III. BACK-SEAT DRIVING BEHIND THE BACK-SEAT DRIVER: ARBITRATION IN THE FEDERAL SECTOR

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I preface these remarks by stating that the views expressed are solely my own and certainly do not reflect the thinking of my colleagues on the Federal Service Impasses Panel or its staff. It is also prudent to observe that my views are not the product of long experience and observation of labor relations and the practice of arbitration in the federal sector. I only recently assumed the role of member and chairman of the panel, and my experience as an arbitrator in the federal sector, when I handled such cases on an ad hoc basis, is confined to a handful of disputes.

One of my very limited contributions to the case law in this field involved a dispute between the Department of Labor and the American Federation of Government Employees. My award in that case was appealed to the Federal Labor Relations Council by the Department. The employer alleged that my award would require it to pay overtime in violation of pertinent regulations contained in the Federal Personnel Manual. The council reviewed my award and decided that the determination should not be disturbed.[1] The case was then appealed to the Comptroller General by the Department, which indicated that it believed my ruling required it to make an illegal expenditure of federal funds.

I've lost track of the case at that point. Although I don't know if it is still being reviewed by the Comptroller General or is now before the Court of Claims, the grievants—certain employees who were required to travel on a Sunday to attend a training conference—have not received the compensatory time off or overtime pay which I directed be paid. They did that traveling two years ago.

Hence, the title for my remarks. First the council had a look. Then the Comptroller General got into the act. Finally, the

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[1] *National Union of Compliance Officers (Independent) and Labor-Management Services Administration, U.S. Department of Labor,* FLRC No. 77A-39 (August 25, 1977), Report No. 136.

Court of Claims may be the final weigh station on the route of an award which, under the collective bargaining agreement between the Department of Labor and the union, was the product of a so-called final and binding arbitration provision of the grievance machinery.

In this regard, Executive Order 11491, as amended,[2] establishes the collective bargaining framework for some two million nonpostal, civilian employees working in the executive branch of the Federal Government. Although not required in negotiated agreements, binding arbitration is now an accepted means of resolving contract disputes in the federal sector. As of December 1977, 2,491 agreements, or 93 percent of all federal agreements, called for arbitration; 2,314 of these, or 93 percent, provided for binding arbitration. Moreover, while in 1970 only 11 binding awards were issued, by 1977 this number had increased substantially to 430.[3] While there has been extensive expansion of grievance arbitration in the federal sector, it cannot be looked at as simply an extension of its private-sector counterpart because it takes place in a different legal context.

The Legal Framework

Section 13(a) of Executive Order 11491 requires that all contracts contain a grievance procedure. The coverage and scope of the procedure are negotiated by the parties, but may not cover matters (1) subject to a statutory appeal procedure, or (2) which conflict with statute or the order. With respect to this second matter, the requirements of Section 12(a) of the order, which make the administration of each negotiated agreement subject to laws, regulations of appropriate authorities, and certain agency policies and regulations, must be contained in every federal agreement.[4]

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[2]Exec. Order No. 11491, 3 C.F.R. 861 (Comp. 1966–70), 5 U.S.C. § 7301 (1970), *as amended by:* Exec. Order No. 11,616, 3 C.F.R. 605 (Comp. 1971–75); Exec. Order No. 11,636, 3 C.F.R. 634 (Comp. 1971–75); Exec. Order No. 11,838, 3 C.F.R. 957 (Comp. 1971–75); Exec. Order No. 11,901, 41 Fed. Reg. 4807 (1976); and Exec. Order 12,027, 42 Fed. Reg. 61851 (1977).

[3]These statistics are as reported by the Labor Agreement Information Retrieval System of the U.S. Civil Service Commission.

