Social Psychological Aspects of Third-Party Intervention in Industrial Disputes

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. . . For the arbitrator looks to what is reasonable but the judge is concerned with the interpretation of the Law. For this reason the arbitrator was conceived so that equity might thrive.

Aristotle, Rhetoric

(Translator, B.E. Killian)

The end crowns all,
And that old common arbitrator, Time,
Will one day end it.

Shakespeare, Troilus & Cressida

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Table of Contents

List of Figures

List of Tables

Appendices

Abstract

The thesis examines the nature of third-party intervention in industrial disputes, from the perspective of bargaining and negotiation. It challenges the common view of the third-party as encouraging a conciliatory approach to the dispute. Experimental simulation provides evidence that a silent third-party affects the nature of agreements reached by negotiators, in this case favouring management. The third-party was regarded as an evaluative presence, encouraging greater intransigence and emphasising the inter-party dispute, at the cost of a more cooperative, personally-oriented approach.

An observational field study of third-party intervention in public and private sector disputes examines the functions and process of industrial arbitration, through the British Advisory Conciliation and Arbitration Service, for relatively inexperienced and experienced participants. Arbitration is traditionally regarded as a semi-judicial, evaluative process, which is distinct from negotiation. It is argued that this public image is necessary, in order to maintain the credibility of arbitration as a method of dispute resolution, but that the actual process is best understood in terms of the social context of collective bargaining. The process of arbitration is compared and contrasted with the processes of problem-solving and negotiation and two different models of negotiation ('concession-convergence' and 'formula-detail') are used to explain the different roles adopted by the arbitrator or board in simpler and more complex disputes respectively. A descriptive account of a group of *ad hoc* arbitrations highlights the effects on inexperienced participants of the evaluative image of arbitration and reaffirms the distinction, identified in the public sector disputes, between simpler and more complex cases, requiring different styles of chairmanship.

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ERRATUM

Chapter seven should begin at page number 159, but in fact begins at page nunber 164.

Chapter eight should begin at page number 210, but in fact begins at page number 211.

CHAPTER ONE

Introduction: Industrial Relations and the Contribution of Social Psychology

Industrial Relations - The Background to the Debate

Since the recognition of industrial relations as a distinct discipline in Britain, there has been a certain amount of debate about the proper contribution of the social sciences. Its development as a discipline in its own right is quite recent, with its most apparent starting point in the work of Dunlop (1958) in the U.S.A. and Flanders (1965) in Britain. These two influential works argued for the study of industrial relations as a system of rules:

> 'The central task of a theory of industrial relations is to explain why particular rules are established in particular industrial relations systems and how and why they change in response to changes affecting the system' (Dunlop, 1958, pp 8-9).

In agreeing with this position, Flanders went one step further, to argue that 'The study of I.R. may therefore be described as a study of the institutions of job regulation' (Flanders, 1965, p.10). Both positions provided the discipline with a central framework which defined the scope of study and relevant issues for research. Both were responses to the previously largely a-theoretical nature of I.R. studies, which had been 'largely historical and descriptive' (Dunlop, 1958, p.6) and which had suffered from the

competing attentions of different social science disciplines, which 'were never intended to offer an integrated view of the whole complex of institutions in this field' (Flanders, 1965, pp.9-10).

Unfortunately however, whilst this approach provided a central focus of study - the 'system of rules' concerned with job regulation - it also concentrated attention (though this was not necessarily the intention of Dunlop's or Flanders' work) on the system's institutional aspects, to the neglect of the dynamic nature of actual working relationships and the processes by which the 'rules and regulations' are firstly developed and secondly interpreted, used and changed in practice. (E.g. Blain and Gennard, 1970; Goodman, Armstrong, et al., 1975; Margerison, 1969.) .

Psychologists have also been interested in using the concept of planned, rule-guided actions as theoretical frameworks for the analysis of behaviour (E.g. Miller, Galanter and Pribram, 1960). Harre and Secord (1972) describe rules as 'propositions' which 'guide action'. They point out, however, that the mere identification of rules does not necessarily explain the person's choice of particular actions for achieving a specific end. Indeed the analysis of rules *per se* would not inevitably lead to an understanding of their structured organisation, which allows the person to manipulate or deliberately avoid them, in favour of a newly created course of action.

Research which concentrates on the formal, official rule systems of I.R. will consequently be limited and incomplete, in its explanation of the actual functioning of the system, which is in the final analysis made up of the people who use and create the institutions. The traditional approach is described by Hyman (1975) as a 'reification', treating

> 'abstract collective entities, which are the creations of human activity, as the active agencies in social relations and in consequence devaluing the part played by human actors' (p.13).

Bain and Clegg (1973) comment on the inherently 'conservative implications' (p.92) of the past use of the systems concept, which has implied a 'stable and integrative I.R. system', which, in line with a Parsonian analysis of social systems, necessarily strives 'to perpetuate itself' (p.92). It is further commented by Hyman (1975) that 'the focus is on how any conflict is contained and controlled, rather than on the processes through which disagreements and disputes are generated' (p.11). Bain and Clegg (1973) agree with Eldridge that such a stance is unacceptable:

> 'The sources of conflict and co-operation, order and instability must have an equally valid claim to problem status' (p.92).

The limited and conservative use of the I.R. system could be overcome, Bain and Clegg argue, by the broadening of what is essentially a 'closed' system to include 'behavioural as well as structural variables and unstructured as well as structured relationships' (p.95). This analysis tries to pave the way for a more realistic and diverse approach to the study of I.R.

and also seems to invite potentially fruitful contributions and perspectives from a number of social science disciplines.

Psychology's Past Contributions

Just two years later, at a British Psychological Society Conference, Bain however showed little faith in the potential contribution of psychology, arguing that it concentrated on the individual, restricted itself to quantitative methods and was overly concerned with scientific rigour. Around the same time, from the perspective of psychology, Brotherton and Stephenson (1975) argued that the traditional closed systems approach made a 'proper psychological contribution to I.R. theory difficult' (p.44). They suggest that it has led to at least three types of misapplications of psychology:

1. Extreme limitation of the field of appropriate investigation, by the use of over-simple and over-generalised concepts (e.g. frustration-aggression theory, Williams and Guest, 1969);
2. Restriction of the variety of psychological explanations to emphasise personality variables and individual differences (e.g. Blain and Gennard, 1970);
3. Application of psychology only to certain levels of the system, (e.g. shop-floor rather than national, Margerison, 1969). It is pointed out that industrial psychology frequently neglected the social context of studies in industry and thus opened itself to criticisms of naivete. This is presumably because the psychologist

was seen as a tool to be used in the solution of 'managerial problems' such as worker productivity. The role of provider of ad hoc solutions is unlikely to contribute to the development of substantial and constructive theories, much less the wider study of industrial relations.

In contrast to Bain's (1975) rather dismal analysis of the future prospects for psychology, Brotherton and Stephenson (1975) argue that research should develop 'in such a way as to complement and enhance, rather than contest, the approaches of other disciplines' (p.50). Despite their enthusiasm for the development of a social psychology of industrial relations which chould enhance psychology and contribute to a 'theory of I.R. which is truly open' (p.50) and Butler's (1979) assertions that social psychology is beginning to contribute usefully to the study of I.R., can it now be claimed that social psychology has had any impact?

What Kind of Impact?

The answer is probably not a lot. As Cherns (1968) points out, the Donovan Commission was probably the first Royal Commission to be substantially influenced by research papers; but none of these came from psychology, perhaps because of the previously mentioned a-theoretical nature of occupational psychology in the 1960s.

In order to make any impact on the practice of industrial relations, Butler (1979) suggests that psychology has to become not only established in the eyes of I.R.

'specialists' as offering an important and creative contribution to research, but it should also aim to make its findings more widely known and work harder to influence the policy-makers themselves.

This in itself is a potentially restrictive approach to the contribution of social psychology. It suggests, if anything, a reversion to the traditional closed systems model, which concentrates its attentions on the official institutions, including government policies, at the expense of understanding the practical 'workings' of the system. Whilst it would be futile to deny the influential role of the policy-makers, concentration on influencing government potentially changes the role of the psychologist from 'tool of management' to 'tool of government'.

A similar line of argument suggests that the direction of psychological research should be determined by current interests and problems as defined by I.R. specialists. As with any 'issue-oriented' approach, however, this would not necessarily result in the development of a strong theoretical base in social psychology. On the other hand, the psychologist's selection of important questions may lead to the pursuit of potentially trivial issues, dictated either by past traditions which have long since lost sight of the interesting questions to which an original experiment was addressed, or by current trends in the discipline, posing questions which are easily solved, within the terms of the discipline's ready methodology, and existing instruments for analysis. Neither approach seems guaranteed to produce either a stimulating framework for further research or generalisable theories.

The starting point for new research is therefore problematic. Psychology, it seems, has to identify the issues which concern it, in the light of current industrial relations practice and thus place itself in a position to provide critical commentary on that practice. If this promotes a re-examination of the discipline and its methods, it must improve the status of psychology, by provoking the development of more adequate means of analysis, description and explanation.

A Distinctive Contribution?

Sooner or later such issues force the researcher to question what kind of distinctive contribution social psychology should make to the development of knowledge in a particular area - in this case Industrial Relations.

In his 1968 essay, Flanders states 'one cannot ignore the social psychological aspects of collective bargaining'. He cites such factors as parties' expectations of the future, perceptions of the immediate situation, sympathy for the other side, judgements of relative power and skill in bargaining and persuasion. Strangely enough, Flanders was committed to a view of I.R. which excluded the so-called 'unstructured, informal' relationships. As already mentioned, other writers have suggested that psychology applies only to the study of personality factors and individual differences or shop-floor relations. It seems obvious however that to confine social

psychology either to the institutional or to the informal levels of I.R. is bound to lead to an inadequate conceptualisation, because it is over-simple to suggest that a 'level' of the 'system' can be isolated from the wider social context, to the extent of ignoring that wider context.

A social psychological analysis should rather be able to throw light on the mutual and continuing exchange between the formal, institutionalised aspects of the 'system' and the relatively unstructured relationships between those people who make up that system, and who use and interpret it from day-to-day. It should offer an understanding of how different levels mutually act on, affect and attempt to control each other (see also Clegg's (1979) discussion of styles of bargaining). It seems particularly important that social psychology should be able to recognise the possibility of change in industrial relations and indeed contribute to such change.

This applies to all 'levels' within the system, from the effect of an individual's role as representative of a particular work-group or party on the person's relationships with others in the Company, to the understanding of the distribution of control over decision-making and the implications for genuine participation in decisions about industrial practice, to the analysis of the relationships between governmental intervention (in the form of increasingly complicated legal statutes) and changing definitions of industrial procedures and disputes.

This analysis overcomes arguments about the location of psychology at a particular 'level of the system' and debate about whether psychology is only a study of personality and individual differences. It attempts to study the individual participants in the context of industrial relations institutions and views the institutions in the context of those who create them. It avoids the assumptions of a stable I.R. system, by recognising the possibility of human agency, which makes the formal informal (and vice-versa) and which brings about changes in existing institutions, through their application in practice.

Third-Party Intervention in Industrial Disputes

The focus of attention in this research is on the functions and process of third-party intervention in industrial disputes, with particular reference to arbitration. The thesis asks what the role of the third-party is, in industrial relations, as depicted and practised by the third-parties and as understood by the parties to the dispute. It examines the significance and function of the claims to impartiality put forward by third-parties and explores the social processes behind the traditional evaluative image of arbitration. Since previous work on third-party intervention has not described the process of decision-making in any detail (with the exception of Douglas' (1962) and Landsberger's (1955a,b) studies of mediation), it was felt that a descriptive study of the process of intervention, the roles played by management, union and third-party and the kinds of outcomes which result,

was very valuable. The eventual aim was to create a model of the third-party process. Consequently the thesis moves from an experimental study of the 'base-line' effect of the mere presence of an observer on the process and outcomes of negotiation to a detailed observational study of 21 arbitration cases. These consist of nine case studies based largely on notes of hearings, discussions with the third-party and copies of the resulting decisions and 12 case studies based on a content analysis of the transcript of each hearing and the third-party's decision.

The generality and significance of experimental findings is examined in the context of arbitration. Particular attention is paid to the character of arbitration in relation to its collective bargaining context. This results in a re-examination of the division between arbitration and negotiation and it is argued that the significance of arbitration is best understood not as a semi-judicial, evaluative process, but placed firmly in its social and political industrial relations context.

Beyond this examination of the third-party's role, the thesis is also an attempt to create part of a social psychology of industrial relations, which is based on the practice of I.R., rather than solely on the experimental study of small groups. Consequently the methodology is itself an 'experiment'. Most of the work is based on observations of arbitration hearings, analyses of case papers and decisions, and discussions with third-parties and officials of the British Advisory Conciliation and Arbitration Service (ACAS). Discussion with the parties themselves was impossible, because of ACAS reluctance to allow any approach to be made to management or union officials.

The standpoint of the 'observer' has sometimes been criticised because it is an 'outsider's' view-point. In retrospect, this seems to be its greatest advantage. The position of outside observer is a privileged one: it affords an insight into events which is lost to those who are inevitably immersed in the process, by virtue of their status as 'inside parties'. Their views of the significance of events should inevitably be different from those of the observer: they have a different perspective. This does not, however, necessarily invalidate the views of the outsider. The third-party's own 'outsider' status is renowned for its potential to allow a clear vision of the dispute. The researcher brings another perspective; in this case the social-psychological one, foreign to the parties in the more formal sense, focussed as they are on the day-to-day machinations of relations between management and union, but perhaps less foreign than many realise, in the practical sense.

CHAPTER TWO

The Role of the Third-Party in Industry - Introductory Review

Increasingly complicated employment legislation and interest in industrial relations as a specialist area of study reflect the prevalent British concern with the regulation and disposal of industrial disputes. The introduction of a person, in the role of conciliator, mediator or arbitrator, who is formally independent of the disputing parties, is generally seen as one method by which otherwise irresolveable disputes may be settled without either side resorting to strike action or lock-out. The third-party is usually expected to persuade the parties to act reasonably and responsibly and settle their disagreement. In order to achieve the apparently impossible, it might be expected that the third-party must also have access to unique skills, and insights which have so far evaded the parties themselves, and thus produce the one settlement which will 'stick'.

The Three Roles of the Third-Party

In British industrial relations, the third-party is conceived of as having three possible roles: conciliator, mediator or arbitrator. Conciliation is usually described as the most 'passive' role and is the most common form of intervention, probably because it is seen as supporting, rather than undermining, traditional principles of voluntarism in collective bargaining. (Figures for the Advisory Conciliation and Arbitration Service (ACAS), for 1975: Requests for

conciliation: 3,338, compared with 29 references to mediation and 391 references to arbitration). The traditional view of the conciliator is that of the 'go-between', providing a channel of communication between the parties, possibly helping them to assess the situation, identify common ground and convey possible concessions between sides without giving the appearance of a firm commitment from the conceding party. The mediator is typically described as more active and forceful than the conciliator. Mediation is defined by ACAS as 'a method of settling disputes whereby an independent third-party makes recommendations as to a possible solution leaving the parties to negotiate a settlement'. The mediator according to Warren and Bernstein (1949), must possess

> 'powers of analysis and imagination, broader experience and knowledge, wider influence ..... His proposals may be ..... substantive or procedural' (p 441).

It seems unlikely that such a clear dichotomy between the active and the passive roles can be maintained in practice, even in Britain, the relative passivity or forcefulness of the third-party depending rather on the nature of the dispute and the corresponding requirements of the parties (Warren and Bernstein, 1949; Indik et al, 1966). The more clear-cut distinction is that between conciliation/mediation (for present purposes treated as closely related, if not identical) and arbitration. In the case of arbitration, the third-party is expected to determine the outcome of the dispute by making a decision or 'award' which the parties agree to accept beforehand (Lockyer, 1979). The formal responsibility for settlement is thus passed to the third-party and, because of this, arbitration has generally been distinguished from negotiation. The arbitrator is formally concerned with a judgement between party positions,

as well as the production of a decision which will resolve the dispute (Morley and Stephenson, 1977; Magenau and Pruitt 1979).

The Ambivalent Attitude Towards Third-Party Intervention in Britain

British trade unionists and managers have traditionally been reluctant to call on the services of a third-party, suspecting them of either being less than impartial and secretly favouring one side or the other or of being too much constrained by government policies. Two surveys of attitudes towards conciliation, one carried out in Britain (Goodman and Krislov, 1974) and one in Ireland (Krislov, 1975) suggest that British management are less favourable towards conciliation than their Irish counterparts. Only one-third of British management and a quarter of union respondents thought that management accepted conciliation enthusiastically, compared with approximately two-thirds of each group in Ireland. Only 10% of British managers and trade unionists thought that the unions were enthusiastic about conciliation, compared with over 60% of Irish managers and 40% of union respondents. Over 80% of Irish management and unions, compared with less than 50% of British respondents, thought that the number of strikes would increase significantly without conciliation. Although the difference in sample sizes, and indeed the relatively small samples may account for some of the findings (Irish: 120 management, 36 union; British: 128 management, 95 union), the differing views apparently indicate the lack of confidence which the British have in conciliation. Answers to open-ended questions in the same survey indicate something of the British ambivalence. Where 70% of respondents had previously indicated that the conciliation officer did not help understanding of

the other party's position, written answers to open-ended questions stated that the conciliator does provide a clear picture of the 'real positions of parties and eliminates any misunderstandings' (p 343). Similarly, in set-response questions, approximately 80% of respondents did not feel that the conciliator 'helped them withdraw from a difficult position' (p 340), whilst replies to open-ended questions claimed that the conciliator allowed parties to withdraw from 'untenable positions without loss of face' (Goodman and Krislov, 1974, p 346). There are two possible inferences to be drawn from such conflicting results: either the British are incapable of answering questionnaires consistently, or some genuine confusion exists about the role of the conciliator, and both management and unions are uncertain in their regard for the skills of the third-party. The conciliation officers surveyed by Goodman and Krislov (1974) were, in contrast with the parties whom they serve, uniformly and, given the doubts expressed by the parties, necessarily confident that the outcomes of industrial disputes would be less satisfactory without conciliation.

The results of such surveys are interesting, not because of the light they throw on actual practices, but because they reflect the parties' suspicions of each other and reveal something of the image which each party wishes to create in the minds of the others. Some time ago, Ann Douglas (1955), commenting on the discrepancies between mediators' accounts of what they do and what in fact she observed, argued that the dubious status of peace in American society placed the mediator in an ambiguous role, which in turn caused the evolution of

'fictions' or myths about the nature of the mediation process, which were widely known and which are still reflected in the kinds of articles written about mediation. Hence those myths which describe the mediator as a 'neutral' and a 'catalyst' (ie unchanged at the end of the process), she argues, stem from a fundamental ambivalence towards peace, which results in a 'need to purge the mediator of liability for the course of treatment, regardless of whether the patient gets well or succumbs' (Douglas, 1955, p 550). In contemporary Britain, the third-party has to be seen simultaneously as a cure for industrial ills, in order to appear as especially skilful to the parties (otherwise why should they accept his or her intervention), and as not responsible for the effects of the treatment, in order to maintain the parties' beliefs in the essentially voluntary nature of the settlement and to protect the third-party from any possible comment or criticism.

The third-party's mystique is furthered by descriptions of mediation as something of an art-form, which is not susceptible to systematic analysis (Cole, 1961; Meyer, 1960). Consequently there is very little research on the actual process of mediation: Rehmus (1965) concludes that it is one of the least studied areas of American industrial relations, and there is a dearth of systematic British research on the third-party. Instead, there are numerous articles, particularly in the American literature, which perpetuate the idea of mediation as an elusive and esoteric collection of abilities, thus promoting the view of the third-party as a strangely insightful person, with a certain advantage

over the parties when it comes to the resolution of otherwise impossible disputes.

The Search for the Ideal Mediator

It has frequently been claimed that mediation techniques are highly individual, and dependent on personal qualities, making generalizations impossible (see Rehmus, 1965). This line of argument led to a number of studies which tried unsuccessfully to isolate the personality traits of the successful third-party. Landsberger (1955; 1958) suggests that the 'intellectual aspects' of a mediator's behaviour are more closely related to his overall standing than 'softer' interpersonal relations variables. He compares mediators with group-leaders of the types identified by Bales (1950): those mediators who were highest on task-oriented skills tended to be low on interpersonally-oriented skills. Wechsler (1950) failed to find any differences on personality variables between 'good' and 'poor' mediators (as rated by colleagues), whilst other studies have gone on to show that mediators vary on every personality dimension and personal attribute imaginable, from patience and persistence to social-mindedness. Researchers have surveyed everything from their marital status and debt-loads to their skills in structuring and presiding over meetings (Wechsler, 1959; Weisenfeld, 1962; Manson, 1958). As might be expected, the array of talents and skills generated are suggestive of the super-human and probably do more to persuade parties' of the abilities of the mediator than they do to establish any satisfactory conclusions about the character of the mediation process.

The Technique of the Mediator

A number of *ad hoc* and mainly anecdotal studies have discussed the range of techniques which may be used by the mediator in the resolution of a dispute. These can be divided into four areas which affect different features of the bargaining process: (1) physical structuring of the situation (Peters, 1952); (2) procedure of meetings (Cole, 1961); (3) substantive contributions (providing information, making suggestions of possible settlement points, etc; Meyer, 1960; Rose, 1952; Maggiolo, 1953); and (4) interpersonal relations (relieving tension, providing support, controlling hostilities, etc; Perez, 1959; Peters, 1958; Warren and Bernstein, 1949). The techniques discussed range across many levels of description and compound different kinds of interventions. None of the articles make any major attempt to explain how the mediator selects one strategy rather than another in relation to the different requirements of each dispute or different stages of the bargaining process. The ambiguities of bargaining, where one side can never be certain of the opponent's reactions to its moves, require sensitivity to changes in the relationship between parties and the flexibility to act on those changes (Young, 1972). Most lists of techniques open to the third-party offer little if any assistance in the development of such flexibility or the choice of techniques according to the changing situation which she or he may face.

There are occasional insights into the problem of differentiating between different types of dispute. Zack (1970)

distinguishes between public and private sector cases, suggesting that in the public sector 'the pressures and framework for potential settlement are less likely to be in the usual terms of market, unemployment levels, skill, competition .....' (p 264). Warren and Bernstein (1949) agree that the form of intervention must vary from case to case, since each 'has its own characteristic profile' (p 451). They divide cases into disputes of right, which concern interpretation of contract terms, and disputes of interest, which concern the creation of new contract terms.

There has, however, been little attempt to create a general framework for the analysis of disputes in relation to the third-party's role. Without such a framework, descriptions of mediation will remain at the level of disconnected anecdotes, and will not move towards an understanding of the mediator's supposed effectiveness. Mediation emerges as an indefinable art, not easily subjected to analysis and difficult if not impossible to teach.

Psychological Studies of Mediation

Three general points emerge from the industrial relations and other descriptive literature on the third-party. First, the value of the third-party is seen as residing in his or her ability to resolve otherwise intractable disputes, by the exercise of considerable skill and experience and by persuading the parties to act reasonably and compromise. Second, the parties, both in Britain and North America, hold ambivalent attitudes towards the supposed value of third-party intervention. Third, in order to maintain credibility in such an uncertain situation, third parties have a vested interest in presenting themselves as

highly skilled and knowledgeable as well as impartial and, preferably, as above criticism from the parties.

The Function of the Mediator

The experimental psychologist's contribution to the understanding of the third-party's role has not moved far beyond the popular view. Put in simple terms, experimental work has concentrated on a theory which suggests that the mediator is able to produce compromise and agreement by 'saving face' for the parties who would otherwise be unable to retreat from their current, 'untenable' positions. The experiments themselves have been set firmly in a concession-convergence model of bargaining (eg Magenau and Pruitt, 1979) and, consequently, are structured such that the 'success' of mediation has been measured solely in terms of the numbers of concessions made or agreements reached. Pruitt and Johnson (1970) argue that mediation provides the negotiator with a face-saving device, whereby 'he can retreat without feeling he has capitulated' (p 246). In standard negotiation groups (no offer of mediation), perceived personal strength was inversely related to the size of concessions made. Pruitt and Johnson argue that the 'absence of such a relationship in the mediation conditions supports the contention that after intervention by a mediator, people are able to make concessions without viewing themselves as weak' (p 246). Examining the 'face-saving' hypothesis from the perspective of the opponent, Podell and Knapp (1969) found that subjects made smaller revisions of an opponent's target and resistance points when concessions of the same absolute size were made through a mediator, rather than coming directly from the

opponent. Both experiements, however, base their claims about the beneficial effects of mediation on extremely restricted situations: bargaining sessions are very brief, communication is restricted to an exchange of bids and 'mediation' is simply a suggestion of a settlement point. Given the minimal social relationship between the two participants, together with minimal obligation to represent a party position, the 'players' are probably relieved to be offered a quick solution. In such circumstances it is hardly surprising that the 'mediator' saves face and appears to be successful in assisting participants to reach agreement. The suggestion of a settlement point was not successful in promoting agreements when task materials were more complex, and communication was face-to-face and unconstrained (Johnson and Tullar, 1972). Although the 'face-saving' function is often described as a requirement of the mediator's role, it is very unlikely that the intervention would be as simple as the experimental manipulation suggests and it is unnecessarily restrictive to concentrate only on this aspect of the third-party's function.

The Process of Mediation

The third-party has always been described as able to achieve settlements where the parties have failed (Meyer, 1960), and sometimes as improving the quality of the settlement (Vidmar, 1971). Such claims are advanced most energetically by those who are practising mediators themselves. Very little work, however, seriously questions the claim or examines the way in which the third-party achieves such success. Bartunek et al (1975)

suggest that where a possible contract zone exists, but is unknown to the parties, a 'content' intervention, in the form of a suggested settlement point in the appropriate region, increases the amount of money gained by both sides. The success of this kind of intervention of course depends on that unique 'insight' into the dispute which the third-party is claimed to have. McGrath and Julian (1963) and Vidmar (1971) have claimed that simulated negotiation groups with an impartial chairman or mediator, present throughout, produce better quality decisions than groups which negotiate alone, where quality of outcome was measured according to how satisfactory the solution was to each side's initial position and in terms of an overall 'constructiveness' rating.

Vidmar's (1971) mediators were instructed to help the group achieve a constructive solution, acceptable to both sides and McGrath and Julian's (1963) chairmen were less hostile and more neutral than party representatives and were most active in structuring and controlling the proceedings which, given the nature of the task, proved vital to a successful resolution. Vidmar's (1971) findings, however, suggest that members of mediated groups did not enjoy the experience, reporting less task motivation, lower esteem for partners and hostility toward the mediator.

Two other studies, in this case conducted in the field, have attempted to link the process of mediation to its outcomes. These suggest that the function of the mediator is to assist the parties in an orderly progression through certain stages of the dispute, to its resolution. In an analysis of twelve

mediation sessions, Landsberger (1955a, b) relies on Bales' (1950) Interaction Process Analysis (IPA) and the phase movement hypothesis to suggest that the more closely a session adhered to a pattern characterised by the changing emphasis over time, firstly, on problems of orientation, secondly, on problems of evaluation and finally on problems of control, the more successful mediation was likely to be. Exploring the relationship between variations in the behaviour of the parties and the behaviour of the mediator, he found some indications that (1) the less supportive remarks exchanged by parties, the more support shown by the mediator; and (2) the greater the hostility between sides, the greater the mediator's contribution to the discussion and the higher the level of supportive remarks made.

Landsberger's findings that the level of initial inter-party hostility was negatively related to the success of mediation, apparently contradicts Douglas' (1962) description of the first stage of mediation, where, she suggests, party representatives take up institutionalized party positions and emphasise the extent of the disagreement between sides. Shows of interpersonal hostility are, however, regarded as detrimental to the opportunity for subtle, psychological explorations of bargaining positions between individuals, which form the second stage of mediation. The discrepancy can be explained in terms of Landerberger's use of Bales' IPA, which does not discriminate between references to parties and references to individuals. The distinction is essential to Douglas' account, which relies on the changing emphasis from interparty to interpersonal levels

of the debate. Douglas' field study of twelve mediation cases does not use a content analysis system to describe the process of mediation. It does, however, suggest the nature of the role played by the third-party, in assisting the parties through the three proposed stages of negotiation. Her thesis is that 'movement, orderly and progressive in nature, stands out as a staid property of the collective bargaining situation which terminates in agreement' (Douglas, 1957, p 57). Three phases necessary to satisfactory resolution of the dispute are identified:

(1) 'Establishing the bargaining range' (p 72), characterised by the categorical statement of party positions, and emphasis of the disagreement between sides whilst avoiding interpersonal hostilities;

(2) 'Reconnoiteringthe range' (p 57) which involves careful exploration of positions by the individuals present for signs of tacit agreement;and

(3) 'Precipitating the decision-making crisis' at which time 'parties again take over the centre of the stage' (p 80), Douglas (1957).

If such a phase movement does occur, the mediator should act in different ways, dependent on the stage of the dispute. In the first phase, the management of detrimental interpersonal conflict is all important, whilst if negotiators have become fixed in untenable bargaining postures, as suggested by Peters (1958), the mediator must assist parties in movement into and through a transitional stage. The third-party will not necessarily enter the dispute at the beginning of the 'phase movement' and must therefore be able to distinguish between

stages and recognise the kind of assistance needed by the parties.

Douglas' study of mediation remains the most substantial piece of research in the area and has proved influential in later models of the negotiation process * (Morley and Stephenson, 1977).

Conclusion

The apparently contradictory findings of experimental work have left the status of the 'face-saving' hypothesis in an uncertain position. Couched as it is in a restricted view of third-party intervention (often no more than the suggestion of a settlement point), experimental studies bear only a slight relationship to field work (Landsberger, 1955; Douglas, 1957).

While the parties remain uncertain of the desirability of third-party intervention, advances in the understanding of the third-party's functions are unlikely. The same myths about the feats performed by the mediator will continue to operate as substitutes for more coherent knowledge of what actually happens in practice. Obviously such myths serve some function for those who play the third-party and for those who receive their offices. They promote the status and acceptability of the conciliator or mediator to the parties, by attributing to him or her superior wisdom and ability, and they protect him or her from comment and criticism, by asserting the neutrality of the third-party role.

The experimental research has not, however, progressed very far towards examining the participants' preconceptions of, and reactions to, third-party intervention, or indeed any other areas pin-pointed as social-psychological by writers in industrial

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* See Chapter 6 for further discussion of Douglas' model of negotiation

relations such as Flanders (1968) and Clegg (1979) Chapter 6. Instead, the definition of third-party intervention handed down by practitioners and policy-makers has been uncritically accepted. The following chapter, therefore, reappraises the traditional view that the third-party encourages reasonableness and compromise and argues that the available evidence provides an equally justifiable, but opposing view, which has received little attention in the past. This argument would suggest that the disputants reactions to the third-party's presence may have the opposite effect to that intended, resulting in greater intransigence by the parties and reduced probability of a compromise settlement.

CHAPTER THREE

A Simulation of the Effects of the Presence of a Third-Party on the Process and Outcomes of Negotiation

> But the tiger...the tiger...with them it's your mere presence which upsets them
>
> - Krespo Munanwaga (1979)
> Ugandan exile

Introduction

There is one point of consensus in the American third-party literature: the mere presence of an 'outsider', the third-party, changes the behaviour of the disputing parties (Rehmus, 1958, p.766). Peters suggests that his or her mere presence forces the parties to reconsider their positions and to merge their conflicting frames of reference. There is however little attempt to explain why the presence of a third-party affects the bargaining 'climate' and in what ways behaviour is changed. There is in short no examination of the *meaning* of the third-party's presence to the parties and it is surely on their understanding of the significance of his or her presence that the explanation of their changed behaviour rests.

It is possible to derive two contrasting predictions of how the presence of a third-party might affect behaviour.

(i) The third-party as the 'voice of reason'

The first argument is derived largely from practitioners of mediation and claims that the third-party represents, to the disputants, the 'voice of the community' (Cole, 1961, p.51).

In consequence, both sides should adopt a position which appears 'reasonable' to an outsider, since they cannot ignore the 'moral authority' vested in him or her (Warren and Bernstein, 1949). In the tripolar model of negotiation, McGrath (1966) argues that the acceptability of a settlement to the wider community is an influential force on negotiators' desires to appear reasonable and to reach a compromise with the opponent.

In the presence of a third-party, therefore, participants should be more willing to adopt a 'problem-oriented', co-operative stance, and negotiations should result in more compromise solutions. The presumed 'face-saving' role of the third-party, discussed in Chapter Two, can be seen to be associated with this line of reasoning. If 'public pressure', in the form of outside intervention, is brought to bear on the parties, negotiators can pass the responsibility for concessions on to the third-party and thus compromise with the opponent without appearing weak.

(ii) The third-party as 'evaluator'

If the third-party is, however, seen by the disputants as invested with external status, he or she may be perceived as fulfilling a primarily *evaluative* role (Cottrell, 1968). The 'temperate speech' and increased politeness, discussed by Meyer (1960) and Peters (1958) respectively, may indicate the greater formality resulting from the presence of a third-party. It has been demonstrated in experiments by Morley and Stephenson (1977) that the more formal the communication system,

the lower the occurrence of interpersonal exchange, and the greater the attention given to the presentation and evaluation of cases. Participants become more party-oriented and positions more entrenched. Any differences in strength of case, which are inherent in the situation, are consequently more likely to become apparent. To the extent that the third-party is seen to exert some control over the situation, party representatives must convince him or her of the validity of their bargaining position.

Following the argument through to its conclusion, the presence of a third-party should result in a more competitive, party-oriented stance, with fewer compromise solutions and more straight victories for one side.

One experiment which has measured the effects of a silent observer on the process and outcomes of negotiation (Belliveau and Stolte, 1977) offers some support to the latter prediction. The presence of a third-party increased the numbers of offers made in negotiation dyads, but had no effect on the number of agreements reached. Increased attention to the task may have resulted in an increased number of offers, without affecting agreements. Belliveau and Stolte (1977) do not examine the nature of those agreements which were made. Consequently no conclusions can be drawn about whether the presence of an observer benefited one side or the other, or in any way improved the quality of agreements. The number of agreements reached is, at best, a limited indicator of the effects of a third-party. The findings also demonstrate the

potential value of a system of content analysis which describes more of the debate than numbers of offers made: the correlation (rho) between number of offers and agreements was as low as .21. As long as participants have sufficient background material to allow some discussion of the issues, the content analysis system should be able to account for the effects of the third-party's presence on process as well as outcomes.

The Significance of the Simulation

Given the limited knowledge of third-party intervention and the conclusions reached in the preceding chapter on the ambivalent attitudes of British managers and trade unionists, the above discussion offerred a clear starting point for the analysis of the third-party role in collective disputes. The examination of the effects of a silent observer on negotiation, in the light of the two views of the third-party as 'voice of reason and force for compromise' or as 'evaluator', should provide the first step towards explaining the psychological significance of a third-party's presence for the parties. The effects of the 'mere presence' of a third-party cannot be measured easily in the field, where the third-party is unlikely to be a passive observer and there are no obvious control groups. The laboratory setting therefore allowed a simplfied model of the real situation to be created while maintaining a realistic negotiation task, constructed after the 'role-playing debate' paradigm (Morley and Stephenson, 1977).

In general, simulation of this type 'attempts to identify the essential aspects of the task situation and to translate as many as possible of these into experimental terms' (Morley and Stephenson, 1977, p.43) with the aim of drawing conclusions which will apply to the real world. The role playing debate itself aims to simulate a collective bargaining situation which allows conflict over inputs as well as over outcomes and which requires the participants to act as representatives of the particular groups in dispute. Communication between the representatives is unrestricted and the task materials, which are used as the basis for the debate, identify the terms of the particular dispute.

The Aims of the Present Experiment

The present experiment aimed to evaluate the effect of the mere presence of a third-party on the process and outcomes of negotiation. Two variables were manipulated: the status of the third-party (Expert or Naive), and the strength of case (management strong or union strong). The main prediction was that the party with the stronger case would be more likely to win when a third-party, particularly the Expert, constituted a third member of the negotiation group. This and other expectations are discussed in the following section.

METHOD

The identity of the third-party, as understood by the participants, is clearly an important factor contributing to the effect of his or her presence. The 'status' of the third-party

was therefore systematically varied between conditions. In the 'Naive' condition, the third-party was described as a third year undergraduate attending as part of required course work. In the 'Expert' condition, on the other hand, the third-party was described as a postgraduate student with experience in industrial relations. In each case the observer was instructed to maintain an interested but neutral attitude, avoiding eye-contact as far as possible. The first expectation, following the argument in the Introduction to this chapter, was that the presence of a third-party, and especially The Expert, would result in a more pronounced interparty orientation than would occur in the Alone condition (Hypothesis 1).

The interparty orientation should be manifested in the process of debate and decision-making. This was examined using Conference Process Analysis (c.p.a.) (see Morley and Stephenson, 1977), a category system designed for describing behaviour in negotiation groups, which is particularly sensitive to comparisons bearing directly on the question of the participants' concern with the task as a representative of a party (see also Stephenson, Kniveton and Morley, 1977, for an example of the detailed use of this system in the description of an industrial wage negotiation*

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* For further discussion of Conference Process Analysis see pages 108-112.

In addition, the actual agreements reached should differ between the experimental conditons. The presence of the third-party and, in particular, the Expert, should encourage the participants to achieve a solution which reflects the relative strengths of case of the two parties in dispute. 'Strength of case' was varied systematically, giving first one and then the other side the stronger case. Settlements should reflect relative strengths of case more in the 'third-party' than in the 'alone' condition, this being reflected in a significant interaction between third-party presence and strength of case (Hypothesis 2).

Third-party Presence and Role Relationships

In this experiment subjects enacted the role of management or trade union representative. Each participant should have some conception of the behaviour typically attached to such roles.

The presence of a third-party may make participants more conscious of their representative role, such that the differences in their respective positions are made more salient than when they negotiate alone. In this case, behaviour should become more conventionalised, and reflect commonly held stereotypes about management-union relationships. Stephenson, Ayling and Rutter (1976) showed that when the role relationship was more apparent (as in 'face-to-face' rather than 'audio-only' interactions), students defending attitudes favourable to management were more likely to take the initiative. In that experiment, as in this one, such students were selected for roles according to their attitude scores on standardized test of attitudes towards industrial relations. The authors suggested that social class differences between the two groups of management-oriented and union-oriented subjects may have contributed to the interaction between role and medium of communication. In this case, it was anticipated that management subjects, possibly more accustomed to 'public speaking', by virtue of their social and educational background, would be more likely to seek to validate their position as managers, by taking the initiative, in the 'third-party' condition than they would in the 'alone' condition. This would have the effect of making victories for management less likely to occur in the 'alone' than in the other two conditions (Hypothesis 3).

PROCEDURE

Undergraduate students were given a short questionnaire designed to assess attitudes towards industrial relations (see Stephenson and Dewey, 1976). The results were used to select a group of 18 students distinctly favourable towards trade unions and a further 18 who were favourable towards management. These were randomly paired to form 18 dyads, each dyad consisting of one subject favourable towards management and another favourable towards trade unions. The task of each pair was to come to an agreed decision on a dispute affecting the 'Townsford Company'. Instructions were as follows:

Instructions

> This is an experiment about industrial relations. You have been assigned the role of union (management) representative in a mock industrial dispute. Please read these thoroughly - you have 30 minutes study time. You will then be asked to take your assigned role in the negotiation, with another person, who has the opposing role. You will have 30 minutes in which to reach agreement with the opposing side. You may make notes, during the study time, if you wish. You will be able to keep both notes and information sheets throughout.

Assignment as Company (Union) Negotiator

> You have been selected by the Townsford Company (the Union) to represent it in its negotiations with the Union. Negotiations for a new 2-year contract broke down last week. You are to do the best you possibly can to get a good settlement of the contract for the company (union). It is essential to the company (union) that the contract be settled in this bargaining period. We realise that this involves compromises on both sides, and you are appointed to carry out binding negotiations for us.

Five major issues were negotiated - sick pay, hourly wage rate, cost of living increases, night shift differentials, and holiday pay. The participants received background material describing the rates paid by other firms, including an average for other industries in the country (the 'going-rate').

Data from an Independent Community Survey (last year)

The following table gives information on Townsford, four other textile plants and averages for non-textile industries in the country. The Moss plant and the Rose plant employ highly skilled workers.

	Townsford	Moss	Rose	Baxter	Kraft	Average for other industries in the country
No. of workers	100	300	90	150	300	60
Sick pay scheme	1/4	3/4	3/4	4/4	0	½
Hourly wage rate	80p	83p	83p	75p	77p	85p
Cost of living increases	No comp.	Yes full comp.	Yes full comp.	No comp.	Yes full comp.	Half compensation
Night shift differential	2	4	5	4	1	4
Paid vacation	3 wks for 1 year	3 wks for 1 year	3 wks for 1 year	3 wks for 1 year-	3 wks for 1 year- 4 wks for 20yrs	3 wks for 1 year 4 wks for 15 years

Issues for Bargaining

1. Sick Pay Scheme

Past contract: Company pay 1/4 of normal wages minus state benefit

Union demanded that company make up wages in full.
Company refused to pay more than 1/4 of difference.

	PROPORTION OF COMPANY PAYMENT				
COMPANY	1/4	2/4	3/4	4/4	UNION
Total money value per 2 years	0	12,000	24,000	36,000	

2. Wages

Past contract: 80p per hour

Union demanded an increase of 8p per hour.
Company refused outright.

INCREASE PER HOUR

COMPANY	00	01	02	03	04	05	06	07	08	UNION
Total money value per 2 years	0	2000	4000	6000	8000	10000	12000	14000	16000	

3. Sliding Pay Scale to conform to Cost of Living

Past Contract: pay scale is fixed through the terms of the contract.

Union demanded pay increase in proportion to increase in the cost of living. Company rejected outright.

COMPANY	No compensation	Quarter compensation	Half compensation	Three-quarters compensation	Full compensation	UNION
Total money value per 2 years	0	5000	10,000	15,000	20,000	

4. Night Shift Differential

Past Contract: an extra 2p per hour is paid for night work.

Union demanded a 2p increase to 4p per hour.
Company rejected.

INCREASE PER HOUR

COMPANY	0	½	1	1½	2	2½	3	3½	4	UNION
Total money value per 2 years	0	250	500	750	1000	1250	1500	1750	2000	

5. Vacation Pay

Past Contract: 3 weeks paid vacation for all workers with one year's service.

Union wanted 4 weeks paid vacation for workers with 10 years of service.
Company rejected.

COMPANY	3 wks for 1 yrs service	3 wks for 20 yrs service	4 wks for 15 yrs service	4 wks for 10 yrs service	UNION
Total money value per 2 years	0	500	2000	5000	

In addition, Background Information, which constituted the manipulation of 'strength of case', was provided as follows:

Union Strong Case

Townsford Textile Company - Background Information

The Townsford Company is a small textile company located in a large northern town. Townsford is highly respected for its quality work in the dyeing and finishing of raw woven fabrics. It employs approximately 100 men. Townsford's men are among the most skilled to be found in the area.

The general business conditions of the town are good and the financial conditions of Townsford are stable. Townsford is operating at full capacity and has a six month backlog of orders. Profits are not as high as at previous times, however, since the company has not raised the prices in several years in order to maintain a good competitive position with other sections of the industry. The company has been able to maintain a 6% shareholders' dividend and has made recent purchases of more modern equipment. Consequently, with the co-operation of the union, restrictive and protective practices, eg over-manning, interdepartmental transfer and task flexibility, were decreased.

The personnel policies at Townsford are not the most modern but are average for the plant size. The past president of the company, who retired three months ago, valued the reputation of Townsford as a 'good place to work'. His successor is viewed with some suspicion by the workers, due mainly to his statements about changing more of the work procedures to achieve greater efficiency.

For the last 25 years, a majority of the employees have been members of the union. Relations of the union with the company, for the most part, have been quite good with grievances promptly discussed and settled. The first strike occurred, however, three years ago and lasted 15 days. The workers lost the fight for a sliding scale wage based on increases in the cost of living index but did get the sick pay scheme, a 2 pence per hour wage differential for night shift workers and several other minor fringe benefits.

Townsford's wage scale of 80p per hour compares unfavourably with most other textile firms; it is considerably lower than those textile firms which employ workers of equivalent high skill and produce a similar high quality product. Wages in the industry have not increased in proportion to increases in the cost of living or increases in other industries.

Despite occasional small wage increases, over a period of years Townsford's workers have slipped from a relatively high pay scale to a position roughly equivalent to that of lowly skilled workers in other industries. This has caused some unrest among the workers and there is some danger of the workers shifting into these other higher paying industries. Unemployment is below normal in the area, and it has been difficult to obtain replacements who meet the skill requirements at Townsford.

Townsford gives seven paid holidays and three weeks of paid vacation to all workers with at least one year of service. The company also pays some sick pay contributions and grants other fringe benefits. More detailed information on Townsford and other firms may be found in the table that accompanies this background information.

The three year contract has now expired. Negotiations for a further two year contract broke down in the final week with both sides adamant in their positions. The only agreement reached was that each side would select a new bargaining agent to represent it, scheduled to meet today (the day before the strike) in an attempt to reach a quick solution and avoid a long strike.

Management Strong Case

Townsford Textile Company - Background Information

The Townsford Company is a small textile company located in a large northern town. Townsford is respected for the consistent quality of its work in the dyeing and finishing of raw woven fabrics. It employs approximately 100 semi-skilled men.

General business conditions of the town are good, but the financial conditions of Townsford are increasingly unstable. The backlog of orders has fallen, while profits have decreased with the rising costs of raw materials and transport.

The company has raised its prices to cover a recent wage increase, but is unable to pass full costs on to customers, if it is to maintain a competitive position with other sections of the industry. If the Union would co-operate with the company in the purchase and manning of more modern equipment, improvements in efficiency would in the long-term aid the company's financial position. The Union have, however, refused any discussion of re-organisation and consequent reduction of restrictive practices.

The personnel policies at Townsford are not the most modern but are better than those of most plants of the same size. The past president of the company, who retired three months ago, valued the reputation of Townsford as a 'good place to work'. His successor intends to continue with the same objectives.

For the last 25 years a majority of employees have been members of the union. Relations of the union with the company have been quite good, with grievances promptly discussed and settled. The first strike occurred, however, three years ago and lasted 15 days. The workers did not get a sliding-scale wage based on increases in the cost of living index, but obtained an hourly wage rate increase, a sick-pay scheme, a 2p per hour wage differential for night shift workers and several other fringe benefits.

Townsford's wage scale compares very favourably with most other textile firms. It is 4% below textile firms which employ workers of a higher level of skill, producing a higher quality product, but ranks higher than firms employing workers of a similar level of skill. Wages in the industry have increased in proportion to increases in other industries, and, to some extent, with increases in the cost of living.

With fairly regular wage increases over a period of years, Townsford's workers have remained on a high pay scale, relative to that of lowly skilled workers in other industries.

Unemployment is at an average level in the area: it should not be very difficult to obtain replacements of similar skill. Management are, however, reluctant to dismiss employees of some years standing.

Townsford gives seven paid holidays and three weeks of paid vacation to all workers with at least one year of service. The company also pays some sick pay contributions and grants other fringe benefits. More detailed information on Townsford and other firms may be found in the table that accompanies this background information.

The three year contract has now expired. Negotiations for a further two year contract broke down in the final week with both sides adamant in their positions. The only agreement reached was that each side would select a new bargaining agent to represent it, scheduled to meet today (the day before the strike) in an attempt to reach a quick solution and avoid a long strike.

The effectiveness of the manipulation of strength of case was determined in advance by successively re-writing the material until independent groups of subjects rated the respective information as more favourable to the Union or to the Management, respectively.

The 18 dyads were randomly allocated to one of three third-party conditions as follows:

Expert Observer - in this condition the observer was described as an experienced postgraduate student who had considerable knowledge of industrial relations, and who would like to sit in on their discussions.

Naive Observer - In this condition the observer was described as an undergraduate student who would like to sit in on their discussions.

Alone - In this condition the subjects came to their decisions with no other person present.

The six dyads in each condition were randomly allocated to three Strong Union Case and three Strong Company Case conditions. All sessions were audio taperecorded, and recordings later transcribed in full.

RESULTS

The outcomes are presented in Table 1 in terms of deviations from the going-rate (i.e. the company average figure) summed across all five issues.

Effectiveness of Experimental Manipulation

The manipulation of strength of case appears to have been effective, the unions averaging £5,917 above the going-rate when their case is strong, but conceding an average of £2,750 below the going-rate when the management case is strong. Employing Mann-Whitney U test, this difference reaches statistical significance in the Alone condition at the 5% level, and over all conditions at the 10% level.

Does the presence of a third-party assist the party with the stronger case (Hypothesis 2)

There is a distinct lack of evidence for the expected interaction between third-party status and Strength of Case. It was expected that the presence of an Observer would exaggerate the effect of Strength of Case. Unfortunately for the hypothesis, the Alone condition finds most impressively for the unions in both Union Strong and Management Strong conditions, and the Expert condition shows least difference

TABLE 1 Settlement-points summed over the 5 issues, and expressed as deviations from the 'going-rate' in 18 dyadic negotiation groups

Strength of Case	Third-party status: Naive Observer	$\bar{x}$	Third-party status: Expert Observer	$\bar{x}$	Alone	CELL MEAN $\bar{x}$
Management strong	-13,000	-4446·7	19,500	-6,333·3	1,000	2,833·3
	- 1,500		9,500		6,000	
	250		- 9,000		1,500	
Union strong	6,500	9,916·7	4,000	-3,666·7	15,500	11,500·0
	23,250		-11,000		10,500	
	0		- 4,000		8,500	
	$\bar{x}$					

Management strong	-£2,750
Union strong	£5,917
Naive observer	2,583
Expert observer	- 5,000
Alone	7,167

between Management and Union Strong case conditions. Although the Strength of Case manipulation was effective, there is no evidence for its differential effectiveness in the presence of a third-party.

Does the presence of a third-party influence which side will be victorious? (Hypothesis 3)

The discussion of the findings of Stephenson, Ayling and Rutter (1976) suggested that the third-party presence should induce the management representatives to assume a more authoritative role, and, hence influence the outcome in favour of the management side. This did in fact occur. In the Alone condition, the unions consistently scored above the 'going-rate' - to the tune of more than £7,000 on average - whereas in the two Observer conditions, and especially in the Expert Observer condition, management were considerably more successful, the average in the Expert groups being £5,000 below the 'going-rate' (see Table 1). Again employing Mann-Whitney U, the six groups in the Alone condition score significantly higher ($p = .05$) than those in the two third-party groups combined, and significantly higher than those in the Expert condition ($p = .021$). The Alone and Naive Observer conditions differed at only the 10% level of significance. In this experiment, the presence of an external observer strengthened the hand of management regardless of strength of case, thus supporting Hypothesis 3.

Do the third-parties increase orientation to presentation of party positions? (Hypothesis 1)

The *outcomes* of experimental negotiation groups have rarely been effectively related to the *process* of decision-making. In this case the results of applying Conference Process Analysis (c.p.a.) categories to the negotiation transcripts are examined, and considered in the light of the principal findings with respect to outcomes.

CPA provides two sets of rules, first for dividing transcripts into Acts, each 'act' making a single 'point', and a second set for classifying each act according to its Mode, Resource and Referent (see Morley and Stephenson, 1977, Chapter 10). The version employed in the simulation is portrayed in Figure 1. Following Longabaugh (1963), each act is categorised according to the 'meaning of the act for the . . . relationship as a relationship' (p.324).

The Mode dimension indicates how information is exchanged; the Resource dimension indicates the function of the information and the Referent dimension indicates who is being (explicitly) talked about or referred to.

The use of c.p.a. categories is illustrated in the following hypothetical exchange:

A. Perhaps it would be best if we agreed to treat this negotiation as a package deal.

B. I think that's a reasonable suggestion.

A. On second thoughts, no. Wouldn't it be best to examine each issue one by one?

A. Trust you to suggest that. It's to your advantage.

A. OK. Let's just split down the middle on every issue.

	MODE	RESOURCE	REFERENT
A. Perhaps it would be best if we agreed to treat this negotiation as a package deal.	Offer	Procedure	Both persons
B. I think that's a reasonable suggestion	Accepts	Procedure	Self
A. On second thoughts, no.	Rejects	Procedure	No referent
A. Wouldn't it be best to examine each issue one by one.	Seeks	Procedure	No referent
B. Trust you to say that.	Offers	Acknowledge-ment minus	Other
B. It's to your advantage	Offers	Acknowledge-ment minus	Opponent
A. OK	Accept	Acknowledge-ment minus	No referent
A. Let's just split down the middle on every issue.	Offers	Settlement point	Both persons

FIGURE 1 - Conference Process Analysis (CPA) categories employed in the classification of each 'act' (after Morley & Stephenson, 1977) in the simulated negotiations.

MODE	RESOURCE	REFERENT
1 Offer	Structuring Activity	0 No referent
2 Accept	1 Procedure	1 Self
3 Reject	Outcome Activity	2 Other
4 Seek	2 Settlement-point	3 Party
	3 Limits	4 Opponent
	4 Positive consequences of outcomes	5 Both persons
	5 Negative consequences of outcomes	
	6 Other statements about outcomes	
	Acknowledgement Activity	
	7 Acknowledgement Plus	
	8 Acknowledgement Minus	
	Information Activity	
	9 Information	

Incidence of c.p.a. Acts*: a further test of the effectivenss of Experimental Manipulation

As a further indication of the effectiveness of the strength of case manipulation, the total incidence of c.p.a. acts was examined. Strength of case had a marked effect. When the union case was strong, the shop stewards contributed 56.0% of all acts, management only 44.0%. With a strong management case, this figure rose to 53.9% and that of the union fell to 46.1%, the differences being statistically significant beyond the 5% level.

Overall Effects of third-party presence

In the Introduction to this Chapter two strands of argument, resulting in contrasting expectations about the effects of the presence of a third-party were discussed. The first approach, derived largely from those in the practical business of mediation, suggested that the effect of a third party should be to make participants more 'reasonable'. The other, derived from laboratory studies by Morley and Stephenson (1977), suggested that the presence of the third-party should reduce the salience of interpersonal exchange and, hence, increase the inter-party orientation of the negotiation group, resulting in fewer compromises and greater intransigence. The term

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*N.B. Two sessions were recorded so poorly that no transcript was available for analysis. Results are, therefore, based on 16 negotiations only.

'inter-party orientation' indicates the concern of the participants with being effective representatives, at the expense of maintaining harmonious personal relationships with other group members. Morley and Stephenson (1977), Stephenson, Kniveton and Morley (1977) and Stephenson, Ayling and Rutter (1976) have discussed the differences that exist between interaction in situations which favour interpersonal and those which favour inter-party exchange. It is suggested here that the third-party will increase the representatives' awareness of their role obligations, resulting in increased emphasis on the exchange between parties, at the expense of the interpersonal relationship.

On the basis of results obtained in the studies cited above, deductions were made about the correlation of each c.p.a. category with task orientation, and predictions then made concerning the association between each c.p.a. category and third-party presence. Table 2 lists these predictions. In general third-party presence is expected to result in increased emphasis on the representative role (e.g. use of Party and Opponent as referents), increased belligerence (e.g. use of Limits, Negative Consequences of Outcomes, and Acknowledgement minus as Resources, and Reject as a Mode) and increased attention to the presentation of case, and probing of the opponent's case (e.g. use of Modes - Offer, Seek; and Resource - Information). Conversely, third-party presence should decrease interpersonal considerations (e.g. use of Referents - Self, Other and Both Persons; and use of

Resource - Acknowledgement plus) and decrease movement towards a conclusion (e.g. use of Resources - Procedure and Settlement Points; and use of Mode - Accept).

In 12 out of the 18 instances, both Naive and the Expert observers had the predicted effect, i.e. those groups negotiating in the presence of an observer had a higher or lower incidence of the c.p.a. category than the Alone groups, as predicted in Table 2. The exceptions were Modes - Offer, Reject and Seek; Resources - Limits and Acknowledgement plus; and Referent - Self. Of these, only one (Acknowledgement plus) indicated the reverse trend to that predicted in both observer conditions. The overall pattern, however, was clearly in the expected direction, with twice as many categories (12) fulfilling expectations as would be expected by chance (6). This yelds a chi-square of 11.86 (2df; $p < .01$). The Referent dimension, in particular, points to the increased inter-party orientation in the third-party conditions. In the Alone condition there was less reference overall to persons and parties, and what reference there was tended to persons. In the third-party conditions, on the other hand, references tended towards the Parties. Differences in the Mode dimension showed greater positive response in the Alone condition (increased use of Accepts) and on the Resource dimension those negotiating in the presence of a third-party were more inclined to criticise (Acknowledgement minus, Negative Consequences of Proposed Outcomes), whereas the Alone groups were more constructive (Positive Consequences of Proposed Outcomes).

TABLE 2 Predicted and obtained association of CPA categories with presence of third-party

	Predicted Positive Association	Result	Predicted Negative Association	Result
Modes	Offer	*	Accept	**
	Reject	*		
	Seek	*		
Resources	Limits	*	Procedure	**
	Negative consequences of outcomes	**	Settlement-point	**
	Acknowledgement minus	**	Acknowledgement plus	-
	Information	**		
Referents	Party	**		
	Opponent	**	Self	*
			Other	**
			Both persons	**

CODE:

** Both Third-Party (Expert and Naive) conditions differ from Alone condition in predicted direction.

* One Third-party condition differs from Alone condition in predicted direction.

- Neither Observer condition differs from Alone condition in predicted direction.

'Procedure' has frequently been shown to be associated with a joint problem-solving approach to the business in hand (see especially Stephenson, 1978; and Stephenson, Kniveton and Morley, 1977), and the increased incidence of Settlement Points and Other Statements about Outcomes in the Alone condition may indicate a greater readiness to reach agreement than in the third-party condition. In the presence of a third-party, participants seemed to 'talk around' the issues (increased use of information). The (unexpected) increased Acknowledgement plus probably indicates an increased formal politeness in the third-party condition. The overall pattern suggests that, by increasing the emphasis on participants' obligations to represent a party position, the presence of a third-party stresses the existence of the inter-party conflict, and makes a more personally oriented, problem-solving approach to the issues less likely to occur.

Further c.p.a. analysis of the Interactions between presence of a Third-Party and Role

Although the overall pattern of results indicated that the presence of third-parties could, if anything, enhance the dimensions of the conflict between parties, ANOVA showed no statistically significant differences between conditions on individual c.p.a. categories. There were, however, a number of statistically significant interactions which, although not specifically predicted, were sufficiently interesting to merit some tentative discussion.

One of the principal determinants of outcomes concerned the apparent effect of the observer, especially the Expert, on the balance of the relationship between the parties. Observers increased the success of management, a finding thought to be partly due to a heightening of management's conventional 'leadership' role when under public scrutiny. Is there any evidence for this in the c.p.a. results? There was some evidence (not statistically significant) that role differentiation was increased in the presence of a third party. Management became more critical and less conciliatory, whilst the union representative moved in the opposite direction, in a number of instances. For example, the union representatives made more use of Acknowledgement plus (i.e. 'praise' and 'respect') directed towards management in the third-party conditions, whilst management representatives made less use of such statements. With respect to Negative Consequences of Proposed Outcomes - statements concerning the disadvantages of proposals - the union side tended to decrease this form of belligerance when a third-party was present, whereas the management representatives increased such behaviour, and the Positive Consequences of Proposed Outcomes category showed the reverse pattern.

Further evidence for role differentiation when exposed to third-parties comes from two highly significant three-way interactions. These indicate that Strength of Case may affect tactical adaptation to the third party's presence. The use of the Reject mode is of interest, in relation to changes made by management between the Alone and the third-party conditions. The patterns of

TABLE 3 Percentage of CPA acts classified as Mode: Reject, calculated separately for Management and Union contributions in different third-party conditions according to Strength of Case

Third-Party Status	Union Strong Case		Management Strong Case	
	Mgmt.	Union	Mgmt.	Union
Naive	4.46	2.98	0.20	1.38
Expert	0.78	3.32	1.35	0.76
Alone	1.92	1.42	0.80	2.66

Analysis of Variance: Mode - Reject

Source	SOS	DF	VE	F	DF2	P
A	12.7711	1	12.7711	2.32	10	0.15830
B	2.8566	2	1.4283	0.26	10	0.77609
C	1.9890	1	1.9890	2.28	10	0.16203
AB	11.8083	2	5.9041	1.07	10	0.37773
AC	0.7520	1	0.7520	0.86	10	0.37510
BC	1.7458	2	0.8729	1.00	10	0.40175
ABC	13.6455	2	6.8228	7.82	10	0.00903

A - Strength of Case

B - Observer Presence/Absence

C - Management/Union Role

change are quite different depending on which party has the stronger case, and the direction of change depends on the status of the third-party. When the union had a strong case, management rejected their proposals consistently if the observer was Naive ($\bar{x} = 4.46$) but adopted the reverse strategy when the observer was said to be an Expert ($\bar{x} = 0.78$). 'Naivety' and 'Expertise', however, elicited quite the opposite trends when management itself had the strong case.

This indicates that participants in the two roles are affected differently by the presence of a third-party, and that these differences vary according to the status of the third-party. The picture is further elaborated by two more three-way interactions. Table 4 shows the incidence of Resource Limits, that is statements which 'set limits' to an agreement without making a specific proposal of a settlement point. Limits are frequently employed as an excuse for intransigence: e.g. statements to the effect that 'it is the Board' or 'the workforce' who insist on a particular figure: the negotiator's hands are tied. It is interesting to note first the difference between the two management conditions in the Alone groups. When management had the upper hand they were more likely to set limits ($\bar{x} = 5.50$) than when the union was strong ($\bar{x} = 1.60$). This picture changes in the presence of a third party; then, given a strong case, the management representatives showed the reverse pattern. The presence of the third-party made them less likely to set limits, i.e. they exploited their advantage less in the presence of a third-party. On the other hand, when the union had the stronger

TABLE 4 Percentage of CPA acts classified as Resource: Limits calculated separately for Management and Union contributions, in difference Third-Party conditions according to strength of case.

Third-party Status	Union Strong Case Mgmt.	Union	Management Strong Case Mgmt.	Union
Naive	6.53	1.89	3.08	6.25
Expert	3.45	4.24	1.39	2.23
Alone	1.60	3.14	5.50	3.03

Analysis of Variance. Resource: Limits

Source	SOS	DF	VE	F	DF2	P
A	0.0824	1	0.0824	0.01	10	0.94325
B	14.0101	2	7.0050	0.45	10	0.64811
C	0.1249	1	0.1249	0.03	10	0.87478
AB	20.4314	2	10.2157	0.66	10	0.53764
AC	3.1873	1	3.1873	0.67	10	0.43303
BC	3.5227	2	1.7614	0.37	10	0.70062
ABC	46.2784	2	23.1392	4.84	10	0.03380

A - Strength of Case

B - Observer Presence/Absence

C - Management/Union Role

case, the third-party presence seemed to encourage management representatives to adopt this particular form of intransigence, and the incidence of Limits increased.

Table 5 portrays the results for the use of Referent Self. The Referent dimension is used only when a person or party involved in the negotiation is explicitly referred to in the act, and 'self' is coded only if the act contains no other referent. Use of the Referent dimension has in the past been shown to be a useful indicator of task involvement and conflict, with references to Party (one's own side) and Opponent (the other side) being particularly good indicators of the involvement of the negotiators as party representatives (Morley & Stephenson, 1977). Inspection of Table 5 shows that variation in the union representative's behaviour largely accounted for the statistically significant interaction. When the union representative had the stronger case, he was more 'self-opinionated' when Alone, whereas when faced by strong management, he became more self-opinionated in the presence of a third-party, especially the Expert.

In summary, it is clear that for both management and union representatives their response to one another, and to differences in their relative power positions, was determined, at least in part, by the presence and status (expert or naive) of a third-party. In general, management differentiated more - acted more strategically - between conditions. But the most important finding is that the significance of their role relationship was changed by the presence of a third-party.

TABLE 5 Percentage of CPA acts classified as Referent: Self, calculated separately for Management and Union contributions, in different third-party conditions according to strength of case.

