CHAPTER 6

BY LAND AND BY AIR: TWO MODELS OF EXPEDITED GRIEVANCE RESOLUTION

I. A PERSPECTIVE ON THE CANADIAN RAILWAY OFFICE OF ARBITRATION

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Introduction

Any discussion of the Canadian Railway Office of Arbitration (CROA) would be incomplete without some background on Canadian National (CN). CN is Canada's largest and North America's sixth largest freight railroad, based on 1996 revenues of $4.2 billion. It serves all of Canada, including the key ports of Vancouver, Montreal, and Halifax, as well as Chicago and Detroit, with connections to all points in North America.

CN, including its American subsidiary Grand Trunk Western Railroad, has about 23,000 employees, 80 percent of whom are unionized. Its labour relations staff, when compared with that of American Class 1 roads on an equal footing basis, is about 25 percent smaller. We deal with seven unions, five of which are international unions and two that are strictly Canadian unions. Union division is generally along craft lines. We, like other labour relations professionals, are continuously looking for areas to reduce costs and administrative burdens and to complement, if not improve, labour-management relations. We believe the CROA is one very good example that achieves these goals. Until November of 1995, when we were privatized with an initial share price of $27.50, we were a Government Crown Corporation. That price, as of the date of this writing, has essentially doubled.

The CROA was established on January 7, 1965, to handle arbitration between the majority of Canadian railway companies and their railway unions. It has a permanent office of arbitration located in Montreal, with a full-time secretary and an arbitrator who is

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retained on a one-year contract. CN has had the vast majority of its arbitration cases heard at CROA for the last 32 years. The system has a number of features that meet the industry's needs, including user-friendliness, brevity, cost efficiencies, flexibility, and education. Each will be examined in this brief treatise.

User-Friendly

From a company perspective, the biggest challenge faced in arbitration is getting the referee to understand the details and implications of the dispute docketed. It is no small chore, given the complex world of railroading and often complex collective agreements. These agreements range in size from 30 to 40 pages to hundreds of pages. A single work rule, in industry terms, could be worth anywhere from a few dollars to several million dollars. Thus, it is of significant advantage to both parties to use a single permanent arbitrator at the CROA.

The use of a permanent arbitrator has one very significant and perhaps obvious benefit. From a very practical standpoint, and for the purpose of being user-friendly, neither side needs to spend considerable time and effort bringing the arbitrator "up to speed" on the background and details of the bargaining relationship, the collective agreement provisions, or practices on the shop floor. These items can be dealt with in short order, often verbally between the parties and most often without any disagreement between company and union officers. The parties have a permanent arbitrator who is well-versed with respect to railway practices and collective agreement administration, and, at the same time, brings a well-rounded knowledge and application of similar issues outside the industry. Accordingly, the unions and company get the best of both worlds.

This leads to not only very consistent awards, but also to a growing body of jurisprudence for use by all participants. As time has progressed, at least from CN's perspective, this body of jurisprudence has allowed many minor issues to be disposed of early in the grievance procedure. We have lost, and as my friend Abe Rosner will likely say, deserved to lose, cases that in the end have been very expensive. At the same time, we have gone back and done a postaudit to determine whether we could have taken a different tack or strategy in approaching the issue. Frankly, there has not been a case in which we felt a different result was achievable. The bottom line is we took a "bad" case and received in turn "bad" case

law. In other words, the use of a permanent arbitrator, as compared with an ad hoc arbitrator, does not alter the quality or direction of the final decision. In terms of wins and losses, our record has been fairly consistent over the years. We are satisfied overall with our success rate.

Brevity

The hearing procedures governing the CROA are critical to its success. They require that parties generally submit a written joint statement of issue one month in advance of a hearing. This governs and controls the issue under dispute. It also defines the arbitrator's jurisdiction. If the parties cannot agree, it is usually because one party or the other is trying to slant the issue statement in an inappropriate manner; each party has the option of submitting its own statement of issue. Even so, the vast majority of cases do have a joint statement of issue signed.

Written briefs are fundamental to the expeditious handling of the disputes. It forces both parties to state their arguments clearly in a brief format, which seldom exceeds 10–20 pages for the usual case. We find that for most disputes, other than very significant or complex disputes, anything beyond 20 pages simply leads to repetitious arguments and, quite frankly, often provides an opportunity for the opposing party to provide an alternate argument, which may not have been considered. The unwritten rule of brief development is to remain very focused on the issue being argued.

Let's look at the hearing procedure itself. The parties, with some minor exceptions, and under the direction and control of the arbitrator, attempt to handle the disputes in a nonconfrontational atmosphere. Theatrics are limited on both sides. If witnesses are used, the process allows for an atmosphere that, while not at all informal, does not take on the semblance or the intimidation of a full court hearing. Witnesses on both sides appear, often for the first and last time in their working careers, in a hearing environment that is conducive to fact-finding. Indeed, the arbitrator, in need of clarification, often asks the most difficult questions of witnesses. According to witnesses leaving the hearing, the experience is very positive, whatever role they may have played in the dispute.

Indeed, as an observation, witnesses are seldom called and then not until the arbitrator requests clarification of the parties' briefs.

Only then will witnesses be required to testify on issues that are in dispute. While the parties recognize the importance of viva voce testimony, particularly when there is a conflict, in discipline cases most often there is no need for formal cross-examination as the arbitrator will, if necessary, ask a few questions of the witnesses to clarify the matter. The point I wish to make here is that significant time is not spent on unnecessary questions and cross-examination. In the end, both parties have been able to substantially reduce the costs by appearing at the hearing with fewer and fewer witnesses.

The parties may use legal counsel at a hearing. However, with due respect to those concerned, we have found the use of lawyers prolongs the time to get to the inevitable decision by the arbitrator. CN's practice is, quite frankly, to seldom use lawyers. The vast majority of presentations are done by our "lay," but very professional, managers. Indeed, even when lawyers are used by the company, it is our managers, who, like union officers, are experts in CROA awards, and they prepare the briefs and arguments. We are very proud of the results.

Cost Efficiency

An interesting point concerning the CROA is the issue of cost. Generally, when dealing with an ad hoc case involving an outside arbitrator, CN estimates that the need for additional witnesses, additional travel costs, delay, and legal fees, amounts to a minimum of $10,000 for a case. Indeed, that number is conservative in the extreme with cases easily running three or four times that amount. We are more than pleased with the economics, estimating the average CROA case costs in the vicinity of 25–30 percent the cost of ad hoc arbitration. In major cases, the savings are simply enormous.

Flexibility

Another positive aspect of using a permanent arbitrator is that it allows numerous cases to be heard, about five to seven in a day, at a more convenient location. For instance, in the last several years, a week in May has been reserved for hearings in Calgary, Alberta. This allows the permanent arbitrator to enjoy a trip to Canada's beautiful West but, more importantly, allows both of Canada's major railway companies to save on travel and witness

costs. All parties agree that the process delivers significant financial savings for the parties. It is expected the practice will continue and perhaps, if the parties agree, expand.

Both parties are aware that any significant disagreement can be resolved in very short order by using the CROA. Indeed, on one issue implemented by the company and with the availability of the CROA in place, the case will be heard within 60 days of the matter becoming an issue. While this is reserved for significant issues, it is pointed out to show that the availability of the office often assists in resolving issues in a timely fashion and not allowing situations to fester.

Education

We have used the availability of CROA hearings to educate officers in understanding the intricacies of arbitration, as well as appreciating the consequences, good and bad, of some of their decisions in the workplace.

The use of the CROA allowed CN in the early 1980s to develop a data base to computer search awards for various issues and expand the data base to include other relevant cases within and outside the industry. I also understand some unions have their own data bases. Accordingly, rather than researching jurisprudence in the vast series of publications, CROA jurisprudence is available on a majority of issues. The issues and decisions in CROA are much the same as outside the industry. Accordingly, with the 2,800 CROA cases currently available, brief preparation time is substantially reduced. The data are also used in educating CN's first-line officers on the various aspects of labour relations.

Conclusion

The CROA has served the parties well for the past 32 years. The following may be seen as some of its many positive aspects:

- A user-friendly process that provides consistent awards,
- A brief and efficient process,
- Substantial savings when compared to ad hoc arbitration,
- Positive education aspects, and
- Flexibility to deal quickly with immediate issues.

II. AD HOC ARBITRATIONS ON CANADIAN RAILWAYS

ABE ROSNER*

Thank you for the opportunity to say a few words about the way we arbitrate grievances on Canadian railways.

Introduction

My union, the Canadian Auto Workers Union (CAW), separated from the United Auto Workers (UAW) in 1985 and has since become the largest private-sector union in Canada, numbering over 200,000 members, in such traditional fields as automobiles and aerospace, and has expanded, in recent years, to include airline, railway, and maritime workers, bus and truck drivers, and many others. The CAW's railway presence dates from 1990, and especially since 1994, when a rapid series of union mergers and membership votes left the newcomer CAW representing roughly one of every three unionized railway workers in Canada, while the balance continue to be represented by five international unions.

