IV. Panel Discussion Remarks

Gan: Thank you. Good afternoon. For those of you neutrals in the room, to the extent you may have been concerned with the title of this session, don't worry; the panelists haven't ganged up and decided that the way to resolve the problem was to pick the arbitrators with the lowest per diem. That's not what we're talking about. As you'll see, I'm actually going to turn to that theme in a minute.

A number of years ago in Washington, D.C., there was a prominent vice president of labor relations at one of the major employers in downtown Washington who had a very stormy relationship with the employees and the unions of this employer. This particular employer had about 6,000 employees in 10 bargaining units. During one set of negotiations a number of years ago, the vice president made some intemperate remarks that were taken by the union negotiator to the vice president's boss; and that ended this vice president's tenure at this employer. About six months later, I got a list from the AAA containing this gentleman's name. I was shocked because at the time the going rate for arbitrators was about $700 or $800. And, the per diem listed for this individual was $200. So, it occurred to me that what was happening here was that we had someone who had a very stormy relationship with the unions, and he was looking to find either an employer or a union looking for a bargain-basement arbitrator.

I find that interesting because I think that's exactly what we don't look for. My point is that, from where I stand, reducing the costs of disputing has absolutely nothing to do with what an arbitrator costs. The costs of arbitration that are internal to the union—things like travel, prep time, time away from other activities—are far more costly than putting on an arbitration hearing or paying an arbitrator at the end of the day. And, therefore, I'd like to tell you a little bit about my relationship as General Counsel to the National Rural Letter Carriers Association (NRLCA).

I'm going to say a few words about the unique structure of the NRLCA. I'll then give you some insight into the screening process that we employ to select only the best cases to arbitrate. That screening process involves a very important relationship between the lawyer, the client, myself, and, in this case, the Director of Labor Relations, Randy Anderson. This relationship is critical to the success of reducing the cost of disputing.

I want to talk about a contractual provision that we have in our collective bargaining agreement that was designed to reduce the cost of disputing. I'm not convinced that it has done that. But, I'll say a little bit about that as well.

The structure of the NRLCA is quite different than the other three major postal unions. There are nine national officers, five of whom are resident in Washington, D.C.; four of whom are in the field. They service well more than 100,000 bargaining unit members on more than 75,000 rural routes in the United States. There are 48 state associations. These are subordinate state associations of the NRLCA, each of which has a head labor relations person—the state steward. There are then levels below the state steward: the assistant state stewards, area stewards, and local stewards. Grievances are handled within each state through the Step 2 level. After that, they're handled at Step 3 by paid union staff people of the national union. And they are handled at the area level with representatives from the postal service. Any appeals from Step 3 go directly to USPS headquarters and are reviewed by the national union's director of labor relations for consideration for arbitration.

Because of this structure, local politics, as far as whether to take cases to arbitration or not, play, in my view, absolutely no role whatsoever. Our costs of disputing are reduced right there based solely on the structure that we employ and on the design that we have both in terms of how the union is structured overall and how the grievances are funneled up through the grievance process.

The next thing I want to talk about is our screening process. I think our greatest savings comes from the screening process that the union has used for far longer than I've been serving as general counsel, probably for the better part of the last three decades. The decision to arbitrate or not rests solely with the director of labor relations. The evaluation of the case and whether or not that case will see the light of day in an arbitration hearing room is ultimately made by one person. I, however, have enrolled in that process as well because we do a double-blind review of case files. What that means is that the director of labor relations reads a case file; I'll read a copy of that same file; I'll give a recommendation to the director; and he will not look at it until he has reviewed the file himself. That ensures that neither of us will be prejudiced by the others' opinion. If we agree to go forward with the case, then the case is scheduled. If we agree to withdraw the case, then the case is

closed. And, if we disagree, then we talk. Ultimately, as I said, the decision is his call. But, I think my opinion is valued, and we have never been unable to reach consensus on whether a case should be scheduled for arbitration or not.

