CHAPTER 4

INNOCENT UNTIL PROVEN GUILTY

I. THE UNION VIEW

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Over the years the United Steelworkers of America has championed worker dignity and fair treatment on the job. One of our main objectives in this area was to achieve a strong justice and dignity provision—one that would establish procedures in discipline cases more in accord with basic notions of justice as recognized in our democratic society, wherein the accused is presumed innocent until proven guilty. Aside from the principle involved, there were obvious practical reasons why the Steelworkers persisted in securing justice and dignity.

Many disciplined employees suffer greatly and unjustly from loss of earnings as well as family upheaval and social stigma while their grievances are wending their way through the grievance procedure and are finally litigated. Let me give you an example—a case in which I was involved—which dramatizes these hardships.

Approximately 15 years ago, in a plant the Steelworkers represents on the West Coast, a young black employee was experiencing some problems with the Black Panther group. The alleged leader of the Panther group in the plant, who had a record of absenteeism, happened to be absent on the same day the young black also was absent. The company suspended both individuals with intent to discharge.

I presented the case of the alleged Black Panther leader before Sandy Porter and the grievance was denied. The grievant had also been the subject of an earlier arbitration case, approximately a year earlier, heard by Arbitrator Ralph Seward who set aside the discharge and returned the grievant to work with full

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back pay. During the intervening year, the grievant had a very poor attendance record, and the second discharge was understandably upheld.

The circumstances involved in the case of the young black, who was discharged the same day as the alleged leader of the Black Panther group, were quite different. The company told me that on one occasion he had addressed a group of employees who were threatening to burn the plant down and persuaded them to return to work. The young man's wife was raped and developed a serious nervous problem, and it frequently became necessary for him to be absent from work because of her condition. When the young man's case was finally heard and decided, he was put back to work with all lost earnings restored. However, during the time it took the parties to get to arbitration and receive a decision, the young man had lost his car, his home, and his family due to a divorce. The ironic thing about this situation is that, although the grievance was sustained and the grievant was put back to work with full pay, he was unable to get his car back, he could not get his home back, and, according to the last report I received, he was unable to get his family back together.

This is the kind of problem that motivated the union to persist in seeking justice and dignity provisions in our labor agreements.

In pursuit of this goal, the 1977 negotiations with the can industry led to tentative agreement by a joint subcommittee on a justice and dignity clause. However, the justice and dignity provision was not included in the can agreement that year because the chairman of the union negotiating committee had some reservations concerning the safety of employees and plant equipment, and the time frame for negotiations was not adequate to resolve those problems.

These hang-ups were resolved in the 1980 negotiations in the can industry, and a strong justice and dignity provision was finally agreed to and incorporated in the 1980 can agreements. I will state those provisions a little later.

To date, in addition to the can industry, we have negotiated justice and dignity clauses with Kaiser Steel, Colorado Fuel and Iron, Continental Fibre Drum, the steel industry, and Kennecott Mineral Company (the only agreement consummated in the copper industry thus far).

The agreements vary somewhat. The first two negotiated—Kaiser Steel and Colorado Fuel and Iron—provide for the retention in employment of a disciplined employee until his grievance is answered in the third step. The can industry, Continental Fibre Drum, the steel industry, and the Kennecott Mineral Company clauses prohibit the company from removing an employee from active work pending the final resolution of any grievance challenging his discharge or suspension. Until the grievance is settled or decided by an arbitrator, an employee will remain on the payroll unless his conduct presents an immediate danger to fellow employees or plant equipment due to fighting, theft, or concerted refusal to perform assigned work. A special feature applies the protection of this provision to an employee who the company claims has quit or otherwise suffered a break in service and who challenges the company's contention through the grievance and arbitration procedure.

Negotiations

Some arbitrators and some company representatives have asked me why the justice and dignity clause was written in its present form. Some people said it was unclear and unworkable. Those of you who may never have participated in the negotiations of a labor agreement may not realize that very often there are time restrictions and other stress inducements which do not always permit the time or opportunity to reach agreement on language that will cover every possible eventuality.

We were told about 6 or 6:30 A.M., during a bargaining session that began at 10 or 10:30 P.M., that we had until 8 A.M. to negotiate a justice and dignity clause. A membership ratification meeting was scheduled for 10 A.M., and before that meeting the agreements had to be consummated, summaries had to be written, and approximately 200 copies of the settlement summary had to be reproduced for the staff representatives and the local union presidents. Needless to say, it would be difficult for an individual to draft the clause, but drafting the language was only half the problem—probably the easier part. The big problem was getting the company representatives to agree. However, we were able to draft a clause and get the agreement. I believe the ratification meeting was postponed and rescheduled for several hours later.