[4]Section 12(a) provides: "Sec. 12. *Basic provisions of agreements.* Each agreement between an agency and a labor organization is subject to the following requirements—(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency

Resolution of Grievability and Arbitrability Questions

There are at least 22 statutory appeal procedures in the federal service covering such matters as discharge and other disciplinary actions involving suspensions of more than 30 days, reduction-in-force, and job classifications,[5] matters which in the private sector and most public-sector jurisdictions would be subject to grievance arbitration.[6] Whether a grievance is on a matter for which a statutory appeal procedure exists is determined, not by the arbitrator, but by the Assistant Secretary for Labor-Management Relations, who is additionally responsible for functions analogous to those performed by the National Labor Relations Board in the private sector. Other grievability or arbitrability questions may, by agreement of the parties, be submitted to arbitration or to the Assistant Secretary.

The council, the central administrative and appellate body under the order—composed of the chairman of the Civil Service Commission, the director of the Office of Management and Budget, and the Secretary of Labor—may review a grievability or arbitrability decision of the Assistant Secretary when his determination is appealed by one of the parties. The council, in its *Crane*[7] decision, clarified the Assistant Secretary's responsibilities when the parties refer a grievability or arbitrability dispute to him. The council held that if, as in *Crane,* the question is whether a grievance is over a matter covered by a statutory appeal procedure, the Assistant Secretary must decide that question and must consider laws and regulations pertaining to that statutory appeal procedure. When the matter concerns whether a grievance is subject to the negotiated grievance procedure, the Assistant Secretary must also answer that question, just as an arbitrator would if the question were referred to him.[8] The council stated that the Assistant Secretary, and by analogy an arbitrator, in making such a determination must consider: relevant provisions of the order including Section 13; contract

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policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level. . . ."

[5] *See* Final Staff Report, *Personnel Management Project* 59 (1977).

[6] U.S. Department of Labor, *Grievance and Arbitration Procedures in State and Local Agreements* 6 (1975).

[7] *Department of the Navy, Naval Ammunition Depot, Crane, Indiana,* FLRC No. 74A-19 (February 7, 1975), Report No. 63.

[8] *Id.*, at 4.

provisions that describe the scope and coverage of the negotiated grievance procedure as well as any substantive provisions being grieved; and existing laws and regulations of appropriate authorities including policies set out in the Federal Personnel Manual.[9] The council has also said that the Assistant Secretary, in making his grievability and arbitrability decision, may not interpret the substantive provisions of an agreement as an arbitrator would in deciding the merits of the case.[10] Thus, while the role of the Assistant Secretary is similar to that of a court in the private sector under Section 301 of the Labor Management Relations Act,[11] his obligation to resolve arbitrability questions is much greater than that of a court.[12]

Arbitral Consideration of External Law

For the past several years this Academy has debated the question of whether the arbitrator should consider external law in fashioning his award. A variety of factors, however, lead me to the conclusion that, at least with respect to the federal sector, the arbitrator must consider external law, appropriate regulations, or the order, or risk having his award overturned.

Title 5 of the United States Code codifies the laws relating (1) to the organization of the Federal Government, and (2) to its civilian officers and employees.[13] The conditions of employment which have been established pursuant to Title 5 constitute a comprehensive package of benefits, the result of which has been that most of the normal substance of collective bargaining in the private sector, such as wages, hours of work, insurance, leave, and employment and retention, has been preempted in the federal sector by law. Moreover, the U.S. Civil Service Commission has the responsibility for administering most of the provisions found in Title 5 and has done so in the context of issuing regulations, directives, and guidelines found in the Federal Personnel Manual. Agency heads pursuant to Section 301 of Title 5 are vested with authority to prescribe regulations

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[9] *Ibid.*

[10] *Community Services Administration and National Council of CSA Locals, AFGE, AFL-CIO,* A/SLMR No. 749, FLRC No. 76A-149 (August 17, 1977), Report No. 133.

[11] 29 U.S.C. § 185 (1970).

[12] *See Steelworkers* v. *Warrior & Gulf Navigation Co.,* 363 U.S. 574, 582, 46 LRRM 2416 (1960); and *John Wiley & Sons* v. *Livingston,* 376 U.S. 543, 546, 55 LRRM 2769 (1964).