Third-party Status	Union Strong Case Mgmt.	Union	Management Strong Case Mgmt.	Union
Naive	5.47	8.64	5.27	9.16
Expert	8.43	7.82	8.74	12.65
Alone	5.11	17.12	6.81	5.89

Analysis of Variance. Referent: Self

Source	SOS	DF	VE	F	DF2	P
A	3.5380	1	3.5380	0.15	10	0.70621
B	28.0548	2	14.0274	0.60	10	0.56914
C	98.5321	1	98.5321	10.18	10	0.00964
AB	71.8784	2	35.9392	1.53	10	0.26349
AC	12.6501	1	12.6501	1.31	10	0.27954
BC	19.4389	2	9.7194	1.00	10	0.40043
ABC	108.2700	2	54.1350	5.59	10	0.02342

SUMMARY and CONCLUSIONS

1. The mere presence of a third-party, especially an expert, is sufficient to change the agreements reached by negotiation groups.

2. The presence of a third-party does not necessarily favour the party with the stronger case. There was no evidence for the expected interaction between third-party presence and strength of case in the present experiment.

3. The main effect of the third-party was to increase the salience of the role relationship between the participants, in this case strengthening the position of the management role. This is reflected in a tendency for management representatives to improve their performance in the third-party conditions.

4. There was evidence to suggest that the importance of the interpersonal relationship was reduced in the presence of a third-party, which, compared with the Alone condition, resulted in increased emphasis on the dis-agreement between parties and less concern with co-operative problem-solving.

5. Conference process analysis suggested that the effect of the third-party's presence on role relationships varies in complex ways according to strength of case.

The participants in this experiment clearly interpreted the presence of the third-party as primarily evaluative in nature not as encouraging 'reasonableness' and compromise.

The effect is more pronounced when 'expert' status is attributed to the observer, which it may be conjectured is similar to that status traditionally attributed to the third-party. The significance attached to the observer emphasised the inter-party dispute, increased task-orientation and differentially affected the performance of management and union roles, benefiting the management side.

The result is surprising, since it contradicts the common belief that the third-party has an ameliorative influence on unresolved conflict.

The generality of the result is of course open to question. The simulation examined only the simplest aspect of the third-party's role and its significance for inexperienced 'negotiators', who may be more susceptible to impressions of being evaluated than practising negotiators. In reality, the third-party generally assumes a more active part in proceedings and the decisions reached have long-term consequences both for the relationship between party representatives and for their constituents.

Nothwithstanding the realistic nature of the task materials, the extent to which all relevant aspects of the behaviour of representatives is reproduced in the simulate system is uncertain (Nicholson, 1970; Morley & Stephenson, 1977). The nature of the exercise may mean that the participants act, not as party representatives, but as

individuals bargaining with other individuals.

The already complex results of the present experiment, combined with lack of knowledge of actual practice served to raise serious doubts about the value of further experiments at this stage. Would these merely be 'experiments in a vacuum', departing further and further away from any significance for the real world context which they attempted to simulate?

Whilst experimental studies have the advantages of control and (relative) simplicity, the researcher did not feel confident that any model of third-party intervention, constructed on the basis of simplified relationships observed in the experimental setting, would be easily generalisable to other contexts. If such an analytical approach was used it would be essential to create a model which could also account for the factors affecting the relationship between the simulate system and the real world. (See also Druckman, 1973). Without a reasonable knowledge of the industrial context in which third-party intervention operates the possibility of creating such a model seemed remote. It would seem more useful to devise experimental studies which have a clearly specified relationship to the original social context and which can therefore explore more precisely the relationships between apparently influential factors in that setting. Experimental social psychology alone, without the links with the context of interest, is likely to produce an unnecessarily restricted understanding of the factors influencing process and outcomes in industrial disputes. In concentrating on the methods of the laboratory,

however elegant the experimental design, it is also possible to adopt an overly narrow approach to the choice of materials, settings and measures, again harming the generality of experimental findings. Field study, in combination with experimental simulation, seems to offer a fuller and more differentiated understanding of the dynamics of industrial disputes and negotiation, promising as it does a greater variety of situations, cases and measures.

The experimental results gave a clear indication of the significance of the third-party's presence for the role relationship between the negotiators, who behaved as if they expected their performance to be evaluated. This resulted in an emphasis on the inter-party orientation of the debate and greater concern with the presentation of case than with the maintenance of harmonious personal relations. The status of this finding, which went against common expectations, would remain uncertain without extension to fieldwork. In practice, the evaluative role of the third-party is most closely linked to arbitration, where the third-party is traditionally regarded as performing a semi-judicial function. The significance of the experimental findings could therefore be further examined in relation to arbitration, which also provided a reasonably public, and consequently less sensitive, forum for research than conciliation/mediation.

CHAPTER FOUR

The Functions and Process of Industrial Arbitration

Introduction - The Traditional View of Arbitration

Arbitration is usually described as a semi-judicial, evaluative process, where the parties to a dispute surrender their responsibility for its resolution to a disinterested third party. For this reason it has been treated as quite distinct from negotiation, where the responsibility for the decision rests on the parties (Morley and Stephenson, 1977; Magenau and Pruitt, 1979). The arbitrator is expected to listen impartially to the arguments of both sides and, on the basis of the evidence put forward, decide the issue between them.

This chapter questions the validity of the typical image of arbitration and suggests that a more comprehensive understanding can be developed if it is viewed in the context of different models of negotiation.

The common view of arbitration as a judicial process does however serve a particular purpose. Its acceptability as a method for the resolution of disputes, is dependent on the perceived impartiality and fairness of the process. If the arbitrator's decision appears to be politically motivated or otherwise biased, the parties have no compelling reason to abide by it, and no reason to end their dispute. Consequently it should not be surprising if practitioners and officials, concerned to maintain the credibility

of arbitration, emphasise its evaluative character and stress that it is possible, in industrial relations or other contests, to make an impartial judgement of the intrinsic merits of the case.

The arbitrators themselves must be above suspicion: as Lord Amulree (1929), first President of the Industrial Court, pointed out, the reasons given for the failure of arbitration in the latter part of the nineteenth century centred around the competence or incompetence of the arbitrators. They were chosen, he said, from

> 'what has been described as the "educated and professional classes". This did not mean that they were necessarily biased, but it rendered them liable to that suspicion on the part of the work people'. (p.54).

John Lockyer (1979), Director of Arbitration at the British Advisory Conciliation and Arbitration Service (ACAS), comments that the parties' statements of case should consist of reasoned arguments, 'based on irrefutable facts' (p.71), in order to allow the third-party to exercise his or her skill in reaching a fair decision. J.R. Clynes, once a practising arbitrator, quoted with approval by Lord Amulree and re-quoted by Lockyer(1979), stated that the arbitrator should be a person of

> 'known impartiality, judicially minded and capable of estimating evidence and reaching a reasonable decision according to the revealed facts of the case' (Lockyer, 1979, p.57).

Arbitrators prefer to present themselves as having a specially skilful approach to the issues in dispute, thus establishing their authority over the parties. Although the trade union experience would suggest that compromise ('splitting the difference') is the most common outcome of arbitration (Jenkins and Sherman, 1977), arbitrators themselves frequently dismiss the compromise option as an inadequate display of their skill and resolve (Lockwood, 1955 ; Lockyer, 1979).

Continual compromise, it is feared, would appear unprincipled and would therefore be damaging to the status of arbitration.

In the past, examination of the consistency and impartiality of arbitration decisions has been made difficult by the third-parties' traditional reluctance to give reasons for their decisions. Such a practice, it is argued, may give rise to the evolution of a body of 'case law', which would seriously damage the perceived 'flexibility' of arbitration. In the 1977 Annual Report of the Central Arbitration Committee, however, Sir John Wood argued that it was necessary to give reasons, in order for the parties to see a consistent pattern emerging from decisions on similar issues. The most common arguments used for not giving reasons, apart from the reluctance to create precendents, are, first, that such reasons may be seen as invalid by the parties and, rather than settling the dispute, may serve to refuel it. Second, in the case of an arbitration tribunal, members may reach the same decision for different reasons. Presumably the reasoning which lies behind these arguments again concerns the arbitrators' fears of undermining the parties' faith in the impartiality and fairness of the process.

Arbitration as a Political Process

Those presenting arbitration as an evaluative, semi-judicial process have usually been the officials or practitioners of arbitration. Other writers have not been convinced that arbitration can be 'neutral' even if arbitrators could be impartial. The debate about arbitration

has therefore chiefly concerned the issue of whether it performs a judicial function, producing decisions based on the merits of the case, or whether it is a political process which serves to maintain an existing status quo.

The political aspects of the process are pointed out by Hyman (1972b), who comments that the choice of arbitrator and the principles applied, by him or her, to the 'facts', in reaching a decision, can be a potent basis for dispute in their own right. Wight-Bakke and Kerr (1948) characterise arbitration, not as an authoritative dispensation of justice, but as an instrument of collective bargaining: the arbitrator cannot

> 'depart so far from a...compromise, consistent with the respective power and desires of the parties, that one or the other of them will be likely next time to prefer open hostility to peaceful settlement' (p.484)

Arbitration is inevitably a political process in the sense that its decisions are based on certain principles drawn from the social context in which collective bargaining takes place. To the extent that conflict exists between employer and employees about the proper rate for the job and other terms and conditions of employment, there is also room for argument about the principles to be applied in deciding any particular dispute. Even the application by the arbitrator of the common concept of a 'fair wage' is far from straightforward. Lockwood (1955) points out that

> 'notions of what is fair and just for each particular group are sufficiently indeterminate so that even the strictest attempt to define wages differentials rationally (according to their economic and social justification) gives leeway for interpretations that vary fundamentally with the different conceptions that (those) groups have of their own social role and that of others, or else proves unacceptable because its determinateness ignores precisely these evaluations' (p.343).

It is on this basis that the contribution of arbitration to industrial relations has generally been described as the maintenance of an existing status quo, with respect to a particular group of employees in a particular industry. Arbitration, Lord Amulree (1929) argued, moves

> 'in the rear rather than in the van of reform. Its function is rather to peg down and make secure gains which have been won...and not itself to lead the advance' (p.186).

Fair wages legislation which provides the union with a right to unilateral arbitration, has generally aimed to protect the lowest paid and most poorly organized, such that the arbitration award, decided on the basis of comparisons with similar groups, becomes a substitute for negotiated terms and conditons of employment already gained through collective bargaining by those other groups.

No matter how closely arbitration may aim to approximate to a judicial process involving the impartial evaluation of arguments in the light of established principles, the industrial third-party must inevitably consider the implications of any decision for the longer-term relationship between the parties. This might be described as the 'expediency' factor in any decision (Guillebaud, 1970) or the choice of an award according to the arbitrator's understanding of what will work in practice, rather than what might be suggested by a strict consideration of the merits of the case. 'Expediency' in general appears to mean the arbitrator's estimate of what the parties would probably have settled for, without his or her intervention, thus departing somewhat from the image of arbitration as a purely evaluative or judicial process. The so-called 'economic' considerations taken into account by the arbitrator, which usually include notions like (1)

the employer's ability, in terms of company profits, to meet union demands or (2) the 'going-rate' of pay for the job in question, are inevitably controversial. When such principles are involved in the determination of an award, perhaps it is not surprising that the reasons for the decision are either not given or only hinted at.

The Relationship Between Arbitration and Collective Bargaining

The 'political' versus 'judicial' argument relating to arbitration bears a surprising resemblance to the wider debate on the nature of collective bargaining. Both arbitration and collective bargaining have been described as inherently conservative, lacking the potential for furthering social change and redressing inequalities.

It has been argued that psychological models of negotiation (e.g. Deutsch, 1973), by dealing with abstract situations removed from the social context, have treated conflict as value-free and a-political, the result of misunderstandings and poor communication between individuals. Social and ideological conflict becomes a disruptive factor which merely delays mutual accommodation and settlement. Critics have argued that researchers should recognise the existence of a non-reducible, ideological conflict which exists between groups in society (Muscovici, 1972; Billig, 1975), suggesting that bargaining can only be understood in its political context. Indeed, it often seems that the resilience of collective bargaining frameworks resides in their conventions for avoiding the expression of fundamental ideological differences and mechanisms for reaching 'temporary accommodations' between different

interests and expectations. When ideological confrontations do occur, they are treated as though they were ritual 'asides' to the main business of the day. The negotiation continues when the attack subsides (Anthony, 1977).

The underlying balance of power between parties is likely to be reflected in the outcomes of negotiation, just as it is reflected in the 'expedient' arbitration decision. The participants, Anthony and Crichton (1969) suggest, are guided by 'tacit expectations' of what an acceptable settlement is, where the actual outcome will tend to reflect the relative costs to each side of rejecting, rather than accepting a given demand (Morley, 1981). The limited usefulness of arbitration in the case of 'institutional conflict' casts further light on the relationship between the two processes.

Included in the category of institutional conflicts are 'struggles for power within the camps of the two main contestants in the market' (Lockwood, 1955, p.339) and the establishment and furtherance of collective bargaining institutions. It could include provisions under the now obsolete union recognition clauses in the British Employment Protection Act (1975). Voluntary arbitration, Lockwood (1955) states, is dependent for its success on the prior acceptance of collective bargaining institutions by both parties. The adverse publicity and lengthy legal disputes surrounding ACAS's attempts to arbitrate on union recognition claims (such as that at Grunwick), and the eventual abolition of that section of the legal statute demonstrated the impossibility of arbitrating on the issue of collective bargaining itself, despite the fact that ACAS

was vested with the power, by virtue of Section 1 (2) of the Employment Protection Act, to encourage the extension of collective bargaining and to promote the improvement of industrial relations. Institutional conflict also includes the fight for power to decide what constitutes an appropriate issue for joint determination and how that issue should be dealt with (Anthony and Crichton, 1969; Morley, 1980). Arbitration it seems is inseparable from collective bargaining. It is impossible to arbitrate on collective bargaining, because what is arbitrable is determined by the nature of the underlying collective bargaining relationship itself.

The Characteristics of Negotiation and Arbitration

In the light of apparent similarities between the two debates, one concerning collective bargaining and the other concerning arbitration, it is important to re-examine and possibly revise the long-standing division between the two. The evidence so far suggests that they are inextricably related, but the question remains as to how far their shared characteristics extend beyond their role in British industrial relations to features of the processes themselves. Are negotiation and arbitration essentially similar processes after all?

There are numerous attempts to describe the essential features of bargaining and negotiation in the literature. It has been characterised as a charade, a game of chance and skill, a distributive process, a search for mutually beneficial agreements,

a competitive struggle, a collaborative process, one of a group of situations involving joint decision-making under conditions of uncertainty and so on. (See Morley and Stephenson, 1977; also Walton and McKersie, 1965; Cross, 1977; Druckman, 1977; Magenau and Pruitt, 1979; Morley, 1979; 1980). Scanning the lists of characteristics, it becomes clear that most of the descriptions could also be applied to the process of arbitration. Morley's (1980) description of negotiation lists five principle defining factors as follows. First, negotiation is described as a joint-decision-making process; second as involving conflict or struggle between opposing sides; third as also requiring a shared belief in the existence of a common interest or the possibility of mutual gain from the relationship; fourth, negotiation involves each side in a form of strategic decision-making where each tries to present a certain image to the other, whilst taking a sceptical view of the images portrayed by the opposing party representatives (Snyder and Diesing, 1977); and lastly, negotiation generally involves talking about a relationship before taking any action.

The only feature which at first sight distinguishes arbitration from negotiation is the first mentioned; negotiation involves joint decision-making. The remaining four characteristics are undoubtedly common to both processes. The parties to arbitration have conflicting interests and values which are reflected in their different ordering of preferred outcomes. Their willingness to submit the dispute between them to arbitration is a clear indication of their continuing mutual dependence and their commitment to reaching a settlement, rather than terminating the relationship. They face the same issues of inferring intentions from statements made by the other side and structuring their own responses accordingly. Their position is, if anything,

made more complex by the addition of an extra party, the arbitrator, who is also likely to adopt a sceptical, questioning attitude towards the claims and counter-claims made by the disputants. Finally, arbitration in Britain always involves discussion of the parties' relationship, in the context of the immediate dispute, before action is taken. As in negotiation, the discussion may range from a lengthy exposition of each side's case to brief statements of positions.

The joint decision-making aspect of negotiation has, however, generally been thought to exclude arbitration. This claim is re-examined below in the light of a discussion of the responsibility for and control over the process and outcomes of arbitration, as distributed between party representatives and the arbitrator.

The Distribution of Responsibility for the Process and Outcomes of Arbitration.

The extent to which arbitration can, in practice, be treated as a process where sole responsibility for decision actually rests on the arbitrator is debatable. An experimental study of simulated litigation hearings (Thibaut and Walker, 1975) describes the possible distribution of control over process and outcome, between disputants and third-party, ranging from the inquisitorial system (where only the third-party decides what evidence is necessary to the decision) through the adversary system, (where the parties have control over selection and presentation of evidence and argument) to negotiation, in the absence of third-party control. In simulated litigation hearings where the third-party was present, participants were more satisfied with the fairness of the adversary system than with the inquisitorial system. This result was however modified by the existence of two factors: time pressure on the parties to reach agreement and the existence of a pre-established

standard for agreement. Under these conditions, it seems the inquisitorial procedure, which gives most control over outcomes to the third-party, can produce a satisfactory resolution.

With reference to arbitration, Thibaut and Walker's (1975) findings imply that different procedures may be more suited to the resolution of different kinds of dispute. A reference to arbitration which is couched in the terms of an existing agreement or established practice may be amenable to a simpler procedure, with greater control over the outcome exercised by the arbitrator, than one resulting, for example, from an annual wage negotiation. In the latter case, a process approaching that of negotiation, with participants sharing responsibility for the decision is more likely to produce a satisfactory outcome.

Is there any evidence that such a difference between types of case brought to arbitration actually exists? American industrial relations practice distinguishes between disputes of 'right' and disputes of 'interest', the former involving the interpretation of contract terms and the latter concerning a decision over the terms of a future contract. 'Grievance' arbitration, or the settlement of a dispute of rights, appears to be the closest approximation to the 'judicial' process: the 'rules' to be applied in making the decision are already set down by the parties and the arbitrator is asked to interpret them with reference to a particular situation in dispute. In Britain, however, unlike the United States of America, the parties do not generally recognise a distinction between disputes of 'right' and disputes of 'interest', since contract terms are not defined as precisely or as legalistically as they are in the U.S.A. The statute law and common law models of bargaining described by Clegg (1979) are relevant in this context. The statute law model, which applies reasonably well

to the U.S.A. is based on a substantive agreement, covering all those areas currently regarded as open to joint determination. The agreement defines relations between the parties until the end of its term. A dispute procedure specified by the agreement is used to decide issues concerning its interpretation.

The common law model is based on an agreed disputes procedure which deals with issues as they arise. Any relevant substantive rule, or customary working practice, may be used to decide the issue, but 'the model recognises no sharp distinction between disputes of right ..... and disputes of interest '(Clegg, 1979, P.117). The common law model applies most closely to British manufacturing industry, while in comparison public sector bargaining has relatively more in common with the statute law model, although the relevant substantive agreements tend not to have a definite, 'fixed-term' and new agreements may be negotiated at any time.

It is evident from Clegg's (1979) discussion that, although the distinction between 'rights' and 'interests' is blurred in Britain, the arbitrator is nevertheless likely to be faced with two different types of issue; the first requiring an interpretation of the terms of a current agreement, or application of a substantive rule, according to a particular grievance; and the second requiring a decision over the terms of a new agreement. The latter entails a decision between conflicting principles and criteria for settlement. Certain cases may, of course, involve both of these, whilst others may be dealt with as though they were open to a solution in terms of an existing agreement, if this is likely to improve the acceptability of the arbitrator's decision to the parties.

Additional support for the suggestion that the satisfactory resolution of different types of issue is likely to require different arbitration procedures, and a different distribution of control over

process and outcomes, is provided by a study of simulated arbitration decisions (Fleming, 1965). The results of the study indicate that in those single issue cases where an established criteria or standard for agreement exists, a number of decision-makers (in this case legally trained students) independently reached the same decision. In such cases, the arbitrator could presumably assume greater control over proceedings, in order to elicit the 'evidence' necessary to satisfy the decision-making criteria. Where the 'experimental' materials (derived from actual cases) were complex and unusual, there were conflicting decisions on outcomes and the same decisions were justified on different grounds, dependent, as one of Fleming's respondent's commented, at least partially on the third-party's initial views on such issues as 'the right of management to manage.' If personal predilections are influential in such cases, it is all the more important that the major responsibility for decisions remains with the parties and that the hearing procedure operates to give maximum control over the presentation of arguments to the parties, and maximum freedom to answer points raised by the other side. Moreover, if part of the 'complexity' of the dispute stems from its concern with the terms of a future pay agreement, the decision must be seen to be equitable, according to principles justifiable to the parties, and consequently applicable in practice. A restrictive procedure, which vests control over outcome in the third-party, is unlikely to be satisfactory in the resolution of such cases.

Control over proceedings does not, however, reside solely along a continuum from adversarial to inquisitorial systems, as suggested by Thibaut and Walker (1975). In a forum where the outward expression of antagonism is considered to be, at best, unhelpful (Lockyer, 1979), control may also be imposed in the form of 'procedural conventions' where 'procedure' becomes institutionalised through its continued use

over a number of years. Its strength appears to reside in the creation of a deliberately artificial situation. As Hyman (1972a) points out, in a discussion of the pre-1971 engineering industry's disputes procedure, at formal conferences between management and unions the 'highly formalised' exchanges during the proceedings contrasted with the equally contrived jokes and socialising engaged in by opposing representatives beforehand. The formality of proceedings independently of who has control over the decision, can be used to ensure a narrow definition of the issue and function to exclude personal hostilities; both may be necessary to achieve at least temporary resolution of the dispute.

The discussion of distribution of control over procedure and outcome suggests that the distinction between negotiation and arbitration processes is not clear-cut. It is feasible to suggest that the nature of arbitration itself will change, according to the type of case and the distribution of responsibility between participants for the outcome. Control over procedure and decision may vary along a continuum from those situations where responsibility is shared between the parties (including the third-party) to those where responsibility rests on the third-party alone.

Following Fleming (1965), those cases couched in the terms of an existing agreement or framework should be amenable to a simpler procedure, where the third-party takes relatively more control than the parties. The more unusual, wide ranging disputes outside the framework of existing agreements require greater participation from the parties in structuring the debate and reaching a conclusion. Given the discussions of statute and common law models of bargaining (Clegg, 1979), a clearer division between the two types of case may be expected in public sector arbitration than in private sector arbitration.

The Use of Different Arguments to Justify Different Types of Claim

The two types of case identified are likely to be justified to the arbitrator in terms of different arguments and according to different underlying principles. Collective bargaining settlements are usually justified by reference to a number of 'moral rules'. Magenau and Pruitt (1979) distinguish between six different principles which may be used. These are equity, which assumes that 'outcomes should be distributed according to the relative contributions of the parties' (p.185), equality (equal division of goods between parties), needs, opportunity (to gain the greatest benefit), equal concessions from present positions and historical precedent. The use of one or more of the principles described is determined by such factors as background culture, the relative status of the parties and the past history of negotiation between the sides.

Evidence from Clegg (1979) indirectly suggests that most claims for improved terms and conditions of employment rest on appeals to equity and historical precedent, where these principles are predominantly interpreted in relation to comparisons drawn between different groups of workers. These comparisons are usually made on fairly limited grounds of similar jobs, in the same industry and district. Major inequalities of the income hierarchy are rarely considered (Hyman and Brough, 1975). Comparisons with other groups of workers, Clegg (1979) notes, are advanced not on economic grounds, but on moral grounds concerned with fair pay. Given the widespread nature of such arguments, the 'merits of a case' concerned with improving terms and conditions of employment are likely to be advanced on similar grounds at arbitration. The parties should expect that the claim will be seen as fair and reasonable to the extent that other comparable groups of employees can be shown to be relatively advantaged.

In relation to grievances where the claim is couched in the terms of existing industrial practice or which concern a disciplinary code, evidence of McCarthy and Coker (cited in Clegg, 1979, p.251) indicates that union representatives aim to establish precedents which can be used as standards of fair practice in later cases.

This method of establishing a particular claim would appear to create an industrial relations equivalent of the 'common law' system used in the British courts. It could in theory be based on a number of the principles of fair treatment described by Magenau & Pruitt (1979).

Thus at arbitration it is expected that different types of arguments will be used in different cases. Claims for improved terms and conditions of employment, outside the framework of an existing agreement, should rely mainly on the use of suitable comparison groups to establish the fairness of the claim. Claims concerning workplace grievances, couched in the terms of an existing agreement, based on custom and practice or relating to a disciplinary code, should be structured around the establishment of a general rule for judging the fairness of treatment in other similar cases. If such a rule already exists the argument will centre on the application of that rule to the particular instance in dispute.

Arbitration as a Process of Problem-Solving

The past treatment of arbitration as an evaluative, a-political process could be taken to imply that its process characteristics actually share more in common with problem-solving than with

negotiation, in the sense that a careful weighing up of the pros and cons of alternative solutions to an industrial 'problem' is called for.

In the psychological literature, the process and characteristics of negotiation groups have been compared and contrasted with the process and characteristics of problem-solving groups. Morley & Stephenson (1977) argued that the two processes are fundamentally dissimilar: 'whereas in problem solving groups coping with the task leads to conflict, in negotiation groups conflict yields to coping with the task' (p.259). The major distinguishing feature of the negotiation group has been regarded as the obligation on group members to represent a particular party. Negotiators must reconcile the conflicting demands of, firstly, representing their constitutents and, secondly, reaching a settlement with the other side through the medium of their personal relations with each other as members of the same, face-to-face group.

The opposing tradition has claimed that all groups, where members are faced with a common task, share certain characteristics (Wall, 1973). In particular, Landsberger (1955), in a study of twelve mediation sessions, concluded that the more closely the session followed Bales' predicted phase movement for co-operative, problem-solving groups, the greater the number of disputed issues which were resolved.

When arbitration has been explicitly characterised as serving a problem-solving function, however, its process characteristics seem to share more in common with those of negotiation. Wood (1979) suggests that a problem-solving approach to arbitration allows the parties to maintain as much responsibility for the final

settlement as possible, thus ensuring their commitment to it and its long-term viability. This approach is, he suggests, particularly important in cases where there are no obvious or well-established criteria for the decision. In such cases, arbitration is usually depicted as having an 'educational' function, assisting and directing the parties on the longer-term development of their relationship (Concannon, 1978).

In an American survey of 101 arbitrators, managers and union representatives, Shore (1966) found some evidence that the unions were more favourable towards a problem-solving approach, with management preferring a more formal, restricted use of arbitration, perhaps because the unions believed that allowing the third-party to take a wider view of the terms of reference would result in the strengthening of collective bargaining arrangements, whilst management preferred to maintain greater independent control over the regulation of such institutions.

In general, the 'problem-solving' approach removes formal authority for the decision from the arbitrator, the role becoming more like that of specially skilled negotiator, or mediator, guiding the parties towards the resolution of the dispute and longer-term management of their relationship. At the same time it gives the arbitrator much greater influence over the nature of that relationship. Influence, however, is generally regarded as one of the core components of negotiation, rather than problem-solving (Snyder & Diesing, 1977; Morley, 1981). Hence it may be conjectured that the third-party in the supposed problem-solving role becomes equally involved in negotiating the terms of his or her relationship with the parties as they are in negotiating the terms of the relationship between themselves.

In relation to models of negotiation, problem-solving, with what Morley (1980) calls a political component, has also been described as one aspect of a larger bargaining process, which moves through a series of ordered stages or phases (Morley & Stephenson, 1977; Morley, 1980; Egan & Loveridge, 1982). It is equally probable that problem-solving will form part of an arbitration process, which is overall closer to the typical process of negotiation than it is to the problem-solving process described by Bales (1950). This expected similarity to the negotiation process is based particularly on the obligation to represent a party position which is shared by members of negotiating teams and those individuals responsible for the conduct of the arbitration.

The Decision to use Arbitration - A part of the Strategy of Negotiation

By virtue of their 'mixed-motive' relationship, the parties to negotiation inevitably try to assess the hidden intentions of the opposing party and calculate the implications of their own responses and manoeuvres for the nature of the relationship between them. Such attempts at mutual influence and control are likely to extend to the use of arbitration, where arbitration is employed, by one or both parties, as an integral part of a negotiating strategy.

The first important aspect of strategy is likely to be the timing of a claim. Union representatives must choose when to pursue an issue to arbitration, in the same way that union negotiators select the most opportune moment to advance a wage claim (Batstone, *et al* 1977). Factors such as government pay policy, member support (or non-support), strength of union organisation, long-term plans for the union's position in the company and so on are likely to influence the decision to use arbitration. The creation of an agreed disputes procedure,

with provision for arbitration is likely to have inherent strategic implications. Representatives must choose which issues to pursue as far as the arbitration stage in the light of the long-term implications for their overall relationship. Arbitration may also be used if union representatives believe that there would be little support for industrial action on a particular issue, which nevertheless furthers certain long-term aims and improves their credibility in the eyes of the members. Institutional conflicts, whilst being the most intractable and least amenable to arbitration, may underly other disputes which are superficially more limited in scale. For example, a successful union claim for the disclosure of certain company information, under the terms of the Employment Protection Act (1975), would allow union representatives to establish a strategic bargaining position vis-a-vis the employer. Hence the union may try to further its long-term aims, in the short term, by an appeal to arbitration. Alternatively, it may demonstrate its determination in the preparation for an annual wage negotiation by pursuing a number of apparently minor issues to arbitration (Fleming, 1965). In each case, arbitration becomes part of a negotiating strategy.

Models of Negotiation and Their Implications for Arbitration

The psychological component of negotiation and, by extension, arbitration is inextricably linked with uncertainties inherent in the process of interpreting the moves made by the other parties and responding to the perceived intentions of those moves. Arbitration, in the context of the collective bargaining relationship, therefore involves the parties in a form of strategic decision-making, which requires them to work through the 'core' processes of information-interpretation (including search for information and definition of

the terms of the dispute), influence and decision-making (Snyder and Diesing, 1977; Morley, 1981). Much of the psychological literature relating to both negotiation and arbitration has neglected the first of these, preferring to present a predetermined scenario to participants, where negotiators are involved only in an exchange of bids for predetermined items of a predetermined value.

This process of 'concession-convergence' from opposing opening positions to a settlement point somewhere between the two, along with the concession dilemma (how to 'stand firm' and yet simultaneously signal flexibility) and tactics to induce concessions, have all received a great deal of attention from psychologists, perhaps because such issues promise relatively easy access to the quantitative and less elusive aspects of negotiation and because of their intuitive appeal to the common view of bargaining as 'haggling over a price' for a particular commodity. It is not, however, entirely clear how these aspects of the process fit into the wider understanding of bargaining and negotiation (Morley, 1981).

The concession-convergence view of bargaining has been contrasted with negotiations where the value of the items in dispute is not fixed beforehand. The latter, Zartman (1977) argues, result in negotiators inventing a formula, 'firstly to cover their own positions and then to provide the basis for a mutually satisfactory agreement ' (p.80). The formula or framework establishes a 'referent principle' which allows the parties to determine the detailed values of the items. In Zartman's terms, the concession-convergence process is in itself only the 'implementation of detail' which is subsequent to the negotiation of a formula. Theoretically, the formula provides the parties with an agreed definition of the issues in dispute, which will allow them to reach an agreement under a 'common notion of justice' (p.76). Deciding

on the formula is likely to involve not only attempts at mutual influence and persuasion, but also, and in parallel, a great deal of searching for and interpreting information.

Loose analogies can be drawn between this description of the negotiation of a 'formula', descriptions of the 'problem-solving' aspect of negotiation (Morley, 1981) and descriptions of the sub-process of 'integrative bargaining' identified by Walton and McKersie (1965). All three suggest that in certain situations, or at certain stages of negotiation, the participants are mainly concerned to define the terms of the negotiation this time, in the context of their longer term relationship, and work through disagreements about the definition of the 'problem' and choice of appropriate criteria for settlement, in order to achieve a solution which is of mutual benefit and which is viable in practice. There are also parallels between descriptions of the concession-convergence process, Zartman's 'implementation of detail' and the sub-process of distributive bargaining (Walton and McKersie, 1965). These all refer to decisions about the actual division of goods between the parties. The two aspects of negotiation could occur as closely inter-related stages of the bargaining process, where the particular terms of the settlement can only be decided after a joint exercise in issue-definition and problem-solving. The distributive aspect could also occur independently and with greater frequency than the definition of issues and establishment of formulae, if only because a great deal of negotiation assumes certain pre-existing definitions and frameworks. Given the present state of knowledge, it is however unclear whether the majority of negotiations focus only on the distributive aspect, which is generally reverted to when difficulties emerge (Morley, 1981).

None of the experimental work on arbitration has considered the implications of a model of negotiation which treats the process as more than

an exchange of bids to reach an agreed settlement point. By assuming a concession-convergence model, the literature has been able either to assume that the main tactical use of arbitration is as a face-saving device by the parties or to regard it as a 'tactical' threat used on both parties, by an external agency, to induce concessions and produce more rapid agreements.

If the concession dilemma has deepened to the point where any movement is likely to seem wrong (Magenau and Pruitt, 1979), negotiators will be unable to resolve for themselves the conflict between the need to establish an image of firmness and strength, whilst also indicating a willingness to compromise. In such cases, arbitration becomes a way of 'saving face' for the negotiators, who wish to concede, but find themselves in an impossible position, vis-a-vis their constituents and each other. Passing the formal responsibility for the decision to an arbitrator may prove convenient, although the actual job of the arbitrator would be to develop a tacit understanding of the parties' unspoken intentions for the outcome of the dispute.

It is sometimes argued that such a use, or 'abuse', of arbitration undermines the parties' own collective bargaining procedures. If arbitration becomes the final stage of procedure, negotiators may withhold concessions in the belief that if too much is conceded now, they will be left in a weak position at arbitration. Walker (1970) argues that the Australian system of compulsory arbitration has encouraged intransigence in the parties and made them more reluctant to reach an independent agreement. Experimental studies have provided evidence to the contrary, suggesting that the anticipation of binding arbitration increases the likelihood of a negotiated settlement. (Johnson and Pruitt, 1972; Johnson and Tullar, 1972; Bigoness, 1976). It is however difficult to relate these findings to voluntary arbitration arrangements in Britain. When control groups (ie. no

expectation of third-party intervention) are compared with experimental groups, Johnson and Pruitt (1972) found that the only significant difference was in the rate of concessions: 'negotiators who anticipated binding intervention conceded more rapidly' (p.7), while Bigoness (1976) found that subjects in normal bargaining conditions conceded almost as much as those expecting compulsory arbitration and those expecting voluntary arbitration did actually concede less. Johnson and Tullar's (1972) findings are made more difficult to interpret because of the introduction of a high versus low 'need to save face' variable. High need to save face resulted in fewer concessions, regardless of the type of intervention anticipated.

The use of 'final offer' arbitration has been advocated as a way of avoiding the parties' tendencies to withhold concessions in the expectation of a favourable 'compromise' solution from the arbitrator. In final offer arbitration, the third-party must choose between the closing positions of the two parties. Magenau and Pruitt (1979) argue that this procedure has the effect of increasing the uncertainty of the parties about the arbitrator's likely decision and thus encourages them to make greater concessions, in order to reach a settlement before arbitration.

The experimental studies cited have presented arbitration as a statement of a settlement point, where the settlement point is either determined by a compromise rule or an unspecified rule. It has been possible to treat arbitration in this simplified way because all of the issues have been couched in terms of a negotiation concerning only the convergence of the parties towards a settlement point. If this model of negotiation is contrasted with the 'formula-detail' model (Zartman, 1977), two different types of arbitration are suggested, with correspondingly different roles for the arbitrator. A concession-

convergence model of bargaining would imply that the arbitrator is required to manage the process of concession-convergence for the parties. Superficially, this is a role close to that traditionally assigned to the arbitrator as 'adjudicator' of the dispute. Yet, in effect, and viewed in the context of the bargaining relationship, it involves the arbitrator in reaching a tacit understanding with the parties over the actual outcome. The 'formula-detail' view of negotiation suggests that the process of concession management is only one aspect of the arbitrator's role. From this wider perspective, the third-party would need to adopt a more flexible approach to the issues, aimed at understanding and resolving the underlying grievances and difficulties faced by the parties. The arbitrator's intention should be to negotiate with the parties a framework for the resolution of the dispute, possibly leaving them to 'implement the detail'.

The arbitrator may find it necessary to adopt one or other of these approaches according to the apparent nature of the dispute and must therefore decide when it is necessary to delve into the wider implications and intricacies of a claim and when to accept the issues at 'face value'. Accepting the dispute at face value, on its merits, implies that the third-party would be predominantly responsible for managing the process of concession-convergence on an issue which the parties want resolved for them. Examination of the underlying significance of a particular dispute implies negotiation of a framework for its resolution. The complexity of the issues may be one indicator which decides the type of approach to be adopted.

The Effect of Complexity of the Dispute on the Arbitration Process

There is some evidence that the more complex the negotiation the less the emphasis given to questions of the details of concessions on either side and the more the concern with developing a common framework

for negotiation (Winham, 1977; Morley, 1980). The more complex the matters in dispute, the less likely are the participants to have a thorough understanding of all the relevant material and arguments. Hence they are unlikely to be clear at the outset about what their minimum goals are, waiting for the negotiation itself to determine what is available. Negotiators are also less likely to know what would be acceptable to the other side and are probably uncertain of the current position of the other (Balke, et al, 1973). As the number of parties increases, the more difficult is the coordination of their differing interests and demands (Midgaard and Underdal, 1977).

Accordingly, it is suggested that where negotiations are complex and the implications for party positions of particular outcomes are uncertain, the arbitrator will not be able to adopt the adjudicatory role, but is more likely to negotiate a formula for the resolution of the dispute with the parties.

The Role of the Parties to Arbitration

There is a widespread belief that bringing in a third-party encourages the disputants to be 'reasonable' and adopt a conciliatory stance. An experimental study of the effect of a third-party's presence on the behaviour of party representatives and on the outcome of a dispute suggests, however, that third-parties can have the opposite effect, increasing the likelihood of intransigence between the sides (Stephenson and Webb, 1982). The experimental findings suggest that the presence of a third-party encourages participants to adopt a relatively formal approach to the dispute, resulting in increased concern with the presentation of party positions, designed to impress upon the arbitrator the validity of the party claims and decreased emphasis on the personal relationship between participants, making them less willing to compromise over the resolution of the dispute.

Allowing for the naïvety of the experimental role players and taking into consideration related findings on the effects of an audience (Zajonc, 1965; Geen and Gange, 1977), it can be argued that those representatives who have some experience of arbitration are likely to behave differently from those who are inexperienced. Social facilitation experiments have shown that the presence of an audience has an adverse effect on the learning of a new task. The effect is generally increased if the participants believe that the audience is evaluating their behaviour. Those with previous experience of arbitration should therefore be able to make more skilful and strategic use of the procedures than those who are inexperienced. The latter should be capable only of striving to create the 'right impression' on the arbitrator. This effort may in turn result in a poor performance and unnecessarily restricted presentation of arguments relevant to the claim, to the detriment of the overall strength of the case. As Egan and Loveridge (1982) point out, 'implied audiences can become very important in determining the judgements made by the actors' (p.31). It is important to recognise that participants at arbitration are striving to create a certain image of themselves as individuals, and of the party which they represent, for the benefit of the arbitrator. Whereas in negotiation they may be imagining the interpretation likely to be put upon their performance by favoured superiors and peers, in arbitration negotiators also have to make certain projections about the interpretation of their behaviour and performance by the third-party, where they are removed from the familiar negotiating context and will, if inexperienced at arbitration, be unknown to the arbitrator. To some extent, the arbitration hearing bears a striking resemblance to the experimental simulation. The negotiators are placed in a strange context, expected to perform their representative role before an unknown audience who

will decide some aspect of their future relationship to each other.

In a symbolic interactionist critique of the interpretation of experiments using the prisoner's dilemma game, Alexander and Weil (1969) show how, in a situation where the 'official task rules' are sufficiently ambiguous, the importation of 'unofficial ground rules' by the players means that they strive to create and live up to the 'situated identity' of the 'good player' which is embodied in the experimental setting. Just as every social situation has an associated set of 'official rules' which define appropriate behaviour, so each situation has a related set of 'unofficial rules' which

> 'function to import a part of the inclusive identity of "person" into the structure of social control imposed by merely situated "player" identities'(p.124).

Thus the norms of the 'good sport' or the 'good player' or, in the context of arbitration, the 'good representative' demand that the participant lives up to expectations apart from the official requirements placed on the individual by virtue of his or her part in the situation. Hence the actual goals of the interaction are likely to be broader than the formal, structured requirement of 'presentation of the case for the union or management at company X' and will extend to representatives' efforts to present themselves to the arbitrator as 'good representatives'. Translating Alexander and Weil's (1969) experimental manipulations into the arbitration context, representatives may be concerned to convince the third-party that they are, at one and the same time, honest, trustworthy and honourable individuals and tough, intelligent, sharp-witted negotiators. It should also be noted that the participants are therefore likely to be acting out a role which is different from the one expected of them by the formal, official structure of arbitration. In the anxiety to create and express an

appropriate situated identity, negotiators may lose sight of or misrepresent the aspects of the dispute which are in reality most relevant to the arbitration.

Influence of Type of Bargaining Relationship on Arbitration

It is not only the relative skill and experience of the parties which is likely to influence the nature of the arbitration process, but also the associated factor of their previous relationship to each other. Batstone et al (1977) distinguish between 'strong' and 'weak' bargaining relationships. Stewards and managers who had strong bargaining relationships were more open with each other about the internal politics of their respective organisations and aimed to protect their opposites from being deceived. Strong bargaining relationships require a much greater degree of trust between the two sides and imply a better understanding of the significance of each other's statements and strategies. Batstone et al (1977) demonstrated that shop stewards engaged in a strong bargaining relationship with management gained more benefits for the workforce with fewer outright confrontations than those in weak bargaining relationships, where the shop stewards saw their job as representing the wishes of their members.

Those negotiators with a strong bargaining relationship are therefore less likely to use arbitration, but when it is used it is more likely to be an extension of their bargaining relationship. Those with a weak bargaining relationship, adopting a confrontation approach, are more likely to pursue claims to arbitration where arbitration itself becomes a threat used by one side against the other.

The Role of the Arbitrator

In negotiations which take place in the absence of any third-party, the behaviour of each side is generally expected to parallel the behaviour of their opposites. The arbitrator is not, however, necessarily expected to mirror the behaviour of the parties. In both of the potential models of arbitration discussed previously, it is however, assumed that

the arbitrator may have to act as an especially skilled negotiator, either as adjudicator and manager of the concession-convergence process, able to perceive and correctly interpret the parties' signals, which have remained misunderstood by the parties themselves, or as a 'guide' during the process of negotiating a framework for resolution of the dispute with the parties.

Descriptions of the 'effective negotiator' may therefore be able to cast some light on the requirements of the arbitrator's role. On the whole, these descriptions distinguish between those negotiators who are able to work in terms of a careful, systematic forward plan, related to the issues, which is flexible enough to allow them to derive maximum benefit from information gained about the other party's intentions, and those negotiators who are more rigidly fixed on one view of the dispute and one objective.

In terms of these descriptions, effective arbitrators should be able to explain their understanding of the actions and intentions of each party to the other in a number of different ways, summarising positions and testing the parties' own understanding of events so far. They should be able to assist the parties in surveying a wide range of alternative solutions, rather than narrowly focussing on one type of outcome (Rackham and Carlisle, 1978; 1979; Morley, 1980; 1981; Snyder and Diesing, 1977). In general the effective arbitrator might be expected to structure the session into a smooth series of steps and organise the parties to allow implementation of the overall plan, rather than allowing the hearing to become side-tracked by trivial issues (Winham and Bovis, 1978).

It may be important for the arbitrator to distinguish those cases where the parties are locked into an 'irrational' bargaining mode. In terms of Snyder and Diesing's (1977) model of the bargaining process the irrational bargainer is over-deterministic in outlook and unable to vary the image of the other according to feedback received from the

events of this particular negotiation. The bargainer's rigid system of beliefs results in the retention of fixed images of the other and defence of the same policies even when, to an outsider, they are clearly out-dated. The representative's beliefs 'are organised so that all considerations point to the same strategic choice' (Morley, 1981, p.118).

An arbitrator meeting parties with such inflexible postures is faced with the task of attempting to vary the image of each to the other, much as Douglas (1962) suggests that the mediator acts as a 'perceptualiser' of the sides to each other. According to Snyder and Diesing's (1977) description of the rational bargainer, the effective arbitrator, in order to find a solution to such a dispute, would need to forestall over-rapid judgement of the case, initiate an active search for information designed to test a series of alternative hypotheses about the underlying circumstances of the dispute and reasons for the current impasse, aim to understand the problem from the perspective of both sides and clarify their positions and expectations in order to determine which aspects of party positions remain open to change and by how much (Snyder and Diesing, 1977).

At present it is unclear how far these considerations apply to the arbitrator's role in general and how much they are specific to the 'integrative' approach to bargaining rather than those disputes which require the arbitrator to decide between party positions. It is tempting to suggest that what the arbitrator may be doing in the 'irrational' case is widening the terms of the dispute, thus allowing the adoption of a more integrative approach.

Summary & Conclusions

Arbitration is generally believed to be a peaceful means to the resolution of conflict between two or more parties. Practitioners of arbitration have generally described it as an evaluative, semi-judicial process, conducted by impartial, authoritative chairmen, who will temper

their evaluations with common sense, according to the perceived needs of the parties' future relationship and the present economic context. A different picture has however emerged from the social sciences, where arbitration has been treated as a political process which has more to do with the regulation of conflict than its resolution. The extent to which it is possible to assume the existence of a consensus, in collective bargaining, over such concepts as the 'fair wage' and other conditions of employment has been questioned and doubts about the nature of 'impartiality' in such a context have been raised. Little, if any, research has examined the actual process of arbitration, or explored in depth the arbitrators' claim to impartiality and fairness and the effects of the arbitration process on the parties' presentation of issues in dispute. There has been only minimal examination of the relationships between types of issues, procedure and outcomes and little suggestion as to how variations in procedure might affect the nature of decisions reached.

It is, however, possible to gain some insights into these issues by examining arbitration from the perspective of collective bargaining. This entails a reassessment of the long-standing division between the two processes. Arguments about the fundamental character of arbitration in fact share much in common with arguments about the fundamental character of collective bargaining: both are generally described as inherently conservative in nature, regulating and accommodating conflict between two sides of industry rather than producing any change in the underlying conflictual relationship itself.

It is argued here that arbitration is inextricably linked with negotiation. In particular, and reiterating Douglas' (1962) argument relating to mediation, it is asserted that the process and functions of arbitration cannot be understood apart from the collective bargaining process. An arbitrated dispute can be conceptualised as part of the

continuing pattern of negotiation between the parties. Whether it is a planned part of a negotiating strategy or an unexpected consequence of the 'concession dilemma', its use at a particular time will play a part in influencing the parties' views of their relationship and of the value of the immediate stake and prize.

Arbitration shares the main defining characteristics of negotiation, the only potentially significant difference resting on the responsibility for the decision itself. The extent to which this actually differentiates the two processes does however appear to have been exaggerated by traditional claims that the arbitrator bears sole responsibility for the outcome of the dispute. The discussion of the potential distribution of control over procedure and outcome between the participants suggests that it is important to distinguish between two types of case which may be dealt with by arbitration. Those issues requiring the interpretation of an existing agreement or working practice, in the light of a specific grievance, may be amenable to a simpler procedure, which vests relatively more control over outcomes in the third-party, than those disputes over the establishment of a new agreement, which require a greater degree of participation from the parties in structuring and defining the issues, examining alternative solutions and creating the framework of future practice. Essentially, the more complex the issues in dispute, the less likely it is that the arbitrator will be able to take the traditional role of adjudicator. Two contrasting models of the negotiation process (the 'concession-convergence' model and the 'formula-detail' model) in fact suggest two contrasting roles for the arbitrator. Those relatively narrow issues, defined according to established practice or current agreements, are likely to be amenable to a decision between party positions, with the arbitrator managing the process of concession-convergence for the parties. If the dispute is however relatively diverse, poorly defined and unstructured with no

clear-cut decision available, the skilful arbitrator is more likely to negotiate an overall structure or framework for agreement with the parties.

It may prove possible to achieve the latter only with experienced participants. The public image of arbitration as a semi-judicial, evaluative process, which on the one hand functions to maintain its credibility as a method of dispute resolution, may also have a detrimental effect on the performance of those who are inexperienced at arbitration. If participants approach the situation expecting to be evaluated, both professionally and personally, they are likely to be most concerned to establish their identity as a 'good representative' in the eyes of the arbitrator. Such a strategy may carry hidden costs if it misleads negotiators about the relative importance of different aspects of their party's position and arguments.

The effective arbitrator, apart from having to counteract such 'evaluation anxiety', is expected to behave as a particularly skilful negotiator who is either able to achieve a tacit understanding of the desires of the parties as to the most appropriate resolution of the dispute or is able to ease the parties through the process of negotiation, assisting them in the creation of a future agreement.

The following chapters (5-8) examine the predictions made and issues raised in relation to two contrasting groups of arbitrated disputes. The first group of cases, containing the most detailed material (chapters 6, 7 and 8), concerns the use of established arbitration provisions in the public sector where the arbitration board and parties have a great deal of experience of both the arbitration process and each other. The second group of cases (chapter 9) consists of a series of *ad hoc* arbitrations with

inexperienced parties. All of the issues will be examined as far as possible in relation to both sets of cases and relevant comparisons drawn. In general, however, the public sector arbitrations carry the bulk of the analysis, with the *ad hoc* arbitrations serving as illustrations of particular points which have significance for the overall argument.

The initial claim to similarity between the processes of negotiation and arbitration is examined in Chapter 6. The rationale behind the two most established stage or phase models of the negotiation (Douglas, 1962; Morley and Stephenson, 1977) and problem-solving (Bales, 1950) processes are reviewed in some detail. These two models are compared with the process of arbitration in order to establish the relationship between them and to cast further light on the significance to be attached to such phase movement models in general. Questions relating to control over procedure and the responsibility for outcomes, and the extent to which predictions based on the two models of negotiation ('concession-convergence and 'formula-detail') fit the process of arbitration are raised in Chapter 7, in relation to a discussion of the relative simplicity or complexity of the issues in dispute, and in Chapter 9 in relation to *ad hoc* arbitration. The respective roles of arbitrator and parties, and their effectiveness with respect to resolution of the issues, are examined firstly in relation to the established group of negotiators who use arbitration regularly and therefore have a good understanding of the process and the particular arbitration board (chapter 8) and secondly in relation to the series of *ad hoc* arbitrations with inexperienced parties (chapter 9).

FIELD STUDY ANALYSES

CHAPTER FIVE

INTRODUCTION TO THE FIELD STUDY

The Historical Background to the ACAS. Arbitration Service in Britain

The British government's official provisions for arbitration can be traced back to legislation in 1800, 1824, 1867 and 1872. None of these acts were particularly successful, the first preventing collective references to arbitration, the next two excluding claims about rates of pay, except by mutual consent, and using the magistrates courts to enforce the exclusion, and the last Act attempting to encourage legally binding agreements (Concannon, 1978). The Conciliation Act (1896) was the first to draw on the principle of voluntarism, seeing the state as providing a reserve settlement mechanism, if all else failed. The Industrial Courts Act (1919), following the advice in the Fourth Report of the Whitley Committee (1918) which was set up to consider the experience of compulsory arbitration during World War I, limited the role of state intervention, by stating that arbitration should be invoked only after the exhaustion of the parties own procedures. As well as providing for the Minister of Labour to refer disputes to an *ad hoc* Board of Arbitration or a single arbitrator, the Act created a standing body of arbitration, called the 'Industrial Court'. The 1896 and 1919 statutes established the context in which arbitration is still regarded in Britain: its success is to some extent measured by the infrequency of its use. Both

Acts were passed during, what Wedderburn and Davies (1969) call, 'a formative era of... labour law and practice' (p.160). The trade union movement managed to persuade the government to exclude legal sanctions, for collective action in trade disputes, from the legislation, and further support for voluntary regulation was encouraged by the emergence of a, now familiar, collective bargaining structure after the War. The development of voluntary collective bargaining arrangements was further supported in the reports produced by the Whitley Committee.

The Industrial Court, Britain's standing body of arbitration, became the Industrial Arbitration Board, in 1971 (under the Industrial Relations Act, 1971) and was similar in composition to the present Central Arbitration Committee, created in 1976.

The Conciliation and Arbitration Service was set up as a body independent of government in 1974. It was renamed the Advisory Conciliation and Arbitration Service in January 1975, and became a statutory body, under Part I of the Employment Protection Act 1975, in January 1976. Its staff were transferred from the old Department of Employment Conciliation and Arbitration Service and the Commission for Industrial Relations, but its 'independence' was vested in its tripartite governing Council, made up of representatives of employers and trade unions as well as independent members.

The case-load dealt with by arbitration has increased steadily since the inception of the service. In 1973, Department of Employment appointed arbitrators heard 54 cases, whilst in 1975, 292 cases were heard by ACAS, appointed arbitrators. This figure had increased to 315 cases by 1978.

Between 1974 and 1978, the distribution of cases heard was as follows:

	Per cent of total cases referred to arbitration
General pay claims	10.4
Other pay matters and terms and conditions of employment	70.3
Recognition	0.3
Demarcation	1.6
Other trade union matters	0.9
Redundancy	0.7
Dismissal and Discipline	12.4
Others	3.4
	100.0

(Lockyer, 1979. p.14-15)

As the table shows, the most common references to arbitration concerned aspects of employees' terms and conditions of employment. Recognition and redundancy issues, on the other hand, are rarely brought to arbitration.

Cases may be heard by a single arbitrator, an *ad hoc* board of arbitration, or, in the public sector, by a relatively permanent board of arbitration. The single arbitrator arrangement is said to guarantee a speedier disposal of the claim. A board of arbitration, consisting of an independent chairman and two side members, one each from management and trade union backgrounds, is likely to be requested when the parties fear that the technical complexities of the dispute may be beyond the capabilities of one person. All participants, acting as arbitrators or side-members, are drawn from lists of 'suitable' people, compiled by ACAS. These are frequently

academics (some with previous experience in industry), retired conciliation officers, lawyers, trade union officials and managers. ACAS officials do not themselves arbitrate.

The ACAS Arbitration Process

Arbitration, through ACAS, is generally arranged only with the mutual consent of both parties, who normally agree on the 'Terms of Reference' to be dealt with by the arbitrator. These terms define the limits of the arbitrator's authority and prescribe the terms in which any award may be couched. Insufficient care in framing the terms of reference may result in a decision which is unacceptable to the parties (Jenkins and Sherman, 1977).

Following the appointment of an arbitrator, a hearing is arranged where the parties present their case to him or her. Prior to the hearing, the parties are asked to prepare a written statement of their case, thus ensuring that the arbitrator has some knowledge of the issues in dispute, before the hearing. Parties are also asked to exchange their written statements beforehad, so that they will be prepared to answer the arguments raised by the other side.

The hearing itself may be conducted in private or in public, with each side electing one main representative. In the official version of procedure, the 'claimant' party is usually asked to state its case first, followed by a reply from the opposing side. Both parties and the arbitrator may then ask questions and discuss the statements. Finally, each side is asked whether it wishes to make a closing statement, this time in reverse order with the claimant speaking last.

The arbitrator or board makes a decision after the end of the hearing. A written report and award is then submitted to ACAS for distribution to the parties.

Public Sector Arbitration

Background to the study

The examination of public sector arbitration offers an opportunity to study its use by experienced practitioners, in the context of relatively stable arrangements. This section of the field study consists of a process analysis of twelve arbitration hearings. Ten of these concerned the same parties (management and up to three unions) from a public sector industry, and the same arbitration board chairman. These ten cases were analysed in the context of thirty arbitration awards, made by the same board, always with the same chairman, for the same parties. The remaining two cases came from public sector industries and had arbitration arrangements which were similar to those of the other industry.

Detailed analysis of the sample was felt to be well justified, because of the rarity of such material in social psychological analyses. The *ad hoc* nature of experimental problem-solving or decision-making and negotiation groups is a frequent source of criticism of conclusions. Whatever the limitations of the case study method, this research goes some way towards answering

questions about the generality of experimental findings, by examining some of these in the context of established and continuing groups of negotiators, who are well known to each other and whose actions have long-term consequences for their future working relationship. The study should furthermore contribute in its own right to theories of group behaviour.

Background to the Arbitration Board

The board which presided over the majority of these cases originates in the parties' long-established negotiation machinery. Appeal to the Board of Arbitration forms the final stage of procedure, as shown in the diagram below:

Diagram:	Machinery of Negotiation
1.	Local committees
2.	Sectional councils
3.	Joint council
4.	National council
5.	Arbitration

The Board of Arbitration consists of an independent Chairman, jointly appointed by the parties, and two side members; one selected by the management, one selected by the trade unions. The arbitration may also be assisted by assessors, one nominated by each party. The Board's function is not insignificant. In the event of a failure to agree at National Council level, and at the request of one or more parties, it has the power to Award on issues as varied as wages, hours

of duty, and other conditions of service, or proposals to vary a National Agreement, where the proposals are, in the words of the the parties, of 'major importance'.

The decision to use arbitration may come from one or more parties, the only necessary condition being a failure to resolve the dispute at National Council level, or, in other words, the exhaustion of the parties' internal negotiation procedures. The parties may agree, before the hearing, that the arbitration decision will be binding, or they may proceed on the understanding that the Award may form the basis for future settlement. In common with the majority of arbitration, the parties set down their case in writing and exchange statements with the opponent before the hearing. In the subsequent written Award, the board's decision is preceded by a summary of the facts and arguments submitted by the parties.

Diagram: The Distribution of Arbitration Awards, in Public Sector Industry I, between 1974 and 1980

Year	Number of Cases
1974	2
1975	2
1976	2
1977	1
1978	13
1979	8
1980	2

The number of cases heard is steady, except for the period covered by restrictive government pay policies. Many of the cases heard during this period concerned issues relating generally to working conditions. Improvements in these would result in benefits to employees, without infringing pay policies.

The Twelve Case Studies

The Hearing Procedure

The hearings attended covered the period between 1976 and 1978 and varied in length from approximately one and a half to three and a half hours. Each of the twelve cases was decided by a Board of Arbitration, consisting of an independent chairman and two side members: one from a trade union background and one from a management background. The employees were in all cases represented by trade union officials. Management was represented by industrial relations or personnel officers.

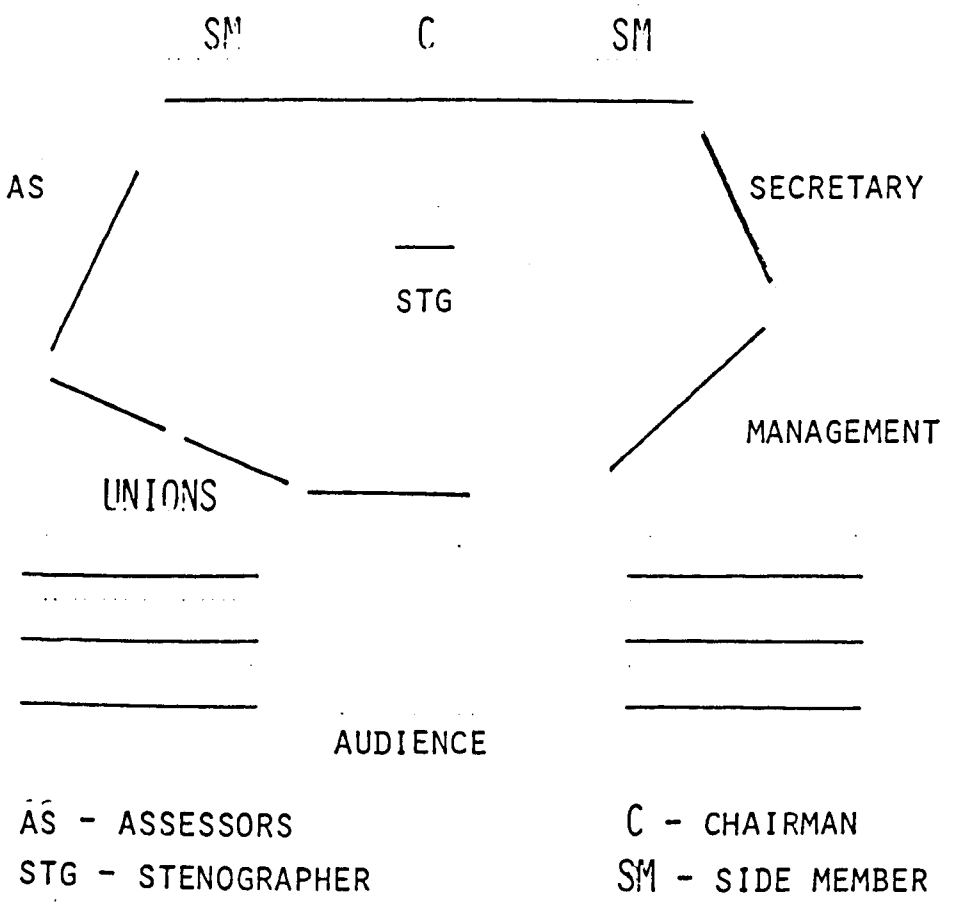
The procedure used at the hearings was typical of arbitration in general, if somewhat formal. Each party commenced with an opening statement of case (sometimes a lengthy process), followed by replies to arguments raised by the opposing party, questions and comments from arbitration board members and finally a summing-up period, where major points of disagreement were re-stated and arguments clarified. The decision was not made explicit during the arbitration hearing, although a range of possible settlements was generally explored and evaluated and some issues moved towards agreement. Since the length of time between hearing and formal, printed statement of the Award may be as

long as eight months (or as short as two weeks) it must be inferred that, at least in some cases, the hearing itself is not the sole source of advice and information available to the arbitration board. Indeed, in one or two cases, the Award refers to an inspection by the board of certain sites or working conditions which were the subject of a dispute between the parties. Nevertheless the decision is ultimately dependent on arguments raised at the hearing, and the researcher with limited access is forced to imagine the rest!

Physical Setting

The hearings were generally held in large hotel rooms, and microphones were available for use by the participants. Hearings were held in public although the audience was never very large (usually six or so people) and rarely vocal.

Diagram: Typical Seating Arrangement in the Arbitration Hearing



The Nature of the Issues

With the exception of one case, all issues were claims brought by one union, sometimes supported by one or two other unions, and concerned improvements in employees working conditions or pay, in the immediate future. The remaining case, brought to arbitration by management, was supported by two trade unions. In this instance, an outcome which favoured management would also have benefited the wages grade employees. The salaried staff union, however argued that such a decision would disadvantage their members.

Description of the Issues

1. Public Sector Industry I

1976

(i) A claim by one union, disputed by the other two, that the basic rate of pay (used for the calculation of bonuses, etc.) should not fall, during the application of the £6.00 pay supplement and that such supplements (which are not used in the calculation of bonuses and other benefits) should be consolidated into the basic rate as soon as possible.

1977

(ii) A claim by the management for a relaxation of restrictions on the advertising of salaried supervisory staff vacancies to wages grade employees. The management claim was supported by the two unions representing primarily wages grade staff. It was opposed by the union representing salaried staff, who argued that the proposed changes would damage the promotion prospects of its members.

1978

(iii) A claim by one union, supported by two others, for a quarterly review of meal and lodging allowances, previously reviewed on an annual basis.

(iv) A claim by one union for the payment of a meal allowance to groups of staff, not previously eligible, who were working in construction gangs more than one mile distant from their booking-on point.

(v) A claim by one union that driving duties in works' yards should be carried out only by staff who were traditionally employed and qualified as drivers, rather than as at present a mixture of both drivers retired from normal duties and employees involved in engineering work in the yards. A second union supported the position taken by management, preferring the existing arrangement, since any changes would displace some of its own members.