All our railway union representatives are thus former members and officers from one of two major union streams: (1) the Canadian Brotherhood of Railway, Transport and General Workers, which represented mostly clerical, stores, and passenger train workers; and (2) the so-called "shopcraft" workers, tradespeople who repair and maintain locomotives and freight cars. (My own origin is with the shopcraft group.)

Corresponding to these two streams are two slightly different schools of arbitration that are used on the three national roads—Canadian National (CN), Canadian Pacific (CP), and VIA Rail (our equivalent of Amtrak)—as well as some smaller regional railways. The first type is used by the Canadian Railway Office of Arbitration (CROA), of which the CAW is a member organization and about which my colleague from Canadian National, Dennis Coughlin, spoke. The second type is the ad hoc method, which the old shopcraft unions have used since the late 1960s and which the CAW also continues to use to this day. In essence, however, the two systems are based on the same method, the main difference being

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that CROA is more institutionalized, and perhaps more economical, and efficient.

Some of the questions frequently asked about the two types of arbitration are: How can two or more grievances be routinely heard in one day? How can thousands of awards be issued over a period of three decades with extremely few court challenges or feelings that justice is not being done, with little, if any, pressure to overhaul the system? In an attempt to answer these questions, let us examine, briefly, some of the characteristic features of ad hoc railway arbitration.

The Grievance Procedure

With the exception of discipline issues, the general course of the grievance procedure—its steps, time framework, etc.—is not significantly different from that followed in other industries. The parties mutually agree upon a single arbitrator and the hearing date is scheduled. In advance of the hearing, the parties must endeavour to agree upon a joint statement of fact and issue—a signed document that defines the dispute, the claims of one or both parties, the specific articles of the collective agreement allegedly violated, and the undisputed facts, if any. When, in exceptional cases, the parties are unable to agree on a joint statement, each files its own statement of issue with the arbitrator. Either way, the arbitrator's task is succinctly circumscribed.

The Hearing

Each party arrives at the hearing bearing a written brief. The brief is a mixture—though hopefully an orderly one—of evidence, argument, and references to authorities. By "evidence," we mean a narrative account of various alleged facts, supported by documents and transcripts that will typically be attached to the brief as appendices.

The representative whose side has the burden of proof proceeds first, distributing copies of its brief and then reading it aloud. The other party then does the same. There follows an opportunity for each representative to rebut points arising out of the other's brief. The arbitrator may pose questions at any time in an effort to clarify a party's submission. At that point, depending on the nature of the grievance and what has emerged from the reading of the briefs, one or more witnesses may be called—but more often than not, the hearing ends without viva voce testimony.

Let's look at what has happened so far. Each party's brief looks a great deal like a typical closing argument: a pleading where the evidence is reviewed, argument is made, authorities are cited, etc. The unwritten rule states that a party's entire case—barring the rare unforeseen development during the hearing—should be contained in its brief. With witnesses sometimes being called after the briefs are read, it may look as if the order of proceedings is reversed. However, we think there are good reasons for going about it that way.

The employer and union representatives spend a lot of time before the hearing to determine which facts are in dispute and which are not. The attempts to agree upon a joint statement are part of that process. By the time the briefs are read, the range of disputed fact has generally been narrowed to a minimum. If witnesses are needed at all, their role can be restricted to dealing with that narrow remaining range. Once the hearing is over, the award is issued, theoretically within 30 days, but often within a few days to 2 weeks.

Role of Lawyers

It is noteworthy that lawyers are almost never used in shopcraft ad hoc arbitrations (less than 2 percent of the time by the union side, only slightly more by the employer). Generally lawyers are used in less than 10 percent of CROA cases. Rather than dwelling on the obvious monetary savings to the parties, the point I would like to underline here is that the same representatives who deal with each other on a long-term basis, who attempt to settle grievances prior to arbitration, and who try to narrow the range of disputed facts, are the ones who ultimately plead before the arbitrator. This reduces the potential for unexpected evidence and helps obviate the need for witnesses and shorten hearing time.

Fair and Impartial Investigation

The range of disputed fact is generally broadest in disciplinary matters. Yet, such hearings also often end with little or no testimony being heard. The reason is to be found in a peculiar feature of most railway collective agreements—the requirement for what is called a "fair and impartial investigation" as a condition precedent for the imposition of any disciplinary sanction. In fact, failure

to conduct such an investigation, or to do it properly voids discipline irrespective of the merits of the matter.

The "investigation" involves a number of processes, all prior to the imposition of discipline. Employees must be made aware of the infraction that they are alleged or suspected to have committed. They must be permitted an opportunity to answer to the charges in the form of a transcribed question-and-answer session led by a company officer, with a union representative present to advise them. Naturally, they may choose to say nothing in reply and wait for their day before the arbitrator, although doing so may deprive them of an opportunity to change the employer's mind or mitigate the penalty later at arbitration. They are entitled to advance notice (typically 48 hours) of the interview and of the "charges" against them. They and their union representatives may demand to see, beforehand, any evidence in the employer's possession upon which the charge may be based, such as written statements by or transcripts of interviews of other employees, photographs, surveillance reports, and videotapes. They generally have the right to cross-examine any employee who may have made a statement upon which the accusation is based. And, they may present their own evidence to the employer by way of rebuttal.

None of this, of course, constitutes a "fair hearing" in the accepted sense. This process does, however, amass long before the arbitration hearing a body of evidence and testimony, including a transcript of the grievor's own account, which is made available to the representatives and the arbitrator at the hearing. In effect, a form of detailed discovery is enshrined in the disciplinary provisions of the collective agreements. The savings in terms of hearing time are very substantial. Parties still have the right to call witnesses, including the grievor, at the hearing, but the pressure is great to focus squarely on the outstanding contested issues and not to engage in a repetitious "rehash" of what is unchallenged or what is already clearly established in the documentary record.

One frequent result of this process is that more hearing time is spent arguing about mitigation of discipline or the appropriateness of a particular remedy rather than about the facts and events.

I hope it is clear that the main reason for briefer hearings, whether in disciplinary or other matters, is the relatively greater time invested by the parties before the arbitrator enters the scene. And it is my experience that this prehearing work is time well spent in that the detailed examination of facts often leads to the settlement of the grievance prior to arbitration.

Single Arbitrator

I noted earlier that in the ad hoc (non-CROA) system, the parties mutually agree upon an arbitrator on a case-by-case basis. The practice, however, except perhaps in the very recent period, has been to emulate the CROA rule and to name the same arbitrator over the years. The principal reason is probably the steep learning curve associated, rightly or wrongly, with the railway industry and railway collective agreements, which are not noted for their transparency or simplicity. Besides, railway employers and unions have long come to appreciate the value of very consistent arbitral interpretation based on close familiarity with the subject matter. The incentive to find, "train," and hang on to a good arbitrator is great indeed. And, in this regard, we count ourselves fortunate. For 20 years, from 1969 to 1989, the shopcraft unions used, exclusively, the arbitral skills of Ted Weatherill for all their grievances on CN, CP, VIA, and the Ontario Northland Railway. Likewise, he acted as the sole CROA arbitrator for a 15-year period. And for the past decade and more, that same role has been filled by Michel Picher, both within CROA and for the vast majority of ad hoc cases. Both have done much to create and maintain the credibility of the railway grievance resolution process that has become associated with their names.

Canadian Railway Arbitral Law

One major consequence of this system has been the creation of a consistent and authoritative body of Canadian railway arbitral jurisprudence, a body that is indispensable not only at arbitration but in the daily "tussle" over grievances and settlements. In that respect, I would like to introduce Exhibit 1—my notebook computer. Within it, besides much else, are contained the full texts of almost 3,500 CROA and ad hoc cases, along with a full text search and retrieval system. In citing authorities, we prefer to find a railway precedent that is on point, but certainly not to the exclusion of the broader body of jurisprudence that is common to all industry.

Judicial Review

Another consequence, I think, can be seen in the infrequency of resort to judicial review. My first-ever arbitration case, in 1984, was

challenged unsuccessfully by Canadian Pacific in Quebec Superior Court and the Quebec Court of Appeal. Last week, CP filed again for judicial review in the Alberta Court of Queen's Bench of an award issued in January. (It happened to be, again, one of my cases.) Those are the only two judicial challenges out of more than 500 shopcraft arbitration awards, by any railway or union since 1969. And the record at CROA, with close to 2,900 awards issued, is very similar.