The justice and dignity provision agreed to between the can industry and the United Steelworkers of America reads as follows:

> "An employee whom the company suspends or discharges or whom it contends has lost his/her seniority under Section 12.5(a)(b)(c)(d) and (e) shall be retained at or returned to active work until any grievance contesting such suspension, discharge or break in service question is finally resolved through the grievance and arbitration procedure.
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> "However, the employee may be removed from active work (without pay) until the resolution of the grievance protesting the suspension or discharge if his alleged cause for suspension, discharge or termination presents a danger to the safety of employees or equipment in the plant due to fighting, theft, concerted refusal to perform their assigned work.
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> "Grievances involving employees who are retained at work under this provision will be handled in the expedited arbitration procedure unless the union staff representative and the division manager of human resources mutually agree otherwise. If the arbitrator upholds the suspension or discharge or break in service under Article XII, Section 12.5 of an employee retained at work, the penalty shall be instituted after receipt of the arbitration decision.
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> "The above references to suspensions, discharges and terminations are examples and are not intended to be all-inclusive but indicate how various types of issues will be handled."

Has Justice and Dignity Increased Arbitration?

Another question I have been asked several times is whether the justice and dignity provision in the contract has resulted in an increase in the number of grievances that are filed and the number of cases that are appealed to arbitration.

The Arbitration Department has audited very closely the grievances which have been filed in the can industry and also the justice and dignity grievances that have been appealed to regular arbitration. To date, I have not noticed a significant increase in the number of cases filed or arbitrated in the regular arbitration procedures.

The can industry justice and dignity clause provides that grievances filed for individuals who are retained at work, if processed to arbitration, will be handled in expedited arbitration, unless the union staff representative and the division manager of human resources mutually agree otherwise. We currently have approximately 96 expedited panels in operation in the United States and Canada, and we have not attempted to review

all of these cases to determine the number of justice and dignity cases processed in this procedure. But I do not believe that the justice and dignity program has contributed to any significant increase in expedited arbitration cases.

I have statistics for two of the can companies that have master agreements containing justice and dignity clauses. These might be of interest to you.

Crown Cork & Seal Company, Inc.: (a) the number of discharges in the year preceding adoption of the new language—13 in 1980; (b) the number of discharges in the first and second years following the application of the agreed-to language—9 in 1981 and 8 in 1982; (c) the number of discharged employees reinstated prior to arbitration in lower steps of the grievance procedure—3 in 1981 and 3 in 1982 in either Step 2 or 3 (specific information not available); and (d) the number of discharge cases which culminated in arbitration for the two-year period set forth in (b) above—2 in 1981 (not reinstated) and 3 in 1982 (in procedure). Four cases were withdrawn in the grievance procedure in 1981 and 2 in 1982.

American Can Company: (a) the number of discharges in the year preceding adoption of the new language—17 in 1980; (b) the number of discharges in the first and second years following the application of the agreed-to language—17 in 1981 and 11 in 1982, for a total of 28; (c) the number of discharged employees reinstated prior to arbitration in lower steps of the grievance procedure—5 in second step, 3 in third step, 1 prior to regular arbitration, 1 prior to expedited arbitration, and 1 at arbitration, for a total of 11; (d) the number of discharge cases which culminated in arbitration for the two-year period as set forth in (b) above—5 in 1981 (not reinstated) and 7 in 1982 (in procedure). Four cases were withdrawn in the grievance procedure in 1981 and 2 in 1982.

Justice and Dignity Cases

Several very interesting cases have occurred since the justice and dignity provision was negotiated. I believe a couple are worth discussing briefly to give you a feel for how the procedure functions.

Case LC-28 involved the National Can Corporation. Lou Crane is the permanent arbitrator for National Can and the United Steelworkers of America. This case arose out of the

three-month suspension of Robert Glaziner; there were two questions: (1) whether the company had just cause to suspend him for three months; and (2) whether he should have been allowed to remain at work under the justice and dignity provisions in Article XVI, Section 9, of the master agreement pending the resolution of his grievance protesting the company's action.

Glaziner was a down-the-line set-up and serviceman at the company's two-piece can plant. At about 1 A.M. on November 5, some cups were hung up in the overhead trackwork. Glaziner got a water hose and shot water "up there" to wash oil off the line so the cups would roll. Water thereafter splashed down onto an overhead duct containing buss bars that conduct 440 volts of electricity. This caused a short circuit, and fuses blew and sparks flew. As a result, Line 2 went down immediately. Then a few minutes later other equipment in the plant stopped because the air compressor had stopped operating. The plant manager testified that there was a total power failure that lasted for about three hours.

