungoverned and open to jungle warfare?

There are several other aspects of this problem which might be discussed, but our time is short. I might mention problems in connection with contract enforcement. There are also problems in connection with the effect of section 301 of the NLRA, which allows the bringing of actions by and against labor organizations in the federal courts.

Lawyers today find themselves, when they have a really serious labor problem, not only litigating it in one court or before the board; they find themselves in the state court and in the Federal court and before the labor court. They start an action in the state court; the case is removed to the Federal court. The Federal court refuses jurisdiction because the Labor Board has exclusive jurisdiction. The case goes back to the state court. The Federal court then enjoins the state court and the case goes up to the United States Supreme Court, and the United States Supreme Court says that the Federal Court could not enjoin the state court. So the state court proceeds and an appeal is

taken to the state appellate court to get the case back to the United States Supreme Court and that court than says the state court didn't have jurisdiction in the first place. Now that is an actual case. It's in the books.

In these various situations, whether a Federal court can enjoin a state court on whether you should be in one court or another court, no one can answer. No lawyer can advise his client what his remedy is today. That is true when my clients, usually employers, come to me, and it's true when Mr. Tobriner's clients, labor organizations, come to him. We can say this is your right but we can't say what the remedy is. And it's a fantastic situation.

Many suggestions have been made as to what the remedy should be. I can't go into those. I merely present you with the problem. I might state that whether or not you are for or against more state authority or more federal authority doesn't depend upon whether you are associated with management's side of the field or labor's side. It depends upon your particular situation. I am sure Mr. Tobriner finds himself -- as I have found myself -- taking one position in one court and another position in another court, trying to get relief for our clients. No matter where the jurisdictional line is drawn, it can mean more limitations upon employers or it can mean more limitations on labor organizations.

In any event, I agree with Mr. Tobriner that the situation requires clarification; the view seems to be obscured by a Los Angeles-type smog.

Mathew O. Tobriner

Attorney
Tobriner, Lazarus, Brundage & Neyhart
San Francisco

SMOG IN CALIFORNIA LABOR LAW

The labor union has come to be an accepted institution in American life, a form of industrial democracy where workers can select their bargaining representative by majority choice in an appropriate voting unit; at the same time they are protected in that choice from economic reprisal by employers. A corollary right is that of the employee not to be forced into a labor union against his will.

The implementation of this principle was one of the brilliant improvisations of the 1930's, symbolized by the Wagner Act. The union, once regarded as an underground conspiracy whose members were subject to fine and imprisonment, climbed first into the light of legality, and, then, with the Act, to the height of an agency selected by workers in an election conducted by government itself. It became an institution -- and I borrow a bit from Art Ross, who has done so much in the development of that concept -- subject to a ramification of rights and liabilities enforced by the federal government.

Today the role of that institution in California has become enveloped in a thick legal smog. Both the worker's right of choice of the union and his protection in the exercise of that choice is now obscure. At the same time management itself in California has been deprived of a procedure whereby it can find which of two unions competing for recognition it should recognize.

Because the NLRB has drastically curtailed its own jurisdiction and because the California Supreme Court has confused the whole subject, workers in large areas of commercein California cannot successfully, with protection, choose their collective bargaining agency. And employers, particularly in small business, have no method, no tribunal, to which they can go to find which union they should recognize.

To understand this impasse, we must separate three fields of activities: those in interstate commerce, within the new jurisdictional yardsticks of the Board, where the Board will function; those in or affecting interstate commerce, outside the jurisdictional yardsticks, where the Board will not function; and those in local commerce where the Board cannot function.

As to the first field, where the Board under its rules will take the case, we have no problem. The recent decisions of the United States Supreme Court hold that in this situation the federal law "pre-empts" state law, and there is protection for the workers, protection for the union, and protection for management.

When we turn to the field of cases in or affecting interstate commerce, in which the Board refuses to act, we encounter California's current labor-management dilemma. In brief, the situation is the outcome of the decision of the California Supreme Court in Garmon v. San Diego Building Trades Council, handed down last December.

The Supreme Court held that if the national Board did not take jurisdiction, the state could. Indeed, the state court did. It held that an employer could complain to a state court that a union was violating the provisions of the Taft-Hartley Act, and the state court could enforce the Act. "Congress," says the Court, "has not prohibited the state from assuming jurisdiction of conduct which would amount to an unfair labor practice under the federal law where the Board refuses to take jurisdiction."

In this case, a union attempted to organize and sign a contract with an unorganized lumber company. The lumber company did not have a sufficient volume of business to meet the jurisdictional yardsticks of the National Labor Relations Board. During the course of these efforts the union apparently presented an agreement to the employer for signature containing union shop provisions. Declaring that the picketing constituted an unfair labor practice under the Taft-Hartley Act, the Court decreed that the state court had the power to enforce the provisions of the Taft-Hartley Act when the NLRB had declined jurisdiction.

Can this reasoning stand close analysis? Can the Board by self-abrogation endow states with the power to act? Will the reach of the Act automatically coincide with the Board's concept -- and its changing one -- of how far it will go in enforcing the act?

I submit the decision is self-contradictory, destructive of the Taft-Hartley Act, and incompatible with the doctrine of federal pre-emption.

First, the decision is self-contradictory. This is what the court did; listen to this language and see how grotesque the decision must be.

The court enjoined the union's organizational picketing "unless and until defendants [the union] have been properly designated as the collective bargaining representative of plaintiff's employees or an appropriate unit thereof." How could this union be selected or designated as the collective bargaining representative of the employees when the NLRB shut its door in its face and refused to proceed with certification or with designation of the union through the process of the Board's conducted election? There is no procedure in California for such certification; nor does California have an agency of its own, even assuming that the Supreme Court would accept a California agency in this capacity. Management and labor are thus offered a unilateral application of certain unworkable parts of the Taft-Hartley Act.

If the California court's theory were adopted by courts in other states which, like California, have no certification procedure, the effect would be, in the name of the Act, to outlaw picketing for a union shop or for organizational purposes in that area of interstate commerce over which the Board does not exercise jurisdiction. In other words, legislation for interstate commerce would apply one rule in one case, when the Board assumed jurisdiction, and another, quite contrary to the spirit of the Act, when the Board declined to exercise jurisdiction.

Second, the decision attempts to destroy federal rights created by the Taft-Hartley Act.

Section 7 of the Act protects the right to join a union and it inhibits employer's coercion against the worker because he exercises that right. It protects the right of employees and labor organizations to organize and picket peacefully for that purpose. These rights are not dependent upon the NLRB's activities at all. They are substantive rights protected by the federal government. How then can the California court say that it will take away these federal rights by its own action in this Garmon case?

Third, the decision is incompatible with the doctrine of federal pre-emption.

Suppose California passed a law which said that employers may choose a union for their workers and that employers may interfere with workers in their choice of a union, that employers may dominate unions and discriminate againts workers because they tried to join a union. If a state may reverse such accepted federal rights because the Board does not exercise its jurisdiction, the Act is torn to shreds and federal supremacy is replaced by the multi-supremacy of 48 sovereign states.

If it be argued that states may so legislate, since the Board determines to vacate the field and states therefore may step in to prevent chaos in no man's land, the definition of state vis-a-vis federal actions is removed. The rationale of federal action in interstate commerce is that, here, the problem transcends state lines and affects more than local commerce. Hence, the state is not sovereign; it is not free to work its will extraterritorially. If we conclude California can remove the free choice of a union in matters affecting other states than California, we break down the basic idea of federalism -- and there is no Taft-Hartley Act, even in the area of interstate commerce.

In substance, the theory that the state can act because the Board does not, means that in the field of interstate commerce there is no pre-emption of the federal Act.

It would mean that the Act could be reduced to coverage of a handful of nation-wide concerns if the Board elected to narrow its exercise of jurisdiction to the chosen few.

But the practical objections to the decision are even more compelling than the legalistic ones. If Garmon is the law of California it would be monstrous if the Taft-Hartley Act could only be enforced by an employer against the union but the union couldn't take advantage of the provision of the act against employers. It is doubtful, however, if our courts can themselves enforce the Act since they are not equipped (1) to hold elections; (2) to investigate claimed unfair labor practices. Court procedure is slow, and by the time hearings on injunctions and appellate procedure is exhausted, the whole evil effect of an unfair labor practice can be consummated. Elections which might ultimately be ordered a year or two after a showing of representation are useless. By that time, the union has probably lost its majority. If Garmon is to be the law of California, unions and management must have some tribunal like the Board to move in fast.

Even if Garmon is reversed by the U. S. Supreme Court, I still think the law of California is caught in a thick smog. I still think we don't have the proper remedy in California for the resolution of the basic problems which I've tried to present to you: the opportunities for workers to choose a labor union by a majority vote, protection of workers in that choice, and protection to those workers who don't want to choose the labor union. If the Board won't protect unions against unfair labor practices of employers or hold elections, unions are still in trouble unless they can get the California courts to protect them. A union having a majority should have the right to an election if the employer won't recognize the union. The employer should be able to get an enforcible decision as to which union he should recognize.

Perhaps the Board's vacating its obligations in this field is due to budgetary economy; perhaps this Administration believes states should be endowed with the power to nullify the Taft-Hartley Act under the Garmon theory. In either event, Board nullification produces chaos in California where both employer and union have been stripped of the procedure needed for certification and the prohibition of union and employer unfair practices.

The Board, I insist, should not be penny-pinched into impotencey. The slight saving in the federal budget gained by reducing Board administration does not justify waste in industry where honest management and labor can obtain neither the selection of a bargaining agent nor protection in such selection. We are in effect denying democracy to workers in small business affecting interstate commerce and forcing those business men to withstand economic pressure by unions because the polling booth is said to be too expensive. I insist that the Board's present curtailment of its administration is a disaster to small business, where it forces the unions to apply economic pressure. But I say, "What else can the union do when there is no administrative procedure afforded to them because of the Board's pulling back in this semi-hara-kiri that it is now committing?

Finally, we turn to that business which does not affect interstate commerce. Here, of course, the Board cannot act; here, the California legislature has given us in place of an NLRB the Jurisdictional Strike Act.

This Act prohibits economic interference with an employer in a dispute arising out of conflicting claims by two or more unions for representation or assignment of work. The Act thus gives an opportunity to the recalcitrant employer who wants to form a so-called company union to do so. And once such a union is formed the employer can complain that an outside AFL-CIO union engaged in organizational picketing is in violation of the Act. Yet the Act provides for no election procedure to resolve the conflicting claims, leaving the decision with the employer. According to the California Supreme Court, the employer gets his injunction and damages against the AFL-CIO Union even if the company union is so slight a thing that it has provided in its own constitution that it will never call a strike. Nor is there any realistic opportunity for the AFL-CIO Union to expose the employer's domination; this is so abortive, expensive, and long an effort that by the time the Supreme Court rules the union's representation has evaporated.

The Act is equally unfair to the honest employer. He has no way to decide which of two competing unions he should recognize. If confronted with a picket line of a union which refuses to consent to an election with an opposing union, the employer must use the Act to enjoin the line. He must do this at his own expense; he must incur the enmity of organized labor which can be even more expensive; he must suffer economic loss because there is no effective legal remedy.