Value of Lay Representatives

I mentioned earlier that we do not use lawyers much. It is not because we do not like lawyers—in fact, I hired one just last week. Over the years, however, we have identified what we believe are positive advantages—at least in our circumstances—for having capable union representatives present grievances at arbitration. I have already alluded to one of the advantages, namely, to facilitate the prehearing discovery process. It is also my experience that union representatives who learn the ropes of arbitration are better equipped to negotiate settlements to grievances. They also play an invaluable role in bargaining collective agreements, if only because their experience in arbitration teaches them how essential clear contract language is and which language needs to be renegotiated.

Other Results and Concerns

The purpose of these remarks is not particularly to preach the merits of our system nor to refute its critics. Frankly, the system works for us, and we rarely hear any criticism. One fellow union representative, who works in another sector of industry, once questioned why I would want to appear at a dismissal hearing with a brief. He said that since the onus is on the employer, he goes to such hearings with an open mind, listens to the evidence, and then decides how to counter it. There is merit in that approach, but as I said, our way of doing things has worked for us.

For those of you who like statistics, I did a rough "win/loss" calculation, based on some very broad assumptions and definitions. In CROA, the awards (from the start) have gone 64 percent for the employer, 36 percent for the union. In the shopcraft world, the score has been 54 percent for the employer, 46 percent for the union. In both cases, the union losses were more heavily concen-

trated in the early years, and their success rate has been increasing. I confess to having no idea as to how these figures compare with other sectors.

Another criticism I have heard relates to the emergence, or perhaps the belated recognition, of new sensitive social issues and the concern that our style of hearings, combined with the absence of professional legal counsel, may not adequately address these issues. I think this concern is well-taken, but the answer lies, in our industry as in others, in increased education and training on both the employer and union side. The CAW, indeed, pays close attention to such training needs and to negotiating them into its collective agreements. The arbitral form that we have fashioned over the decades is flexible enough, in my estimation, to accommodate the new social and political content.

Another possible concern is that if grievance arbitration becomes simple and inexpensive enough, the incentive to settle will lessen and the pressure to push every minor issue to arbitration will become irresistible. All that can be said here is that after many years of experience, this does not seem to have been a problem for us. Notwithstanding the general satisfaction with our system, much experimentation has been under way in the last year or two, spurred mostly by a very difficult period surrounding the mergers and an unusually enormous grievance backlog that resulted. We have experienced some success with some forms of mediation/arbitration. We have also disposed of numerous "minor" grievances by super-expedited treatment where there are no written briefs or witnesses, only a few minutes of verbal exposé by each party, followed by a 30-minute argument, and nonprecedential awards. The jury is "still out" on this latter process; in particular, we would not wish to see such a process entrenched to the detriment of the normal grievance settlement discussions.

The Future

So far, there are no indications of a desire, on either side, to radically overhaul the basic system we have used for years. There are areas, however, where improvements might be explored. Joint statements of issue, for example, which have a tendency to be distressingly brief, could be elaborated into more full-fledged discovery documents, even in nondisciplinary situations. Written briefs could be exchanged in advance of the hearing. After some of the positive experiences of the past year, more experimentation

with mediation/arbitration seems merited. The Canadian Railway Office of Arbitration, or some similar institution, could be broadened to encompass all railway companies and all railway bargaining units.

In any event, whether these or other avenues of evolution are pursued, Canadian railroaders are unlikely to abandon their way of doing arbitrations in the near future.

III. Moving From the Old to the New American Airlines Expedited Grievance Resolution Process

Judith A. Ladislaw*

In order to fully appreciate how successful our new dispute resolution and grievance procedures are working, it is necessary to provide some background facts and figures. Under our old contract, grievances were filed citing contract violations and/or unjustified actions of the company and also outlining the relief sought for the infractions. If the grievance was denied at the local level, as most grievances were, the case was submitted to the four-member System Board of Adjustment (SBA) which met quarterly. Since the SBA was comprised of two union and two company members, most of the four-member board cases ended in a deadlock.

On April 1, 1992, I assumed the position of Vice-President of the Association of Professional Flight Attendants (APFA). One of my duties was to administer the grievance and arbitration department and sit as a member on the SBA. The four-member SBA was scheduled to meet the week of April 16, 1992, and there were 185 cases docketed to be heard. Needless to say, only a handful of these cases were settled or heard and the end result was more deadlocked cases. Each administration inherited at least 100 or more deadlocked cases, and any similar cases were deadlocked prior to scheduled System Board hearings. As of July 1992, there were 258 deadlocked cases, and the list grew each quarter.

Deadlocked cases were dealt with sometime during each vice-president's term of office. Most were settled, I think, mainly because the cases were old. Since neither side had the conclusive documentation to prove a case, compromise was the best solution. Few of the cases ever reached arbitration. In fact, many flight attendants had forgotten about the 1989 grievance for 15 hours of

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pay and were happy to settle for 8 hours of pay when the case was settled four years later. Meanwhile, the enormous backlog of grievances was seriously undermining the relationship between the company and the union and between the company and its employees. Tension and animosity between the parties increased, and each unresolved grievance came to represent a failure of the system and to convince each party that the other was being unreasonable.

Luckily, both the union and company negotiating teams recognized that the system was in need of a major overhaul. When negotiations commenced in October 1992, the parties undertook this monumental task and were successful in reaching a tentative agreement, which included our new language, in May of 1993. Our current agreement was ratified in two separate sections, and the final piece was put into place with an interest arbitration award in October of 1995. The dispute resolution and grievance procedures[1] were ratified in March of 1994.

The new procedures required a total shift in how the union and the company dealt with each other in resolving disputes. The focus was on resolving the dispute quickly and at the local level. The focus had to shift from who is right and who is wrong to discussions based on interests. In order to foster this cultural change, the agreed-to language contained provisions for joint training. Jack Upchurch and I were given the daunting task of taking a visionary concept and putting it into play. Keep in mind that in 1994 the relationship between the parties was very strained. The events of 1993 were fresh in everyone's mind, and we still did not have a complete contract. Nonetheless, we forged ahead and selected the outside facilitators to conduct the joint training, worked on the content, and held the first of seven training sessions in April of 1995. The joint training was conducted by the Mediation Research and Education Project at a neutral site, the Allen Center at Northwestern University.

In several three-day sessions, local APFA representatives, Flight Service along with the Flight Service Regional Manager and Field Human Resources personnel in the same cities were trained in the same sessions. Headquarters Employee Relations, Flight Service, and APFA Headquarters representatives trained together. In some of the later sessions, Headquarters Crew Resources joined the

[1]Article 28, Dispute Resolution and Grievance Procedures and Article 29, System Board of Adjustment.

training. To date there have been 315 company representatives and 141 union representatives trained.

The concept contained in the negotiated language was to resolve disputes in a nonadversarial manner. To this end, grievances and the "you are wrong, we are right and here's what the penalty is" attitude were replaced with the filing of a Notice of Dispute. The philosophy is to provide an avenue for genuine problem solving rather than taking a confrontational "win/lose" approach.

Some of the problems we have encountered so far include:

- Company facilitators often are not perceived as impartial.
- Some facilitators have difficulty issuing a recommendation that does not violate the contract, possibly due to lack of knowledge of the contract.
- Empowerment is an issue for flight service managers who do not feel they can settle a dispute because decisions are overridden even though they are nonprecedential and should not be overridden.
- The company assumes a "black and white" position on rules.
- There is a tendency to not recommend a solution but merely to say "Grievance denied," thus straying from the interest-based approach back to a rights-based approach.

There is a perception that there has been great success overall at the local level, but the process has been much less effective at the headquarters level where issues are bigger and not localized.

IV. The New American Airlines Expedited Grievance Resolution Process

Jack P. Upchurch*

Background

The grievance and arbitration mechanism practiced at American Airlines prior to the 1993 contract negotiations was the traditional formal grievance process. Employees could file a grievance, await the docketing of the case and the decision of a four-member System Board (comprised of two members of management and two members of the Association of Professional Flight Attendants (APFA)). Typically this process resulted in a dead-

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locked case or, for the fortunate grievant, a compromise settlement reached months after the actual event. In either case, the process was a lengthy, expensive, and inefficient method of dispute resolution.

The members of the respective American Airlines and APFA negotiating teams realized early in the 1992–1993 negotiations that the existing contractual mechanisms for handling grievances and arbitrations were inefficient, costly, and sorely in need of overhaul. Therefore, the parties agreed that the first step in negotiations should be redrafting the relevant articles in the working agreement and the development of new systems to serve the interests of all parties.

Implemented Procedures and Practices

Central to the procedural changes outlined in Articles 28 and 29[1] of the working agreement is the underlying theme of resolving the dispute at the earliest possible stage. The resolution is best achieved by utilizing an interest-based approach to problem resolution by the individuals most directly involved with the issue. Prior to implementation, all affected management and union participants in the work force attended alternative dispute resolution training. Participants were encouraged in training to avoid position or "rights-based" stances and instead employ an interest-based methodology to resolve disputes. The following section describes the processes that were agreed to and implemented.