Glaziner was suspended for six days, pending a determination by the company, for violating Plant Rule #6, which deals with negligence or carelessness, and for violating Plant Rule #17, which deals with failure to comply with plant safety rules or general industrial safety orders of the State of California. The six-day suspension was converted into a discharge, but the discharge was subsequently reduced to a three-month suspension that was the subject of this case.

Glaziner claimed, notwithstanding, that "everybody" on the graveyard shift used a water hose to clear jams, and that "a lot of times" the foreman would tie a hose to an elevator "or whatever" and "run" the water up themselves. Mr. Crane stated that "all in all" Glaziner's testimony was less than impressive.

The company contended that because Glaziner's offense constituted a danger to employees and equipment in the plant, it was justified in not allowing him to remain at work under the justice and dignity provision.

A company witness, Mr. Krueger, testified that he felt Glaziner had learned a lesson from the November 5 incident and he didn't consider Glaziner a danger to the employees or equipment in the plant when he allowed him to work for the balance of his shift on November 5 and to return to work on November 7, after Glaziner's scheduled days off.

Arbitrator Lou Crane found that Krueger's willingness to

allow Glaziner to return to work on November 7 was especially significant because he had two days to think about the matter before he did so. Mr. Crane also found that there likewise was no basis for him to assume that Glaziner would repeat what he did the morning of November 5 if he had been permitted to remain at work under the justice and dignity provisions. He held, therefore, that the company should have permitted him to remain at work pending resolution of his grievance.

In another interesting case, the company's action in refusing to retain an employee at work during the period of his six-day suspension was upheld by the arbitrator. The grievant had been charged with insubordination, leaving his workplace without permission, and producing excessive scrap. The arbitrator determined that the latter two offenses involved no element of "danger to the safety of employees or equipment in the plant" which would exclude the grievant from coverage under the justice and dignity clause, but the conduct underlying the charge of insubordination was such as to justify the company in concluding that there was a danger to the safety of employees in the plant. (The grievant had gone to the first aid room, insisting that he wanted to see the plant industrial relations manager, whose office was about 25 feet away. He had cursed the nurse and other individuals, had thrashed around while claiming that he was stiffening up and couldn't move, and had even suggested that he be sent to a mental institution and talked about shooting himself to get attention. All of this frightened and upset the plant nurse and convinced the arbitrator that the grievant's conduct had presented a danger to the safety of employees.)

However, in a later companion case involving the same fact situation, in which the union sought to set aside the grievant's six-day suspension and the discharge to which it was subsequently converted, the same arbitrator found that a six-day suspension was too severe and modified it to a three-day suspension. The grievant had failed to file a separate grievance to contest the conversion of his six-day suspension into a discharge, as required by the contract. Ironically, however, the arbitrator ruled that any question concerning grievant's failure to file a separate grievance protesting the conversion of his six-day suspension pending a determination by the company was moot because there no longer was such a suspension which could be converted under the contract. In other words, there was no provision for converting a three-day suspension into a discharge.

Therefore, the grievant was reinstated with all the pay lost, except for the three-day suspension.

As you can see, justice and dignity is subject to many strange twists, especially during the transition period during which the bugs are being worked out in arbitration.

Conclusion

To conclude, I will discuss the basic steel industry clause briefly. A justice and dignity clause was agreed to on an experimental basis in the recently negotiated basic steel agreements. One interesting aspect of the steel provision is that the parties agreed that the justice and dignity provision would be installed by option of the local union at plants presently or hereafter covered by the Labor Management Participation Team (LMPT) program. By August 1, 1985, subject to the right of individual locals to opt out, the justice and dignity procedure shall be installed at one-third of all steel-producing plants of each company.

I believe that this is a very significant development. As we see more quality circle, LMPT, or productivity committees in plants, there is a strong possibility that a justice and dignity clause will be negotiated as a companion provision. For the people who are saying that the time has arrived for labor and management to work together more closely, justice and dignity provisions may be another big step in that direction.

The securing of justice and dignity clauses in our agreements was part of President McBride's election platform, and he has given great support to the chairmen of various negotiating committees in their pursuit of such clauses.

II. THE MANAGEMENT VIEW

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More than 30 years ago, Continental established a master agreement bargaining arrangement with the United Steelworkers of America (USWA) during a period of dramatic growth. This relationship was mutually beneficial to the Steelworkers

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