[13] Government Organizations and Employees, 5 U.S.C. (1970); 80 Stat. 378.

concerning the conduct of employees, and Section 302 provides that the head of an agency may delegate to subordinate officials the authority vested in him by law to take final action on matters pertaining to the employment, direction, and general administration of personnel within the agency.

Into this mix of law, Executive Order 11491, as amended, creates the basis for collective bargaining for federal employees on personnel policies and practices and matters affecting working conditions, reserving to federal employers extensive management rights as enumerated in Sections 11(b) and 12(b) of the order.[14] Moreover, as mentioned earlier, the requirements of 12(a) of the order, which make the administration of each negotiated agreement subject to laws, regulations of appropriate authorities, and certain agency policies and regulations, coexist with the provisions within the four corners of every federal-sector agreement. Thus, the proscriptions of these external rules must be considered by the arbitrator as well as the language of the agreement itself.

To avoid any confusion on this point, it is best not to refer to an agreement in the federal sector as having four corners. Rather, the terms of a contract in the limited area reserved for collective bargaining and the above-mentioned external law are confined within a pentagon rather than a rectangle. If there is still some basis to continue the debate over whether external law must be considered by the arbitrator in the private sector, there is no question that he or she must do so in the federal sector.

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[14]Section 11(b) provides: "(b) In prescribing regulations relating to personnel policies and practices and working conditions, an agency shall have due regard for the obligations imposed by paragraph (a) of this section. However, the obligations to meet and confer does not include matters with respect to the mission of an agency; its budget; its organization; the number of employees; and the numbers, types, and grades of positions or employees assigned to an organizational unit, work project or tour of duty; the technology of performing its work; or its internal security practices. This does not preclude the parties from negotiating agreements providing appropriate arrangements for employees adversely affected by the impact of realignment of work forces or technological change."

Section 12(b) states: "(b) management officials of the agency retain the right, in accordance with applicable laws and regulations—(1) to direct employees of the agency; (2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees; (3) to relieve employees from duties because of lack of work or for other legitimate reasons; (4) to maintain the efficiency of the Government operation entrusted to them; (5) to determine the methods, means and personnel by which such operations are to be conducted; and (6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency. . . ."

Standards for Review of Arbitration Awards

From the arbitrator's point of view, the most significant function that the council performs is its consideration of exceptions to and possible modification of arbitration awards. In this regard, its rules provide that the council will grant a petition for review of an arbitration award only where it appears that the exceptions to the award present grounds that the award violates applicable law, appropriate regulation, or the order, and on additional grounds similar to those applied by courts in the private sector. If the council grants the petition for review, it will then proceed to consider the merits of the alleged ground and determine whether the award should be sustained, modified, set aside, or remanded.[15] In part, then, the council will review awards on grounds similar to, but not identical with, those which restrict the discretion of courts in the private sector to review such awards. These include (1) the arbitrator exceeded his authority; (2) the award does not draw its essence from the collective bargaining agreement; (3) the award is incomplete, ambiguous, or contradictory so as to make implementation of the award impossible; (4) the award is based on nonfact; (5) the arbitrator was biased or partial; and (6) the arbitrator refused to hear pertinent and material evidence.[16] These standards for review are all familiar to us as a result of our private-sector practices and will not be dealt with further in this paper.

What is different in the federal sector is the other grounds for review, namely, that the award violates applicable law, appropriate regulation, or the order. These grounds, which I call "federal-sector grounds," recognize the extensive body of statutes and regulations that affect many aspects of collective bargaining in the federal sector. Their impact is demonstrated by the fact that over three fourths of the appeals[17] of arbitrator awards accepted by the council for review were on these grounds.