Article 28—Dispute Resolution and Grievance Procedure

This Article provides for an informal dispute resolution process to address individual flight attendant grievances other than discharge and APFA Presidential Grievances. The full text of Article 28 appears in the addendum at the end of this chapter. Employees forward a copy of an informal document, Notice of Dispute (NOD), to their immediate supervisor or manager. The document provides a brief summary of the dispute and the remedy the employee is seeking. The supervisor, employee, and frequently the union representative then begin informal discussions and communications in an attempt to resolve the issue. Supervisors are authorized to resolve the issues during this initial NOD phase of the

[1]Article 28, Dispute Resolution and Grievance Procedures and Article 29, System Board of Adjustment.

process without fear of reprisal or retribution for their decisionmaking. All discussions, documents, or resolutions are nonprecedential and are not admissible in any other case or grievance forum.

If no resolution occurs during the NOD phase, then the employee or union representative may request further review of the issue through the Dispute Resolution Conference (DRC). The conference is also informal but now provides for a neutral, nonadversarial facilitator, whose role is to conduct the meeting and guide the parties to resolution of the dispute through an interest-based, problem-solving approach. The facilitator is a member of management who is jointly selected by the parties involved in the dispute. Again, in the DRC, all matters, discussions, and proposed resolutions or recommendations are considered off-the-record and nonprecedential in any other setting.

If no resolution is reached during the DRC, the facilitator is required to issue a recommendation to resolve the dispute. The employee has the option of accepting or rejecting the recommendation. If accepted, the terms of the recommendation are implemented. If rejected, the NOD may be submitted to the System Board of Adjustment as a formal grievance with a specific grievance statement, the matter at issue, and the remedy sought.

Article 29—System Board of Adjustment

The American Airlines Flight Attendant System Board of Adjustment was established in accordance with section 204, title II of the Railway Labor Act.[2] The System Board is the mechanism for handling formal grievance disputes, and Article 29 defines its jurisdiction, authority, administration, and composition. The full text of Article 29 appears in the addendum at the end of the chapter.

As discussed earlier, the prior System Board process involved a four-member board comprised of two company representatives and two APFA representatives. Obviously, the majority of cases presented to the board resulted in a deadlock, thereby delaying resolution of the issue, frustrating the parties, and ultimately failing to provide timely remedies to the key issues confronting flight attendants in the workplace.

The negotiators sought to remedy this situation by developing a revised System Board procedure that featured the advent of a

[2]45 U.S.C. §151 (1926).

Quarterly System Board (QSB). The QSB meets four times a year and consists of three members, one appointed by APFA, one appointed by the company, and one standing neutral arbitrator. The standing arbitrator is mutually agreed upon by both parties and can be terminated by either party.

Several expedited procedures were agreed to by the parties, including:

- Prior to the hearing date, the presenters on each side meet to exchange all documents, preliminary motions, etc.
- Prior to the hearing date, the presenters meet and stipulate in writing all facts and issues not in dispute.
- The Board issues a decision the same day of the hearing.
- Parties make oral closing statements (unless the Board agrees that written briefs are necessary).
- Presenters make their best effort in limiting opening statements to 5 minutes, with a maximum of 10 minutes. Closing statements are not to exceed 15 minutes.
- As a general rule, no court reporters are utilized.
- Executive Board sessions are limited to 30 minutes.
- All decisions issued by the QSB are final and binding and made with precedential effect (unless the Board agrees otherwise).

The implementation of the above QSB procedures, coupled with the changes initiated by the dispute resolution process, has proven to be a great success. The new methodology has enabled the parties to make great strides in improving the working relationship between everyone involved, to the ultimate benefit of all employees.

Implementation and Concerns

As indicated, all parties agree that front-line employees have benefited greatly from the implementation. The immediate impact is that the cases going forward to the System Board have dropped dramatically. In April of 1992, the old four-member board was docketed with 185 cases. In contrast, the January 1997 QSB was docketed with two cases and both were settled prior to the hearing date. Since implementation, the cases going forward to the formalized system board or QSB have been reduced by approximately 80 percent.

Obviously, the great majority of disputes are being resolved through the dispute resolution process. Within that process, 85

percent of the disputes are being resolved at the initial NOD phase. Of the remaining cases that have progressed through the dispute resolution process, approximately 90 percent reached resolution in the DRC, either through a mutually agreed-upon settlement or the acceptance of the facilitator's recommendation at the employee's option. Only a small minority of cases (10 percent of those that were not resolved at the NOD phase or through a DRC) were submitted to the formal System Board of Adjustment or QSB.

While it is apparent that these new procedures have been a great success and are proving to be a very efficient and user-friendly method of resolving grievances, a few concerns have arisen. From the perspective of some front-line managers, there is the perception that we have gone "too far" in resolving these employee issues—that is, "giving away the store" just to ensure management is conveying the image of buying into the interest-based approach to grievance resolution. The scope of empowerment continues to be an issue for front-line management. Is violating or ignoring company policy within the scope of the supervisor's empowerment? Even though the NOD and DRC settlements are nonprecedent-setting, a few of the settlements have raised concerns about their "systemwide" implication on policy or contract interpretation. Another issue for management is the perception that some union representatives are filing "frivolous" NODs, knowing full well that the issue is clearly covered by federal law, contract language, or a company policy, yet hoping to "get something" for the flight attendant on a nonprecedent basis. In addition, some NODs have been filed that clearly have "systemwide" scope and application. If the remedy requested was granted for that individual employee or base, the decision would ultimately affect the entire fleet of airplanes, all employees, negotiated contract language, etc.

The process, despite the few concerns that have surfaced, has been deemed very successful by the parties in attaining the primary goal of resolving disputes in a timely, interest-focused manner. In summary, although American Airlines and APFA have occasional reservations about the implemented processes, both parties believe these changes reflect the beginning of an improved, cooperative relationship that sets a good foundation for the future of dispute resolution at American Airlines.

ADDENDUM

ARTICLE 28—DISPUTE RESOLUTION AND GRIEVANCE PROCEDURES

A. DISPUTE RESOLUTION PROCESS

1. Purpose

a. Intent

The Dispute Resolution Process described herein is intended to create fundamental changes in the method and manner of resolving disputes between the parties, and to facilitate non-adversarial resolution of disputes, wherever possible. This process is applicable to all disputes other than Presidential and Discharge Grievances.

b. Implementation/Training

To ensure the successful implementation of the Dispute Resolution Process, the Company and the APFA agree that joint Alternative Dispute Resolution/Conflict Resolution training shall be conducted for Company and APFA representatives as soon as practicable after ratification of this Agreement.

c. Railway Labor Act

Nothing within this Dispute Resolution Process is intended in any way to affect or abridge the rights of any individual under the Railway Labor Act.

2. Types Of Disputes

a. Individual Dispute

An individual dispute ("Individual Dispute") is defined as a dispute between a flight attendant and the Company involving any action of the Company affecting him/her, except discharge.

b. Group Dispute

A group dispute ("Group Dispute") is defined as a dispute protesting any action of the Company which affects those specifically named flight attendants at the same base and in the same manner, e.g., scheduling or pay matter affecting all flight attendants on a specific leg on a specific day. Any APFA representative shall be recognized by the Company as the representative of a specific named group of flight attendants at his/her base for the purpose of submitting such dispute. The provisions of this Section A. shall apply to the processing of such Group Disputes.

c. Base Dispute

A base dispute ("Base Dispute") is defined as a dispute protesting any action of the Company affecting flight attendants at the base as a group. The local APFA Chairperson or Acting Base Chairperson designated by the APFA, shall be recognized by the Company as the representative of flight attendants at that base for the purpose of submitting such dispute. The provisions of this Section A. shall apply to the processing of such Base Disputes.

3. Notice of Dispute

a. Filing

A flight attendant having such a dispute may file an abbreviated, informal document termed a Notice of Dispute (hereinafter referred to as a NOD) in person or through an APFA representative, within ten (10) days, exclusive of Saturdays and Sundays, after becoming aware of such dispute. Such NOD shall be filed with the Manager of Flight Service, or his/her designee. Any and all documents supporting the claim that are in the possession of the flight attendant or the APFA representative should be attached to the NOD form at the time of filing.

b. Signature/Authorization

Such NOD must be signed by the individual flight attendant(s) affected who is filing the dispute. If the NOD is submitted through an APFA representative, a signed authorization must be submitted to the Company, designating the APFA as the representative of the flight attendant(s) affected with respect to the dispute. Employees covered by this Agreement may be represented at a Dispute Resolution Conference by such person as they may choose and designate, and the Company may be represented by such person as it may designate.

c. Distribution of NOD

Unless the APFA has filed the NOD on behalf of the flight attendant, the Company shall provide a copy of the NOD to the local APFA Chairperson, or Acting Base Chairperson designated by APFA, within five (5) working days of the Company's receipt of the NOD.