(vi) A claim by one union, supported by one other, for an increase from ten to twenty minutes in the signing-on allowance for a particular group of staff.

(vii) A claim by two unions, supported by a third, for the creation of a booking-on and -off allowance for staff involved in changeovers, when working on continuous (twenty-four hour) duty shifts.

(viii) A claim by one union, supported by another, for the rescindment of two long-standing provisions which allowed the management to roster employees, without consultation, for up to nine hours.

(ix) A claim by one union, supported by another, for staff passed to act as drivers, though not yet engaged on driving duties, to receive the same rates of pay and conditions of service as a driver.

(x) A claim by one union, supported by another, for the introduction of a mileage limitation for drivers on shift work.

2. The Remaining Two Cases

(i) A claim by one union concerning the rate of pay for juveniles (under eighteen), in relation to the interpretation of the 'pro rata' rate for junior staff, during the implementation of the government's £6.00 pay supplement.

(ii) A claim by one union for the regrading of a group of employees, within an established job evaluation system.

Method of Analysis

Materials used

1. Written statements of case provided background information to the dispute and listed the main points of disagreement between the parties.
2. A copy of the arbitration Award was obtained in each case.
3. A transcript of each hearing was prepared by stenographers, with the aid of a tape-recorder. The transcripts were, as far as it is possible to tell, a very accurate record.

Observations

The researcher was present at each hearing, in order to make notes on the physical setting, administrative arrangements, and other officially unrecorded details of participants, and 'off the transcript' events.

The Use of Conference Process Analysis

Hearing transcripts were coded by the researcher using an adapted form of Conference Process Analysis (Morley and Stephenson, 1977) shown in Figure 2. CPA was used, because of its particular relevance for face-to-face groups where the participants have an explicit obligation to

represent a party position and because of its comprehensive coding system, which allows each act to be coded in terms of each of three dimensions, the Mode, Resource and Referant. This is in contrast with Bales' interaction Process Analysis which describes each unit in terms of one (and only one) of twelve possible categories. Bales' grouping of categories into four areas (task-oriented: questions; task oriented: answers; social-emotional: negative; social-emotional positive) conceals a distinction between the function of information being exchanged (ie to deal with problems of orientation, evaluation and control) and the way in which that information is made salient (ie given, asked for, agreed with, disagreed with). This results in an inconsistency in the sense that different types of information which can be asked for (categories 7-9) or given (categories 4-6) are distinguished, but no distinction is drawn between the content of information which is accepted (category 3) or rejected (category 10). These distinctions are central to CPA.

Figure 2 Conference Process Analysis (CPA) (Adapted) form, as Used in Content Analysis of Arbitration Hearings

Dimension	Mode	Resource	Referent
	0.	0.	0. No referant
	1. Offers	1. Procedure	1. Self
	2. Accepts	2. Settlement point	2. Management person
	3. Rejects	3. Limits	3. Union person
	4. Seeks	4. Positive consequences of present practices	4. Management party
		5. Negative consequeces of present practices	5. Union party
		6. Other statements about present practices	6. Arbitrator
		7. Positive consequences of proposed outcomes	7. All persons
		8. Negative consequences of proposed outcomes	8. All parties
		9. Other statements about outcomes	
		10. Positive acknowledgement	
		11. Negative acknowledgement	
		12. Information.	

In the resource dimension, three categories were added to allow the description of that part of the arbitration hearing which is concerned with 'present practices'. These were defined as follows:

Resource Category 4: Positive consequences of present practices. This contains all units referring to the advantages of continuing to operate an existing agreement or maintaining an established custom. E.g. 'Modern equipment has made the job safer...and less stressful'. 'Longer turns of duty add to the variety of work'. 'The agreement...diminishes the likelihood of fatigue'. 'This operation is a good revenue earner'.

Resource Category 5: Negative consequences of present practices. This contains all units referring to the disadvantages of continuing to operate an existing agreement or maintaining an established custom. E.G. 'It is almost impossible to persuade anyone to accept the job of press shop operator'. '...Such a haphazard situation can only lead to disgruntled staff...' 'Present arrangements restrict our choice of applicants'.

Resource Category 6: Other statements about present practices. This contains all other statements about present or customary practices or agreements or the consequences of those practices. E.g. 'The basis of the grading scheme is a "forced pairing" system'. 'The written log only relates to controllers... and in many instances this is only brought up to date after the (shift) changeover'.

These three categories parallel the three categories concerned with 'outcomes' ie:

resource category 7: positive consequences of proposed outcomes;

resource category 8: negative consequences of proposed outcomes;

resource category 9: other statements about outcomes.

The structure of the referent dimension was changed slightly in order to cope with the increased number of parties to the dispute. The referent dimension is still scored only when the attitudes or behaviour of a person or party involved are explicitly described (Morley and Stephenson, 1977). The categories used aimed principally to distinguish between references to a person in the group and references to a particular party to the dispute (referent category 2: management person; referent category 3: union person; referent category 4: management party; referent category 5: union party, etc.). Referent category 6: arbitrator, was scored whenever someone explicitly referred to a member of the arbitration board or to the board as a whole. Reliability of coding was measured by the investigator re-coding sections drawn at random from each transcript approximately six months after the initial coding. The correlation between (a) first and second divisions of transcript into units was .98; (b) first and second classification of units in terms of mode, resource and referent, was .85.

Coded transcripts were analysed firstly in terms of proportions of acts of each kind, in each dimension (i.e. proportions of 'offers', 'accepts, 'rejects', and 'seeks', totalling 100% in the Mode dimension; proportions of 'procedure', 'limits', etc. totalling 100% in the Resource dimension, and so on). Secondly, transcripts were analysed in terms of the proportions of acts of each kind contributed by management, union and arbitrator.

Analyses of variance were carried out on the twelve cases, for each c.p.a. category. (ie. 'offers'... 'seeks'; 'procedure'... 'information'; 'no referent'... 'all parties'.) The factors used were:

(1) phase or stage of hearing (1,2,3);

(2) role (management, union, arbitrator);

(3) complexity/simplicity of issues (complex/simple),

where 'Phase' and 'Role' were treated as repeated measures.

CHAPTER SIX

Group Problem-Solving and Negotiation Processes Compared with the Arbitration Process

Section One Theoretical Origins and Rationale for Bales' Three-Phase Model of Group Problem-Solving, Compared and Contrasted with Theoretical Origins and Rationale for Douglas' (1982) and Morley and Stephenson's (1977) Three-Stage Model of Negotiation

It has been argued that the success of both negotiation and problem-solving is indicated by the extent to which it is structured in terms of its movement through an orderly series of stages or phases (Douglas, 1962; Morley and Stephenson, 1977; Winham and Bovis, 1977; Bales, 1953; Landsberger, 1955). The phase movement for problem-solving groups, proposed by Bales (1951), is compared and contrasted with the stages of negotiation proposed by Douglas (1962) and Morley and Stephenson (1977), in order to establish the relative similarity or dissimilarity of the processes of arbitration, negotiation and problem-solving. It is expected (as argued in Chapter Four) that arbitration will be more closely related to the process of negotiation than it is to the process of problem-solving.

Bales' Model of Group Problem-Solving

The most striking feature of early models of group processes (Lewin, 1952; Parsons, Bales and Shils, 1953) is the extent to which they rely on principles borrowed from classical mechanics, whether it

is the 'field theory' propounded by Lewin or Newton's Laws applied to social action, in the case of Parsons' theory. Although the origins of Bales' model of group problem-solving have virtually disappeared in more recent discussions of IPA and the predicted phase movement, the model's characterisation of group problem-solving becomes more comprehensible, and the rationale behind it more evident, when it is viewed in the context of early theories of social action, rooted in classical mechanics. Both Parsons and Lewin treat the social system as something which is stable and which tends to maintain its equilibrium. Lewin characterises this as a 'quasi-stationary' process, which 'like a river, continuously changes its elements even if its velocity and direction remain the same' (p.202). The equilibrium is maintained at some pre-determined level by the existence of equal and opposite forces (e.g. towards and against authoritarian control), where the 'resultant' of forces is equal to zero. Parsons relies explicitly on the Laws of Motion to explain the 'stability of the system: 'action and reaction tend to be equal in force and opposite in direction' (Parsons, Bales and Shils, 1953, p.164). His 'principle of acceleration' (p.165) assumes that changes in the rate of process are accounted for by an 'input of energy' from some external source, which is balanced by an equal 'output' of energy from the system. Parsons *et al* also argue that, independently of other principles, the system has to resolve internal incompatible or conflicting patterns, in order to avoid 'low levels of integration and . . . dissolution' (p.165). Translated into the 'micro' level of the face-to-face group, the model assumes a closed system, with a finite amount of energy which can be expended and linear series of actions and reactions. Issues

concerning how the identified 'equilibrium' came about, or how change is effected are thus essentially outside the frame of reference. The maintenance of the state of equilibrium is instead seen as the central focus for research. Bales (1953) describes the 'problem' of equilibrium as one of 'establishing arrangements . . . whereby the system goes through a repetitive cycle, within which all of the disturbances created in one phase are reduced in some other' (p.123). Bales, in line with Parsons' general 'theory of action', differentiates four areas of importance for social interaction. These are described as (1) the Expressive-Integrative (Social-Emotional Area: Positive Reactions); (2) the Expressive-Integrative (Social-Emotional Area: Negative Reactions); (3) Instrumental-Adaptive (Task Area: Questions); (4) Instrumental-Adaptive (Task Area: Answers).

The Expressive-Integrative Areas (positive and negative) reflect Parson's argument that equilibrium can only be maintained to the extent that the system, or in this case the group, can successfully integrate discordant elements, and, secondly, that increasing attempts at 'control', as group tasks are dealt with, result in opposing 'forces' of antagonism and hostility.

The next stage in the development of the model is Bales' argument that these four areas vary systematically over time, in the extent to which they predominate in the group discussion. Bales (1951) defines these 'phases' as 'qualitatively different sub-periods within a total continuous period of interaction' (p.389), where the whole session involves the group taking a decision on a given problem. The phase hypothesis is stated as a movement from relative emphasis on 'problems of orientation, to problems of evaluation and

subsequently to problems of control' (Bales, 1951, p.390). At the same time, the 'relative frequencies of both negative . . . and positive reactions tend to increase' (p.390).

These 'phases' can be seen, in turn, to have their parallels in earlier discussions of the aspects of reflective thought discussed, for example, by Dewey (1933), who describes 'thinking' as more effective to the extent that it contains 'an orderly chain of ideas . . . a controlling purpose and end, (and) . . . examination, scrutiny and inquiry' (p.8.). Bales, in transferring a similar process model to the group level, argued that it was possible to demonstrate empirically, for groups dealing with 'full-fledged' problems (from problem recognition to resolution), a set order to these stages (i.e. orientation, evaluation and control). He did not, however, as later writers have done, argue that the more closely the group activity follows the prescribed order of phases, the more effective its problem-solving will be . Bales attempts rather, in line with the underlying principles of equilibrium, to establish a 'base line' account of group processes, which will hold true for the majority of small, face-to-face groups, where there is at least minimal need to maintain group solidarity, such that members feel committed to act on a joint decision, and such that tension and antagonism between the members will be negatively valued. Deviation from the established pattern is consequently treated as (i) indicative of particular kinds of 'malfunctioning' of the group process itself, or (ii) as resulting from planned interventions into the task or style of interaction. The phase

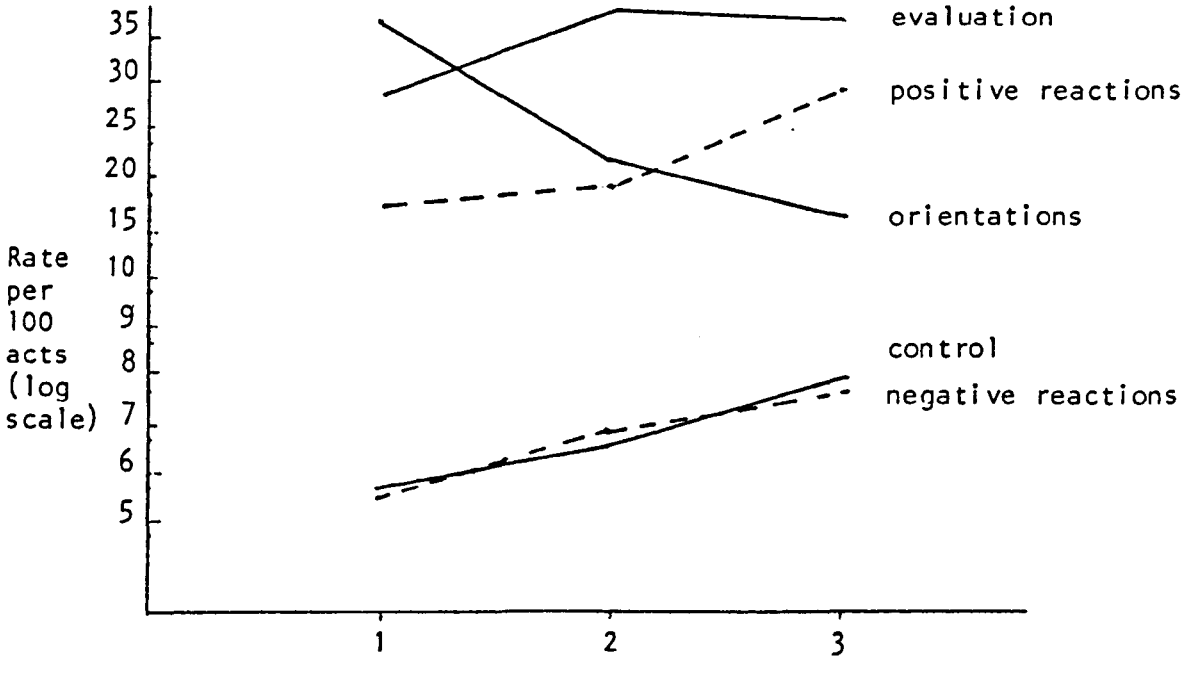
movement postulated is itself treated as a requirement for the maintenance of 'system equilibrium'. In line with the general closed system model, a 'problem' or 'disturbance' is depicted as being introduced into a system in the steady state. The subsequent group process acts to regain the lost equilibrium. Group members initially orient themselves to the problem, indicating that some uncertainty about the relevant evidence or facts exists. This 'orientation' inevitably provokes a subsequent 'evaluation' stage, where contrasting criteria, which reflect group members' differing values, are applied to the available evidence with the aim of reaching some agreed interpretation. The third phase is said to give most emphasis to 'control' activities, which concern judgements between different possible outcomes and the drawing up of a firm decision on a joint course of action. Dealing with problems of orientation, evaluation and control in turn disturbs the 'balance' of inter-personal relations in the group. Disagreement, Bales argues, whilst necessary to problem-solving, may impair the solidarity of the group, particularly as over time increasing emphasis is given to problems of 'control'. Following Lippitt (1950) and Lewin (1952) Bales argues that increasing control is matched by opposing hostile, antagonistic forces, which on a 'hydraulic' model of energy flow, may irrepressibly 'burst forth', if not relieved during the group discussion. Thus changing patterns of expression of tension and tension management, over time, are part of the same equilibrium process. Since the group has to return to a state of equilibrium, forces towards dissolution are matched by attempts to reintegrate the group, in the form of humorous comments,

expressions of solidarity and so on. Hence Bales derives the hypothesis that both negative and positive reactions will be at their peak during the final phase of the group's activity.

Bales' Findings

Interaction Process Analysis (IPA) was applied to twenty-two cases (Bales, 1951), providing general support for the phase movement hypothesis. Acts of orientation were generally at their highest during the first phase, acts of evaluation during the second phase and controlling acts in the final phase, while the occurrence of both positive and negative reactions increased over time. 'In the absence of any compelling rationale', as Bales puts it, the beginning and end of each phase were determined by cutting the session tapes into three equal parts. Summing across groups, some of which did not fit Bales' own criteria for the occurrence of the phase movement, the following pattern was established.

Figure 3 Proportions of orientation, evaluation and control acts, in each of three equal phases of group problem-solving (based on twenty-two sessions)



(Parsons, Bales and Shils, 1953)

On the basis of these findings, and in line with Bales' 'equilibrium' model, he argues that 'there are certain conditions which seem to be more or less inherent in the nature of the process of interaction and communication itself' (Bales and Strodtbeck, 1951, p.396). Having begun by setting out a fairly stringent set of criteria necessary for the appearance of the phase movement in group discussion, Bales thus concludes that, in fact, something of the same movement is evident in a variety of groups, including those which do not deal with an entire problem from recognition to resolution. He seems rather to be arguing that the very appearance of certain kinds of acts (e.g. acts of orientation) is inevitably followed by certain other acts (e.g. acts of evaluation), the progression itself being a necessary condition for the eventual restoration of the group's equilibrium.

Other Evidence Supporting the Existence of a Phase Movement in Decision Making Groups

1. Managerial Decision-Making Groups, within an Organisation

In questioning whether, within any one decision-making 'episode', distinctive phases exist, Witte (1972) analysed 233 decisions concerning the purchase of data processing equipment. He concluded that the decisions consisted of a number of different operations which occurred at different times, with an average of 32 and a maximum of 452. Overall, a sequence of five

phases was distinguished: Problem recognition, gathering of information, development of alternatives, evaluation of alternatives and choice. This sequence was not however supported in all cases, or indeed for a sub-sample of the most efficient decisions.

2. Negotiation Groups

Although Bales never explicitly excludes negotiation groups from the phase-movement model, it was originally tested on essentially co-operative groups. It was however acknowledged that the evaluation of a problem involved the expression of 'different values and interests as criteria by which the facts of the situation and proposed course of action are to be judged'. (Bales and Strodtbeck, 1951, p.391). (Parsons, Bales and Shils, 1953, make more explicit comments on the potentially divisive and non-co-operative nature of decision-making groups particularly in industry.) The major difference in the case of negotiation groups would seem to be, as McGrath and Julian (1963) pointed out, the explicit obligation to represent a particular party and its position. Clearly, the question to be asked is whether Bales' model or similar 'sequence' models of group processes generalise to decisions which are reached explicitly through negotiation. Interaction Process Analysis (IPA) was applied to twelve small firms' mediation sessions, by Landsberger in 1955. Those sessions judged as more 'successful', in terms of number of issues resolved by the end of the meeting, conformed more closely to the predicted phase movement. (The correlation - rho - between the ranking of success and number of transpositions required for the observed

phase movement to conform to that predicted was .58.) In 'unsuccessful' cases, negative, hostile comments were not highest during the final phase, suggesting perhaps that successful mediation serves a cathartic function. Furthermore, hostility at the start of the session was negatively correlated with 'successful' resolution (rho - .58). Essentially Landsberger moved one step further than Bales, in arguing that only those negotiation groups termed successful in their decision-making, conformed to the predicted phase movement.

Evidence of a phase movement was found, in simulated negotiations, by McGrath and Julian (1963). They used a rather different process analysis, and divided sessions into four equal parts of 7.5 minutes each. Structuring activity was highest in phases I and III, the 'pace' of debate increased over time, along with an increasing number of positive, negative and neutral feedback acts, both of these results providing general support for Bales' model. In contrast with Landsberger's results, successful groups showed decreasing negative affect towards the end of the session, and were generally more 'neutral' in tone throughout discussion. The timing of structuring acts was particularly important in this case, given that the successful completion of the task required the production of specific recommendations. Although neither Landsberger nor McGrath and Julian explicitly attempt to examine the effect of a third party (mediator or neutral chairman) on the decision-making process or its sequence of stages, McGrath and Julian's results suggest that the chairman played a vital role in the successful completion of the task, since chairmen were responsible for the initiation of over 90% of the vital 'structuring' acts.

Douglas' and Morley and Stephenson's Models of Negotiation

The mediation process was also studied by Ann Douglas during the 1950s. She proposed a model of negotiation based on the view that members of negotiation groups, by virtue of their obligation to represent a party position, are faced with different demands from members of problem-solving groups. Douglas' three-stage model suggests that the process of negotiation can be represented by the changing emphasis over time on the interpersonal and interparty aspects of the debate (Douglas, 1962). This view of the negotiation process has been used to make different predictions about the form of the debate from those proposed by Bales (Morley and Stephenson, 1977).

The first stage of negotiation, Douglas argued, is concerned with setting up the bargaining range, where the party line is stressed and the differences between opposing party positions are emphasised. The second phase consists of more subtle explorations of possible settlements, where those individuals present implicitly weigh up the chances of one or other settlement and, according to Anthony and Crichton (1969) and Stevens (1963) argue the advantages or low costs to the opponent of moving to its own position. Douglas (1962) comments that this part of negotiation is about the 'estimation of the meaning of what is said' (p.547) and Morley and Stephenson (1977) have argued that it can be characterised by the increased emphasis on interpersonal aspects of the negotiators' relationship. The third stage constitutes the 'decision-making crisis', characterised by more explicit commitment to particular outcomes, combined with the drawing-together of an agreement on the future course of action.

Superficially, there is little difference between this exposition of the three stages of negotiation and Bales' description of the phase movement for problem-solving groups. Both could be summarised in terms of 'orientation, evaluation and control' stages. In looking at how these three components of the debate are managed, however, the model of negotiation emphasises that conflict between the parties exists from the outset, while the group problem-solving model focusses on the consequences of the three phases for inter-personal harmony.

The major difference between the proposed negotiation and problem-solving processes resides therefore in a different view of conflict and its expression. In terms of Bales' (1951) analysis, conflict is generated between individuals as a 'side effect' of their struggle to come to terms with a shared problem. In negotiation groups, however, the expression of conflict between parties, at the outset, is presented as vital to the satisfactory resolution of the dispute. The early expression of differences must, however, give way to relatively accommodative 'problem solving' between group members, if the differences are to be resolved. Such problem-solving is generally regarded as ameliorating the conflict between parties, rather than producing conflict between individuals. In terms of Douglas' model, the first stage of lengthy speeches and emphasis of the 'wide divide' between the parties is an important precursor to the later exploration of positions between individuals. Negotiators could not satisfactorily explore the areas of potential accommodation and agreement without first demonstrating the resolve and determination of their respective parties. Not only would they face the challenge from constituents of having 'sold out' or failed to do

justice to the merits of their own side's case (Morley, 1980), but they would also suffer from having failed to establish an image of sufficient firmness and determination in the eyes of the others, who might otherwise expect complete capitulation to their party's demands at the first sign of a conciliatory gesture.

Although the internal logic of the progression is clear, the possibility of reaching a mutual understanding during the later stages of negotiation is likely to be seriously damaged if early expressions of conflict between the parties are treated as indicative of personal hostility between the negotiators, thus undermining the personal relationships which come to the fore in the middle stage of negotiation and which facilitate the process of mutual accommodation. In terms of negotiation, therefore, the expression of personal conflict is regarded as a serious threat to a peaceful resolution of the dispute, and not, as Bales would suggest, as an inevitable consequence of dealing with the problem.

Using two negotiations, one in a food-manufacturing group, and one concerning a group of electricians, and drawing on experimental findings, Morley and Stephenson (1977) extended Douglas' model, while still arguing that negotiation does indeed proceed through three stages, different in character from those proposed by Bales for problem-solving groups. The first stage of negotiation is described as essentially distributive in nature and as being concerned particularly with the establishment of the relative merits of each side's case in the context of the overall power relationship between them. The main requirement on the individuals present is to fulfill their role as a party representative. In contrast with problem-solving groups, 'the information presented is geared to the justification of a divisive position, not to the solution of a common

problem' (Morley and Stephenson, 1977, p.259). The second stage is relatively more concerned with 'problem-solving', where the range of possible solutions, which satisfy criteria established in stage 1, is examined. During this second stage, the particular individuals in the group are most salient as 'characters' in their own right, rather than as party representatives. The final stage deals with decision-making and plans for future action. The negotiators strive to satisfy both the demands of their own parties and the demands of the actual group members.

In terms of Conference Process Analysis (c.p.a.) categories, the phase movement in negotiation is characterised by the changing emphasis from interparty to interpersonal forms of address and, over time, fewer statements indicating rejection of the opponent's proposals, together with a decrease in expressions of hostility and antagonism and an increase in praise and other supportive statements (Morley and Stephenson, 1977). These conclusions are in contrast with the findings of Bales and Strodtbeck (1951), Landsberger (1955a,b) and McGrath and Julian (1963), who have argued that coping with the task leads to both increased conflict, expressed as hostile remarks and disagreements, and increased positive, supportive comments and agreements, which counterbalance the forces towards dissolution of the group.

The opposing accounts rest to some extent on the different content analysis systems used by the investigators. Bales' I.P.A does not distinguish between 'personal' hostilities and expressions of inter-party conflict, whereas c.p.a. does make this distinction. In relation to Landsberger's (1955) findings, for example, Douglas' (1962) model of negotiation would agree that a high level of personal

hostility at the start of negotiations would be detrimental to the eventual resolution of the dispute. There is however a more fundamental disagreement, which is based on Morley and Stephenson's (1977) view that the problem-solving aspect of negotiation does not, as Bales would suggest, lead inevitably to inter-personal tensions, but allows the conflict between the parties to be dealt with. This disagreement will be examined in relation to the arbitration process.

Predicted Changes Over Time in Levels of c.p.a. Categories based on Morley and Stephenson (1977) and Ann Douglas (1962)

With these contrasting predictions in mind, it is possible to derive a series of expected changes in the relative emphasis given to different Conference Process Analysis categories, over time. Since it is expected that the arbitration process will be more closely related to the model of the negotiation process developed by Morley and Stephenson (1977), than to the model of the problem-solving process developed by Bales (1953), these predictions are based on the previously established pattern of changes during the course of negotiation, as reported by Morley and Stephenson (1977).

There are a number of practical difficulties involved in the interpretation of content analysis material, since it describes changing patterns of debate over time, where the categories themselves are inter-related. (For example, if 90% of all statements are 'Offers' of some kind, only 10% can be 'Accepting', 'Rejecting' or 'Seeking'. If the level of 'Offers' falls, the level of 'Accepts', must rise.) Neither is it easy to predict what a 'chance'

distribution of categories should be, since this idea makes nonsense of the expected rules of discussion and argument. Nor is it easy to say what a 'significant' change in the level of use of any category should be, since significant 'change' in the use of that category is itself dependent upon the overall frequency of occurrence for that category.

Consequently, the setting up of an expected distribution of categories, on the basis of Morley and Stephenson's (1977) findings provides a more substantial starting point for the development of a model of the sequencing of debate and decision-making in relation to arbitration. The arbitration hearing is unlike the negotiating session, to the extent that the final decision is formulated outside the hearing and the parties are concerned to convince the arbitrator of the merits of their case as well as convincing each other. Those disputes which are brought to arbitration originate in deadlocked negotiation. Such negotiations may themselves be different in character from those which are concluded in agreement. The arbitration group as a whole, however, shares many characteristics with the negotiation group. Its members are concerned with justifying divisive positions, and they have very evident obligations to represent a party position. If they are to continue working together, the sides eventually have to reach some agreement, however temporary, on the issues in dispute. The content analysis of the arbitration hearing should therefore cast light on the essential similarities and differences between this process and the processes of negotiation and problem-solving.

Predicted Changes in cpa Category Levels from Stage I to Stage II

Based on Morley and Stephenson's (1977) findings, the change in character from a first distributive bargaining stage, to a second problem-oriented stage should be reflected in the following c.p.a. dimensions as indicated:

(i) The Mode Dimension

Increased use of statements indicating Acceptance of a proposal, and increased use of questioning and exploratory comments (Seeks), should occur together with decreased use of Rejects, which has in the past been taken to indicate disagreements and divisiveness.

(ii) The Resource Dimension

Increased positive, supportive gestures and praise for others (Positive Acknowledgement) should be accompanied by fewer demonstrations of hostility (Negative Acknowledgement), which, it has been argued, are typical of the opening bravado of negotiation. Less use of Procedural comments is expected, indicating that the participants have established the general form of the session, and are moving into a less structured phase. Fewer references to Limits should be made indicating less concern with restricting the range of options, while the use of strategic statements should increase, indicating attempts to persuade or dissuade others of the merits of a particular course of action (Anthony and Crichton, 1969). Informational statements should decrease, since the background to the case should already be established.

(iii) The Referent Dimension

Increased references to Self and Persons are predicted, with a corresponding fall in Party references, characterising the more informal, exploratory nature of discussion in the middle stage of negotiation, where individual group members are more prominent.

Predicted Changes in c.p.a. Category Levels from Stage II to Stage III

The change in character from the second, problem-oriented stage, to the third decision-making stage is perhaps more difficult to predict, in terms of c.p.a. categories, since findings have generally been less clear cut. Here it is treated as primarily impersonal in nature, and concerned with summarising, controlling and structuring activities, which define the terms of a final outcome.

(i) The Mode Dimension

In line with the general characterisation of negotiation groups, questioning or exploratory statements (Seeks) should decrease and conflict expressed in the form of Rejections should decrease.

(ii) The Resource Dimension

According to Morley and Stephenson's (1977) findings, the final stage of negotiation is characterised by an increasingly business-like approach, accounting for the rise in Procedural statements, whilst the use of Limits, constraining the options for settlement, should continue to decline. A decline in the use of strategic arguments (Positive and Negative Consequences of Present Practices/ Proposed Outcomes) should be accompanied by increased attention to Outcomes. The level of Positive Acknowledgements should continue to increase, while Negative Acknowledgements should continue to decline.

(iii) The Referent Dimension

Both Personal references to particular group members and references to Parties are expected to decrease between Stages II and III, with an increased level of Self references. These predictions are in line with Morley and Stephenson's (1977) findings and seem to reflect the rather business-like, relatively impersonal nature of the final phase of negotiation.

Predicted Changes in c.p.a. Category Levels

	c.p.a. category	predicted change
Stage 1 to Stage 11		
Mode	Accepts:	increase
	Rejects:	decrease
	Seeks:	increase
Resource	Procedure:	decrease
	Limits:	decrease
	Positive/Negative Consequences of Present Practices/Proposed outcomes:	increase
Referent	Self:	increase
	Person:	increase
	Party:	decrease
Stage 11 to Stage 111		
Mode	Rejects:	decrease
	Seeks:	decrease
Resource	Procedure:	increase
	Limits:	decrease
	Statements about outcomes:	increase
	Statements about present practices:	decrease
	Positive/Negative consequences:	decrease*
	Positive acknowledgement:	increase
	Negative acknowledgement:	decrease
Referent	Self:	increase
	Person:	decrease
	Party:	decrease

*of present practices/ proposed outcomes

Section Two Stages of the Arbitration Hearing

1 Profile of the Arbitration Process

Previous discussion of arbitration and, in particular the experimental findings reported in Chapter Three, have led to the general expectation that the arbitration process will be more formal in nature than the typical negotiation process. In the experimental simulation, the presence of an observer increased the participants' concern to do justice to the position of their party. This should be even more evident in the context of arbitration, where the participants are further constrained by the need to address statements through the Chairman.

Overall Distribution of Acts, compared with Negotiation

This expectation is in fact upheld by a comparison between the overall distributions of c.p.a. categories for negotiation (as reported in Morley and Stephenson, 1977, p.255 and p.279) and arbitration (see Tables 6 and 7).

Just as Bales (1950) found empirical uniformities in the occurrence of each Interaction Process Analysis category, reading down table 7 a consistent pattern emerges for c.p.a. categories which varies relatively little from case to case.

1. In the Mode dimension, the majority of statements were made in the form of Offers ($\bar{x}$ = 86.74%, S.D. = 13.53). There were few interruptions (uncoded units, $\bar{x}$ = 0.32%, S.D. = 0.09), reflecting the general formality of proceedings. On average 7.89% of acts (S.D. = 2.14) were phrased as questions or requests for information

(Seeks); 3.9% (S.D. = 0.49) were phrased as Accepting and 1.15% (S.D. = 0.26) as Rejections. Comparing this pattern with that established for negotiation (Morley and Stephenson, 1977), the arbitration hearings were more dominated by Offers, with slightly fewer Rejections and Seeks and a lower level of interruptions. This pattern reflects the more 'decorous' nature of arbitration, when compared with negotiation. The presence of the chairman encouraged a rather controlled form of debate.

Table 6 C.P.A. Categorisation of acts in each of twelve Arbitration Hearings (in Percentages)

c.p.a. category	Case 1	2	3	4	5	6	7	8	9	10	11	12	Overall Average	Standard Deviation
Person														
Management	43.04	36.10	33.09	29.27	29.19	28.63	30.77	19.37	21.26	26.44	27.67	21.20	28.04	9.28
Union	32.10	47.69	36.99	35.88	46.15	36.81	28.97	36.65	25.90	08.46	20.31	33.88	32.07	11.51
Arbitrator	24.86	16.21	29.92	26.67	17.50	28.02	21.98	24.69	24.61	20.04	15.75	13.08	23.96	8.12
(Union 2)	-	-	-	08.18	07.16	06.54	18.29	19.28	12.99	25.03	12.45	24.01	14.88	6.68
(Union 3)	-	-	-	-	-	-	-	-	15.23	20.04	23.83	07.83	16.73	5.98
Mode 0	00.47	00.37	00.36	00.43	00.30	00.43	00.26	00.09	00.17	00.00	00.43	00.13	0.32	0.05
Offers	82.44	91.56	84.05	88.13	90.65	86.17	85.41	83.42	87.95	87.20	91.61	94.05	86.74	13.53
Accepts	05.21	01.69	05.82	04.17	01.81	04.87	05.01	04.80	03.44	03.11	01.92	01.94	3.90	0.49
Rejects	01.98	00.66	00.72	01.36	00.60	00.78	00.66	00.70	01.98	01.27	01.10	01.14	1.15	0.26
Seeks	09.90	05.72	09.05	05.91	06.64	07.75	08.66	10.99	06.45	08.42	04.94	02.74	7.89	2.14
Resource 0	00.47	00.37	00.36	00.43	00.30	00.43	00.26	00.09	00.17	00.00	00.43	00.13	0.32	0.05
Procedure	21.83	06.60	11.15	11.06	05.51	09.28	07.12	06.28	09.90	06.14	06.90	07.39	9.47	3.36
Settlement Point	00.05	00.00	01.80	00.49	00.23	00.18	00.35	00.70	01.80	00.35	02.35	02.68	0.78	1.04
Limits	02.50	00.66	03.42	01.25	00.83	00.82	00.79	00.61	01.64	01.49	03.38	03.75	1.75	1.15
+ con. p.p.*	00.83	00.00	01.80	01.90	02.79	01.67	01.58	02.01	01.38	00.57	00.90	00.07	1.27	0.84
- con. p.p.*	02.24	00.00	03.06	04.17	07.47	03.38	02.55	05.50	10.33	04.56	09.32	00.07	4.31	3.26
sts./p.p.*	22.09	20.18	45.02	34.09	30.32	50.18	44.04	50.79	33.48	38.23	26.81	04.68	32.99	13.86
+ con. prop. out.*	00.42	01.83	00.00	00.98	01.58	00.18	02.24	02.09	00.52	00.48	01.85	04.48	1.35	1.24
- con. prop. out.*	01.30	03.30	00.06	06.45	03.02	00.71	05.01	04.19	01.20	00.39	05.12	13.51	3.62	3.65
sts./out.*	02.45	23.48	11.57	03.14	11.09	02.28	20.00	10.30	10.93	12.54	17.21	32.84	13.23	8.59
+ ack.*	04.17	01.47	00.66	02.28	01.66	00.75	02.37	01.22	00.95	00.96	01.42	02.98	1.85	0.78
- ack.*	05.05	06.60	01.02	02.44	01.66	01.32	00.84	03.32	01.38	01.97	03.24	03.34	2.77	1.52
Information	36.58	35.51	20.08	31.33	33.56	28.84	12.84	12.91	26.33	32.31	21.02	24.08	26.40	7.47
Referent 0	39.86	50.26	40.77	28.83	46.68	48.33	41.01	41.88	50.17	41.78	34.99	42.14	41.19	11.04
Self	08.86	04.99	06.53	06.78	07.09	09.17	05.58	06.11	07.92	05.04	04.09	06.19	7.02	2.11
Person	09.62	04.47	08.81	08.12	08.72	07.56	07.15	06.88	08.94	07.32	03.92	05.14	7.45	0.50
Party	35.02	35.95	37.59	50.22	32.73	30.50	41.52	41.08	30.63	42.47	50.35	37.93	38.79	6.62
Arbitrator	06.67	04.33	05.88	05.47	04.98	04.73	04.79	03.49	04.39	04.43	06.65	08.60	5.53	0.11

Notes Referring to Table 6

Case

1 - private company
2 - nationalised industry II
3 to 12 - nationalised industry I

Since the overall pattern of category values does not differ dramatically between cases 1 and 2 and 3 to 12, these two were included in the overall analyses of variance.

*

+ con. p.p. - positive consequences of present practices
- con. p.p. - negative consequences of present practices
sts./p.p. - other statements about present practices
+ con. prop. out. - positive consequences of proposed outcomes
- con. prop. out. - negative consequences of proposed outcomes
sts./out. - other statements about outcomes
+ ack. - positive acknowledgement
- ack. - negative acknowledgement

Table 7 Overall Mean c.p.a. Categorisation of acts in arbitration hearings compared with Morley and Stephenson's (1977) wage negotiations (in percentages)

c.p.a. category	Grand Mean Negotiation (1) [N=1]	Grand Mean Negotiation (2) [N=1]	Grand Mean Arbitration [N=12]
Mode			
0.	10.20	01.50	00.32
Offer	68.00	79.20	86.74
Accept	09.50	03.90	03.90
Reject	02.60	03.60	01.15
Seek	09.70	11.80	07.89
Resource			
Procedure	01.10	07.80	09.47
Settlement Point	10.90	07.00	00.78
Limits	18.20	30.20	01.75
Positive consequences of present practices	-	-	01.27
Negative consequences of present practices	-	-	04.31
Other statements about present practices	-	-	32.99
Positive consequences of proposed outcomes	01.80	01.10	01.35
Negative consequences of proposed outcomes	02.70	01.50	03.62
Other statements about proposed outcomes	-	-	13.23
Positive acknowledgement	00.20	00.90	01.85
Negative acknowledgement	01.60	01.20	02.77
Information	48.00	47.70	26.40
Referent			
0.	62.60	47.90	41.17
Self	14.50	10.20	07.02
Person	14.10	31.00	07.45
Party	09.80	11.00	38.79
Arbitrator	-	-	05.53

(Negotiation figures reproduced from Morley and Stephenson (1977), p. 255 and p.279)

2. This is further highlighted in the Resource dimension where the level of the strategic categories (Positive and Negative Consequences of a particular course of action) tended to be higher than in negotiation (Overall level in the arbitration hearings - 10.55% compared with 2.6% of all acts in negotiation). This suggests, particularly since the majority of these acts (7.93%) are threatening the Negative Consequences of a course of action, that the form of debate at arbitration constrains the way in which the rejection of the opponent's position is expressed, focussing on the use of threatening statements, rather than outright rejections of the other side's proposals. (e.g. 'If the proposed changes go ahead, our members will refuse to work those positions'.)

The level of statements about Procedure is fairly high ($x = 9.47\%$, S.D. = 3.36), again confirming the controlled nature of proceedings. The formal procedure did not, however, diminish the expression of praise or blame: these two categories form a slightly larger proportion of total acts in the arbitration hearings than they did in negotiation (2.1% in negotiation; 4.62% in arbitration).

A relatively large proportion of the debate centred on the background context of the dispute and current agreements or working arrangements ($\bar{x} = 32.99\%$, S.D. = 13.86), a result which is predictable given the arbitrator's status as an outsider to the dispute. The focus on Present Practices also reflects the enduring concern of arbitration with the interpretation of agreements. The concern with Outcomes ($\bar{x} = 13.23\%$, S.D. = 8.59) and Settlement Points ($\bar{x} = 0.78\%$, S.D. = 1.04) was consequently less prevalent than might be expected in negotiation.

3. In the Referent dimension, an average of 41.19% of all acts had no specific referent (S.D. = 11.04), compared with an average of 55.25% in negotiation. The majority of the remaining acts refer to one or other Party to the dispute, ($x = 38.71\%$, S.D. = 0.50). This is a complete reversal of the pattern established by Morley and Stephenson (1977) for negotiation, where the largest proportion of acts referred to a particular Person present (14.1 - 31.0%) and a smaller proportion (9.8 - 11.0%) referred to a particular Party to the proceedings. The relative emphasis given to interparty rather than interpersonal references has generally been used to characterise the formality of proceedings (Morley and Stephenson, 1977). In this case, the relative concentration on interparty references emphasises the more formal, controlled nature of the arbitration hearing, which follows a reasonably standard procedure. In contrast, participants at the negotiating table, who do not have to address remarks through a chairman, are more easily allowed to forget the constraints of their representative role.

In sum, the overall distribution of categories characterises the arbitration hearing as more formal, impersonal and controlled than negotiation.

II Three-Stage Analysis of Arbitration Results

(i) Division of Hearings into Stages

Previous stage or phase analyses have adopted the pragmatic approach of dividing the total number of units of analysis into three, in order to establish where each stage of the process should begin and end. It was decided, in this case, to identify the beginning and end of each stage, according to the apparent distinctions between the three parts of the hearing process, which resemble the three parts of the classic debate. During the first stage, the party representatives present their arguments. This is followed by a more loosely structured exchange of questions and answers between parties and the arbitration board and finally, each side is asked to summarise their present position, clarifying the main areas of disagreement and remaining uncertainties.

The division of the hearing transcripts into three parts therefore reflects the point of transition from one stage to the next, as described above (See Appendix 7 for Total Units in each case and points of division.)

(ii) The Effects of Stage of Hearing on c.p.a. category levels

Table 8 indicates the number of statistically reliable changes in category levels, over time. Table 9 gives the results, using the binomial test, of simply counting the number of cases (out of twelve) in which the predicted direction of change is fulfilled. The results of analyses of variance show limited support for the

changes between Stages, predicted on a negotiation model. For Stage I —— II, 4/12 predicted differences in c.p.a. category levels were statistically reliable, with a further three changes in the predicted direction which were not statistically reliable. For Stage II —— III, 5/12 predicted differences in c.p.a. category levels were statistically reliable, with a further five changes in the predicted direction not statistically reliable.

On a less stringent test, simply counting the number of cases out of twelve in which the predicted direction of change occurs, the model is largely supported for Stage I —— Stage II changes (binomial test, $Z = -2.01$, $P < .02$), with considerably less support for predicted changes between Stages II —— III ($Z = -1.0$, n.s.).

The results are described in more detail below, and presented graphically.

Table 8 Proportional Use of Each c.p.a. Category, Derived from Sum Totals of Raw Scores Across 12 Cases

		STAGE						TOTAL		F	p
		1	(S.D.)	2	(S.D.)	3	(S.D.)				
Mode	0	0.11	(0.09)	0.40	(0.31)	0.44	(0.40)	0.29	(0.15)		-
	1 (Offers)	97.66	(0.92)	78.54	(3.78)	84.70	(6.41)	88.08	(3.22)	6.05	.009
	2 (Accepts)	0.60	(0.45)	6.22	(1.32)	5.04	(3.28)	3.60	(1.39)	9.57	.001
	3 (Rejects)	0.65	(0.48)	1.63	(0.88)	0.99	(0.67)	1.05	(0.41)	4.97	.02
	4 (Seeks)	0.98	(0.49)	13.21	(2.90)	8.82	(3.53)	6.97	(2.22)	25.27	.001
Resource	0	0.11	(0.09)	0.40	(0.31)	0.44	(0.40)	0.29	(0.15)		-
	1 (Procedure)	5.95	(1.68)	10.19	(3.31)	12.11	(3.77)	9.06	(1.99)	10.76	.001
	2 (Settlement Point)	2.04	(1.46)	0.38	(0.71)	0.26	(0.33)	1.01	(0.92)	7.50	.004
	3 (Limits)	2.04	(2.00)	1.70	(1.78)	2.01	(1.32)	1.93	(1.17)	1.92	(.17)
	4 (positive consequences of p.p.)	1.58	(1.49)	0.92	(0.89)	0.95	(0.87)	1.20	(0.74)	0.17	(.84)
	5 (negative consequences of p.p.)	4.68	(3.24)	5.08	(4.89)	2.43	(2.66)	4.13	(3.02)	4.02	.03
	6 (other statements about p.p)	33.30	(12.54)	32.60	(15.01)	30.78	(13.97)	32.34	(12.95)	2.72	(.09)
	7 (positive consequences of prop. out.)	2.11	(2.18)	0.98	(2.03)	1.22	(1.03)	1.50	(1.27)	1.53	(.24)
	8 (negative consequences of prop. out.)	4.80	(4.51)	4.51	(5.20)	2.96	(2.31)	4.17	(3.83)	0.72	(.50)
	9 (other statements about outcomes)	13.81	(9.39)	12.76	(8.96)	15.18	(8.76)	13.90	(8.30)	1.75	(.20)
	10 (positive acknowledgement)	1.43	(0.48)	1.53	(0.84)	2.58	(1.79)	1.81	(0.74)	3.86	.03
	11 (negative acknowledgement)	2.37	(1.56)	2.45	(1.14)	3.11	(1.69)	2.61	(0.92)	1.28	(.30)
	12 (information)	25.78	(7.57)	26.49	(9.34)	25.98	(10.90)	26.05	(7.17)	0.23	(.80)
Referent	0 (No referent)	47.28	(9.24)	38.17	(4.84)	34.99	(6.12)	40.99	(5.94)	1.95	(.17)
	1 (Self)	2.69	(1.00)	8.81	(2.34)	9.11	(3.44)	6.37	(1.36)	31.51	.001
	2/3 (Person)	5.74	(0.89)	9.86	(1.87)	9.94	(3.52)	8.18	(1.55)	0.23	(.80)
	4/5 (Party)	39.65	(9.60)	37.62	(5.94)	39.15	(7.65)	38.91	(6.78)	1.51	(.25)
	6 (Arbitrator)	4.65	(1.28)	5.53	(2.39)	6.82	(2.37)	5.54	(1.36)	3.82	.04

Table 9 Predicted direction of change and observed number of cases which change in the predicted direction, in terms of proportions of c.p.a. categories

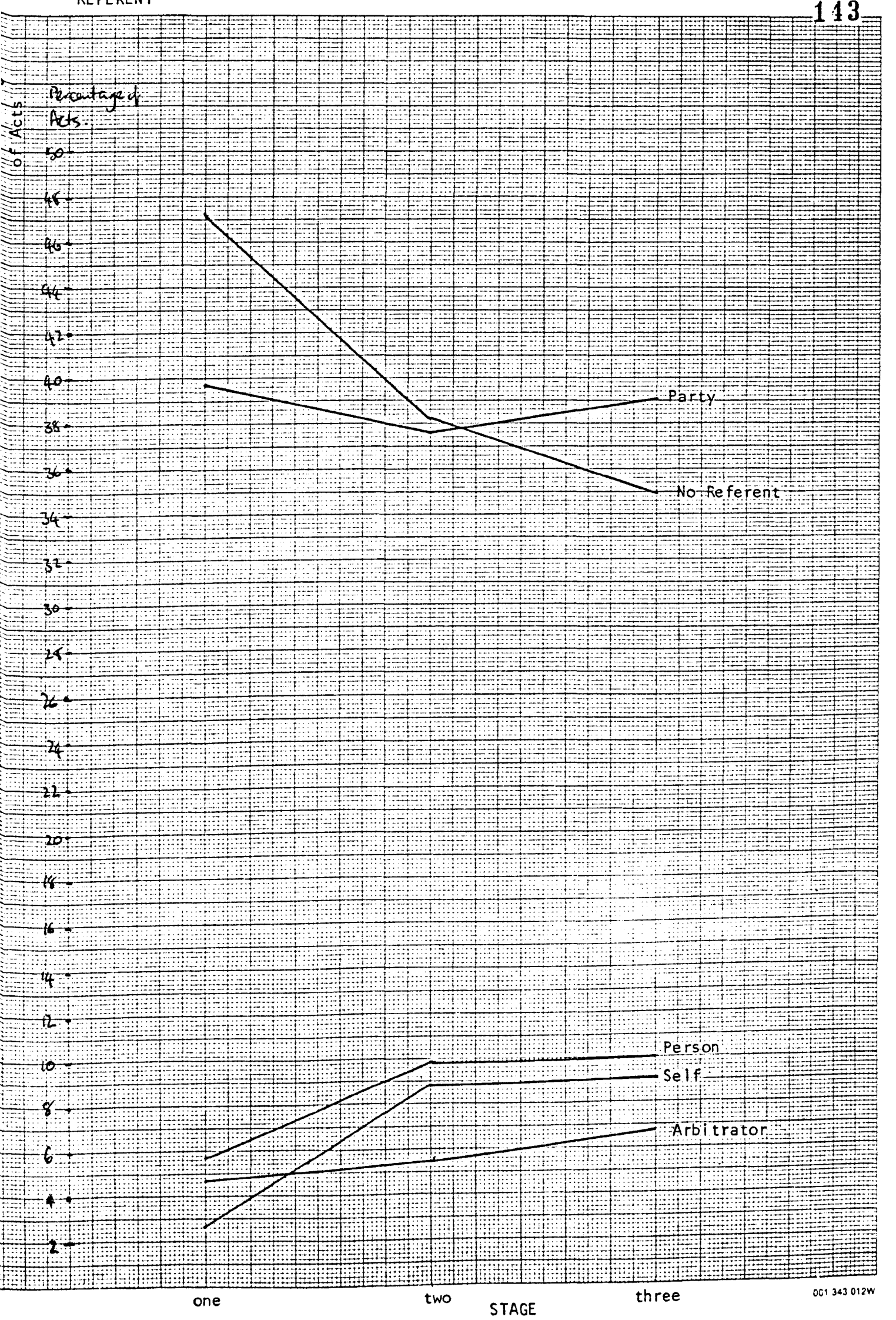
	c.p.a. Category	Stage 1 - 2 Predicted	Observed		c.p.a. Category	Stage 2 - 3 Predicted	Observed
Mode	2. Accepts	Increase	12/12	Mode			
	3. Rejects	Decrease	2/12		3. Rejects	Decrease	7/12
	4. Seeks	Increase	12/12		4. Seeks	Decrease	10/12
Resource	1. Procedure	Decrease	2/12	Resource	1. Procedure	Increase	4/12
	3. Limits	Decrease	5/12		3. Limits	Decrease	4/12
	4,5, 7 & 8. Positive and negative consequences of proposed outcomes/present practices	Increase	20/48		4,5, 7 & 8. Positive and negative consequences of proposed outcomes/present practices	Decrease	18/48
					6. Statements about present practices	Decrease	9/12
					9. Statements about outcomes	Increase	10/12
	10. Positive acknowledgement	Increase	10/12		10. Positive acknowledgement	Increase	10/12
	11. Negative acknowledgement	Decrease	6/12		11. Negative acknowledgement	Decrease	5/12
	12. Information	Decrease	7/12				
Referent	1. Self	Increase	12/12	Referent	1. Self	Increase	6/12
	2,3 & 7. Person	Increase	11/12		2,3 & 7 Person	Decrease	6/12
	4,5 & 8. Party	Decrease	5/12		4,5 & 8.Party	Decrease	8/12

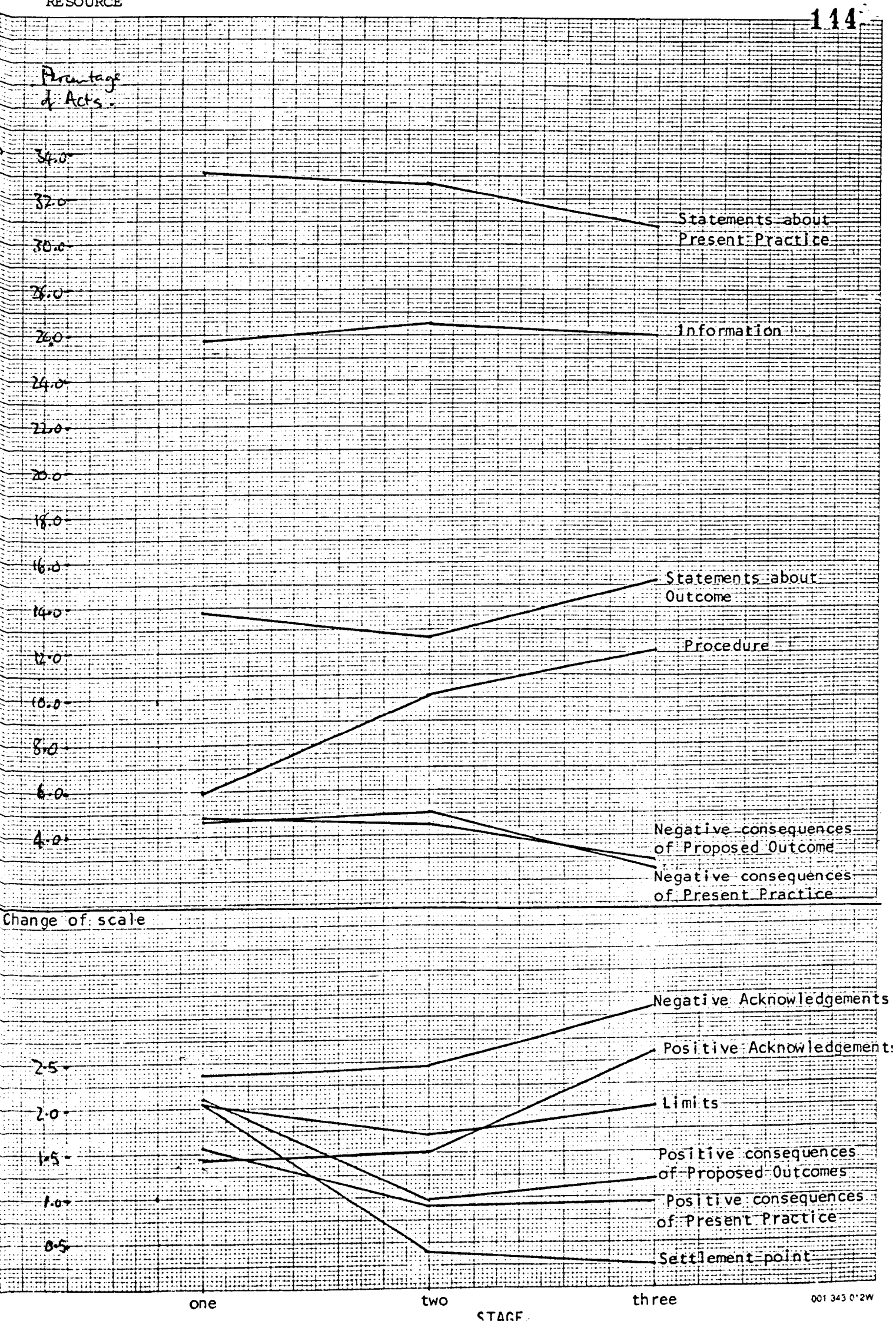
Stage 1 to 11

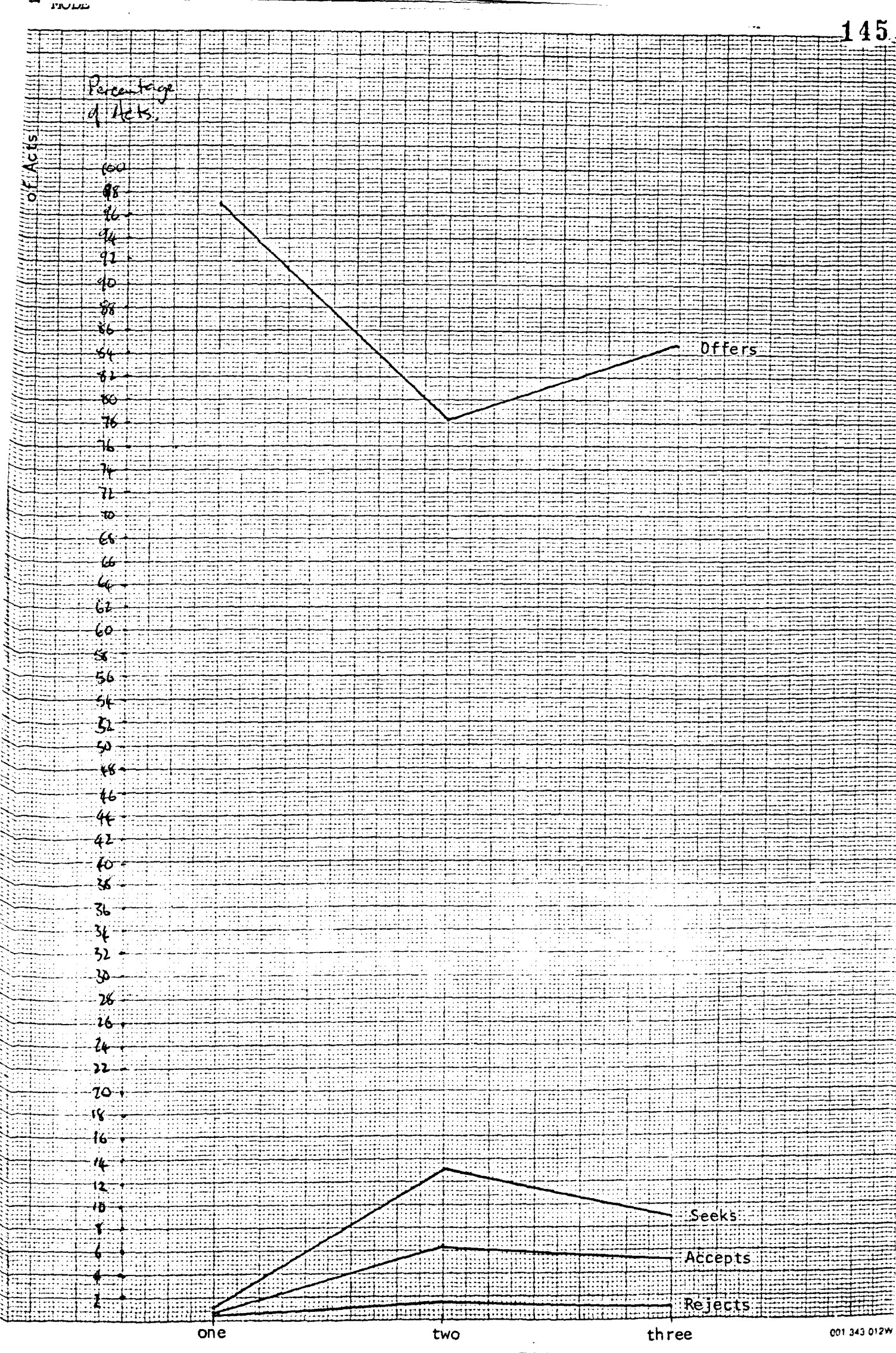
Using the binomial test, $z = -2.01$, $p. < .02$

Stage 1 to 11

Using the binomial test, $z = 1.0$ n.s.


REFERENT
Percentage of Acts
of Acts
50
48
46
44
42
40
38
36
34
32
30
28
26
24
22
20
18
16
14
12
10
8
6
4
2
Party
No Referent
Person
Self
Arbitrator
one
two
three
STAGE
001 343 012W


Percentage of Acts
34.0
32.0
30.0
28.0
26.0
24.0
22.0
20.0
18.0
16.0
14.0
12.0
10.0
8.0
6.0
4.0
Statements about Present Practice
Information
Statements about Outcome
Procedure
Negative consequences of Proposed Outcome
Negative consequences of Present Practice
Change of scale
2.5
2.0
1.5
1.0
0.5
Negative Acknowledgements
Positive Acknowledgements
Limits
Positive consequences of Proposed Outcomes
Positive consequences of Present Practice
Settlement-point
one
two
three
STAGE
001 343 0·2W


Percentage of Acts.
100
98
96
94
92
90
88
86
84
82
80
78
76
74
72
70
68
66
64
62
60
58
56
54
52
50
48
46
44
42
40
38
36
34
32
30
28
26
24
22
20
18
16
14
12
10
8
6
4
2
Offers
Seeks
Accepts
Rejects
one
two
three

Stage I to Stage II

In the Mode Dimension, the level of Offers fell from Stage I to Stage II, with a corresponding increase in the level of Accepts (conforming to the predicted change), a small increase in Rejections (opposite to that predicted) and a substantial increase in questions and exploratory acts (Seeks, as predicted). In the Resource Dimension the use of Procedure increased in Stage II of the hearing (counter to expectations), and the use of Limits remained low and unvarying, rather than decreasing. References to Settlement Points were at their highest at the beginning of the hearings. The strategic categories showed an interesting pattern of variation, although the only statistically reliable change was in the Negative Consequences of Present Practices category, which changed in the predicted direction, increasing from Stage I to Stage II. The hearings generally were characterised by a higher level of negative statements, threatening the undesirable consequences of a proposed course of action or pointing out the disadvantages of a current agreement, than statements about the Positive Consequences of actions. The two Positive Consequences categories, persuading the other side of the advantages of either the current agreement or future proposals, was highest at the start of the hearings, rather than increasing in the second stage as predicted. Those statements concerned with Outcomes and Present Practices also decreased slightly in the second stage of the hearing. The levels of Positive and Negative Acknowledgement remained the same in Stages I and II, counter to predictions. The level of Information did not fall as predicted but remained fairly constant.

In the Referent Dimension, references to Self increased significantly, as predicted, while references to Person and Party showed no significant changes. Personal references did, however, tend to increase in the second stage of the hearing, with a corresponding decrease in the number of statements without an explicit referent. References to Arbitrator also increased. The relatively constant use of Party references indicates the overall formality of the process, although the rise in references to Self and Person indicates that, even within this context, where Parties tended to dominate the proceedings, the second stage of the hearing was still characterised by more exploratory exchanges between the individuals present.

Stage II to Stage III

In the Mode Dimension, the level of Offers increased slightly, while Seeks, Accepts and Rejects all decreased. The decreasing use of questioning and exploratory statements conformed to expectations, but overall, the level of Rejections remained slightly higher in the final stage of the hearing than it was at the beginning (counter to expectations).

In the Resource Dimension, Procedure increased as predicted, statements about Outcomes tended to increase (not statistically significant) while statements about Present Practices declined slightly (not statistically significant). Negative Consequeces of Proposed Outcomes/ Present Practices declined as expected (the latter was statistically significant). The use of Limits and the Positive Consequences categories remained stable, counter to predictions that they would decrease. Positive Acknowledgements continued to increase significantly, as

predicted. Negative Acknowledgements however also increased slightly. In the Referent Dimension, references to Person and Party did not decrease as expected and references to Self remained stable. References to the Arbitrator continued to increase slightly.

(iii) The Consistency of Observed Changes Across Hearings (See Table 10)

Overall, the observed pattern of changes in category levels was remarkably consistent from one hearing to the next, testifying above all to the restraining effect of a standard procedure on the form of debate and argument. This standardisation was particularly noticeable in the Mode Dimension, where the level of Offers was always highest in the opening stage of the hearing, the level of Accepts and Seeks always increased from Stage I to Stage II and the level of Rejects increased in all but two cases. (In these two cases the level of Rejections actually decreased throughout the hearing.) The pattern of category changes in the Resource Dimension was more varied, particularly in the strategic categories, where arguments about Present Practice or Outcomes were more or less relevant depending on the precise nature of the dispute. The Negative Acknowledgement category was also slightly less consistent, in the sense that its level decreased, rather than increased, towards the end of hearings in four out of twelve cases. The Referent Dimension categories again showed a remarkably consistent pattern of changes, with Person and Self references increasing from Stage I to Stage II in all but one case, Party references decreasing in all but two cases and references to the Arbitrator increasing or remaining constant in all but two cases.

Table 10 Consistency of Overall (Average) Changes in c.p.a. Category Levels in Twelve Arbitration Hearings

	Number of cases out of 12 where changes occured in the opposite direction to that expected.*
Mode Dimension	
1. Offers	2
2. Accepts	1
3. Rejects	2
4. Seeks	2
Resource Dimension	
1. Procedures	2
2. Settlement point	0
3. Limits	7
4. Positive Consquences of Present Practice	2
5. Negative Consequences of Present Practice	3
6. Other statements about Present Practice	6
7. Positive Consequences of Proposed Outcomes	4
8. Negative Consquences of Proposed Outcomes	3
9. Other Statements about Outcomes	3
10. Positive Acknowledgement	2
11. Negative Acknowledgement	4
12. Information	8
Referent Dimension	
0. No Referent	2
1. Self	0
2/3/7. Person	2
4/5/8. Party	1
6. Arbitrator	3

* Changes in c.p.a. category levels occur between Stages I → II and Stages II → III. ie. For each category ('Offers', etc), 24 changes are counted.