Agencies and unions, recognizing this broader basis for review, have not exercised the same restraint that parties in the private sector have in appealing awards. From 1970 to 1977, 184 of 1,204 binding awards, or 15 percent, were appealed to the council, of which almost 80 involved members of the National

[15] 5 C.F.R. §§ 2411,32, .37 (1976).
[16] Federal Labor Relations Council, Information Announcement 9 (July 2, 1976).
[17] *Id.*, at 5.

Academy of Arbitrators. This compares with an estimated 1 to 1½ percent of private-sector arbitration awards that have required court action to be instituted with respect to any aspect of arbitration.[18] The council accepted 62 of the 184 cases for review and modified or set aside the arbitrator's award in more than half of them (35 cases). Only 10 of the 62 awards were sustained in their entirety (six other cases were withdrawn by the appealing party); 10 of these were pending at the end of 1977.

These statistics indicate to me that a number of my fellow arbitrators are unwilling to accept the fact that they must grapple with rules and regulations affecting the substantive provisions of federal-sector collective bargaining agreements and make findings consistent with the terms of such external law. They also demonstrate that some federal managers have not yet come to terms with the fact that the existence of the collective bargaining agreement ordains diminution of their managerial authority. Moreover, some union representatives, I suspect, find that the use of this appeals machinery makes it easier to avoid political decisions.

At this time, I am convinced that the council has been trying to exercise forbearance in reviewing arbitrator awards. The council members and their professional staff appear to be firmly committed to the need for effective final and binding grievance arbitration in the federal sector. The council, however, cannot exercise restraint where the losing party in the arbitration, usually the agency in such cases, alleges that the arbitrator's award, if carried out, would require the agency to violate the terms of a statute, such as the Back Pay Act of 1966. In this regard, the council's decision to review once again points out that arbitrators in the federal sector do not have unfettered discretion with regard to remedies which the arbitrator believes can best secure proper adherence to the terms and intent of the agreement.

Review of Arbitration Awards—The Federal-Sector Grounds

The council, through a number of decisions, has clarified the basis for determining whether the arbitrator's award violates

[18]Elkouri and Elkouri, How Arbitration Works (Washington: BNA Books, 1973), 26, n. 5.

applicable law, appropriate regulations, and Executive Order 11491.[19] In this regard, the review of arbitration awards may also involve such other back-seat drivers as the Comptroller General and the Civil Service Commission.

The Order

As mentioned above, the order includes comprehensive management rights provisions. The circumstances in which the council has modified or set aside awards on the grounds that the award violated the order have involved these provisions. Thus, an arbitrator, in applying the contract to the circumstances of a case, must be careful that his award does not in any way negate any of management's retained rights or any other pertinent provisions of the order.[20]

Appropriate Regulation

The council has also held that Civil Service regulations found in the Federal Personnel Manual (FPM)[21] and travel regulations promulgated by the General Services Administration[22] are "appropriate regulations" within the meaning of the council's rules. Most cases of this kind involve allegations that the award violates the FPM, which furnishes grounds for review. In cases involving the FPM, the council requests the Civil Service Commission's interpretation of the regulations as they pertain to the findings made by the arbitrator. The Civil Service Commission in these circumstances has not used this opportunity to second-guess an arbitrator on the merits of his award. When the council finds, however, based on the Commission's interpretation, that the arbitrator's award violates the FPM, the council modifies or sets aside the award.

For example, in a case involving whether the grievant should be temporarily promoted, the arbitrator determined that he should, concluding that the grievant satisfied the negotiated

[19]A more comprehensive examination of the council's decisions in this area can be found in its July 2, 1976, Information Announcement (*supra* note 16) and in Frazier, *Labor Arbitration in the Federal Service,* 45 Geo. Wash. L. Rev. 721 (1977).

[20]Information Announcement, *supra* note 16, at 8–9.

[21]*Francis E. Warren Air Force Base, Cheyenne, Wyoming and American Federation of Government Employees, Local 2354,* FLRC No. 75A-127 (September 30, 1976), Report No. 114.