4. Initial Informal Attempt to Reach Resolution

a. Discussion(s)/Initial Exchange of Documents

After a NOD is filed, the Company, the flight attendant(s) and his/her APFA representative should endeavor to discuss and resolve the dispute as soon as possible. The parties will commence the exchange of all documents supporting their respective positions at this point.

b. Resolution

Should the parties be successful in reaching a resolution to the dispute, the matter shall be considered resolved and no further action shall be taken by the parties on the matter except any action necessary to implement the terms of the resolution reached between the parties. Such resolution shall be summarized on the NOD form and shall be provided to the flight attendant and the APFA representative involved, or, if none, to the local APFA Base Chairperson or acting Base Chairperson designated by the APFA.

c. Discussions/Resolution—Off the Record/Non-Precedential

All matters discussed or decided prior to the Dispute Resolution Conference ("DRC"), including resolutions, shall be off the record and shall have no precedential effect on any other matter or be admissible or relied upon in any other matter. Notwithstanding the foregoing, the parties are not precluded from referring to such a resolution orally and in general terms, and should not refer to specific bases or number of such resolutions reached in other DRCs or initial informal discussions under this procedure.

5. Dispute Resolution Conference

a. Purpose

Should the initial attempts to reach resolution be unsuccessful, a meeting hereinafter referred to as a Dispute Resolution Conference ("DRC") shall be scheduled. The purpose of the DRC shall be to attempt to reach an acceptable resolution of the dispute informally.

b. Scheduling Coordination

The scheduling of a DRC shall be coordinated through the Flight Service Base Manager's office at the flight attendant's base station.

c. DRC Held Within 30 Days

The DRC shall be held within thirty (30) days following receipt of the NOD at a time and date mutually agreed upon, unless the parties otherwise agree.

d. Participants at DRC

Except as noted below, participants at the DRC shall be limited to the flight attendant(s) who filed the NOD, his/her APFA representative, a Company representative and a Facilitator. In all matters involving an individual flight attendant's performance or attendance, or a personal matter, the flight attendant shall be present at the DRC. In all other disputes, such as scheduling, contractual or other policy issues, the flight

attendant may elect not to attend the DRC and be represented at the DRC by his/her APFA representative.

e. Summary of Issues

Prior to, or at the beginning of the DRC, the flight attendant, or his/her APFA representative, shall briefly summarize on the NOD form the matter at issue and the remedy sought. For Group or Base Disputes, as defined in paragraphs 2.b. and c. above, the APFA representative shall provide this summary on the NOD form.

f. Facilitator

(1) Selection

The DRC shall be facilitated by the Flight Service Base Manager or his/her designee, i.e., a peer Flight Service Manager. The Company shall select the Facilitator, except that any individual who is or was materially involved in the decision and/or the events leading to the NOD shall not be eligible to serve as the Facilitator at the DRC for that NOD. The Company shall consider the recommendation of the APFA grievance representative in the selection of the Facilitator for a DRC.

(2) Role

The role of the Facilitator shall be non-adversarial. The Facilitator shall assist the parties in fashioning an acceptable resolution to the dispute.

(3) Discussions with Facilitator—Off the Record/Non-Precedential

The Facilitator shall review all of the documents exchanged and presented by the parties, and provide the parties with an opportunity to openly discuss the dispute. All matters discussed or decided at the DRC, including recommendations, whether accepted or rejected, and resolutions, shall be off the record and shall have no precedential effect on any other matter or be admissible or relied upon in any other matter. Notwithstanding the foregoing, the parties are not precluded from referring to such a resolution or accepted recommendation orally and in general terms, and should not refer to specific bases or number of such resolutions or accepted recommendations reached in other DRCs or initial informal discussions under this procedure.

g. Document Exchange

At the DRC, the parties shall exchange all documents not previously exchanged supporting their respective positions. This exchange should continue throughout the process as documents become known to any of the parties, until such time as the dispute is finally resolved in accordance with this Agreement. For confidentiality purposes, and, at the option of either party, all names and other identifying information may be expunged from any documents exchanged.

h. Resolution

(1) If an agreement resolving the matter in dispute is reached by the parties during the DRC, the Facilitator shall summarize the agreement on the NOD form.

(2) All participants at the DRC shall sign the agreement.

(3) The dispute shall be considered resolved and no further action shall be taken by the parties on the matter except any action necessary to implement the terms of the agreement reached between the parties.

(4) The Company shall provide a copy of the completed NOD form to the flight attendant and the APFA representative involved, or, if none, to the local APFA Base Chairperson or acting Base Chairperson designated by the APFA.

i. Failure to Resolve/Facilitator's Recommendation

(1) If no agreement resolving the matter in dispute is reached by the parties during the DRC, the Facilitator shall issue a written, non-binding recommendation.

(2) The recommendation shall be issued as a separate document apart from the NOD form.

(3) The Facilitator shall issue the recommendation at the conclusion of the DRC, unless otherwise agreed to by the parties, and in no event shall the recommendation be issued later than three (3) working days following the conclusion of the DRC.

(4) A copy of the recommendation, when issued, shall be provided to the flight attendant(s), and to both the Company and the APFA locally.

j. Acceptance of Facilitator's Recommendation—Notification/Confirmation

(1) The flight attendant(s), or the APFA representative, as applicable, shall have five (5) days exclusive of Saturdays and Sundays, from receipt of the Facilitator's recommendation to notify the Flight Service Base Manager, or his/her designee, that the recommendation is accepted.

(2) In the case of an individual or Group Dispute, the flight attendant(s) shall notify the Flight Service Base Manager, or his/her designee, of his/her acceptance by:

(a) signing the recommendation form indicating his/her acceptance and returning the completed form to the Flight Service Base Manager, or his/her designee;

(b) orally notifying the Flight Service Base Manager, or his/her designee, either in person or by telephone; or

(c) authorizing his/her APFA representative to communicate to the Flight Service Base Manager, or his/her designee, his/her acceptance either orally or in writing.

(3) In the case of a Base Dispute, the APFA representative shall notify the Flight Service Base Manager, or his/her designee, by:

(a) signing the recommendation form indicating his/her acceptance and returning the completed form to the Flight Service Base Manager, or his/her designee; or,

(b) orally notifying the Flight Service Base Manager, or his/her designee, either in person or by telephone.

(4) In all cases, the acceptance must be communicated within five (5) days, exclusive of Saturdays and Sundays, from receipt of the Facilitator's recommendation. In all cases where the Flight Attendant, or the APFA representative, as applicable, has communicated his/her acceptance orally, such acceptance must be confirmed in writing to the Flight Service Base Manager, or his/her designee.

(5) Once acceptance is received, the NOD shall be considered resolved and no further action shall be taken by the parties on the matter except any action necessary to implement the terms of the recommendation.

(6) A copy of the signed recommendation form and acceptance of the recommendation shall be provided by the Flight Service Base Manager, or his/her designee, to each of the parties, and to the APFA representative involved, or, if none, to the local APFA Chairperson or Acting Base Chairperson designated by the APFA.

k. Rejection of Facilitator's Recommendation—Notification/Confirmation

(1) In the case of an Individual or Group Dispute, the flight attendant(s) shall notify the Flight Service Base Manager, or his/her designee, of his/her rejection by:

(a) signing the recommendation form indicating his/her rejection and returning the completed form to the Flight Service Base Manager, or his/her designee;

(b) orally notifying the Flight Service Base Manager, or his/her designee, either in person or by telephone; or,

(c) authorizing his/her APFA representative to communicate to the Flight Service Base Manager, or his/her designee, his/her rejection either orally or in writing.

(2) In the case of a Base Dispute, the APFA Representative shall notify the Flight Service Base Manager, or his/her designee, of his/her rejection by:

(a) signing the recommendation form indicating his/her designee, of his/her rejection and returning the completed form to the Flight Service Base Manager, or his/her designee; or

(b) orally notifying the Flight Service Base Manager, or his/her designee, either in person or by telephone.

(3) In the event the flight attendant or APFA Representative, as applicable, provides no response within ten (10) days,

exclusive of Saturdays and Sundays, following receipt of the recommendation, the recommendation shall be deemed rejected and dispute may be submitted to the System Board for adjudication.

(4) In any case where a recommendation has been rejected, the Company shall provide a copy of the signed rejected recommendation to APFA Headquarters within five (5) working days of receipt; or, if no written response is forthcoming within ten (10) days, exclusive of Saturdays and Sundays, from issuance of the recommendation, the Company shall notify APFA Headquarters in writing, within five (5) working days, that such recommendation has been deemed rejected.

(5) In all cases where a recommendation has been rejected, for record keeping purposes, the flight attendant(s) or the APFA Representative, as applicable, shall submit a signed copy of such rejection within thirty (30) days following receipt of the recommendation.