Section Three The Three Stages of the Arbitration Process

The most obvious conclusion to be drawn from the analysis of the arbitration hearings is that each falls into three distinct stages, which are generally consistent from one hearing to the next. Superficially the three stages of the process are evident to any observer and a detailed content analysis is not necessary to show that each hearing follows a standard procedure, which moves from the presentation of arguments, to exchange of questions and answers, to a summary of the points in dispute.

The content analysis itself, however, indicates that both Bales' phase movement and Morley and Stephenson's model of negotiation could be said to apply to some extent to the arbitration process. It is however evident from the high level of statements addressed formally to parties, that the hearing is not treated principally as an accommodative problem-solving exercise (typically accompanied by a higher level of personal exchange). The existing dispute is clearly between the parties represented. The arbitration hearing offers one method of dealing with that dispute. Yet Bales' three phases of orientation, evaluation and control appear to match the three stages of the hearing reasonably well. There is even some small measure of support for Bales' suggestion that hostility and antagonism increases during the course of the debate, along with positive, supportive gestures aimed at preventing the dissolution of the group.

The extent to which the stages of arbitration actually fit Bales' problem-solving phases is, however, probably more apparent than real. It must be remembered that the three stages of

arbitration are consciously 'imposed' on the group process by virtue of the standard procedure in use, rather than occurring as a product of the particular 'problem' which is being dealt with. That procedure is in itself more likely to be a reflection of our society's belief in the value of rational argument and debate as a means to the resolution of a dispute than a sign of conformity to Bales' phase movement.

The three stages of negotiation distinguished by Morley and Stephenson (1977) could also be said to match the three stages of arbitration reasonably well. The first stage of the arbitration process is essentially distributive in character, concerned with establishing party positions and giving particular emphasis to the relative merits of the case (Positive Consequences of Present Practices/Proposed Outcomes). This is followed by a second stage concerned with explaining the likely room for manoeuvre which the third party may have (Negative Consequences of Present Practices/ Proposed Outcomes; higher level of references to Self and Person) and a final stage of controlled examination of closing positions and remaining points of disagreement (high level of references to Procedure; references to Party again rise; increased use of Outcomes).

The Overall Significance of the Findings

In terms of Bales' phase-movement model, the face-to-face group is treated as a mechanical, closed system, with a finite amount of energy, where the 'disturbance' input, in the form of a problem, equals the energy output, or problem solution. The group process is

treated as a linear series of actions and reactions and the progression from one phase to the next is seen as inevitable. The overall philosophy behind the model is generally difficult to apply to arbitration. The principal difficulty, as with negotiation, is with the view of conflict which the model expresses. In Bales' system, conflict is treated as a by-product of the group process. In arbitration, as in negotiation, the process is itself created in order to deal with the pre-existing conflict between parties. The three stages are not emergent, as Bales would suggest, but chosen as a method of controlling the expression of conflict between the parties. The arbitration process is not about integrating the discordant elements which threaten the dissolution of the group, but about recognising the fundamental conflict of interest between the parties and regulating its expression by virtue of a standard, conventionalised procedure. Antagonism and hostility between sides pre-exists the arbitration, which in itself exists to manage and contain the expression of conflict. Within the constraints of the arbitration procedure, individual antagonisms are not allowed the possibility of expression, since in line with Douglas' (1962) argument, the outbreak of personal hostilities at the arbitration stage would be detrimental to the production of a workable resolution. The level of Negative Acknowledgement remains lower at the end of the arbitration hearings than it is at the beginning of Bales' problem-solving sessions.

It seems that there is a need to distinguish between the social process and the procedure for dealing with the 'problem'. In this case, the procedure used encouraged a very formal process. This is

perhaps the basic difference between Morley and Stephenson's (1977) negotiations and the process at the arbitration hearings. The existence of the conflict between sides is central in both cases, but the concrete expression of that conflict is different and it may be suggested that the arbitration process resembles a formal negotiation.

The Effect of a Conventional Procedure on the Expression of Conflict between Parties

The formality of conventional procedure imposes its own regularities on the patterning of discussion and directs the expression of conflict into certain confined channels. One aspect of that formality is the internal movement of the hearing itself through these stages which are more than 'notional'. The formality of the hearing has clear effects on the dialogue, decreasing the likelihood of interruptions, and personal forms of address and, partly because of the chairman's presence, decreasing the likelihood of exchange directly between individual party representatives on opposing sides. The relative grandeur of the physical setting, the public nature of the forum, the use of microphones and the physical distance between arbitration board and parties all tended to increase the 'psychological' distance between participants from opposing sides and the board. Morley and Stephenson (1977) studied the effects, on negotiation process and outcomes, of different channels of communication, arguing that the use of the telephone increases the formality and impersonal nature of the proceedings, where the greater formality results in greater emphasis on the 'party line' and less

concern for personal relations between group members. In this case, the physical setting and the presence of microphones exerted a similar formalising effect on proceedings, to the extent of outlawing the expression of personal antagonisms.

These factors, together with the use of a standard procedure, regulate the expression of the conflict between sides, by requiring the parties to distance themselves from it and thus talk about it, without engaging in its exterior forms. Contrary to the negotiations described by Morley and Stephenson (1977), the extent of the conflict over preferred outcomes was expressed, at the hearing, initially without the use of a high level of Rejections and with few overt signs of hostility and antagonism. The first stage of the hearing was instead characterised by a high level of statements offering details of present positions with much reference to distinct parties. The justification of party positions relies not on rejections of the opponent's stance, but on assertions of the merits of the case. Only in the second stage of the hearing, when the procedure allows a less structured discussion of the issues, does the more common pattern of disagreement and conflict emerge, in almost colourful contrast with the first part of the hearing. This second stage is characterised by a greater diversity in the form of expression and arguments, and allows slightly more indication of underlying antagonisms between sides. The debate is more personalised, with increased reference to Self and other individuals. Whereas in mediation sessions, initial hostility was negatively correlated with successful resolution (Landsberger, 1955a,b), in arbitration hostility during the first

stage of the hearing is ruled out by the hearing procedure itself. The problem-solving element in the arbitration process did not, as Bales would suggest, necessarily provoke increasing conflict between individuals in the group, but allowed something more of the areas of agreement and disagreement between the sides to be explored.

The results suggest that, in a procedurally formal setting, a distinction should be made between the expression of disagreement and the expression of hostility (something which both Bales and Morley and Stephenson have used together as expressions of conflict), such that disagreement need not be accompanied by the outward expression of hostilities between sides or group members. In the past the characterisation of formality in communication has relied largely on arguments about the depersonalised nature of more formal communication. The use of a standard procedure also formalises the expression of conflict. The disagreement between sides is restricted in form, confining statements mainly to Offers and relying on comments about the positive and negative consequences of proposed action or inaction to convey the extent of the underlying conflict. Representatives of the opposing sides are consequently able to maintain a relatively disinterested stance, facilitating the resolution of the dispute.

Conclusion

In reality there are very few 'problems' which are non-divisive and which consequently could be resolved along non-partisan lines. Such problems are most likely to exist when the consequences

for the decision-makers are not serious. In the case of a long-standing conflict of interest, in the context of a continuing relationship between group members, such as that encountered in industrial relations, the methods for dealing with the conflict are frequently institutionalised in order to regulate and control its expression. These methods constitute in themselves part of that 'group maintenance' function which Bales discusses.

The three stages of the arbitration hearing are formally established by the conventions of a procedure which decrease the possibilities for innate variations according to the type of issues in dispute. What function does the hearing perform for the parties? Firstly, the procedural formality controls the overt expression of conflict and may in certain cases facilitate the discovery of a solution to the dispute. Secondly, since arbitration provides a public forum for the hearing of differences, it is both an opportunity for representatives to demonstrate to constituents that their interests are being zealously protected and pursued, and an opportunity for parties to reappraise their own and the other side's position, with the benefit of a third-party presence. The third-party may give new emphasis to aspects of the dispute previously ignored by the parties. Lastly, the final stage of the hearing provides a forum for the re-framing of differences in the light of the arbitrator's questions and comments.

Rather than a linear series of actions and reactions, the arbitration process can be characterised as one part of a larger cycle of decision-making and negotiation, viewed in the context of the bargaining relationship between the parties. Burnstein (1980) distinguishes between exogenous and endogenous cycles, the former

being events in the environment (economics, government pay policy, etc.) and the latter being events internal to the group. In this case such internal cycles may include the need to maintain the group, although this is not necessarily expressed verbally on such occasions.

Drawing on Mintzberg et al's (1974) characterisation, arbitration can be depicted as part of a decision selection process, embedded in routines of diagnosis, development and selection. Yet within itself it contains all of those elements. Whilst some of the issues brought to arbitration clearly concern a re-run of well-established practices and habits, with a choice between pre-determined solutions, some of the issues require the creation of new solutions, uniquely designed to meet the particular circumstances. Those decisions are themselves likely to form one part of another cycle. The picture which emerges is not one of linear chains of action and reaction, such as those discussed by Bales, but a process which is social in nature, and which builds on and changes what has gone before. Pfiffner (1960) suggests that the circular nature of such a process is closer to 'fermentation in biochemistry . . . than (it is to) the industrial assembly line' (p.129). Whatever the political and strategic reasons for pursuing some of the disputed issues to arbitration, it can be argued that, in some cases, the arbitration hearing provides a specific means for the 're-cycling' of decisions and arguments. To the extent that this method contrasts with preceding and subsequent negotiation and committee stages, it should assist the parties in the discovery of a novel solution to the dispute. If, as Mintzberg et al (1974) suggest, 'complexity' is gradually understood through the continual recycling of the arguments

and issues, it may be conjectured that, where an arbitration provision exists, some of the thorniest disputes, requiring the greatest amount of 'recycling' before the achievement of a workable solution will at some stage, and even before the possibilities of negotiation are exhausted, result in arbitration.

CHAPTER SEVEN

Procedural Justice and the Process of Arbitration in Relation to the Relative Simplicity or Complexity of the Dispute

Section 1

The Nature of the Disputes brought to Arbitration

It has been suggested, in Chapter Four, that it is possible to distinguish between two types of public sector disputes brought to arbitration, the first concerning the interpretation of a current agreement or the application of an established standard in relation to a current issue, and the second concerning a decision over the terms of a new agreement according to conflicting principles and criteria for settlement. It was also suggested in Chapter Four that the relative simplicity or complexity of the dispute was likely to be one indicator of the approach which the third-party should adopt in dealing with the case. For the purpose of the present analysis the distinction between cases is therefore made in terms of their relative 'simplicity' or 'complexity', where the simple cases are defined partly in terms of their concern with the application of an established standard to the current dispute and the more complex cases are defined partly in terms of their lack of such established criteria. Although it might be more accurate to describe complexity as varying along a continuum, the small sample size prohibited any finer discrimination than the initial division between 'simpler' and

'more complex' cases. This distinction corresponds reasonably well to Thibaut and Walker's (1975) distinction between cases with established criteria for decision and cases which lack such criteria.

The preface to the arbitration board's decision on pay restructuring proposals illustrates the board's own understanding of the more complex disputes: 'We have had to decide a series of issues which will have widespread implications for the future . . . We feel we must preface our conclusions on these matters with some reference to the unusually complex circumstances which surround the . . . proposals . . . Many of the outstanding issues were still the subject of negotiations . . . It is not possible to say what the final position of the two sides would have been . . . Finally some of the issues themselves are complex in that they involve assessment of changes in work pattern and responsibilities both in the past and in the future' (arbitration board decision, 1974).

In the context of negotiation, two aspects of complexity have been distinguished (Winham, 1977; Zartman, 1971; Barber, 1966), firstly the difficulty, which decision-makers face, of dealing with a large mass of information, and secondly, the uncertainty created by the lack of an obvious framework or set of criteria for judging the relative weight or significance of different and conflicting information. A quote from the arbitration board serves to illustrate the former: 'We have been presented with two claims which have not been advanced on the same basis. They have also produced different responses from the other parties concerned with the outcome of our decision. As a result we have been faced with four divergent views of the problems and events . . . together with incompatible

suggestions for dealing with them . . .' (arbitration board decision, 1978). The aspect of complexity concerned with the mass of information to be dealt with may be defined as:

(i) the size or width and variety of issues; and

(ii) the number of interested parties.

Taken together these two features cause the number of possible viewpoints to multiply rapidly (Winham, 1977).

The 'uncertainty' which is characteristic of complex problems may be produced by

(i) problems of discovering or generating information;

(ii) the lack of an easily applicable framework for the ordering of priorities and justification of decisions; and

(iii) long-term consequences which are not easily foreseeable in advance (Winham, 1977).

Although in the public sector arbitrations, the parties provided a great deal of detailed information, oriented towards supporting their particular arguments, the problem from the board's point of view was 'how to form some estimate of the relative justifiability of the range of offers made, bearing in mind the (management's) admission that its own evaluations were based on subjective judgements . . .' (arbitration board decision, 1974). In contrast with the simpler cases, where appeal could be made to an agreed criterion, in more complex disputes the hearing and decision have to encompass debate about the kinds of criteria to be used in evaluating alternative agreements.

The Definition of Simple and Complex Disputes

In the light of the preceding discussion, the distinction between simpler and more complex cases was made as follows.

1. Simpler Cases

In industrial relations terms, the simpler disputes were those which

(i) concerned a single issue and decision point or a main and a subsidiary issue, which was related in an obvious and immediate way to the main focus of dispute;

(ii) could be decided within the context of an existing agreement or by reference to established practice;

(iii) had outcomes with limited and foreseeable consequences for the industry and industrial relations as a whole. (See Figure 4.)

2. More Complex Cases

The more complex disputes were those which

(i) concerned a number of issues, which could be extensive, in terms of the numbers of staff and grades covered, and which were related to each other such that a decision on one issue had uncertain or unpredictable effects on all the others;

Figure 4 Examples of simple cases, referred to arbitration

	Case 1	Case 2	Case 3	Case 4	Case 5
Main Issue	Claim for increase in signing-on and -off time, allowed to drivers	Claim for signing-on and -off allowance for staff involved in continuous shift-working	Claim for quarterly review of meal and lodging allowance to replace current annual review	Claim for payment of meal allowance to staff in construction gangs, working more than one mile from their booking-on point	Claim for payment of full driver's rate to drivers' assistants qualified to drive
Subsidiary Issues	Grievance over poor organisation of notice-boards which drivers were required to check before commencing duty	Arbitrary fashion in which overtime was currently granted to staff remaining over at the end of a shift	-	Provision of adequate facilities for meals/ refreshments whilst involved in maintenance work	Slow promotion to driver
Decision Context	Agreement for 20 minute signing-on and -off allowance	Other agreement with groups of staff for signing-on and -off allowance	Agreement on payment of meal and lodging allowance	Agreement on payment of meal and lodging allowance	Agreement over drivers' terms and conditions of employment
Decision	No justification for a general increase. Work study proposed, for efficient arrangement of notice-boards and other information	No justification for general allowance. Creation of new agreement over procedures for claiming overtime proposed	Six monthly review proposed	No entitlement	No entitlement to full rate, but some allowance, recognising their qualification, proposed
Grounds for decision	1. Has there been an increase in duties? 2. If so, is extra time needed?	1. Is there a significant "change over" period between shifts? 2. If so, should this be paid for by regular allowance? 3. Comparability with other public sector arrangements.	1. Is annual review causing hardship to staff, given high rate of inflation? 2. Comparability with other public sector arrangements.	1. Are staff working more than one mile distant from booking-on point entitled to meal allowance? or 2. Is the allowance payable only to staff working outside their normal area?	1. Would there be a detrimental effect on incentive to apply for driver's job? 2. Are drivers' assistants waiting for promotion in an unfavourable position?
Implications for Industrial Relations	Related to claims by other groups for the creation of a signing-on allowance	Related to drivers' claim for increased signing-on and -off allowance	-	-	Potentially repercussive claims by other groups in similar position

Figure 5 Examples of Complex Cases, referred to Arbitration

	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6
Issues	Pay restructuring proposals in terms of: 1. Payments for additional responsibilities; 2. Restructuring for salaried staff; 3. Payment for irregular and unsocial hours; 4. Consolidation of individual bonus payments into basic rates; 5. Implementation, etc.	Provision of adequate differentials and maintenance of relativities between salaried and wages grades, in the light of pay restructuring proposals	Method of payment and consolidation into basic rate of £6.00 pay supplement and effect on basic rate of pay in operation	Proposed changes in procedures for advertising salaried staff vacancies to wages grades. (Claim brought by management)	Proposed rescindment of two agreements which allow management to roster staff up to 9 hours without consultation	1. Claim for increased responsibility and productivity payments; 2. Claim for comparability of salaried staff with wages grades
Main Arguments	Equity/Justifiability of proposals in terms of: 1. Establishing relationships between grades/differentials; 2. Recognising responsibilities; 3. Overall efficiency; 4. Good industrial relations practice, etc.	Equity/Justifiability in terms of: 1. Relationships between grades, particularly supervisory and non-supervisory; 2. Disruption of established principles for grading of posts	Equity/Justifiability in terms of: 1. Psychological importance of not reducing the basic rate (historical precedents); 2. Effects of proposed payment methods on calculation of bonuses, etc.	Equity/Justifiability in terms of: 1. Conflicting expectations of salaried versus wages grades over promotion/job prospects; 2. Rights of management to widest possible choice of applicants; 3. Difficulties in recruitment	1. Rights of management to determine hours of working; versus rights of employees to self-determination; 2. Good faith of the parties in operation of "cooperative" arrangement	Equity/Justifiability in terms of: 1. Perceive re-introduction of individual bonus arrangements; 2. Future stability of the industry; 3. Productivity; 4. Stress and strain of certain jobs
Decision	Compromise between positions of management and unions	Compromise between positions of management and unions	Compromise between positions of management and unions	Favours management proposals for reform of procedure	Favours unions	Compromise between positions of management and unions
Implications for Industrial Relations	Covers whole workforce; relations between work-groups and unions; future structure of industry, etc.	Part of continuing argument about supervisors' differentials in relation to increases received by wages grades staff	Covers whole workforce; unions disagree over long-term effects of different payment methods and consolidation	Related to continuing arguments over the relationships between salaried, supervisory and wages grade staff	Uncertain effects on future timetabling, crucial to the operation of the industry	Related to continuing arguments over methods of payment of bonuses (individual versus group versus additions to basic rates)

(ii) lacked a specific framework or easily available criterion for agreement in terms of which any decision could be couched;

(iii) frequently involved reference to abstract principles of equity and justice;

(iv) had wide-ranging, long-term implications for industrial relations, including inter-union relations, which were difficult to forecast.

(See Figure 5)

Section II

Procedural Justice and Arbitration

According to Thibaut and Walker's (1975) model of procedural justice, different procedures should be required in order to deal satisfactorily with the two types of disputes. The simpler cases should be most appropriately resolved by a procedure which vests most control in the third party (inquisitorial) and the more complex cases should be most satisfactorily resolved by a procedure which vests most control in the disputants (adversarial/negotiation).

Without reference to detailed content analysis, it is however immediately evident to any observer that, in public sector arbitration, a standard procedure has been used consistently by the same parties since the 1950s. This procedure, which has been used over 80 times to decide disputes between parties, is set down formally in their agreed disputes procedure. Appeal to arbitration forms the final stage of a machinery which progresses disputes from local

committees up to national level. The role of arbitration is not insignificant for the industry, since the arbitrators have the power to decide issues as varied as wages, hours of duty, other conditions of employment or proposals to vary a national agreement where the proposals are, in the parties' own words, of 'major importance'.

As established in Chapter Five, the procedure in use superficially follows the form of the classic debate. An opening statement is made by each side, explaining and justifying their position (98.64% of all statements are framed as 'offers' at this stage, Table II). The 'claimant' party (generally the union) speaks first, followed by the respondent (usually management). Both sides and the arbitration board may then ask questions and challenge arguments raised in the opening speeches (characterised by more varied forms of address and in particular more questioning, TableII). Finally, party representatives sum up in reverse order, the claimant speaking last. All hearings thus have three distinct, formal stages and the conventional nature of proceedings is illustrated by the restrained form of argument (statements are mostly framed as 'offers', 88.08% overall, Table II), very restricted expression of hostility and antagonism (1.28% of all acts) and standard, 'polite' forms of address (38.91% of references are to one of the parties present, as opposed to 8.18% personal references and 6.37% references to one self).

TABLE II DISTRIBUTION OF MODES (SHOWING HOW THE STATEMENT IS FRAMED) ACROSS THE THREE STAGES OF THE ARBITRATION HEARING

	STAGE					
MODE	1	2	3	TOTAL	F.	P.
0.	0.11	0.40	0.44	0.29	-	-
1. Offers	97.66	78.54	84.70	88.08	6.05	.009
2. Accepts	0.60	6.22	5.04	3.60	9.57	.001
3. Rejects	0.65	1.63	0.99	1.05	4.97	.02
4. Seeks	0.98	13.21	8.82	6.97	25.27	.001

The first obvious point is that this general procedure is followed, regardless of the particular issues in dispute, which may range from pay restructuring with widespread implications for the industry and workforce, to relatively minor claims for an additional ten-minutes signing-on allowance or an extra provision for a meal allowance, with much more restricted implications for the industry. This general conclusion challenges Thibaut and Walker's claims that different procedures are likely to be more satisfactory for dealing with different types of case. Thibaut and Walker could, of course, say in defence that perhaps the parties are not actually satisfied with the fairness of the hearing procedure in all cases. On the contrary, however, the procedure was set down by the parties who persist in its use, despite the practical objections to its more cumbersome aspects sometimes raised by the arbitrator.

In contradiction to Thibaut and Walker's model, therefore, one particular procedure may be felt to be fair, in the sense that it is consistently, and fairly frequently, used by the parties, regardless of the type of issues involved.

Factors Influencing Preferences for a Particular Procedure

If the choice of procedure is not based on a logical match between it and the type of case, then the factors which do influence preferences for a particular procedure must be identified. In this case, there are at least two reasons why the procedure is regarded as fair, both relating to the social and political context of the third-party proceedings, a context which is easily ignored in an abstract analysis of the type carried out by Thibaut and Walker (1975). The first reason is related to the parties own cultural background: the procedure is formally adversarial, reflecting the strong underlying faith, which is widespread in our society, in the efficacy of 'debate' as a means to the rational solution of a conflict of interests. The second reason is related to the specific significance of the arbitration (or other third-party) forum for the parties' own relationship. In this case, arbitration is at the apex of the industrial disputes procedure. By the time an issue has reached this final stage, it has to be seen to be dealt with in a thoroughly formal, conventionalised manner. Only if it is dealt with in this way will the process and subsequent decision be able to command the respect of both sides. There is a sense in which the

outcome of arbitration is equitable by virtue of this procedure in itself. This sense of the fairness of the hearing is quite separate, and it seems deliberately distinguished from, the grounds for the decision itself. Any decision must be seen to be equitable by virtue of the standard procedure which produced it.

With reference to Thibaut and Walker, the idealised, imagined relations between procedure and fairness of outcome in different disputes seem to bear little relation to the actual strategic considerations involved in the choice of a particular procedure. In general, the social and political context of the third-party process will work against implementation of a supposedly 'rational' model and will generate its own specific perceptions of what constitutes a fair hearing. In this case, attempts to vary the procedure would be more likely to be seen as threatening, rather than enhancing the fairness of the hearing.

The Relationship between the Standard Procedure and the Concept of Distribution of Control

1. Defining Distribution of Control and Applying it to the Arbitration Hearings

In practice, the meaning of distribution of control as used by Thibaut & Walker can be shown to be ambiguous when it is applied to actual third-party proceedings. A number of different interpretations can be made. For example:

(i) In formal terms, the hearing is clearly positioned in the middle of Thibaut and Walker's control continuum, by virtue of its overall adversarial form;

(ii) Yet it could also be said that the parties alone control the procedure, in the sense that their past decision determined its form regardless of the issue.

(iii) Lastly, it could be claimed that none of the actual participants control the procedure at each specific hearing, in the intentional sense that Thibaut and Walker appear to mean. That is the parties do not make a conscious choice about the appropriateness of the procedure for dealing with different issues, on each occasion. On the contrary, a form of conventional control is in operation by virtue of the shared expectations of the participants and their past commitment to that particular procedure.

2. Distribution of Control and Type of Case

Despite these reservations it is still possible to ask whether the distribution of control over procedure does, in any observable sense, vary with different kinds of case. Taking a simplistic indicator of control: the relative contributions of arbitrator and parties to the debate, and assuming that those who contribute less exercise less control over proceedings, it was found that the arbitrator contributes significantly less in the more complex cases that he does in the simpler cases (Table 12).

Table 12 Average Contribution* of each Party to the Arbitration Hearing, according to the relative Simplicity or Complexity of the Dispute

(No. of cases = 12. 'Simple' = 7; 'Complex' = 5)

Party	Simple	Complex	F.	P.
Management	30.89	24.07	2.96	(.10)
Union	30.99	33.58	0.25	n.s.
Arbitrator	26.27	20.72	4.24	.05
(Subsidiary Unions	11.85	21.63	-	-)
	100	100		

This finding superficially gives some support to Thibaut and Walker's contention that the parties should assert relatively more control over procedure in the cases which lack specific criteria for decision.

The distribution of acts by the arbitrator over three stages of the hearing does not, however, change. The arbitrator's pattern of contribution in both simpler cases and more complex cases remains the same (Table 13).

* Refers to percentage contribution of total c.p.a. Acts.

Table 13 Average Contributions* of Participants, According to Stage of Hearing and Relative Simplicity or Complexity of Case

Person	Simple Cases			Complex Cases		
	Stage			Stage		
	1	2	3	1	2	3
Management	38.26	25.31	29.09	34.28	22.14	15.77
Union	40.13	32.35	27.42	33.47	31.28	38.86
Arbitrator	6.84	39.94	31.95	2.87	37.09	22.19

Whereas Thibaut and Walker would presumably expect the third-party to take a more passive role throughout the hearing of more complex cases, the arbitrator actually remains highly active in the middle stage of all hearings. He is, in fact, consistently the most active participant during this second stage, and in contrast remarkably passive during the first stage of the hearing when the parties are highly active in the presentation of their case. The overall phase effect is thus maintained in the hearing of the more complex cases, and the overall procedure remains intact in terms of who contributes when or the roles played by the participants.

Section III

The Social Process of the Arbitration Hearing

In order to understand the differences between the arbitration of simpler and more complex disputes it is necessary to maintain a distinction between the procedure used and the social process at the

* Refers to percentage contribution of total c.p.a. Acts.

hearing. The different types of disputes result in variations in the social process which are oriented not towards the production of a fairer hearing, but towards dealing with the different tasks faced by the arbitrator.

In the past, arbitration has been treated as a process which is quite distinct from negotiation, because the parties surrender their responsibility for the outcome of the dispute to a third party. The preceding analysis, however, implies that arbitration is best understood in terms of its position within the framework of collective bargaining, and according to the strategic choices made by the parties in the light of their overall relationship. From this perspective, the differing social processes of the arbitration hearing may be explained by comparisons with different models of the negotiation process.

The past experimental work on arbitration has assumed a concession-convergence model of negotiation, leading to a view of arbitration as a 'face-saving' device or as a threat to be used in inducing faster concessions from the parties. This would imply that the third-partyaccepts the dispute at face value and, whilst appearing to be an adjudicator of the dispute, in fact acts as a manager of the concession-convergence process, by developing a tacit understanding of the parties' unspoken intentions for the outcome of the dispute.

In contrast, a formula-detail model of negotiation (Zartman, 1977) would suggest that the process of concession management is only one aspect of the arbitrator's role. In terms of the latter model, the arbitrator is more likely to be engaged with the parties

in negotiating a general framework, leaving the detailed resolution of the dispute to be decided and implemented by the parties.

It was hypothesised, in Chapter Four, that the complexity of a dispute was one indicator of the type of approach adopted. In general it is expected that the more complex the issues, the less the emphasis given to details of concessions on either side and the more the concern with developing a common framework for negotiation.

Parties' Statements of Position

If the third-party is to be able to engage in managing the 'concession-convergence' process with the parties, then the parties must have clearly defined, opposing opening positions. The precise statement of a preferred settlement point should therefore be more common in the simpler disputes than in the more complex disputes. This expectation is in fact supported (Table 14).

Table 14 Number of Cases with Precise Statement of Preferred Settlement Point, classified according to the relative Simplicity or Complexity of the Dispute

Case Type	Specific Statement of Preferred Settlement Point	No Specific Statement of Preferred Settlement Point	
Simple	17	0	17
Complex	7	6	13
	24	6	30

(Based on analysis of 30 arbitration decisions in Public Sector industry 1, during the period 1974-1980.)*

* Data collected by the author.

In the more complex disputes it was less likely that the parties would make a precise statement of the preferred outcome of arbitration in their written statement of case. Something like the 'concession-convergence' process is, therefore, at least feasible in the simpler cases and much less feasible in the more complex cases.

The Effects of Complexity on the Process of the Arbitration Hearing

Results

The analysis of hearings is based on the twelve cases, observed by the researcher, where the proceedings are described in terms of Conference Process Analysis (c.p.a.), Morley and Stephenson (1977), as described in Chapter Six.

Main Effects of Complexity/Simplicity

The major differences between the hearing process, in the case of simpler and more complex cases, are shown in Table 15. In brief:

1. The management and arbitration board contributed less to the debate in complex cases, whilst the subsidiary unions contributed relatively more.
2. In the mode dimension, complex cases produced a slightly lower rate of Accepts and Rejects.
3. In the resource dimension, the categories which changed according to the relative simplicity or complexity of the dispute were those concerned with Outcomes. In complex

Table 15 Average proportions of acts in each c.p.a. category, according to the relative Simplicity or Complexity of the Dispute

c.p.a. category	Case: Simple	Case: Complex	F	p
Person				
Management	30.89	24.07	2.96	.10
Union	30.99	33.58	0.25	n.s.
Arbitrator	26.27	20.72	4.24	.05
(Subsidiary Unions	11.85	21.63	-	-)
Mode				
1. Offer	83.50	85.09	0.88	n.s.
2. Accept	4.79	3.35	2.37	.16
3. Reject	1.32	0.83	3.05	.11
4. Seek	8.59	8.55	0.00	n.s.
Resource				
1. Procedure	15.84	13.45	1.18	n.s.
2. Settlement Point	0.88	1.21	0.32	n.s.
3. Limits	2.02	1.59	0.40	n.s.
4. Positive Consequence of Present Practice	1.21	1.65	0.68	n.s.
5. Negative Consequence of Present Practice	2.93	3.47	0.15	n.s.
6. Other Statements about Present Practice	31.17	27.14	0.29	n.s.
7. Positive Consequence of Proposed Outcomes	0.48	1.87	20.20	.001
8. Negative Consequence of Proposed Outcomes	1.51	5.28	6.97	.02
9. Other Statements about Outcomes	9.51	16.60	2.61	.14
10. Positive Acknowledgement	2.48	3.30	1.36	n.s.
11. Negative Acknowledgement	2.72	2.13	0.35	n.s.
12. Information	27.55	19.82	3.44	.09
Referent				
0. No Referent	40.96	39.32	0.31	n.s.
1. Self	7.33	6.68	0.31	n.s.
2. Management Person	3.39	2.73	1.20	n.s.
3. Union Person	5.07	7.10	4.28	.07
4. Management Party	9.01	11.65	1.81	n.s.
5. Union Party	24.22	22.71	0.13	n.s.
6. Arbitrator	5.42	6.43	0.63	n.s.
7. All Persons	1.92	1.68	0.21	n.s.
8. All Parties	2.06	2.91	1.11	n.s.

cases, more use is made of both Positive and Negative Consequences of Proposed Outcomes and Other Statements about Outcomes and relative to the simpler cases, the amount of general Information decreased.

4. In the referent dimension, complex cases produced a higher rate of personal reference to the union representative.

Interaction between Role, Stage and Complexity of Dispute

Tables 16 to 22 show two- and three-way interactions between the role (management, union or arbitrator) of the participant, the stage of the hearing (1, 2 or 3) and the relative simplicity or complexity of the dispute. Although some of these were statistically significant at the .10 level only, they are included because of the light which they appear to cast on the hearing process. In the more complex disputes, management was particularly responsible for increased use of Limits (confining the range of agreements possible) and made most use of the Negative Consequences of Proposed Outcomes. Both union and arbitrator made relatively more use of Limits in the simpler disputes (See Table 16 and 17).

Whereas management focussed attention on the Positive Consequences of Present Practices at the beginning of more complex disputes (Table 18), the union was most active in stressing the Positive Consequences of Proposed Outcomes (Table 19), and in focussing attention on the possible Outcomes at the beginning and end of complex disputes (Table 20). In general, the arbitration board were less Accepting of statements made in the more complex disputes (Table 21), whilst making more personal references to the union representatives (Table 22).

Table 16 Percentage of c.p.a. Acts classified as Resource: Limits, calculated separately for Management, Union and Arbitrator, according to the relative Complexity or Simplicity of the Dispute

	ROLE		
Type of Case	Management	Union	Arbitrator
Simple	1.14	2.34	2.50
Complex	2.73	1.30	0.74

Analysis of variance, F=2.68, p .09
(Case x Role)

Table 17 Percentage of c.p.a. Acts classified as Resource: Negative Consequences of Proposed Outcomes, calculated separately for Management, Union and Arbitrator, according to the relative Simplicity or Complexity of the Dispute

	ROLE		
Type of Case	Management	Union	Arbitrator
Simple	1.59	1.49	1.45
Complex	8.04	4.00	3.81

Analysis of Variance, F=3.94, p .04
(Case x Role)

Table 18 Percentage of c.p.a. Acts classified as Resource: Positive Consequences of Present Present Practice, calculated separately for Management, Union and Arbitrator, according to Stage of Hearing and the relative Simplicity or Complexity of the Dispute

	Type of Case						
	ROLE				ROLE		
Stage of Hearing	Management	Union	Arbitrator	Stage of Hearing	Management	Union	Arbitrator
1	2.95	1.61	0.40	1	5.29	0.73	0.00
2	3.42	0.24	0.24	2	3.25	4.01	1.17
3	6.35	0.00	0.70	3	1.57	1.02	1.22

Analysis of variance, F=2.17, p .09
(Case x Stage x Role)

Table 19 Percentage of c.p.a. Acts classified as Resource: Positive Consequences of Proposed Outcomes, calculated separately for Management, Union and Arbitrator, according to Stage of Hearing and the relative Simplicity or Complexity of the Dispute

Type of Case

Stage of Hearing	ROLE			Stage of Hearing	ROLE		
	Management	Union	Arbitrator		Management	Union	Arbitrator
1	1.07	1.20	0.00	1	1.68	5.48	0.00
2	0.00	0.39	0.1	2	1.27	2.19	1.99
3	0.28	0.88	0.40	3	1.79	1.27	1.13

Analysis of variance, $F=2.19$, $p < .09$
(Case x Stage x Role)

Table 20 Percentage of c.p.a. Acts classified as Resource: Other Statements about Outcomes, calculated separately for Management, Union and Arbitrator, according to Stage of Hearing and the relative Simplicity or Complexity of the Dispute

Type of Case							
Simple				Complex			
	ROLE				ROLE		
Stage of Hearing	Management	Union	Arbitrator	Stage of Hearing	Management	Union	Arbitrator
1	6.42	10.09	9.38	1	15.35	23.47	18.78
2	5.05	14.06	7.59	2	12.41	14.13	19.72
3	9.14	11.92	11.93	3	7.46	24.74	13.33

Analysis of variance, $F = 2.56$, $p < .05$
(Case x Stage x Role)

Table 21 Percentage of c.p.a. Acts classified as Mode: Accepts, calculated separately for Management, Union and Arbitrator, according to Stage of Hearing and the relative Simplicity or Complexity of the Dispute

Type of Case

Simple				Complex			
	ROLE				ROLE		
Stage of Hearing	Management	Union	Arbitrator	Stage of Hearing	Management	Union	Arbitrator
1	1.15	0.81	2.23	1	0.24	0.05	0.00
2	6.71	9.39	3.76	2	10.83	5.69	2.61
3	9.82	5.22	4.06	3	5.60	3.24	1.86

Analysis of variance, $F = 2.36$, $p < 0.7$
(Case x Stage x Role)

Table 22 Percentage of c.p.a. Acts classified as Referent: Union Person, calculated separately for Management, Union and Arbitrator, according to the relative Simplicity or Complexity of the Dispute

	ROLE		
Type of Case	Management	Union	Arbitrator
Simple	2.58	1.14	11.50
Complex	1.90	0.91	18.50

Analysis of variance, $F = 3.99$, $p < .03$

(Case x Role)

Interactions between Stage of Hearing and Complexity of Dispute

Tables 23 to 28 show six interactions between the stage of the hearing (one, two or three) and the complexity of the dispute.

(1) In the mode dimension the relatively higher use of statements Rejecting other propositions in simple cases was accounted for by the increased use of Rejects in the middle of the hearing. In complex cases, there was little variation.

(2) In the resource dimension, Limits were most frequently imposed in the middle of complex cases, whilst they were at their highest at the end of the hearing in the simpler disputes. The two strategic categories, concerned with the Positive and Negative Consequences of a current Practice or agreement, tended to vary ($p < .10$), such that although their overall use did not change according to the type of case, they were used most frequently in the middle of the more complex disputes, falling to their lowest levels at the end of the hearing. There was less variation in these categories in the simpler disputes.

(3) In the referent dimension, references to the Management Party were highest in the middle of complex disputes, whereas they increased, although to a lesser extent, throughout simpler disputes. Appeals to the Arbitrator tended to increase throughout the more complex disputes, whereas there was little variation in the simpler cases ($p < .08$).

Table 23 Percentage of c.p.a. Acts classified as Mode: Rejects, calculated separately for Stages 1,2 and 3 of the Hearing, according to the relative Simplicity or Complexity of the Dispute

	Stage of Hearing		
Type of Case	1	2	3
Simple	0.46	2.12	1.39
Complex	0.64	0.71	1.13

Analysis of variance, $F = 3.94$, $p < .04$

(Case x Stage)

Table 24 Percentage of c.p.a. Acts classified as Resource: Limits, calculated separately for Stages 1,2 and 3 of the Hearing, according to the relative Simplicity or Complexity of the Dispute

	Stage of Hearing		
Type of Case	1	2	3
Simple	1.11	1.39	3.56
Complex	1.03	2.57	1.16

Analysis of variance, $F = 3.62$, $p < .05$

(Case x Stage)

Table 25 Percentage of c.p.a. Acts classified as Resource: Positive Consequences of Present Practice, calculated separately for Stages 1,2 and 3 of the Hearing, according to the relative Simplicity or Complexity of the Dispute

	Stage of Hearing		
Type of Case	1	2	3
Simple	1.29	0.64	1.70
Complex	1.88	2.24	0.83

Analysis of variance, $F = 2.66$, $p < .10$

(Case x Stage)

Table 26 Percentage of c.p.a. Acts classified as Resource: Negative Consequences of Present Practice, calculated separately for Stages 1,2 and 3 of the Hearing, according to the relative Simplicity or Complexity of the Dispute

	Stage of Hearing		
Type of Case	1	2	3
Simple	2.52	3.24	3.02
Complex	2.75	6.11	1.55

Analysis of variance, $F = 2.90$, $p < .08$

(Case x Stage)

Table 27 Percentage of c.p.a. Acts classified as Referent: Management Party, calculated separately for Stages 1,2 and 3 of the Hearing, according to the relative Simplicity or Complexity of the Dispute

	Stage of Hearing		
Type of Case	1	2	3
Simple	7.32	9.52	10.94
Complex	6.77	15.62	12.57

Analysis of variance, $F = 5.16$, $p < .02$

(Case x Stage)

Table 28 Percentage of c.p.a. Acts classified as Referent: Arbitrator, calculated separately for Stages 1,2 and 3 of the Hearing, according to the relative Simplicity or Complexity of the Dispute

	Stage of Hearing		
Type of Case	1	2	3
Simple	5.57	4.75	5.93
Complex	4.00	6.36	8.93

Analysis of variance, $F = 2.83$, $p < .08$

(Case x Stage)

Discussion of the Hearing Process and resulting Decisions

(i) The Process of the Hearing, according to Type of Dispute

The results of the analysis suggest that there is some support for the expected distinction between the social processes of the hearing in the two types of dispute. The process of the more complex disputes is more closely related to that generally expected of negotiation: more concern with the strategic implications of alternative outcomes, rather than present practices alone, and more personal comments, in this case from the arbitration board, directed to union representatives, who were generally in the position of claimants.

In comparison with the simpler cases, relatively more attention was centred on the discussion of the nature and future implications of the proposed range of outcomes (Outcome categories changed according to type of case, rather than categories concerned with current agreements and practices). The more complex disputes thus required a more forward-looking debate, with participants attempting to anticipate future consequences, both good and bad, of a current course of action, rather than looking to the past and present for the context of, and solution to, the dispute. The arbitrator appeared to be chiefly concerned with exploring the extent of differences between the parties and examining the viability of the alternative proposals put forward, in the light of the parties' conflicting frameworks. (While the unions argued the case largely in terms of abstract principles of equity and fairness and demanded consideration of the rights of employees, vis-a-vis those of management and other groups of workers, management tended to concentrate on debate about the

overall stability of the industry with particular reference to its financial well-being and productivity.) The simpler cases, in contrast, were consistently concerned with claims for improved terms and conditions of employment in the context of established practices and agreements. They were dealt with in a more straightforward manner and involved less subtle exploration of party positions, with the arbitration board concentrating their attention on parties' statements of the 'facts' relating to the current dispute and their relevance or irrelevance in relation to the established decision criteria (eg entitlement/no entitlement to a meal allowance according to the terms of agreement x).

Table 29 Average Proportions of Statements classified as 'Present Practices' (c.p.a. categories 4-6), compared with Statements classified as 'Outcomes' (c.p.a. categories 7-9), in Complex and Simple Disputes

	Type of Case	
c.p.a. categories	Simple	Complex
Present Practices (4-6)	35.31	32.26
Outcomes (7-9)	11.50	23.75

(ii) The Outcomes of Arbitration, according to Type of Dispute

Further support for the distinction between cases can be gained from a qualitative analysis of the outcomes of thirty arbitration decisions from the same board of arbitration and parties, during the period 1970 to 1980.

Table 30 Types of Outcome in Simpler and More Complex Disputes

	Outcome		
Case	Directly favours management or union	Suggests principles and compromise	
Simple	14	3	17
Complex	5	8	13
	19	11	30

The simpler disputes resulted in more decisions clearly favouring one side or the other and directly stating what the resolution of the dispute should be. The more complex disputes resulted in relatively more decisions which proposed a number of general principles on which the parties could be drawn towards a workable agreement.

Decisions resulting from the simpler disputes were based on the arbitration board's judgement of the merits of the case, in the light of current practice and were likely to be justified in terms of a simple decision rule which had been made salient during the hearing. For example, in the claim for a quarterly review of the meal and lodging allowance, to replace the current annual review, the

arbitration board decided as follows: 'given the rate at which inflation has been running ... there is a strong case for more frequent consideration of the allowance'. In the case of a union claim for payment of a meal allowance to staff in construction gangs, working some distance from their booking-on point, the board stated: 'We cannot accept that there is a justification for altering the present situation, whereby payment is linked with the requirement for a man to work outside his normal area'.

In contrast with these apparently straightforward decision rules, the more complex disputes resulted in statements such as: 'We have sometimes felt it would not be wise ... to do more than indicate the general direction in which we think the parties should travel' (Arbitration board decision, 1974, emphasis added). They were thus providing a 'framework', rather than a definitive answer to the dispute. Such awards necessarily formed the starting point for future negotiations between the parties on the details of their implementation.

(iii) The 'Framework' used by the Arbitration Board in the More Complex Cases

The more complex disputes lacked clearly identifiable starting and finishing points, in the sense that pay restructuring issues, group differentials and relativities were continually raised in negotiations between the parties and presented repeatedly before the arbitration board. Consequently the board devised its own long-term, general framework for responding to these claims and consistently interpreting a series of apparently *ad hoc* disputes, such that the resulting decisions could be seen to develop an underlying order and rationale. Since the more complex cases tended to involve less specific terms of

reference, the board was relatively free to pursue its own point of view and concentrate on their understanding of the issues and concerns reflected in the parties' statements at the hearing.

The parties' conflicting proposals for settlement were countered by the arbitration board's 'theory', which viewed the continuing disputes as due to the industry's lack of a systematic job evaluation and grading scheme. The introduction of such a scheme would, they argued, improve efficiency, benefit employees who felt unjustly treated in relation to other groups or whose career path was presently uncertain, and contribute to the long-term stability of industrial relations: 'We think that a more systematic study of jobs, in the light of future (industrial) needs, would help to promote a more radical improvement in utilisation of manpower and equipment' (Arbitration decision, 1974). When the parties appeared to be making little progress towards job evaluation, the arbitration board repeatedly pursued the same line of argument, expressing particular concern, with each new dispute, that the parties should implement those sections of earlier decisions which recommended the introduction of job evaluation. Furthermore, they argued that disputes over differentials, bonus schemes, payments for additional responsibilities and so on, were likely to be endless, and decisions necessarily *ad hoc*, unless there was some possibility of appeal to established principles of job evaluation. The introduction of such a scheme would, they argued, allow a consistent approach to the resolution of these apparently disconnected issues by providing the required context, or 'formula', for a 'just decision' between conflicting claims.

It can be argued that, in the more complex disputes, the

arbitration board became relatively more involved as a party (rather than acting as 'adjudicator') with a specific interest and distinctive point of view, which was pursued through the arbitration process. In the course of such action, it departed from the limited role traditionally attributed to arbitration, to make quite extensive recommendations on the regulation of industrial relations and the industry's future. In a sense, the pattern of decisions which emerged provides support for Downs' (1957) argument that 'complexity and especially uncertainty promote ideology in ... decision-making', because in order to reach any decision it becomes necessary to identify some relatively simple over-riding goals, in the light of which conflicting positions can be interpreted. Hence the 'ideal' of the systematic job evaluation procedure replaces an individual incentives approach, which it has been argued leads to endless series of comparability claims, as one group tries to maintain its position vis-a-vis another.

(iv) The Different Perspectives of Management and Union

Complexity has generally been treated as a given, fixed quantity, which is neutral with respect to conflicting points of view and in its implications for decisions. Thus Newhouse (1973) discusses the confusing and difficult nature of the Strategic Arms Limitations Talks, the implication being that, if politicians, bureaucrats and scientists could only grasp the scale of the problem, the difficulties of reaching agreement would be overcome. Where conflicting interests are involved, however, it seems likely that representatives of opposing parties will be interested in manipulating the perceived complexity of the issues,

with the intention of gaining the kind of outcome most favourable to their own party. In the case of negotiations between African nations and the EEC, Zartman (1971) observed that the 'complexity of the issues ... delayed agreement until late in the game as members held out on one point in the hope of gaining a final agreement on another' (p.56). The complexity of the issues was thus used as part of the bargaining strategy. The party which is able to structure the issues and organise material to suit its preferred perspective is in a potentially powerful position if it can establish the predominance of its perspective such that certain conclusions are bound to follow from the consideration of its arguments. Consequently the complexity of the dispute is not necessarily fixed and measurable, but a characteristic of a dispute which is changeable according to the interests and perspectives of the parties. In the case of arbitration, it would therefore seem impossible to discuss the nature of complexity without recognising its significance for the power relationship between the parties.

In line with Zartman's (1977) model which describes negotiation as requiring the creation of a framework for agreement, the more complex disputes demanded that the hearing be used as an opportunity to establish the priority of the claimant's preferred framework for the interpretation of the issues. Where the dispute lacked an obvious applicable frame of reference (ie a current agreement or practice), which could be appealed to in order to decide the issue 'authoritatively', as in the simpler cases, the arbitration forum provided a new opportunity for the structuring and organisation of material, such that the party's views on the most appropriate future course of action could gain ground. Previously contentious issues could acquire

the status of definite proposals for future negotiations, by virtue of an arbitration award. Barber (1966) points out that the definition of a problem shapes the kind of outcomes possible. The most appropriate strategy for each side in the more complex disputes was thus likely to consist of attempting to focus the attention of the arbitrator on particular aspects of the situation, whilst making others relatively obscure.

The parties in fact draw on a variety of arguments in order to establish the validity of their position. The same kinds of arguments, about economics, considerations of equity in relation to comparisons between grades and jobs, and the relative merits of consistency as opposed to change in work practices, could, however, be used by opposing parties to justify divergent positions and to reach opposing conclusions. Thus an outcome considered to be equitable and efficient by one group was represented as inequitable and inefficient by another group. This applied to differences between management and unions and to differences between one union and another, where the unions disagreed over the implications of a set of proposals for the future prospects of their members, in comparison with other groups of employees. As might be expected, the general framework advocated by management differed from that advocated by the union. In the more complex cases, management portrayed itself as particularly firm and intransigent. Since the level of references to the management party was particularly high during the second phase of the more complex disputes, this suggests that management's own references to itself as a formal body, at this point in the hearing, were used to emphasise its unwillingness to be swayed by union demands. Its representatives were particularly concerned to set limits and

confine the range of outcomes possible (the use of Limits was in turn most concentrated in the middle phase of the hearing) and to stress the disadvantages of proposed changes. It placed most emphasis on the desirability of present working arrangements in the first part of the hearing, whilst the union was more concerned to discuss and press the advantages of its proposals for change during the opening exchanges of position, paying relatively more attention to certain aspects of present practice in the middle of the hearing. Whereas management's discussion of outcomes increased throughout the hearing of simpler cases, it decreased throughout in the more complex disputes. The tendency towards increasing appeals to the arbitrator appeared to indicate the growing concern of the parties to draw his attention to their particular point of view in more complex cases.

In these disputes, the union side is seen to be pressing for change in the face of a reluctant management, protesting the constraints which it faces and forecasting the disastrous implications for the industry of the union demands. In the simpler cases, in contrast, the discussion was primarily focussed on the interpretation of present agreements and related more closely to the concrete, immediate issues in dispute (an increased booking-on and -off allowance, payment of a meal allowance, etc). The introduction of relatively wide-ranging and abstract proposals in the more complex cases left the party opposing changes (usually management) to set the limits of change and confine the appropriate criteria to be used in deciding the outcome to supposedly concrete considerations of finance. The claimant union, in the face of such opposition, concentrated on arguing the more ambiguous, indefinable points of relativities between groups, good

industrial relations practices, employee rights and rewards for service and responsibility. Its aim might be described as to pose a challenge to the opposing party's criterion for the evaluation of proposals, in the belief that the arbitration process could lead to the establishment of new priorities and thus shift the current status quo towards a position more favourable to the union.

Two conflicting frames of reference thus become evident. The management attempt to define the issues in terms of economics, productivity and the efficient operation of the industry. The unions, whilst acquiescing to this perspective to some extent, were also able, in more complex disputes, to introduce relatively abstract considerations of equity and employee rights, in an attempt to establish the superior claims of their frame of reference. In seeking recourse to arbitration in complex disputes, it seems that the unions may attempt to alter the balance of power between sides, by using it to give new emphasis to their claims and to relegate the management's arguments about economics to the status of secondary considerations. To the extent that they succeed in this, the arbitration decision results in an advantageous starting point for negotiation, where the framework, or terms of the issues to be negotiated, have been decided by arbitration. In the case of a pay claim, for example, the decision went against the union's preferred method of payment, but the union gained assurances on the wider principles of maintaining the original basic rate, which management had wished to reduce without guarantees of future restoration. The union also gained assurances on the future consolidation of the £6.00 pay supplement into the basic rate of pay. Consequently the arbitration resulted in a strong starting-point for the union in

its future negotiations with management. The unions thus appeared to be in a potentially more advantageous position in the more complex disputes. In such cases, arbitration may not only be the last stage of a disputes procedure, but also the starting point for future negotiation, where the claimant party has succeeded in establishing, to some extent, the validity of its concerns in relation to the proposals of the other side.

(v) The Re-cycling of Complex Issues

The long-term disputes over bonus schemes, differentials, classification of jobs, determination of basic pay scales and so on, appeared in a series of references to arbitration, largely relating back to the initial arbitration decision on pay restructuring (1974). All were issues which were treated by the parties as central to industrial relations. They were part of the continuing process of defining the terms of relations between groups - between unions as well as between union and management. The more contentious the issues and the more uncertain the implications of proposed changes, the more those issues were continually 're-cycled' through the parties' negotiation procedure, from year to year. The arbitration board assumed an influential role in deciding the course of industrial relations policies, by virtue of its involvement in the 1974 pay restructuring exercise, which had implications still unfolding and affecting subsequent areas of dispute. Consequently the parties continued to refer related issues to the board for further consideration. Arbitration, in this case, ceases to be the end point of a dispute, and becomes one part of a much longer cycle of negotiation and argument,

which results in a continuing series of changes in the industry. As the arbitration board becomes involved in long-running negotiations, their decisions become contentious issues in themselves. They may result not only in further negotiations over how they should be implemented in practice, but also form the basis of further dispute between the parties who disagree over their implications. In turn, such disputes may eventually be referred back to arbitration in a slightly altered form, where the board's original decision proved unacceptable to the parties. The introduction of a bonus scheme for a small group of employees, for example, resulted in an appeal to arbitration by two unions whose members were not advantaged by the scheme. They argued that the individual bonus payment was inconsistent with present policy and reverted to the old system of linking bonus payments with individual performance. It had long been agreed that such systems were inequitable and generally unsatisfactory as an aspect of remuneration, and bonus payments were being consolidated into the basic rate. This policy dated back to negotiations preceding the 1970's pay restructuring exercise. The unions bringing the claim therefore argued that their members should receive a similar increase in pay, but added to basic rates, rather than as a supplement to pay. One union in fact used the arbitration forum to present a general pay claim on the basis of increased productivity, whilst the other simply claimed parity with the group receiving the new bonus payment. The arbitration board argued that the bonus payment was actually a payment for additional responsibilities undertaken by the group of employees and was therefore in line with a well-established principle in the industry. They recommended that similar additional responsibility payments should be made to a particular group of drivers

and possibly to other groups of employees who might feel that they had a claim on these grounds. The union representing the drivers found the decision unacceptable, because it was generally opposed to any moves towards the classification of drivers' jobs, preferring to distribute benefits evenly amongst drivers, and the management found the decision unacceptable because of the size of the payment recommended and the suggestion that other groups might be in a position to pursue a similar claim. The renewed dispute was eventually referred back to arbitration, encompassing arguments about payments for irregular and unsocial hours, additional responsibility and changed methods of work, sectional bargaining, bonus and incentive schemes, relativities between jobs and job restructuring.

The arbitration board has clearly departed to a large extent from the more traditional 'outsider' role, and has in the process gained an influential but contentious role, in relation to the parties.

Summary and Conclusion

1. Two types of dispute were dealt with by arbitration in the public sector industries studied:

(i) The simpler disputes were defined in terms of a mutually agreed framework. These conformed more easily to the traditional view of arbitration as having a limited role in industrial relations and serving as the end-point of a dispute. Decisions tended to favour one side or the other explicitly.

(ii) The more complex disputes were wider-ranging, with uncertain implications for the future of industrial relations between the

sides. Simple decision rules were inappropriate and the case lacked obvious mutually accepted standards for the decision.

2. Contrary to Thibaut and Walker's (1975) psychological model of procedural justice, the procedure used to deal with these disputes did not vary according to the type of case: the parties' perception of a 'fair hearing' instead relied on the use of a standard procedure. Variations in the procedure would have been regarded as damaging to the impartiality of the process, not as enhancing it.

3. It is however important to distinguish between the procedure and the social process of the hearing. Variations in social process, within the broad framework of a standard procedure, allow the arbitrator to cope with the varying demands of the task.

4. The general expectation that the complexity of the dispute would affect the type of approach adopted in the hearing was upheld. In the simpler disputes, the arbitrator can be described as managing the process of concession-convergence, where the context is set by an existing agreement or practice and the decision is justified in terms of an established standard. The arguments raised by the parties at the hearing surrounded the interpretation and application of that 'standard' to the current dispute. It was not, however, clear that the arbitrator was using these hearings in order to gain a tacit understanding of the parties' preferred settlement, since opposing positions were clearly defined in the context of established practice. This may be one distinction between the public and private sector arbitrations. In the more complex disputes, particular emphasis was

given to the development of a framework for negotiation between the parties, with the arbitrator acting more as a party to negotiations than as an 'outsider', and leaving the detailed concessions to be made in subsequent negotiations between the union and management. Negotiations over the proper framework for agreement were not confined to any one hearing, but extended over a number of years, by virtue of the recurrence of certain issues and arguments (differentials, bonus schemes, pay restructuring, etc).

5. The complexity of the dispute did not appear to be neutral with respect to party positions, and the union in particular appeared to be able to gain some advantage, because the arbitration process, by its very nature, is required to take account of considerations of equity and fairness, which were used by the unions to assert the importance of fair treatment for their members. Skilful negotiators, faced with a conventional procedure, seem to be able to use its very conventionality to demonstrate the firmness of their party stance and their unwillingness to move towards the opponent. The arbitrator was required to deal with two opposing frameworks put forward by the parties: financial costs versus employee demands for improved terms and conditions of employment. In order to sway financial considerations, the unions were required to establish the merits of their case according to considerations of equity, reasonable industrial relations practices and the well-being of employees. The third-party is no longer able to focus on the establishment of areas of factual dispute in relation to the terms of a current agreement, but is instead faced with the need to explore the long-term implications of opposing positions, with a view to creating a framework within which the parties can continue to function in the future. The union was able to establish the relevance of a negotiation framework

which recognises more than financial constraints by taking into account the priority of employees' needs for certain standards of pay and related conditions of employment. It was frequently able to gain an advantageous starting point for further negotiation with management, where the terms of the negotiation are defined by the arbitration decision.

6. In dealing with the conflicting frames of reference put forward by the parties, the arbitration board attempted to establish its own framework for the interpretation of the mass of detailed information assembled. The board thus assumed a creative and powerful role in relation to the parties. By virtue of its particular point of view, which influenced future negotiations between the contending parties, it resembled a party to negotiation in its own right.

7. The more complex disputes were central to the process of definition and re-definition of relations between the parties and to the determination of the balance of power between them. Consequently, those arbitration decisions, which deal with disputes over the proper criteria to be used in deciding what constitutes an 'equitable' outcome, are treated by the parties as contentious issues in their own right and may be the subject of much further negotiation.

By implication, control over the <u>outcome</u> of particular disputes could be said to vary. Whilst it is viable for the third-party to assume control in the simpler cases, where the decision is a dichotomous one between two opposing positions (entitlement/no entitlement to a meal allowance/bonus payment, etc), in the more complex cases, because

the decision forms the basis for a future working agreement between the parties, the process of the hearing is closer to that traditionally associated with negotiation, in the sense that participants are arguing about the future implications of different courses of action and their relative advantages and disadvantages, according to the differing priorities of management and unions. If the subsequent arbitration decision is to be viable in practice, the arbitrator and parties must of necessity share responsibility for the eventual outcome.

8. In general the study of the arbitration process suggests that a reassessment of the artificial division between negotiation and arbitration is needed. While the impartial, evaluative image of arbitration functions to maintain the public acceptability of the process, the understanding of arbitration is actually dependent on the collective bargaining context from which it originates. The nature of the relationship between the parties determines the significance of the different disputes and thus affects the task faced by the third-party. It would be unrealistic, to say the least, to expect an external third-party to produce the definitive resolution, typically expected of arbitration in those disputes which are central to industrial relations. The third-party did however try to assist in the negotiation of a framework for the resolution of the dispute. Arbitration did not serve as a substitute for negotiation, but neither was it, as is generally assumed, the end-point in a series of negotiations which ended in deadlock. Instead it was likely to form part of a continuing cycle of negotiations, which were necessary in order to deal with the highly conflictful issues contained in the more complex disputes.

CHAPTER EIGHT

The Roles of Management, Union and Third Party in the Public Sector Arbitrations

The aim of the chapter is to examine the respective roles of arbitration board and parties, in relation to an established group of negotiators who make regular use of arbitration and therefore have a good understanding of the process and of the members of the arbitration board.

It has already been noted that the conventional procedure in use at these hearings resulted in considerable emphasis being given to the defence of party positions, rather than to conciliatory gestures (Chapters Six and Seven). This is in line with experimental findings (Chapter Three) which suggested that, contrary to normal expectations, the presence of a third-party did not necessarily encourage conciliation and compromise.

It is not possible to demonstrate convincingly, without detailed interviews and observations of the negotiators outside arbitration, that management and union representatives at these hearings had the 'strong' bargaining relationship described by Batstone et al (1977). The negotiators did, however, know each other well by virtue of their long history of association and were also familiar with the chairman of the arbitration board. Although arbitration was used fairly regularly, it became more a part of the cycle of negotiations or, alternatively, a routine part of the 'processing' of minor disputes through the stages of the negotiation machinery. It was not evident that arbitration was held out as a threat by one side against the other.

The Arbitrator's Role Compared with the Role of the Parties

In general, the part played by the arbitrator in the hearings is likely to differ from that part played by management and union representatives. In chapter four, the arbitrator was compared with the effective negotiator, who is typically able to work in terms of a systematic forward-looking plan which is nevertheless flexible enough to benefit from information gained from the parties relating to their current position and the differential values which they are likely to place on different settlements. In order to achieve this, the effective arbitrator might be expected to structure the session into a smooth series of steps and organise the parties to allow the implementation of the overall plan, rather than allowing the hearing to be side-tracked by trivial or irrelevant issues. The structuring of the hearing should in turn allow the third party to forestall over-rapid judgement of the case or fixation on one type of outcome only. He or she should be able to initiate an active search for information designed to test alternative hypotheses about the underlying reasons for the current impasse, canvas a wide range of alternatives and be able to understand the problem from the perspective of both sides, while clarifying their positions and expectations in order to determine which aspects of party positions remain open to change and to what extent. Such strategies may be particularly relevant in those disputes where the parties are, in Snyder and Diesing's (1977) terms, locked into an 'irrational' mode of bargaining, where the negotiators operate according to a set of rigid beliefs about the negative intentions of the other side and are determined to defend the same set of policies, even when to an

outsider they are clearly out-dated. In these types of dispute, the beliefs of the negotiators are organised such that all considerations point to the same strategic choice and consequently they are unable or unwilling to change their views about the intentions of the other side, according to feedback received from the events of the specific dispute. The arbitrator should also be less hostile and more neutral than the parties (Landsberger, 1955a;b; McGrath and Julian, 1965), more concerned with directing and controlling the procedure of the hearing, maintaining his authority in relation to the representatives and, in general, evaluating the arguments put forward and the potential range of outcomes.

The parties to the dispute are more likely to be oriented towards the presentation of the case and more preoccupied by the need to advocate the benefits of their preferred outcome to the third party. They are likely to be more antagonistic than the third party, to the extent that the procedure allows such expression of hostility, and less concerned with the immediate direction and structuring of the proceedings.

Results of Conference Process Analysis of 12 Public Sector Arbitration Hearings, according to the Role of the Participants and the Stage of the Hearing

(i) Average Level of Contribution

On average, the arbitration board contributed least to the hearings, while the major union contributed most (Table 31).

Table 31

Average Contributions* of Union, Management and Arbitrator (in terms of c.p.a. categories) to twelve cases

	% Contribution	Standard Deviation
Management	28.76	4.34
Union	31.13	10.07
Arbitrator	21.48	5.26
(Other unions	(18.63)	

The arbitration board contributed very little during the opening stage of the hearing (4.00%), when management and union were making their statements of case. The majority of the board's contribution occurred in the second stage of the hearing, when they were in fact the most active participants, suggesting that although the board's overall contribution may be smallest, this does not reflect a total pattern of inactivity. To the extent that the arbitration board takes a directive role in proceedings, this function appears to be concentrated particularly in the middle of the hearing.