This local failure of remedy parallels the situation where the Board now refuses to act in activities affecting interstate commerce. Neither of these areas of vacuum is consonant with the principles of institutional bargaining now nationally accepted. Small business and local business have as much right to industrial democracy as does oligopoly or monopoly.

Certainly, at best, the present situation is confusing. The extent of the Board's exercise of jurisdiction is a changing one, and even if the present Board considers its yardsticks to be permanent, a later Board may upset them. The boundaries of federal-state jurisdiction are equally ill-defined.

While this is admittedly a fluid and uncertain area of the law, labor and management should not suffer the added difficulty which results from the Board's own inaction. Board hara-kiri is no answer. It is time for the Board to pick up the jurisdiction it has so lightly dropped.

It is time, too, for the California legislature to adopt an act providing for industrial democracy and protection for democratic choice of a union to local management and unions in the place of the lop-sided Jurisdictional Strike Act. It is time to clear away the smog and confusion in the air of California labor relations.

Theophil C. Kamnholz

General Counsel
National Labor Relations Board
Washington, D. C.

THE LABOR MANAGEMENT RELATIONS ACT OF 1947

ITS CHANGING ROLE IN THE FIELD OF LABOR RELATIONS

It was with pleasure and anticipation that I accepted your invitation to speak at your 1956 Conference on Labor Relations and Arbitration. This Conference has become an annual event of decided significance in the country, combining as it does the skills and the techniques of the components of the labor-management field, private and public, practicing and academic. Its importance in exploring issues, exchanging information, experience, and ideas, and in developing areas of agreement cannot be exaggerated. It is indeed an honor to be here and to play a part in this affair.

It was suggested when I was invited to speak here that I describe some of the more interesting and important current developments in my field: Federal labor-management regulation under the National Labor Relations Act. It, of course, must be quite generally understood that the part that this Act plays in the drama of labor relations is a limited one. Perhaps one of the significant developments in the labor relations field is that the Board's role becomes more and more limited as the principles of collective bargaining become more and more established.

Twenty years ago when the Board was conceived, the national concern was focused on the union's struggle to organize employees. You will recall that in 1937 almost 60 percent of all strikes involved demands for recognition. The comparable figure for 1955 is about 14 percent. Labor struck 2728 times for recognition in 1937, whereas in 1955 it struck only 595 times for this purpose. These 1937 strikes cost one million, two hundred thousand men 24 million days of work, whereas the comparable 1955 figures is 46,000 men and about one million days of work. A glance at some of the Labor Board decisions of that early period

reminds us that the principal issues at that time reflected this struggle over recognition and the right to bargain collectively. The Board's Annual Report for the year 1938, for example, noted that

> Immediately following the decisions of the Supreme Court [in the Jones & Laughlin and related cases] there occurred a most extraordinary increase in cases before the Board. It is now a matter of history that thousands of workers turned to the Board for redress of grievances centering around the issue of the right to belong to and function through a labor organization. But what is clearer now than at that time is the growing tendency, where the issue of organization is involved, for labor organizations to turn more to the Board than resort to strikes.

In the two decades that followed this observation, union membership increased to more than 18 million men, covered by some 125,000 collective bargaining agreements. With this tremendous increase in the size of union membership came general acceptance of the principles of collective bargaining in most areas. Simultaneously, of course, broad experience about the collective bargaining process developed and bargaining relationships matured.

As a consequence of this process of maturation, the profound protective effect of the Federal Labor Act in these earlier years has been gradually diminishing. The Federal Act, of course, continues to be a major factor in the American labor relations scene, but the scene has been changing. In fact, a few of the major unions have never bothered to qualify themselves for the privilege of using the National Labor Relations Board. Consequently, during the past nine year period, these unions have filed no charges of unfair labor practices and no petitions for elections of collective bargaining representatives with the Board, and I dare say that they have survived. Should someone place an erroneous inference upon this observation, let me hasten to say that I do not suggest that other unions follow this example.

A further example of the changing role of the Board is a discernible trend to encourage more broadly the private disposition of unfair labor practice disputes through the medium of collective bargaining. The Act itself proclaims a policy to defer its processes to settlements or agreements to settle disputes involving strikes of a jurisdictional nature. Section 10(k) of the Act provides that if, within 10 days after notice that a charge has been filed in one of these jurisdictional dispute cases, the parties to the dispute show the Board that they have either adjusted the dispute themselves or have agreed upon a method for its voluntary adjustment, the Board shall take no further action in the proceedings "to hear and determine the dispute." It is further provided that the charge asking for remedial action shall not be dismissed until the dispute has actually been adjusted.

The Building and Construction Industry's National Joint Board for the Settlement of Jurisdictional Disputes was created in March 1948 with encouragement from the National Labor Relations Board, in response to the promise of the statute that the Federal procedures for the determination of these disputes would give way to private systems. This promise was made good in the recent case involving A. W. Lee, Inc.. In that case the Board decided that the submission of the case to the Joint Board constituted an agreement upon a method for voluntary adjustment of the dispute within the meaning of the statute, and thus compelled the dismissal of the Board's own statutory proceedings to determine the dispute.

I might add that a number of unfair labor practice complaints alleging a violation of Section 8(b)(4)(D) -- the Section which prohibits jurisdictional strikes -- have been authorized by the General Counsel on charges that a labor organization had struck in violation of a Joint Board award. However, these cases were closed prior to submission to the Board upon settlement with the result that this issue is not likely to be presented for Board decision for some time.

It is also worth noting here that the Joint Board has entered its ninth year. I believe this establishes a longevity record for organizations of its kind. From present indications its prospects for a long and useful life are quite promising.

The trend in the Board's handling of arbitration issues involved in cases before it appears to coincide with the pattern established in the jurisdictional dispute cases. These aribtration cases generally relate to conduct constituting both a possible violation of the National Labor Relations Act and a possible breach of a collective bargaining contract. They generally fall into one of two categories. They may involve unilateral action by an employer with respect to some condition of employment in alleged violation of his collective bargaining contract, and also of his obligation to bargain pursuant to Section 8(a)(5) of the National Labor Relations Act. On the other hand, they may involve situations where the employer has taken some action against an employee in alleged violation of the anti-discrimination clause in both the collective bargaining contract and in Section 8(a)(3) of the National Labor Relations Act. Critics of the Board have observed that the Board's policies in the handling of the arbitration issue involved in these cases have not been clearly delineated in the past and in fact may not have followed any discernible pattern until recently. Possibly it might be more accurate to conclude that the Board attempted to decide these cases on an ad hoc basis in an effort to balance in each case the desirability of encouraging collective bargaining with that of redressing violations of the statute which the arbitrator's award failed to reach.

To elaborate upon this point, let me say that an arbitrator's award has no binding effect upon the Board. Section 10(a) of the statute makes it clear that the Board's jurisdiction over unfair labor practices "shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise . . . " Nonetheless, it has always been recognized that the Board has the discretion to decline to assert its jurisdiction over a matter in which arbitration procedures had been used or were available.

While clear lines of decision or standards marking the basis for the exercise of this discretion were not laid down during the early years, one can discern them fairly clearly today. For example, in Spielberg Manufacturing Company, decided in June 1955, the complaint alleged a discriminatory refusal to reinstate economic strikers in violation of Section 8(a)(3) of the Act. The strike for which they were allegedly penalized had been settled by an agreement which, among other things, provided that the question of their reinstatement, arising because of alleged misconduct, would be referred to arbitration. The arbitrator ultimately found that the Company was not required to reinstate these employees. The four dischargees thereupon filed charges of unfair labor practices, alleging discrimination. The Board declined to assert its jurisdiction in this case because it was satisfied that "the [arbitration] proceedings appear to have been fair and regular, all parties had agreed to be bound, and the decision of the arbitration panel is not clearly repugnant to the purposes and policies of the Act." It concluded that "the desirable objective of encouraging the voluntary settlement of labor disputes will best be served by our recognition of the arbitrator's award."

In so holding, the Board explained that its decision was not to be taken as inconsistent with its earlier decisions in the Monsanto Chemical Company case and the Wertheimer Stores case. In the first of these matters, the arbitrator's award gave retroactive effect to a union-security agreement, a practice clearly prohibited by Sections 7 and 8(a)(3) of the National Labor Relations Act. The award directed the discharge of the employee unless he complied with the award requiring him to pay his dues retroactively. He was thereafter discharged upon failure to comply. The Board, in finding that the union had illegally caused this discharge, disregarded the award because it was "at odds with the statute." In other words, this was a case where compliance with the award caused one of the parties to violate the Act, a situation which the Board will not countenance.

In the Wertheimer case, the complaint alleged that the employee had been discharged because of his activities within the union. The discharge had been the subject of an arbitration proceeding, carried through by the union over the opposition of the employee who had filed an unfair labor practice charge. The arbitrator found in favor of the company. The Board disregarded this award because the employee had not agreed to be bound by the aribtration.

Another case worth noting in this field is that involving the Pacific Intermountain Express Company. In that matter, the Board found that the Teamsters had caused the company to fire one of its drivers, Sanders by name, because he had been in the forefront of a movement to abolish a discriminatory system of assigning work, illegal under Section 8(a)(3) of the National Labor Relations Act. When the company discharged Sanders, it gave as its reason the pretext that Sanders had been speeding. Sanders invoked the grievance procedure specified in the Central States Area Motor Freight agreement and filed a formal appeal through the union which, unbeknownst to him, had engineered his discharge. When the case finally came before the Joint State Committee, a panel consisting of both industry and union representatives, Sanders offered to the union for use in the proceedings tachograph recordings of his truck speeds which established his innocence as well as the names of witnesses who would testify on his

behalf. The union ignored the proffered evidence and instead turned the trial of the case over to a union official who had only a short time earlier criminally assaulted Sanders. This man, presumably acting for Sanders, submitted no evidence on his behalf, called no witnesses, and conceded all the facts, arguing merely that the penalty of discharge was too severe. The Joint State Committee found that Sanders had been discharged for speeding and upheld his dismissal. In the proceedings before the Labor Board on charges filed by Sanders against both the company and the union, the respondents did not offer as a defense the award in the company's favor. However, had they done so, it is a fair guess that the General Counsel would have nonetheless issued the complaint and that the Board would have sustained it. I offer this case merely as an example of the type of matter in which the award cannot serve to defer action by the Board on the charges.

The Board has further indicated that where the employer has arbitrated or is willing to arbitrate claims of contract violation based upon unilateral changes in working conditions, he has satisfied his obligations to bargain as required by the national Act (McDonnell Aircraft Corp. and Consolidated Aircraft Corp.) However, in this connection, it should be noted that the Board in Hekman Furniture Co. declined to consider the alleged availability of arbitration procedures under a contract where the claim charges a refusal to supply wage information needed by the union in order to perform its functions under the collective bargaining agreement. In the Hekman case the Board brushed aside the defense of the availability of the arbitration procedures by advising "that 'the collective bargaining requirement of the Act' is not satisfied by a substitution of 'the grievance procedure of the contract for its [respondent's] obligation to furnish the union with information it needed to perform its statutory functions.' " Whether the Board today will continue to draw this distinction between the substantive aspects of contractual obligation and the tools needed for the effective administration of a contract or, indeed, for the negotiation of a new contract, is not a question admitting of ready answer.