6. Submission to System Board

Once the recommendation has been rejected, the NOD may be submitted as a grievance to the System Board of Adjustment, as provided for in Article 29 of this Agreement. The submission of a dispute to the System Board of Adjustment must be made within thirty (30) days of APFA Headquarters' receipt of the rejected recommendation. The submission to the System Board of Adjustment shall include a formal and specific grievance statement, including the matter at issue and the remedy sought, the NOD, and a copy of all documents exchanged to date.

7. Conversion of Individual, Group and Base Disputes to Presidential Grievances

At any time after a NOD is filed in accordance with Section A of this Article, and prior to submission to the System Board of Adjustment, APFA may determine that a particular dispute involves a contractual or a policy issue which cannot be resolved at a local level and should be converted to a Presidential Grievance. In such case, a formal and specific statement of grievance shall be filed, and the dispute processed in accordance with the Presidential Grievance procedures detailed herein. The Company may recommend that a NOD is appropriate for conversion to a Presidential Grievance, and the APFA shall consider the Company's recommendation.

B. DISCHARGE/PRESIDENTIAL GRIEVANCES

1. Discharge

a. Notification of Discharge/Request for Investigation and Hearing

A flight attendant shall not be discharged from the service of the Company without written notification of such action which

shall contain the precise charges, nor without an investigation and hearing thereon, provided that such flight attendant makes written request for such investigation and hearing within ten (10) days, exclusive of Saturdays and Sundays, after receipt of notification. A copy of such discharge will be sent to the APFA Base Chairperson and the APFA Division Representative, simultaneously, with employee notification, unless the employee being discharged requests otherwise.

(1) Hearing Officer

Such written request for an investigation and hearing shall be addressed to, and such hearing conducted by, the Managing Director, Flight Service, or his/her designee.

(2) Investigation and Hearing Held Within 10 Days

Such investigation and hearing shall be held within ten (10) days, exclusive of Saturdays and Sundays, of the receipt of the flight attendant's written request therefor.

b. Hearing

At the hearing, both parties shall present an explanation of their respective positions by describing the evidence and setting forth their arguments. The Company shall present its explanation first. Should either party desire to call a witness or witnesses to give testimony in support of his/her respective position, such witness shall be subject to questioning by the other party.

c. Document Exchange

Documents supporting the respective positions of the parties may be exchanged at the hearing at the option of either party. For confidentiality purposes, and, at the option of either party, all names and other identifying information may be expunged from any documents exchanged.

d. Decision

The official conducting the hearing shall render a decision as soon as possible but no later than ten (10) days, exclusive of Saturdays and Sundays, after the close of such hearing.

e. Appeal

If the decision of the Managing Director, Flight Service, or his/her designee, is not satisfactory to the flight attendant, the matter may be appealed to the American Airlines Flight Attendant System Board of Adjustment as provided for in Article 29 of this Agreement provided said appeal must be submitted within thirty (30) days of receipt of the decision of the Managing Director, Flight Service, or his/her designee.

f. Withhold from Service

A flight attendant may be held out of service by the Company pending such investigation, hearing and the appeals therefrom.

g. Exoneration

(1) Reinstatement

If, as a result of any hearing or appeal therefrom, as provided herein, a flight attendant is exonerated, s/he shall, if s/he has been held out of service, be reinstated without loss of seniority and shall be paid for such time lost in an amount which s/he would have ordinarily earned had s/he been continued in service during such period.

(2) Personnel Record

If, as a result of any hearing, or appeal therefrom, as provided herein, the flight attendant shall be exonerated, the personnel record shall be cleared of the charges.

2. Presidential Grievances

a. Filing

The President of the APFA may protest, in writing, to the Vice President, Employee Relations, of the Company any action of the Company or any alleged misapplication or misinterpretation of this Agreement within forty-five (45) days after such alleged action, misapplication or misinterpretation has been ascertained.

b. Decision

The Vice President of Employee Relations shall evaluate such grievance and render a decision, in writing, within twenty (20) days after it has been received.

c. Appeal

If the decision of the Vice President, Employee Relations is not satisfactory, an appeal may be made, in writing, within twenty (20) days to the System Board of Adjustment, as provided in Article 29 of this Agreement.

3. General

a. Failure to Appeal Within Time Limits

If any decision made by the Company under the provisions of this Article is not appealed by the flight attendant(s) affected within the time limits prescribed herein for such appeals, the decision of the Company shall become final and binding.

b. Time Limits

It is agreed by the parties hereto that the periods of time for hearings, decisions and appeals, established in this Article, shall be considered as maximum periods of time and that when hearings, decisions and appeals can be handled in a period of time less than the maximum time stipulated, every effort will be made to expedite such cases.

c. Stenographic Reports

When it is mutually agreed that a stenographic report is to be taken of the investigation and hearing, in whole or in part, the cost will be borne equally by both parties to the dispute. In the event it is not mutually agreed that a stenographic report of the proceedings shall be taken, any written record available taken of such investigation and hearing shall be furnished to the other party to the dispute upon request, provided that the cost of such written record so requested shall be borne equally by both parties to the dispute.

d. Representation at Hearings

Employees covered by this Agreement may be represented at hearings by such person or persons as they may choose and designate, and the Company may be represented by such person or persons as it may designate. Evidence may be presented either orally or in writing, or both, and through witnesses.

e. Grievance Matters to be in Writing

All matters handled under the procedure provided for in paragraph B of this Article shall be in writing and shall be signed by the employee or a representative designated by him/her, and all decisions shall be in writing.

f. Representatives/Witnesses

When, under the operation of this Agreement, a flight attendant is chosen to act as the representative of, or witness for, another flight attendant against whom charges have been proferred, such flight attendant shall, when the requirements of the service permit, be given leave of absence of a time sufficient to permit him/her to appear as such representative or witness.

g. Submission to the System Board

All submissions to the System Board of Adjustment shall be made in accordance with the provisions of Article 29 of this Agreement.

ARTICLE 29—SYSTEM BOARD OF ADJUSTMENT

A. STATEMENT OF PURPOSE

In compliance with Section 204, Title II, of the Railway Labor Act, as amended, there is hereby established a System Board of Adjustment for the purpose of adjusting and deciding disputes which may arise under the terms of this Agreement and which are properly submitted to it, which Board shall be known as the "American Airlines Flight Attendant System Board of Adjustment", hereinafter referred to as the "System Board".

B. JURISDICTION OF THE SYSTEM BOARD

1. General

a. Scope

The System Board as constituted in accordance with the provisions of this Article shall have jurisdiction over disputes between any employee covered by this Agreement and the Company growing out of grievances or out of interpretation or application of any of the terms of this Agreement. The jurisdiction of the System Board shall not extend to proposed changes in hours of employment, rates of compensation, or working conditions covered by existing agreements between the parties hereto.

b. Definitions

As used in the Article:

(1) "Arbitration Hearing" is defined as a meeting of the System Board held for the purpose of adjusting and deciding disputes which may arise under the terms of this Agreement.

(2) "Session" is defined as a series of arbitration hearings held for the purpose of adjusting and deciding Individual, Group and Base disputes pending before the Quarterly System Board as defined in 2.a. below.

(3) "Executive Session" is defined as any meeting of the System Board wherein the participants are limited to the members of the System Board.

2. System Board Consideration of a Dispute

a. Individual, Group and Base Disputes

The System Board shall consider and have jurisdiction over any Individual, Group or Base dispute, as defined in Article 28 of this Agreement, properly submitted to it by the President of the APFA in accordance with the terms provided for in this Agreement. Regular sessions of the System Board shall be scheduled once each quarter for the purpose of considering all Individual, Group and Base disputes properly submitted to the System Board when such disputes have not been previously settled in accordance with the terms provided for in this Agreement. Such regularly scheduled sessions, hereinafter referred to as the "Quarterly System Board," shall take place once each quarter provided that there are such disputes filed with the System Board for consideration. The Quarterly System Board shall continue in session until all such disputes before it have been considered unless otherwise mutually agreed upon.

b. Other Disputes

The System Board shall consider any other dispute properly submitted to it by the President of the APFA or by the Company when such dispute has not been previously settled in accordance with the terms provided for in this Agreement.

C. AUTHORITY OF THE SYSTEM BOARD

1. Decisions

Decisions of the System Board in all disputes properly referable to it shall be final and binding upon the parties thereto.

2. Majority Vote

A majority vote of all members of a System Board shall be competent to make a decision.

3. All Judgments Rendered Without Prejudice

It is understood and agreed that each and every System Board Member shall be free to discharge his/her duty in an independent manner, without fear that his/her relations with the Company or with the employees may be affected in any manner by any action taken by him/her in good faith in his/her capacity as a System Board Member.