Although the major union's contribution did not vary significantly from stage to stage, management's contribution decreased over time (Table 32, presented graphically, p. 216).

* Refers to percentage contribution of total c.p.a. Acts.

Table 32

Average Contributions* of each Party, according to Stage of Hearing, in 12 Cases

Person	1	(S.D.)	2	(S.D.)	3	(S.D.)	F.	p.
1. Management	36.16	(8.28)	24.01	(11.82)	23.53	(9.90)	4.97	.01
2. Union	32.31	(13.24)	28.26	(18.74)	32.42	(10.19)	0.25	(.25)
3. Arbitrator	4.00	(1.82)	38.46	(5.99)	28.05	(10.21)	53.87	.001

(ii) Differences between the Parties in Type of Statements Made (Table 33)

In the mode dimension, the major contributing union showed slightly less overall variation in the framing of statements than management or arbitrator, making most statements in the form of Offers (92.12%), with 4.25% Accepts and smaller proportions of rejections and questions. Management made slightly more use of Accepts (5.75%) and Rejects (2.08%), whilst the arbitration board concentrated relatively less on statements Offering information (72.12%) and more on questioning the other participants (Seeks 23.00%).

In the resource dimension, the arbitrator was most preoccupied with Procedure (32.31% of acts), whilst the parties concentrated more on Statements about Present Practices (management, 35.98%; union, 31.79%) and Information (management, 26.70%; union, 28.27%). Management made most use of the Positive Consequences of Present Practices (3.12%), and the Negative Consequences of Proposed Outcomes (4.28%) whilst the union gave more emphasis to the Negative Consequences of Present Practices (5.86%) and the Positive Consequences of the Proposed Outcome (1.72%). The arbitrator spent

* Refers to percentage contribution of total expressive Acts.

Average Contributions of each Party (in terms of c.p.a. Acts), According to Stage of Hearing, in 12 cases.

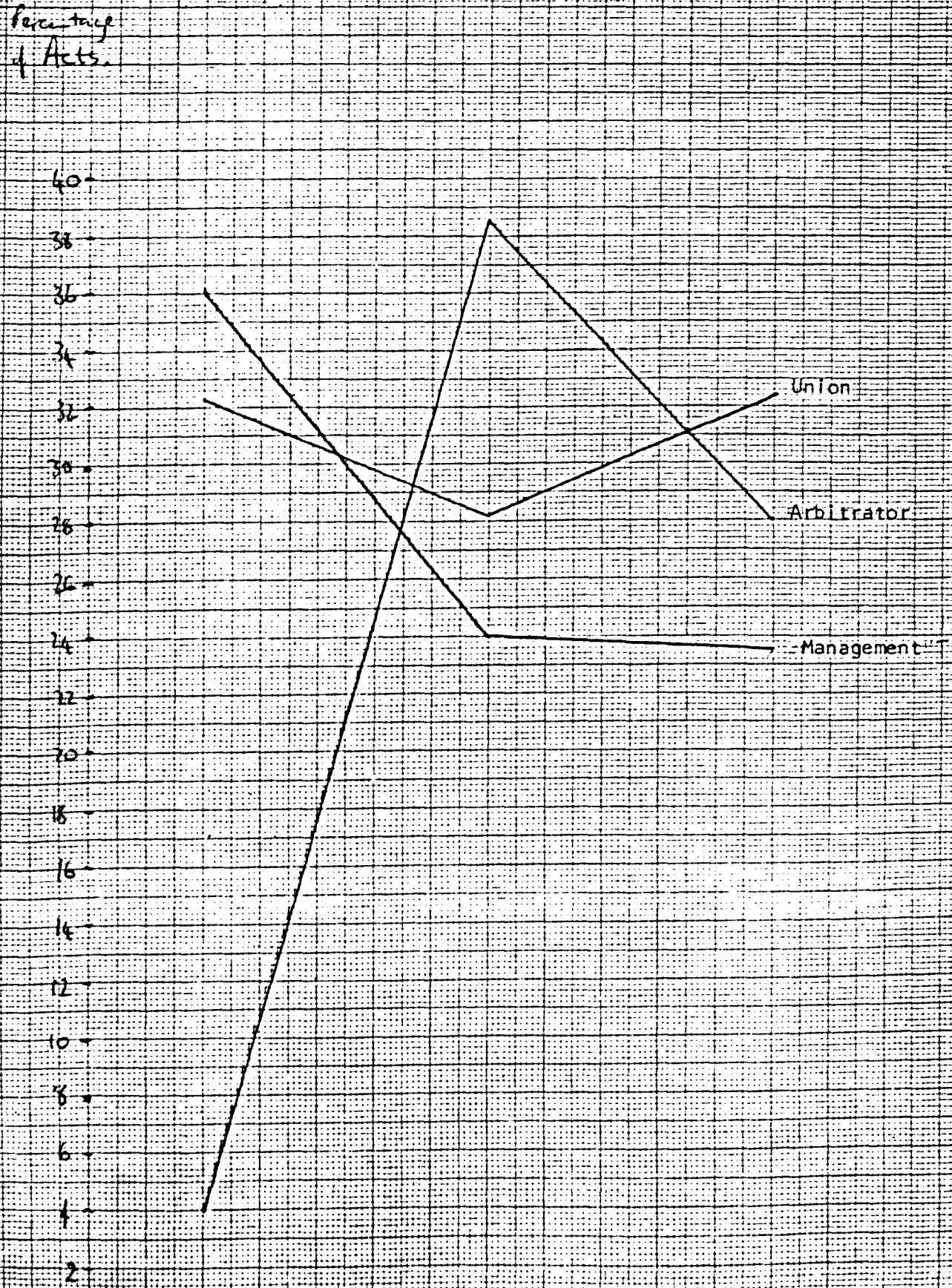


Table 33 Average Proportions of Acts, in each c.p.a. category, contributed by Management, Union and Arbitrator (12 cases)

	Management (1)	Union (2)	Arbitrator (3)	F	p
Mode					
1. Offer	88.26	92.12	72.12	18.84	.001
2. Accepts	5.75	4.25	2.57	9.57	.001
3. Reject	2.08	1.10	0.18	24.91	.001
4. Seek	1.38	1.34	23.00	132.08	.001
Resource					
1. Procedure	7.05	5.18	32.31	141.95	.001
2. Settlement Pt.	0.80	0.70	1.56	1.68	n.s.
3. Limits	1.80	1.90	1.82	0.06	n.s.
4. +ve. con. p.p.	3.12	0.72	0.34	8.25	.002
5. -ve. con. p.p.	1.71	5.86	1.89	7.90	.003
6. Oth. sts. p.p.	35.98	31.79	20.69	16.75	.001
7. +ve. con. prop. out.	0.92	1.72	0.53	3.06	(.07)
8. -ve. con. prop. out.	4.28	2.53	2.43	4.45	.03
9. Oth. sts. p.p.	12.01	13.44	11.94	0.15	n.s.
10. +ve. acknowl.	1.25	1.86	5.37	11.45	.001
11. -ve. acknowl.	1.23	5.65	0.54	17.92	.001
12. Information	26.70	28.27	18.00	7.79	.003
Referent					
0. No ref.	46.06	42.07	32.69	9.27	.001
1. Self	7.87	7.02	6.29	1.65	n.s.
2. Mgmt. person	0.29	2.10	6.96	43.10	.001
3. Union person	2.30	1.05	14.42	51.51	.001
4. Mgmt. party	11.80	9.94	8.59	3.66	.04
5. Union party	23.81	28.45	18.53	9.67	.001
6. Arbitrator	5.47	6.48	5.57	0.68	n.s.
7. All persons	0.70	0.62	4.14	15.34	.001
8. All parties	2.07	2.64	2.53	0.39	n.s.

(For list of abbreviations, see Table 6, p.138)

more time than the parties offering praise and positive, supportive comments (5.37%), whilst the union representatives made most critical and hostile comments (5.65%).

In the referent dimension, the arbitrator made more personal references (Management Person, 6.96%; Union Person, 14.42%; All Persons, 4.14%) and relatively fewer references to Parties (Management Party, 8.59%; Union Party, 18.53%). Overall the arbitrator referred more to the union side than to management. The parties mostly referred to themselves and each other formally as Parties.

(iii) Variations between Stages, in Management, Union and Arbitration Board's Relative Contributions

(Tables 34 to 46)

Arbitration Board

The increased activity of the arbitrator in stage two of the hearing is accounted for by the change from a procedurally oriented, directive role (Resource: Procedure, 55.75% of acts in Stage 1, falling to 17.50% of acts in Stage 2), where the arbitrator referred more to the group as a whole (Referent: Persons, 6.6%) or to particular individuals (Referent: Union Person, 19.57; Referent: Management Person, 7.97%), to a more evaluative role in Stage 2. Here the arbitrator asked more questions than either party (Resource: Seeks, 32.26%), probing the details of present agreements or working arrangements which were the subject of the arbitration (Resource: Other Statements about Present Practices, 30.76%) and exploring the negative implications or disadvantages of the proposed changes (Resource: Negative Consequences of Proposed Outcomes, 5.32%).

Perhaps because the arbitrator held final responsiblity for the decision, he appeared to be more interested in defining the settlement point of the dispute than the parties, particularly in stage one of the hearing (Resource: Settlement Point, 4.21%). As the arbitrator's attention moved away from controlling the course of hearing in stage one, so his acknowledgement of participants decreased (Resource: Positive Acknowledgement, Stage 1 - 9.95%; Stage 2 - 1.52%). This rather formal politeness, consisting largely of welcoming participants and thanking them for their efforts, increased again in the final phase of the hearing (Resource: Positive Acknowledgement, 4.63%), alongside directives to the participants as to how they should proceed (Resource: Procedure, Stage 3 - 23.68%).

In the middle of the hearing, the arbitrator's attention was focussed on party positions rather than on individuals (Referent: Management Party, 11.22%; Referent: Union Party, 19.03%), indicating the evaluative nature of this period.

Management and Union

The parties to some extent showed the reverse pattern. Both management and union tended to agree more with each other and with the arbitrator's comments on their respective positions, as the hearing progressed. The parties were particularly oriented towards persuading the arbitrator of the validity of their view of the issues in question, during the first part of the hearing (Resource: Positive Consequences of Proposed Outcomes, Management - Stage 1 - 1.32%, Stage 2 - 0.53%; Union - Stage 1 - 2.99%, Stage 2 - 1.14%; Resource: Negative Consequences of Proposed Outcomes, Management - Stage 1 - 6.28%; Stage 2 - 2.65%; Union - Stage 1 - 2.83%, Stage

2 - 2.57%). Their participation during the second part of the hearing was directed towards satisfying the demands of the arbitration board for clarification and re-examining the extent and variety of the differences between them.

In contrast with the arbitrator, the parties made more personal references as the hearing proceeded, with the most noticeable change occurring between stages one and two.

Union references to the management representative were highest in the middle of the hearing (Referent: Management Person, Stage 1 - 0.35%; Stage 2 - 4.09%), and declined in the final stage (1.87%). Management references to the union representatives increased throughout the hearing (Referent: Union person, Stage 1 - 0.70%, Stage 2 - 2.43%. Stage 3 - 3.74%). As previously noted, however, unlike the typical picture of negotiation, references to parties did not decline consistently over time. In stage two of the hearing, each party referred more to itself than it did to its opponent, with references to opponents decreasing from stage one to stage two (See Tables 44 and 45).

Table 34. Percentage of c.p.a. Acts classified as Mode: Accept, calculated separately for Management, Union and Arbitrator's contributions according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	0.77	8.42	8.06
	Union	0.50	7.85	4.40
	Arbitrator	1.30	3.28	3.14

Analysis of variance, $F = 4.07$, $p < .008$

(Interaction between Stage and Role)

Table 35. Percentage of the c.p.a. Acts classified as Mode: Seek, calculated separately for Management, Union and Arbitrator's contribution, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	1.48	0.93	1.73
	Union	0.17	2.35	1.50
	Arbitrator	9.22	32.26	27.51

Analysis of variance, $F = 19.61$, $p < .001$

(Interaction between Stage and Role)

Table 36. Percentage of c.p.a. Acts classified as Resource: Procedure, calculated separately for Management, Union and Arbitrator's contribution, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	3.79	6.93	10.44
	Union	4.02	5.04	6.46
	Arbitrator	55.75	17.50	23.69

Analysis of variance, $F = 21.68$, $p < .001$

(Interaction between Stage and Role)

Table 37. Percentage of c.p.a. Acts classified as Resource: Settlement Point, calculated separately for Management, Union and Arbitrator's contribution, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	1.48	0.41	0.50
	Union	1.40	0.34	0.38
	Arbitrator	4.21	0.31	0.16

Analysis of variance, $F = 2.81$, $p < .04$

Interaction between Stage and Role)

Table 38. Percentage of c.p.a. Acts classified as Resource: Other Statements about Present Practices, calculated separately for Management, Union and Arbitrator's contributions, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	38.02	34.03	35.90
	Union	35.96	29.92	29.49
	Arbitrator	0.76	30.76	30.56

Analysis of variance, $F = 12.83$, $p < .001$

(Interaction between Stage and Role)

Table 39. Percentage of c.p.a. Acts classified as Resource: Positive Consequences of Proposed Outcomes, calculated separately for Management, Union and Arbitrator's contribution, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	1.32	0.53	0.91
	Union	2.99	1.14	1.05
	Arbitrator	0.00	0.90	0.70

Analysis of variance, $F = 3.26$, $p < .02$

(Interaction between Stage and Role)

Table 40. Percentage of c.p.a. Acts classified as Resource: Negative Consequences of Proposed Outcomes, calculated separately for Management, Union and Arbitrator's contribution, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	6.28	2.65	3.91
	Union	2.83	2.57	2.20
	Arbitrator	0.00	5.32	1.97

Analysis of variance, $F = 5.50$, $p < .001$

(Interaction between Stage and Role)

Table 41. Percentage of c.p.a. Acts classified as Resource: Positive Acknowledgement, calculated separately for Management, Union and Arbitrator's contribution, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	1.16	0.78	1.81
	Union	1.55	1.61	2.41
	Arbitrator	9.95	1.52	4.63

Analysis of variance, $F = 8.38$, $p < .001$

(Interaction between Stage and Role)

Table 42. Percentage of c.p.a. Acts classified as Referent: Management Person, calculated separately for Management, Union and Arbitrator's contribution, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	0.33	0.20	0.34
	Union	0.35	4.09	1.87
	Arbitrator	7.97	4.61	8.29

Analysis of variance, $F = 4.41$, $p < .005$

(Interaction between Stage and Role)

Table 43. Percentage of c.p.a. Acts classified as Referent: Union Person, calculated separately for Management, Union and Arbitrator's contribution, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	0.70	2.45	3.74
	Union	0.04	1.49	11.65
	Arbitrator	19.57	11.65	12.02

Analysis of variance, $F = 5.21$, $p < .002$

(Interaction between Stage and Role)

Table 44. Percentage of c.p.a. Acts classified as Referent: Management Party, calculated separately for Management, Union and Arbitrator's contribution, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	7.46	16.28	11.68
	Union	9.80	8.70	11.33
	Arbitrator	4.01	11.22	10.55

Analysis of variance, $F = 3.96$, $p < .008$

(Interaction between Stage and Role)

Table 45. Percentage of c.p.a. Acts classified as Referent: Union Party, calculated separately for Managment, Union and Arbitrator's contribution, according to Stage of Hearing

		Stage		
		1	2	3
Role	Management	33.73	17.34	20.36
	Union	26.50	29.10	29.75
	Arbitrator	18.21	19.03	18.34

Analysis of variance, $F = 5.57$, $p < .001$

(Interaction between Stage and Role)

...of c.p.a. Acts classified as Referent:

...calculated separately for Management, Union

...member's contribution, according to Stage of

	Stage		
	1	2	3
	0.08	0.99	1.04
	0.02	0.80	1.04
	6.66	1.92	3.84

...of variance, $F = 4.28$, $p < .006$

...tion between Stage and Role)

Discussion

In many senses, these public sector cases provide an example of 'well-practised' arbitration. The procedure has been used sufficiently frequently, and the arrangements are sufficiently familiar to the participants, for the process to run without many of the 'minor' difficulties of control and direction which are likely to face inexperienced representatives with an *ad hoc* board of arbitration.

It might be argued that the chairman of the arbitration board, who featured in 10 out of the 12 cases, is able and effective, in the sense that he has retained his acceptability to the parties, who jointly agreed to his appointment, over a long period, consistently producing decisions which the parties have been able to negotiate over, if not implement outright.

In general, expectations about the differing roles of arbitrator and parties are upheld. The arbitration board were the most neutral participants at the hearing, making particular use of polite, supportive comments in the early and late stages of the hearing, while the parties tended to be more hostile and rejecting and more concerned with pressing their point of view and emphasising the advantages of the party's position. The generally low level of hostility however suggests that the parties were not, in any obvious sense, operating from an irrational, over-restricted perspective of what the opportunities were.

The arbitration board clearly had formal authority for controlling and directing the proceedings to the extent that they required such direction. The fact that it was the arbitration board who were able to refer to group members personally, particularly

at the beginning and end of the hearings, suggests that, apart from encouraging a relatively harmonious approach to the meeting, the parties were also expected to defer to the authority of the arbitrator, while continuing to address each other formally as parties. It was noticeable that a personal comment was made to the arbitration board on only one occasion: that of the chairman's birthday.

The available evidence does suggest that the arbitration board is operating in a similar way to an effective negotiator. While allowing the parties the forefront of the stage in the opening and closing stages of the hearing and adopting a role which is primarily procedurally-oriented (indicating the order of proceedings, maintaining control and exercising a kind of formal politeness towards group members), the arbitration board takes the central role in the middle of the hearing. At this stage, the board explicitly turns its attention away from individuals to the parties. Party positions are evaluated and examined in greater depth, exploring the extent of differences between sides and the potential negative consequences of a decision which favoured changes in present working arrangements. During this period the role of the arbitrator shifts from one which is essentially concerned with the process of the hearing to one which is centred on the immediate task focussing on the substantive issues in dispute, examining a range of alternative accounts of the underlying reasons for the impasse and exploring the possible outcomes.

The parties, on the other hand, appear to take a different course through the hearing. Morley and Stephenson (1977) commented that the use of the referent Other appeared to indicate the progress of negotiation. This category (demonstrated here by union references

to Management Person and management references to Union Person) appears to fullfil a similar function in the arbitration hearing. Unlike the negotiation process, however, party spokesmen continued to make a high level of formal references to their own party throughout the hearing, in justification and defence of their preferred course of action and in responding to the arbitrator's questions and challenges in the second stage of the hearing. Nevertheless, formal references to the opposing party tended to decrease as the hearing proceeded, while personal references to the Other increased, suggesting that progress through the arbitration hearing is indicated by the changing relationship between own party : other person references. In this case the ratio own party : other person changed from 32.34 in phase one of the hearing to 6.94 in phase two.

CHAPTER NINE

Ad hoc Arbitration - a Series of Case Studies

Introduction

One of the most perplexing features of the British Advisory Conciliation and Arbitration Service arrangements for *ad hoc* arbitration is that unions and management choose to use them as a means to end their dispute. Unlike standing, permanent arbitration provisions, like those in the public sector, the *ad hoc* arbitrations are less an expected and familiar feature of industrial relations between the parties and more an aberration. Those cases studied here were largely the result of failed conciliation attempts, but even so it is somewhat surprising that negotiators are willing to allow an unknown outsider to decide some potentially important aspect of their future relationship and agree to abide by the decision before the hearing takes place.

The obvious contrast between the public sector cases and the *ad hoc* arbitrations is the relative inexperience of the representatives in the *ad hoc* cases, compared with representatives in the public sector arbitrations. Representatives are unlikely to know the arbitrator and will have had little or no previous experience of the arbitration process. As argued in Chapter Four, they are consequently unlikely to be able to make such skilful and strategic use of the procedures as that made by the experienced representatives. The *ad hoc* arbitrations therefore serve as an interesting contrast with the public sector cases and illustrate a number of points made in Chapter Four, which views arbitration in the context of

collective bargaining.

A number of expectations may be stated at the outset. Arbitration should in general be treated as part of longer-term negotiating strategy, although the relative inexperience of representatives may affect their ability to present a convincing case, if they are adversely affected by the evaluative public image of arbitration. In these cases it is suggested that this image is likely to have a dominating effect on the performance of union and management representatives, affecting the formulation of the terms of reference to the third-party, and hence the type of case which is heard, as well as the process and outcome of the hearing. This should in practice cut across distinctions between types of case (distinctions of the 'statute law'/'common law' variety) tending to make the disputes appear more uniform than they are, in order to make them conform to the common idea of an arbitrable dispute.

In such circumstances, the arbitrator appears to have a number of choices. He or she can either capitalise on the uncertainties of the parties to impose his or her authority and make a decision which is accepted by them because of that perceived authority or he or she can try to deal with parties' apprehensions and conduct the hearing in a relatively informal, relaxed manner, which seeks to understand the 'problems' behind the dispute and resolve those, without too much concern for the precise terms of reference. If the parties are however operating according to the terms of Snyder and Diesing's 'irrational' bargaining mode, both of these courses of action may prove very difficult, and in the long-term ineffectual as a means to the resolution of the dispute, with the experience of

arbitration simply being one more event to be interpreted in terms of a 'master-script' according to which each side regards the other as fundamentally bad, untrustworthy and ill-intentioned towards itself.

Ad hoc Arbitration Cases

Nine private arbitration hearings were observed and discussed with arbitrators and ACAS officials. Each case study comprised statements of case from each party, notes of the hearing organisation and debate, which were as full as the researcher's variant of speed-writing would allow, a copy of the arbitration Award and, in six out of the nine cases, notes from an informal discussion of the case with the arbitrator or chairman. The cases were heard between June 1976 and February 1978. Two cases were heard by single arbitrators and seven cases by *ad hoc* boards of arbitration. Hearings varied in length from one hour and nine minutes to two hours and forty minutes, with an average length of one hour and fifty-one minutes.

The Nature of the Issues

All of the nine cases were framed in terms of an established rule or agreement and required the third-party to give an interpretation of that agreement, in relation to the particular dispute. The claims either asked the arbitrator to interpret a specific agreement or asked for a decision relating to which side held responsibility for breaking an agreed grievance procedure. In this sense, they could all be said to concern 'disputes of right', although other issues lay behind the terms of reference in some, if not in all, of these cases. This disjunction between the way in which the terms of

reference to arbitration were framed and the actual reasons for the dispute suggests that the parties were required to engage in a certain amount of strategic thinking in order to make the terms of the dispute resolveable by, and appropriate to, arbitration as presented by ACAS. This appeared to mean that the dispute should be limited to certain relatively narrow issues, possibly reflecting only one aspect of a more extensive conflict, and set in a specific context.

Types of Issue and their Terms of Reference

1. Terms and Conditions of Employment and Other Pay Matters

Five out of the nine cases can be described as concerned with the terms and conditions of employment. These were, in many senses, the most straightforward issues from the point of view of the arbitrator. Each required a decision on one point or two points only and was related to the interpretation of a specified agreement, the terms of which could be drawn on to frame a decision, which in four out of the five cases, was almost a foregone conclusion.

Case One A Joint Industrial Council

Terms of Reference: To decide whether the Pay Board Advisory Report No. 4 on London Weighting is relevant to the Working agreement of the Joint Industrial Council.

Description of Case and Outcome

This was the simplest case and was heard by a single arbitrator, after being referred from conciliation. Provision for arbitration was written into the JIC constitution. The union side of the JIC wanted the employers' representatives to recognise the applicability of the Pay Board's London Weighting report, directed first and foremost to the public sector, to their companies in the private sector.

Current pay policy prevented any money being involved in the claim at the time.

The union representative argued that the Pay Board report was applicable to the private sector, that a traditional payment of a 'London differential' already existed in the industry (up to now, 20p above JIC minimum), and that the high cost of living in London justified an increase in this 'London rate'. On grounds of equity, the union claimed their entitlement to a London Weighting, because of their comparability with other groups in the public sector, whose minimum rates are determined by Whitley councils, and argued that the Companies themselves accepted the applicability of the London Weighting, since they had given evidence to the Pay Board. Although pointing out their willingness to consider the matter in the context of annual pay negotiations, management claimed that the Pay Board Report was not applicable to their industry, because the JIC set only minimum rates of pay, rather than determining national wages scales similar to those operating in the public sector. Thus companies situated in London were already paying a competitive rate, above JIC minimum, in order to obtain labour. The imposition, through JIC agreements of an extra London differential would mean that some employers would have to leave London. The arbitrator's decision was against the union and reasons were given in the Award. It was argued, not according to considerations of equity such as the union's case was grounded in, or in terms of economics, such as the management's case was couched in, but in the narrower sense, literally according to the terms of the Pay Board Advisory Report, which described the kind of national pay structure to which the report on London Weighting should apply. This was a uniform grading scheme, with an incremental scale beyond the age of eighteen. Since the JIC merely set a rate for forty hours below which no one should be paid, the arbitrator decided that the agreement did not satisfy 'the criteria for private sector applicability of the London Weighting as defined by the Pay Board and by the Secretary of State for Employment'.

Case Two An Industrial Training Board and APEX

Terms of Reference: To determine a union claim that, having regard to the agreement of 1974, the Board made a genuine error, contrary to what was in the minds of the parties at the time of negotiating the agreement, in that the Threshold Payment for the rise in the Retail Price Index for the month of June 1975 was not paid until a date after the 1st August, 1975.

Description of Case and Outcome

In this case, the success of the union depended crucially on the inclusion, in the terms of reference, of the phrase 'according

to what was in the minds of the parties at the time of negotiating the agreement', and the clause in the previous annual wages agreement which provided for the payment of an indexation amount according to rises in the cost of living, to be paid 'from the first of (each) month following the rise in the (Retail Price) Index'. In practice, as the union representatives pointed out, the payment had been delayed by a month in each case. The relatively late publication date of the RPI figure meant that the relevant data could not be fed into the computer early enough for the salary adjustments to be made. Hence, for the sake of administrative convenience, payments were made one month later than they should have been. The union passively accepted the change, because they foresaw no undesirable future effects. With the introduction of pay policy, from 1st August 1975, however, the Training Board wished to off-set the indexation figure, resulting from the June rise in RPI and paid on 1st August, against the £6.00 pay aupplement. According to the union, the payment was actually due on 1st July and should not therefore be off-set. Hence, the union argued, there was 'a genuine error, contrary to what was in the minds of the negotiators at the time of the agreement, in that the June increase was not paid before 1st August'. The employer unsuccessfully pursued the claim that the actual method of payment, originally adopted for administrative convenience, was established through custom and practice, and therefore constituted a variation in the agreement. The arbitration board decision once again relied on the terms of the written agreement, which showed that 'it was the intention of both parties to pay cost of living increases in the month following the rise in the retail price index'. Consequently the indexation payment for June 1975 fell due in July 1975, and, by implication, need not be off-set against the £6.00 pay supplement, under pay policy operative from 1st August 1975

Case Three Metal Manufacturing Company and TGWU

Terms of Reference: To decide whether the entitlement to the three additional days of holiday granted to employees in 1975 resulting from the JIC agreement of 23rd October, 1974 which states 'As and from 3rd September, 1975, a further three days annual holiday with pay will be granted bringing the total annual holiday entitlement to twenty working days'.

OR

Whether this agreement to the three days resulted from a local agreement applicable from 1st January, 1975 and as a consequence justifies the union claim for an increase of 55p per week to be added to the £5.45 wages supplement in the JIC agreement.

Description of Case and Outcome

The arbitrator was asked to decide whether three days extra annual holiday, granted in 1975, arose from a JIC agreement or a local agreement. The significance of the claim lay in its implications for the employees' rate of pay. If the holiday entitlement arose from a local agreement, operative from the 1st January, 1975, as the union argued, there would be no need to off-set this benefit against the £6.00 pay supplement available under government pay policy. If, as the employer argued, it arose from a JIC agreement, operative from 1st September 1975, it should be off-set against the £6.00, as in fact already determined by the JIC annual agreement over pay. The union case depended on the argument that a document distributed by the employer, detailing holiday entitlement commencing 1st January 1975, constituted an agreement (although the union conceded that they had had no part in the drawing up of the document and had in previous years objected to its being labelled as an agreement). Since negotiations at local level had traditionally concerned improvements to JIC agreed minimum terms and conditions, the terms of the annual holiday agreement/document were said to constitute a better condition of employment than that set out in the JIC agreement. The union argued that the three days extra holiday should not therefore be off-set against the £6.00. Management argued that the union had never actually produced any evidence of a local agreement, and that furthermore they had stated at JIC disputes committee level, that the holiday entitlement did arise from the JIC agreement.

Since the employees of this particular company were the only group seeking to disagree with the JIC agreement on pay for 1975-76, the claim probably resulted from local shop-floor dissatisfaction, causing the union officials to pursue the claim to arbitration, where the obvious decision, that the three days holiday entitlement 'did not result from a local agreement applicable from 1st January, 1975' (Arbitration Award) was made. At one level it is clearly unsatisfactory to claim that three days holiday, granted a year before, should be used to decrease the amount of money available for wage increases in the following year. Within the narrow perspective of arbitration, however, and given the kind of argument which the union tried to make in acquiescing to that perspective, there could be no other conclusion. In giving reasons for the decision, the arbitrator pointed out that, in other circumstances, the union might agree that it would be 'dangerous to say that the "guide" over-rules the agreement, where it is quite clear what the agreement means'. The arbitrator applied the terms of the agreement literally, and advocated the value of establishing such consistent practice in industrial relations.

Case 4 A Bakery and URTU

Terms of Reference: To determine whether, in all the circumstances, the company is justified in adjusting van salesmen's commission to take account of the increase in bread prices since the introduction of the two-thirds : one-third commission scheme in October 1974.

Description of Case and Outcome

The arbitration board was asked to decide whether the company was justified in adjusting van salesmen's commission to take account of the increase in bread prices, since the introduction of a new commission scheme. The union argued that the commission scheme, whereby the driver was paid commission on one-third of the value of his or her total weekly sales, was self-adjusting for price increases. The introduction of a regulator, by the company, meant that they entirely controlled the levels of commission, and thus set commission earnings at an arbitrary and inequitable rate. Management, on the other hand, argued that the union had always known that management reserved the right to adjust commission according to bread price increases. According to custom, "It is a universal practice within the baking industry that where van salesmen have monetary commission schemes, these are adjusted in order to neutralise ... the effects of bread price increases". Furthermore the regulator used was not arbitrary, but agreed by a working party with representatives of both management and union. Given the nature of the commission agreement, and given that the union had already assented to the operation of a regulator, by virtue of its participation in the working party and given the existence of a very similar arbitration award which also discussed the adjustment of commission earnings according to bread price increases, it was difficult to see why the union brought the claim to arbitration. In its written statement, the company says that it "appreciates the constitutional proprieties observed by the Union in bringing this matter to arbitration". This suggests that the source of the dispute is as much between salesmen and union officials as it is between company and union. The salesmen refused to accept the operation of a regulator, although the union officials were involved in its calculation. Consequently, union officials pursued the issue to arbitration. The arbitration took the responsibility from the union officials, who would otherwise appear to be failing to meet their obligations as representatives of the salesmen. In this case, the narrowness of the terms of reference: which asked whether the company was 'justified in adjusting ... commission', ensured a defeat for the union.

Case 5 Car Transportation Firm and TGWU

Terms of Reference: To consider a failure to agree concerning the correct interpretation of a local agreement on the introduction of 15 metre trailers for car transporters. This agreement was signed on 22nd June, 1970. It refers to payments to be made for the carrying of each car 'over and above the normal previously considered car carrying capacity of the 13 metre trailer' and to determine this issue in accordance with the schedule attached.

Description of Case and Outcomes

The fifth decision in this group seems at first sight surprising and unpredictable. The trade union side disputed the interpretation of a local agreement, which had been operative for the past seven years. The agreement originated in the replacement of thirteen metre car transporter trailers by fifteen metre trailers, and stated that a bonus would be payable to car transporter drivers, for each car carried 'over and above the normal previously considered cary carrying capacity of the thirteen metre trailer'. The union wanted to claim that the normal load of the old thirteen metre trailer was five cars. Consequently bonus payments should be paid for every sixth and seventh car carried. For the past seven years, bonuses had only been paid for every seventh car carried. That this interpretation had not be challenged by the union was demonstrated clearly at the hearing by the production of agreements, signed by union officials, describing normal working as the carrying of six cars. Subsequent to a previous dispute, concerning the payment of a double bonus when drivers were away over-night with the same load, a union official had made a written amendment to the original agreement, stating that 'every seventh car carried is subject to payment, above confirmed by management ...'.

Why pursue this apparently inexplicable change of interpretation to arbitration? The management statement of case hinted, and it became clear during the hearing, that the drivers had taken industrial action after discovering over a cup of tea that other transporter drivers employed by the same firm, but in the north of England rather than the south, received bonus payments for every sixth and seventh car carried. Instead of making an argument for parity with the northern drivers, however, the union statement of case, as prepared for arbitration, did not mention the origins of the dispute, but preferred to argue the case by claiming that the normal load of the old thirteen metre trailer had always been considered to be five cars. The union side was obviously constrained to some extent by its views on the proper use of arbitration, such that its claim was made on the rational basis that thirteen metre trailers carried five cars only. The case seemed even more abstruse, but in a sense revealed the inventiveness of the union, when the researcher discovered that the employer had already conceded the union's claim for bonus payments on every sixth and seventh car carried. The union however wanted back pay for the past seven years of, what they now regarded as, lost bonuses. This cast new light on the union's reasons for arguing the case in the way they did: if they could show that normal meant five cars, they would be justified in claiming arrears on the bonus payments. Since the management had already conceded the first point, the arbitration board, although it was not supposed to know about the existence of the concession, could hardly decide against the union. All that remained was to decide how much back pay should be awarded. The arbitration board settled on £250, the figure which the union had indicated as acceptable to their members during conciliation, and which constituted the only compromise decision emerging from this group of cases. Thus despite the fact that the union had a dearth of supportive arguments and made little use of what they did have, they successfully achieved, through their use of arbitration, something they were extremely unlikely to achieve through negotiation.

2. Union Recognition

Case 6 Engineering Company and APEX

Terms of Reference: To determine whether the monthly staff employed in the Sales Department should be included for collective bargaining purposes in the Monthly Staff Recognition Agreement.

Description of Case and Outcome

Although unusual because of the infrequency of such references, this case was essentially similar in pattern to the others. The chairman of the arbitration board described it as 'a very, very simple issue ...', and said he 'found it difficult to believe that it needed a Board of Arbitration to solve it'. The union wanted the company to include the monthly-paid sales staff for collective bargaining purposes in the Monthly Staff Recognition Agreement. The reference came less than a year after the initial agreement. Management claimed that the office-based and field-based sales staff should be treated as one unit, in which case union membership was very low: two out of a possible total of sixteen. If however, office-based sales staff were considered separately, the level of union membership became two out of four. Since the union already represented other monthly paid office staff, the arbitration board reasoned that, because of the similarity in terms and conditions of employment between office-based sales staff and other monthly paid office staff, and the distinctions between the office staff and outdoor sales representatives, 'those four members of the monthly paid sales staff should be included for collective bargaining purposes in the Monthly Staff Recognition Agreement' (Arbitration Award). In discussion with the researcher, the chairman of the board commented that "all we were doing was ensuring that the company followed a fairly common (industrial practice, of treating office sales staff and outdoor sales representatives as different groups of employees. He also commented that in this case he saw arbitration as performing an educational function, advising the management, in particular, of a practice which was common to most firms. The case appeared to be very straightforward, with no hidden inter-union rivalries and no apparent reason for management's unwillingness to allow the four staff to be represented collectively by the union. Each already had the right to individual representation. The union based its case heavily on what was considered to be good industrial relations practice, while the company argued that the union could not claim to be representative because of the low rate of membership among the whole sales force. Recourse to arbitration was likely to prove successful from the union's point of view, if it relied on arbitration as an interpreter or reflector of current industrial relations practice. On this occasion the external authority of the arbitrator was used to lend weight to the union's claims of what constituted common practice.

3. Dismissal/Disciplinary Issues

This group of three cases was quite distinct from those already described. The references were concerned with the dismissal of an employee or the appropriate action to be taken by employees or management, when an agreed grievance procedure is violated.

Case 7 Film Processing Company and ACTAT

Terms of Reference: To consider whether the action proposed by the company, in relation to the declared intention to dismiss Mr X, a member of the union, for a work error is deemed to be justified having regard to all the facts. If found to be unjustified to consider all these facts and award.

Description of Case and Outcome

The most straight-forward case in this group concerned a claim by the union against the proposed dismissal of an employee for a work error. None of the cases discussed previously concerned any extensive dispute about the facts of the case. Similarly, in this case, unlike the other two in the group, there was little dispute over the events which had taken place. An employee had seriously, and to some extent irrepairably, damaged a large part of the only copy of a new feature film, at the negative polishing stage. The company claimed that this was a matter of gross carelessness, since the slow rate at which the machine worked was such that the employee's inattention must have occurred over five hours or more. The company claimed that this amounted to gross misconduct, justifying dismissal. Their prestige and perceived reliability had been seriously damaged in the eyes of potential customers and they feared for their future if the same man was allowed to return to the polisher's job. The trade union side did not choose to dispute the employee's responsibility for the damage, although questioning to some extent the reliability of the polishing machine and how far it is possible to detect polishing errors immediately. Instead it concentrated on arguments couched in terms of disciplinary procedure, asking whether the error constituted gross misconduct, by appealing to precedent, emphasising the employee's previous, long-standing good work record, questioning whether there was any intent to damage, (in fact the company agreed that the act was not deliberate) and criticising the company's disciplinary procedure for being too vague and imprecise, such that the employee was not aware of the potential consequences of his error. The reference to arbitration appeared to be the result of a genuine impasse, which both sides were concerned to settle. The arbitration board's decision was a compromise. The

employee was suspended without pay for four weeks, followed by reinstatement in the same job. The board commented that it took into account the man's previous good record, and the lack of 'arrangements for supervising production and producing the final copies of negatives and prints'. The latter point was not emphasised or even discussed by either party during their statements. It was an argument given weight solely by the arbitration board, presumably relying on what they assumed to be good management practice in general.

Case 8 Food Processing Company and TGWU

Terms of Reference: The arbiter should decide whether:

(a) the company/union communication and settlement procedure had been exhausted prior to action being taken by employees, bearing in mind the circumstances surrounding the situation.

(b) the company's decision not to pay was correct.

(c) payment should be made for the eight hours stoppate of work by cold store employees.

Case 9 Plant Contracting Company and AUEW (C)

Terms of Reference: To determine whether the AUEW (C) or the company prevented the terms of the procedure for the avoidance of disputes from operating.

Description of Cases 8 and 9 and Outcomes

The remaining two cases in the group were startling by their contrast with the other references. Principally they asked the arbitration board to attribute praise and blame with respect to the conduct of the parties towards each other. Perhaps these two are perfect instances of what Jenkins and Sherman (1977) mean when they say of arbitration: 'the probability is that the verdict will be a compromise offering comfort and caster-oil to both sides in relatively equal measures'. In these cases however, the danger is obviously that the experience of arbitration, and a decision which explicitly favours one side or the other, could simply confirm the parties' previous belief in their own righteousness. As the chairman of one board pointed out, the two sides were 'more interesting in proving their case than in solving the problem ...'. Curiously enough, these were the least evaluative sessions in the sense of atmosphere, conduct and outcomes. Both resulted in a compromise decision, the

main aim of the arbitrators apparently residing not in any ideas of retribution but in bringing the parties back together amicably and suggesting how they might both conduct themselves more reasonably in future. Both disputes were complicated because they involved a number of inter-related issues, the actual events were controversial and disputed, and the issues themselves symbolised a struggle for supremacy between management and union. The first dispute (Case 8) had escalated to the point where for the management, it symbolised their right to manage. The arbitration board was asked to decide three issues: firstly, whether the dispute procedure had been exhausted before the employees took strike action; secondly, whether the company's decision not to pay for time lost during the action was correct (the employees did not leave the site, but did refuse to leave the works canteen and were subsequently clocked-off by management); thirdly, whether payment should be made for the eight hour stoppage. A long-standing grievance over working conditions fuelled the action. The cold store employees concerned had, previous to a company merger, had access to free tea. Employees now had to pay for their tea and access was more limited by canteen opening times. Eventually, due to what the union described as management's inaccessibility and general unwillingness to discuss the provision of tea during canteen closing times, the cold store workers decided, spontaneously it appeared, to stay in the canteen, where three of them had originally been refused tea because they were five minutes late for their break, until the problem was resolved. The union argued that the men were not on strike, but merely refusing to obey supervisors' instructions to return to work. They were, the union said, locked-out by the company, who clocked men off during their official break-time. The decision not to pay for time lost was therefore incorrect. Management's main source of distress was the claim that the employees continually flouted the agreed grievance procedure. They argued that the shop stewards and men had acted irresponsibly in refusing to return to work, pending the implementation of procedure, that it was the union's responsibility to pursue the grievance over the provision of tea to the next stage of procedure, and therefore the men were on strike. Consequently they were clocked-off, because the company believed in the maxim no work : no pay. In general, the union was more interested in the wider issues surrounding the procedural one, and keen to show the bitterness felt over the provision of tea. Management preferred the narrower interpretation of the terms of reference, restricting the decision to procedural issues and concentrating on the union violation of procedure, from which narrowly defined dispute it could clearly have emerged the victor. The whole lengthy history of events preceding the occupation of the canteen indicated a general lack of foresight on the part of management who seemed to have either seriously underestimated the strength of feeling over the issue. Both sides appeared to have little respect for the other, with first one and then the other acting precipitately. The eventual result was a confrontation over the principles of the right to manage versus the right to organise and act collectively. In such cases arbitration appears to serve as a trial of strength for the parties, who are unwilling to back down. The arbitrator would have to be blessed with unheard of skills in order to resolve such a dispute, and would have to far outstep his or her limited authority. Perhaps this is why the Awards in this and in the remaining case offered compromises which were most concerned with the settlement of the immediate dispute

and with making suggestions for future improvements. The board decided as follows:-firstly that procedure had not been exhausted prior to the action taken; secondly, that in the circumstances "the company's decision not to pay was technically correct (my emphasis) and thirdly that payment should not be made for the eight hours stoppage. Payment should however be made for 1¼ hours to all employees ... clocked off by the company from 11.15 a.m." (Arbitration Award). The chairman of the board defined the decision, to the researcher, as dependent on whether management acted too precipitately, and described the Award as a reasoned compromise. In commenting on the decision in the written Award, the board says "we are not fully satisfied that the men would still have refused to return to work had management been able to make a firm offer to deal with the issue in the next stage of procedure at that time, when the dispute related solely to the provision of tea and not also to the question of payment from 11.15 a.m. ... In the light of the company's offer to discuss the question of payment at the Stage C meeting, we cannot condone the men's renewed decision not to return to work".

The last dispute (Case 9) was probably the most irresolveable. The focus for the dispute was the dismissal of one man for allegedly falsifying time sheets (though this was not mentioned in the terms of reference). Behind the reference lay a confrontation between company and union which according to the union, challenged the union's right to exist and which resulted in a twenty-four week strike/lock-out and the closing down of the firm. Admittedly the closure seemed to have offered the perfect opportunity for the sacking of all the original employees and the creation of three new firms, using the same equipment, but with the old names replaced. The employer appeared to be looking for an opportunity to harass a particular group of unionised employees, the union was keen to show its strength and determination in the face of what was seen as arbitrary and vindictive action against it. The owner of the company, a single minded entrepreneur, made all drivers, who were called out on strike in support of the dismissed man, 'redundant'. Subsequently, the two depots involved in strike action were closed and new companies created. At the same time various slurs were cast on the reputation of each party. The union suggested that the owner was inept in the conduct of industrial relations and the company provided various letters indicating that the union had made official a strike which was supported only by a small minority of trouble makers, its chief interest being to damage the employer rather than represent the interests of the members. A good many letters, signed and unsigned, were produced to support both versions of the events. Altogether a very confusing, contradictory and suspicious picture of relations between the parties emerged. The only point on which both sides seemed able to agree was that 'Malpractice is the name of the game' (Union official). The arbitration was reduced to ridiculous proportions by the terms of reference, which asked the Arbitrator to assign praise and blame. By this late stage it was extremely uncertain that either side could gain anyting from the claim. The parties appeared uninterested in the resolution of the dispute, the company no longer existed and the employees had other jobs. An ACAS official suggested that the employees were possibly seeking compensation. The arbitration was apparently used, by the parties, with the aim of inflicting further damage on the opponent:

a spiteful objective, as the board chairman described it. The Award, which was not implemented, concentrated on presenting a balanced judgement of rights and wrongs and tried to advise on what the board considered to be reasonable future conduct. The decision moved beyond the originally limited terms of reference to discuss the investigation of the initial dismissal and the strike and recommend the re-affirmation of the agreed disputes procedure both in letter and in spirit.

Discussion of the Effects of the Evaluative Image of Arbitration on the Process and Outcomes

There are a number of ways in which the *ad hoc* arbitrations could be conceptualised. This discussion however focusses particularly on the impact of the evaluative image of arbitration, since this provides a major source of contrast with the public sector cases.

(1) The Effect on Terms of Reference

The most obvious effect of the evaluative image of arbitration on representatives who are relatively inexperienced in its use, is on the framing of the terms of reference of the dispute. All of the cases were cast in terms of identifiable procedural or other current agreements, such that each could be decided as a 'yes' or 'no' choice between two alternatives (eg Should the office-based sales staff be included for collective bargaining in the Monthly Staff Recognition Agreement? or Was the company justified in adjusting van salesmen's commission?). In this sense, the parties seem to accept a restricted 'legalistic' use of the process, rather than adopting a wider, problem-solving orientation. Presumably the disputes would not have been described in these terms by the parties, without resort to arbitration, suggesting that ACAS officials and the parties' views of the process affect the way in which the dispute is eventually

defined, casting it in terms of a proposition which is in fact open to an 'evaluation'. Certainly the terms of reference chosen have important implications for the range of outcomes possible. A relatively minor omission in the reference itself can change the tenor of the decision. In the case of the van driver's commission issue, the narrow terms of reference, which asked whether the company was 'justified in adjusting ... commission', precluded an award on the obviously over-restrictive nature of the adjustment used. The chairman of the arbitration board, in discussion with the researcher, said 'we all agreed that we had to make some adjustment ... but that the existing regulator was too tight ... Ideally we should have liked to tell the two sides that the regulator was needed but that they should get together to debate the adjustment figure again, to allow the van salesmen more. Unfortunately the terms of reference did not allow this'. The prologue to the Award tried to indicate the board's view: 'One (objective of the commission scheme) is the maintenance of the real value of the incentive elements ...'. By allowing the restricted terms of reference the union lost an opportunity to make some significant gains.

(2) Parties' Statements of Case

The definition of the dispute in turn affected the arguments which the parties could legitimately use to defend their case. If the dispute is treated as though it is open to adjudication, this implies that arguments which provide evidence of the 'correctness' of the party's view of events and their preferred outcome must be presented. The parties written statements in fact varied in length and quality from a few sketchy paragraphs to fully documented

case histories with appendices detailing relevant agreements, disputes procedures and so on. The ACAS leaflet, on the preparation of written statements of case for arbitration, states that each party should provide 'a clearly set out exposition of their case and ... include in it all the important and relevant points'. Written submissions help the parties 'in presenting a more logical and forceful case at the ... hearing'. The statement it says should contain (i) history and background of the dispute; (ii) background to the company and union representation; (iii) arguments supporting or opposing the claim; (iv) a summary of the case emphasising essential points.

The requirements of the statement, as described, assume considerable ability in the construction of a convincing written argument. One or both sides may have little experience of such a task and the logic behind the claim may be contrived to suit the perceived demands of the arbitration process. The obvious instance of such a contrived argument is the reference involving a car transporter firm, where the union claimed that the normal car carrying capacity meant five, not six, cars, despite the fact that the agreement had operated on the basis of a bonus paid only for every seventh car, for the previous seven years.

The arbitrators themselves tended to be dissatisfied with written statements, saying that they gave too few supportive arguments, failed to explain why the arbitrator should Award in a particular way, or simply omitted too much of the history of the dispute. The details were seen as particularly important when the events were in dispute: a coherent written statement of events, however, is exceptionally difficult when the history itself is incoherent and the actions irrational. In these cases, (eg food

processing/cold store workers and plant contractors) the demands of logical exposition resulted in a certain structured coherence being given to events and a spurious rationality being imposed which was not there at the time and which gave the cases a peculiarly incomplete air. As the chairman of the plant contractor's dispute said, 'The hearing followed the normal rules, but the dispute had no rules at all'.

The cases dealing with terms and conditions of employment all involved written statements which attempted to show the existence of an agreement and/or its meaning or applicability, in relation to a particular situation. The perceived requirements of a coherent argument sometimes led parties astray and resulted in poorer presentations than might otherwise have been possible. In the bakery dispute about the adjustment of van salesmen's commission, the union tried to prove that there was no agreement about the introduction of a regulator, despite the fact that such an agreement obviously existed. Their case consequently appeared weak. Had they concentrated instead on the incentives element of the commission scheme, they would have been able to present a more convincing argument. The incentive element had clearly declined in proportion to wages; consequently the regulator was excessive.

In general, the style and choice of arguments can have a disadvantageous effect, for one or both sides, on the outcome of the arbitration. In these cases, the van salesmen suffered by virtue of the union representative's lack of foresight in agreeing to such restricted terms of reference and then acquiescing to this definition of the dispute, rather than introducing wider-ranging issues about the underlying principles of the incentives scheme. Narrow or

restricted terms of reference may of course also be used to advantage, if they exclude certain considerations from the arbitration (eg the management's preferred view of the cold store workers' dispute).

(3) The Behaviour of Representatives at the Hearing

All hearings were conducted in the semi-adversarial/semi-inquisitorial fashion described by Lockyer (1979). The parties were asked to present their arguments to the arbitrator or board. Each could ask questions and answer points raised by the other side and the arbitrator also asked questions and commented on the submissions.

(i) Does Arbitration benefit Management?

The results of experimental work indicated that the third-party's presence changed the role relationship between sides, enhancing the performance of management.

Decisions made through arbitration did not consistently favour one side or the other, but the third-party in the experiment was not responsible for the decision. His effect was rather on the style of debate. The nature of arbitration demands a certain skill in the presentation of a lucid and convincing argument. Neither side had a monopoly on this skill. Two employers used lawyers to present their case, which to the arbitrators seemed long-winded and tedious, or suffering from over-kill, yet the parties own attempts were also sometimes regarded as poor, or amateurish. Skill in presentation of case was not, however, all important. In the dispute over car transporter bonus payments, despite the chairman's initial opinion that the union had at best, a poorly argued case, and their own admission towards the end of the hearing that they had no case: (Chairman: 'Why then has six cars been regarded as normal (carrying

capacity) for the last seven years?' Union: 'The drivers understood that six was the normal carrying capacity ... Then they met certain (other) drivers'.), the chairman was somehow convinced, during the hearing, that five cars was normal capacity for the old thirteen metre trailer and the union received a proportion of back payments for lost bonuses. Thus although skill in presenting an argument was evaluated by the arbitrator, it was not the sole determining factor of success.

(ii) The Effect of the Third-Party on the Salience of the Role Relationship between Parties

As suggested by experimental results, the parties' expectations that they, and the case which they represented, would be evaluated by the arbitrator or board did affect their behaviour at the hearing and the salience of their role relationship. The third-party forum, the arbitrators acknowledged, results in both sides being 'very keen that the arbitrator should see the issues through their eyes' (arbitrator).

Representatives tended to focus their attention on the presentation of a 'rational' argument in support of their favoured outcome and according to the types of supportive statements which were legitimised by the restricted terms of reference.

Concentrating on the exposition of the case, for the benefit of the arbitrator, in turn leads the parties to define the relationship between them in formal terms. Hence, however familiar the representatives were outside the hearing, the role relationship is made salient over the personal relationship, during arbitration: agreements are made by management and union; management clocked men

off; the union official is called in at Stage C of procedure; the union knew that adjustment would be made for bread price increases, and so on.

The formal relationship between parties is maintained through the strictures of procedure, which requires statements to be addressed through the chair. Although this practice was not uniformly followed throughout the hearings, since the arbitrator decided initially who would speak when and what kinds of statements or questions were acceptable at what stage of proceedings, the parties were always aware that they were being directed to behave in a certain way, eg '... Following normal practice, I shall call first on the union to present their case ... The order of march then ... if management will show great forebearance and not butt in, but note down any points which they might have arising from the union submission, they will then have the opportunity to elucidate any points ... I shall then call on my colleagues for any further points which they might have to put to Mr X (union). Then I shall call on Mr Y (management) to put the case for the management and suffer a similar ordeal at the hands of ourselves and the union ... I shan't close the hearing until I have an assurance that you have all said all that you wish to say ... This might involve some departure from procedure ...'. The aim of the arbitrators in pursuing such a procedure was to preserve sufficient formality to prevent any expression of hostility between sides, which they regarded as detrimental to the settlement of the dispute, and to provide sufficient flexibility for the discovery of the necessary details of the claim. Interventions by the arbitrator during the hearing, such as derogatory references to conversations breaking out between sides, or other reminders to

parties of their purpose, served to renew the arbitrator's control and discourage invective and abuse. Although some hearings were less formal than others, the only real exception to the pattern was the plant contractor's dispute, where participants ignored the arbitrator's attempts at control, referred to each other by first names, and surrendered the attempt to make clear who held what position for the benefit of the arbitrator. Those present at the hearing seemed to be generally indifferent to the changed context and determined to continue insulting each other.

Some of the parties were clearly wary of the procedure and of speaking out of place, apologising for their inexperience and hesitating over what kinds of statement to make when. The forum was sufficiently unusual to produce a type of social desirability effect, whereby the parties set out to conform to their perceptions of the arbitrator's wishes, presenting themselves as responsible party representatives, who conducted themselves reasonably, (stressing their past good record of industrial relations), knowledgeable in industrial relations practices (quoting ACAS guides on disciplinary procedures and so on) and, on the whole, not openly abusing the other side, but convinced of the merits of their case.

The preceding analysis (sections 1 to 3) suggests that the symbolic interactionist view of the hearing, developed in Chapter Four, is supported by the nature of the process. Representatives, of both management and union, do indeed go beyond the 'official task rules' of arbitration (stating their position, answering questions), in order to present what they believe to be a convincing performance at the hearing. The 'unofficial ground rules' in this case, are directed towards creating the 'right impression' for the implied evaluative audience of the arbitrator. To the extent that this creates a conflict between the presentation of a well-formed, logical argument in support of a claim, which may bear little resemblance to the underlying dispute, and the presentation of the self as both an able negotiator and a trusworthy individual, representatives did tend to lose sight of, or misrepresent certain aspects of the dispute which were particularly relevant to their success at arbitration.

(4) The Arbitrator's Role and Behaviour

As might be expected, the maintenance of the credibility of the arbitration process was treated as an important aspect of the arbitrator's role. All third-parties appeared particularly concerned to demonstrate to the parties, their competence to decide the issue: 'asking technical questions calms things down'; 'asking questions and summarising points of common ground shows you understand' (Arbitrator's comments). Another arbitrator commented that the chairman should have absolute control over proceedings, describing this as one aspect of the arbitrator's perceived legitimacy, which comes from the attribution of faith to those handling the case (Arbitrator). The same chairman demonstrated that he sensed the importance of developing

and maintaining the faith of the parties in the authority of the arbitrator, when he commented that 'it never ceases to surprise me that they will hand over particular issues which may involve great cost to them, should they lose.' The arbitrator must show to the parties that he or she knows the consequences of deciding one way or the other.

All arbitrators, to some extent, assessed the strengths and weaknesses of the parties' cases, commenting on the extent to which they had no case or only a weak case, but they also assessed the strengths and weaknesses of each side's representatives: their ability to construct an argument, develop a theme, emphasise the important points and so on. An important part of this assessment was possible only through the hearing, where the arbitrator gained indications of the credibility of the parties (arbitrator), through various non-verbal cues. It is not difficult to see why the parties are concerned to present the relationship between them in a positive light. The arbitrator interprets the quality of response to his or her questions as much as the content of the response: one chairman (in the cold-store workers dispute) described management as touchy on certain issues, in particular the incident of the lock-out. In response to a question about whether management had acted responsibly in clocking men off so quickly, since a sit-in on a university campus would not necessarily result in the expulsion of the students, the manager had responded with a comment on how with respect he was running a business and not a university. 'Someone else might have explained reasonably that no, he didn't feel that management acted precipitately, because ...' (arbitrator). In this case, the quality of management's response ('You could tell they were

worried, arbitrator) was an important factor in the decision that they had acted too precipitately and that the employees involved should therefore be paid for a proportion of the time lost.

(5) The Arbitrator as 'Effective Negotiator'

Arbitrators differed in the extent to which they were able to maintain control over the hearing and hence structure the session into orderly stages to allow a proper examination of the issues. As in the public sector cases, the second stage of the hearing was particularly concerned with the assessment of the credibility of parties and their positions and was thus crucial to a satisfactory outcome. One arbitrator described this stage as a departure from the earlier coherent presentation of cases, into a stage where 'isolated points are thrown up, many of which are irrelevant ... and produce misunderstandings on both sides as to the importance of a point'. The effective arbitrator must be able to distinguish between relevant and irrelevant arguments 'which are normally in the ratio one to three, relevant to irrelevant' (Arbitrator). At this stage, the arbitrator must also attempt to probe behind the arguments for any hidden disagreement and may explore the criteria to be used in reaching a settlement. The nature of the decision may be subtly indicated, by the focussing of the hearing around particular questions: 'It all boils down to ... determining whether your JIC is covered by paragraphs 152, 153 or not' (Arbitrator). A summary such as this one indicated the direction of the arbitrator's reasoning and, unless it was quickly challenged, was usually followed by a rapid summation of main points of disagreement by the parties and the close of the hearing.

Not all cases were, however, amenable to such direct summaries of the decision point. Although generally aware of the need to 'ask the right questions', the arbitrators did not always see themselves as successful in their attempts. In two cases, arbitrators felt that they should have pursued certain questions which were central to the decision, but which were lost sight of during the hearing. These issues tended to be particularly concerned with definitions of terms, such as error or normal, which happened to be central to the decision. Or they may have been issues concerned with the taken-for-granted background to the case, such as the operation of the shift-system in the cold store workers dispute over tea-provisions, or the examination of the parties' actual working knowledge of an agreed disputes procedure in the plant contractors case.

This point indicates the difficulty of proceeding under an inquisitorial system, where the issues are less than straightforward. Arbitrators commented that with the benefit of clear written evidence and coherent statements at the hearing, they were better able to formulate the right questions. When there was too much diffuse evidence, and the relative importance of different pieces of evidence was not apparent, the arbitrator or board was to some extent at a loss. Clearly, in some of these cases, a very simple procedure was adequate. The criteria for decision were already established by the parties: the applicability of a report, the representativeness of the union, the proper definition of collective bargaining unit, the particular clause in an agreement. It was much less easy to identify the right questions, when the chairman was asked who is to blame or whether the company was justified in dismissing an employee.

(6) The 'Irrational' Cases - Can Arbitration Help?

It was suggested in Chapter Four that the effective arbitrator may have to deal with the 'irrational' disputes by widening the terms of reference of arbitration and adopting a more integrative, constructive approach to the definition of the dispute. The last two cases in the group observed here indicate the difficulties and potential dangers for the third-party in adopting such a role. Both cases were highly emotionally charged and the third-party was asked, not simply to interpret an agreement, but to deal with disputed accounts of the events surrounding the grievance and industrial action. Both could be said to be examples of management and union representatives with a 'weak' bargaining relationship, in as much as the lack of respect and trust between the two sides was evident and the main purpose of resorting to arbitration seemed to be to further threaten and harass the other side. These disputes were clear examples of the 'irrational bargaining' mode, in the sense that the parties wanted the arbitrator to assign blame for the cause of past events and thus establish the 'righteousness' of their own position, rather than being willing to discover a course out of the mutual distrust in order to improve the terms of their future relationship. The third-parties in these cases were however unwilling to adopt an evaluative stance, preferring instead to produce a compromise solution which would enable the parties to overcome the dispute and continue to work together. Presumably a decision which explicitly favoured one party's version of the events would be particularly damaging in such cases since, by allowing the dispute to be seen as a 'win/lose' confrontation, it would most likely be interpreted by both sides as further evidence of the morality of their view and, for the 'losing' side, of the

biased nature of arbitration.

Attempts to widen the terms of the dispute and adopt a more mediatory, integrative approach to the hearing may however be interpreted by one side or the other as an illegitimate attempt by the arbitrator to step outside a preferred 'masterscript' and thus may be regarded, not as a constructive move, but as a political tactic ensuring their defeat if that wider perspective does not favour their position. This point is illustrated in both of the highly disputed cases. In the equipment contractors dispute the owner of the comapny preferred a wider view of the terms of reference, allowing the third-party to 'consider what this dispute is really all about, (which is) whether Mr G was unfairly dismissed' (Employer). In the food processing case, the cold-store workers preferred the wider view over the narrower interpretation of procedure. Both of these attempts to extend the arbitrator's powers of decision-making were resisted by the other side, because such a step appeared to operate against their interests. In the latter case, particularly, restricting the arbitrator's authority to a judgement in terms of a procedural agreement, and eliminating the wider grievance, meant that the decision was bound to favour management. The union's salvation lay in the inclusion of a term which asked the board of arbitration to bear in mind the circumstances surrounding the situation.

Although the third-parties in Cases 7,8 and 9 (Case 7 - dismissal of film polisher) attempted to adopt a more integrative approach to the dispute, their success was limited according to the extent of the antagonism between the sides. The more integrative approach appeared to be acceptable to the parties only when the pre-existing

conflict had not seriously damaged the underlying relationship between management and union, as in the dismissal of the film polisher (Case 7). During the later part of this hearing, the arbitration board began firstly to explore the union's views of what behaviour would constitute gross misconduct and then asked both sides about a range of possible outcomes, in the attempt to find an acceptable settlement point. (What sanctions lay between a warning letter and dismissal? What precedents existed for suspension without pay? Were there other jobs which the man could be moved to?) This approach was possible because of the willingness of the parties. Even in this case a certain amount of latent antagonism emerged when, after a very calm and conciliatory exposition by the main management speaker, one manager reacted quite violently to a suggestion of disciplinary action less severe than dismissal, with a statement to the effect that he would never allow the man to touch a negative film again. This provoked hostile comments from the union side to the effect that management regarded this as a win/lose confrontation, and believed that if they didn't get rid of Mr P other employees will think they can get away with poor work. Management in turn countered the accusation with statements about the low turnover of staff in the company, and their willingness to abide by any decision of the arbitration board.

The integrative approach was less successful when the conflict had clearly affected the personal relations between sides and the issues were strongly disputed as in the cold-store workers action and the plant contractors case. The latter case in particular demonstrated the most extended 'abuse' of procedure, since despite any attempts by the third-party to impose order, the hearing merely

became more heated and disorderly. In general the overt expression of conflict between sides was met with diversionary tactics by the arbitrator, in the form of technical questions, or directives over the adherence to procedure. The arbitrator tried to divert the parties from their mutual slur tactics by stating that he would question each in turn in order to establish at what point grievance procedure had broken down. The parties however proved too antagonistic to be completely constrained, to the extent that one employers' association representative who was there purely in the status of observer requested 'control through the chair and not a general interchange'. Clearly where the extent of the immediate conflict is uppermost, the hearing must be carefully controlled, if the arbitrator is to gain any understanding of the events and potential range of outcomes.

Although it was suggested that the effective arbitrator, confronted with parties in a very antagonistic, irrational conflict, should be able to widen the definition of the dispute, allowing a more flexible, open-ended approach, in the light of these cases it might be added that the arbitrator also has to recognise when this will be acceptable to the parties and when attempts at positive, integrative strategies will simply be reinterpreted by one or both sides as detrimental to their 'best interests' in terms of the damage which they are able to inflict on the other side. Instead of being able to provide the outsider's 'rational' view-point the third-party may find him or herself caught up in the same definition of the conflict as that pursued by the parties and consequently used by the parties as further encouragement of a mutually destructive encounter.