We are pragmatic about the cases that are selected for arbitration. There is no secret about the standard that we use in selecting those cases. We ask ourselves whether we have a reasonable likelihood of success. We are very serious about that standard. And, because of it, many cases do not get arbitrated. We arbitrate cases that we think we should win. I think we've been served well over the years by using that standard. It doesn't mean that we are extraordinarily safe by any stretch of the imagination. I think we do push the envelope, but we do it in only the right cases. We do it at the right time. We take risks; but they are, I think, calculated risks.

So you might ask, if you don't take every discharge to arbitration, are you in court a lot defending DFR cases? The answer to that question is, no, we're not. I think our per capita lawsuit rate in DFR cases is a fraction of what you see in other unions the size of the NRLCA. If we have one or two DFR cases pending at any given time, that's a lot. And, that's nationally. And frankly, even when we have those DFR cases, very few of them actually include allegations that we should have taken a case to arbitration and did not. They are DFR cases for other reasons.

I think the bargaining unit knows that because we've had this long history of doing things this way, it will get a fair shake, all the way up through the grievance procedure. If they get to the level of the director of labor relations, and ultimately the answer is no, then there is no problem at that point. There's an understanding. For better or for worse, the director of labor relations has historically been a pretty accessible position within the NRLCA. You actually get to talk to somebody, and you may actually get an explanation for why your case isn't going to be arbitrated. I think that's important.

So we have, I think, employed a successful model that has led to very good results, and I think, that has substantially reduced the cost of disputing. We may well arbitrate fewer cases per capita than the other postal unions, but it's all about, in our view, choosing the right cases to arbitrate and only after quite a rigorous review. We tell our stewards routinely, don't just tell us the good stuff, we want the dirt, too, because that's what helps inform our judgment.

Our screening process would not work as well as it does if you didn't have balance in the relationship between attorney and client. I think that's really important. We have a deep respect for what we're doing in analyzing these cases and have a devotion to making certain that everybody is getting a fair shake in the review process. The files are read from cover to cover. And, if the evidence isn't there, then the case doesn't get arbitrated. If we think we need to ask questions, then we'll do that. And, there's no second guessing. We make the tough decisions, and those decisions are what they are.

The cost of disputing would be reduced further, I would argue, if the postal service in every region of the country looked at cases like we do. I think they do in some places, but I think in other places they don't. And, that actually increases the cost of disputing. I think there may be institutional hurdles that make that hard to happen. It may well be something that they strive for; but too often we hear in the field, "I'm sorry, I can't settle this case, my district manager won't let me." "My post master would be really upset." "He or she says it just can't happen." "We'll have to let the arbitrator decide." From our perspective, that's the last thing we want to hear because the whole model of the grievance procedure in the postal service is to have things settled at the lowest possible level. When you get to the last step of the procedure and find out that the advocate might actually agree with you that the case should be resolved but that there are impediments to doing so, it is distressing.

We have a contractual provision in our agreement in Article 15:5 that says "all costs, fees, and expenses charged by an arbitrator will be borne by the party whose position is not sustained by the arbitrator. In those cases of compromise where neither party's position is clearly sustained, the arbitrator shall be responsible for assessing costs on an equitable basis." I guess that's our version of Texas Hold'em. The problem is that it doesn't work well enough. The concept is simple: if you lose, you pay the freight; therefore, union, you take a bad case to arbitration it's going to cost you. Likewise, Postal Service, if you don't settle, then you're going to pay the freight. No one has done an empirical study of whether or not this actually yields the result that the parties intended. The fact is, it doesn't work because we have too many cases that get beyond where they should.

I just have one last point. My law partner, Mark Gisler, suggested that maybe we need to up the ante a little bit. Maybe this contractual provision isn't enough. Maybe what we should be doing is saying, not only does the loser pay the arbitrators fees and expenses, but they also pay for counsel fees and expenses and travel and so forth. I realize that's quite a radical suggestion. I'm not sure that we'll be seeing that at the bargaining table, but I think it's food for thought because that is one thing that we had always hoped would reduce those costs.

And with that, I'll stop talking.