At this point, I might refer briefly to those cases in which the Board has refused to grant relief to a union which has failed to use the contractual procedures for the settlement of its claims. In Crown-Zellerbach the union complained that the company unilaterally changed a contract piece-rate to compensate for new and improved equipment. The union made no attempt to use the grievance and arbitration procedures established by its contract for the settlement of its protest, but instead filed charges with the Board. The Board dismissed the complaint without determining whether the company's conduct warranted the issuance of a remedial order because of its policy to encourage collective bargaining through the "channelization of the collective bargaining relationship within the procedures of a collective bargaining agreement."

Where the contract expressly or by implication substitutes the grievance and arbitration procedures for the right to strike, the Board has held that a strike over an issue subject to these procedures is unprotected and that employees who engage therein have lost the protection of the national Act. (W. L. Mead, Inc.)

Similarly, it has been held that a strike in derogation of the contractual procedures relieves the employer from his obligation to

bargain during the continuance of the strike. (Timken Roller Bearing Co. v. N. L. R. B. and N. L. R. B. v. Standard Oil Co.)

The cases to which I have referred mark out in fairly clear outline the Board's developing policy with respect to the interplay between its functions and those of the arbitrator. I would like to emphasize, however, that the detail has not yet been fully drawn. There are aspects of the problem, some of which I have mentioned briefly, which have yet to be explored.

In closing I might touch on one of the more important and interesting ramifications of the Board's restraint in asserting its full jurisdictional powers. This question, which for the past 4 or 5 years has been lurking in the background of our operations, involves the interrelationship of the Federal and State spheres of labor regulation. Decisions of the Supreme Court spell out the general doctrine that the Federal labor law occupies the field which it covers to the exclusion of State action. (Garner v. Teamsters; Weber v. Anheuser-Busch; General Drivers v. American Tobacco Co.) However, the Board has never exercised its full jurisdiction under the statute. Its method for determining when it will assert its power is to be found in the Board's published jurisdictional standards which measure the probable impact of labor disputes on interstate commerce by the dollar volume of interstate activity of the enterprises affected by the dispute. As a result of the Board's policy of withholding its hand in cases of essentially a local nature, there is created an area of interstate activity which is covered by the Federal Act, but which the Board will not enter. The question is whether this area is nonetheless pre-empted by the Federal Act and remains beyond the reach of the State. The precise question is presented in the case of San Diego Building Trades Council v. Garmon, decided December 2, 1955, by the Supreme Court of your state. On May 7, 1956, the Supreme Court of the United States granted the Building Trades' petition for a writ of certiorari and the matter should be heard by that Court in the fall. In this case, the Building Trades Council picketed the Valley Lumber Company in support of its demand for a contract requiring a union-shop contract which apparently would have violated Section 8(a)(3) of the National Labor Relations Act. The volume of business performed by the Valley Lumber Company, however, was not sufficient to satisfy the Board's standards for the assertion of jurisdiction. In fact, the employer in this matter had filed a representation petition with the National Labor Relations Board which was dismissed because its volume was insufficient. The Valley Lumber Company thereupon brought an action in the State courts for an injunction and for damages on the theory that the Union's action was tortious under California decisions because it involved picketing for an object unlawful under Federal law. The Supreme Court of the State of California concluded that the State is free to occupy any part of the Federal field which the Federal Agency declines to police. In other words, the area which had been pre-empted by the Federal Act reverted to the State upon the refusal of the Federal Agency to assert the power which it had under the statute. This question is an important one because of the breadth of the Board's policies in this respect.

I have not attempted this afternoon, in reviewing the changing role of the Labor Board in the field of collective bargaining, to develop that part of the Board's program involving the statutory emphasis upon the

rights of individual employees against trespass by either the employer or the union or both. This concept that the individual must be made secure in his freedom to make choices lies at the very heart of the statute. It has not been my intention to minimize this fact by excluding from my analysis references to the cases on this subject. Neither is it my intention to minimize the difficult problems involved in the administration of the other provisions of the statute, including the secondary boycott prohibitions which, even after nine years of experience, still remain not fully explored. While the problems and developments in these areas are vital and are undoubtedly of interest to you, I have emphasized the Labor Board's role in promoting collective bargaining since this continues to constitute the major thrust of the national labor policy. It is in this province that we continue to find the promise of eventual industrial peace. Without in any way underestimating the importance of the allied problems under the law, they should diminish as labor and management progress to higher planes of understanding, confidence, and mutual respect.

Chairman: Sam Kagel
Attorney
San Francisco

Discussants: Joseph Angelo
Sub-district Director
United Steelworkers of America
Oakland

Vincent H. Brown
Manager
San Francisco Retailers' Council
San Francisco

Richard Liebes
Research Director
Bay District Joint Council of
Building Service Employees
San Francisco

C. T. Spivey
Director of Employee Relations
Columbia-Geneva Division
United States Steel Corporation
San Francisco

HOW TO PROCESS GRIEVANCES

A Panel Discussion

The topic of this panel is "How to Process Grievances." This is a symposium on how to investigate, evaluate, prepare, and present grievance cases, and a consideration of the function of arbitration in the grievance process.

I would like to introduce the members of the panel. To my extreme left is Mr. C. T. Spivey, Director of Employee Relations of Columbia-Geneva Steel Division of the United States Steel Corporation; sitting next to him is Mr. Joseph Angelo, who is the Sub-district Director of the United Steelworkers of America. These participants will discuss grievance handling from the point of view of manufacturing industries.

On my extreme right is Mr. Vincent H. Brown, Manager of the San Francisco Retailers Council, which includes the major department and specialty stores in San Francisco; and to my immediate right is Mr. Richard Liebes, who is the Research Director for the Bay District Joint

Council of Building Service Employees, which includes janitors, elevator operators, and hospital workers. These participants deal with grievances in the service industries.

I have been given permission by the panel to indicate briefly some of the basic premises upon which we will maintain our discussions.

Currently there is hardly a collective bargaining agreement in the U. S. that does not contain a grievance procedure of some kind. Whether it's a one step, two step, three step, or ten step process depends entirely on the industry involved.

For purposes of our discussion we are going to assume the following typical grievance steps: We will assume that step one refers to the informal attempt to settle a grievance on the job between the employee and his foreman; between the shop steward, or the business agent, and the foreman. Step two, unless we indicate otherwise, will refer to the more formal adjustment board or industry grievance board. Step three will refer generally to the terminal step of the grievance procedure: arbitration.

Grievance disputes and differences may arise not only from the direction of the employee and the union, but also from the employer.

Employee grievances may cover a variety of subjects. Typical ones are those involving questions of proper wage and complaints involving incentive and classification systems. Complaints about the treatment from supervisors constitute another large category. The seniority provisions, too, give rise to many grievances: questions about the proper application of the provision; about establishing the correct date for seniority purposes; its application in layoffs and promotion. General working conditions such as questions of health and safety are also a constant source of grievances in the plant.

There may also be complaints initiated by management. These complaints involve alleged violation of some provision of the agreement by an employee.

There is a general notion existant -- though I don't think it's valid -- that after you meet with the union and you negotiate the substantive terms of the agreement such as wages, hours, and working conditions, negotiations are over. But, of course, that is not the end of negotiations. There is continuous negotiation depending on how many grievances develop during the terms of the agreement. Negotiations are conducted at every level of the grievance process.

Thus, employees, foremen, shop stewards, act as negotiators. The responsibility for negotiating the application and interpretation of the agreement is carried on primarily through the grievance procedure.

Our discussion will be concerned with some of the problems involved in the negotiation process which goes on after the "big agreement" is actually agreed upon and signed by the parties. We are going to use a question and answer method to discuss these problems. I will ask the panel members the questions and they will give you the answers.

Mr. Kagel: The first obvious question is: What shall be considered a grievance? Is it only a misinterpretation or misapplication of the agreement or is it any gripe that the employee, the union, or the employer might have?

Mr. Liebes: I would answer that both ways. A grievance properly can be a label pinned on any sort of gripe. Certainly, if there is a worker on the job who thinks he is being treated unfairly, and he makes some noise about it, by bringing it to the attention of his union, in effect, he does have a grievance. Broadly, a grievance, I would suggest, is any sort of dissatisfaction that arises from the man on the job. But, for the purposes of this panel, I think we are probably looking at this a little more narrowly and technically and are thinking of a grievance, not as just a gripe unrelated to a contract, but rather a dissatisfaction over some part of the job that relates to the employment relationship as it is set forth in the contract.

Mr. Spivey: There is a difference between complaints in general and grievances that should be noted. A complaint is anything an employee may bring up and want to discuss with his foreman. Even at this point, he may bring the grievance committee, etc. into the discussion with his foreman, the grievance committeeman, or the assistant grievance committeeman. If, however, it is to be handled as a grievance, it must be put into writing; and it must, according to our contract, be a question regarding the interpretation or compliance with the contract. If it is outside that definition under our contract, we may not consider it a bona fide grievance.

Mr. Angelo: I would agree that there is a difference, but the union grievance committeeman and the members of our union take the position that any time an employee has a complaint or a gripe, even if he alleges the moon is made out of green cheese, as far as we are concerned he has a grievance and it should be processed under the grievance procedure. The question of whether or not it does come under the provisions of the collective bargaining agreement will be determined in the later stages of the grievance procedure. We definitely take the position that no foreman, department supervisor, or industrial relations supervisor can tell the employee that his complaint does not qualify as a grievance. That question must be decided under the grievance procedure.

Mr. Kagel: If you make these distinctions between complaints and grievances, what language do you use in your agreements? In other words, the arbitrator, assuming the grievance gets to that step, might be confronted by a claim by one party or the other that a certain issue is not arbitrable, on the ground that it is not an arbitrable grievance under language of the agreement. Now how do you make this distinction that you fellows have been talking about?

Mr. Angelo: So far as steel is concerned, many of our collective bargaining agreements handle it this way. In the event a new issue arises in any particular department, if the company alleges that it is not a grievance within the meaning of the contract, that issue can go to arbitration by mutual consent of the parties. A stipulation is submitted as to what the issues are going to be. The arbitrator

makes his decision on such issue or issues and those issues only. Of course, we also hold that the arbitrators cannot add to or delete from the terms of the collective bargaining agreement. But this argument does not preclude both parties from mutually agreeing to submit to arbitration a particular issue that may not be covered by the collective bargaining agreement.

Mr. Brown: Returning to the first question about what constitutes a grievance, we certainly feel generally that both gripes and legitimate grievances involving interpretation or application of the contract provisions are matters that ought to be taken up at least at the first level; however, our general practice has been not to entertain any formal grievances unless they are subject to arbitration. Our contract language limits arbitration to issues that are covered by the terms of the agreement.

Mr. Spivey: On this whole question, I think we should look at the basic function of the grievance procedure. The grievance procedure is in the contract as a method of settling differences of opinions. We are never very technical as to whether the matter is really one of interpretation or compliance with the agreement until the grievance gets up into the last steps of the grievance procedure; that is, before it gets to arbitration. Most of us in our industry look upon the procedure as a method of settling complaints or beefs and, whenever we can, stay away from the technicalities of the contract itself in the first steps of the procedure. Our first objective is to attempt to settle problems that we have, and the procedure provides the outlet that can be used for that purpose. If we feel that it is outside the collective bargaining agreement and the matter should not go to arbitration, we may get technical at that stage.