(7) Different Arbitration Styles

Although some arbitrators did appear to vary their approach to different cases depending on their perceptions of the parties' needs*, most seemed to develop a distinctive style which was relied on regardless of the issues. Arbitrators came to the hearings with distinct views about the purpose and conduct of the arbitration. They formed opinions about the party spokesmen (integrity, ability to argue, willingness to settle, and so on). These differences were reflected in the hearing procedure and, in more unusual cases, possibly in the kind of decision reached. Their stylistic preferences depended on their view of arbitration and whether they saw the process as a limited, adjudicatory one or as a more broadly-defined, problem-oriented one, where the 'real issues' had to be uncovered during the course of the hearing.

This was the most obvious dimension on which arbitrators differed. One arbitrator took the evaluation of cases very seriously. He saw the arbitrator's role as relatively passive, preferring to allow the parties to structure their cases as they saw fit. He was not inclined to assist a less able representative in the presentation of arguments, or drawing out of points which he felt may have been favourable to that party, but which had been poorly argued. This person interpreted the terms of reference as a precise limitation on the extent of his

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* One arbitrator, in two different cases, took a narrower view of the hearing in a case concerning the interpretation of an agreement, that he did in the dismissal case (film processing company) where the hearing was used to discover a decision which would provide a satisfactory resolution for both sides.

authority, and, in the case of a board of arbitration, dealt with the decision itself by a specific procedure. Where the side-members disagreed, he asked each to explain grounds for their decision, and then weighed their arguments along with those from the two sides, thus creating a second arbitration with the chairman taking the final decision. Another arbitrator, while aiming at an orderly hearing preferred the informal, 'even at the price of a little disorder'. He did not believe that the decision should constitute 'Articles of unconditional surrender'. His approach to the board's decision was that it 'emerged, a bit like (at) a Quaker meeting ... where the result was understood'. The chairman assumed that the side-members agreed: '(I said) can I assume we all answer this in the same way? ... There was no dissent'. Another chairman, wary of exercising too much influence, said that he tried not to express an opinion on the outcome until both side-members had spoken, and another arbitrator, who described arbitration as solving a problem, preferred to find common ground between two dissenting side-members, so that all were in agreement over the final decision. Another felt that dealing with a board of arbitration was an inferior method of settlement and preferred the flexibility possible when a single arbitrator met with the parties and adopted a mediatory role, which allowed the award to emerge during the hearing, deriving the principles for the decision from his understanding of the terms of the parties' relationship.

As Fleming's (1965) work indicated, personal differences between arbitrators were less likely to influence decisions in the most straightforward cases, wehre the award rests on what two arbitrators referred to as a legalistic interpretation of a clause in a report or an agreement. It is, however, conceivable that

decisions in more complex cases, like the cold-store workers dispute, where the particular issue became a focus for the more extensive underlying conflict over union and management principles, could be made differently by different arbitrators. In this case, the chairman of the arbitration board felt that the decision depended on whether management acted too precipitately. He queried the management spokesman during the hearing, over whether even if one side deviated from agreed procedure, the situation was necessarily improved by the other side taking punitive action (ie clocking the men off). It is conceivable that someone who believed in a strong disciplinary management ethos would have been less inclined to view the employees' apparent frustrations with any sympathy. Alternatively, an arbitrator who preferred to take a legalistic/judicial approach to claims may have adhered more strictly to the terms of reference (as the arbitrator did in the van salesmen's commission dispute) and awarded the union nothing.

Conclusion

It has been argued that the evaluative image of arbitration has observable, and sometimes detrimental, effects on the behaviour of party representatives who have little or no previous experience of the process, in terms of the definition of the dispute, statements of case and conduct at the hearing.

Taking the terms of reference of the cases at face value, it was clear that the arbitration process, as presented to the parties, tended to make the disputes appear more uniform than they were in practice. All were couched in terms of an agreement or disputes procedure and appeared to be amenable to a decision between two

interpretations of a particular section of that agreement.

In practice, however, it was clear that, as in the public sector cases, characterising arbitration solely as a judicial, evaluative process is too narrow a view. In effect, there were two varieties of arbitration in these cases, as there were in the public sector cases. In this instance, the simpler disputes were those which did not appear to reflect an extensive underlying conflict between the parties and which were consequently soluble according to the terms of an existing 'rule' or criterion. When it was clear that the immediate conflict went no further than the particular issue in dispute (as in the group of cases dealing with terms and conditions of employment), the hearing concentrated on the statements of case and examination of the immediate dispute. The arbitrator, relying on his perceived authority, generally adopted a 'legalistic' stance, and the decision was made according to a strict interpretation of the agreement presented by the parties for consideration, or in the light of criteria established through current industrial relations practice (union recognition). The one decision which does not fit easily into this framework was the car transporter drivers' claim for increased bonus payments, decided, according to the ACAS secretary, more for the sake of expediency than equity. In this case, lying behind the interpretation of a term in the agreement, was the drivers' dissatisfaction resulting from their discovery that another group, employed by the same company, received more bonus payments for cars carried than they did. This case suggests that where the decision is in some sense predetermined by actions already taken by management or union (in this case, management's concession of the union's first claim, even before arbitration), the award will seek to be consistent with the

parties' actions, rather than being consistent with the more general practice of arbitration itself, where the decision can be couched in terms of the criteria given by the parties' own agreement. The political decisions, in this sense, are partly oriented to satisfying the perceived needs of the parties and partly oriented towards maintaining the credibility of arbitration: if the decision is unacceptable to the parties, their potential faith in the process of arbitration is undermined. The third-party in this case appeared to be displaying some tactical skill of the variety discovered in Chapter Four, where it was suggested that, in the simpler cases the arbitrator was likely to manage the process of concession convergence on behalf of the parties, by developing a tacit understanding with them of an acceptable settlement point.

In this instance, those cases which were more complex in the sense that they involved general principles of management/union rights were also those in which the parties were most antagonistic towards each other, and wanted the arbitrator to pronounce on the 'rights' and 'wrongs' of certain actions. The arbitration board was less interested in a strictly evaluative interpretation of the terms of reference and thus, rather than deciding who was to 'blame' for past events, was more concerned to provide a remedy for the animosity between the parties. The attempt to perform the problem-solving/mediatory role, demonstrated in the dismissal/disciplinary cases, was, however, limited by the extent to which the procedure (or the chairman's individual style) could successfully contain the antagonism felt between the two sides.

Overall, the nature of the arbitration appeared to be dependent on the participants' views of the process. (Here ACAS seemed to

exercise a certain amount of discretion in assigning different arbitrators, with differing views of their role, to particular cases.) The effectiveness of the process as a method of dispute resolution is likely to depend on the initial objectives of the parties. Where it is used for damaging political ends, as a way of furthering, rather than resolving, a crisis in industrial relations, it is likely to be at best irrelevant. The parties however showed a certain amount of ingenuity in their use of arbitration, and in terms of negotiation strategy, union representatives had some success in establishing arguments which would probably have carried little weight in open negotiations. A weakly organised union was also able to gain through the use of arbitration, by borrowing from the status of the arbitrator to bring pressure to bear on an employer, in order to establish common industrial relations practices. Finally, the process may be used to gain a concession when negotiation itself could produce no further benefits (car transporter drivers) or to demonstrate the assiduous defence of members' interests by union officials who may in fact believe that they have no case.

In sum, the use of arbitration appeared to be limited only by the inventiveness of the participants and the relative inexperience of party representatives. As in the public sector cases, the significance of arbitration was best understood according to its significance for industrial relations between the sides.

Conclusion

Third-party intervention has an uncertain status in British industrial relations. Suspicion of bias or government interference and long standing traditions of voluntarism ensure that management and unions are cautious in its use. Yet as an area of study it is interesting not only because it is regarded as a civilized means to control and regulate conflict, but also because of the insights which it can offer into the bargaining relationship between parties, at a moment of impasse and public expression of strife.

In particular the field study of arbitrated disputes which has been reported provided a valuable opportunity to study aspects of the social process which takes place behind the public, institutional representation of third-party intervention. It has examined the ways in which the institutional arrangements for arbitration are used and managed by the participants.

The third-party is traditionally depicted as a neutral figure whose presence and skill encourages the parties to adopt a conciliatory, cooperative stance. This public image, it has been argued, exists partly because of the ambivalence felt by the parties towards his or her role, and functions to protect the third-party from criticism, while also suggesting the special skill necessary for the role. The evidence brought forward in the thesis has considerably undermined the common assumption that the third-party has an ameliorative, conciliatory effect on unresolved conflict. The experimental evidence indicated that even a silent third-party is sufficient to change the nature of the agreements reached (in this case, in a direction favourable towards management). Both experimental and field study evidence indicated that the third-party's presence and role, as

understood by the participants, instead of encouraging a cooperative approach to the issues, resulted in greater intransigence in the form of increased emphasis on the role relationship between the sides and less immediate concern for the personal relationship. The third-party was treated as an evaluative presence and representatives were keen to impress upon him or her the strengths of their own party's case.

The move from experimental simulation to observational field study was justified in terms of the wealth of descriptive and exploratory material which it has provided. The field study has also been profitable in that it demonstrated the consistency of a number of previously observed occurrences in one-case studies, across a larger number of cases. The use of observational method has provided a different perspective from the more traditional questionnaire and interview methods, which have at least two disadvantages: first, people tend to present themselves in the most favourable light possible to an interviewer, and second, respondents may not always be sufficiently aware of their own behaviour to be able to describe it afterwards. This was certainly a problem which the arbitrators faced in trying to give a detailed account of their conduct of the hearing.

Moreover, arbitration has consistently been described by practitioners as a semi-judicial, evaluative process, able to produce an impartial decision, based on the reasoned evaluation of cases. It has consequently been treated as a process which is quite distinct from negotiation and set apart from collective bargaining. It has been argued that this public image of arbitration is necessary in order to maintain the parties' faith in the credibility

of the process as a means to the resolution of their dispute. In order to understand the social process of arbitration, however, the long-standing division between negotiation and arbitration must be revised. Evidence from the field study of arbitration has repeatedly affirmed that, far from being a distinct process, the nature of arbitration cannot be understood apart from the collective bargaining process of which it forms a part. Placing arbitration in its social context of bargaining and negotiation allows a more elaborated understanding of the process than has been possible previously.

The findings from the field study of arbitration, in both long-term public sector arrangements and private sector *ad hoc* arrangements, have clearly reaffirmed Douglas' (1962) argument that orderly movement through a series of stages is a predominant characteristic of the process of third-party intervention which ends in agreement. The three stages of arbitration by virtue of the formal procedure in use, were more evident than those characteristic of negotiation, where they have been described as notional. Movement through the stages was consistent from one case to the next and from one type of case (simpler and more complex) to another.

In the public sector cases, where the availability of a verbatim transcript of the proceedings made it possible to carry out a detailed content analysis, the process was compared with Bales' hypothesised phase movement for problem-solving groups and Morley and Stephenson's (1977) model of negotiation. It was expected that the stages of arbitration would be more closely related to the stages of negotiation than problem-solving groups, because of the members' obligation to represent a party position. Although the detailed predicted changes in c.p.a. - categories were not uniformly

supported in the arbitration hearings, nevertheless the overall form of the stages of arbitration was more closely related to the stages of negotiation than to the stages of problem-solving. In both arbitration and negotiation, the process is created in order to deal with and regulate the pre-existing conflict between parties, although the concrete expression of that conflict differed between the two processes. Conflict was not, as Bales would argue, an inevitable by-product of the group process. The procedure used at arbitration encouraged a very formal process, which allowed the parties to talk about the conflict from a relatively disinterested standpoint, rather than engaging in it. The expression of interpersonal hostility was minimal, because of the constraints imposed by the conventional procedure.

The first stage of the hearing can be described as essentially distributive in nature, after Morley and Stephenson (1977), and is concerned with the presentation and justification of the parties' demands. The second stage of the hearing is more concerned with a detailed examination of positions, with the arbitrator taking a strategic role and paying particular attention to the possible disadvantages of the alternative outcomes put forward. The final stage was most concerned with a re-evaluation of party positions in the light of the preceding debate. Although references to parties remain relatively constant throughout the hearing, indicating the overall formality of the process in contrast with negotiation, progress through the hearing is indicated by the contrasting movements of arbitrator and parties. The arbitrator's role does not parallel that of management and union, but is quite distinctive. He was throughout particularly concerned with directing the procedure,

maintaining an atmosphere of polite formality and questioning the party positions, in order to discover their reasoning and justification. In the first and final stage of the hearing, the arbitration board adopted a relatively passive, process-oriented role, particularly concerned with welcoming and thanking the individuals present, while providing the opportunity for the development of party positions. In the middle of the hearing, however, the arbitration board became the most active participants, adopting a party/task-oriented style, turning their attention to probing and exploring each side's case and demanding an appraisal of the alternative outcomes available. The parties, on the other hand, portray almost the reverse pattern of movement. As in negotiation, the use of the Referent:Other appeared to indicate progress through the hearing. Formal references to the opposing party tended to decrease as the hearing progressed, while personal references to the other side increased.

Further support for the argument that the social process of arbitration is best understood in terms of the bargaining relationships between parties was provided by evidence that the nature of arbitration changed according to the type of case and the distribution of responsibility between participants for the outcome of the hearing. As predicted, the more complex the issues in dispute, the less likely the arbitrator was to take the traditional role of 'adjudicator'. Contrary to Thibaut and Walker's (1975) argument that different types of case required different procedures for their satisfactory resolution, the standard procedure in use acted as a 'guarantee' to the parties of the fairness of the hearing. The nature of the relationship between the parties determined the significance of different disputes, which resulted in variations in the

task facing the third-party, rather than variations in procedure. The different tasks in turn affected the social process of the hearing. The two varieties of arbitration which result are best understood in terms of two contrasting models of negotiation: the 'concession-convergence' and 'formula-detail' models. In the simpler disputes, the arbitrator was more likely to act as manager of the concessions for the parties, according to a pre-established criterion. In the more complex disputes, which could extend over a period of years, the arbitrator resembled a party to negotiation, with the major aim of creating an acceptable framework for future negotiation between sides, where the detailed implementation of the decision would be subject to negotiation by the parties. The process of arbitration in these cases could only be understood in terms of the parties long-term relationship and as one part of a continuing cycle of negotiations, dealing with issues of equitable treatment and industry finance, which are central to industrial relations.

The distinction between cases was upheld in both public and private sector cases, although as expected the distinction between cases was less clear cut in the private sector *ad hoc* arbitrations, where the disputes were presented to the third-party in terms amenable to an evaluative decision between two distinct outcomes. The more complex cases, however, were those which concerned emotive principles of management and union rights. Arbitrators attempted to construct a framework in terms of which the parties could overcome their mutual distrust. The success of this approach was, however, limited by the hostility between the sides. The third-party needed to act as a specially skilled negotiator, who is able to overcome the narrow

perspective which the parties have adopted and re-introduce a more integrative approach. The most hostile disputes appeared to be instances of a weak bargaining relationship, where arbitration was used as a threat by one side against the other.

The third-party was more able to adopt the role of skilled negotiator in the public sector hearings, where the participants evidently had a much stronger bargaining relationship and had established a basis of mutual respect. Particularly in the more complex disputes, the third-party was able to adopt a flexible approach to the issues, search for and appraise alternative outcomes, identify potential areas of common ground and examined the future consequences of different decisions. Not all of the arbitrators in the *ad hoc* cases were equally skilful in this respect, with a number recognising the important questions only after the close of the hearing. This raises the question of the extent to which the character of the public sector hearings which shared the same chairman depended on the particular abilities of that individual. Perhaps all that can be said with confidence on this point is that the chairman was certainly an example of a skilful negotiator, in so far as decisions resulting from the tribunal were dealt with seriously by the parties and proved continuously acceptable over a long period. His abilities perhaps benefited from long-term involvement and experience, an advantage not open to those acting as *ad hoc* arbitrators. The conventional procedure preferred by the parties in the public sector cases could also be said to exert a constraining effect on the chairman's style. Indeed it should be asked whether the lengthy exposition of cases which preceded each hearing did not sometimes detract from its usefulness as a means of

solution of the dispute. No doubt the parties would reply that this presentation in itself constitutes part of the assurance of the fairness of the hearing.

The relative experience or inexperience of representatives at arbitration affected the use which they were able to make of the process. The more experienced participants treated it as part of collective bargaining, while inexperienced representatives were more affected by its evaluative image. Inexperienced representatives appeared particularly concerned with creating an impression of themselves as both able negotiators and trusworthy individuals, for the implied evaluative audience of the arbitrator. This sometimes resulted in the creation of a spurious logic for the dispute which bore only slight resemblance to the original issues and, occasionally led representatives to over-look practical arguments which were important to the success of a claim.

In general, the thesis has reviewed arbitration from the perspective of bargaining and negotiation, in order to show how different models of the negotiation process can enhance the understanding of arbitration. In doing this, it has also raised reciprocal questions about the status of those models. In particular, the field study has shown that the concentration of research on concession-convergence models of bargaining is unjustifiably restrictive. Much less is known about development of frameworks or 'formulae' used by negotiators to justify preferred settlements than is known about the details of concessions within the context of an agreed framework. Yet the establishment of a framework, as demonstrated here, is crucial to the resolution of particular disputes and negotiations over the appropriate frameworks

to be used in governing the relationship between the sides may be reiterated over many years, in many different guises.

An improved understanding of successful negotiation, and successful negotiators, is likely to result only from more concern with this essentially social-psychological arena, where the terms of the conflict are first negotiated and the parties strive to define and adjust mutual expectations of each other's demands. The skill of the negotiator resides in his or her ability to develop and establish the credibility of a preferred framework, whether this places economic consideration above employee welfare or the needs of one group above the needs of another. Such a skill extends beyond the 'official' negotiation table, to arbitration and other formal and informal meetings between participants. Arbitration is an integral part of that collective bargaining process and can only be understood in that light.

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Appendix 1

Extracts from Arbitration Hearing Transcripts

(Chapters Five, Six, Seven and Eight)

Case 2,

Classification - Simple

Stage 1 of the hearing

THE CHAIRMAN: Good morning, ladies and gentlemen. If I can say "welcome" in spite of two facts: one, that we are here on a Monday morning, and two, that we are in the middle of a heat wave. That is the way things turn out sometimes, and I think we have to put up with it.

May I begin by introducing my colleagues, Mr C and Mr H; Mr H, the Secretary, you probably all know. As far as procedure is concerned, I think people here actually know how we usually operate on these occasions. We try to treat things as informally as possible, as this seems to be the best method of getting the various issues exposed and explored. Perhaps, when we come to the questioning, cross-questioning and so on, we could direct that through the Chair, just for clarity.

We have to thank you for the agreed statements on the background and factual comments, and also the separate statements of case from the two parties. I think that these, as usual, are helpful in setting out the issues, ad we are grateful for that. What we shall do is to ask Mr S and Mr G to take us through the main issues and arguments, and perhaps, if you would like, on the first round you might take the opportunity just to comment on what has been put by the other side; then after this first round there will be a number of issues, I think, which will emerge and which you will want to discuss further, and which we shall no doubt want to ask some questions about as well. I think, looking at the time, that we shall quite probably be able to get through this this morning, so we shall not make any arrangements for a break for lunch. Obviously we will allow whatever time is necessary to get through all that requires to be got through, and we can come back if that turns out to be necessary. Meanwhile we shall proceed on the basis that we can finish round about lunchtime.

Are there any other questions on procedure? (No reply) Very well, could I ask Mr G now to kick off.

(Union) Mr G: Thank you, Chairman. Professor H, members of the Tribunal, the claim that is outlined in the terms of reference we have submitted before you is concerned with the interpretation of the Government White Paper, "The Attack on Inflation", in the Annex, in the extract from the TUC entitled "The Development of the Social Contract", where it refers to the fact that the pay element, which we know will cover the period 1st August 1975 to 31st July 1976, should be £6 a week to all full-time adults aged 18 and above, pro rata for part-timers and juveniles. It is what "pro rata" for juveniles means, for 16 and 17 year olds in grades represented by the Civil and Public Services Association, that we are particularly concerned with.

In the terms of reference is given our interpretation of what we believe "pro rata" should mean: that 16 and 17 year olds should receive a pay supplement determined by calculating the percentage that the 16 and 17 year old pay scale points are of the 18 year old point on each pay scale (which, of course, is the lowest point under the Government/ TUC guidelines that can receive the maximum £6 pay supplement), and for that percentage, once it has been worked out, to be applied to the £6 to determine the actual supplement to be given to 16 and 17 year olds in each grade. As regards the full details of the percentages of the

£6 that we are claiming, the amounts are only actually given in the terms of reference, but the actual percentages of the £6 that we are claiming for 16 and 17 year olds are given on page 9 of the joint factual information. They are shown in contrast, on page 9, with the percentages and cash supplements that have already been offered by the ---.

If I can now turn to page 1 of our case, in paragraph 2 we make the point that there have been no meaningful negotiations between ourselves and the --- on our claim. We believe the --- have deliberately ignored outside evidence of pay supplements given to 16 and 17 year olds in other areas of comparable employment, and that they have also refused to take into account the movement of the Retail Prices Index since the 16 and 17 year olds' last pay supplement which was on 1st April 1975.

In paragraph 3 we show the very small amount of money - £135,000 odd - involved in meeting our claim, and we give the very small percentage when you express this amount as a proportion of the CPSA wages bill.

Paragraphs 4 to 7 give the history of the CPSA claim, which we believe illustrates that the --- have not considered our claim seriously. Our claim was subject to excessive delay, and at no stage, in our view, was there any real negotiation on the claim. We consider that evidence of the unwillingness of the --- is shown to some extent in the minutes of the very few meetings that took place on the claim, and these are reproduced in Section V of the joint factual information. The delay was such that the --- had to agree to pay out the pay supplement of £6 to 18 year olds and above, before we had actually received a firm pay offer for 16 and 17 year olds. We think that this can hardly be considered a satisfactory situation. To this day we have not received any explanation for the delay in responding to our claim.

In paragraphs 8 and 9 we show how the --- have attempted to impose upon the CPSA grades the basis of the settlement reached between the Union of --- Workers and the --- for 16 and 17 year olds in grades represented by the Union of --- Workers. We argue that if the --- had worked out a common basis for determining the pay supplement of 16 and 17 year olds, and if they had written to those --- trade unions representing such staff, before any negotiations had started on any of the one individual claims submitted by trade unions, then we perhaps would not now feel so bitter at the ---'s attempt to impose the formula used by the Union of --- Workers upon us, because we would have had an opportunity to influence the --- thinking, the --- attitudes, before it began its negotiations with the first union that got involved in discussions for this group of staff - that is, the Union of --- Workers. We do not believe that the --- in fact had worked out an approach to the pay of 16 and 17 year olds prior to receiving the Union of --- Workers claim. Otherwise we believe it would have attempted to sort out an agreed approach with all unions, and there is a machinery, the Council of --- Unions, to work out an agreed approach. The --- have done this once before through the Council of --- Unions - for example, on the decision whether to make the £6

supplement superannuable or not. Agreement was reached on that point through the Council of --- Unions prior to any negotiations getting under way. In our view, the --- received the Union of --- Workers claim for 16 and 17 year olds and accepted it without amendment, and they have then tried to impose it on all other unions representing 16 and 17 year olds, regardless of other considerations.

Can I say that we have got no quarrel with the Union of --- Workers on this matter. They drew up their claim quite separately from us. We have no idea how they approached the issue. Our concern (which may be different to theirs) has been to safeguard the value of the previous pay settlement as far as the pay guidelines will allow. There is no relationship between the criteria used in sorting out recent Union of --- Workers pay settlements over the past couple of years, and those for CPSA. As will be seen from a quick glance at page 10 of the joint factual information, the Union of --- Workers have a pay settlement date of 1st January compared with a pay settlement date of 1st April for CPSA grades. In the 1975 pay settlement for the Union of --- Workers grades there was a cost of living threshold clause, while in ....

Stage 2 of the hearing

(Union) Mr G: It seems to me to be rather a fly way of trying to say "consistency". If we adopted the same approach as regards the pay at age 20, then the amount, for example, for a clerical assistant, would be the pay supplement due as a proportion of the 20 age-point, which would be £4.13 instead of £3.40 and for a 17 year old it would be £4.47 instead of the offer of £3.61. We must take into account what happens to these people at the age of 20. Can they, for example, stay on the age 20 point for ever? They cannot. They must move to another scale at age 20. However, when you reach the maximum of the clerical assistant grade or the clerical officer grade you are stuck there unless you are promoted to another grade. We must take into account that this is a training grade just as our junior scale is a training grade, and after a period of service they will move to another scale where they will receive the adult rate for a fully trained operative. Therefore, the --- Union has been able to negotiate a better formula than that of the --- Union. This was a mutually agreed and negotiated formula and it explodes the myth that the --- has had internal consistency.

(Arbitrator) Mr C: The question of the maximum for the grade and the age at which it is reached is obviously most important. I want to be absolutely clear on the facts. What is the age concerned? I know that in the paper it is shown for the grade under discussion, but as regards the --- Workers, what is the age at which it is considered that the maximum applies? I should like similar information as regards the --- Union. Do people reach some sort of break-point and move on to a new scale? Where does the scale cease and where do you really get on to the other rate?

(Management) Mr S: As I have said, as regards the --- Union grades, the scales are age-pointed from 16 to 20. After that the people concerned do not go on to a new scale - they are regraded according to whatever they may be.

(Arbitrator) Mr H: Is that done automatically?

(Arbitrator) Mr C: So the rate for ages ceases altogether at 20?

(Management) Mr S: Yes, I think that at that stage they go on to another grade which itself may be age-pointed.

(Arbitrator) Mr C: Is it or is it not?

(Management) Mr R: It depends on the job. I do not have the details with me. In some industrial jobs the adult rate applies at 18, 20 or 21. The point is that once apprentices finish their apprenticeships they go on to something else. In our view that would not be strictly comparable with the people on the junior clerical assistant scales, because they are not going through the same sort of training programme.

(Arbitrator) Mr H: What happens to these people at 21?

(Management) Miss B: They go on to a higher grade which is not age-pointed.

(Arbitrator) Mr H: As I understand it, it is being argued that the appropriate maximum for the purposes of this calculation is the maximum of the T2A?

(Management) Miss B: In fact, it does not make any difference because the maximum of each of the eight grades involved in the calculation - all employing juveniles - are identical. I mean that they are identically age-pointed from 16 to 21. The significance of the trainee technician or apprentice grade is that the majority of juveniles are employed on that grade. Therefore, when one weighs up the different products of the arithmetic in respect of each grade, the scales fall predominantly on the arithmetic for the trainee technician apprentice, because that is the grade in which the majority of the juveniles are employed.

(Arbitrator) Mr H: So the original offer was based on the maximum of the T2A?

(Management) Miss B: Yes.

(Arbitrator) Mr H: Therefore, in terms of internal consistency, that was the original view of the ---?

(Management) Mr S: There are some six or seven --- grades employing juveniles, but the great majority of people are T2As.

(Arbitrator) Mr C: We now know that the relevant age which has been agreed with other parties is 20. What is it for the --- Workers? What is it for each of the grades which we are now considering?

(Management) Mr S: The agreement with the --- was in relation to the maximum of the scale, which in their case happened to be 20. We did not say, "let us take the 20 age point" and relate it to that -

(Arbitrator) Mr C: That is my point. It is incidental, but it is interesting. At what age does that maximum fall on the other people concerned - the --- and the other grades?

(Management) Miss B: The main grade is --- and the age is 21.

(Arbitrator) Mr C: What is it based upon?

(Management) Miss B: For the --- and PA it is 21; for the postal equivalent of the CO it is 25. It is the maximum of the scale which if you were age-pointed all the way would correspond to 25. For the --- it would be 23 and for one other grade known as the OTO2 - the Overseas --- Operator Class 2. They are not actually age-pointed all the way. Age-pointing stops at 21, but there are points above that to which people progress. Therefore, there is a range.

(Arbitrator) Mr C: Therefore, the regular incremental system stops at these ages?

(Management) Miss B: No.

(Arbitrator) Mr C: What is significant about them if it does not stop? As I understand it, it is not rigged for age.

(Management) Mr S: These are the ages when the people in the various grades reach their maximum.

(Management) Miss B: That is, if they had come in at the bottom of the scale and progressed up.

(Management) Mr S: They are not age-pointed all the way up. As regards the ---, the formula was in relation to not the highest age point, but the maximum of the scale.

(Arbitrator) Mr C: Give us some ages for the people who are under discussion now.

(Management) Mr R: I am not sure that we understand your question. Our approach has been consistent because there are a variety of pay scales. They all have age-pointing towards the bottom end of the scale, but they all progress to totally different maximums. In the case of the --- and the --- the approach was to relate proportionate increases to the maximum rate. It so happens that in the ---'s case their scales are far more straightforward and rather similar to the type of situations that arise in industry when you reach the adult rate at 20 or else where, as in the case of the T2A, 20 is the top of an apprentice's scale. They are the only people whom we specifically employ as apprentices.

(Arbitrator) Mr C: I am sorry that you do not understand the point that I am trying to make. It is important that you should understand it. I am asking typically at what age do people reach these points. I am fully aware of the fact that you do not have regard to age. We have been told that typically the age concerned for the --- is 20, for the --- 21, 23 and 25. What typically are the ages of the people with whom we are concerned in this claim?

(Management) Miss B: Let us take the example of someone age 16 at the bottom of the age-pointing scale who progresses by normal increments to the maximum of the scale. For a CO the relevant age is 23 years. In the case of smaller grades like typists and data punchers it is less easy because there is a degree of dependency upon technical proficiency, such as improving speeds. However, I suppose that typically it would be 21 to 24 - somewhere in the middle.

(Arbitrator) Mr C: Is it common ground that we are talking about ages between 21 and 24?

(Management) Mr C: As regards the 16 and 17 year-olds who come in, certainly in some cases they have to reach certain typing standards. If they do not some will be sacked and they will never reach the adult rate. However, I suppose that that could apply to the odd apprentice. The key point is that the --- side said that the large bulk of the juveniles in the --- grades were in the trainee technician apprentice grade. I think that Miss B said that?

(Management) Miss B: Yes.

(Union) Mr G: When we talk about the maximum of a grade, we normally mean a point at which people may stop for some years. That is the

point which they have reached for doing a particular skill and unless they are promoted or attain more qualifications they will not move on. However, people do not stay on the 20 point. They cannot stay on it year after year. The maximum points used in the --- case, which they are trying to impose on us, are points that people can stay on for a number of years. Therefore if you reach age 20, having survived the apprenticeship, then you must go to the technician class to a grade which has a three-pointed scale. My understanding is that the --- are arguing that it is like having one scale, because you have to move on to that scale and therefore you should have determined the 16 and 17 year-olds' pay in relation to the maximum of the Class 2A which is £56.80, compared with the 20 year-old point on the training scale of £40.37. You will appreciate that it will make a significant difference in what percentage of £6 supplement you will be paid, whether you take the 20 year-old point or the maximum of the Class 2A. We are saying that that is not consistent with the approach used as regards the ---. They had a different negotiating basis. Therefore the ---'s argument about internal consistency falls down. That is why we argue that our claim should be treated on its merits, taking into account all the other considerations.

The --- made the point that it was as much up to the unions to take the initiative in relation to getting internal consistency as it was for the ---. That is rather unfair. Our primary concern is not internal consistency. Our primary concern is to get the best deal for our 16 and 17 year-old members and to ensure that the pay rates that we fixed over a year ago - so far as incomes policy will allow - are not diminished in up-to-date real value terms. It is the --- that has put forward the objective of internal consitency. That is why it was up to them to take the initiative. They had over six months to write to all the unions concerned saying that they would like an internally consistent approach for 16 and 17 year-olds and that they would like to adopt a certain formula which they hoped could be agreed amongst the unions. The --- knew that it had one union with an operative date on 1st January. Our operative date was 1st April. The --- had an operative date on 1st July. Therefore, it knew that it could get itself into a fair old tangle if it wanted internal consistency because it would be dealing with different time-scales and with people putting their claims in at different times. Therefore, that argument is not particularly solid. The --- say that they are not bound by the agreement that they reached in April 1975, because pay research had been suspended. I see no reference in the agreement to pay research. The agreement says: "The Association have also agreed that, with the introduction of restructuring, the rates of pay in the Civil Service or movements in such rates will cease to have special relevance in the determination of the pay of the grades they represent." It does not say anything about the rate of pay as determined by the Pay Research Unit. If it had meant to say that it would have done so. The wording is precise.

The --- knew in advance that that agreement had been reached. That agreement supports our view that the --- should have taken the initiative at some early stage after the White Paper was published, to try to get a common approach, if they felt that that was their overriding objective.

(Management) Mr S: Obviously, within the --- there are different structures of grades. Some grades are represented by the Association, some by the --- and some by the --- and other unions. There is no common pattern. As regards the 1976 pay settlement and the increase for the juveniles, we have in each case related it to the maximum of that grade. As we have tried to explain this morning, in the --- it happens that the maximum is age 18, but in the ---, for example, the range is 21 to 25. We have tried to give you the picture as regards the Association's grades. There has always been the common pattern of relating it to the maximum.

(Arbitrator) Mr H: Why did you argue that the appropriate maximum was T2A initially?

(Management) Mr S: I do not think that we did argue that. That came out this morning.

(Arbitrator) Mr H: As I understand it, that was the basis of your offer to the ---?

(Management) Mr S: The first settlement was with the --- which does not represent the T2A grades.

(Arbitrator) Mr H: YOu were then trying to get internal consistency and were arguing that the appropriate maximum rate in the --- case was T2A?

(Management) Mr S: Yes.

(Arbitrator) Mr H: you were knocked-off there, so you are no longer internally consistent.

(Management) Mr S: In our view we are, because the maximum of the T2A grade —

(Arbitrator) Mr H: YOu did not settle in relation to the maxum of the T2A grade; you settled in relation to the 20 year-old point.

(Management) Miss P: The basis of the ---'s discussions with the ...

Stage 3 of the hearing

... common sense in having some real discussions.

(Arbitrator) Mr C: There were discussions on superannuation?

(Union) Mr G: Yes.

(Arbitrator) Mr C: And it was made superannuable?

(Union)Mr G: Yes.

(Arbitrator) Mr C: It was easy to agree because everyone got what they wanted. You agreed that it should be superannuable, but there were no "full-blooded" negotiations.

(Union) Mr G: All sides agreed that it should be sorted out before negotiations started.

(Arbitrator) Mr C: We keep being told that we shouldnot take any notice of this table. I am puzzled about the reference to the Water Services. The Water Services look so arbitrary when they refer to 50 per cent., 75 per cent., and 100 per cent. As I understand it this was a carry over into the clerical area of a relationship established in the manual area.

(Management) Mr R: The fact that the figures are so clear reflects the per cent rate for the manual workers.

(Arbitrator) Mr C: You are saying that the manual worker is on 50 per cent., of the 18 year-old rate?

(Management) Mr R: Yes.

(Arbitrator) Mr C: That is the pay he receives.

(Management) Mr R: From the information I have, they are on 50 per cent., of the adult rate at 16; 75 per cent., at 17. On the white collar side there are no specific rates for age relationship, therefore it is just a question of taking It and 17 year-olds, whatever grades they are in.

(Arbitrator) Mr C: I understand. I thought that 50 per cent was rather low.

The Chairman: We have come to the end of our questions and in terms of discussion we are beginning to get into the area of diminishing returns. Do you wish to make any further comments, Mr G?

(Union) Mr G: We have become rather upset about these negotiations because the --- have tried to impose a claim by another trade union on which there were no negotiations, but which was accepted, on us without real negotiations. We believe that to accept an offer on a similar basis would undermine the pay rates that were agreed in

April 1975 and would be inconsistent with the sort of pay supplements being paid to juveniles outside, especially in the Civil Service as regards which the --- agreed only in the last round of negotiations that the pay rates in the Civil Service and the movement of pay rates were specifically relevant to the pay of clerical staff in the ---. The --- have justified this on the ground of internal consistency. I hope that we have examined what happened with the --- in sufficient detail to show that the --- have not been consistent in their negotiations. They have agreed a different formula for the --- which has meant that they will get a higher amount than has been offered to us. Therefore, if there is no internal consistency, our claim should be examined on its merits, on the basis of outside settlements, the movement of the RPI and the Civil Service settlement. We ask the Tribunal to award in our favour.

(Management) Mr S: A few moments ago the question of superannuation came up. It is superannuable and as a result 18 year-olds and above have 6 per cent., deducted from the £6 and they receive £5.64p. Sixteen and 17 year-olds are not on a superannuation scheme, so there is no deduction. Once again I refute the suggestion that the --- has acted inconsistently as regards the ---. We do not share that view. Apart from that, I do not think that we have anything to add to what has already been said.

The Chairman: Thank you very much for helping us to deal with this issue. At first sight the matter seems simple, but when you look into it, it is not so simple. We have an understanding of the issue. We shall adopt the usual practice of reaching our decision as quickly as possible and letting you have the information. The final report will come later. Thank you all very much for helping us.

Case 12,

Classification - Complex

Stage 1 of the hearing

Union 1: When my Executive Committee considered the outcome of the negotiations that had taken place at the Staff National Council they decided to refer the matter to the National Tribunal and my Society's principal arguments in support of its claim for a substantial percentage increase for its member grades are as follows:-

1. A reduction in rates of pay as proposed by the Board would further distort the relative position of -- staff and other grades as determined by an award of the National Tribunal as set out in Decision No 42.

2. There is no obligation imposed upon the Board by the voluntary incomes policy to prevent them giving an assurance that immediately they are free to do so the proposed allowances would be incorporated into the basic rate of pay.

3. To accept the Board's offer would return the parties to the position following the "Agreement" when all bonus and mileage payments were frozen at the rates in operation prior to 8 July 1968. The N.T. accepted the Society's submission that all mileage and enhanced payments should be calculated on a current rate of pay and this recommendation was incorporated in an agreement with the Board.

Dealing with the argument listed as No 1, I must reiterate what I said to this Tribunal on another occasion. Following many months of negotiations and discussions, between the parties, the National Tribunal made one of the most thorough examinations ever undertaken of the -- pay structures. Two years have now elapsed and if we accept theproposals of the Board there would be a further distortion of the relative position of -- staff and other grades as determined and set out in Decision No 42. I have indicated earlier in these submissions that the settlement reached during 1975 distorted established relationships and in Appendix No 1, I am setting out details of representative grades which show that since mid-1974, there has been a disturbance of the pattern set in the basic rates of pay by the temporary allowance of August 1975, and how the relative position would be further affected by the proposed supplement.

My second principal argument is a statement of fact. Whilst Government/ TUC Pay Policy Agreement set out what can be paid during the negotiating year 1975/76 there was nothing within that agreement which prevents an employer giving the assurances that I am now seeking.

Dealing with my third main argument, if the proposals of the Board are accepted, then there would in all but name be two rates of pay. One would be an inclusive rate payable for time worked within the standard week, (but not for associated enhancements, allowances or mileage payments) which would be pensionable, paid for holidays and count for sick pay. There would be a separate rate for the purpose of calculating enhancements. This is the same position as that which

applied following the 1968 "Agreement". For some six years there were two rates of pay, the "pre-Agreement" rate which was used for the purpose of calculating mileage and bonus payments and a current rate for other purposes. Everybody agreed from the experience that was gained during that period of time, that this was an entirely unsatisfactory arrangement. The trade unions and the management agreed that there should be consolidation. And when the issues were referred to the National Tribunal there was no disagreement between the parties on this particular issue.

Yet here we are, some two years later, reverting to a situation which previously the parties agreed should not exist. Whilst acknowledging the constraints imposed by outside bodies there is nothing to prevent the Board giving a categorical assurance that immediately the restraints have been removed the supplement would be consolidated into the basic rate of pay. I ask this tribunal in its findings to direct that this should be done.

. . . . . .

Management: Mr Chairman and Gentlemen, the claim before you is unusual, when compared with the other matters dealt with by the National Tribunal in recent years. It is about certain pay structure principles and about action to be taken at some time in the future. It is not about the amount of money, since I think it true to say there is no disagreement amongst the parties about the size of the pay increases which were due to start on 26 April 1976, but it is about the way in which the money should be calculated. It is also about assurances for the future.

In this industry we all have a great respect for our Machinery of Negotiation, and for the help which the Tribunal has been able to give in the resolution of problems. Nevertheless the Board regrets that this particular claim has been brought to the Tribunal for two main reasons.

The first is the very practical point that it has considerably delayed the payment of increases which the Board has offered and which should now have been operative for 14 weeks. This is especially unfortunate at a time when inflation is affecting every household budget.

The second and much more fundamental point is that the Board is concerned that the Tribunal is being asked to deliberate upon the action which should be taken by the parties to this Machinery at some unknown time in the future. I shall develop in more detail later why I think it would be unwise for any of us to be committed in such a way, but my reason for introducing the point at this early stage is to question seriously the suitability for a Tribunal ruling of this part of the Union claim.

If I could go over the background. In order to understand the setting of the claim and of the Board's response it is necessary to refer back to two previous Tribunal cases, and outline the events which have followed. Copies of the documents and minutes I shall mentioned, Decisions 42 and 45, and Minutes 560, 571, 572, 575, 576 and 577, have been provided to the Tribunal.

Decision 42 dated 24 July 1974 was the culmination of a major pay restructuring exercise. The negotiations which followed were concerned

with matters of interpretation and application rather than principle, and the conclusions reached are recorded in Minute 560. Its significance, in the present context, is that the Union ar arguing that the relativities established by 42 are endangered by the form taken by the Board's offer in the present 1976 pay negotiations.

This line of argument is projected into Decision 45, of 29 May 1975, and its outcome. The negotiations which followed, recorded in Minutes 571 and 572 and involving four separate meetings, were extremely complex, but in the end it was agreed that the 1975 general pay settlement should take the form of a two stage increase effective from 28 April 1975 and 4 August 1975 respectively. The last negotiations were on 20 June 1975 and the last of the Trade Unions signified acceptance on 1 July 1975. The two stages consisted of raising the 42 (560) rates of pay by 27½% and 30% respectively at the two dates, the only addition to this being that from 4 August 1975 a non-enhanceable temporary allowance was also added to (560) rates of pay of £36.00 and under, tapering from £1.30 per week at the lowest rates to 5p per week. With the exception of this temporary allowance, therefore, the settlement preserved the percentage relativities established in 42/560. The actual rates agreed are those shown in the schedule to Appendix "A" under the heading 'present rate'.

At the time this settlement was effected none of the parties was aware of the imminence of the announcem-nt of the Government's policy, and publication of the Attack on Inflation White Paper (Cmnd. 6151) 11 July 1975 or the concept of the voluntary restruction of pay increases to a cash £6 limit in the year 1 August 1975 to 31 July 1976 which was set out in Cmnd. 6151; more specifically that it would provide, in Clause 5 of the Annex to the White Paper, for the offsetting against the £6 limit of any pay increases effective from 1 August 1975 onwards.

As soon as the implication of this policy became apparent and before payment of the second stage of the increase had been activated, the Board wrote to the Trade Unions, on 16 July 1975, as follows:-

> "I am writing to advise you that on the basis of the information at present available about the effect of the White Paper published last week it would be the Board's intention to pay currently the increases which are due to come into effect on 4 August 1975."

Stage 2 of the hearing

...That is what you are saying, is it not, that the principle should be reinforced as a desirable principle rather than that the Board should say that they are going to do it at any particular point in time? What you are really asking for is that these principles should be guaranteed?

(Union 1) Mr B: Yes. The reason is this, of course, that although Mr W said he would be pressing for it only in April, the Government/ TUC guidelines do not coincide with our dates for salary increases. They are from August to August; ours are from April to April. Will we have to wait from August to April before we can do something? This was the hint given to us by --- in the negotiations. If I may say so, they did not tell you this. When they gave you certain extracts this morning of what was said in meetings those extracts - and I do not blame them, of course, that is their job - suited their case, but if you look into the full shorthand notes of all that was said in the meetings, then you see they hinted of this particular issue and, as far as we are concerned, when they quoted certain things this morning they were taken out of context. I do not want to take this out of context. What I want to say is this, and this is one of the points, that immediately, because it is a national agreement, it is permitted for this amount of money to rank for enhancements, etc., then it should automatically be introduced, Chairman. I am asking the Tribunal, therefore, to rule on this particular point, and it is not any negotiating promise for the future, as the --- have argued today. It is for the --- to honour the existing national agreement.

The Chairman: I think I see your point. The next point relates to something which was said by several of the parties. The Board, I think, said this, that there was a point in these negotiations, before the issue came before the Tribunal, when it appeared to them that the Society almost accepted, or appeared to be about to accept, the position as it was advanced by the Board, that it appeared to them that they were prepared to make some kind of undertaking in respect of the 2½ per cent., that they would do that as soon as possible, and that they were prepared to say that they would, as you say, negotiate in the future on the rest of it, and you appeared to them to be prepared to take this away and look at it, and subsequently you came back and referred the matter to the Tribunal. It has been suggested to us that this was a rather abrupt event and what you are really being asked is why did you not go back to the Board and say why you now tell us you could not accept this proposal and why did you not try to get into further negotiation with them to see if you could get any further on that, rather than appearing to renege on the position, as they saw it, you adopted and come to the Tribunal?

(Union 1) Mr B: That is a very good question on the evidence that has been laid before you by my two colleagues on my right, but they only gave you extracts from the minutes and you know as well as your colleagues must know that in negotiations all kinds of methods are adopted to endeavour to extract, how you could easily just take a knife and chop a part out to suit your particular case. I will submit to

you, Chairman, that they have endeavoured to chop out of those negotiations certain words to suit their case today. If you take it all in its full context you will see what we were driving at in the negotiations, and the shorthand notes of the meeting, if there are any such things and I do not think there are, would bring out the full context of what we were arguing. I want to make it very clear to you there was no abrupt ending. We were very firmly on two principles, that we thought it was categorically wrong - we used the words psychologically wrong - to deduct from existing basic rates of pay a sum of money, and secondly, we thought it wrong that people should be hinting of negotiations in the future on what should be a national agreement implementation, and as they had accepted that it was the basic rate of pay, we were endeavouring in our way to resolve the situation the best way we could in the negotiations to try to achieve those two principles. All they have extracted from the minutes are certain points of view used in debate and argument. I would submit to you that in minutes it is the final decision that matters, and we made it very clear before the end of those meetings that we could not see our way clear to accept the way that the --- Board were going. But we do not just go into negotiations to be flat-footed. We go into negotiations with reality and discussion and, therefore, we tried our best to see if we could find a solution.

(Arbitrator) Mr D: I wonder if you can help me here, because what you have said here, is there something in some minutes we have not seen or some records we have not seen that would help us on this point?

(Union 1) Mr B: I do not know whether they would, as far as I am concerned, because if you took every little word that was uttered, you would have reams and reams of paper, because there are all kinds of things said in negotiations. We have our brief shorthand notes. Whether the --- have their shorthand notes I do not know, but I ask you to take my word for it. Believe me or believe me not, that is entirely up to you, naturally. What I am saying to you is whatever utterances they have endeavoured to quote this morning are utterances which were part of a negotiation argument and not assurances given.

(Arbitrator) Mr G: Could I ask on the same issue something I found a little bit of a problem. To make it very simple, your union is taking a different line from the other unions we are listening to. I am trying very hard, and have been this morning, to follow exactly why that is. I have listened again just now to you to see whether I can get the complete story. Do you think you have personally given the Tribunal every point of substance which has led you to certain conclusions which differ from those of Mr W and Mr M? Is there something else you would like to mention?

(Union 1) Mr B: May I say through you, Chairman, to Mr G it is extremely difficult to fully appreciate what would convince me and what would convince you and, therefore, I can only hope I have given you everything which I believe is a relevant issue. Briefly, I would say the fears of what happened previously, which drove us, as a trade union —

(Arbitrator) Mr G:

(Union 1) Mr B: Yes - into conflict for three or four years, which was

a terrible thing which we do not want to happen again, and secondly, the fear that we have that there is in this, when accepting the new basic rate of pay and telling us what it is and what would be negotiated in the future for enhancements, etc. - the same principle, I think - the fear that our people have of reducing existing basic rates of pay to achieve perhaps something which could again go back to this principle - we call it Penzance. I think those are the basic reasons, as I tried to point out in our case to you this morning. There is nothing else that I could throw in to help you because if I said we do not trust them you would say it does not matter, that is a negotiating point. We do trust them but we are fearful of what they are saying to us now on this particular issue for the future.

(Arbitrator) Mr G: It is the reduction of the basic rate of pay, of which you made a great point, but in fact we have been assured it is a myth, that there is no physical reduction in the amount of money, that it is the normal rate of pay plus £6. On this particular issue would you like to comment further? Let us assume you have not convinced us.

(Union 1) Mr B: It is not a myth. I want to say right now here in front of you that the figures they have given you, of course, are correct. There is no need for anybody to put that on paper because we all know what the social contract says, that we can only increase our earnings, unfortunately, by £6. That is a fact of life now.

(Arbitrator) Mr G: And that nobody will suffer.

(Union 1): Mr B: Now.

(Arbitrator) The Chairman: On the Board's proposals.

(Union 1) Mr B: Now. If you mean suffer you mean exactly now?

(Arbitrator) The Chairman: Yes.

(Union 1) Mr B: No, but I am asking you to see exactly what it means for the future at the present time, without going into all these figures, through enhancements, through his mileage, his overtime, his Saturday afternoons, his Sundays, and the 10 per cent. you gave him as a result of a responsibility allowance, earns £7, he gets £6. That is it, and so what we are saying is we understand that now but we do not want that cut off in the future which is cut off at the present time.

(Arbitrator) The Chairman: But you are agreeing particularly with the Board, and I think also with Mr W, who put a considerable amount of evidence in to us to show, let me put it this way, that it does not matter how you play it - play it your way, play it their way - and I think Mr W made this point, at the end of the day the money in the pay packet this time round is the same. Whether you play it your way or their way the money is the same. Do you accept that?

(Union 1) Mr B: But it is not just for this time round.

(Arbitrator) The Chairman: Do you accept it for this time round?

(Union 1) Mr B: At the moment. Never mind "this time round". That is too wide a statement for me. At the moment it could not affect it their way or my way - at the moment.

(Arbitrator) The Chairman: At the moment.

(Union 1) Mr B: I do not know what is going to happen next month. Neither do they.

(Arbitrator) The Chairman: At the moment.

(Union 1) Mr B: Correct, but it could mean, Chairman, as I have proved in the figures at the back of my submission, a tremendous loss to men at any time that something else happens. Neither you nor I nor Mr W nor the --- know what is going to happen at any time in the future. We saw what happened in the House of Commons last night.

(Arbitrator) Mr D: There is a point made in the evidence submitted by the --- that because of certain occupational characteristics of no overtime, Sunday workings and so on, some members would have substantially less than the £6. I think the words are "substantially less".

(Union 1) Mr B: I would like to mentioned through you, Chairman, to Mr D the other option, the option which has been ruled out by the --- by ourselves, the --- and ---, the option of one man subsidising the other. That is what we are trading when the negotiations start in the future, which you have resolved for us in Fiat 42.

(Arbitrator) The Chairman: I have one other question that I have been asked to ask you. If you look at the evidence again, it was suggested to us, I think particularly by Mr M but suggested by others, too, that there have been agreements signed in other parts of the ---, for example in the workshops among supervisors and so on, which embody the principles of this agreement in the sense that it is being advanced by the Board, and I take it that --- has been a party to those agreements?

(Union 1) Mr B: No, we have not. I want to make this very clear also, that as far as the statement made about representation of --- employees is concerned and who represents more than others, I am not interested in that argument. I want to place it very clearly before you as a Tribunal, and I stand by this any time, that as parties to the assurance we are all equal and I do not gain any more strength than anybody else and I do not wish ever to say that. What I want to say to you is this. Whether we like it or not wage negotiations are placed in the --- Staff Joint Council - and I made this clear - general section meeting or, if we do not go there, the --- Staff National Council level, where all parties are equal. It does not matter whether you represent 1, 2 or 122, and I shall never use that argument. I want to make it clear that the grades you are talking about now are not in the machinery that we are in. They are in a different section from our machinery and not the grades that we are in. When I say "we" that is the three unions here.

(Arbitrator) The Chairman: It is really just the --- shopmen they are talking about?

(Union 1) Mr B: I think it must be so, mostly grades which --- represent, but we are not party to it.

(Union 2) Mr M: If you are asking me what I meant —

(Arbitrator) The Chairman: You might as well come in now, Mr M.

(Union 2) Mr M: I was trying to do, Mr Chairman! Mr B is quite right. --- are not parties to certain sections of the machinery. Both the --- and we are. For example the workshop supervisors were joint parties to the agreement; --- were joint parties; professional and technical staff. We are the only parties to the agreement, the ---. I was only mentioning this to try and throw a ray of light on the immediate problem.

(Arbitrator) The Chairman: I see. It is just that it appeared to one or two of us when we were going through what you said that it might be the case that it was being suggested that --- had been party to an agreement of this kind. That is not being suggested?

(Union 2) Mr M: That is quite right.

(Union 1) Mr B: No.

(Arbitrator) Mr C: Mr M, your submission, paragraph 21, page 7, was the one which seemed to give that impression. Would you like to comment on that?

(Arbitrator) The Chairman: This is really the paragraph that led to this problem.

(Union 2) Mr M: Is this not just what we have been talking about?

(Arbitrator) The Chairman: Yes.

(Arbitrator) Mr G: ".. for the staff covered by today's hearing .." - this is what bothers me.

(Union 2) Mr M: This means we are talking today about the people who are in the --- machinery of negotiation and consultation, to which all three of the unions sitting here today are parties, but there are various other machineries on --- where one can say we have no --- drivers at ---, we have no --- drivers among the workshop supervisory staff, as distinct from the power staff, in which the --- are not parties, and if I have misled the Tribunal on this I am very sorry. What I was trying to do was to indicate where the --- were involved we managed to reach accommodation with the ---.

(Arbitrator) The Chairman: I think those are all the questions we have for you. Can I turn to the Board. The first question that I have relates to page 17, paragraph 42 and this raises an issue that I have already raised with Mr . It is really in this paragraph that you are talking about the cumbersome administrative problems of dealing with this kind of individual week by week settlement. You say: "It would involve the calculation of an individual offset for each employee each week .." and at the bottom of this page you say your best estimate

is four months "even if all programming resources were taken off other productive work". What we are really asking is whether you could amplify this a bit, because in view of the fact that you have already certain computer facilities at your disposal for dealing with problems of this kind, in line with what Mr B said earlier about the kind of things you will have to do in relation to the next pay policy, do you really want to tell us it would take you four months to do this?

(Management) Mr W: You will, I think Chairman, appreciate that I am not a computer expert. At least, if you did not appreciate it before you can do so now. I am not. I am advised by the experts concerned this is the amount of time it would take and it is not just a question of amplifying present payroll systems. It means, in effect, that you have completely to re-write the payroll system so far as the computer is concerned and this is what it would mean. It would mean four months to do just that. It would mean stopping all the other work that you want to do as an on-going procedure in relation to the computer.

Can I just comment on the second phase of the anti-inflation policy. I do not quite see it in the same way as Mr B does. If you accept in the first place that you cannot have more than £6 in the first phase, the second phase says, in effect, you can have 5 per cent. of your earnings, with a minimum of £2.50 and a maximum of £5, so what you do is you would do the calculation in the same way as you do it today, and the way we hope you will agree we should do it, and you simply add 5 per cent. to that and you get 5 per cent. with a minimum of £2.50 and a maximum of £4. So we do not really see any complication about doing the second phase calculation. We do not see us having to go back over every individual in the way Mr P has described unless you forced us to do it.

(Arbitrator) Mr D: I do not suppose. Chairman, there are many computer experts here today —

(Management) Mr W: I have one behind me.

(Arbitrator) Mr D: But I assume that the people who would have the responsibility of doing this would be, by and large, the staff who are organised by Mr M, in fact. He refers to this in paragraph 15, page 5, that they have conducted an examination. I wonder if I might now come to Mr M and ask him what that examination was in this particular area, because I assume it is his members who actually undertake this.

Stage 3 of the hearing

(Union) What I am saying to you is this. We will do that but we are rather disturbed to think that something which is already a national agreement the Board cannot say yes to because it might cost them £27m, and other people say: "We do not want to be a party to it because we might want more." Well, if it is more we will get more. We will have a go any time to get more. I want to point out to you as a Tribunal that we cannot say how hard we will fight and we cannot determine how the --- Board will react. I would submit to you as a Tribunal that your job - and it is not for me to teach you or tell you but I am sure you will know - will be to see that existing agreements at least are honoured. The existing national agreement tells us in no uncertain manner that the basic rate of pay will be the amount of money that will be enhanceable. If there happens to be some legislation poured out by the Government - one perhaps does not call it legislation but it is a moral type of legislation I mentioned this morning - all we are saying is that we have the country's future at heart like everybody else, although we argue. We understand the economic crises of the country, although we will argue to try and deal with them in a different way from the way they are being dealt with. All we are saying is when we are permitted - "we" being all of us in the negotiating team - to apply - I could have worded it differently - the national agreement, then it will apply. What we are doubtful about at the moment is that we are going to sign an agreement now, Chairman, that is saying to everybody that we do not really accept that there is a national agreement but we will negotiate it in the future.

Chairman, you asked the --- Board, would you be prepared to implement it all if a satisfactory settlement could be reached. That was your question to the --- Board and I was a bit surprised at their answer, but very pleased, when they said yes, they would have done. That is what they said. Therefore I am saying if they could do it because it would have reached an understanding in negotiations, they could do it now, and I see nothing wrong in your recommending that they should, first of all, reach an agreement that that 2½ per cent. could remain on basic as now, because everybody proved to you, and I am not arguing, it does not make any difference to the money now but does in the future, and the follow-through could be deducted, because the only argument against that has been complication in working it out. I have been endeavouring to prove to you that they have to do it anyway. The national agreements make it extremely clear that the enhancements will be based on the basic rate of pay.

Chairman and members of the Tribunal, I do thank you for the patience you must have had in listening to this case. I am sure of this, that you have ignored those remarks of the --- Board in the early stages of today when they were telling you they could not understand why it had come here and it seemed petty and all that type of thing. I am sure you must have grasped by now that there is something more serious in it. I thank you for your patience in listening. I, on behalf of my organisation, await with interest and anticipation the wise decision that I know you will give and the right decision, because I think it is so clear and if you examine the evidence we have placed before you you cannot but award in our favour.

Let me close by saying this. Yes, I am greatly concerned about the delay in the implementation of wages for this year. My members and I could use the same argument as has been used about other things. We have been talking about principles. My members are affected. My members' spending power is reduced. My members are just as concerned but they have been prepared to wait until a principle which is extremely important to us has been dealt with, and an issue which is extremely important to us, that is the reduction of basic rates, has been dealt with by this Tribunal. I know how complicated your task is and I hope that you will make your decision as speedily as possible. I am sure in my mind of the decision and, therefore, we can then enter into an agreement with the --- Board early and see to it that the --- workers get their just rights, or a little bit towards their just rights that they are entitled to as a result of the wages legislation we are in at the moment. Chairman, I ask you on behalf of --- to award accordingly, because --- is not flippant about this, we are extremely serious.

(Applause)

The Chairman: Thank you, Mr B. I would like to thank Messrs B, W, W and M for giving us the usual straightforward hearing of their points of view. I would also like to thank our assessors, Messrs P, B, R and B, for their help and assitance and, of course, we may be going back to them subsequently. I would like finally to give an undertaking that we shall consider with great care, and I hope expedition, all the points you have raised and shall give you our answer as soon as we can and without delay. Thank you very much.

Appendix 2

Extracts from Arbitration Awards, in Simpler and More Complex Disputes (Chapter Seven)

SIMPLER DISPUTES.

DECISION No. 30 OF THE TRIBUNAL

37. The . case is in essence an argument from history. It is based on the principle that in the past a worker customarily went home for a meal during his normal working day. Where he was unable to get home for his meal this was an atypical situation, for which he was compensated by payment of a meal allowance. For the sake of convenience, payment of that allowance was tied to his absence from his normal station.

38. Although the basis for the payment of the allowance has not been changed, the situation in which the allowance was initially introduced no longer applies and it is difficult to see its relevance to present-day conditions, when the customary pattern is for men *not* to go home for a meal during the working day. If we were to grant the . claim, this would not alter that situation. The only effect of meeting the claim would be to extend the allowance to a large number of workers for continuing to take their meal in their usual way, i.e. "on the job".

39. The . argument relative to the Examiners does not appear to us to be relevant because the meal allowances paid to them are based on special circumstances, allied to the position of District Shopmen. As we understand it, these allowances were conceded by the . and accepted by the . . on the understanding that the agreement to pay them would not be used as a basis for seeking similar provisions for other grades of staff.

40. **In all the circumstances, we cannot accept that there is justification for altering the present situation whereby payment is linked with the requirement for a man to work outside his normal area of work.**

41. In conclusion, we feel that we must express our concern that adequate facilities for meal breaks for all of the men in mobile gangs should be provided without further delay. The . have expressed their intentions on this point. **However, we recommend that they should give priority to the provision of the mobile cabins and that these should in all cases contain adequate facilities for taking meals "on the job".**

42. We should like to place on record our thanks to the parties for the clarity with which they presented their evidence. We should also like to thank the Assessors and our Secretary, Mr.

(Signed) (Chairman)
(Signed) .

37. The claim we have to consider is for signing-on time for [redacted] staff to be increased from 10 to 20 minutes. So that we could fully appreciate the points made to us by the parties during the course of the hearing, we invited the Assessors to recommend a number of depots and signing-on points which we might visit. In doing this, we asked that the depots selected should form a representative cross-section, taking into account size of the depot, type of traffic, Region and extent of area covered. In the 12 depots which we visited, we watched a number of drivers sign-on and questioned them closely about the problems which they had to overcome.

38. From the information which we gathered, our conclusion is that there is no general case for an increase. We were impressed with the adequacy of signing-on arrangements at many of the depots we visited and at these it was clearly possible for footplate staff to sign on in 10 minutes or less. At the other extreme, the situation at [illegible] in particular was far from satisfactory. Indeed, there were problems at a number of depots (e.g. at [illegible] where the absence of a supervisor for part of the time [illegible] largely be overcome by adequate reorganisation.

39. We therefore recommend that the parties should undertake a joint exercise in Organisation and Methods Study, the aim of which would be to establish and to site in logical order, the various points to which a driver should go in signing-on. Particular attention should be given to the following points:

(i) diagrams should be issued to the men in wallets at signing-on times. Care should be taken to ensure that diagrams are handed in when the men sign-off to avoid the problem of missing diagrams which, we were told, occurs at some depots. Spare copies of the diagrams should be retained at the signing-on point, to be issued where the original diagram is not available, so as to obviate men themselves having to copy out details;

(ii) where more than one case is available for the display of notices other than late notices, consideration should be directed to arranging the notices so that they are allocated, where possible, to separate cases according to criteria decided locally, e.g. by area, by subject matter, or by date of appearance. Care should be taken to ensure that all notices are fully visible in the appropriate notice cases, which should be clearly labelled, with the late notice case painted red. All cases should be locked to ensure security of information. Old notices should be removed regularly;

(iii) the layout of signing on points should be the subject of particular study and where, as at [illegible] the premises are clearly unsatisfactory for the purpose, attention should be directed to reorganisation of the premises or even to rehousing;

(iv) attention should be paid to the particular problems which existed at [redacted], arising from the lack of a second locomotive depot superintendent.

40. Nevertheless, even after reorganisation, we cannot be certain that there will not still be instances (e.g. because of engineering work over a wide area for an extended period) where drivers need more than 10 minutes to sign-on. This is a matter for the [illegible] and where they are satisfied that a case exists for a temporary increase in the signing-on time — and this may well relate only to some of the diagrams worked from a particular depot — they should make such overtime payments as are necessary so as to ensure that the additional signing-on time is available.