Casselman: Thank you very much. I'd like to just explain a little bit about the Canadian Post Office experience and compare it to the U.S. because I know we have some things in common and some things that are a bit different. Just by way of introduction, I'm going to explain a little bit about the company. Canada Post Corporation was created in 1981 through federal legislation. We were a government department prior to that. But, we wanted to become more independently run. We're like a private company. As a government department, we had a very bad history of labor relations. We had many, many years where we would not be able to come to any collective bargaining agreements and there would be lengthy strikes and back-to-work legislation. We had a lot of disruptions, and we also were losing a lot of money.

Since we've become a crown corporation, things have turned around for us. We started making a profit in 1989. And the year 2006 marked 12 consecutive years that we've made a profit. Our revenues, I think, were $7 billion in 2006.

To give you an idea, we deliver about 40 million pieces of mail each day. Now, I believe in the U.S., the number of employees is much greater; but in Canada, our post office, we have about 72,000 employees. Ninety percent of those are unionized. We have four bargaining agents that represent our employees. We have the association that represents a supervisory and sales group. We have a union that represents the administrative and professional group. We have a union that represents the rural post masters and assistants. And, then we have our main union, which is the Canadian Union of Postal Workers. They represent all the plant workers, the internal mail sorters, the letter carriers that deliver the mail, and also our new group, which is the rural mail carriers. They used to be contractors that were brought in as employees in 2004.

Recently we have successfully negotiated a collective agreement that expires in 2011. This was a really good round of negotiations

for us. It was completed very quickly. Sometimes we've had negotiations go on for two or three years before we can come to an agreement. This time, both parties decided that we wanted to try to do it as much as possible without any media alerts. In fact, half of our customers didn't even know that we were in collective bargaining at the time. That was really good for us because of our history in the past of having so many strikes. That scares off a lot of our customers, and they go elsewhere when they are looking for different kinds of mail delivery that's not considered part of our exclusive privilege, which is only the first class letter mail.

So, what we've thought about doing is improving our labor peace by focusing on improving our level of employee engagement. We realize this is a huge undertaking, and we've looked at what to do to best engage our front-line employees. They are the ones who spend most of the time with the customers; so we thought, let's ask them what they need to do to be satisfied in their job in order to be able to provide the best service that we can. We also wanted to take a look at the relationship between our front-line supervisors and other employees because that is very important as a meter stick for the relationship on the shop floor because that seems to be where the crux of the issues have historically originated.

We have also looked at a number of other initiatives such as direct communications with our president. We've had a new president for two years now; one of her issues is that she would like to invite all the employees across the company to write to her about any concerns or suggestions they might have. She gets a lot of letters, and she answers them all as best she can. We also have an employee satisfaction survey that we send out once a year so that we can get some sort of idea of what the issues are with the employees; what they are happy with and what they're not happy with.

We're also trying to get more employee recognition programs and have more employee involvement. The president has set up regional forums across the country in all of our major centers. She or some of the executives from the team come out and talk to the employees so they can hear some of our big picture strategies and get a better understanding of some of the concerns that we have with letter mail erosion.

We've also looked at health and safety. That is a really big issue for us. We have a high injury rate compared with some other industries, and we want to look at ways that we can improve that. Also, the president put in $20 million last year into upgrading facilities

so that employees have nicer cafeterias and some fitness facilities on site. All of these initiatives are designed to help change the morale of employees and, in turn, result in fewer grievances.

We also looked at our supervisors. We felt that the supervisors were so busy trying to get the mail out by deadlines and get their production rate up that they weren't spending enough time understanding employee needs. We did an assessment and decided that we needed to hire more supervisors. Last year we hired 300 more supervisors. So, one of the big things that labor relations has been involved in is a lot of training for our new supervisors. We have a collective agreement that is more than 500 pages in length. There is a lot for supervisors to learn, especially if they are coming in new to the company. We wanted to get them comfortable with the collective agreement so that they're better able to understand the rights of the employees under the agreement.

So now, let's talk about the grievances. Our relationship with our biggest union, which is the Canadian Union of Postal Workers, has been rocky. They represent 80 percent of our employees and generate about 90 percent of our grievance activity. In the early 1990s, we had 145,000 grievances pending resolution. I'm not sure how that compares to the U.S.; but for a company with 72,000 employees, 145,000 grievances is quite a lot. We sat down with our union and decided to come up with a resolution process that we called "the grievance resolution process." The goal was to resolve as many of those as we could without having to go in front of an arbitrator. It was basically taking a whole bunch of grievances on one particular subject and trying to come to a settlement on a package basis. Of those grievances that we started off with in 1992, we have only 1,800 left. So we've really come a long way.