Mr. Liebes: I'd like to comment on that same point if I may, Sam. Tom has said that the purpose of a grievance clause is to settle disputes, and that certainly is one of the main functions. But I think along with that there is another very important purpose of grievance machinery, and that is the general purpose of developing somewhat more sound labor-management relations. There are plenty of cases in the experience of all of us when a gripe comes before a grievance committee and does not itself represent a contract violation. It may, nonetheless be well founded and illustrate some defect on the part of supervision or of a particular line supervisor. The grievance machinery, in coming into action in that sort of situation, performs a job over and above the one of simply settling day-to-day disputes.

Mr. Kagel: What the panel has said on this question of what constitutes grievance can, perhaps, be summarized this way. Your agreement may read that the grievance procedure applies only to disputes arising out of the interpretation and application of the agreement, or it may read that it shall apply to any grievance that the employee may have. But, if you do have the latter, you would, perhaps, have a distinction in terms of the powers of the arbitrator if it gets to the arbitration step. Such a distinction could be that the arbitrator could automatically determine matters which involve the application or interpretation of the agreement, but that if the

complaint involves something outside the contract there would have to be a formal stipulation as to the issues submitted by the parties before the arbitrator could act.

Now the next question I want the panel to consider probably has a self-evident answer. How many steps should there be in a grievance procedure? Of course, we all realize that the answer to this depends on the size of the industry, and it upon its general complexity. Joe, how many steps do you have in the steel procedure?

Mr. Angelo: We have five, and that's three steps too many. I'd like to explain my reason for making that statement. Too often the line supervisor -- the foreman and the general foreman in a particular department who function at the lower steps -- has no authority to make a decision on a grievance. It has to be referred to the industrial relations department or the policy-making department of the company. As far as I can see, considering the expense and delay involved, if we are not going to get anything settled in steps one and two we might as well go to the industrial relations department in the first place and call that step one. That would eliminate two steps.

Mr. Kagel: That brings up the whole question of authority, which we are going to consider in more detail a little later. How many steps are there in the service industry groups?

Mr. Brown: I think most of our contracts have three. On a multi-employer basis however, step one is usually divided into 1(a) and 1 (b), 1 (a) being the step in which the grievance is taken up between the employee and his immediate supervisor, or by the business agent for the local union and the representative of the firm. Step 1 (b) normally involves the union representative and association representative. Our step 2 is similar to the informal grievance committee hearing commonly called in our industry "adjustment board". And, of course, our third step is arbitration.

Mr. Liebes: In general, in the service industries with which I am familiar, the steps are much more informal than in a factory situation. We often have the problem of very small units with as few as one or two employees in an establishment. What we think of as a large establishment would be considered very small in a factory situation. The main purpose in the first steps of our procedure is to set the machinery in motion and to move from lower level supervision up to top management. To do this most quickly and effectively the contracts in the service industry are emphasizing an informal approach rather than a formalized procedure.

Mr. Brown: I would agree with you, Dick, on the procedure, but I would like to correct one impression that you may have made. Not all the service industries we represent are small. One of our members employs over 3500 people, and that will qualify as large, even in manufacturing.

Mr Kagel: The next subject we want to touch on is one of the problems that constantly appears both in the drafting of the grievance procedure provisions and also in the actual application of the provisions. It

is the question of time limits. Should there be a time limit on the initial filing of the complaint? Borrowing from lawyer's language, should there be sort of a statute of limitations provided in the procedure, or should there be a time limit, and if so what, on the handling of a complaint after it has been filed? Or further, should there be a time limit in moving of the complaint from one step to the other steps provided in the agreement?

Mr. Spivey: We have found that grievances must be handled in an orderly manner. And the only way you can handle them in an orderly manner is to provide time limits, because if you don't provide time limits, particularly in the first instance when the grievance arises, management can be saddled with a considerable amount of retroactive pay. To avoid this the agreement should specifically provide that, if there is a complaint, it must be brought to the attention of management as soon as the employee knows that he has been aggrieved. As the grievance goes on up through the procedure, we use specified time limits to get the thing resolved as soon as it is practicable. Our time limit on the first step is five days; if it is not settled there it automatically goes into the second step for seven days; and then it goes into the third step which involves the entire grievance committee and the plant management and has a time limit of a month. There are other time limits for the additional steps. If there are no time limits, both the union and the company, many times, will not move in and process the agreement as they should. And as a result, we have a festering sore, so to speak, that causes more trouble as time goes on. We like to get them settled as soon as we can -- if possible, in the first step.

Mr. Brown: I'd like to add something to that. One of the things that all of the members of the panel agreed on in the advance discussion on this topic was that all grievances, if possible, should be settled at the first level, preferably withing 24 hours. That's ideal, but, of course doesn't happen as often as we would like.

We have never had time limits for the successive steps of our grievance procedure. We do have time limits within which a union must file a protest of a discharge; and, in some of our agreements, we have time limits within which a union must file a claim of incorrect classification. The latter is not absolute, but if the time limit is not observed, certain rights to retroactive pay are forfeited. Personally, I am not too sold one way or the other on the matter of having time limits. I recognize Tom's point about some advantages in their use but, under certain circumstances, it is extremely valuable to have time leeway. I realize that you can always agree with the other party to extend the time limits, but this sometimes presents difficulties. I have found, through experience, that certain grievances tend to disappear or be dropped where they are not pushed up through the grievance machinery by time limits.

Mr. Liebes: On this same point, if we are to look at grievance handling, as the Chairman suggested, as part of collective bargaining, then the imposition of very rigid time limits can frequently interfere with this approach. There are situations in which an employee may have a real grievance but, because of language barriers or ignorance of the contract, he is unaware of just what his rights are. He

certainly should not be prohibited, because of some rigid time limitations, from seeking redress for that grievance. At the first step, I feel, there should be an extremely flexible application of any time limit. However, as we move up to the more formal steps, particularly those designed to get an arbitration process into motion, time limits are more appropriate. At this stage, presumably the "professionals" are in the picture and are more aware of their own rights and the rights of those they represent. Rigid time limits at this point play a very real part in preventing any stalling by either side and force them to work as quickly as possible towards settlement of the dispute.

Mr. Kagel: What do you do when your contract provides for time limits and they are not observed in a particular grievance? Let's suppose that the grievance is processed anyway and when it gets to the arbitration step your attorney, or yourself, looks at the case and says it might be won on a technicality even though you might be wrong on the merits. Essentially, his argument before the arbitrator is that the employee or employer has no right to arbitration because the time limits were not observed. What do you do in a case like that?

Mr. Angelo: I would like to make a few comments on that. First of all, we are protected under the terms of the agreement. Our agreement states that when the employee becomes aware that he has a grievance, he has a reasonable period of time following that point in which to make his complaint or grievance known to the supervisor with or without the benefit of the grievance committeeman being present. We must recognize also that an employee may dilly-dally about filing a grievance; he may have one and knows that he has one but decides to wait awhile. If he doesn't bother to file it until six months later he is precluded by terms of the agreement from going ahead with it. On the other hand, the employee might have been by-passed on promotion, or some such thing, and not have known until several months after the act that he had a grievance; then that employee has the right under the terms of the agreement to file that grievance. After it's filed in writing, if the parties do not follow a time schedule there will be an accumulation of grievances that creates nothing but chaos. Without a time schedule, it's an easy matter for the company or the union or both to procrastinate on the processing of grievances. If the grievance has no merit, the parties can agree that the grievance has no merit and pull it out of the grievance procedure at any step. But if it does have merit, there is no reason to hold it up. It should be processed, including arbitration if necessary. As far as we are concerned, we want grievances brought to the attention of management as soon as they occur so the possibility of creating difficulties in a particular department is eliminated. A pile up of grievances will create slow-downs and work stoppages and other similar problems.

Mr. Spivey: On the question of whether the rigid time limit rules might really interfere with a just handling of a grievance, it should be remembered that most agreements provide that the parties can agree to extend the time limits. I know of one particular grievance that was in the grievance procedure for over 700 days; that's quite a long

time. But it was mutually agreed that it was the type of grievance that took a lot of investigation and a lot of work. And as a result of the mutual agreement to extend it the grievance was finally settled.

Mr. Kagel: I think we can summarize these views by saying that you can have a procedure which has no time limit, or you can have one which specifies particular periods of days (five days, seven days, ten days) with language in the contract that the parties may, by mutual agreement, extend those times. Another possibility, and I gather that is the condition in the steel workers agreement, the agreement may provide that grievances must be filed within a reasonable period of time. I assume, then, the question of time would be determined in accordance with the facts and circumstances of each case.

But I do think that one thing becomes clear, and that is that from the point of view of both the union and the employer grievances should not be permitted to become stale. They should be brought to the attention of management as soon as it is reasonable or within the specified time limit and be settled as expeditiously as possible. That is particularly true where money claims might be involved, because if the case involves the back payment of money claims in the way of wages, commissions, readjustments of scales, there ought to be some time limit in which the individual can bring that claim or lose his rights to total reimbursement. Of course, this follows the general practice of law in which the recognized times in the statute of limitations vary according to the type of problem that may be involved.

Mr. Liebes: I'd like to add a final word Sam, if I may, on this same point. The general position of our organization is that there should be ample leeway for filing the original complaint. In all fairness, I think I should say that one problem to our business representatives is the case of an employee who may have entered into some sort of "sweetheart deal" with his employer in which he voluntarily gave away some of his rights. After that, maybe as long as a year or two later, there is a flare-up and the employee either quits or is discharged and comes down to the business agent and complains that two years ago he didn't get what he should have had. We take a rather dim view of that attitude and, in some cases, we wish we had more time limits to prevent that sort of occurrence.

Mr. Kagel: On our next subject again, of course, the practice will vary. The question is: When a grievance occurs should it be put in writing? Should the grievance be submitted in writing? Should it be on a particular form which has been submitted by the parties, either by the management or the union or, in most cases, drafted jointly?

Mr. Spivey: We have often found that when it's necessary for an employee to put down in writing the actual grievance that he has, when he gets together with his grievance committeemen to review the grievance to reduce it to writing the employee and the committeemen decide that there is no grievance. Also, when there is a record of

what the grievant is actually claiming, you don't get any surprises as to the issues when you process the grievance on up through the steps of the grievance procedure. If you have it in writing, you know what the issues are and go ahead trying to resolve them. We don't have the requirement for initial submission in writing in the coal mining agreement, and it's surprising how the issues change as we go from the first step of the grievance procedure on up to arbitration. It's rather interesting at times, but very disconcerting.

Mr. Brown: In our industry we have never required that grievances be in writing and, although I can see why Tom takes the position that they should be in writing, I am not certain about the value of it. The fact that our grievances have been presented orally has not caused a great deal of trouble in the processing of them. I have tried to counsel the personnel representatives in the stores that I represent that they should keep their own notes on the grievance and also keep a running record of discussions held on the grievance and the decision which was made, and then submit a copy of their complete notes to my office. I must confess that I have been only partially successful in accomplishing that, but I'm still trying. When it looks as though a grievance is about to go to arbitration, we feel that it is then necessary to reduce the grievance to writing, or, in other words, to put it in terms of a submission to the arbitrator.

