

## II. GRIEVANCE PROCEDURE AND ARBITRATION IN A NONUNION ENVIRONMENT: THE NORTHROP EXPERIENCE

LAWRENCE R. LITRELL\*

In the earliest days, just prior to World War II, Northrop Aircraft, Inc. consisted of a small group of engineers and technicians headed by our founder, John K. Northrop, who were dedicated to the development of aircraft of advanced design. Jack knew everyone and everyone knew him. He was immediately available to solve problems as they arose, whether they involved an aircraft design, a policy dispute, or a personnel matter.

As the company's production activities grew during World War II, a personnel department was added to handle employment, draft deferments, recreation, Bond drives, wartime wage controls and, incidentally, the day-to-day personnel problems that arose. Throughout this explosive growth, Jack Northrop made every effort to maintain the close relationship with the personnel that he had enjoyed in those early days, and he was extraordinarily successful. He knew more Norcraftors by their first name than anyone else in the plant. His door was always open and, more important, people walked through it. It became common knowledge that if you couldn't get a problem resolved elsewhere, you could go to Jack and it would get fixed. So naturally the load got heavier. Many times the problems Jack handled dealt with employee discipline, and most often he would see to it that nothing really bad happened to anyone. He was that kind of guy. However, some people who got favorable decisions from Mr. Northrop really didn't deserve his help, and others who did, wouldn't go or couldn't get to him in time. Inconsistencies grew along with demands on his time, and it became apparent that a better way of handling personnel complaints and problems was needed.

Recognizing this need, Roger McGuire, a manager in what by then had become the Industrial Relations Department, proposed in 1946 that the company adopt a formal grievance procedure with arbitration as its final step. To suggest that a nonunion company adopt a formal grievance procedure was unprece-

---

\*Corporate Director, Industrial Relations, Northrop Corporation, Century City, Los Angeles, Calif.

mented at that time, and to propose that management expose its theretofore unilateral personnel decisions to the scrutiny of an outsider for validation or rejection was nothing short of revolutionary. To compound this madness, the procedure was to be made available not to just the production and maintenance personnel, but to all nonsupervisory employees, hourly and salaried alike.

For a nonunion company to take such a step required both sensitivity and courage: a sensitivity to the needs and desires of the people of Northrop and to the company's management climate at that time, and the courage to open up important internal judgments to outside decision-makers.

In the usual case the adoption of a grievance procedure with arbitration requires neither sensitivity nor courage, but merely a desire to obtain a no-strike clause in a union contract. In Northrop's case, the only negotiations were within the management structure of the company, and I am sure they were intense. The final result, however, was that Northrop was, I believe, the first nonunion manufacturing company to adopt formal grievance machinery for both hourly and salaried personnel which terminates in final and binding arbitration.

Now, lest I appear to be "the complete Northrop chauvinist" and/or extremely naive, let it be noted that our sensitive and courageous predecessors in management had had their sensitivity heightened and their courage bolstered by two union elections in 1945. While the employees chose not to be represented (the first time by an uncomfortably slim margin), it became clear that even though the company provided wages, hours, and working conditions as good or better than others in our industry, a significant gap existed in our procedure for conflict resolution which required a new approach.

Three elements were viewed as essential if this new approach was to be successful: First, the formalized procedure through which facts are discovered and unresolved grievances may seek resolution by appeal to higher levels of management, and finally to arbitration. Second, clearly written and universally distributed personnel policies and standards of conduct, providing for progressive discipline. Third: An organization of people with the responsibility of assisting employees in the resolution of their grievances. I don't think anyone in our industry had ever heard of an ombudsman in 1946 so they were called Employee Relations Representatives.

The grievance procedure adopted in 1946 is essentially the same as that which we have today and closely parallels the four-step procedures found in many union contracts. It addresses not only the concerns of the employee who feels he has been unfairly terminated, but those many other areas of work-related problems that arise. Our employee handbook, "Working with Northrop," provides that any nonsupervisory employee may file a grievance ". . . when they feel they have not been treated in accordance with company policy." In actual practice, this language is interpreted quite broadly and anyone with a real work-related complaint will get access to the grievance procedure.

The matters dealt with in the grievance procedures are just about those you would expect in any industrial organization. Discipline and discharge are the most frequently grieved subjects. Other subjects would include the application of seniority in layoff situations, distribution of overtime, report time pay, shift selection, job classification, promotion, and on and on.