At the time, our union was filing 24,000 grievances a year. Now, they are still filing about 15,000 a year. So, there's a big difference there, but we still have a lot of issues that we do need to resolve. Although we got rid of the old backlog, we now have a new backlog of 25,000 grievances. So, there are still grievances out there that need to be resolved.

Regular and Formal Arbitration

At the same time as the resolution process was instituted to deal with the backlog, the parties agreed to create a new, more streamlined process to deal with future grievances so that a huge backlog would never recur. This procedure is an informal and accelerated

mechanism to facilitate a more speedy settlement of grievances arising out of application of the collective agreement.

The basic principle of the process is that the scheduled number of cases to be heard at each hearing should not be less than 25; the use of witnesses is to be minimized; and lawyers are not to be used to argue the cases. All grievances are to be part of this process, with the exception of termination grievances, policy grievances, and those involving large numbers of employees or the union as a whole. These grievances fall under the "formal" arbitration procedure.

The parties have also agreed to meet at least one week prior to each arbitration hearing in order to exchange a copy of any documents they intend to use at arbitration, including precedents and authorities. This meeting also serves the purpose of establishing and agreeing on the facts relevant to each case and most importantly, results in the settlement of a vast majority of grievances (85 percent). These preliminary meetings help to ensure that when in front of an arbitrator, time is used as efficiently as possible.

The "formal" arbitration process is reserved for more complicated matters. Unlike the regular process, these hearings often involve witnesses and lawyers and take a number of days to conclude.

Therefore, through the development and use of the "regular" arbitration procedure, grievances are being resolved in a manner that reduces the costs of arbitration. This is a success as the cost of formal arbitration (approximately $13,000 per grievance) far exceeds the cost of regular arbitration (approximately $900 per grievance) and 83 percent of all grievances that proceed to arbitration are handled through this "regular" process.

However, I should add that the "regular" process could use some refinements, as we are finding that the number of witnesses on many occasions exceeds the "minimal" number that the parties had originally intended and the union often does not schedule a sufficient number of grievances at each hearing, resulting in cancellation costs.

Grievance Reduction

In an effort to reduce the costs of disputing, Canada Post has implemented several measures to reduce the number of grievances filed. These measures include a complaint stage, the development

of key performance indicators, grievances held in abeyance, and root cause analysis.

Complaint Stage. The complaint stage provides an opportunity for employees and supervisors to resolve issues before resorting to the filing of a grievance. This allows employees to seek a quick resolution to their issues and supports the Corporation's goals of reducing the number of grievances filed and the costs of proceeding to arbitration.

This has been a part of the CPC/CUPW collective agreement since 2000; however, due to limited acceptance by this union, this stage is not widely used as a grievance management tool. Our Quebec region, which had the second lowest number of grievances filed per 1,000 employees in 2005, is the only region that formally utilizes this process as they have been able to reach an agreement with the local union to do so.

In Quebec, in 2006, 30 percent of issues were resolved between the parties through the complaint stage without the filing of a grievance. Several areas across the country have developed local agreements as well for managing the grievance process; however, these processes are not tracked or documented, as they are informal.

As such, it is evident that the use of a complaint stage helps to support the Corporation's ongoing efforts in the area of employee engagement as ineffective grievance resolution impacts employee satisfaction and the union-management relationship.

Key Performance Indicators (KPIs). In an effort to reduce grievances and associated costs, targets are set each year for our regional Labour Relations teams. The targets include the reduction in number of grievances filed, reduction of pending files, and increased resolution of grievances at the first level of the grievance procedure.

This year the targets will include three new performance measurements directly associated with the resolution of grievances. They involve the reduction in time to resolve grievances; the number of hours spent by Labour Relations Officers on evening and night shifts to assist supervisors in grievance prevention; and the minimum number of union consultations, with the expectation that more discussion and resolution of issues will occur with a lesser number of grievances being filed.