Mr. Liebes: We have much the same view. In practically all of our first step grievances where there is a complaint made to the individual employer, it's done in an informal method. In some cases just a telephone conversatin is the inital step and this method is used to settle a lot of disputes. In fact, in some contracts we administer there is a procedure set forth in the collective bargaining agreements indicating an informal grievance step in which the parties simply meet and try to work things out at that level. However, prior to that, if the union member comes to his business agent and submits his case many of our local unions will seek to reduce that complaint to writing and in some cases this is done on a standard form. This form is usually for our own internal use and isn't necessarily used at any step of the formal grievance with the employer. We find that writing the employee's statement of his grievance assists us in a variety of ways. First, it will often clarify the dispute itself right at that stage. Second, it is a continuing record for the union which can then be utilized next time around in the actual contract negotiation, because, if we find during the year that there are many disputes relating to one particular contract section, it's a pretty good signal that there is something wrong with that section.

Mr. Kagel: I'd like to just take up that particular phase of it for a moment, and then come back to some more problems involved in the writing of the grievance. I think what Dick has pointed out is the problem of maintaining a record through the whole process of the daily collective bargaining of the agreement, the actual working out of the provisions of the agreement. I'd like to ask Tom, because I happen to know how they operate, how they keep a "perpetual inventory" on their agreement.

Mr. Spivey: We keep a record of every grievance that's filed, regardless of the step at which it is filed, the section of contract under which it is filed, and also the plant and the department. It provides us with quite a bit of information,and, as Vince mentioned, it certainly is a help in our future negotiations as to what sections of the contract have been causing trouble. When we find that a majority of the grievances are coming from one department, we decide that perhaps we'd better look down there and try to find the trouble. There are times when it may be management's fault. Joe will agree with that, I know. But as you know, all supervisors are human. Some can do an outstanding job in the handling of grievances and others may need some additional training in the processing and handling of the grievances. We also keep a record of the grievances filed per thousand employees and grievances filed per thousand man-hours worked. It allows us to keep a pretty good chart on trends to see how we are doing, whether we are doing a good job, whether we are having more grievances filed this month prior to negotiation, or just what is the story. It provides us with a lot of very useful information.

Mr. Kagel: Could you do this without having the grievances filed in writing?

Mr. Spivey: I don't think you could.

Mr. Kagel: And as I understand it Tom, you actually have a blackboard somewhere in one of your offices so that you can just walk in like you were walking into a map room and see what the situation is. Is that correct?

Mr. Spivey: We do have a large board, although it isn't a blackboard, on which we put information, and on the board we show the grievances filed each month and the section of the contract under which each is filed. The pending grievances are on the board in red, because as grievances start pending for a period of time that's a signal that something ought to be done. At some point they are not being handled properly. We try to keep our pending grievances down as much as we can because if they pend for a long period of time it does cause trouble.

Mr. Angelo : From my standpoint, the collective bargaining agreement is a live document, an every day document that you are going to use as a tool of the trade. No one in this room would think of going into negotiations without reducing his prior agreements to writing so that he will have something to go by. We consider the grievance procedure in the same manner. If the foreman and the grievance committeemen and the employer reach an agreement, then the terms of that agreement should be reduced to writing so you have a permanent record. If this is done you avoid the situation in which, six months after a settlement, after a change in foremen, the new foreman says, "I didn't make the agreement, I don't know what you are talking about." Instead, with a written record you have a live agreement that's in effect and will be in effect for the life of that contract.

We also maintain a record in our office, similar to what Tom does in his office, to find out where we are going and why. If the grievance is a complaint type of grievance which is outside the agreement and the foreman wants to take care of it by acquiescing to the request of the employee, we are not too concerned about a written record. But if it is something that involves either the interpretation or the application of our contract, we want the grievance settlement in writing so that we have a permanent record.

Mr. Kagel: It might be fair to point out that, of course, like any other paper work, you have to decide whether it pays, or you may just be indulging in luxury. In view of the fact that businesses currently have so much paper work anyway of one sort or another this becomes an important consideration. My own personal feeling, along with what I think is the conclusion of this panel, is that if we are talking about the grievance process as a negotiating process, and it is that, then the grievance in effect represents a demand. And I think we have arrived at the stage in collective bargaining where ordinarily the demand is made in writing; very seldom is it made orally. I can understand some of the situations that Dick Liebes' organization might have. If you are talking about a janitor who might be one employee in a whole plant, you probably wouldn't have or need formal procedures. But if you talk about Vince Brown's outfit where he says one employer may have 3500 employees then it would seem to me that in processing grievances it would be no different from a manufacturing or a production plant. Placing the grievance in writing does many things. It defines the issues. It may prove to the employee, before he presses any further, that he really has no beef of any consequence. It may prove to the employer's representative on first reading that there is a serious violation of the agreement on the part of management that should be corrected immediately. It also gives to the parties a continuing record of how the contract is actually working in practice. And it provides the parties with information that they need when they get to the formal negotiations on substantive contract terms, such as whether a particular provision of the agreement should be changed, modified, eliminated, or whether new provisions should be incorporated. In fact, the grievance process is the real guts of the collective bargaining contract. The negotiation in the contract comes around once every year or every two years and the parties are all set for it. You usually set up formal negotiating committees and you collect your information and prepare your arguments. But during the life of the agreement the only way negotiation continues is by the actual filing of these written grievances.

That brings up the next point, and that is the importance of the writing itself. Now we will assume, for example, that the grievant has complained that he or she has been misclassified or discharged unfairly, or has a similar grievance. I would like to address a question primarily to the employer representatives. Where you do have written grievances, who writes the answer for the company, and how does that person determine what answer to give?

Mr. Spivey: It depends a lot on the maturity of your organization. We have been working with the steel union for quite a long period of time. Our foremen and supervisors have had a lot of training on administration of our contract. As a result, our first line foremen today are a lot different from what they were ten years ago. The foreman of today is familiar with his contract and he has a pretty good idea when he gets a grievance what the answer should be. Our philosophy is that when he gets a grievance the first thing that he should think of is what is the right thing to do. After he determines the right thing, then he tries to see whether or not it can be done under the contract. If the foreman has doubts in his mind concerning a question of interpretation of the contract, of course, he goes for staff help, which may be his immediate supervisor; he in turn may call in the industrial relations man to find out what he thinks is the interpretation of the particular section of the contract. But, for all intents and purposes, our objective is to have our supervisors properly trained so that they know as much about the contract as our staff members and can act as bona fide management representatives in the handling of a grievance.

Mr. Kagel: Joe, let me ask you a question, I know that you and Tom are currently involved in about a thousand grievances, so this is obviously without reference to any particular case. Is the union representative, after the grievance gets past the foreman, ever impressed by the answer that is actually written out by the foreman? For example, do you ever on the basis of the answer decide that maybe these fellows are right for a change and drop the grievance?

Mr. Angelo: Our usual experience is that the foreman's answer is so brief that you couldn't find it in a thimble. It is not only brief, but it is usually a denial of the grievance so it doesn't impress me. Does that answer your question?

Mr. Kagel: Yes, you answered my question. Do you think it would make any difference if the answer of the foreman was in more detail?

Mr. Angelo: If the answer is in more detail, and in the final analysis he still says no, it still wouldn't impress me.

Mr. Kagel: Well, what I am getting around to is Joe's suggestion that perhaps you should eliminate the first two steps of your five step procedure.

Mr. Spivey: Let me comment on that. I think that the union wants to get its grievance committee properly trained and the company wants to get its supervisors properly trained so that they can handle grievances at the proper level. The more things that can be handled at the lower level, the more mutual respect for each other is developed and the more problems are eliminated.

Mr. Angelo: All joking aside, Sam, many of the foremen, as Tom states, do a good job in handling the grievances that may arise in a particular department. The fact of the matter is that insofar as the Pittsburg plant and the Torrance plant are concerned, I think they are doing a yeoman's job. Grievances have dropped tremendously

in the past couple of years. That doesn't hold true, however, in a lot of other steel companies and in the part of U. S. Steel, for example, where the foremen still aren't doing a good job. We are only impressed with the facts of the situation. If a foreman answers a question properly and gives a thorough explanation of the condition, and the griever is satisfied with that answer, we are impressed. On the other hend, if the facts are not as the foreman states, then, of course, we take the grievance up further. So, generally speaking, I am impressed with the action taken by some of the foremen but not all of them.

Mr. Kagel: I would like to add a comment to that, because I think this is one place where the actual written grievance ties into the arbitration process. Many times, if the parties actually get into arbitration, they'll introduce the grievance and that in effect is supposed to constitute the submission agreement and the issue and almost the position of the parties. That's where the arbitrator begins to see either the facility with which the report was made or the fact that it is not very complete. I would say, as a matter of practice, that most of the answers are too short. There is a tendency on the part of the foreman, perhaps either through lack of training or company policy, not to describe the facts sufficiently or sometimes not at all. This is apart from the question of whether or not the final answer is no. Nor is it a question of how long or short the answer should be. But the answer should be reasonable and it should describe the facts, at least from the company's viewpoint. Very often the foreman will simply say no, not giving any facts concerning the grievance itself. Somewhere along the line there ought to be an answer to the material facts. Many times the foreman tends to talk around the case. The grievance might, for example, involve a matter of discipline about which the employee is complaining. Of course, the foreman is then in a tough spot. He has to write an answer which will protect the company, assuming that they will go through all the steps up to arbitration, and he also wants to protect his position because he might have been the person that in effect was the trigger on the particular grievance. And yet many times the answer placed in there by the foreman really has nothing to do with the issue about which the person is complaining. It doesn't go to the material facts. Nor does the answer of the foreman many times include any consideration of the objective standards which you have to assume the company is recognizing when they sign a contract which provides for certain conditions. He may give an answer in terms of his personal desires or his personal beliefs. Of course, none of this is very important if the arbitrator is concerned with applying or interpreting an existing agreement and, as a matter of fact, the personal beliefs of the foreman may be quite contrary to the actual policy of the comapny. From my experience in seeing these answers as they are placed in arbitration records, it would seem to me that there could be profitably a great deal more training of the foreman or whoever is supposed to write the grievance answers. He can still say no, but it's the old question of how he says no. A lady may say no, and you may take that without any difficulty. Or she may say no, and you might feel hurt. I think almost the same technique has to be developed in the answering

of these grievances. It may be then, as Joe points out, that the union develops a confidence in these replies and may give a great deal more credence to the responses than they otherwise would.

Mr. Liebes: Mr. Chairman, on the point you mentioned, we seldom go through the procedure of formal written complaints and written answers, but I do recall a couple of years ago a situation where my union put a complaint into letter form. As I recall, the letter started off saying the position of the union is a simple one; section so-and-so of the contract has this provision which has not been lived up to; then it went on for a couple of pages spelling out the precise nature of the complaint. By return mail we had a communication from the attorney of that company who said, "The company reply is a simple one. Your grievance is denied". I can assure you that that grievance went rapidly to arbitration.

