In summary, the benefits of expedited arbitration often turn out to be liabilities as well. In our case, a process designed to handle cases rapidly and to reduce the large volume has had to deal, during each successive contract year, with an increase in the number of appeals to arbitration, thus defeating its intended purpose. Under this system, some union as well as management representatives have chosen to avoid making decisions at the first, second, or third step of the grievance procedure and to allow the arbitrator to resolve the dispute.

The actual lower cost per case in expedited arbitration is far offset by the expense involved in processing a greatly increased number of cases. Also, this increased volume has necessitated the use, in some instances, of unsophisticated arbitrators and advocates as well as additional hearings which, in turn, have led to awards that have little value or consistency in guiding the parties. The end result of a supposedly quick and inexpensive method of hearing a large volume of appeals has been to create a system that, in reality, feeds upon itself, encouraging the parties to become increasingly more reliant upon an arbitrator's decision rather than upon each other in resolving grievances arising under their collective bargaining agreement.

IV. U.S. POSTAL SERVICE—A UNION PERSPECTIVE

WILLIAM BURRUS*

Expedited arbitration, like law, is a response to the felt needs of our time. There are some who contend that the expedited arbitration process represents not a new development, but a return to the original concept of arbitration—a process that is informal, inexpensive, and speedy. Whichever of these two views is correct, it seems clear that the advent of the expedited process was caused by the extensive use of the full panoply of transcripts, briefs, participation by lawyers on both sides, and emphasis on legalism and court-like hearings. At least in large industries, such as steel and the Postal Service, heavy grievance caseloads triggered the introduction of expedited arbitration.

Steel was the pioneer among large enterprises in instituting expedited arbitration as a method of resolving certain types of

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grievances. Expedited arbitration began as an experiment in that industry in August 1971 and was ultimately adopted on a permanent basis. The postal unions and the Postal Service followed, adopting expedited arbitration on an experimental basis in the 1973 national agreement. Here, too, it ultimately became a permanent feature of the parties' agreement.

The postal arbitration system was modeled upon and was similar to that used in the steel industry in most respects. The cases that go to expedited arbitration are confined by the contract to disciplinary cases of 14-days' suspension or less which do not involve any interpretation of the agreement and to such other cases as the parties may mutually determine. Even though the contract provides for utilization of the Federal Mediation and Conciliation Service or the American Arbitration Association, the parties have mutually agreed upon a joint procedure for administering expedited arbitration schedules. Under this system, the parties prepare a joint letter which is forwarded each quarter to arbitrators on the expedited panel, requesting that they respond with their available dates.

The Postal Service computer system is used to schedule cases on a first in–first out basis, and cases are assigned in sequential order to arbitrators' available dates. Sufficient numbers of back-up cases are included in the scheduling to insure against open dates resulting from prearbitration withdrawals and settlements. The parties then agree to the time and place of the scheduled hearings. Hearings are informal, there are no transcripts, no briefs are to be filed, no formal rules of evidence are applied, and the hearing normally must be completed within one day. Arbitrators are authorized to issue a bench decision, but they rarely do. They are required to render a decision within 48 hours after conclusion of the hearing, and ordinarily they prepare a brief written explanation of the basis for their decision. No decision in an expedited case may be cited as precedent.

A case may be referred from expedited arbitration to the regional arbitration panel in three situations: (1) prior to the hearing if either party concludes that the issues involved are of such complexity or significance as to warrant reference to the regular panel (in such case the party so claiming must notify the other party at least 24 hours prior to the scheduled time for the expedited arbitration); (2) at the hearing by the arbitrator if he or she believes the issues are of sufficient complexity or signifi-

cance to warrant reference to the regular panel; or (3) if the parties mutually agree that the complexity or significance of the case warrants such reference.

The American Postal Workers Union and the National Association of Letter Carriers are parties to the national agreement and between them they represent about 500,000 postal employees employed in some 30,000 post offices dispersed over the 50 states as well as in Guam, Puerto Rico, and the Virgin Islands. It is not surprising therefore that over the period of the current contract there will be perhaps 4000–5000 minor discipline cases that will be appealed to arbitration. Not all of these cases will actually go to a hearing and to an arbitrator's award. However, at this time it may be anticipated that approximately 6000 cases will have gone all the way to an award over the life of this contract. The size of this caseload obviously speaks on behalf of an expedited arbitration procedure.

Originally the Postal Service and the unions established rosters of experienced arbitrators to hear expedited cases. Although these arbitrators are paid less than their normal daily fee and may hear as many as three cases a hearing day, the parties encountered little difficulty in staffing the panels. Today there are five panels established on a geographical basis and comprising, at the current writing, a total of 164 arbitrators. These panels have served as a training ground for later promotion, and a substantial number of the 53 arbitrators currently serving on regular panels in APWU cases were elevated to regular panels after serving on an expedited panel.