[22]*Professional Air Traffic Controllers Organization and Federal Aviation Administration, Eastern Region,* FLRC No. 76A-10 (January 18, 1977), Report No. 121.

agreement's criteria for assignment to a higher level position.[23] As to the relevant Civil Service regulations, the arbitrator stated that they were not controlling.[24] While the decision is a good private-sector award, the arbitrator cannot ignore the relevant regulations of the Civil Service Commission in the federal sector. In this case, based on the interpretation of the Civil Service Commission which found the arbitrator's award to be contrary to its regulations, the award was set aside by the council.

It should be noted, however, that the council has held that internal agency regulations are not "appropriate regulations" for purposes of establishing a ground for review. Thus, the interpretation of agency policies and regulations, which are (1) incorporated into the agreement and are otherwise arbitrable, or (2) not incorporated in the agreement but are on the same subject matter and submitted to the arbitrator by the parties, is a matter left to the judgment of the arbitrator, and the council will not substitute its or the parties' interpretation for that of the arbitrator.[25]

Applicable Law

Most cases in which the council has accepted petitions for review of arbitration awards alleging that the award violated applicable law have involved back pay. In the federal sector, such matters are controlled by the Back Pay Act of 1966,[26] with the Comptroller General having statutory responsibility to review awards in which agency officials question the propriety of federal expenditures by third parties including arbitrators, the Assistant Secretary, and the council.[27] Any payment of federal monies directed by an arbitrator must be authorized by law in order to be capable of implementation. Thus, for example, certain remedies that may be considered available to an arbitrator in the private sector are not available to him in the federal sector. Remedies not available under the Back Pay Act include interest on back pay, payment of consequential or punitive damages, recompensation for discrimination in hiring on nonequal

[23] *International Ass'n of Machinists and Aerospace Workers and Naval Air Rework Facility, Norfolk, Virginia,* FLRC No. 77A-11 (December 20, 1977), Report No. 140.
[24] *Id.*, at 2 of the council's decision.
[25] Information Announcement, *supra* note 16, at 7–8.
[26] 5 U.S.C. § 5596 (1970).
[27] 31 U.S.C. §§ 74, 82(d) (1970).

employment opportunity grounds, and attorney fees and other litigation expenses.[28]

But where there is a statutory basis for the payment of money, such awards will be upheld by the council consistent with the decisions of the Comptroller General. For example, the violation of an otherwise mandatory provision in a negotiated agreement, whether by act of omission or commission, which causes an employee to lose pay, allowances, or differentials, is an unjustified or unwarranted personnel action under the Back Pay Act (as is an improper suspension, furlough without pay, demotion, or reduction in pay). Under these circumstances, the Back Pay Act allows compensation of an employee for pay, allowances, or differentials he would have received but for the violation of the negotiated agreement.[29] Before any monetary payment may be made under the act, however, the arbitrator must find that (1) the employee has undergone an unjustified personnel action in violation of an otherwise valid mandatory provision in a collective bargaining agreement; (2) such action resulted in a withdrawal of pay, allowances, or differentials, as defined by applicable Civil Service Commission regulations; and (3) but for wrongful action, the withdrawal of pay, allowances, or differentials would not have occurred. Crucial to the award for back pay is the *but for* finding.[30]

The Comptroller General, in exercising his responsibility for ascertaining that public funds are disbursed according to law, has acted in a less constrained fashion than the council in reviewing back-pay awards. In this regard, the Comptroller General has involved himself into the contract-interpretation and application process with what I perceive to be more avidity and less trepidation than the council.

In a recent case,[31] the promotion of a grievant, who was to have been promoted along with other fellow employees, was delayed for over a month because the recommendation for the

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[28]U.S. General Accounting Office, Manual on Remedies Available to Third Parties in Adjudicating Federal Employee Grievances, App. III (1977).

[29]54 Comp. Gen. 312, 318 (1974).

[30]*Tooele Army Depot and Local 2185, American Federation of Government Employees, AFL-CIO,* FLRC No. 76A-24 (May 18, 1977), Report No. 126.