The first step of the procedure, which must be taken within five working days of the event that precipitated the grievance, is an informal discussion between the employee and his immediate supervisor. Quite often this step is initiated upon the counsel of an employee relations representative to whom the employee has come with a problem or complaint. Most grievances are settled at this point and that, of course, is the goal of the procedure—to resolve problems at the earliest possible stage and within the organization in which the employee works.

If, after presenting his problem to his supervisor, quite often with the assistance of the employee relations representative, the employee is not satisfied with the result, he or she (and with increasing frequency, she) may take the second step in the procedure by filing a grievance notice. The employee relations representative will assist the employee in writing his grievance and will then conduct a more formal investigation to ensure that all of the facts are known and that the underlying problems which may have led to the stated grievance are discovered, if possible.

The employee relations representative then acquaints the appropriate higher level of management, called the administrative officer, with the grievance and the discovered facts relating to it. The administrative officer may then make a decision or may call for a conference of the grievant, the supervisor involved, and

the employee relations representative in an effort to resolve the grievance. In any event, he must, within ten working days after receiving the grievance, render a written decision.

If the administrative officer's decision is unacceptable to the grievant, the decision may be appealed within five days to the third step in the procedure—the Management Appeals Committee. This committee consists of the division vice president responsible for the organization in which the employee works, the division vice president of human resources, and the corporate vice president of industrial relations or his designee, selected by him from a panel of corporate directors and vice presidents of human resources from other divisions.

To assist the committee at the hearing and in its deliberations, the employee relations representative prepares a folder for each member of the committee. The folder contains the grievance notice, the administrative officer's decision, and the grievance appeal. It also contains a statement of the facts as determined by the employee relations representative, the stated positions of the grievant and the management, an analysis of the case, and copies of any record or other documentation that bears upon the case.

On an appointed date, the committee meets with the grievant and the employee relations representative. The facts are reviewed and the employee tells his side of the story and may support his position by calling witnesses, if he chooses to do so. The immediate supervisor and any other management or staff employees who can add to a full understanding of the problem provide the committee with their views of what "really" happened.

This hearing with the Management Appeals Committee is conducted quite informally. The process is again one of fact-finding, and the members of the committee participate directly by careful and thorough questioning of each witness. If need be, a hearing will be continued in order to develop additional facts or meet with necessary but unavailable witnesses. At the conclusion of the hearing, the committee members discuss and evaluate the evidence presented and reach a decision—often unanimous, occasionally two to one. This decision is then prepared by the employee relations representative, reviewed by the committee members and, when acceptable to them, signed. Within two weeks of the hearing, the written decision is delivered to the aggrieved employee.

If, despite this application of collective wisdom by members of the Management Appeals Committee, the employee's grievance is still not resolved to his or her satisfaction, it may be appealed to the fourth and final step of the procedure—final and binding arbitration.

The question of who shall arbitrate the grievance is decided by mutual agreement between the grievant and the company, represented by an employee relations manager. If mutual agreement cannot be reached—which is seldom—a list of five qualified arbitrators is obtained from an appropriate source, such as the state conciliation service. (FMCS has declined to provide lists to us for the past few years on the grounds that their charter limits their services to disputes between companies and their certified bargaining representatives.) The final selection is made by each party alternately striking names until only that of the selected arbitrator remains.

After agreement is reached, the selected arbitrator is contacted and a date is set for the hearing. This alone has become something of a problem. The popularity of certain experienced arbitrators either make them practically unavailable, in which case the selection process must be repeated, or the date must be set weeks or sometimes months after the decision to arbitrate has been reached. I know the answer, and frequently we do select less well-known arbitrators.

At this point it is well to note that it is extremely rare for the company to allow a case to go to arbitration unless it is convinced that its position is supportable, both on the facts and in its equitable aspects. All other cases are resolved at one of the earlier steps of the procedure. Apparently, we are not always correct in this evaluation, however, because arbitrators do from time to time make decisions that favor Northrop grievants. But despite this, I have maintained that the company has never "lost" an arbitration case. The lessons learned are almost always worth the costs incurred. Arbitration keeps a dear school, but antediluvian supervisors will learn no other—with apologies to Poor Richard and Dr. Franklin.

In the arbitration hearing, the company is represented by an employee relations manager experienced in arbitration and familiar with the case. The employee may represent himself or may elect to be represented by counsel of his own choosing. If so, that is an expense that the grievant must bear. All other costs of arbitration and the grievance procedure which preceded it are

borne by Northrop, including the pay of all witnesses and that of the grievant during the processing of the grievance.