41. The Assessors provided us with valuable aid both in agreeing the arrangements for our visits to the various locomotive depots and in accompanying us on our visits. We wish to place on record our thanks to them for their assistance, as well as to our Secretary, Mr.

(Signed) [illegible] (Chairman)
(Signed) [illegible]

February 1978

59

SUMMARY OF THE TRIBUNAL'S AWARD

178. *Payment for Additional Responsibilities*

(a) *Drivers*. The Tribunal awards a sum equivalent to 10% of the driver's basic rate to be paid in recognition of all the items of additional responsibility adduced in the evidence of the parties. (Para. 109).

(b) *Secondmen*. The Tribunal awards that the percentage increases for secondmen contained in the Board's offer should be retained. When working driving turns all secondmen should receive the full driver's rate inclusive of the 10% addition. (Para. 111).

(c) [redacted]s. The Tribunal recognizes that there is merit in the [redacted]s claim in respect of additional responsibilities in basic rates and recommends that all guards receive the present basic rate of conductor guards with an additional responsibility payment to the common grade of guard of 5% of the present basic [redacted] rate. (Para. 113).

(d) *Other* [redacted] *Grades*. The Tribunal considers that in broad terms the relativities between payments to different grades contained in the Board's offer (excluding drivers and [redacted]) represents a useful indication of the extent to which improvements on payments to other grades might be effected; but the Tribunal would not favour any payment for additional responsibilities in excess of 10% of the basic rate of any particular grade. (Para. 117).

179. *Restructuring for Salaried Staff*

(a) The Tribunal awards that the C.O.1 maximum rate of pay be attained at the age of 21 (and the grade of clerical assistant discontinued) and that the C.O.2 pay scale be reduced from 5 to 2 years. (Para. 119).

(b) The Tribunal awards that payment of Higher Grade Duty allowances should be made to clerical staff in cases where 25% or more of a man's normal time is spent working in the higher grade. (Para. 120).

(c) The Tribunal awards that the Board's proposal to allocate 2% of supervisors' pay bill costs to preserve the supervisor's differentials over the grades supervised should be improved to take account of

180. *Payment for Irregular and Unsocial Hours*

(a) The Tribunal awards an increase in the proposed payments for irregular and unsocial hours to 10%, 7½% and 5% of the basic rate with payments to be made according to category and on an individual basis. (Para. 129).

(b) The Tribunal recommends that the payments for irregular and unsocial hours awarded by the Tribunal should be included in the first stage of the restructuring programme. (Para. 130).

(c) The Tribunal awards *against* the claims (Para. 132).

(i) That irregular and unsocial hours payments should be paid for week-end work and week-day work from 18.00 hours to 08.00 hours.

(ii) That existing "on call" allowances should be improved to match the maximum payments for irregular and unsocial hours.

(iii) That irregular and unsocial hours payments should continue to be paid in periods of public holidays, sickness and annual leave.

(d) The Tribunal awards in favour of raising the existing 10% Aggregation and Commuted Allowance to 15% and the existing 2½% allowance to 7½%. (Para. 133).

(e) The Tribunal awards that payment for both working on rostered days free from duty and on rest days should be paid at the higher of the two present rates. (Para. 134).

181. *Consolidation*

(a) *Grades.* The Tribunal awards in favour of the offer of the Board that all bonus schemes and all mileage payments for turns up to 199 miles should be withdrawn and consolidated as the Board proposes into the basic rate. (Para. 138), but increased by 7% (Para. 156). The Tribunal also awards in favour of the Board's proposals for "buying out" residual bonus earners (Para. 139) and in favour of the arrangements proposed by the Board for the continued payment of long mileage payments for turns of 200 miles and over. (Para. 140).

(b) The Tribunal awards in favour of the Board's consolidation proposals for , includ-

(c) *Other C . .. .: Grades.* The Tribunal awards in favour of the Board's consolidation proposals for other c · grades. (Para. 142).

(d) *Salaried Staff.* The Tribunal awards in favour of the Board's offer to increase the pay of salaried staff by 4½%. (Para. 143).

182. *Established Status*

(a) The Tribunal awards in favour of the Board's proposals for Established Status. (Para. 144).

(b) The Tribunal feels that any reduction in the standard working week for salaried grades would be a step away from the declared policy of equalising conditions of service and therefore decides against the · s claim. (Para. 145).

(c) The Tribunal considers that it would be inconsistent to introduce lieu bonuses for periods of leave when bonus payments are being withdrawn elsewhere. The Tribunal therefore decides against the .. claim. (Para. 146).

183. *Staging.* The revised staging programme proposed by the Tribunal is set out in paragraph 150.

184. *Implementation Date*

(a) The Tribunal awards that all changes in pay arising out of the first stage of the restructuring programme other than consolidation, should be calculated in terms of current rates i.e. those applying from 29th April, 1974 — and excluding all threshold payments. (Para. 154).

(b) The Tribunal concludes that back-dating should be timed to coincide with the introduction of current levels of pay — i.e. payments made under stage one of the restructuring programme should be implemented from 29th April, 1974. (Para. 157).

(c) In the case of consolidation the Tribunal suggests that the net increase in pay (after adding the consolidated amount, calculated by reference to existing rates, and deducting all bonus and/or mileage earnings) should be back dated to 29th April, 1974. Those who suffer a net decrease in pay as a result of consolidation should not be affected by the back dating arrangements in this respect. In their case this aspect of back-dating would be waived. (Para. 158).

ques of job analysis and job evaluation on the footplate has been impressed upon Tribunal. The Board must be prepared to work without delay towards realistic proposals in this regard to put before the Unions. (Paras. 165; 166).

(b) The Tribunal considers that there is scope for initiatives concerning incentive schemes designed to improve utilization of labour and equipment on the (Paras. 167-169).

(c) The Tribunal thinks that a more systematic study of jobs in the light of future needs, would help to promote a more radical improvement in utilization of manpower and equipment in other areas e.g. — among permanent way staff or within large stations. (Para. 170).

(d) The parties should consider moving to a situation in which it is accepted that general settlements contain a substantive reform element. In normal circumstances the negotiations determining the annual settlement would be the forum within which the parties should attempt to agree their overall priorities in an integrated way. (Para. 175).

DECISION AND OF THE TRIBUNAL

41. As we understand the position of the [illegible], they are asking the Tribunal to award in favour of two changes in the [illegible] offer:

(a) the rate used to calculate enhancements should be the rate operating from the 4th August, 1975. It is accepted that the effect of this on earnings would require reductions to be made in the £6 supplement allowable under the terms of the T.U.C. pay Guidelines. These should be calculated on an individual basis, dependent on earnings entitlements in each pay period;

(b) the [illegible] should undertake to incorporate all pay supplements into basic rates of pay "immediately legislation or voluntary pay codes" permit.

42. After careful consideration the Tribunal has decided that they cannot recommend any alteration in the [illegible]'s offer in respect of the first of these propsals. We fully appreciate the desire of the [illegible] to avoid a position where it can be argued that the increases of 4th August have been reduced or abolished, but we cannot agree that their suggestions are likely to lead to less problems or fewer difficulties. Whilst we appreciate that in respect of enhancements [illegible] members may consider that they are at a disadvantage as compared with the previous position, we have to make our decision within the parameters of the Government's pay policy, which has been established in consultation with the T.U.C. and which is supported by all the parties who appeared before us. In this respect, we would point out that some of [illegible]'s members would, under the terms of their claim, be entitled to amounts in excess of the £6 limit prescribed in the White Paper.

43. It is admitted that in terms of the immediate effect on pay nothing is to be gained by the [illegible]'s proposals. Yet it would undoubtedly require considerable additional work. The [illegible] informed us that unless payment of the supplement was to be made in arrears, they would need to introduce a major re-organisation of their payroll system. This would take a considerable time. Their best estimate was "four months even if all programming resources were taken off other productive work". They also pointed out that "there would be no way of bridging the intervening period and we would have no way of calculating arrears . . . other than by clerical effort". It seems to us that even if the [illegible] has exaggerated what is involved, we must assume there would be some delay and this would not be well received.

44. But it is also clear to us that the proposals of the [illegible] would produce problems in terms of presentation to the individual worker. Pay slips would need to show the effect of the August increases on particular enhancement payments and the basic rate. The total effect would then need to be subtracted from the £6 entitlement, to indicate to workers the sum that was left to form the actual supplement paid. The

we feel that if an attempt were made to provide all the information required the result would be complex and difficult to follow.

45. The other unions argue that this would produce misunderstandings and allegations of unfairness which they would have to answer. We can see why they favour the much simpler and more easily understood proposals of the Board. Of course it would have been possible to produce a less complex scheme, if the parties had favoured one of the T.U.C.'s suggestions for "averaging out" the effect of the August increases. But we fully appreciate why this was considered an inappropriate method, given the varying pattern of earnings on the railway, indeed we consider that the parties were right to reject a solution along these lines. We therefore feel that we must choose between the proposals of the . and the offer of the .

46. Equally important is the need to ensure that railwaymen retain the full value of the £6 supplement for the purpose of calculating holiday entitlement, sick leave and pension payments. This can best be done by a return to the pre-August rate along the lines suggested by the ' On the first issue raised by the ' ' the Tribunal therefore awards *that the rate used to calculate enhancements should be that set out in the 's last offer. The £6 per week increase, provided for in the T.U.C.'s Pay Guidelines, should take the form of a standard supplement*

47. We turn to the second proposal of the ., which invites us to decide that consolidation should be regarded as a first priority as soon as pay guidelines permit. The first point to make is that the '. is right to stress the problems that inevitably arise when substantial payments are introduced which do not count for the purpose of enhancement. If premium payments for overtime, rest day work and other periods are realistic and functional they ought to move in step with payments made for normal hours in a standard working week. Otherwise their relative value is reduced and the rationale of the payment structure is undermined. In this sense a good case can always be made out for the early consolidation of all forms of non-enhanceable payment. Considerations of this kind influenced the Tribunal when it decided to recommend that irregular and unsocial hours payments should be calculated by reference to basic rates. The ', is fully justified in reminding the Tribunal of what Report 42 said on this subject. However, we have to take into account the factors which gave rise to the existence of the present £6 supplement, and other developments since that time. They are relevant to the appropriateness and justifiability of recommending the total consolidation of enhancements as soon as circumstances permit.

48. The fact is that the T.U.C., in agreement with the Government, formulated the £6 guidelines without provision for enhancement. The policy that emerged, and which is accepted by all the parties appearing before us, rules out consolidation for the twelve months

August, 1977. They envisage a further wage-round based on another non-enhancement supplement — i.e. a 5 per cent increase in individual earnings, subject to upper and lower cash limits. No provision is made for consolidation of this year's flat rate supplement.

49. We should perhaps point out that it is no part of our task to pronounce on the utility, or effectiveness, of particular forms of incomes policy. These matters are only relevant to this reference because the . . . is asking us to recommend that pay supplements should be incorporated into basic rates as soon as incomes policy permits. We are therefore bound to take note of the fact that as the policy guidelines are written at present they appear to rule this out for a year or more.

50. But this fact affects another argument that we have to consider. The £6 supplement represents a disturbance of the relativities established as a result of Decision 42 and maintained in last year's settlement. A commitment how to consolidate the whole of the £6 supplement, as it stands, might be said to constitute recognition of the fact that the parties now wish to move away from those relativities. Yet this may not be how they feel when the moment arises and incomes policy becomes more flexible. It could be that all the parties will prefer to negotiate an agreement which attempts to return to the 1974 position in respect of relativities. Even if this is not thought to be desirable, or other factors make it impossible, they may wish to deal first with certain outstanding problems that have arisen in respect of particular grades. The fact is that we have no way of knowing how far, in the future, the parties will want to regard the consolidation of the £6 in its present form as their first and over-riding priority. What we do know is that the . . calculates that the cost of placing the full £6 a week on basic rates, and allowing this to rank for enhancements, would be about £32m a year as indicated in the Assessor's letter — i.e. it would add 3.9 per cent to the cost of the paybill. It has been put to us that we should not appear to pre-empt a sum of this size so far in advance of the declared needs and wishes of the parties at the time.

51. Finally, we have to have regard to the fact that the . made certain statements and offers in respect of future consolidation. They are set out in full in the 's evidence and need to be stated again at this point:

(a) the . did not regard non-enhanceable supplements as a satisfactory part of the railway pay structure;

(b) if it would assist in reaching a satisfactory settlement (the . .) would be prepared, when circumstances permit, to consolidate that part of the supplement which restored the basic rate to that which was operative from 4th August, 1975, and they could then consider ways of consolidating the remainder of the supplement;

(c) the . would be prepared to consolidate in principle but the method and date to be for future negotiation

way to meet the . position, as we understand it. We think that if it were clarified, and extended in some respects, it could represent the basis for a reasonable settlement.

53. In the first place, the statement recognises the problems that inevitably arise when substantial payments are introduced which do not count for enhancement. We have said that these problems should be appreciated and avoided wherever possible. Because of the position it adopts in respect of enhancements, the . quite properly offers to commit itself to the principle of consolidation. This was one of the requests made by the . in negotiation, although we think it is capable of being stated by the . in a more satisfactory way.

54. Then, as an earnest of its good intentions, the . made a more detailed pledge in respect of a relatively small part of the £6 supplement — i.e. that part which is required to restore the effect of the August increase. The . informs us that this would represent an annual cost of about £5m — i.e. 0.6 per cent of the pay bill or roughly one sixth of the full cost of consolidation. We consider that this pledge could also be made in a more concrete form.

55. At the hearing, we asked why the . felt that an offer along these lines had to be confined to approximately one pound in six. The . 's answer, if we understood their position, was that to go further would be to pre-judge future priorities and propose more than would be acceptable to the other unions. We appreciate why they took this view, but feel that the principles underlying paragraph (b) may be capable of being developed in a way that does not give rise to these objections. In this respect it is worth noting that the paragraph does stipulate that the . 's willingness to implement partial consolidation is contingent on their belief that a move of this kind would "assist in reaching a satisfactory settlement". When examined on this point the . appeared to be saying that they would have no objection if the other unions had no objection. We think they are right to adopt this attitude. We consider that all parties should now accept the need for some degree of consolidation as soon as incomes policy permits.

56. We also think that agreement on the union side is bound to remain the crucial factor in the timing of any further consolidation. The . must continue to keep its options open for this reason above all. However, we think there is a case for trying to strengthen the general commitment to total consolidation as soon as possible — so long as the parties remain free to respond to future developments. With all these considerations in mind we recommend that the and the unions should consider amending the current offer of the . to give effect to the proposals in our decision below.

57. The Tribunal awards:

(1) that all parties should state that non-enhanceable supplements are unsatisfactory as a permanent feature of pay

(2) that they should also agree that as a result they are, in principle, committed to the complete consolidation of the proposed £6 supplement;

(3) that at the earliest opportunity conformable with T.U.C.-Government Guidelines, or statutory requirements, the . should be pledged to consolidate that part of the £6 supplement which restores the basic rate to that which was operative from 4th August, 1975;

(4) that at the earliest opportunity conformable with T.U.C.-Government Guidelines or statutory requirements the . and the unions should agree to give earnest and serious consideration to the need to consolidate in full the remainder of the £6 supplement.

A. *The circumstances of our award*

99. We have been presented with two claims which have not been advanced on the same basis. They have also produced different responses from the other parties concerned with the outcome of our Decision. As a result we have been faced with four divergent views of the problems and events which produced these references, together with incompatible suggestions for dealing with them. More important still, the differences between the parties have sometimes been taken to a point where they have ruled out the basis for compromise proposals. We have also been warned that other solutions would be self-defeating, since they would give rise to further claims designed to cancel out their effects.

100. We do not parade these difficulties before the parties to elicit their sympathy for us in our appointed task. We do so because we feel we must preface our award by pointing out that the circumstances surrounding it are such that they rule out any form of settlement, unless the parties are prepared to modify at least some of their adopted positions in the light of our Decision. We fully accept our responsibility to propose a solution that is compatible with the future stability and prosperity of the railway industry; yet we wish to respond to those who we feel have established a case on the evidence presented to us. We know that the parties will accept that we have tried to produce a balanced set of proposals after long and careful consideration. We urge them to consider our Decision with their usual care. Given a readiness to compromise, we feel it represents the basis for a solution. It is our unanimous verdict.

101. We have taken the view that the best way to present the award is by considering the arguments advanced for a change in the present situation under three separate headings. We deal first with the argument based on comparability, before going on to consider other arguments based on productivity and responsibility.

B. *The comparability argument*

102. It has been put to us, most notably by the [illegible] in their submission, that the payment made to pay train guards represents a disturbance of established differentials that must be corrected. Their claim relates to the grades they represent, but the [illegible] have made it clear that any movement among these grades would result in claims advanced on behalf of other staff covered by the 1956 Machinery. On this basis, the claim for comparability is a case for a general movement in the pay structure.

103. As we see it, there are six arguments against a development of this kind. In the first place, there seems to be no reason why such a process should ever end. For if we were to concede the substance of the [illegible] claim, and the [illegible] were to agree, it would be difficult for them to resist a further spate of claims designed to restore comparability to other groups. There would also be nothing to prevent the pay train guards from seeking to restore their lead over other guards. A precedent would also have been set for further parity demands, whenever a particular group of workers received any additional payment for

Decision No. 42 sought to meet that objective and this Tribunal does not wish to undermine it in a way that would be ruinously expensive and difficult to control.

104. Secondly, we are reluctant to accept that a general movement is needed, or justified, to deal with the consequences of payments made to no more than 8 per cent of [illegible] Yet the case for comparability assumes that because pay train guards on some 800 turns, involving about 1,600 men in any week, have received pay increases which, we were told, in some cases average no more than 55p a day, there should be a total movement in pay which the [illegible] calculate would cost them a further £28m.

105. Thirdly, the payments made to pay train guards do not affect basic rates; they take the form of a supplement or bonus. As a result, the same guard may, dependent upon the allocation of duties within his roster, receive the [illegible] allowance and commission on one day and revert to his ordinary basic rate on the next. We would be reluctant to agree to a general movement in basic rates as a response to an irregular and uneven payment of this kind.

106. Fourthly, and most important of all, we have observed the pay train guards at work and have been able to contrast what they do with what we know of the work of other [illegible]s. Although we were not asked to assess the justifiability of the [illegible] settlement, or its compatability with the settlement on "consolidation" arising out of the acceptance of Decision No. 42, our observations lead us to believe that the payments made under the new agreement can be regarded as compensation for additional responsibilities over and above those undertaken by the generality of [illegible]s. We therefore consider their consequences under this heading, when we come to consider the case for change on the basis of additional responsibilities — i.e. at paragraph 117 below.

107. Fifthly, although we accept that one of the aims of the Restructuring Proposals, at the time of Decision No. 42, was to establish and preserve a broadly-based stability of basic rate relativities, it does not seem to us that it was the intention of the parties at that time to freeze all aspects of the pay structure, so that it could not adapt and react to new demands and requirements. Indeed, the [illegible] and the [illegible] have both quoted a number of cases where necessary changes have been introduced. The [illegible].T. itself, in Decision No. 42, supported the need for "A Future Programme of Reform". In paragraph 168, the [illegible].T. said that consolidation would:

> "result in a pay structure which contains virtually no elements designed to maintain and improve the utilisation of manpower and equipment. It is also clear that nothing will be done to reward performance or encourage or induce the acceptance of change or flexibility. In our opinion these are matters which should exercise the attention of the Board in the years ahead. Some or all of them surely must form the basis of its future aims and objectives within the context of a new reform programme."

It seems to us that the claim for comparability, as it has been presented to us in these hearings, would prevent further necessary change and adaptation for the sake of the protection of differentials which have already been modified by the consent of the parties.

108. Finally, it might be argued that in the circumstances a more logical approach would be to think in terms of parity with a notional rate for [illegible] — i.e. a rate which took into account the fact that the great majority of [illegible] do not receive any benefits from the [illegible] agreement at the moment, although one day they might have the opportunity of becoming [illegible]. Presumably some approximation of such a notional rate could be computed by

averaging present [illegible] allowances and bonus and dividing this sum into the total number of [illegible] employed on [illegible]. But the sum involved would be a trifling amount and the effect, in terms of a comparable movement in basic rates elsewhere, would be negligible indeed. Moreover, such a proposal would still be open to most of the objections raised above — e.g. the argument that the most appropriate way to regard the additional payments made to [illegible] is as compensation for additional responsibilities not placed upon the majority of the grade.

109. **We therefore conclude for all the reasons set out in paragraphs 102 to 108 above, that the claim for change on the grounds of comparability must fail and we so award.**

C. *The productivity argument*

110. The argument for change on the grounds of increased productivity was advanced by the [illegible] on behalf of the [illegible] grades. As we understood their case, it rested on three contentions. First, the drivers' contribution to improved productivity since 1974 had been greater than that of any other grade. In support of this contention, the [illegible] cited such developments as high speed working, differential line speeds, heavier loads, improved utilisation of rolling stock, new forms of traction, signalling, braking and so on. Such developments would not have been possible without the full co-operation of footplate staff and the [illegible] itself. Second, [illegible] were expected to accept additional responsibilities, increased strain and more flexible working in the interests of higher productivity; they also were expected to agree to further reductions in manpower. In this, the [illegible] claim, drivers are more involved in the burdens of technological change than any other grade. Finally, the [illegible] contended that the [illegible]s proposals for linking pay to productivity in future were unacceptable to them — not least, because they took the form of an overall supplement to basic rates which was dependent on factors outside the control of drivers. What they demanded was a separate increase for footplate staff which fully recognised their special contribution to past and future productivity.

111. There would seem to be four arguments against this proposal. In the first place, we do not know of any acceptable way of determining the relative contribution of [illegible] staff to overall productivity improvements. The [illegible] tells us that, in terms of staff reductions, these grades have made less contribution than other [illegible] grades. They also say that the formula of passenger/freight tonne-miles per driver shows a decrease of 4.8 per cent since 1974. But we cannot accept either of these measures as an objective guide to the relative contribution made by [illegible] staff and we appreciate that the conclusions they point to are not acceptable to the [illegible]. On the other hand, the [illegible] have not provided us with alternative methods of calculation that support their claim. What they have done is to emphasise the extent to which *some* drivers are being affected by the new working methods that make increased productivity possible — without spelling out the consequences in terms of their relative worth. Indeed, the [illegible] have not even provided us with a precise claim in money terms. They have said that this is a matter we must decide after consideration of all their evidence.

112. This brings us to the second argument against the [illegible] proposal. It follows from what has been said above that if we were to decide that a separate payment of a given size should be paid to [illegible] staff, and the [illegible] agreed to abide by our Decision, the way would be open to further claims and counter-claims on behalf of other occupational groups — many of whom

might well argue that their contribution to productivity was at least as great as that of the footplate grades. We know of no way in which we could give guidance to the parties on how to deal with such claims, although they would threaten still further the broad stability of basic rate relativities that we have agreed was one of the main objectives of the 1974 review.

113. Then there is the fact that it seems to us that the very nature of railway work militates against attempts to apportion contributions towards improved performance on a grade by grade basis. As the . argues, productivity gains on the railways arise as the result of a complex of inter-acting decisions and responses. This process begins with management investment, planning and innovation, but it usually involves many other grades besides footplate staff before it is completed — e.g., S.& T. technicians, signalmen, permanentway staff, controllers and so on. In this sense we have to accept the description of productivity improvement as essentially a "team effort". This means that a strong argument can be made out for regarding the contribution of the workforce to improved productivity in a way that facilitates a team approach. We consider that this constitutes a third argument against a separate scheme for footplate grades.

114. Of course, it does not follow from this that we accept the view of the present proposals for an overall Business Performance Scheme. Indeed, in Decision No. 61 we examine the criticisms made of the proposed scheme by all the railway unions and we propose a number of changes. What we feel we can say at this point is that in our view an overall scheme of this type is a more appropriate way of linking pay to productivity than the sectionalised proposals advanced by the .

115. Finally, we have to say that, insofar as the A based their case on grounds of additional duties, more intensive working and added strain, we take the view that such developments are best assessed on grounds other than their contribution to higher productivity. We certainly do not consider that in themselves developments of this sort constitute a case for a separate productivity payment for staff. They are much more reasonably regarded as arguments in favour of increases in pay on grounds of additional responsibility. Indeed, similar arguments were advanced by the on this basis at the time of Decision No. 42. We therefore consider them in detail under this heading in the next section of our Award.

116. Meanwhile, we conclude that for all the reasons set out in paragraphs 111 to 115 the claim for a change on grounds of productivity must fail and we so award.

D. *The additional responsibility argument*

117. We have said that although we have not been asked to re-assess the justifiability of the settlement, we consider that, for the purposes of this reference, the payments arising out of it are best regarded as compensation for additional responsibilities. We therefore feel that we are entitled to consider how far the claim can be justified on similar grounds. If any case can be made out under this heading there would be no grounds for regarding it as a signal for a general movement in basic rates. It would also not rule out the introduction of an agreed and appropriate scheme to link pay to improved productivity. With these thoughts in mind we examined the arguments of the with great care to see if we could agree that a case had been established.

responsibility affecting all footplate staff. What we were faced with was an argument that a limited number of drivers had been required to work more intensively, or under conditions of greater strain, with more burdensome responsibilities, as a result of particular developments which at times only affected a relatively small number of driving turns — e.g. [illegible] ...ges, the ...act ... and so on. Other planned changes were said to be likely to involve additional responsibility and strain at some time in the future — e.g. the introduction of reversible ...

119. We inspected examples of all these developments in company with our Assessors and tried to decide how far a claim could be established in each case. This led to our second conclusion: much of what we saw was before the ... when it was considering the ...'s offer for "Payment for Additional Responsibilities" in 1974. On that occasion, it will be remembered, the ... asked for changes in the past and future content of driving work to be recognised under eleven headings, including the trend to increased speeds, speed restrictions, intensified suburban working, medical strain and new forms of traction. The ... took the view that there was a case for an additional responsibility payment roughly twice that suggested by the Board, but it went on to the point out that this should be paid "in recognition of all the items of additional responsibility adduced in the evidence of the parties".

120. We have decided that we are unable to form a view about the possible impact of planned or future changes which were not then operational. We consider that we would only be justified in recommending further payment if we were convinced that one of two conditions applied:

1. the degree of responsibility involved in any particular case was significantly underestimated at the time of Decision No. 42; or
2. subsequent developments had resulted in new examples of significant additions to responsibility that were not taken into account at the time of Decision No. 42.

121. After further careful consideration of the evidence to which our attention was drawn it is our unanimous conclusion that there is one instance where one or other of these conditions is met. This is the case of ... driving. We fully appreciate that the operation of ... was, in some sense, taken into account in the 10 per cent Award in Decision No. 42, but it was not possible for the ... members at that time to observe the impact on the drivers' job of speeds of more than 100 miles an hour. We have now all been able to observe this ... in operation from the ... and we have all been equally impressed by a number of factors:

(a) the cost and sophistication of the equipment involved;

(b) the need for more intense observation of conditions c...

(c) the limitation of braking distances when confronted with sudden hazards;

(d) the extra pressures involved in time-keeping;

(e) the considerable responsibilities for the comfort and safety ...

All these factors appear to us to consitute a case for an additional payment for ... speeds of over a hundred miles an hour.

the relative value of the additional responsibilities involved, in comparison with the duties performed by the generality of drivers. As a result, we find we can recommend that for [illegible] at more than 100 miles an hour, an additional payment is justified. This should be equal to 25 per cent of the basic rate per turn per [illegible]

123. Of course there are several ways in which such entitlements could be distributed amongst [illegible]e staff, but there are broadly two alternatives. In the first place, they could take the form of separate allowances, confined to the drivers who actually drive [illegible]. In the second, the parties might prefer to total up the sums involved and average them out amongst drivers in general, or drivers and assistant drivers, or all [illegible] staff. After careful consideration we consider that we wish to recommend the first alternative to the parties.

124. We consider that all drivers who are required to drive at more than 100 miles an hour in a given turn should receive a supplement equal to 25 per cent of the drivers' basic rate for the turn in question. (Given the drivers' present rate of pay, this would result in a payment of £3.14 per driver per turn.) This seems to us to be a fair and reasonable recompense for the additional responsibilities involved. It is also in line with a well-established practice on the railways of providing extra payment for duties which are significantly more responsible than those required to be performed by the generality of a given grade. We have already said that the payments recently made to [illegible] are best regarded as one example of this practice. Another example is the extra payment made for driving motor vehicles; another is the practice of paying the full drivers' rate to drivers' assistants when they undertake driving duties. (Indeed, it is possible to argue that the existing mileage allowance for driving turns over 200 miles is yet another illustration of the principle in action.)

125. Because it derives from such a widely accepted principle, we do not view the first alternative as any kind of precedent. In particular, it is not a form of "classification" — or even a move in that direction. We fully appreciate the [illegible]'s opposition to all forms of classification. In Decision No. 42, the [illegible] went out of its way to stress that it had been impressed "by the variety and scope of existing drivers' tasks and their close inter-relationship". It said that there was no "simple alternative way" of organising this work and concluded:—

> "... we were impressed by the practical objections which the [illegible] and the drivers themselves were able to raise to the rather tenuous ideas outlined at our hearings. We also sympathise with the [illegible]'s objections to proposals which they think are bound to reduce the diversity of driving work, making it more monotonous and boring."

126. It should be explained that the present [illegible] Decision is not seeking to depart from this general position. We are not suggesting that there should be a separate class of drivers, enjoying a special rate for work that is regarded as particularly responsible. What we are proposing is fully compatible with the existing link system and the preservation of flexibility and diversity in driving work. It would also be capable of development and extension where there are significant additions to responsibility either now or in the future. There may also be clerical groups who have been significantly affected by similar changes in technology — e.g. those concerned with preparing schedules for merry-go-round trains. If so, it is open to the Unions to pursue these matters through the usual channels, if they wish to do so.

127. [illegible]

consequence, they may still wish to argue that the sums arising out of our Award should be distributed amongst all drivers, or even all . staff. We have said why we favour a more direct relationship between additional responsibility and payment in this instance.

STRESS AND STRAIN

128. So far our award has tried to deal with the pay claims that form the basis of this Decision under the broad headings of comparability, productivity and responsibility. However, we have been concious throughout that one aspect of the / claim was likely to receive less than its due regard if it had to be contained entirely within this framework. We refer to what the . had to say about the effect of stress and strain on the footplate on their members' health and expectation of life. We believe that there may well be a special problem here: but we are not convinced that it is one that can be settled, or even dealt with, within the context of a claim for more money.

129. We realise that this is an uncharted area, where proof is lacking as to the effects of stress and strain on a drivers' health. But it can surely be said that the physical requirement of the driver's job are such that he has to meet higher standards than is the case with other types of work. It follows from this that when drivers are withdrawn from their work on account of hypertension, or some other disability, they are less likely to be able to return to their normal work after a period of treatment or rest than is the case with other grades. In other words, the consequences of even minor disabilities are more lasting and damaging in their case. There is also evidence that it is often difficult to fit them into other work.

130. We therefore conclude that because of higher health standards, footplate staff are at greater risk in holding their employment than other railway grades. The . advance this circumstance as an argument in favour of increasing pay, but it is our view that pay is not the answer to the problem. What is required is some way of reducing risks, or their consequences for particular drivers. We do not consider that this Decision is an appropriate place for us to make positive suggestions, or proposals, under one or another of these headings, although we are not unmindful of the fact that two of the references awaiting our attention have some relation to the problem of stress and strain amongst footplate staff and we propose to deal with those references at the earliest possible moment. Our point, at the moment, is simply that, while we do not consider that the / . arguments relating to health hazards constitute a case for going further than we have done in this Decision, we would not want to be thought to be dismissing them out of hand. For this reason, we have proposed discussions along the lines set out below. In fact, we recommend **that the parties should give urgent consideration to this matter, so that they may deal with the basic problem in its entirety as soon as we have issued our Decisions on those aspects of it which have been referred to us, which, as we understand them, do not deal with the problem as a whole.** There are several possible ways forward which the parties should review. One approach would seem to lie through moves in the direction of earlier retirement — as we were told is the case on the French . Another approach would involve more regularised arrangements for accommodating ex-drivers in other forms of . employment.

E *Conclusions and summary*

131. We have said that we consider that there is no basis for an agreed solution to the issues raised in these two references unless those involved are prepared to modify at least some of their adopted positions. Yet if they are

the future stability and prosperity of the industry and the merits of the case. The key lies in regarding the recent settlement for 's as compensation for additional responsibilities. We can then ask whether there are any other groups who would be able to sustain a similar claim on similar lines? We have given our reasons for deciding that driving at more than a hundred miles an hour involves a substantial additional responsibility, and we have suggested that there may be other groups where there may be a case to be dealt with by up-grading. We have also said why we consider that the payment of additional responsibility allowances, on a turn by turn basis, is in no sense a departure from established practice. It remains for us to recommend our proposals to the parties, and to thank both the Assessors and our Secretary.

132. We can summarise our Decision as follows.

1. *The claim for a general pay movement on the grounds of comparability is not sustained, for the reasons set out in paragraphs 103 to 108 above.*
2. *The claim for a separate payment for grades, on grounds of productivity, is not sustained, for the reasons set out in paragraphs 111 to 115 above.*
3. *We recommend that for driving at more than 100 miles an hour an additional payment is justified. This should be equal to 25 per cent of the basic rate per turn per driver.*
4. *We recommend that these entitlements, amounting, according to our calculations to £3.14 per driver per turn should take the form of separate and identifiable allowances, confined to those drivers who are required to undertake the additional responsibilities involved.*
5. *It may be that some other groups affected by the claim could establish a similar case on grounds of additional responsibility – e.g. in ways discussed in paragraph 126. If this is the case, it is open to the parties to deal with the issue through the normal channels and, if a claim is justified, up-grading would seem to be the most appropriate solution.*
6. *There should be discussions between the and the appropriate unions to deal with the problem that arises when a driver is no longer able to perform the full range of driving duties for reasons of health. These discussions should explore, amongst other possibilities, the approaches suggested in paragraph 130 above, – i.e. early retirement and more regularised arrangements for accommodating ex-drivers in other forms of employment.*

Signed: (Chairman)

October 1978

Appendix 3

Anova Tables, with cell means and standard deviations, referred to in c.p.a. Analysis of Arbitration Hearings (Chapters Five to Eight)

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	95.67285	98.52199	96.25999
T1P2	1	2	98.57142	99.00200	98.75083
T1P3	1	3	86.49285	70.35596	79.74750
T2P1	2	1	73.50000	91.46799	81.00083
T2P2	2	2	86.72142	67.42999	86.72499
T2P3	2	3	65.07428	66.46599	65.65416
T3P1	3	1	85.12285	92.21999	86.91082
T3P2	3	2	93.35557	87.41999	90.88416
T3P3	3	3	69.50295	72.98599	70.95333
	MARGINAL		83.50501	85.09221	84.16518
	COUNT		7	5	12

MODE ONE.

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL
T1P1	1	1	7.98340	1.54905
T1P2	1	2	1.44098	0.96982
T1P3	1	3	8.89729	40.18531
T2P1	2	1	32.75542	5.45469
T2P2	2	2	6.97205	12.02150
T2P3	2	3	7.68585	15.44156
T3P1	3	1	7.80498	5.47965
T3P2	3	2	5.56910	14.09224
T3P3	3	3	7.14348	15.61181

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	746139.17668	1	746139.17668	9879.50	0.0000	
	CASTYP	66.29535	1	66.29635	0.88	0.3709	
1	ERROR	755.23969	10	75.52397			
	TIME	3061.29173	2	1530.64589	6.05	0.0086	* T.
	TC	550.29599	2	275.14345	1.09	0.3560	
2	ERROR	5056.16751	20	252.80838			
	PERS	8343.17599	2	4171.58800	18.84	0.0000	* P.
	PC	946.41023	2	473.20511	2.14	0.1442	
3	ERROR	4428.27051	20	221.41353			
	TP	32.89954	4	8.22488	0.04	0.9971	
	TPC	557.59751	4	139.39190	0.65	0.6310	
4	ERROR	8592.31522	40	214.80791			

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HEALTH SCIENCES COMPUTING FACILITY
UNIVERSITY OF CALIFORNIA, LOS ANGELES 90024
PROGRAM REVISED NOVEMBER 1979

MODE TWO

CASE 5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = SIMP	COMPL	MARGINAL
	TIME PERS		
T1P1	1 1	1.15226	0.24401	0.774 17 *
T1P2	1 2	0.31143	0.05200	0.49500
T1P3	1 3	2.67500	0.00000	1.30183
T2P1	2 1	6.70571	10.52800	8.42335 -
T2P2	2 2	9.38143	5.69000	7.64916
T2P3	2 3	5.75571	2.61200	3.27917
T3P1	3 1	9.62429	6.60000	8.06417 -
T3P2	3 2	5.22143	3.24000	4.39583
T3P3	3 3	4.05714	1.35800	3.14083
	MARGINAL	4.79444	3.34711	4.19139
	COUNT	7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = SIMP	COMPL
	TIME PERS	
T1P1	1 1	1.54056	0.35755
T1P2	1 2	1.10258	0.11628
T1P3	1 3	2.56730	0.00000
T2P1	2 1	4.59156	5.88555
T2P2	2 2	6.24329	2.32381
T2P3	2 3	1.88222	1.17350
T3P1	3 1	4.66001	5.22065
T3P2	3 2	3.89249	2.22588
T3P3	3 3	3.86382	1.39283

1PRCL 3 ACAS

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	1739.97392	1	1739.97392	74.88	0.0000	
	CASTYP	54.95779	1	54.95779	2.37	0.1550	
1	ERROR	232.35093	10	23.23509			
	TIME	620.42527	2	310.21264	22.67	0.0000	~ T.
	TC	20.37407	2	14.68703	1.06	0.3454	
2	ERROR	273.64492	20	13.57424			
	PERS	131.56424	2	65.59212	9.57	0.0012	~ P.
	PC	16.54853	2	8.27493	0.83	0.4515	
3	ERROR	199.94253	20	9.99702			
	TP	154.61499	4	38.40375	4.07	0.0074	~ T×P.
	TPC	39.02612	4	22.35653	2.36	0.0595	~ T×P×C.
4	ERROR	377.56989	40	9.43925			

1PRCL 4

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HEALTH SCIENCES COMPUTING FACILITY
UNIVERSITY OF CALIFORNIA, LOS ANGELES 90024
PROGRAM REVISED NOVEMBER 1979

MODE THREE

1 GROUP INFORMATION

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

CASTYP =	TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	0.55714	0.92600	0.71083
T1P2	1	2	0.44571	0.98600	0.67083
T1P3	1	3	0.09429	0.00000	0.02417
T2P1	2	1	3.02000	1.43000	2.32417
T2P2	2	2	2.09143	0.66600	1.48833
T2P3	2	3	0.46857	0.00000	0.27333
T3P1	3	1	3.11286	2.14400	2.70917
T3P2	3	2	1.05429	1.23600	1.13000
T3P3	3	3	0.00000	0.09000	0.03750
MARGINAL			1.32270	0.83311	1.11870
COUNT			7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

CASTYP =	TIME	PERS	SIMP	COMPL
T1P1	1	1	1.20833	1.13874
T1P2	1	2	0.51742	0.55140
T1P3	1	3	0.37800	0.00000
T2P1	2	1	2.48707	1.09254
T2P2	2	2	1.73809	0.69529
T2P3	2	3	0.83451	0.00000
T3P1	3	1	2.85036	2.16358
T3P2	3	2	0.97515	0.65078
T3P3	3	3	0.00000	0.20125

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	121.99722	1	121.99722	59.17	0.0000	
	CASTYP	6.29201	1	6.29201	3.05	0.1112	
1	ERROR	20.61954	10	2.06196			
	TIME	14.97276	2	7.48638	4.97	0.0177	* T.
	TC	11.87711	2	5.93855	3.94	0.0360	* T.C.
2	ERROR	30.13090	20	1.50655			
	PERS	59.32468	2	29.66234	24.91	0.0000	* P.
	PC	3.38055	2	1.69032	1.42	0.2552	
3	ERROR	23.81412	20	1.19071			
	TP	15.50059	4	3.87525	1.74	0.1598	
	TPC	5.80553	4	1.45134	0.65	0.6286	
4	ERROR	88.98027	40	2.22451			

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	7.31143	9.30600	1.47585
T1P2	1	2	1.29143	9.00000	6.17000
T1P3	1	3	10.29286	6.58200	9.22167
T2P1	2	1	1.24000	0.48500	0.92583
T2P2	2	2	2.59714	2.01400	2.35417
T2P3	2	3	30.15286	35.16199	32.25749
T3P1	3	1	2.34000	0.90400	1.73167
T3P2	3	2	1.25143	1.87400	1.49917
T3P3	3	3	26.19714	29.35799	27.51416
MARGINAL			8.58524	8.55400	8.57222
COUNT			7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL
T1P1	1	1	4.61477	0.66424
T1P2	1	2	0.74426	0.00000
T1P3	1	3	7.40950	10.41545
T2P1	2	1	1.14250	0.59436
T2P2	2	2	1.18021	1.18031
T2P3	2	3	6.47744	10.01264
T3P1	3	1	4.13648	1.20553
T3P2	3	2	1.02778	1.55911
T3P3	3	3	6.54167	12.95713

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	7711.02574	1	7711.02574	225.58	0.0000	
	CASTYP	0.02551	1	0.02551	0.00	0.9799	
1	ERROR	344.28345	10	34.48884			
	TIME	1424.14422	2	712.07211	25.27	0.0000	< T.
	TC	57.08059	2	28.54029	1.01	0.3811	
2	ERROR	563.57476	20	28.17874			
	PERS	11103.54377	2	5551.77189	132.09	0.0000	< P.
	PC	33.57530	2	16.78803	0.40	0.6799	
3	ERROR	841.64153	20	42.08208			
	TI	2265.14574	4	566.28644	19.61	0.0000	< TP
	TPC	79.39216	4	19.84804	0.68	0.6097	
4	ERROR	1157.10580	40	28.92764			

MODE FOUR.

COMPL 5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	4.78286	2.40000	3.79000 *
T1P2	1	2	4.55714	3.55000	4.02417
T1P3	1	3	58.07142	52.50999	55.25416
T2P1	2	1	8.02000	5.39200	6.92500 *
T2P2	2	2	5.39571	4.67400	5.04250
T2P3	2	3	18.69571	15.95800	17.50166
T3P1	3	1	10.16143	10.62400	10.43750 *
T3P2	3	2	7.27000	5.33500	6.46417
T3P3	3	3	26.01715	20.41200	23.68166
	MARGINAL		15.84849	13.45133	14.84676
	COUNT		7	5	12

Resource one

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL
T1P1	1	1	3.08110	3.08466
T1P2	1	2	3.33669	1.56113
T1P3	1	3	15.11141	30.75662
T2P1	2	1	4.91127	6.49468
T2P2	2	2	3.01166	2.21931
T2P3	2	3	7.12049	4.01031
T3P1	3	1	5.29157	8.53509
T3P2	3	2	6.53000	3.22398
T3P3	3	3	12.72943	8.58279

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

SOURCE		SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	22527.39552	1	22527.39658	176.77	0.0000	
	CASTYP	150.21349	1	150.21349	1.18	0.3031	
1	ERROR	1274.37432	10	127.43743			
	TIME	2319.88432	2	1159.94215	13.76	0.0007	< T.
	TC	4.03540	2	2.01770	0.02	0.9815	
	ERROR	2156.83025	20	107.84401			
	PERS	15749.44423	2	7874.72214	141.95	0.0000	< Pers.
	PC	64.75369	2	32.37684	0.58	0.5663	
	ERROR	1108.79939	20	55.43997			
	TP	7747.65814	4	1936.91329	21.68	0.0000	< T.P.
	TPC	55.23163	4	8.80792	0.10	0.9823	
	ERROR	3573.45921	40	89.33648			

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HEALTH SCIENCES COMPUTING FACILITY
UNIVERSITY OF CALIFORNIA, LOS ANGELES 90024
PROGRAM REVISED NOVEMBER 1979

335

RESOURCE TWO

CASTYP COUNT
SIMP 7.
COMPL 5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = SIMP TIME PERS		COMPL	MARGINAL
T1P1	1	1.05714	2.06200	1.47588
T1P2	1	2	1.39571	1.40200	1.39833
T1P3	1	3	4.41286	3.90000	4.21000
T2P1	2	1	0.12286	0.82000	0.41333
T2P2	2	2	0.00000	0.51400	0.25617
T2P3	2	3	0.00000	0.62200	0.31167
T3P1	3	1	0.25571	0.73600	0.49750
T3P2	3	2	0.45429	0.26600	0.37583
T3P3	3	3	0.12429	0.20600	0.15633
MARGINAL			0.28145	1.21422	1.02309
COUNT			7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = SIMP TIME PERS		SIMP	COMPL
T1P1	1	1	1.00907	2.45923
T1P2	1	2	1.05794	1.27917
T1P3	1	3	7.00000	3.64219
T2P1	2	1	0.32805	1.34222
T2P2	2	2	0.00000	1.42915
T2P3	2	3	0.19438	0.92085
T3P1	3	1	0.67654	1.35573
T3P2	3	2	0.55502	0.75458
T3P3	3	3	0.32283	0.46063

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	115.28347	1	115.28347	12.71	0.0051	
	CASTYP	2.90723	1	2.90723	0.32	0.5787	
1	ERROR	90.67321	10	9.06732			
	TIME	92.51950	2	46.25975	7.56	0.0037	< T.
	TC	1.59132	2	0.79566	0.13	0.8796	
2	ERROR	122.28329	20	6.11416			
	PERS	14.23624	2	7.11812	1.68	0.2113	
	PC	2.55134	2	1.27567	0.30	0.7425	
3	ERROR	84.59993	20	4.22999			
	TP	43.00245	4	10.75061	2.41	0.0639	< T.P.
	TPC	2.08328	4	0.52082	0.13	0.9709	
4	ERROR	152.99900	40	3.82497			

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

CASTYP =	TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	0.99857	1.91600	1.48083
T1P2	1	2	1.04429	1.18600	1.10333
T1P3	1	3	1.54143	0.00000	0.75917
T2P1	2	1	0.79286	4.17400	2.20167
T2P2	2	2	1.60571	1.97200	1.75533
T2P3	2	3	1.77571	1.57800	1.69333
T3P1	3	1	1.62571	2.10200	1.83500
T3P2	3	2	4.39857	0.74600	2.24917
T3P3	3	3	4.67714	0.65200	3.00000
MARGINAL			2.02111	1.59067	1.84176
COUNT			7	5	12

Resource
THREE

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

CASTYP =	TIME	PERS	SIMP	COMPL
T1P1	1	1	0.35719	2.34579
T1P2	1	2	1.64432	1.79092
T1P3	1	3	2.25958	0.00000
T2P1	2	1	1.04262	7.08327
T2P2	2	2	2.12433	1.36927
T2P3	2	3	2.09557	3.10071
T3P1	3	1	1.62735	2.22749
T3P2	3	2	3.77688	1.23269
T3P3	3	3	7.05109	0.63763

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	342.42952	1	342.42952	28.11	0.0003	
	CASTYP	4.86356	1	4.86356	0.40	0.5416	
1	ERROR	121.81596	10	12.18170			
	TIME	30.58271	2	15.29136	1.92	0.1725	
	TC	57.56419	2	28.78209	3.62	0.0456	T x C.
2	ERROR	159.15124	20	7.95756			
	PERS	1.10585	2	0.55293	0.06	0.9460	
	PC	54.31056	2	27.15531	2.68	0.0932	P x C.
3	ERROR	210.27723	20	10.51386			
	TP	11.27869	4	2.81967	0.34	0.8469	
	TPC	8.70979	4	2.17720	0.27	0.8985	
4	ERROR	324.30812	40	8.10770			

CASTYP	COUNT
SIMP	7
COMPL	5

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP =	SIMP	COMPL	MARGINAL
	TIME PERS			
T1P1	1 1	2.78429	5.14200	3.76667
T1P2	1 2	0.94714	0.50600	0.76333
T1P3	1 3	0.15000	0.00000	0.08750
T2P1	2 1	1.64429	3.45800	2.40000
T2P2	2 2	0.13000	2.51400	1.12333
T2P3	2 3	0.15714	0.76000	0.39667
T3P1	3 1	4.84571	0.90200	3.20250
T3P2	3 2	0.40000	0.66200	0.27583
T3P3	3 3	0.26429	0.91200	0.53417
	MARGINAL	1.21143	1.65067	1.39444
	COUNT	7	5	12

Resource Four

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP =	SIMP	COMPL
	TIME PERS		
T1P1	1 1	2.95120	5.29244
T1P2	1 2	1.61307	0.72807
T1P3	1 3	0.29486	0.00000
T2P1	2 1	3.41655	3.29190
T2P2	2 2	0.22728	4.01364
T2P3	2 3	0.25991	1.17228
T3P1	3 1	6.35252	1.57163
T3P2	3 2	0.00000	1.02469
T3P3	3 3	0.09923	1.22334

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	215.02914	1	215.02914	28.74	0.0003	
	CASTYP	5.06442	1	5.06442	0.68	0.4295	
1	ERROR	74.82037	10	7.48204			
	TIME	1.84077	2	0.92038	0.17	0.8429	
	TC	27.30730	2	13.65365	2.56	0.1026	
2	ERROR	106.80212	20	5.34011			
	PERS	154.55321	2	77.27660	8.25	0.0024	< T=.
	PC	2.80350	2	1.40180	0.15	0.8619	
3	ERROR	187.30805	20	9.36540			
	TP	18.36098	4	4.59524	0.70	0.5957	
	TPC	56.83332	4	14.20958	2.17	0.0901	~ T=.
4	ERROR	262.12545	40	6.55314			

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP =	SIMP	COMPL	MARGINAL
	TIME PERS			
T1P1	1 1	0.42266	2.40200	1.24750
T1P2	1 2	7.13286	5.55200	6.59917
T1P3	1 3	0.00000	0.00000	0.00000
T2P1	2 1	1.95143	4.49800	3.01250
T2P2	2 2	5.11000	9.39200	6.89417
T2P3	2 3	2.64857	4.42800	3.39000
T3P1	3 1	0.73714	1.05200	0.86633
T3P2	3 2	5.40286	2.23200	4.08167
T3P3	3 3	2.93429	1.36400	2.28000
	MARGINAL	2.92667	3.46389	3.15259
	COUNT	7	5	12

RESOURCE FIVE

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP =	SIMP	COMPL
	TIME PERS		
T1P1	1 1	0.64194	4.48155
T1P2	1 2	5.41476	4.42152
T1P3	1 3	0.00000	0.00000
T2P1	2 1	1.41717	6.95357
T2P2	2 2	5.54080	13.62551
T2P3	2 3	4.11619	3.93533
T3P1	3 1	0.95524	2.35234
T3P2	3 2	4.75067	2.64751
T3P3	3 3	4.62160	1.48139

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	1073.70678	1	1073.70678	20.83	0.0010	
	CASTYP	7.71762	1	7.71762	0.15	0.7069	
1	ERROR	515.51833	10	51.55183			
	TIME	116.11480	2	58.05740	4.02	0.0341	< T.
	TC	24.54354	2	41.92177	2.90	0.0781	< T*C.
2	ERROR	288.76073	20	14.43804			
	PERS	370.35542	2	185.17771	7.90	0.0030	< P.
	PC	15.12315	2	7.56658	0.32	0.7277	
3	ERROR	468.60055	20	23.43003			
	TP	68.88183	4	17.22046	1.06	0.3902	
	TPC	27.94996	4	6.98749	0.43	0.7868	
4	ERROR	651.50212	40	16.28755			

339

NUMBER OF CASES READ 12

PAGE 2 PCAS

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

Resource

Six

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	37.15142	39.74799	38.02499
T1P2	1	2	41.36255	29.50599	35.96416
T1P3	1	3	1.30469	.00000	.76083
T2P1	2	1	37.31999	29.42800	34.03166
T2P2	2	2	32.13714	26.32599	29.92416
T2P3	2	3	35.50870	24.10600	30.75466
T3P1	3	1	39.54456	30.79400	35.69749
T3P2	3	2	28.13857	31.37599	29.48749
T3P3	3	3	29.04428	32.09199	30.55999
	MARGINAL		31.16809	27.14000	29.48972
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL
T1P1	1	1	18.41566	19.93745
T1P2	1	2	19.32774	14.80799
T1P3	1	3	2.25690	.00000
T2P1	2	1	23.62071	20.19453
T2P2	2	2	8.44455	15.36284
T2P3	2	3	10.51989	19.50241
T3P1	3	1	11.64547	24.55102
T3P2	3	2	15.54954	19.22454
T3P3	3	3	13.57252	23.62761

1 PAGE 3 PCAS

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	59245.50842	1	59245.50842	60.94	0.0000	
	CASTYP	425.92058	1	425.92058	0.29	0.6015	
1	ERROR	14544.93572	10	1454.49357			
	TIME	1044.19319	2	522.09659	2.72	0.0905	* T.
	TC	256.63173	2	128.31589	0.65	0.5344	
	ERROR	3909.55284	20	195.47764			
	PERS	4285.74573	2	2142.87287	16.75	0.0001	* P.
	PC	15.10649	2	7.55325	0.06	0.9423	
	ERROR	2552.28018	20	127.61401			
	TP	6144.66356	4	1536.16589	12.03	0.0000	* TP.

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	TIME	PERS	CASTYP = SIMP	COMPL	MARGINAL
T1P1	1	1	1.07286	1.67600	1.32417
T1P2	1	2	1.20286	5.48200	2.98583
T1P3	1	3	0.00000	0.00000	0.00000
T2P1	2	1	0.00000	1.26800	0.52833
T2P2	2	2	0.99857	2.19400	1.14083
T2P3	2	3	0.11143	1.99400	0.99583
T3P1	3	1	0.25429	1.79200	0.91250
T3P2	3	2	0.88286	1.27400	1.04583
T3P3	3	3	0.39857	1.13000	0.70333
	MARGINAL		0.48238	1.86778	1.05963
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	TIME	PERS	CASTYP = SIMP	COMPL
T1P1	1	1	2.72132	2.91421
T1P2	1	2	1.02805	5.39584
T1P3	1	3	0.00000	0.00000
T2P1	2	1	0.00000	2.40521
T2P2	2	2	0.92656	2.65953
T2P3	2	3	0.29421	1.45407
T3P1	3	1	0.49477	2.35854
T3P2	3	2	0.94795	1.32662
T3P3	3	3	0.50763	0.69210

PAGE 3 ACAS

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	144.95517	1	144.95517	58.13	0.0000	
	CASTYP	50.38225	1	50.38225	20.20	0.0012	* C.
1	ERROR	24.93951	10	2.49396			
	TIME	8.30143	2	4.15071	1.53	0.2415	
	TC	3.09821	2	1.54910	0.62	0.5454	
2	ERROR	54.38027	20	2.71901			
	PERS	30.93792	2	15.41896	3.06	0.0693	* P.
	PC	8.13049	2	4.06525	0.81	0.4604	
3	ERROR	100.80538	20	5.04026			
	TP	33.25114	4	8.57028	3.26	0.0209	* T*P.
	TPC	35.72753	4	8.93189	2.19	0.0873	* T*P.C
4	ERROR	117.36256	40	2.93406			

RESOURCE

SEVEN

8410

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	2.06286	11.34600	6.28083
T1P2	1	2	1.14657	5.18000	2.82833
T1P3	1	3	0.00000	0.00000	0.00000
T2P1	2	1	1.07714	6.26500	2.64750
T2P2	2	2	1.57000	3.57200	2.57333
T2P3	2	3	2.52571	9.23000	5.31917
T3P1	3	1	2.08571	6.49400	3.91083
T3P2	3	2	1.45429	3.84200	2.19917
T3P3	3	3	1.81143	2.18600	1.96750
	MARGINAL		1.50841	5.28200	3.08074
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL
T1P1	1	1	4.51157	4.20903
T1P2	1	2	2.19176	8.77397
T1P3	1	3	0.00000	0.00000
T2P1	2	1	0.12473	4.45591
T2P2	2	2	3.06443	6.26171
T2P3	2	3	5.59574	7.90838
T3P1	3	1	2.53297	6.03464
T3P2	3	2	2.45199	3.12491
T3P3	3	3	1.81651	2.71813

1 CASE 3 ACAS

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	1210.37931	1	1210.37931	22.57	0.0008	
	CASTYP	373.79273	1	373.79273	6.97	0.0247	← C.
1	ERROR	536.38549	10	53.63850			
	TIME	19.10861	2	9.55430	0.72	0.4972	
	TC	34.46412	2	17.23206	1.31	0.2932	
2	ERROR	263.59154	20	13.17958			
	PERS	106.41193	2	53.20599	4.45	0.0252	← P.
	PC	94.16977	2	47.08488	3.94	0.0362	← P.C.
3	ERROR	239.22597	20	11.96145			
	TP	284.13167	4	71.03292	5.50	0.0013	← T.P.
	TPC	85.04787	4	21.26197	1.65	0.1816	
	ERROR	516.54360	40	12.91360			

RESOURCE EIGHT

342

RECORD STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = SIMP		COMPL	MARGINAL
	TIME PERS			
T1P1	1 1	6.42000	15.35000	10.14083
T1P2	1 2	10.08714	12.41600	11.05583
T1P3	1 3	9.32428	7.45800	8.53167
T2P1	2 1	5.65000	23.46599	12.72333
T2P2	2 2	14.06000	14.12800	14.08233
T2P3	2 3	7.59000	24.74199	14.73666
T3P1	3 1	9.13571	19.77600	13.15250
T3P2	3 2	11.92428	19.72000	15.17250
T3P3	3 3	11.93143	13.33000	12.51416
	MARGINAL	9.50920	16.59800	12.46287
	COUNT	7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = SIMP		COMPL
	TIME PERS		
T1P1	1 1	8.66374	15.85942
T1P2	1 2	12.05857	6.69138
T1P3	1 3	16.57109	5.34926
T2P1	2 1	6.79385	10.55071
T2P2	2 2	16.10646	6.42057
T2P3	2 3	8.42519	9.12556
T3P1	3 1	8.17465	15.64197
T3P2	3 2	7.56724	14.57230
T3P3	3 3	10.54583	9.46570

1 TABLE 3 ACAS

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY
	MEAN	17891.63156	1	17891.63156	35.56	0.0001
	CASTYP	1319.08795	1	1319.08795	2.61	0.1375
1	ERROR	5059.68409	10	505.96841		
	TIME	440.59539	2	220.29769	1.75	0.1927
	TC	345.05205	2	172.52601	1.37	0.2772
2	ERROR	2520.64827	20	126.13041		
	PERS	30.32773	2	15.16385	0.15	0.8556
	PC	380.51035	2	190.25517	1.82	0.1972
3	ERROR	2086.11546	20	104.30577		
	TP	115.84898	4	28.96224	0.58	0.6821
	TPC	515.80074	4	128.95018	2.56	0.0531 * T x P x C
4	ERROR	2013.60308	40	50.34008		

Resource
NINE

0349

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

RESOURCE

TEN

	CASTYP = TIME PERS		SIMP	COMPL	MARGINAL
T1P1	1	1	1.30571	0.94400	1.15500
T1P2	1	2	2.22143	0.61500	1.55250
T1P3	1	3	10.20714	9.59400	9.95167
T2P1	2	1	0.70571	0.87500	0.77667
T2P2	2	2	1.02571	2.44400	1.61250
T2P3	2	3	1.64000	1.62500	1.51833
T3P1	3	1	0.42143	3.74600	1.60667
T3P2	3	2	1.73143	3.35800	2.40917
T3P3	3	3	3.25571	6.54800	4.62750
	MARGINAL		2.47936	3.50489	2.82333
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME PERS		SIMP	COMPL
T1P1	1	1	2.76534	1.23443
T1P2	1	2	4.45611	0.92589
T1P3	1	3	8.37860	6.25466
T2P1	2	1	1.20971	0.92300
T2P2	2	2	1.34852	1.48034
T2P3	2	3	0.65942	1.15361
T3P1	3	1	0.43675	0.77300
T3P2	3	2	2.39686	3.70404
T3P3	3	3	1.56819	3.88457

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	878.26163	1	878.26168	66.71	0.0000	
	CASTYP	17.88910	1	17.88910	1.36	0.2706	
1	ERROR	131.63289	10	13.16329			
	TIME	141.10923	2	70.55414	3.80	0.0382	< T.
	TC	57.08442	2	28.54221	1.54	0.2310	
2	ERROR	365.49114	20	18.27456			
	PERS	347.55743	2	173.77872	11.43	0.0005	< P.
	PC	1.66347	2	0.83173	0.05	0.9479	
	ERROR	304.40312	20	15.22016			
	TP	290.79266	4	72.69816	8.38	0.0001	< T x P.
	TPC	9.73880	4	2.43222	0.27	0.8962	
		244.35240	40	8.72190			

RESOURCE

ELEVEN

CROSSTABULATION

CASTYP	COUNT
SIMP	7
COMPL	5

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	0.81714	0.93600	0.86583
T1P2	1	2	5.28000	3.11000	4.37583
T1P3	1	3	0.15000	0.00000	0.08750
T2P1	2	1	1.01714	0.69000	0.92167
T2P2	2	2	6.24143	5.69000	6.00750
T2P3	2	3	1.42714	0.50600	1.04333
T3P1	3	1	1.76571	2.12400	1.91500
T3P2	3	2	7.11714	5.77000	6.55583
T3P3	3	3	0.58429	0.32600	0.47750
MARGINAL			2.71889	2.12689	2.47222
COUNT			7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL
T1P1	1	1	1.34713	1.22812
T1P2	1	2	7.67775	1.77291
T1P3	1	3	0.39886	0.00000
T2P1	2	1	1.93536	1.07159
T2P2	2	2	5.43509	7.61500
T2P3	2	3	1.47837	0.77947
T3P1	3	1	1.04043	1.98722
T3P2	3	2	5.12027	4.55681
T3P3	3	3	1.14569	0.45362

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY
	MEAN	616.39073	1	616.39078	23.44	0.0007
	CASTYP	9.19968	1	9.19968	0.35	0.5573
1	ERROR	262.93792	10	26.29379		
	TIME	28.55164	2	14.17582	1.28	0.3000
	TC	0.46182	2	0.23091	0.02	0.9794
2	ERROR	221.57253	20	11.07863		
	PERS	517.36084	2	258.68017	17.92	0.0000
	PC	8.68202	2	4.34101	0.30	0.7443
3	ERROR	288.44162	20	14.43408		
	TP	17.79761	4	4.44940	0.53	0.7124
	TPC	5.19950	4	1.29988	0.16	0.9593
	ERROR	334.09345	40	8.35234		

< P.

845

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = SIMP		COMPL	MARGINAL
	TIME PERS			
T1P1	1	1	40.21285	16.58000	30.36533
T1P2	1	2	24.68999	30.82999	27.24833
T1P3	1	3	14.09257	9.53900	11.47333
T2P1	2	1	28.53625	19.44400	24.74666
T2P2	2	2	32.21999	25.62600	29.47250
T2P3	2	3	27.62571	14.31799	22.03916
T3P1	3	1	28.57856	20.24600	24.99000
T3P2	3	2	29.67285	25.65599	28.09250
T3P3	3	3	21.41857	19.21399	20.50000
	MARGINAL		27.54571	19.81599	24.32537
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = SIMP		COMPL
	TIME PERS		
T1P1	1	1	14.62477	5.63578
T1P2	1	2	5.04509	11.62795
T1P3	1	3	11.84724	9.94358
T2P1	2	1	20.33569	13.10527
T2P2	2	2	13.97865	12.47918
T2P3	2	3	9.31571	10.56443
T3P1	3	1	16.50205	19.95136
T3P2	3	2	13.57186	14.33672
T3P3	3	3	11.64922	10.87305

PAGE 3 ACAS

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	58384.39967	1	58384.39967	128.19	0.0000	
	CASTYP	1568.03534	1	1568.03534	3.44	0.0933	* C.
1	ERROR	4557.81555	10	455.78155			
	TIME	103.12890	2	51.56445	0.23	0.8000	
	TC	114.47232	2	57.23615	0.25	0.7808	
2	ERROR	4549.95417	20	227.49921			
	PERS	2230.32143	2	1115.16074	7.79	0.0032	* P.
	PC	739.03954	2	369.51984	2.23	0.1334	
3	ERROR	2863.84817	20	143.19241			
	TP	805.22424	4	201.30606	1.82	0.1431	
	TPC	776.29630	4	194.07407	1.76	0.1543	
4	ERROR	4413.65552	40	110.34139			

RESOURCE

TWELVE.