The majority of grievances are resolved at the first level and pre-arbitration stages. This indicates that most grievances are resolved without the involvement of a third party, through discus-

sion between the parties. This is truly a success as 97 percent of grievances are resolved without the assistance of a third party.

Grievances Held in Abeyance. In an effort to keep the regular arbitration procedure free from being bogged down with issues that may become moot, the parties have agreed to hold in abeyance any unresolved grievances where discipline is imposed but where there is no financial impact on the employee, such as reprimands or waived suspensions. These grievances are kept in abeyance until either party wishes to rely on the presence or absence of such discipline in relation to another relevant issue, or at the latest, 12 months from the date of the alleged infraction. At the end of the 12 months, the grievance is deemed to be settled, as our discipline procedure stipulates that all reference to discipline must be removed from an employee's personal file if no further discipline is imposed within 12 months of the first infraction.

These grievances, while in abeyance, are not included in the grievance scheduling process. Furthermore, the parties often agree to hold in abeyance any grievances relating to measures taken by the Corporation with respect to the attendance of an employee.

This is viewed as a success as valuable resources are not being used to resolve issues that are of an administrative nature. The arbitration process is reserved for resolving other matters as expeditiously as possible.

Root Cause Analysis. Although grievances concern all articles of the collective agreement, the majority fall into the categories of discipline (i.e., written reprimands, suspensions), attendance management, work in the bargaining unit (i.e., supervisors allegedly touching/moving mail), overtime/uncovered letter carrier routes (i.e., modified duties, rotation days off, equal opportunity bypasses), hours of work, health and safety, and special leave.

Labour Relations has been striving to reduce the overall number of grievances filed. However, to do so effectively, we started with a study on high volume grievances to determine some of the root causes and develop strategies to reduce these types of grievances.

We chose overtime grievances for our first study. As a result, Labour Relations has implemented specific action plans, such as the creation of a flow chart, to simplify the rules for overtime administration for our supervisors to follow.

By targeting the underlying factors that are contributing to these grievances, the Corporation is attempting to reduce the number of grievances filed and associated costs. As this is a recent under-

taking, the results have not yet demonstrated the overall impact of the analysis; however, it is expected that this initiative will yield positive results and we will expand the study to include other types of high volume grievances.

Relationship Improvement

More than ever, union and management are participating in joint committees aimed at addressing employee and workplace issues. We are also discussing business opportunities and forecasting scenarios for the business. This includes sharing of information on mail volume erosion, potential opportunities for business development, job retention, and job growth. For example, semi-annual meetings are held with the executives and President of Canada Post and each bargaining agent to share key financial information and critical issues.

Furthermore, a "Partnership Agreement" was signed by the President of Canada Post and the President of the APOC bargaining agent. This agreement outlines the commitment made by the parties to work together in a spirit of mutual trust and cooperation and to ensure that interpersonal and industrial relations proceed in a manner than ensures both the well-being of all employees and the economic and efficient operation of the Corporation. Such agreements help to foster a relationship that encourages communication and reduces grievances.

Although we still have a long way to go to cultivate fully the ideal union-management relationship, the Corporation has been successful in continuously improving the rapport with each of the bargaining agents.

Although the mediation approach to dispute resolution is prevalent in Canada and I believe throughout the United States as well, it is our philosophy that the key to improved relationships and long-term grievance cost reduction is through a focus on employee engagement and continual sharing of information, ideas, and strategies with our unions and associations. Therefore Canada Post does not use mediation as a formal means of dispute resolution, although it is sometimes suggested by arbitrators and utilized from time to time to mediate grievance settlements. Looking into the future, this means of dispute resolution is something that we may utilize more frequently, but we maintain that a mutual solution is better than one imposed by a third party.

Conclusion

It is evident that through the regular and formal arbitration procedure, the grievance resolution process, grievance reduction methods, and a stronger focus on employee engagement, Canada Post has come a long way in improving our union-management relationships and in reducing the costs of disputing. Although we have achieved many successes from these initiatives, we understand that we must continue to work with our employees to seek solutions that serve our collective interests.