D. ADMINISTRATIVE OFFICERS OF THE SYSTEM BOARD

1. Commissioner and Deputy Commissioner

There is hereby established the position of Commissioner of the System Board and the position of Deputy Commissioner of the System Board. The Commissioner and the Deputy Commissioner are hereby deemed the "Administrative Officers of the System Board."

2. Terms of Office

The Vice President of the APFA and the Vice President of Employee Relations, or their respective designees, shall act as the Commissioner or the Deputy Commissioner of the System Board. The Commissioner and the Deputy Commissioner once designated shall serve for one (1) year or until a successor has been duly appointed and designated. The office of Commissioner shall be filled and held alternately by the APFA and by the Company. When the APFA is acting as the Commissioner, the Company shall act as the Deputy Commissioner for the System Board, and vice versa.

3. Duties and Authority

a. Administrative Duties

The Commissioner and the Deputy Commissioner shall be charged with coordinating the administrative functions of the System Board, including the appointment of arbitrators and the scheduling of arbitration hearing dates. The Commissioner and Deputy Commissioner shall have the right to delegate some or all of their responsibilities or duties to a designee, provided such delegation is promptly communicated to the other party.

b. Record Keeping

The Commissioner and the Deputy Commissioner shall maintain a complete record of all disputes submitted to the System Board for its consideration and of all findings and decisions made by it.

c. Expenses of the System Board

The Commissioner and the Deputy Commissioner, acting jointly, shall have the authority to incur such expenses, as in their judgment, may be deemed necessary for the proper conduct of the business of the System Board, and such expenses shall be borne one-half (1/2) by each of the parties hereto.

E. COMPOSITION OF THE SYSTEM BOARD

1. Appointment of Three (3) Member System Board

The System Board, in a given dispute(s) shall consist of three (3) members; one (1) of whom shall be appointed by APFA; one (1) of whom shall be appointed by the Company; and one (1) of whom shall be an arbitrator appointed in accordance with the provisions of this Article. Such appointees shall be known as "System Board Members".

2. Invocation of Five (5) Member System Board

If either the APFA or the Company desires in a given dispute(s) a System Board comprised of two (2) Company members, two (2) APFA members, and the appointed arbitrator, such party shall invoke such System Board upon ten (10) days' written notification to the opposing party. The invocation of a five (5) member System Board from time to time on a case by case basis shall not constitute cause for dispensing with the provisions of 1. above in any other dispute(s).

F. CHAIRPERSON OF THE SYSTEM BOARD

In a dispute properly submitted to the System Board, it shall be the duty of the Commissioner and the Deputy Commissioner to endeavor to reach agreement on the appointment of an arbitrator to sit as a member of the System Board and to serve as its Chairperson for the purpose of reaching a final decision on the dispute(s) pending before the System Board. The Chairperson shall preside at all arbitration hearings and Executive Sessions of the System Board involving such dispute(s) and shall have a vote in connection with all actions taken by the System Board on that dispute(s).

G. APFA AND COMPANY SYSTEM BOARD MEMBERS

1. Leaves of Absence and Travel

APFA and Company System Board Members who are employees of the company shall be granted necessary leaves of absence for the performance of their duties as System Board Members. So far as space is available, System Board Members shall be furnished free transportation over the lines of the Company for the purpose of attending arbitration hearings and Executive Sessions of the System Board, to the extent permitted by law.

2. Disposition of System Board Member Expenses

Each of the parties hereto will assume the compensation, travel expense and other expenses of the System Board Members appointed by it.

3. Notification

The Commissioner and the Deputy Commissioner shall each notify the other of the individual(s) appointed to serve as System Board Members for a given dispute(s).

H. TERMS OF OFFICE—SYSTEM BOARD MEMBERS

1. Quarterly System Board

The Quarterly System Board Members shall serve for one (1) year from the date of their appointment or until their successors have been duly appointed. Quarterly System Board Member vacancies shall be filled in the same manner as provided herein for the appointment of the original Quarterly System Board Members.

2. Discharge and Presidential Grievances

The System Board Members charged with deciding Discharge and Presidential Grievances shall serve on an ad hoc, case by case, basis.

I. SUBMISSION OF DISPUTES

1. Content of Submissions

All disputes properly referred to the System Board for consideration shall be addressed to the Commissioner. Five (5) copies of each petition, including all papers and exhibits in connection therewith, shall be forwarded to the Commissioner who shall promptly transmit one (1) copy thereof to the Deputy Commissioner and each member of the System Board. Each submission shall include:

a. Individual, Group and Base Disputes
   (1) A formal and specific grievance statement, including:
      (a) Question or questions at issue.
      (b) Statement of facts.
      (c) Remedy sought.
   (2) Copies of all documents exchanged between the parties to date.
   (3) Notice of Dispute.

b. Discharge and Presidential Grievances
   (1) Question or questions at issue.
   (2) Statement of facts.
   (3) Position of employee, employees or the APFA.
   (4) Position of the Company.
   (5) Copies of all documents exchanged between the parties to date.

2. Joint and Separate Submissions

When possible, joint submissions should be made, but if the parties are unable to agree upon a joint submission, then either party may submit the dispute and its position to the System Board, provided however, that such separate submissions must be made within thirty (30)

days from the date of the Commissioner's receipt of the original submission. No dispute shall be considered by the System Board which has not first been handled in accordance with the provisions of this Agreement, including, as applicable, the rendering of a decision or the issuing of a recommendation by the Company.

3. Company Petition

Notwithstanding the foregoing paragraph, in no way shall the Company's right to file a petition to the System Board be affected.

J. PANEL OF ARBITRATORS

1. Panel

The Commissioner and the Deputy Commissioner shall endeavor to maintain at all times a panel of eleven (11) arbitrators that are mutually acceptable to act as the Chairperson of the System Board and from whom dates of availability are routinely obtained. Appointment of an arbitrator as a System Board Member will be based upon mutual agreement, rotation and availability.

2. Vacancy/Termination

If a vacancy occurs on this panel, the Commissioner and Deputy Commissioner will endeavor to agree upon an arbitrator to fill such vacancy within thirty (30) days. Each arbitrator shall serve as a member of this panel for an indefinite term; either the Commissioner or Deputy Commissioner may cause the services of an arbitrator to be terminated (except as to disputes already submitted to him/her) by giving written notice to the other party and to the arbitrator.

3. Appointment of Ad Hoc Arbitrator

In the appointment of an arbitrator, the Commissioner and Deputy Commissioner should attempt to reach agreement from among members of this panel, however, nothing in this Article shall prohibit the Commissioner and Deputy Commissioner from agreeing to utilize an ad hoc arbitrator for a particular dispute(s).

K. APPOINTMENT OF ARBITRATOR, LOCATION AND NOTICE OF HEARINGS

1. Quarterly System Boards

a. Chairperson/Standing Arbitrator

(1) Appointment of Standing Arbitrator

The appointment of a standing arbitrator to chair the Quarterly System Boards for the succeeding calendar year must be made no later than forty-five (45) days prior to the end of the present calendar year.

(2) Termination

Either the Commissioner or the Deputy Commissioner may terminate the services of a standing arbitrator after the first

Quarterly System Board or any Quarterly Session thereafter so long as such termination is made no later than sixty (60) days prior to the next scheduled session of the Quarterly System Board. In such event, the Commissioner and the Deputy Commissioner will promptly agree upon the appointment of another arbitrator, either from the panel of arbitrators or an ad hoc arbitrator, to chair the Quarterly System Boards. Should the parties fail to reach agreement within fifteen (15) days, the provisions prescribed herein will be utilized to retain the services of an arbitrator for the remainder of the calendar year. The newly appointed standing arbitrator will chair the next session of the Quarterly System Board, or if unavailable, the succeeding Quarterly System Board. If such arbitrator is unavailable for part or all of that initial session of the Quarterly System Board, during such period of unavailability, the parties will mutually agree upon an arbitrator to temporarily chair that part of the Quarterly System Board for which the newly appointed arbitrator is unavailable.

b. Location of Arbitration Hearings

The Quarterly System Board shall meet in the city where the General Offices of American Airlines, Inc. are maintained, unless a different location is agreed upon by the Commissioner and the Deputy Commissioner.

c. Notice of Arbitration Hearings/Docket

Upon receipt of notice of the submission of a dispute, the Commissioner shall set a date for the arbitration hearing, which shall be at the time of the next regular session of the Quarterly System Board and such dispute shall be considered docketed for hearing. If the President of the APFA or the Vice President of Employee Relations consider the dispute of sufficient urgency and importance, and the dispute has been docketed but not heard due to time constraints during at least one (1) prior session of the Quarterly System Board, either party may request an arbitration hearing at an earlier date. Such earlier date shall be at such a time and place agreed upon by the Commissioner and Deputy Commissioner, but not more than fifteen (15) days after such request for an arbitration hearing is made. The Commissioner shall give the necessary notices, in writing, of such arbitration hearing to the System Board Members and to the parties to the dispute.

d. Pre-Arbitration Conference

Prior to each session of the Quarterly System Board, representatives from Headquarters Flight Service, Employee Relations and the APFA will confer by phone, or in person if mutually agreed upon, to review all grievances submitted to date. All

parties will use their best efforts to facilitate and expedite the processing of disputes before the System Board.

e. Conversion to Presidential Grievance

(1) If, at any time prior to submission to the System Board, the APFA elects to convert a particular Individual, Group or Base Dispute to a Presidential Grievance, the procedures in Article 28 governing Presidential Grievances shall apply.