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	53.62571	47.56199	51.09916
T1P2	1	2	46.22142	53.39799	50.37043
T1P3	1	3	33.16428	30.16599	31.91500
T2P1	2	1	48.36571	41.03599	45.52916
T2P2	2	2	46.14714	34.49199	41.23466
T2P3	2	3	36.53714	33.47399	35.26083
T3P1	3	1	37.77999	47.54200	41.76416
T3P2	3	2	34.66571	34.47599	34.55166
T3P3	3	3	30.12142	31.94999	30.98332
	MARGINAL		40.95539	39.32066	40.27425
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL
T1P1	1	1	12.13079	6.99014
T1P2	1	2	14.67570	10.28751
T1P3	1	3	6.94479	10.49226
T2P1	2	1	23.22017	19.66265
T2P2	2	2	14.01997	9.49370
T2P3	2	3	4.74409	9.14497
T3P1	3	1	5.27971	17.51343
T3P2	3	2	10.12729	9.00563
T3P3	3	3	5.84745	7.57973

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY
	MEAN	169161.41257	1	169161.41257	737.77	0.0000
	CASTYP	70.14907	1	70.14907	0.31	0.5923
1	ERROR	2292.87856	10	229.28786		
	TIME	1209.42673	2	604.71336	1.95	0.1580
	TC	542.14047	2	271.07023	0.89	0.4329
2	ERROR	6192.45573	20	309.62279		
	PERS	3297.56482	2	1648.78241	9.27	0.0014
	PC	4.35123	2	2.17561	0.01	0.9879
3	ERROR	3559.11154	20	177.95558		
	TP	887.44263	4	221.86067	1.26	0.3032
	TPC	453.69193	4	113.42300	0.64	0.6356

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* F.

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP =	SIMP	COMPL	MARGINAL
	TIME PERS			
T1P1	1 1	2.98000	1.66200	2.43083
T1P2	1 2	4.42000	3.93000	4.33250
T1P3	1 3	2.17286	2.50000	2.30917
T2P1	2 1	8.97857	10.39500	10.56000
T2P2	2 2	6.83357	7.63000	7.14833
T2P3	2 3	11.33714	6.66200	9.49083
T3P1	3 1	11.74286	9.53500	10.82333
T3P2	3 2	9.40143	9.77000	9.55500
T3P3	3 3	6.97286	7.29400	7.05533
	MARGINAL	7.33381	6.67755	7.06037
	COUNT	7	5	12

REFERENT ONE

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP =	SIMP	COMPL
	TIME PERS		
T1P1	1 1	2.37539	1.17056
T1P2	1 2	5.18585	2.65761
T1P3	1 3	2.38287	5.59017
T2P1	2 1	7.76670	2.36136
T2P2	2 2	3.32138	2.70465
T2P3	2 3	4.13493	2.92166
T3P1	3 1	4.50662	6.36675
T3P2	3 2	3.11598	5.58300
T3P3	3 3	3.49250	2.48922

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ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY
	MEAN	5155.55564	1	5155.55564	141.43	0.0000
	CASTYP	11.30506	1	11.30506	0.31	0.5898
1	ERROR	364.33854	10	36.43385		
	TIME	852.69451	2	426.34731	31.51	0.0000
	TC	0.90634	2	0.45317	0.03	0.9671
2	ERROR	270.55075	20	13.52754		
	PERS	45.53412	2	22.76706	1.65	0.2165
	PC	9.52472	2	4.76236	0.34	0.7148
	ERROR	275.37550	20	13.76878		
	TP	120.75965	4	30.18991	1.35	0.2692
	TPC	62.37638	4	15.59355	0.70	0.5991
	ERROR	595.89972	40	22.34999		

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1 PAGE 2 FCAS

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	TIME	PERS	CASTYP = SIMP	COMPL	MARGINAL
T1P1	1	1	0.56571	0.00000	0.33000
T1P2	1	2	0.54143	0.07500	0.34750
T1P3	1	3	8.60000	7.05400	7.96833
T2P1	2	1	0.23286	0.14800	0.19750
T2P2	2	2	3.97857	4.32000	4.09167
T2P3	2	3	4.[illegible]	5.[illegible]	4.61000
T3P1	3	1	0.20143	0.53000	0.33873
T3P2	3	2	2.02143	1.65500	1.86917
T3P3	3	3	10.11857	5.73400	8.29167
	MARGINAL		3.38625	2.73489	3.11602
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	TIME	PERS	CASTYP = SIMP	COMPL
T1P1	1	1	1.49674	0.00000
T1P2	1	2	1.31517	0.16994
T1P3	1	3	[illegible]	7.45644
T2P1	2	1	0.61666	0.33094
T2P2	2	2	[illegible]	5.64005
T2P3	2	3	3.21109	3.11[illegible]
T3P1	3	1	0.25143	0.92255
T3P2	3	2	1.46136	1.63155
T3P3	3	3	3.27709	4.20553

1 PAGE 7 FCAS

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY
MEAN	964.15791	1	964.15790	105.73	0.0000
CASTYP	11.20576	1	11.20576	1.20	0.2983
1 ERROR	93.03532	10	9.30353		
TIME	5.82206	2	2.91103	0.23	0.7956
TC	15.25945	2	7.52972	0.56	0.5512
ERROR	257.06508	20	12.85430		
PERS	796.81443	2	398.40721	43.19	0.0000
PC	14.55765	2	7.27881	0.79	0.4685
ERROR	184.87056	20	9.24353		
TP	160.52700	4	40.13175	4.41	0.0048
TPC	26.27161	4	6.56790	0.72	0.5824
ERROR	[illegible]	40	9.10379		

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REFERENT THREE

CUP SUBJECTIVE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

CASTYP = SIMP TIME PERS			COMPL	MARGINAL
T1P1	1	1	1.09429	0.15400	0.70250
T1P2	1	2	0.07286	0.00000	0.04250
T1P3	1	3	15.07714	25.85400	19.56750
T2P1	2	1	2.92286	1.91600	2.44500
T2P2	2	2	1.22571	1.43600	1.42833
T2P3	2	3	9.69000	14.40200	11.65333
T3P1	3	1	3.01714	3.63800	3.74167
T3P2	3	2	1.92286	1.29600	1.60417
T3P3	3	3	9.73000	15.23600	12.02417
MARGINAL			5.07254	7.10355	5.91880
COUNT			7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

CASTYP = SIMP TIME PERS			COMPL
T1P1	1	1	1.61613	0.34435
T1P2	1	2	0.12996	0.00000
T1P3	1	3	9.42559	17.45945
T2P1	2	1	2.26992	1.54044
T2P2	2	2	1.24614	1.38941
T2P3	2	3	5.07292	10.29931
T3P1	3	1	3.00555	2.30199
T3P2	3	2	1.77427	1.47303
T3P3	3	3	5.04349	4.91229

1 CASE 3 ACAS

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	3391.75315	1	3391.75315	153.73	0.0000	
	CASTYP	105.25185	1	105.25185	4.28	0.0555	* C.
1	ERROR	295.15396	10	29.51540			
	TIME	54.60772	2	27.30386	0.82	0.4557	
	TC	20.22112	2	10.11056	0.30	0.7410	
2	ERROR	664.44352	20	33.22218			
	PERS	4193.55555	2	2096.77283	51.51	0.0000	* C.
	PC	324.71705	2	162.35852	3.99	0.0349	* P.C.
	ERROR	814.24145	20	40.71207			
	TP	543.28354	4	135.82088	5.21	0.0018	* T.P.

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = SIMP		COMPL	MARGINAL
	TIME	PERS		
T1P1	1	1	8.66000	8.62200	7.46083
T1P2	1	2	9.62300	10.05200	9.90000
T1P3	1	3	4.28714	3.62200	4.01000
T2P1	2	1	11.04714	23.58600	16.87583
T2P2	2	2	5.41714	9.10000	8.70167
T2P3	2	3	9.10857	14.17400	11.21916
T3P1	3	1	10.22857	13.70200	11.67583
T3P2	3	2	10.78286	12.69000	11.33083
T3P3	3	3	9.57000	11.91000	10.54500
	MARGINAL		9.01249	11.65289	10.11324
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = SIMP		COMPL
	TIME	PERS	
T1P1	1	1	10.47407	3.09610
T1P2	1	2	4.75323	2.26478
T1P3	1	3	3.88960	3.53529
T2P1	2	1	7.50977	12.53966
T2P2	2	2	3.26322	5.50993
T2P3	2	3	4.58844	5.70640
T3P1	3	1	3.41740	7.52636
T3P2	3	2	3.45756	4.68979
T3P3	3	3	2.45415	6.50365

1DATE 3 ACAS

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE = T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	11211.35336	1	11211.35336	110.69	0.0000	
	CASTYP	192.56832	1	192.56832	1.91	0.2187	
1	ERROR	1012.59791	10	101.25979			
	TIME	592.59579	2	296.44789	15.72	0.0001	× T.
	TC	194.75756	2	97.48878	5.16	0.0156	× T × C.
2	ERROR	377.19643	20	18.85982			
	PERS	211.38293	2	105.69147	5.66	0.0043	× P.
	PC	73.53435	2	36.76717	1.28	0.3105	
3	ERROR	576.05598	20	28.80280			
	TP	443.69842	4	110.92460	3.96	0.0084	× T × P.
	TPC	148.12494	4	37.03123	1.32	0.2750	
4	ERROR	1119.59923	40	27.99923			

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BASIC STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

REFERENT

FIVE

	CASTYP = TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	34.25428	32.99200	33.72833
T1P2	1	2	29.60457	22.15799	26.50416
T1P3	1	3	20.72000	14.69200	18.20833
T2P1	2	1	17.50999	17.37500	17.33500
T2P2	2	2	26.40856	32.56199	29.09749
T2P3	2	3	18.82285	19.57499	19.05416
T3P1	3	1	25.65257	15.49500	20.35833
T3P2	3	2	30.21857	29.08999	29.74833
T3P3	3	3	15.41857	22.43199	18.84083
	MARGINAL		24.22444	22.71377	23.59500
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL
T1P1	1	1	19.24119	11.58135
T1P2	1	2	8.42561	11.53600
T1P3	1	3	14.62182	10.92558
T2P1	2	1	11.66050	11.55504
T2P2	2	2	10.52897	8.30423
T2P3	2	3	8.27224	9.46497
T3P1	3	1	11.53652	10.22499
T3P2	3	2	9.10787	5.76103
T3P3	3	3	8.19549	8.65293

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY
	MEAN	57843.88946	1	57843.88946	128.07	0.0000
1	CASTYP	59.09547	1	59.09547	0.13	0.7233
	ERROR	4515.75515	10	451.57552		
	TIME	277.20265	2	138.60132	1.51	0.2451
2	TC	232.83573	2	116.41787	1.27	0.3033
	ERROR	1836.15523	20	91.80781		
	PERS	1636.10351	2	818.05046	9.67	0.0012 **
3	PC	110.02103	2	55.01052	0.65	0.5424
	ERROR	1745.10357	20	87.25504		
	TP	1652.39684	4	413.09921	5.57	0.0012 **
	TPC	542.53169	4	135.63292	1.80	0.1498
	ERROR	3323.22523	40	75.83066		

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

REFERENT

SIX

CASTYP = TIME PERS		SIMP	COMPL	MARGINAL
T1P1	1 1	3.21286	3.49000	3.32833
T1P2	1 2	5.51429	6.01500	5.72333
T1P3	1 3	7.97571	5.41000	5.69417
T2P1	2 1	4.15714	6.74000	5.73833
T2P2	2 2	4.58857	7.69000	5.63667
T2P3	2 3	5.32714	5.25500	5.29750
T3P1	3 1	3.91000	13.14000	7.75750
T3P2	3 2	6.51857	10.23000	8.06500
T3P3	3 3	7.35571	5.42400	5.71750
MARGINAL		5.41667	6.43222	5.83981
COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

CASTYP = TIME PERS		SIMP	COMPL
T1P1	1 1	1.56730	2.40944
T1P2	1 2	3.90622	2.69735
T1P3	1 3	6.41233	5.59017
T2P1	2 1	3.25996	5.47153
T2P2	2 2	3.32411	4.46466
T2P3	2 3	2.69810	2.01909
T3P1	3 1	1.36191	10.94339
T3P2	3 2	4.71561	4.55270
T3P3	3 3	4.21875	2.34905

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY	
	MEAN	3685.39857	1	3685.39887	85.19	0.000	
	CASTYP	27.07302	1	27.07302	0.63	0.4473	
1	ERROR	432.62317	10	43.26232			
	TIME	129.52751	2	64.76376	3.82	0.0393	T.
	TC	95.98155	2	47.99078	2.83	0.0826	T*C
2	ERROR	339.96891	20	16.94846			
	PERS	32.86206	2	16.43104	0.68	0.5138	
	PC	241.97751	2	120.98876	4.99	0.0174	P.C.
3	ERROR	474.53919	20	24.22546			
	TP	79.50514	4	19.87628	1.54	0.2082	
	TPC	92.30425	4	23.07606	1.79	0.1496	
4	ERROR	515.15401	40	12.87885			

GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	0.10286	0.04000	0.07667
T1P2	1	2	0.00000	0.05200	0.02167
T1P3	1	3	7.43571	5.57500	6.66667
T2P1	2	1	1.02286	0.95600	0.99417
T2P2	2	2	0.30571	1.49000	0.79917
T2P3	2	3	2.00714	1.79500	1.92000
T3P1	3	1	0.96714	1.11600	1.04083
T3P2	3	2	0.56857	1.69000	1.03583
T3P3	3	3	4.82286	2.37500	3.83333
	MARGINAL		1.92365	1.67680	1.82083
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

	CASTYP = TIME	PERS	SIMP	COMPL
T1P1	1	1	0.27213	0.08944
T1P2	1	2	0.00000	0.11623
T1P3	1	3	7.73423	7.70285
T2P1	2	1	1.15930	1.09553
T2P2	2	2	0.43143	1.17546
T2P3	2	3	1.94738	1.64532
T3P1	3	1	1.96764	1.61078
T3P2	3	2	0.64471	1.14206
T3P3	3	3	1.58617	1.27461

PAGE 5 ACAS

ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY
	MEAN	340.50189	1	340.50189	45.74	0.0000
	CASTYP	1.59840	1	1.59840	0.21	0.6553
1	ERROR	74.41879	10	7.44188		
	TIME	16.28004	2	8.14002	0.91	0.4120
	IC	4.13709	2	2.06854	0.23	0.7944
	ERROR	179.70985	20	8.98549		
	PERS	256.96721	2	128.48360	15.34	0.0001
	IC	24.16157	2	12.08078	1.44	0.2593
	ERROR	167.51513	20	8.37576		
	TP	124.71893	4	31.17973	6.28	0.0057
	TPC	6.45230	4	1.61308	0.32	0.8543

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GROUP STRUCTURE

CASTYP	COUNT
SIMP	7.
COMPL	5.

CELL MEANS FOR 1-ST DEPENDENT VARIABLE

REFERENT EIGHT.

	CASTYP = TIME	PERS	SIMP	COMPL	MARGINAL
T1P1	1	1	1.71571	3.12600	2.07000
T1P2	1	2	2.21571	2.66200	2.31000
T1P3	1	3	3.07571	1.66600	2.63333
T2P1	2	1	0.77714	2.95200	1.68333
T2P2	2	2	1.75571	3.06400	2.09250
T2P3	2	3	1.45714	1.66000	1.54333
T3P1	3	1	2.10143	2.95600	2.45750
T3P2	3	2	4.79286	5.32000	5.00667
T3P3	3	3	3.45714	2.90000	3.22500
	MARGINAL		2.05984	2.90734	2.41296
	COUNT		7	5	12

STANDARD DEVIATIONS FOR 1-ST DEPENDENT VARIABLE

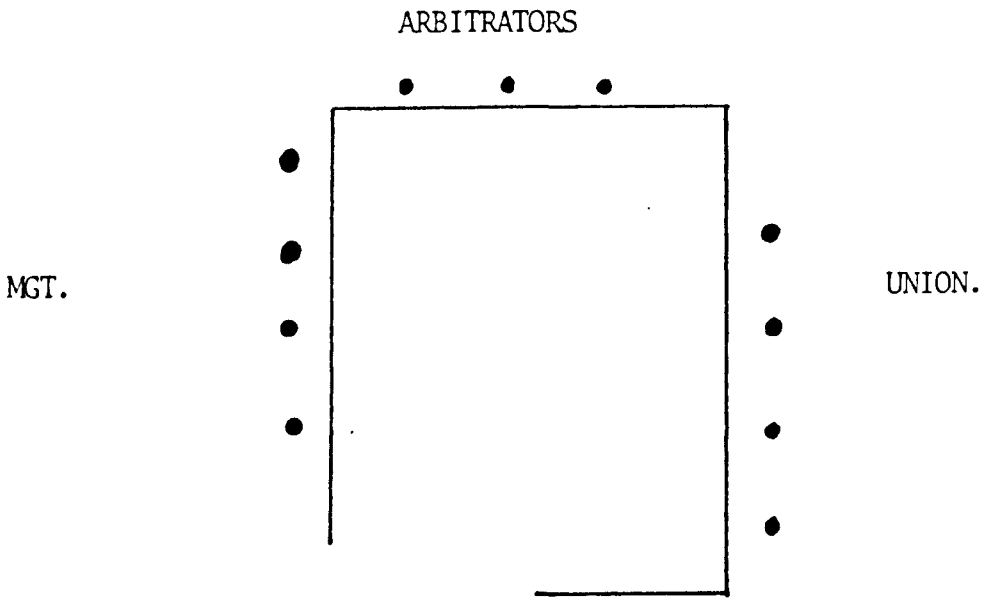
	CASTYP = TIME	PERS	SIMP	COMPL
T1P1	1	1	1.64126	3.06503
T1P2	1	2	1.09768	1.79526
T1P3	1	3	2.42827	3.72529
T2P1	2	1	1.52264	4.29193
T2P2	2	2	0.91702	3.31743
T2P3	2	3	1.14218	1.53862
T3P1	3	1	2.60779	1.47507
T3P2	3	2	2.74081	1.48232
T3P3	3	3	4.22287	1.95796

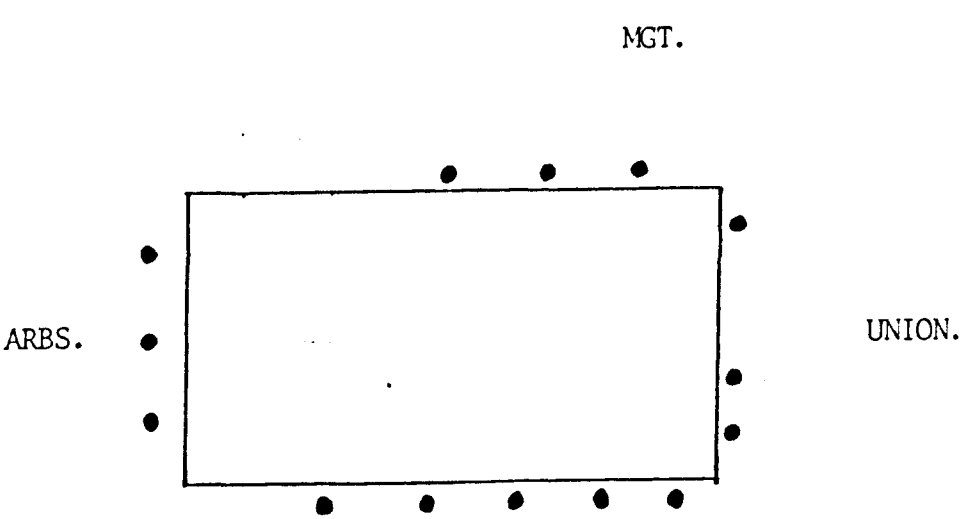
ANALYSIS OF VARIANCE FOR 1-ST DEPENDENT VARIABLE - T1P1 T1P2 T1P3 T2P1 T2P2 T2P3 T3P1 T3P2 T3P3

	SOURCE	SUM OF SQUARES	DEGREES OF FREEDOM	MEAN SQUARE	F	TAIL PROBABILITY
	MEAN	547.66147	1	647.55147	38.19	0.0001
	CASTYP	19.85337	1	19.85337	1.11	0.3165
1	ERROR	169.57644	10	16.95764		
	TIME	18.13149	2	9.06574	2.19	0.1379
	TC	13.40665	2	6.70332	1.62	0.2228
2	ERROR	82.76559	20	4.13828		
	PERS	5.80844	2	2.90422	0.39	0.6853
	PC	35.44717	2	17.72359	2.39	0.1192
3	ERROR	148.90553	20	7.44528		
	TP	7.35551	4	0.83813	0.26	0.9008
	TPC	7.55514	4	1.88878	0.57	0.6855
		147.39237	40	3.68481		

Appendix 4

Typical Seating Arrangements at the Arbitration hearing (Ad hoc Arbitration Case Studies, Chapter Nine).





Appendix 5

Extracts from Parties' Statements of Case

(Ad hoc Arbitration Case Studies, Chapter Nine)

CASE 5

Union Statement.

DISPUTE ON THE PAYMENTS DUE TO TRANSPORTER DRIVERS OPERATING CAR TRANSPORTERS WITH 15 METRE TRAILERS.

1. As referred to in 'Undisputed Facts' the Company operated 13 metre trailers until legislation allowed the introduction of 15 metre trailers in 1970.

   On the 22nd June, 1970, a local agreement was signed between the Transport & General Workers' Union and [illegible] management (See Appendix 1). This was in two parts:-

   (a) The driver received an hourly payment for driving a 15 metre trailer (11/- per hour) and,

   (b) For each car carried etc. as referred in 'Undisputed Facts', Dagenham depot delivered the production of one of Ford's largest locations, and until the introduction of the 'Baby' Ford Fiesta, the production of that depot was such that the size of the vehicles produced, only made it possible to carry 5 vehicles on the 13 metre trailer.

2. During April 1970, an agreement was signed (See Appendix 3) of Dagenham to destination to Dagenham, five cars carried from Dagenham but six cars only carried out of Halewood or elsewhere. The reason for this being the length of car as produced by Ford Motor Company other than their factory at Dagenham.

3. Majority of work during this time was Ford Motor Company Cortinas, Dagenham, Essex to the Midlands. The smaller cars produced at Ford Motor Company at Halewood (Lancashire) or by other manufacturers in the Midlands would obviously not be transported to the North or Midlands by Dagenham based transporters.

4. The Company attempted to carry three Dagenham produced vehicles on the bottom deck of the 13 metre trailer, by the use of 2 sloping ramps on the bottom deck, but the Company were forced to abandon the project because of damage to vehicles and the safety factor, which shop stewards made representations to the management.

5. In the other major producing area which the Company refer to, this payment has been made since 1970.

[illegible] Ltd. and the Transport & General Workers Union: A Dispute on the Payments Due to Transporter Drivers Operating Car Transporters with 13 metre Trailers.

The Case for The Company [illegible] Ltd.

/ There is attached hereto as Appendix 1 a "Joint Paper" by the parties setting out the undisputed facts /.

1. Both parties agree that from June 1970 until the present the payments to the transporter drivers at Dagenham have been made according to the Company's interpretation of the Dagenham Local Agreement of 22nd June 1970, and not according to the interpretation now advanced by the Trade Union. Both parties also agree that from June 1970 to October 1977, a period of over 7 years, the interpretation of the Agreement by the Company went unchallenged by the Trade Union. The Agreement is attached as Appendix 2.

2. In these circumstances it is the contention of the Company that the burden of proof of an error in interpretation should rest on the Trade Union.

3. We contend also that the Union is obliged to prove two distinct and separate facts and that its case fails if it cannot convince the panel on either count.

4. Firstly it is obliged to demonstrate that the normal car carrying capacity of the 13 metre trailer in June 1970 was 5 cars and that this fact was clearly recognised at the time and accepted as such by both parties.

5. Secondly if it can convince the panel on this count, then we contend that the Union must explain why it allowed over 7 years to elapse before challenging the interpretation on which the Agreement has been implemented. Custom and practice is a powerful principle in industrial disputes. We ask the panel to consider how it would react if the situation was reversed in that the Company was claiming that for over 7 years it had paid to its drivers amounts in excess of the correct interpretation of the Agreement. In these circumstances we suggest that, even if the Company demonstrated incontrovertibly that its interpretation was absolutely correct, it is highly improbable that a Panel of Arbitrators would find in its favour - either in awarding retrospective financial adjustments or in ruling that the interpretation established by custom and practice should be amended for the future. Custom and practice would almost certainly, we suggest, overrule all other considerations in these circumstances.

6. Industrial relations agreements are not written by solicitors. They are written by working trade unionists

would seek. As a result, the principle of custom and practice implicitly recognises that there is a responsibility on both parties to challenge clearly anything that it believes to have been a misinterpretation of an agreement by the other party as soon as it is aware of the existence of any dispute. If either party does not do so we believe that in practice it concedes its right to do so at a later date. Any element of ambiguity in any industrial relations agreement - no matter how ancient and no matter how hallowed by custom and practice - would otherwise become a potential focus of industrial conflict which would in general be incapable of logical resolution because most of the evidence on which a decision could be based would have been lost with the passage of time.

7. Since the signing of the Local Agreement at Dagenham which is the subject of this dispute over 7 years have elapsed and the written record that remains of industrial relations negotiations in this period is limited. The Company's case is that in June 1970 both parties recognised the normal car carrying capacity of the 13 metre transporter as being 6 cars. In our opinion, the evidence presented below proves the following points:

1. Before June 1970, 13 metre trailers carrying 6 cars were operating out of Dagenham.

2. In December 1969, both parties considered normal working of these 13 metre trailers (which at that time constituted the Dagenham fleet) to be represented by the carriage of 6 cars.

3. During the period between June 1970 and October 1977, the Union had no reason to be in any doubt of the fact that the threshold for extra car payments to transporter drivers was the seventh car carried and not the sixth.

4. The Union's Shop Steward for the transporter drivers section at Dagenham in June 1975, was in no doubt that Agreement both before and after this date related extra car payments to the seventh car carried and not to the sixth and that this fact was clearly and explicitly accepted by him at that time.

8. This evidence is presented in paragraphs 9 to 13 inclusively below. In paragraph 14 we have added a brief note of explanation as to what we believe led the Trade Union into this dispute.

9. We agree that in the mid 1960's, when 13 metre trailers were first introduced, they carried 5 cars - 3 on the top deck and 2 on the lower one. However, because of the productivity benefit involved, the Company immediately devoted considerable engineering effort to devising a satisfactory modification that would enable 3 cars to be carried on the shorter lower deck. Two

lower deck and one with extension flaps on the rear end of the lower deck. In 1967 the Company first modified trailers to carry 6 cars (see Appendix 3). In the month of May 1969 Government legislation was introduced to permit the use of 15 metre trailers. This permitted the Company to extend its 13 metre trailers to continue to carry six cars and more. It was not permissible to extend the length of the lower deck by the full 2 metres (from 13 metres to 15 metres) because of restrictions on the overhang permitted beyond the rear axle. However, it was possible to fit extension flaps of length 2' 6". These flaps then made it possible to carry three cars on the lower deck in the flat position as well as three cars on the top deck. A photograph of a trailer of 13 metres modified with these 2' 6" extension flaps is attached as Appendix 4. The Company's Fleet of 65 transporters in 1969 was almost exclusively of a type that permitted this extension to be used. Virtually all trailers as a result had been modified to carry six cars by the end of 1969. Apart from a short period of three weeks at the end of 1969 and early 1970, when there was a dispute (see paragraph 10 below) on the safety of carrying three cars on the lower deck it was the normal practice throughout for six cars to be carried on these adapted 13 metre transporters.

10. In 1969, just after the company had completed the equipping of all its standard 13 metre trailers with 2' 6" extension flaps there was a short industrial dispute on these trailers. The Trade Union claimed that it was difficult to chain the third rear car securely. The dispute was resolved within the same day by the Company's agreement to fit an additional chain and accepting the fact that the drivers would only carry five cars until such time as the chain was fitted. Since this was a very minor modification which could be carried out easily and quickly all the Company's standard 13 metre trailers had been fitted with a chain of this type within three weeks. The agreement established that, provided a safety chain was fitted to the lower deck, normal working, explicitly identified as the carriage of 6 cars, would resume. A photocopy of this agreement is attached as Appendix 5. We ask the Arbitrators to note that neither this agreement nor the Agreement of June 1970 related to specified models. Both refer only to "cars" and to what was considered to be "normal".

11. A 15 metre trailer was obtained and used for manoeuvrability tests during 1969. When these tests proved satisfactory the Company placed orders for a number of 15 metre trailers, the first of which arrived in January 1970. These vehicles were capable of carrying seven cars, four on the top deck and three on the lower deck, and this was one car more than the existing 13 metre trailers which carried three on the top deck and three on the bottom deck. The drivers consequently demanded an extra payment because they were carrying one additional car. While these negotiations continued the Company carried six cars on its fleet of 15 metre transporters, three on the top deck and three on the bottom deck. Negotiations

were completed on 22nd June 1970. The agreement then reached provided a higher basic rate for drivers operating 15 metre transporters regardless of how many cars they were carrying on a particular trip. It also provided for an additional payment of six old shillings on any trip when the 15 metre transporter was carrying the additional car of which it was capable, as per Appendix 2.

12. The Local Agreement of June 1970 was not made and immediately forgotten. The attached memo dated 20th July, 1970 (Appendix 6) shows that it was the focus of considerable discussion and bargaining during the period of its introduction. There is however, no doubt that the threshold for extra car payments from the outset has in practice been the seventh car carried. There is no record of any challenge from the Trade Union to this interpretation. Any discrepancy between what the employee believes in his entitlement and what he has been paid can be and is normally a matter for immediate representations to Management, often with a shop steward present. No representative of the Union has claimed that at any time from June 1970 until October 1977, any transporter driver protested even verbally that he had been wrongly paid. 60 articulate and outspoken drivers would hardly fail for 7 years to notice an underpayment or fail to question it.

13. Seven years have not elapsed without reference to the Agreement nor without challenge from the Trade Union on particular other aspects of its application. There are a limited number of occasions where a transporter driver outbound with a load from Dagenham is involved in a journey that is recognised as being of 2 days duration. Whether such a journey involved one single extra car payment (because one trip only was involved) or twice the normal extra car payment (because of the 2 days driving) is not covered by the Agreement. Only a small fraction of the trips involve 2 days driving and this situation was probably overlooked by the people who framed the Agreement. In June 1975 the question became a bone of contention. It was settled on 13th June, 1975 by the agreement that from this date onwards double the normal extra car payment would be provided for a 2 day trip involving extra cars, but that no retrospective payments would be made for the fact that it had not been paid this way previously. The Trade Union negotiator was Mr. M. Dulieu in his capacity as the Shop Steward of the Transporter Drivers Section. No typewritten version of this addendum to the Agreement was made but Mr. Dulieu annotated his copy of the original Local Agreement carefully and explicitly with a new clause. He then signed and dated it. The Company has a photocopy of this annotated document. A Copy is provided as Appendix 7. It shows beyond doubt that at this date the Union's representative of the transporter drivers recognised explicitly and accepted that the extra car payments were in respect of the seventh car carried and not the sixth.

the dispute arose. It is our contention that it was triggered by the coincidence of 2 factors in the Autumn of 1977. The first was a temporary reduction of output from Ford's Dagenham plant which had the effect of marginally reducing the earnings of the Dagenham transporter drivers. The second was their discovery during this period that the transporter drivers at the Company's other major depot in Halewood were receiving extra car payments for 6 as well as for 7 cars. The claim, we believe, was initially presented because of an underlying desire to achieve immediate parity with drivers at the Company's Halewood plant. Retrospection was not mentioned. The Company then demonstrated conclusively that in the 1970/71 period Dagenham and Halewood had negotiated totally different local agreements on the introduction of the 15 metre transporters: (Dagenham had obtained a higher basic rate than Halewood. This small difference in basic rates for transporter drivers between Dagenham and Halewood drivers has continued to the end of 1977. Halewood had struck a bargain on extra car payments more favourable to the drivers than that struck at Dagenham). The claim from the Union at Dagenham then appears to have become transmuted for the first time into a challenge to the interpretation of the Local Agreement of June 1970. At this time also the first demand for retrospective payments was made.

15. The Union's delay in challenging the Company's interpretation of the 1970 agreement has a further effect. If the panel finds that the Union's contentions are right it will or may be open to the Union to claim back payments for its members from 1970 to date. This raises two fundamental difficulties. Fist, by no means all the present transporter drivers have been employed continuously throughout this period. Secondly, the Company's pay roll records only go back to 1974 and the Company has no means of calculating the number of cars carried by each driver beyond that year. At best, therefore, the panel could only make a rough estimate of the appropriate back payment which would almost certainly be wrong and would prejudice the Company, while unfairly benefiting existing drivers with short or relatively short periods of service. Within the broad terms of reference of the panel the Company therefore advances these further reasons for inviting the panel to reject the Union's claim.

Dated the 17th day of January 1978.

CASE 9

BOARD OF ARBITRATION BETWEEN . , INDUSTRIAL SERVICES

AND THE AMALGAMATED UNION OF ENGINEERING WORKERS (C.S.).

STATEMENT OF CASE OF

A.U.E.W. (CONSTRUCTIONAL SECTION)

1. On the 14th December, 1976 Mr. G was instructed to take a crane to ~~Coventry~~ Crane Hire. In accordance with the firm's normal practice there was negotiation on the length of running time to be allowed and, after discussion, this was agreed at five hours. This is recorded in Document No. 1.

2. Mr. G returned to Slough Depot shortly after midnight on the 15th December, 1976 to find instructions for his next job at Mars, Slough, at 7.30 a.m. on the 15th December, 1976. Accordingly he prepared the crane immediately and left the yard for home at 12.45 on the 15th December, 1976. He returned to the yard at 4.30 a.m., i.e. three-and-three-quarter hours later.

3. At the end of the week Mr. G completed his time sheets in respect of the Coventry Crane Hire job and the Mars, Slough, job.

4. This document, Document No. 2, shows that Mr. G completed the time sheet for Coventry in accordance with his agreement with Mr. ., recorded in Document No. 1. Document No. 2 also records the time booked for the Mars job, i.e. one hour each way travelling time. The job card for the Mars job is attached (Document No. 3).

5. On the 21st December, 1976 Mr. in the presence of Mr. Union Shop Steward, accused Mr. G of falsifying his time sheets in respect of the Coventry job and suspended Mr. G from work on full pay (which he had never received). Mr. I informed the Union's Divisional Organiser, Mr. .

6. On the 5th January, 1977 Mr. R with Mr. the Deputy Shop Steward again saw Mr. Baldwin to see if there was any change in Mr. attitude and was told by Mr. that he was consulting his legal department. Mr. R referred to Section 10 of the Consolidated Crane Agreement. (Document No. 4).

8. On the 10th January, 1977 Mr. , Divisional Organiser, met with Mr. at the Slough Depot together with Mr. and Mr. . Mr. explained the implications of the Employment Protection Act and the Consolidated Crane Agreement. Mr. response was a refusal to re-employ Mr. , to which Mr. W responded that in those circumstances all A.U.E.W. (Constructional Section) workers were withdrawing their labour.

9. At no time did Mr. G depart from the agreed formula and system laid down and evidenced by Document No. 6 which sets out the agreement for booking travelling and rigging time.

10. Industrial Services is a member of the Contractors' Plant Association. That association has an agreement with the A.U.E.W. (Constructional Section) known as the Consolidated Crane Agreement. (Document No. 4 already referred to).

11. Section 8 lays down disciplinary procedures and Section 10 provisions for the avoidance of disputes.

12. By Section 8 a verbal warning shall be given to the operative of the employers' dissatisfaction. No such verbal warning was given. Nor was the Union (Shop Steward) notified. It is not known if any entry was made in the operative's record for no such document has been provided. Indeed until this dispute no employee nor indeed the Union was aware of the existence of such record.

13. Further by Section 8 (2) no further verbal warning confirmed in writing was given to Mr. G or his Shop Steward.

14. By Section 8 (4) in the event of alleged gross industrial misconduct the employer is required to investigate as quickly as practicable,(andif

fair hearing of the operative and the local representative of the Union. Mr. Gr : was suspended on the 21st December, 1976 but there was no fair hearing indeed there was no hearing at all.

15. Nor under Section 8 (5) was Mr. Gr warned that an investigation into alleged gross industrial misconduct was taking place.

16. Under Section 8 (4) in the event of alleged gross industrial misconduct it is intended that the local representative should be present. Unlike other Sections the words "Shop Steward" are not indicated. This clearly means that it is the Full-Time Official of the Union who should be present. The intention is to make the Union officially aware of the seriousness of the charge and its possible implications on the relationship between the employer and the Union.

17. Section 10 of the Consolidated Crane Agreement is headed "Procedures for the Avoid nce of Disputes". The principle lying behind this section is that there should be no action taken by either side until the procedure agreement has been exhausted.

18. In the present case it is clear that as early as the 21st December, 1976 a dispute existed. In accordance with Section 10 (3)(c) the matter was referred to the local official of the Union, Mr. Winterflood, by the Shop Steward, following the meeting with Mr. Richard Baldwin when Mr. Griff was suspended.

19. In accordance with Section 10 (3)(d) Mr. W . notified the General Secretary of the A.U.E.W. (Constructional Section).

20. On the 11th January, 1977 acting in accordance with Section 10 (3)(c) the General Secretary wrote to Mr. of the Contractors' Plant Association (Document No. 7) suggest ng a meeting in an attempt to

21. It was not until the 2nd February, 1977, three weeks later, that a reply was received from the Contractors' Plant Association (Document No. 8). The Union was unable to accept the terms for a meeting, namely a full return to work, for the Union's Argument was that Industrial Services has not complied with either Section 8 or the terms of Section 10. A letter dated the 7th February, 1977 (Document No. 9) was sent setting out the Union's attitude.

22. Shortly before that letter was received a meeting took place at the Head Office of the A.U.E.W. (Constructional Section) with the Assistant General Secretary and Mr. At that meeting the Assistant General Secretary reaffirmed the Union's desire to see the provisions of the Consolidated Crane Agreement applied but Mr. refused to reinstate Mr. C.

23. A further meeting took place on the 27th January, 1977 attended by Mr. and his Legal Adviser, Mr. At that meeting Mr. through his Solicitor again refused to reinstate Mr. C but said they would rescind their dismissal contained in Document No 5. and offer him a sum equivalent to redundancy pay. That offer was not acceptable to the Union.

24. On the 9th February, 1977 a letter from the Contractors' Plant Association (Document No. 10) was received by the A.U.E.W. (Constructional Section) stating that Industrial Services had offered to suspend Mr. C until a Central Conference could take place. No such suspension was in fact ever offered as set out in paragraph 22, the only offer made was a sum equivalent to redundancy pay.

25. SUMMARY: National Agreements such as the A.U.E.W. (Constructional Section)/Contractors' Plant Association is designed to avoid precisely the situation which has arisen in this case.

26. Section 8 lays down in very clear terms consistent with the recommendations set out in the A.C.A.S. guide exactly what should be done if an employer has any complaint about the conduct of one of his employees. Yet Section 8 was never complied with by Industrial Services. No verbal warnings were given, no follow-up written warnings were given and the local Official was not involved in the way that Section 8 intended nor was the Full-Time Official involved until after a written dismissal was given. No enquiry took place and notification given of its existence nor was Mr. G . and the Official ever given a hearing so that Mr. G . could present his version of the dispute. The only meeting of any relevance was when Mr. G : was suspended yet if the charge was gross industrial misconduct the procedure of enquiry followed by a hearing was never adhered to. At all times Mr. G. has denied falsifying his time sheets, no evidence has ever been presented and most importantly Mr. G: has never been given the opportunity of defending himself against.

27. Section 10 is designed to bring in the Full-Time Officials and the Head Office of the Union in order to deal with matters quickly to prevent industrial action occurring. It is clearly designed to maintain the status-quo pending discussion at employer/head office level yet B Industrial Services have never at any time been prepared to reinstate Mr. G and to allow the procedure to operate.

11th July, 1977.

Industrial Services and Amalgamated Union of Engineering Workers Reference to Arbitration.

Observance of Consolidated Crane Agreement Procedure.

HISTORY OF EVENTS.

1. The original dispute between ourselves and the AUEW stems from our dismissal of one of our Crane Drivers employed at our Slough Depot namely for alleged falsification of his time sheets. We had reason to believe that time sheets were not being filled in correctly. On 1.12.76 we wrote to Mr. Griffin on this subject regarding alleged discrepancies in his time sheet for the week ended 25.11.76. Copy herewith. On 14.12.76. we issued a formal written notice to all drivers at Slough Depot regarding correct completion of time sheets - copy herewith.
2. On Wednesday 21.12.76 was summoned to the office together with the Slough Shop Steward and was interviewed by Mr. regarding the time sheets he had put in for the 14th/15th and 16th December. It was put to him by Mr. that he was claiming a total of 15 hours for the Coventry job he had been employed to do whereas in fact he was only entitled to claim 13 hours 35 mins. having arrived back at our Slough Depot 11.30 p.m. and leaving 11.35 p.m. on the 14th December and not 1 a.m. on the 15th December as shown on his time sheet. denied this. Mr. pointed out there were two independent witnesses as to his time of arrival back to the Depot but maintained his denial. Mr. also alleged according to his time sheet was claiming a total of 15½ hours for Wednesday the 15th December 1976 all at double time rate (no 4 hours break) whereas the correct total was 11½ hours. 8 hours flat 3½ hours overtime. Likewise in respect of Thursday the 16th December 1976 claimed he s started work at 8.a.m. whereas according to our records he did not arrive in the Depot until 8.30 a.m. Mr. told the matter would be investigated further and meanwhile he was suspended on full time.
3. After Christmas on Tuesday 4.1.77 having considered the matter carefully Mr. met with a Mr. the area organiser and the local representative of the AUEW Mr. (Shop Steward) and Deputy Steward case was discussed with Mr. and Mr. indicated he was minded to dismiss G. for this falsification of his time sheets which we considered amounted to gross misconduct justifying instant dismissal. Mr. W. warned there would be trouble and in fact Mr. R said "right were on strike". Deputy Steward D and Mr. W (local organiser) looked very surprised and Davis said "wo, hang on a minute Les" but made his way to the office door and repeated "were on strike". All three of them walked out of the yard arguing loudly as they walked up the road. Later (Steward) said to me "Ive had to do this Richard, Tony is my best friend". I replied that this is totally unacceptable and an

situation before a central conference could be convened. There was subsequently a vote taken on the question of a strike and out of 43 men who voted ten were in favour of strike action and in fact the AUEW men at our Slough Depot have been on strike ever since then.

4. On Wednesday 5.1.77 we delivered written notice to G informing him he was dismissed forthwith - see copy letter attached.

5. On Tuesday 25.1.77 notwithstanding a clear majority vote against strike by 33 to 10 the men at our Stockton Depot were instructed to come out on strike by their Union the AUEW and have been on strike ever since. On that same day our Mr. met representatives of the AUEW for further discussions and it was agreed that a full scale meeting should be convened at the Headquarters of the AUEW at Clapham the following day Thursday the 27th January 1977 at which n would be present and also our legal adviser with Mr. B .

6. On Thursday 27.1.77 we attended the meeting at the Union Headquarters at Clapham and put forward our case regarding the dismissal of who was present at the meeting as was Mr. the Slough Shop Steward and several other Union Representatives headed by Mr. n the Assistant Secretary of the AUEW. After more than two hours discussion during which G maintained that he had simply made an honest mistake on his time sheets and we maintained it was deliberate falsification there was a brief adjournment so that we could consider putting forward an offer in an attempt to resolve the dispute. The meeting was reconvened and we said we were prepared to reinstate the four men who had been dismissed namely Roberts, Banner, Bisgro and Dyer and take back all the other men on strike but we were not prepared to reinstate G but that we would pay him an ex gratia payment equivalent to his redundancy pay in return for which we wanted the strike action suspended and the terms of the notice dated 14.12.76 which we had issued to all drivers regarding the completion of time sheets strictly observed in the future. This offer was refused by Mr. S an who insisted on the total reinstatement of Griffin and who also made it clear that he was not interested in following the procedure laid down in Section X of the Consolidated Crane Agreement for the avoidance of disputes unless and until Griffin was first reinstated. The meeting therefore achieved nothing and the strike of industrial action has continued from that day.

7. As a result of discussions with the Contractors Plant Association CPA to which we belong further attempts were made by them during February to get the AUEW to concur in the convening of a Central Conference but they met with no more success than we did because the AUEW continued to insist that before they would attend any Central Conference Griffin must be reinstated. We would refer the Board of Arbitrators to the letters from the AUEW to the CPA of 7.2.77 and 14.2.77 copies herewith and the letter from the AUEW to Warings Ltd. dated 2.5.77 - copy herewith. In June 1977 the CPA issued a statement setting out their version of these events - copy herewith and the AUEW issued a circular in reply dated 14.6.77 - copy herewith.

8. On 21.3.77 [illegible] made application to the Industrial Tribunal for compensation (NOT REINSTATEMENT) for unfair dismissal and on 12.4.77 we filed our reply. A date for the hearing of his application was eventually fixed for Tuesday 21.6.77 at the London Regional Office of the Industrial Tribunal but on 13.6.77 G[illegible] wrote to the Tribunal stating that he wished to withdraw his application and we were so informed. On 22.6.77 we received the official decision of the Industrial Tribunal to the effect that "the application is dismissed on withdrawal by the applicant".

9. Meanwhile following several informal meetings and discussions between the representatives of the CPA and AUEW a major meeting was convened and took place on Thursday 26.5.77 attended by our Mr. P. [illegible]n, Representatives of AUEW, CPA and Engineering Employers Federation. However no agreement could be reached because the AUEW maintained their refusal to proceed to Central Conference as provided by the Consolidated Crane Agreement unless we first reinstated G[illegible]s Which we refused to do.

10. Industrial action had escalated and threatened to become nation wide as a result of which following further discussions between ourselves the CPA and the AUEW it was agreed the situation be referred to arbitration and that ACAS be invited to act as mediators - see CPA Statement dated 17.6.77 herewith.

SUBMISSIONS:

The Consolidated Crane Agreement was concluded and signed by the CPA and AUEW on 9.7.76 (Copy enclosed herewith)

Section 111 contains 'General Conditions' and sub section 8 Page 11 relates to disciplinary procedure and the warnings which should be given both to the operatives and the Union Representatives. We maintain that our letter to G[illegible]s dated 1.12.76 and the notice of 14.12.76 constituted such warnings.

In sub-paragraph 8 (4) Page 12 relating to alleged gross misconduct it is provided that an investigation shall take place and where the decision is for summary dismissal it shall be given in writing. We maintain that the investigation carried out by us, the meeting with G[illegible]n and the Slough Shop Steward on 12.12.76 and our subsequent letter of dismissal dated 5.1.77 a copy of which was sent to L. [illegible]s - Shop Steward (Local Representative) constitute proper notice in accordance with the provisions of that sub-section.

Under 8 (vi) it is provided that an appeal may be made by the operative in accordance with the procedure for avoidance of disputes set out in Section X.

Section X Procedure for the Avoidance of Disputes provides for negotiations for settlement of disputes and maintenance of normal working during the process of such negotiations. It is stated specifically in Section X (1) that there shall be no stoppage of work or other industrial action until the provisions of the procedure laid down under Section X have been exhausted.

Paragraph 3 (d) Provides that if after negotiations between the employee and his union on the one hand and the Employer on the other hand the matter still remains unresolved then it may be referred to the Executive of the Union and the CPA and "either Body May then refer the matter to a Central Conference for settlement".

It is our contention that we were entitled in accordance with the provisions of Section 111 (8) (iv) to dismiss Griffin for gross misconduct. We further submit that nowhere in the Consolidated Crane Agreement is it stated either expressly or impliedly that the Section X procedure for the avoidance of disputes can only be invoked provided the employee concerned is reinstated. On the contrary we contend that Section X makes it clear that normal working shall continue until the procedure has been exhausted. The AUEW at all times refused and still refuse to attend a Central Conference unless and until [illegible] is reinstated.

We maintain that is a breach by the AUEW of the procedure laid down in Section X for the avoidance of disputes. The AUEW therefore prevented the Section X procedure from operating.

DATED this 11th day of July 1977

Appendix 6

Extracts from Arbitration Awards (Ad hoc Arbitration, Case Studies, Chapter Nine).

INTRODUCTION Case 9

1. By minute dated 6 July 1977, the Advisory, Conciliation & Arbitration Service (ACAS) referred for settlement by a Board of Arbitration a difference between Industrial Services [redacted] (the Company) and the Amalgamated Union of Engineering Workers (Constructional Section) (AUEW (C)). The Board consisted of ; OBE, MA, independent Chairman appointed by the ACAS, Mr ., nominated on behalf of the employers' side, and Mr , [redacted], nominated on behalf of the workpeople's side.

2. The terms of reference were:

> "To determine whether the Amalgamated Union of Engineering Workers (Constructional) or Industrial Services prevented the terms of the Consolidated Crane Agreement procedure for the avoidance of disputes from operating."

BACKGROUND

3. On 21 December 1976, a crane driver, Mr A G , was suspended on basic pay by BIS, on the grounds that he had allegedly falsified time sheets. On 5 January 1977, BIS wrote to Mr G , informing him that further investigations had indicated that he had been guilty of gross misconduct and that he was therefore dismissed.

4. Following a meeting on 10 January 1977 between representatives of BIS and the AUEW(C), other employees at the Company's Slough depot stopped work in support of a demand that Mr G should be reinstated, pending consideration of his case under the industry's procedure. Four of the strikers were subsequently dismissed on the grounds that they had broken their contract of employment with BIS. On 25 January, employees at the Company's Stockton depot joined the stoppage.

5. In subsequent discussions, AUEW(C) complained that in dealing with Mr G 's case, BIS had been in violation of procedure. The union insisted that the case must be dealt with in accordance with the provisions of the Consolidated Crane Agreement (CCA), but the parties were unable to agree arrangements for doing this and in June 1977 agreed to refer their difference to arbitration.

MAIN REPRESENTATIONS BY AUEW(C)

6. The Union maintained that in dealing with Mr G. case, BIS had not adhered to the disciplinary provisions of the CCA to which, as members of the Contractors' Plant Association (CPA), BIS were party. In particular, BIS had not given Mr G. a verbal warning of their dissatisfaction, nor had the Company notified the shop steward as required by Section III, Clause (8)(b)(i) of the CCA; there had been no verbal warning confirmed in writing in accordance with Clause (8)(b)(ii); the provisions of Clause (8)(b)(iv)(v) relating to gross misconduct cases had not been followed, as Mr Gr , had not been warned that his case was being investigated, nor had there been a fair hearing of the employee with a full-time official present. Furthermore, action had not been taken under Section X of the CCA.

7. In giving official support to the stoppage, the AUEW(C) aimed to persuade BIS to reinstate Mr G , pending resolution of his case under the CCA procedure. The AUEW(C) did not dispute that a man could be dismissed for gross misconduct, but they were concerned that such cases should be dealt with in accordance with what they regarded as good industrial relations practice, as laid down in the CCA.

8. BIS had not only failed to adhere to the procedure under the CCA. They had also failed to observe what was regarded as good practice in industry generally with regard to disciplinary cases, as laid down in the ACAS Code of Practice.

9. It was common practice in the industry for crane drivers to claim hours additional to those worked; the practice was so generally followed and so widespread that while accepting that it was a malpractice the AUEW(C) did not consider that it constituted gross misconduct.

10. BIS alleged that its crane driver employees had been notified that falsification of time sheets would merit instant dismissal. Many crane drivers had not been aware of the notice issued by the Company, as this had not been issued to employees on an individual basis, but had been posted on notice boards where it had, in one instance, been obscured by other papers. The AUEW(C) had all along made clear to BIS that if they had any complaints about time sheets or other malpractices they should raise the matter with the Union, but the Company had never done this.

11. In dismissing Mr C[illegible], BIS had not made him aware of his rights of appeal against dismissal under CCA procedure.

MAIN REPRESENTATIONS BY BIS

12. The Company contended that Mr G[illegible]s offence constituted gross misconduct and that BIS had followed CCA procedure for handling such cases, in which the procedure provided for an appeal to be made on behalf of the employee to Central Conference. BIS were quite prepared to go to Central Conference, but AUEW(C) had refused to do so unless Mr Griffin was first reinstated.

13. The AUEW(C) had contended that the practice of claiming for time not worked was so widespread in the industry that it should not be classified as gross misconduct, but BIS could not share this view. In fact, a notice had been issued on 14 December 1976 warning all crane drivers that they would be instantly dismissed if they were found to have falsified their time sheets.

14. Mr G[illegible] had thus, in common with all the other crane drivers, been given a general warning; he had been interviewed regarding his offence in the presence of a shop steward on 21 December; he had been told in writing on 5 January of the reason for his dismissal. Thus, the Company contended, they had done everything required of them under the CCA in relation to cases of gross misconduct.

15. As to the AUEW(C) contention that BIS should have made Mr Griffin aware of his right of appeal, his contract of service made clear that he was employed in accordance with the provisions of the CCA; furthermore, the Company had written separately to him on 5 January notifying him of his right of appeal.

AWARD

16. It was clear from our terms of reference and from the statements made at the hearing that both the Employer and the Union regarded the Consolidated Crane Agreement of July 1976 as the basis of their relationship and considered themselves bound by its provisions, at least from November 1976, when the firm applied for membership of the Contractors' Plant Association. In particular they accepted the rules embodied in Section III (8) Disciplinary Procedure and Section X (1)-(4) Procedure for the Avoidance of Disputes.

17. We find, however, that the Employer:

(i) - did not take adequate steps to inform all his employees of the Agreement and its provisions in relation to their Contract of Employment;

(ii) did not follow the Disciplinary Procedure laid down in the Agreement as carefully as he should have done, especially with regard to giving adequate warning to an employee whose behaviour was considered to be unsatisfactory and informing him of his right of appeal;

(iii) in particular, did not give Mr Griffin a fair hearing as required by Section III (8)(b)(iv) of the Agreement.

18. At the same time we find that the Employer had the right to dismiss Mr G. r after first suspending him for alleged gross misconduct.

19. We find that the Union, for their part,

(i) resorted to strike action too early and too precipitately, and long before the Procedure for the Avoidance of Disputes had been exhausted;

(ii) did not adequately assist Griffin to appeal against his dismissal;

(iii) insisted on his re-instatement, which they had no right to do, before participating in any discussions or negotiations for the solution of the dispute.

20. Our conclusion is that both the Employer and the Union were responsible for actions which prevented the procedures from operating, and for violating the Agreement, in letter or in spirit.

RECOMMENDATIONS

21. Our terms of reference related to the responsibility for violating the Consolidated Crane Agreement, and we have found that both parties must bear some responsibility. It is not justifiable, however, for either side to refuse

to negotiate for a solution of the dispute on the ground that the other side has violated the Agreement. Nor is it reasonable for either side to lay down conditions, such as that the strike must be ended or that G must be re-instated, before it will even meet the other side and consider possible solutions to the dispute. We have been acutely conscious throughout this hearing, that the urgent need is not to apportion blame for what has been done and not done in the past but to resolve the dispute and take steps to re-establish good relations in the future. To this end we strongly urge that the following action should be taken:

(a) by the Company:

(i) to suspend G on full pay (that is, average earnings for the four weeks before he was dismissed) from the date of this award until his case is settled; and to re-instate the four other workers who have been dismissed;

(ii) to ensure that in future important letters to employees are sent by recorded delivery post; that copies of such letters are handed to the local representative of the Union; that important notices to staff are issued to them individually with their pay slips and that all notices are posted on notice boards fixed in appropriate places;

(iii) to send copies of this Report and Award to all employees and to officers of the Contractors' Plant Association.

(b) by the Union:

(i) to call off the strike immediately;

(ii) to send copies of this Report and Award to all trade union members, shop stewards and union officials concerned.

(c) by the Company and the Union:

(i) to have the alleged gross misconduct of G investigated, as a matter of urgency, either by a Central Conference (section X(4) of the Agreement), or by the Advisory, Conciliation and Arbitration Service, or by an independent body; in order that the case may be settled one way or the other;

(ii) to summon a Central Conference, as soon as G ,r ; case has been settled, to discuss matters on which there is dispute, and to try to resolve them in a spirit of give and take;

(iii) to re-affirm acceptance of the Consolidated Crane Agreement, and to undertake to follow its provisions in letter and in spirit.

Signed] : (Chairman)

INTRODUCTION Case 4

1. By minute dated 18 February 1977, the Advisory, Conciliation and Arbitration Service (ACAS) referred for settlement by a Board of Arbitration a difference between [redacted] Bakery (the Company) and the [redacted] Union (URTU) The Board consisted of [redacted], independent Chairman appointed by the ACAS, Mr [redacted], nominated on behalf of the employers' side and Mr [redacted], nominated on behalf of the workpeople's side.

2. The terms of reference were:

"to determine whether, in all the circumstances, [redacted], Nottingham, are justified in adjusting Van Salesmen's commission to take account of the increase in bread prices since the introduction of the two third one third commission scheme in October 1974".

BACKGROUND

3. The Company, a wholly-owned subsidiary of [redacted] Limited, employs 67 van salesmen to deliver its products to grocers' shops, to supermarket and to other sales outlets.

4. Before October 1974, the Salesmen were paid commission on sales achieved above a certain level, known as the datum figure. The datum figure was determined by the circumstances of a particular round, so as to take account of factors such as the number of calls involved, the mileage covered and the number of hours worked.

5. This commission scheme had been evolved before the URTU had become responsible for negotiations on behalf of the salesmen. Subsequently, following their assumption of that responsibility, the union had negotiated a fresh commissi scheme with the Company. This scheme, introduced in October 1974, had been similar to schemes in operation in other companies within the [redacted] Group and had provided for the payment of commission on one-third of the sales of the individual salesman.

6. When the price of bread had been increased on 22 February 1975, the Company had applied a "regulator" to adjust the amount of commission payable, with the aim of ensuring that salesmen did not benefit from the increase in price, with no concommitant increase in productivity. The Company took similar action in respect of subsequent increases in bread prices, but in August 1976 the salesmen refused to accept the further application of the regulator, on the grounds that it was causing them to lose commission.

7. A sub-committee composed of three representatives from the Company and three from the union was set up to look into the matter and recommended the use of a percentage regulator rather than a monetary one, but the salesmen rejected this suggestion. The Company nevertheless implemented the sub-committee's recommendation, not only in respect of the August 1976 bread price increase, but also in relation to three subsequent increases, while the issue was being dealt with in procedure. However, as no agreement was reached, the issue was referred to the ACAS for arbitration.

MAIN SUBMISSIONS BY THE UNION

8. Although the scheme which had been in operation prior to October 1974 had contained provision for salesmen to raise grievances about its operation, when the union had become responsible for negotiations, they had found that on some rounds the datum figure operated unfairly against the roundsman concerned. There had in fact been widespread dissatisfaction with the datum figure aspect of the scheme, the salesmen being particularly critical of the scope that this afforded management for bringing an individual salesman's earnings into line with that of his fellows, by enabling the Company to adjust the datum figure if they considered that a man's earnings were too high. It was this widespread dissatisfaction that had led the URTU to seek to negotiate a fresh scheme. In the union's view, it was fully understandable that the salesmen should dislike the concept of a "regulator", which they saw not only as being similar to the datum figure in its effects, by giving the employer the opportunity to exercise undue control over their commission earnings, and hence restoring the anoma removed in October 1974, but also as destroying the principles of the two-third, one-third scheme.

9. The basic concept of that scheme had been that the datum figure was self-adjusting. During negotiations on the scheme, the Company had stated that they reserved the right to make adjustments to it should the price of bread be increased, but the union had not agreed to the use of a regulator.

10. The earnings of some salesmen had fallen when the new scheme had been introduced, but they had accepted this on the understanding that the majority of their colleagues would benefit. The union contended that the application of the regulator had reduced the sums qualifying for the top band of commission and had thus had considerable effect on the pay of salesmen who were, in some cases, the same men who had suffered a drop in earnings in 1974. Typically, commission on one round had fallen by £3 between December 1976 and March 1977.

11. When the union representatives had approached the Company, the management had conceded that the use of the regulator had a detrimental effect on the salesmen's commission earnings. This view had been substantiated by the joint working party, the union members of which had insisted that any arrangement for adjusting commission earnings should operate more fairly. The result had been a somewhat complicated formula based on a percentage regulator. This formula had not been acceptable to the union members, but had been applied as an interim arrangement while negotiations continued.

12. The URTU considered that one of the main criteria for the successful operation of a payment by results scheme was that it must be simple. This was not the case with the regulator system which was not understood by a large number of the salesmen. Another essential for a commission scheme was that it should generate a reasonable proportion of the gross earnings of participants Since 1974, however, the proportion of earnings from payment by results had fallen in relation to basic pay.

MAIN SUBMISSIONS BY THE COMPANY

13. The Company recalled that the initiative for changing the commission scher had come from the union. In agreeing to negotiate a fresh scheme, the Company had made clear that whatever scheme was introduced, they would continue to make adjustments to nullify the effect of any increases in bread prices. This was in line with the common practice in Companies where bread salesmen were paid commission on cash sales. The findings of the Board of Arbitration would thus be of immense importance for the baking industry. There was no justificati for the union's assumption that there would be increases in commission under th two-thirds, one-third scheme.

14. So far as the regulator was concerned, the Company accepted that the formula was complicated, but it was necessary under the circumstances and the joint working party had been unable to devise a less complex arrangement. Schemes such as that introduced in October 1974 needed fine tuning but the Company did not accept that they had over-adjusted to compensate for bread price increases. They could not accept the salesmen's view that no adjustment should be made when bread prices were raised.

15. The union had claimed that commission earnings had deteriorated in relation to the basic rate between 1974 and 1977, but the salesmen received an average weekly increase in commission of £1:49 on the introduction of the new scheme and commission which had been at an average of £17:17 in May 1974 had averaged £21:45 for week ending 5 February 1977, £19:84 for week ending 12th February, £20:06 for week ending 19 February and £21:80 for week ending 26 February 1977.

16. It was not true that the management could manipulate the regulator to restrict earnings, as asserted by the URTU. The regulator now in use derived from an agreement within the joint working party and its principles of operation flowed from that agreement.

17. The Company recalled that the salesmen had operated the revised commission scheme for almost two years before the question of adjustments had been raised as an issue. It was true that there had been a technical difficulty as to how adjustments should be made but this had been overcome by the joint sub-committee.

AWARD

18. We are aware that a commission scheme such as that operated by Turner and Son has to attempt to achieve a number of objectives. One of these is the maintainance of the real value of the incentive elements in the scheme. Another objective is that changes in bread prices should not result in windfall gains or losses to van salesmen. These and other aims have to be balanced against each other and presumably were taken into account by the joint working party.

The issue on which we have to decide is a narrower one and is limited by our terms of reference. On that issue, and after careful consideration of the evidence, we have come to the conclusion that in all the circumstances we were justified in adjusting van salesmen's commission to take account of increases in bread prices since the introduction of the two-thirds, one-third commission scheme.

[Signed]

March 1977

Appendix 7

Table 18 Total Numbers of c.p.a. Units, in each Arbitration Hearing Transcript, and their Points of Division into Three Phases

Case	Total No. of Units	No. of Units in Phase 1	No. of Units in Phase 2	No. of Units in Phase 3
1	1920	488	716	716
2	1363	510	426	427
3	1668	694	487	487
4	1842	683	579	580
5	1325	569	378	378
6	2811	1026	892	893
7	2275	766	754	755
8	1146	278	434	434
9	1162	532	315	315
10	2281	973	654	654
11	2814	1498	658	658
12	2989	1483	753	753