It is this point in the procedure which has been of great concern to us. Throughout the processing of the grievance, up to the point of arbitration, the grieving employee has been counseled by an employee relations representative who, by the time the grievance reaches arbitration, probably knows more about the case than the grievant himself. However, the grievant cannot avail himself of this expertise in the arbitration but must, at this point, seek his own paid counsel or represent himself against an expert.

The company's employee relations managers feel that this is a weakness in the system that may be manifested in a number of ways. Where the employee represents himself, his lack of knowledge of the procedure often unduly delays the proceedings; the imbalance of the experience and skill of the grievant vis-à-vis an employee relations professional forces the arbitrator to take a more active role than he might otherwise do; the arbitrator, if he feels that the contest is uneven, may unconsciously give the grievant the benefit of more doubts than he is really entitled to; and, finally, as in one case, an arbitrator may even refuse to render a decision due to the lack of adversary counsel.

At our regular Interdivisional Industrial Relations Committee meeting later this month, the Employee Relations Subcommittee will recommend the adoption of a new option for the grievants who plan to take their cases to arbitration. In addition to the current choice of obtaining paid outside counsel or representing himself, the employee will be permitted to choose as counsel the employee relations representative who has helped him through the steps of the grievance procedure, or a member of the employee relations staff of a division other than his own. If this option is exercised, the division at which the case arose will transfer funds to cover the preparation and hearing time of the selected counsel to the division at which he or she works. In this way the employee will be provided counsel without cost, and I believe that the arbitration process will be expedited and due process better served.

I hope and believe that this recommendation will be adopted and, knowing our employee relations people as I do, I can assure you that any employee who chooses to employ this option will find that he has a real advocate working in his behalf.

Even without this latest wrinkle, the system of grievance handling now employed by Northrop has been in effect for 35 years—and it works. Basically, it works because we want it to work and take pains to see that it works. And it works because we have good people working hard to make it work.

Our employee relations people are all degreed specialists with experience as industrial relations generalists. They are selected on the basis of their ability to communicate at all levels and to understand and apply Northrop's industrial relations philosophy in those many cases where the facts don't quite square with an established rule or policy. They serve the long-range goals of the company in maintaining fair and equitable treatment of employees by daily application of knowledge and mature judgment, and I am very proud of them.

They are counselor, shop steward, and business agent for the aggrieved employee. They are also the counselor and sometimes the conscience of management. They walk a thin line on a hard road, and they do it very well. However, the thing that makes managers listen and employees believe is the existence of the grievance procedure and, most important, the potential that in any given case management's decision may be judged by an impartial arbitrator outside the influence of management.

I have come to believe that without final and binding arbitration, a system of internal grievance handling, whether it be a simple "open door" policy or a more formal system, runs great risk of losing credibility in the eyes of the employees.

A further and very practical benefit flows from a system that uses arbitration; it forces the establishment of written personnel policies, rules, and regulations which add certainty and consistency to the treatment of personnel.

Perhaps the most beneficial effect of such a grievance system is that it makes people think before they take actions which may result in a grievance. No system will ever substitute for good supervisory judgment, but it may help some supervisors to exercise it, knowing that sometime in the future an independent arbitrator may be asked to judge the propriety of the action taken.

This, then, is Northrop's way of providing due process in a nonunion industrial environment, and I recommend it for your consideration. I do not believe that it is the only way, but I do believe it has significant advantages over the creation of a new bureaucracy to further reduce the nation's productivity by en-

suring—without understanding—that every “T” is dotted and every “I” is crossed. Nor do I feel that further legislative, judicial, or bureaucratic barratry is called for in this area. We are all plentifully supplied with potential causes of action. It would seem that the sole remaining unprotected class consists of non-veteran white males under the age of 40 who are not engaged in union activity, an OSHA complaint, or a worker’s compensation case, and who do not work at Northrop. Everyone else has at least one forum to which to appeal.

As an industrial relations pragmatist, I would also caution those who keep a supply of wood stakes handy to drive into the heart of the doctrine of “termination-at-will” (an unfortunate term which has little real relevance today), that in doing so they may loose a far greater evil on society than the one they seek to destroy.

I would also ask those who believe that the Northrop system of grievance handling is just the thing they need in their company to be very careful. We should be cautious, in viewing a system that works well elsewhere, not to jump to the conclusion that it will work as well for us. This is true whether we are looking at another company’s policy or procedure or the laws of other nations. A different history, a different cultural environment, or a different legal heritage can vastly alter the practical application and results obtained from a system that works to perfection elsewhere. That which the Japanese have found to be a serene solution could be a nightmare of frustration in litigious California. And a 35-year-old grievance system that works well at Northrop could be a disaster installed overnight for widgeon workers in Waukegan.