Mr. Angelo: Sam, I want to correct any impression thay may develop here. In our procedure, at steps three and step four, practically all the steel companies do have a clear explanation of the grievance, the company's position, the union's position, a summary of the position taken by both sides, and finally, the decision rendered by the company. So, insofar as our procedure is concerned except for the experiences you have had, Sam, with one of the steel companies in this area where they don't put anything in writing, all of our other companies do answer the grievance in detail. I think this is very good because when it does go to arbitration the arbitrator can look at the grievance and at the minutes of the meetings and get a pretty good picture of what has happened at steps one, two, three, and four of the grievance procedure.

Mr. Kagel: Any other comments on this matter of writing? I only want to conclude on this point: you ought to find out first who is writing both the grievance and the answer. I have a hunch that some of you may not even be sure who's doing that in your respective organizations. After you find that out, that person ought to be very well trained in the technique of investigating a grievance and writing a clear, reasonable, and factual answer to grievances.

Now, I'd like to go on to the next question. When an employee decides he has a grievance, what should the griever do? In other words, you have an employee and he has a grievance; what's the first thing that that person ought to do?

Mr. Brown: I think the first thing he ought to do is to take the grievance up with his immediate supervisor and try if possible to resolve the grievance right at that point. Failing to do that, then I think he should take recourse to his union representative. The union representative, of course, can proceed with the grievance through the necessary steps.

Mr. Liebes: In general, it is a sound idea for the aggrieved employee to try to get a direct settlement with his employer, but often that's not practical. I'm thinking particularly of situations we have described earlier in smaller service units where the person on the job who is perhaps nominally the supervisor may have little or no authority to do anything about it. A very common procedure

in our organization is that any aggrieved employee initially will come to the union office and, even prior to making any effort to follow up his complaint with his management representative, he will call upon the assistance of the union business agent and from there on it will go through the normal steps. I believe the answer to this sort of question must be determined by the type of situation, the size of the unit, and any responsible authority that's available for the employee to see.

Mr. Kagel: Suppose the foreman has a grievance. What should he do? Who should he talk to first?

Mr. Spivey: The foreman, of course, would go to his immediate superior. Or he may want to go the employee first, if he has a difficult problem with an employee; if it is with a group of employees he may want to talk to the group. If he can't resolve the matter with them he may contact a grievance committeeman himself and talk to him and to the employee or the group of employees to attempt to resolve the issue. If he can't do that, then he will go to his immediate superior and discuss it with him to see what they can do. The same way with the employee. If he can't settle it with the foreman, then he's going to get a grievance committeeman in with him and attempt to settle it. Our contract provides that there should be a discussion stage before any grievance is entered in writing. The employee, with or without his grievance committeeman, should first discuss the problem with his foreman or his immediate superior and attempt to settle it; if they can't resolve it then they go on and put it in writing and follow the formal procedure.

Mr. Liebes: I think there is one danger, one risk, involved in this practice of attempting to settle things at the first level. That danger is that the employee may be at a very serious disadvantage in terms of his understanding of his own rights and he can get talked out of a grievance. If the union representative were with him at the early discussions, then the employee would have a very strong measure of protection. That would discourage any settlements on the job involving interpretation of the collective bargaining contract that didn't involve the union representative appearing with him.

Mr. Kagel: Then would you discourage the employee from talking to his immediate supervisor?

Mr. Liebes: If it's something that the union is completely unaware of, there is not much we can do about the situation. We do make an effort to explain the contract to the members and we also certainly welcome and urge the union member to notify the union office when there are grievances and misunderstandings. In general we think it's a very healty thing for the employee to try to straighten out some misunderstanding with his immediate supervisor, subject as I said to this qualification that he shouldn't be in a position where he would give away any of his rights.

Mr. Kagel: What about the union itself? Suppose the union has a grievance, who should the union go to?

Mr. Angelo: Under our set-up, if the union has a complaint of such a nature that it's general, the committee meets with the supervisor of industrial relations or the plant manager and discusses the problem.

Mr. Kagel: Should the union go in and talk directly to the foreman or the plant manager?

Mr. Angelo: If it is a grievance involving an individual in a particular department the aggrieved employee with or without his grievance committeeman can talk to the foreman. If the grievance committeeman finds that a contract provision is being violated he can go in and talk to the foreman or the department superintendent. It it's a type of grievance that covers two departments, then he can go directly to the superintendent of industrial relations.

Mr. Liebes: On this question, there is one point which I don't think has been brought out very clearly here and that is that there are many contracts in the Bay Area which cover an association with a large number of individual firms. I know in our practice if we have a complaint against one of the thirty or more stores that are members of the association represented by my good friend Vince Brown, we will frequently find it very expeditious to go to the association rather than to the individual store, particularly if it's a matter of a general contract interpretation that has already been pretty well clarified on an association level.

Mr. Kagel: I'd like to consider a variation of this same subject that we've been discussing the last few minutes. Why and how should grievances be screened, when first submitted to either the union or management? In other words, what is the union's viewpoint on screening grievances? Do you think they ought to be screened? If so, how? Or shouldn't they be screened at all?

Mr. Spivey: I'll comment on that first. I don't think the union screens grievances at all. All they do is get a grievance and process it. Unfortunately, the union is a political institution. You get a new grievance committeeman in there and he says, "Well I can't settle this one; it's too hot for me. We'll process it on up, sometimes right up to the top step."

Mr. Brown: I'd like to disagree with the other management representative.

Mr. Kagel: I'm glad I called on the union point of view first.

Mr. Brown: Tom, I think, is generalizing too much. We deal with several different unions. With some unions I'd agree with Tom emphatically. With other unions it's exactly the opposite. Some unions do an extremely good job of screening grievances and weeding out those without merit before they bring them up for further discussion.

Mr. Liebes: I'd like to invite Tom to come down and sit in the office of one of our business representatives on a typical day and I can assure him that there are many complaints registered by union members that

never do reach the employer's ears, simply because it's a matter of misunderstanding on the part of the union member that is cleared up right there. I think there is a very excellent degree of screening that is being carried on by most unions.

Mr. Kagel: What is the nature of the screening, Dick? What do you do when you do screen them?

Mr. Liebes: Perhaps we are using the term without defining it. I think that what we are talking about is the problem of distinguishing between the general gripe and the contract violation. A member can come in with a payroll stub and be pretty hot about it and say that he didn't get the proper amount of overtime. But upon looking at it, the business representative finds out that the check is correct and the member is given the explanation and we hope he goes home happy. The same thing can happen on a variety of cases, where there is a complaint that we find is not a valid one to bring up under the grievance machinery of the contract. I'd say in the very first instance, that any business representative has an obligation to get the facts. He is not just a transmission belt that picks up the phone every time an aggrieved employee comes in and starts yelling at the management. He has an obligation to find out what the facts are and once he gets them he certainly should be very firm in taking the proper action.

Mr. Angelo: Well, Sam, insofar as the screening of grievances is concerned, I disagree with Tom one hundred per cent when he says that our union will accept a grievance and process it whether it has any merits or not. The usual situation is about like this. The aggrieved employee takes his gripe and reduces it to writing and hands it to the grievance committee. The grievance committeeman is not going to throw the grievance out; he's going to talk to the employee to find out what the facts are. The thing you want to remember is that this grievance committeeman comes from the same department as the grievant so that the employee cannot pull a fast one on him. And if it is not the grievance committeeman it's his assistant. The whole plant is blanketed by union representatives and they know what's going on. If a grievance goes to the higher steps of the grievance procedure, ninety-nine times out of a hundred it's because the grievance committeeman is not sure about the meaning and application of the contract. So by processing it further they are complying with time limits and they are putting it into a higher level where the grievant has the benefit of the entire committee to analyze and thoroughly scrutinize that particular girevance in view of the contract and based upon the facts of the situation. And last but not least -- and I should mention that I don't have to run for office; I'm appointed, so I needn't offer favors -- if the grievance has no merit and reaches step four it will be withdrawn. If Tom is going to be honest he will vouch for that.

Mr. Spivey: Well, I guess I'd better be honest about this, Joe. The facts do tell us this. About fifteen per cent of our grievances are actually settled in the first step, about twenty-five per cent in the second step, thirty per cent in the third step, and about twenty-five per cent in the fourth step. Only about five per cent of our grievances ever get to arbitration. So we can see from the

facts that somebody is doing a pretty good job. I think that means both the union and local plant mangers. They are talking about these things everyday and they are getting these grievances settled. But we do still have the problem of processing some grievances that shouldn't go any further than the first step.

Mr. Kagel: What about these cases that are sometimes presented to arbitrators and as the case begins to develop it becomes quite obvious -- and this has happened on both management and union cases -- that there is simply no explanation for its ever having reached the arbitration stage? The thought arises sometimes that perhaps the arbitrator is being made a "fall guy", that politics are involved either on management's side or on the union's side, or that somebody, putting it very bluntly, hasn't the guts to take the position that it is not a valid grievance. Does that happen very often at the grievance level?

Mr. Angelo: I believe this, Sam, that there are instances where somewhere down along the line someone should assume responsibility and make a final determination whether or not that grievance should go to arbitration. And I agree with you that there are times when someone decides that we'll throw this in the lap of the arbitrator and let him make the decision. That puts him in the clear to say later, "I didn't turn you down, I bought the case, but the arbitrator didn't see it our way." I don't think that that's the proper procedure to take because it does have dangers. As far as the union is concerned I am very reluctant to bring a case up that is without merit. And there is a very good reason. If the arbitrator rules against us, and unfortunately they often do, that ruling tends to establish a precedent -- Bethlehem and U. S. Steel and Youngstown, all the large companies, are guided by this kind of precedent. So if we have a weak case and the arbitrator rules against us, it may work to our disadvantage the next time, even though we may have a good case; because a previous arbitrator ruled against the union on a similar case the second arbitrator is likely to go along with this prior ruling and that does happen in spite of what Sam may say on that issue. So as far as we are concerned, we want to be certain that our grievances are screened and that only the valid ones go on up to arbitration.

There are other types of grievances where we are uncertain about how the contract will be applied, where we are interested in finding out what a third party may decide on that particular issue. We want a final determination as to how that type of grievance will be considered in the future. If the contract is weak on this point, we, of course, keep a record of that and attempt to change the contract language in the negotiations. On the other hand, if the ruling is in our favor, then we can prepare for attempts by U. S. Steel or some other employer to change and weaken the terms of this section of the collective bargaining agreement in negotiations. So we have two types of grievances, Sam: the type where someone throws it in the arbitrator's lap and lets him be the fall guy; and we have the other type of grievances where we really and truly want an answer to a problem that may be vexing both sides of the bargaining table.

Mr. Kagel: We said we were going to discuss the problem of authority in the handling of grievances. I would like to come back to that now. Just what kind of authority do the parties have to settle grievances at the first level? In the case of the union, this would mean the shop steward or committeemen; and for management, it would be the foreman. We will just use those for illustrations. How do we see the role and function of these people who get in to the grievance process at the first step? What about the shop steward? What authority does he have, what authority should he have? How far should he go? Should he run the operation, should he interpret the contract, should he report the facts? What is this animal we call a shop steward or a committeeman? Is he the first negotiator for the union? I think in this case we'll ask the employer what he thinks he ought to be first. Then we'll see what the union representatives have to say.

Mr. Spivey: Well, he shouldn't be running the department, that's one thing.