Under the national agreement, arbitrators have tenure on all postal panels for the life of the agreement plus six months unless the parties otherwise agree. Rarely has an arbitrator been removed from any panel. Of course, when the time comes to select arbitrators for the next contract, the selection process is somewhat more painful, but the parties have never had to call upon either of the appointing agencies for assistance.

On balance, the expedited process has worked out quite well in the Postal Service. It has achieved a high degree of acceptability, and it has undoubtedly reduced the cost of arbitration. Regular arbitration normally involves one case per day of hearing, while expedited arbitration cases may be heard at the rate of three per hearing day. The brief capsulized statements of reasons usually are adequate to explain the essential basis for the arbitrator's decision.

The process has worked sufficiently well so that the range of

issues submitted to expedited arbitration has not infrequently gone beyond minor disciplinary cases. On a number of occasions the parties have sought to reduce grievance hearing caseloads by a kind of crash program. Cases involving a broad range of issues—interpretation of the contract, factual disputes as to higher level pay, timeliness of grievance filing, and the like—have been submitted to expedited arbitration. During the course of the 1981 (the current) national agreement, by mutual agreement the parties have expanded the use of expedited arbitration to disputes which center to a large degree on conflicts as to factual circumstances. Disputes involving such issues as restricted sick leave, withholding of step increases, and denials of employee requests for leave have been referred to expedited arbitration.

When, in 1981, the parties found a backlog of 19,000 cases in the system (4000 of them expedited cases), they agreed to a mini-expedited process to handle them. Under the agreement each party was required to prepare a written statement of the facts and its contentions in the case and to present the statement to the arbitrator and to the other party. Only issues and documents contained in the case file could be presented in the arbitration, and witnesses were allowed only when there were issues of credibility.

Each party independently reviewed the cases to determine which ones would be processed under this mini-expedited system. The result was that, under this system, approximately 17,000 cases were removed from the system through hearings, settlements, or the prearb process. With this assist from the mini process, current cases are now being heard with an average time lapse of six months from the date of certification. The time lapse for expedited cases is three months. Such referrals to the expedited process demonstrate the parties' increasing confidence in the system and their judgment that, in particular circumstances, the rapid resolution of a dispute may well contribute more to good labor-management relations than does a long-delayed, full-dress hearing with an award accompanied by lengthy opinions.

Under the expedited system, an award is rendered in an average of five days. For cases heard in the regular arbitration system, the time lapse has been about 68 days. The average cost of a regular arbitration case is about $850 as contrasted with about $350 for an expedited case.

You are no doubt aware of the recent Supreme Court decision

in *Bowen* v. *United States Postal Service*[1] in which the American Postal Workers Union was held primarily liable for damages in a breach of the duty of fair representation case. The question is presented whether the streamlined type of hearing and procedure in expedited arbitration runs afoul of the duty of fair representation. There is no sound reason to think that it does. All parties are provided a full opportunity to be heard. Mere expedition in the issuance of awards is not incompatible with the careful consideration of the evidence and arguments. Despite the recent tendency of some courts to give an unduly expansive application of the criteria of unfair representation laid down by the Court in *Vaca* v. *Sipes*,[2] expedited arbitration affords employees very fair representation indeed. Speedy justice is surely an achievement the courts should envy.

The expedited process has made a real contribution to the Postal Service and the unions which represent the employees. The sheer size of the Postal Service and the large numbers of grievances and complaints from over 500,000 employees, coupled with decisions made by 29,000 postal managers, does tax the grievance-arbitration system. The successful and efficient functioning of the three-track system in the Postal Service—national, regular, and expedited—depends upon the efficiency of each of the tracks, and the expedited process has made a real contribution toward that end.

Nevertheless, speaking generally, we do have some real problems that require new steps for their resolution. One such problem arises from the absence of an impartial chairman system. Unfortunately, on a number of occasions, different national or regional arbitrators have reached different conclusions with regard to identical issues. Thus, one party or the other tends, from time to time, to seek a second bite of the apple in arguing issues previously resolved by another national or regional arbitrator.

To retain the confidence of the more than 500,000 workers in the Postal Service's system of industrial justice, each component of the arbitration process must work in concert with the others. While the Postal Service's expedited system works as well as one could reasonably expect, the functions of the other panels must be redesigned to provide finality for specific disputes.

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[1]U.S. Supreme Court No. 81-525 (January 11, 1983), 112 LRRM 2281.
[2]386 U.S. 171, 64 LRRM 2369 (1967).