(2) If, after submission to the System Board, the APFA elects to convert a particular Individual, Group or Base grievance to a Presidential Grievance, the grievance shall, within forty-five (45) days of notice of conversion to the Company, be scheduled for a Pre-Arbitration Conference. Should the Company desire to file a separate submission to the System Board, such submission shall be filed within thirty (30) days following the date of the Pre-Arbitration Conference.

2. Discharge Grievances

a. Appointment of Arbitrator/Hearing Date

The Commissioner and the Deputy Commissioner shall, within forty-five (45) days from the date of APFA's submission, agree on the appointment of an arbitrator to chair the System Board and schedule the arbitration hearing date of a Discharge grievance. The scheduled hearing date may be outside this forty-five (45) day time limit.

b. Exception: Underlying Dispute

For a discharge grievance arising from an underlying policy or contractual dispute which is currently pending between the Company and the APFA, the arbitration hearing on the discharge may be held in abeyance until the policy or contractual dispute between the Company and the APFA has been resolved in accordance with this Agreement.

c. Location of Arbitration Hearing

In discharge disputes, the System Board shall meet in the city where the discharged employee was based, unless otherwise agreed to by the Commissioner and the Deputy Commissioner.

d. Notice of Arbitration Hearing/Docket

Discharge grievances shall be scheduled for arbitration hearing at such place and time agreed upon by the Commissioner and the Deputy Commissioner. The Commissioner shall distribute the necessary dockets, in writing, with the time and place of such arbitration hearing, to the System Board Members and to the parties to the dispute.

3. Presidential Grievances

a. Headquarters Pre-Arbitration Conference

Within forty-five (45) days of APFA's submission of a Presidential Grievance to the System Board, a Headquarters Pre-Arbitration Conference shall be held with the President of the APFA or his/her designee(s) and the Vice President of Employee Relations, or his/her designee(s). At such conference, the parties shall exchange all documents known to the parties at the time which are used in support of their respective positions. For confidentiality purposes, and, at the option of either party, all names and other identifying information may be expunged from any such documents exchanged.

b. Appointment of Arbitrator/Hearing Date

The Commissioner and the Deputy Commissioner shall, within forty-five (45) days from the date of APFA's request for arbitration, agree on the appointment of an arbitrator to chair the System Board and schedule the arbitration hearing date of the Presidential Grievance. The scheduled hearing date may be outside this forty-five (45) day time limit.

c. Location of Arbitration Hearing

The System Board shall meet in the city where the General Offices of American Airlines, Inc. are maintained, unless a different location is agreed upon by the Commissioner and the Deputy.

d. Notice of Arbitration Hearing/Docket

Presidential Grievances shall be scheduled for an arbitration hearing at such place and time agreed upon by the Commissioner and the Deputy Commissioner. The Commissioner shall distribute the necessary dockets, in writing, with the time and place of such hearing, to the System Board Members and to the parties to the dispute.

L. PROCEDURE FOR BREAKING DEADLOCK IN THE APPOINTMENT OF AN ARBITRATOR

Should the Commissioner and the Deputy Commissioner fail to reach agreement on the appointment of an arbitrator to chair an arbitration hearing(s) of the System Board as provided in K.1.a. (1), K.2.a. and K.3.b. above, the Vice President of Employee Relations and the President of the APFA, or their respective designees, shall, within ten (10) days of the expiration of the time limits as provided in K.1.a. (1), K.2.a. and K.3.b. above, meet to review the reasons for the failure of the parties to reach agreement on the appointment of the arbitrator, and to make a final attempt to reach agreement prior to petitioning the National Mediation Board.

1. Petition to National Mediation Board

If, within ten (10) days of the meeting described above, the Vice President of Employee Relations and the President of the APFA have failed to reach agreement on the appointment of an arbitrator, the Commissioner shall petition the National Mediation Board for a list of seven (7) arbitrators who, in addition to other credentials, are members of the National Academy of Arbitrators. The Commissioner and the Deputy Commissioner will have thirty (30) days from receipt of this list to appoint an arbitrator and schedule the hearing date.

2. Appointment of Arbitrator

Through the process of elimination, with the Commissioner and the Deputy Commissioner alternately striking an equal number of the arbitrators from the list supplied by the NMB, an arbitrator will be appointed and the case set for hearing at the earliest possible date.

M. SCHEDULING AND POSTPONEMENTS OF ARBITRATION HEARINGS

The Commissioner and the Deputy Commissioner agree to use their best efforts to schedule arbitration hearings at the earliest practical date and to avoid and/or limit, whenever possible, the number of postponements. Any delay in scheduling or postponement should be for good cause, i.e., System Board Member, grievant, witness or presenter unavailability due to sickness, injury, and/or vacation; presenter staffing considerations; or delays pending the resolution of an outside hearing or resolution of a substantially identical dispute, etc.

N. STENOGRAPHIC REPORTS

When the Commissioner and the Deputy Commissioner mutually agree that a stenographic report is to be taken of a hearing of the System Board, in whole or in part, the cost will be borne equally by both parties to the dispute. In the event it is not mutually agreed that a stenographic report of the proceedings shall be taken, any written record available taken of such System Board hearing shall be furnished to the other party to the dispute upon request, provided that the cost of such written record so requested shall be borne equally by the parties to the dispute.

O. REPRESENTATION AND SUMMONING OF WITNESSES

1. Representation

Employees covered by this Agreement may be represented at System Board hearings by such person or persons as they may choose and designate, and the Company may be represented by such person or persons as it may choose and designate.

2. Witnesses

a. Summoning of Witnesses

(1) On request of individual members of the System Board, the System Board may, by a majority vote, or shall at the request

of either the APFA representative(s) or the Company representative(s) thereon, summon any witnesses who are employed by the Company and who may be deemed necessary by the parties in the dispute, or by either party, or by the System Board itself, or by either group of representatives constituting the Board.

(2) The number of witnesses summoned at any one time shall not be greater than the number which can be spared from the operation without interference with the services of the Company.

b. Disposition of System Board Witness Expenses

Each of the parties hereto will assume the compensation, travel expense and other expenses of the witnesses called or summoned by it. So far as space is available, witnesses who are employees of the Company shall receive free transportation over the lines of the Company from the point of duty or assignment to the point at which they must appear as witnesses, and return, to the extent permitted by law.

3. Leaves of Absence for Representatives/Witnesses

In a dispute before the System Board, when a flight attendant is chosen to act as the representative of, or witness for, another flight attendant, such representative or witness shall, when the requirements of the service permit, be given leave of absence of a time sufficient to permit him/her to appear as such representative or witness.

P. EXCHANGE OF DOCUMENTS AND WITNESS LISTS

1. Formal Exchange

Thirty (30) days prior to the date set for an arbitration hearing, the representatives designated by the parties shall exchange all documents they intend to enter in support of their respective positions and make available, in writing, the names of all witnesses they intend to summon whom they deem necessary to the dispute. Identifying information expunged from previously exchanged documents for reasons of confidentiality will now be exchanged with all information intact.

2. Additional Documents and Witnesses

Nothing herein shall require the representative of either party to present the aforementioned documents or to summon the aforementioned witnesses during the course of the hearing, nor shall the representatives of either party be restricted from entering documents or summoning witnesses who become known subsequent to the thirty (30) day exchange. Such additional documents and the names of such additional witnesses shall be exchanged at the time such determination is made.

Q. EVIDENCE

Evidence may be presented at a System Board hearing either orally, or in writing, or both, and through witnesses.

R. TIME LIMITS

It is agreed by the parties hereto that the periods of time established in this Article, shall be considered as maximum periods of time and that when disputes can be handled in a period of time less than the maximum time stipulated, every effort will be made to expedite such disputes.

S. STATEMENT OF EMPLOYER AND EMPLOYEE RIGHTS

Nothing herein shall be construed to limit, restrict, or abridge the rights or privileges accorded either to the employees or to the employer, or to their duly accredited representatives, under the provisions of the Railway Labor Act, as amended, and the failure to decide a dispute under the procedure established herein shall not, therefore, serve to foreclose any subsequent rights which such law may afford or which may be established by the National Mediation Board by orders issued under such law with respect to disputes which are not decided under the procedure established herein.