[31]*New York Regional Office, Bureau of District Office Operations, Social Security Administration, Department of Health, Education, and Welfare and Local No. 3369, New York-New Jersey Council of Social Security Administration District Office Locals, American Federation of Government Employees, AFL-CIO* (Robins, Arbitrator), FLRC No. 77A-13 (August 2, 1977); and Comp. Gen. Dec. B-190408 (December 21, 1977).

grievant's promotion apparently never reached the employer's personnel officer. When the error was discovered, the promotion recommendation was resubmitted with a request that the promotion be effective retroactively. This request was denied. At the arbitration hearing it was stipulated by the parties that but for the error the grievant would have been promoted at the earlier date, which error the arbitrator determined constituted a violation of the agreement. The arbitrator, accordingly, awarded back pay.

The council, in examining the basis of the employer's exceptions to the arbitrator's award, stated with respect to each one that they constituted nothing more than a disagreement with the arbitrator's interpretation of the contract. In this regard, the employer had argued, in part, that the contract clause found to be violated by the arbitrator, because of its lack of specificity, did not create a nondiscretionary agency requirement to promote retroactively. But the council determined that its precedent was clear that a challenge to an arbitrator's interpretation of the collective bargaining agreement is not a ground upon which the council will grant review of an arbitration award. Accordingly, the employer's petition was denied.

The employer, however, then went to the Comptroller General who overturned the back-pay award. In this regard, the Comptroller General disagreed with the council's conclusion that the arbitrator's finding of a contract violation amounted to a finding of a violation of a mandatory agency requirement grounded in the collective bargaining agreement. In doing so, the Comptroller General determined that the arbitrator could not have specifically found that the contract language constituted a nondiscretionary agency policy mandating promotion. The Comptroller General, in effect, was disagreeing with the arbitrator's interpretation of the contract—something that the council, through a long line of precedent, has determined is not an appropriate basis for review of arbitration awards.

The outcome of this case is remarkable! As if there were not enough lack of finality caused by review of arbitrator decisions by the council, the involvement of the Comptroller General, in the manner described above, portends an even lesser amount of finality and greater uncertainty for the arbitrator. In this regard, in another case, the Comptroller General adopted the position that the deference shown the decisions of arbitrators in the private sector, "including their construction of collective bar-

gaining agreements," as reflected in the *Steelworkers* trilogy, has "no application to an arbitrator's decision made pursuant to a collective bargaining agreement between the Government and a union"[32] because the Labor Management Relations Act specifically exempts federal employees from its coverage. Accordingly, he concluded that federal-sector awards must be held to a stricter standard of review than those in the private sector.

I recognize, of course, that the protector of the Government's purse must act when there is an improper application of accountability requirements, statutes, or rules which are called to its attention. In this regard, I realize that agency disbursing officers, who may be held accountable for the illegal payment of public monies, cannot be precluded from seeking a decision from the Comptroller General with respect to whether an arbitration award of back pay may be properly implemented. Moreover, I have already acknowledged that, in the federal sector, there is no room for argument concerning the impact of external law and regulation on the discretion of the arbitrator in interpreting the collective bargaining agreement. On the other hand, it seems to me that the question of whether the Government wants to follow the precedent of the private sector and the national labor policy found in the trilogy—that is, that the final and binding nature of the arbitration award, as well as the arbitrator's determinations with regard to arbitrability, are to be respected whenever possible—is a policy decision which the Comptroller General is not called upon to make.