Mr Kagel: I invited that comment, as you probably gather.

Mr. Spivey: We have a provision in the contract that says we are supposed to direct the work force. Sometimes we have a little difficulty convincing new committeemen that that is really so. They decide that they are going to determine who is going to do what. We have had problems like this. But the important thing is the attitude and relationship that is developed between the grievance committeeman and the department superintendent and the foreman. If those relationships are developed properly and if they do acquire mutual respect for each other, negotiations are going to be on very sound basis. In this atmosphere when the union is right on the grievances it presents, neither the foreman nor the department superintendent will disagree. When they are wrong, we are going to tell them that they are wrong and if they want to process it further they can. To make the grievance machinery work well it is very important to develop the best possible relationships between the foreman and the shop steward.

Mr. Brown: I would like to comment on this point, Sam; and I guess I'm going to take the very right wing position. Although we think that unions certainly have the right to appoint shop stewards, as a general procedure we refuse to recognize them for the purposes of handling or discussing grievances. The reason for this view is that, from what little experience we have had with having them operate at the first level, it results in a complete hodge podge of solutions to the grievances that are filed. It seems to depend too much upon the peculiarities of the individual personalities of the shop stewards involved. We also found in cases where the indivdual and department manager can't resolve it, that we get a more consistent interpretation of the agreement by taking it up next between the personnel representative and the union business agent, rather than to have the union steward involved in the procedure at all.

Mr. Kagel: Then you by-pass the stewards af far as negotiations for settlement is concerned. Is that correct?

Mr. Brown: Absolutely.

Mr. Angelo: Perhaps that works well in the service industry, but it certainly wouldn't work in our particular industry with the thousands of employees that are scattered throughout a particular plant and the manifold problems that exist and are created from day to day. No union representative stationed in that particular office could keep abreast of the many problems that arise. So we have shop stewards; in some plants they are called shop stewards, in others grievance committeemen and assistant grievance committeemen. Their job, in effect, is to be a line of communication between management and employees, and the employee and management. If the company has a particular problem, we encourage the company to talk to the grievance committeemen and tell them what they contemplate doing so they in turn can relay that information to the employees. If the employees have a beef or a gripe of some type and they are unhappy about it, they go to their committeeman who will in turn go to the management and lay it on their doorstep. So far as making decisions or having a hodge podge of decisions made by rank and file people, we find in our experience that there isn't this hodge podge because we attempt to train our people in the meaning and application of the agreement and their rights under the agreement. We consider the grievance committeeman as an agent of the union and if we don't train him properly, and we get a hodge podge of settlements, then it isn't the company's fault; it's the fault of the union for not training that man properly. We attempt to do adequate training so that we have a consistent interpretation of the contract, and so that they do a good job in policing for possible violations of the collective bargaining agree ment.

Mr. Liebes: I agree with Joe's statement. I think in many cases the use of the steward system is pretty much a function of the size of the unit that is involved. We have many cases where it just isn't practical at all to have stewards. Where they are used the union certainly has the strong obligation to educate them concerning their functions. If they are educated we have found that they are extremely valuable in terms of administering the contract. I should like to comment on Tom's opening statement. Maybe in some cases these stewards should be running the department. I am referring to a recent university study that was made in which a sample of stewards and a sample of foremen were studied rather intensively in terms of their intelligence, their ability to handle situations, and their general qualifications. The results of the study were that the stewards scored much more highly than the foremen.

Mr. Spivey: Well, what the company does is to promote our shop stewards or grievance committeemen to supervisory positions.

Mr. Kagel: Do you gentlemen think that there ought to be any language in the agreement which either defines or specifies the duties or the limitations of duties or authority of the shop stewards? Some agreements do contain such language.

Mr. Angelo: I don't like to see an agreement with too many rules or we'll end up like the railroad industry with their so-called "book of rules." I think the way we handle it, generally speaking, is a good way because we don't have too many rules to go by other than the rule of good sense and common judgement, and it doesn't result in too many problems. At times we will have grievance committeemen that will run the department and we can't help it if the foreman abrogates his authority and lets the union representative take over. The only thing I object to, however, is that the grievance committeeman isn't getting the proper salary for running the department. That isn't covered under the agreement so that would probably have to be handled as a complaint.

Mr. Kagel: Well, let's look at the foreman now. What authority should the foreman be given with reference to grievances? Others may have different titles, but we are talking about the first level employer representative who seeks to negotiate a settlement of a grievance on the job. What training should he have? What authority, if any, should he have?

Mr. Spivey: Under our agreement the first steps are between the foreman and the employee and/or the grievance committee. We feel that the foreman should have the full authority to answer those grievances.

Mr. Kagel: I don't mean can he answer it. Can the foreman settle it?

Mr. Spivey: He may attempt to settle it, let's put it that way. We have had instances where foremen have made bad decisions and we are stuck with them. Sometimes I think we have done a pretty poor job of training our foremen. We attempt to do quite a bit of training on contract administration. Joe mentioned that he knew about one plant that wasn't so good. Well, we have had a lot of trouble of this type. At the present time we are taking the foremen and all other supervisors up to superintendent off the job for forty hours and putting them through a contract administration course. We hope that as a result of that they'll have a better understanding of the contract and that they'll be able to handle the grievances as they come up. We also hope that it will help them understand the fundamentals of developing the relationship that is necessary to properly administer a contract when you work with the grievance committeeman day in and day out. There are a lot of excellent grievance committeemen who do a pretty fair job and I'll have to admit that many of them know more about the contract than some of our foremen do. I think that's our fault, if that's the case, and it is necessary for us to do something about it.

Mr. Kagel: I think we've had two opposite views represented here. In one, apparently both management and the union believe that both at the foreman level and at the union steward level a very large amount of authority should be granted for the purpose of settling the disputes. As a part of that view there is a recognition that there should be training, very thorough and formal training, of that personnel. We'll talk about that a little later. The other point of view which has been mentioned here is that there should be virtually no authority at the first level, but that actually the first

level should be used as nothing more than, copying Dick's term, a transmission-belt for getting the grievance from the first level up to the business agent and employer level above the foreman.

Again, as in most of the principles in the grievance process, there is no one plan that is perfect for everyone. If there is anything in the whole field of collective bargaining that has to be custom tailored, it is the grievance process and the grievance machinery and the authority that's given under it. One of the great errors that is made very often is that unions or employers will copy provisions from other collective bargaining agreements. That is probably the worst practice in the world. In the law practice it is reasonably satisfactory if you copy a complaint from another lawyer, assuming he won his case; you figure you have a fifty - fifty chance of winning yours. You can't go too far wrong; the allegations are general and after all the relationship is different. In the plaintiff-defendant relationship, you never expect to see these fellows again. If you are the plaintiff you're going to try to get as much as possible; and if you are the defendant, to give as little as possible. And if it is a personal injury case the likelihood of the same plaintiff being hit again by the same defendant is very unlikely. Psychologically and factually, of course, that is exactly the opposite of the situation in the collective bargaining relationship. As you can see, at least as we have approached the subject here, this process of collective bargaining is going on daily in your plant and is going on not just by the brass but in some cases by dozens and in other cases by hundreds of personnel who are directly or indirectly under their supervision. So it is a constant process that goes on. Therefore when you draft your provisions as to the grievance process it must be drafted for your own case. You are big or you are small; you've got a union and employer where there is a long relationship or a short one; there is confidence or there is no confidence, or confidence is just beginning to develop. All of these factors must be considered and weighed before your process is developed and drafted.

Now I'd like to touch for a moment on something which the panel has mentioned with reference to the foreman and the shop stewards. That is the the kind of training -- assuming you are going to train them -- that should be given to foremen and stewards. What is it, for example, that both management and the union do in training in the steel industry?

Mr. Angelo: This isn't universal in steel but it is practiced in U. S. Steel on the Coast. After we negotiate a new contract or amend an existing contract, we call in the grievance committeemen, the assistant grievance committeemen, all department superintendents and whoever else the company wants to include and we jointly review the contract and the changes, and go over just exactly what the new clauses mean. We attempt to start this out as a joint effort. We are both there, both are parties to the agreement, both sat in on the negotiations. We attempt to explain to the line supervision and the grievance committeemen the various phases of the contract, its meaning, its application, and its interpretation. Now that

doesn't mean that three months later we don't end up with a disagreement as to its meaning and application, but we do attempt from that point to continue this training. Another thing we do is that every three months we have what we refer to as quarterly meetings -- let-down-your-hair meetings -- and in those meetings with the grievance committeemen, representatives of the union, and representatives of management from all departments, we try to find out what is wrong in any particular department and whether the contract has been applied correctly or incorrectly. At that stage we try to clear the atmosphere so that we have harmonious relations. At Columbia Steel this program has been working very successfully. I hope that some of the other steel companies will start the same thing. I understand that Kaiser at Fontana now has such a program. As far as we are concerned, it's a mutual responsibility to administer the terms of the collective bargaining agreement. It was entered into in good faith; we should police the contract in good faith; we should apply the contract in good faith. If management thinks that it was forced into a particular section of the agreement, and for that reason tries to sabotage it whenever and however it can, that is only going to lead to more difficulty. I don't care what kind of a program management has, if it tries jungle warfare, then the union members are going to follow the rules of the game and they'll be trying jungle warfare, too. So I say that a very important phase of collective bargaining is to sit down together and attempt to work out administration on an even keel so that you have harmonious relations.

Mr. Spivey: On that particular point, Joe came up with a suggestion here awhile back. We were having these quarterly meetings, attempting to develop harmonious relationships, and we had a rather unfortunate circumstance which was a little embarrassing to both parties. While we were sitting there trying to work out things, a work stoppage developed. Well, Joe came up with a suggestion, which we haven't put it into effect yet, but we are considering it. Joe pointed out that we have safety huddles everyday in which we try to talk about certain safety rules and such things as that. So Joe said, why not have labor relations huddles or whatever you would want to call them. The grievance committeemen and the management may know what the contract says and how we are supposed to operate under it, but there is a group of employees in the plant who probably read the contract once a year and are not familiar with how the things are supposed to be handled. For example, they don't know that instead of having a work stoppage you are supposed to file a grievance. We haven't started it yet. Maybe a five minute huddle between the foreman and his group of employees on a certain phase of the grievance procedure might be worthwhile. If there is anything in the contract that I believe is certainly a joint responsibility it's the handling of grievances. Anything that can by done by both parties to do a better job on that is going to result in making more profit for the company and that's what we're in business for anyway.

Mr. Kagel: Any comments from the right side of the table on this question of training.

Mr. Liebes: I think the answer we have been trying to apply to this question has been a rather flexible one. In the first instance,

as has already been brought out, the informed worker on the job is much less likely to have a grievance than one who does not understand the rules that he is working under. In many of our organizations we have what we call new member classes where the newly initiated employee is brought into a class which is held just once a month. He is given a bit of indoctrination about what the contract is that he is covered by, and what the internal procedures of the union are. We found that there have been some pretty great benefits from that program. As far as the business agents themselves are concerned, our unions have annual conventions and we have been making an effort over the last five years or so to include in these several workshops on different aspects of collective bargaining so that the delegates are able to go home with some pleasant memories but also with some factual information that will help them do a better job in their capacity as union representatives.