Other considerations, it seems to me, may shape the Government's position on this matter. Those policy-makers in the legislature or in the executive branch of the Government, who are charged with designing the federal sector's labor relations program for its own employees, should weigh the need to safeguard the purse from the very modest forays upon it by unsophisticated arbitrators as against the benefit that will flow from insuring the final and binding characteristic of an arbitration award in the federal sector. The Supreme Court has reasoned that the primary incentive for a private employer to enter into an arbitration agreement is to obtain a no-strike agreement from the union with whom the private employer is required to bargain. The Court asserted that the benefits to be derived from a

[32]Comp. Gen. Dec. B-180095 (December 8, 1977).

no-strike clause outweigh whatever costs may result from affording employees an arbitral remedy. The Court also concluded that the private employer could refuse to arbitrate if that no-strike protection were not enforceable.[33] The question may well be asked: Does the Federal Government, as an employer, seek to enjoy its statutory protection against strikes by its employees without in turn affording its employees a meaningful arbitration procedure with an effective final and binding consequence?

Arbitrators who consciously, or through ignorance, ignore limitations imposed by statute or regulation upon the expenditure of federal monies can only impose a minimal cost upon the Government. The area of collective bargaining, which provides the subject matter of the agreement which they review, is a very narrow one in which almost all significant cost items of the private agreement are excluded at present. Shall such limited liability open the door to a review of the whole decision-making process and give an Alice-in-Wonderland meaning to the agreement of the bargainers to abide by a final and binding award? Shall such cost considerations threaten the efficacy of the whole arbitration process by giving an award a tentative character which destroys much of its value as a dispute-settlement technique? Shall such considerations open the door to a review of promotion, demotion, minor discipline, and work-assignment awards?[34] In my opinion, deferral to arbitral judgments must be given some priority over strict compliance with accountability rules if reliance upon arbitration in the federal labor-management relations program is not to be undermined.

Conclusion

Although, as I stated earlier, these remarks reflect my own personal views, there are signs that the policy-makers are recognizing that federal-sector arbitration must gradually move closer to the private-sector model.

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[33] *Boys Markets, Inc.* v. *Retail Clerks Union Local 770,* 398 U.S. 235, 74 LRRM 2257 (1970).

[34] *See, e.g., Veterans Administration Center, Temple, Texas and American Federation of Government Employees Local 2109,* FLRC No. 74–61 (February 13, 1976), Report No. 99; *Tooele Army Depot, Tooele, Utah and American Federation of Government Employees, AFL-CIO, Local 2185,* FLRC No. 75A-104 (July 7, 1976), Report No. 108; and *Tooele Army Depot and Local 2185, American Federation of Government Employees, AFL-CIO,* FLRC No. 76A-24 (May 18, 1977), Report No. 126.

Current proposals to codify the federal labor relations program would provide a legislative basis for collective bargaining in the federal sector and replace the present executive order. They would also expand the subject matter of bargaining which would then be subject to final and binding arbitration. This would lessen the present impact of external law.

In December 1977, the staff of the President's Reorganization Project, which studied the existing federal civil service system, recommended expanding the present permissible scope of negotiated grievance and arbitration provisions to include matters presently subject to statutory appeal procedures except for complaints concerning position classifications, examination ratings, pay status under the Fair Labor Standards Act, equal employment opportunity, and political activity.[35] The President's task force also recommended that arbitrators be vested with sufficient authority to fashion "make-whole" remedies.[36] It proposed as well that arbitrators should have sole authority to resolve arbitrability questions subject to limited review by the central administrative authority of the federal labor relations program.[37]

These suggested changes testify to the consensus that has developed about making arbitration the keystone in the dispute-resolution structure in federal labor relations. Surely, providing further assurance of the finality of arbitration awards must be an integral part of such a program. This has long been the conclusion reached by the courts and our legislators in the private sector. On the whole, there is agreement there that interference with and review of the arbitral process must be resisted. The necessary accommodation to give equal consideration to the need for finality of awards issued in the federal sector should also be provided.

Less back-seat driving will permit the intent of the bargainers, as it is discerned by experienced arbitrators, to be applied to the administration and application of the labor agreement. That is what a meaningful arbitration provision in the agreement, and an effective and equitable federal labor relations program, should seek to achieve.

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[35]Personnel Management Project, at 69, 71.
[36]*Id.*, at 72.
[37]*Id.*, at 71.