Mr. Brown: I'd like to make just one comment about this problem and the differences resulting from working with a multi-employer association group in contrast to one steel plant. I find that the most an association is usually able to do is to inform the people in each of the plants or stores who are going to be responsible for administering the contract what the terms and conditions of the contracts are. Unfortunately, I suspect that there is not as good a job done in our industry as should be done in informing the first line supervisor about the contract and how he ought to work under it.

Mr. Kagel: I would say from my observation of collective bargaining for some twenty odd years, from one point of reference or another, that what we are touching upon now, the problem of informing people on the job about the contract, is probably the greatest single weakness in the process. It is also the development which seems most uneven. And I think that this has resulted from a failure, at least up to the present, to recognize that your contract is being negotiated everyday your plant or your store or your office or whatever it might be is in operation. It doesn't end when you just simply agree once a year or once every two years to some increase in wages or to a new welfare plan or to a pension. That's very easy to tell the members about; they understand that. That's just so many "porkchops", if they can translate it. But the same negotiators at the same time might have covered a great many sections of the agreement on something that's very important and they report it in a very cursory manner at the union meetings or even at the steward meeting. As a matter of fact, nobody is interested in hearing about these sections because it is much more interesting to listen to information on "porkchops" than to hear why a vacation period has been changed or some other similar clauses. This constant process of education, even reaching Joe Angelo's suggestion of daily huddles if that's required, must depend again on custom tailoring. But almost a daily reminder of the rules under which they are working is the kind of thing that will pay off. I need not point out to employers that if you think your main cost in your contract is what you give annually you are just badly mistaken. The main cost of your contract is what happens everyday in your operations. And often one day in your plant can cost you a great deal more than the one-half cent or the five cents on their straight time wages

that you were arguing about for two months with the union. This cost may result from pure ignorance, ignorance which you as employers primarily should take the lead in eliminating. Though you have a right to expect the unions to educate their own people, I think that you might as well be realistic about that. They will educate their own people within certain limits. They may do it in the formal type of program that Joe Angelo mentioned, or they may do it sometimes as Dick points out at an annual convention. But the fact remains that the union simply is not in a position to do as much with their own people as management is able to do. And, of course, if you can jointly work out an educational program with the union then you have an ideal situation. If you have the kind of meetings that Joe and Tom described, where you can let your hair down, then nobody feels that he is being taken advantage of and representatives of both management and the union can explain the terms of the contract and indicate it's operation. There is the advantage that in quarterly meetings grievances that took place in the preceding quarter can be reviewed for the purposes of showing how their settlements effected contract interpretation and application.

Mr. Spivey: Sam, I want to interrupt there if you will pardon me. In these quarterly meetings no grievances are settled as such.

Mr. Kagel: That's what I would understand. But do you discuss the past ones?

Mr. Spivey: Just grievances but never the settlement.

Mr. Kagel: Well, that's what I'm talking about. And I again urge management particularly to realize that this is where you can save more than you think you have saved by very smart negotiations of the contract itself.

Now, let's get on to the next subject for a few moments. In the grievance process itself, no matter where it may appear -- in the first step, second step, or even the arbitration step -- how much weight should be given to past practice? You have heard that term; it's a magic term one side or the other always brings up to prove its point or support its defense. There are two situations in which the term "past practice" is used. In some cases contract provisions are clear, but the actual practice has varied from those provisions. In other cases the contract is silent or ambiguous on the particular parctice involved. What about this matter of past practice? What is it, how do you find out what constitutes past practice, and when you do find out, what do you do with it?

Mr. Liebes: I'd like to comment on the first point you raised, Sam. Where there is a contract provision, but through past practice something else has been done and there have been arbitration decisions both ways on it, I feel very strongly that if there is clear language on it in the contract then, regardless of what has been done to the contrary, if there is a dispute, that dispute should be governed by the contract language. We find that case arising quite frequently, especially when we have association contracts and perhaps some individual employer has made a special deal or has interpreted the

contract a certain way without complaint for some time. But if there is a dispute that is filed on this practice, and the dispute clearly shows that the contract is being violated, then I believe that past practice should be given absolutely no weight, but, rather, that the language of the contract should be controlling.

Mr. Kagel: Dick, as long as you have started, what would you say in the other more difficult situation in which the contract is either silent or ambiguous.

Mr. Liebes: My answer in that case would, of course, be somewhat different. There may be disputes arising with no contract language at all. First of all, that might involve the question as to whether we can even have recourse to the grievance machinery on an issue that is not covered in some way by the contract. Of course, in some cases the general provision is in the contract, but not the details of how it is to work. For example, frequently there will be a clause dealing with holidays that will simply list the holidays but won't cover such points as what happens if you don't work the day before the holiday or what happens if the holiday falls during your vacation. In those cases I believe that the past action of the parties carry much weight in deciding a dispute.

Mr. Kagel: Any other comments?

Mr. Brown: I agree with everything Dick says.

Mr. Spivey: If the contract doesn't have a "prior practice" or "local working conditions" clause, I would suggest that you should never put one in. We've had some experience with a local conditions clause, and to try to figure out what local conditions are in a plant which has 5,000 employees is almost impossible. We don't even attempt to do it because it would take almost 10 years of all our available men-hours to do it. But we do find that if we change a local working condition the union knows about it very quickly. For example, in one mill they may have a twenty minute lunch period and you find out that it's been going on for the last fifty years. We don't really think that's any way to run a place. We ought to get some spell men in there and work that mill during those twenty minutes. Under our contract we have to have mutual agreement of union and management to make that change. This is on the theory that this local working condition that has been in effect is a benefit to the employees and can't be changed unilaterally. This local working conditions clause of the contract is a pretty difficult section to live with and work with but fortunately we are beginning to learn how to live with it, and although it's still a little difficult at times, it's working out.

Mr. Angelo: Tom says, don't negotiate a past practice clause in your agreement. On the other hand if you look at the financial reports of U. S. Steel Corporation, and compare the amount of steel produced in the year 1955 with that in '53 and the number hours required to produce that steel, you will see that the past practice clause hasn't hurt it too much, because in 1955 a lot more steel was produced than in 1953 and with a lot less man-hours.

Mr. Kagel: I just want to say that you are now listening to a rehearsal for the negotiations which will take place shortly because Joe is on the national negotiating committee.

Mr. Angelo: We have, I think, two questions to answer here. One relates to an agreement in which there is a past practice or a local condition clause. With this type of clause it is difficult to know what to do if a question comes up unless the parties to the negotiation have spelled out what past practices should be protected. Frequently there is a blanket coverage of all past practices which indicates that all existing working conditions superior to the terms of the collective bargaining agreement shall remain in effect. This sometimes results in the protected conditions that are in many cases far superior to the terms of the collective bargaining agreement itself.

In the other type of situation where the contract is silent, my interpretation is that all conditions, not changed by the contract, that were in effect at the time of the signing of the agreement are protected by that agreement. If the practice is something of long usage, where it has been applied day in and day out, there should be no question as to its controlling nature in deciding a dispute. But if it's something that happened only three times over a period of twenty years, that in my opinion is not an established past practice. If a particular situation is cited where a foreman said, "Okay, fellows, take a break," that is not sufficient to establish a past practice. This question of past practices, it seems to me, has to be settled strictly on a case-by-case basis.

Mr. Kagel: That's the kind of answer you get in the United States Supreme Court on anything difficult, Joe. It's probably about as close as you can get to a general answer on this kind of question. Where basically, it is a question of fact, it has to be decided on a case by case basis.

I want to make a few comments on the function of arbitration in the grievance process. If you accept the view that the grievance process is a negotiation process, then the arbitration step, the terminal step, should be used in the grievance process as seldom as it is used in the negotiations on the substantive terms of the contract. In other words, it should be used literally and factually as a last resort. The best technique, the most successful technique in collective bargaining, is to have the parties themselves settle the dispute. That's the negotiation technique. And only if you have no other course open should you resort to arbitration. There is a tendency to resort to more arbitration in the grievance procedure process than there is when you are negotiating a contract, only because it's set forth in the contract as a step of the grievance process. But I think this greater use is a failure to recognize why it is set forth in the agreement as a terminal point. The reason is obvious. If you are going to have a grievance procedure you set forth arbitration as a termianl point only as an alternative to a work stoppage. Now in the old days, and I mean about twenty years ago, arbitration as a terminal point did not appear in most contracts. So when you had a grievance you tried to settle

it with the employer; if you couldn't settle it that was the end and you had quickie strikes or slow downs or any of the devices whereby one party attempts to force its position upon the other party by direct power rather than in terms of the merits of the case. If you go back before that -- on this Coast for example -- the old IWW, whenever it couldn't settle a dispute, used to pull a whistle out in the woods and everybody would stop work until everything was settled. Now, of course, we have come a long way from that. One of the ways is that we have set up some semi-judicial enforceable machinery to settle these disputes if it becomes necessary. But even though this is simple because it is in the agreement, one should not go to them too easily.

When I say that arbitration, even in the grievance procedure, should be used as a last resort, I really mean it. If most of you will review how little resort you have to arbitration in your substantive term negotiations, such as those on wages, hours, and working conditions, and if you realize that although the grievance problems may not seem as important as the monetary ones, that they are still extremely important, then you will agree arbitration should be used with caution and only as the last resort. As one who makes part of his living -- and I emphasize only part -- from arbitration I have no hesitancy in giving you this advice because I know you will not follow it.

Now another thing I would urge strongly: do not use the arbitration step in the grievance process to obtain conditions or changes in an agreement that properly should be made during contract negotiations. If you have a grievance that should be taken up in direct negotiations, either when the contract opens or in an independent negotiation during its life, do it at that time, but do not try to bring it within the terms of an existing agreement. It's a bad practice no matter who might attempt to use it. In other words, I would distinguish between the negotiations on your grievances as they arise out of the interpretation of the existing contract, and the gripes that you might have which could be properly taken care of when the contract is open. These distinctions are important to keep in mind.

But if you have to go to arbitration I would urge that you select an arbitrator in whom you have confidence, that you have an arbitrator who will decide the case on the basis of record. By this last point I mean an arbitration where the parties have an opportunity to present their case fully and where there is a transcript of the record and exhibits are permitted to come in. I have often had occasions where the parties do not want a transcript and in those cases I refuse to take the case unless the parties will submit it on briefs. I think it is nonsense to suggest that an arbitrator can sit at a hearing for a full day and make notes or pretend to make notes and then claim that he has made a decision based upon the record. Those of you who have had any experience with hearings may well know that something might be said during the seventh hour which is very important in terms of what was said the first hour, but if there is no record of it you can't recall what was said. I think that once you use the arbitration process, you must dignify that process and maintain it at a high level, just as lawyers

attempt to keep our court procedures operating at a reasonably high level.

I think the arbitration process and the arbitrators should not be used for purposes of mediation or compromise. If you represent either the union or the employer, and you want a mediator, get a mediator. There are some very excellent ones around; usually the government supplies them without cost. And if you want compromise, be smart and make the compromises yourself. You might as well get credit for being the good guy, because the next time the other party might be a good guy and give you a break. If you go to arbitration, go in to win and insist that the arbitration decision be based not on mediation, not on compromise, but on the record itself.