used lawyers nearly 60 percent of the time, while unions used them nearly 35 percent of the time.

In summary, then, our way of handling grievance arbitration has worked. I think it has worked because we have an agreed-upon procedure, with established time tables for hearings and a deadline for decisions. Another reason it works is that the negotiators of the agreement are responsible for its administration and make presentations to the arbitrator without costly legal representation.

Having the same arbitrator for a long time also contributes to success because he has become familiar with the terms and conditions of the collective agreement and has established consistent jurisprudence for future guidance.

Most of all, it works because everyone respects the process. Where respect exists, diplomacy sets the tone. It's a bit like the old drugstore scene. An elderly lady asks the young counterman if he has anything for grey hair. His diplomatic response: "Nothing, madam, but the greatest respect."

III. U.S. POSTAL SERVICE—A MANAGEMENT VIEW

SHERRY S. BARBER*

Approximately 670,000 people work in the Postal Service, one of the largest United States employers. Almost 90 percent of our employees are represented under collective bargaining agreements, and more than half of that 90 percent by the American Postal Workers Union, AFL-CIO, which is also represented on this panel. The other three major unions are the National Association of Letter Carriers, AFL-CIO, the National Rural Letter Carriers' Association, and the National Post Office Mail Handlers, Watchmen, Messengers, and Group Leaders Division of the Laborers' International Union of North America, AFL-CIO.

Beginning with the 1963 agreement between the former Post Office Department and the six organizations then certified as exclusive representatives, some form of arbitration has been utilized in the Postal Service. Prior to Postal Reorganization, this was referred to as advisory arbitration. The arbitrator had no

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jurisdiction over promotions, policy, the mission of the Post Office Department, its budget, organization, technology, assignments, and personnel. The arbitrator's award was subject to the approval of the Post Office Department and could be appealed by either party to the Assistant Postmaster General, Bureau of Personnel. The 1966 and 1968 National Postal Labor Agreements continued these advisory grievance arbitration procedures within the limits of Executive Order 10988.

We began private-sector collective bargaining under the Postal Reorganization Act in 1970. The Postal Service and the four national unions, who are now the exclusive representatives of our bargaining-unit employees, have concluded five collective bargaining agreements—in 1971, 1973, 1975, 1978, and 1981. Our next negotiations will be in 1984.

Under the Reorganization Act, the unions received the majority of the collective bargaining rights found in the private sector. In arbitration, the restrictions on the arbitrator's jurisdiction were narrowed to a limitation as to the terms and provisions of the contract. The concept of final and binding arbitration was introduced, which provides that the decision of the arbitrator is the final step in the process and will be binding on all parties.

In the early stages, the unions and the employer operated under the customary one-tier level of grievance arbitration. All arbitration cases, regardless of type (minor discipline, removals, contract application or interpretation) were heard in the same forum by one of the arbitrators on a small, mutually agreed-upon panel or, on occasion, by a mutually agreed-upon ad hoc arbitrator. All cases were centrally scheduled from headquarters, by mutual letter, which created significant delay, paperwork, and backlogging of appeals.

During the life of the 1971 agreement, it became evident that the system could not handle the number of arbitration appeals. By the time the parties were ready to negotiate their second labor agreement in 1973, they were faced with an unmanageable task of trying to achieve a final resolution of a large number of unresolved contractual grievances as well as minor discipline cases—oral counselings, written letters of warning, and short-term suspensions.

In an attempt to find a solution, the parties, during their 1973 negotiations, adopted an expedited arbitration procedure for hearing minor disciplinary cases, to begin on January 1, 1974. By agreement, the hearings were to be informal, with no tran-

scripts or briefs. Decisions were to be short, noncitable, nonprecedential, and issued within 48 hours.

Approximately 30 panels of arbitrators to hear these expedited cases were established throughout the country. These panels have been continuously enlarged, and there are currently 150 arbitrators who hear only expedited cases. Using the expedited arbitration procedure, the parties kept relatively current with minor discipline cases. Through successive years, however, contract cases became backlogged. These were individual employee and class action grievances involving overtime, employer or employee claims, holiday pay, and so on, as well as major cases of contract interpretation. The 1973 expedited system was continued in the 1975 agreement, and the backlog continued to grow.

In 1977, in yet another effort to find a remedy for the situation, the employer and three of the unions signatory to the labor agreement formed a study group to look at the grievance arbitration procedure. The National Rural Letter Carriers' Association chose not to join this group since that union filed relatively few grievances, did not have a backlog, and apparently felt that their caseload was manageable under the existing grievance arbitration procedure.

The study group, chaired by one of our national arbitrators, was composed of representatives and attorneys from management and the other three unions. The group's recommendations were further developed in subcommittee during the 1978 labor negotiations. Various changes were made in the grievance arbitration procedure, including having the regions schedule cases on a first-in, first-out basis and eliminating submission letters. The parties are encouraged to settle cases at the lowest possible level. Additionally, the national parties agreed that arbitrators would serve for the life of the contract plus six months, which gave stability to our various panels. The national parties also agreed upon arbitrators for regular and expedited arbitration panels within each region.

Over the years, with the expedited procedure and the enlargement of our regional removal panels, we have been able to stay current with discipline cases. However, unscheduled contract application cases remained a serious problem within some regions. Prior to the 1981 negotiations, the backlog of appeals from the last two contracts was more than 19,000 cases nationwide. Although this appears to be a large number, it also must

be realized that the unions had appealed almost 40,000 cases to arbitration during the term of the 1978 agreement alone.

During the 1981 negotiations, the parties agreed in a memorandum of understanding that certain limited contractual issues could be referred to expedited arbitration. In addition, another study group was named and charged with investigating ways of dealing with the extensive backlog of contract cases from prior agreements. Backlog procedures, based upon the volume of cases the parties had already seen in expedited arbitration, were agreed upon with APWU and NALC. While the procedures differed slightly, in general they were very similar to the expedited procedures enumerated in the national agreement. For example, the NALC backlog procedure is identical to the contract procedure except that one study day is paid for each hearing date used, regardless of the number of cases scheduled for that date. The APWU procedure differs slightly, allowing backlog awards to be cited only in other backlog hearings and the use of written fact sheets which may be put before the arbitrator. No expedited awards may be cited in any arbitral forum at the national or regional levels.

The parties agreed upon the panels that would hear backlogged contract issues. Panels are assigned cases in rotation by available hearing date, just as other regional panels are administered.

Using the expedited backlog procedure, we have seen the number of backlogged contract cases reduced more than 85 percent over the past 18 months (from 19,000 following the 1981 negotiations to fewer than 2500 in May of this year). This is in addition to maintaining reasonable currency with the appeals filed under the 1981 agreement (of the more than 6000 expedited appeals during the first 18 months, over 1800 have been heard, approximately 1900 remain open, and the remainder were settled or withdrawn). During calendar year 1982, an average of 250 cases were decided each month in the expedited process. One of our postal regions is current and several others will become current shortly.

In view of the parties' heavy reliance on an expedited system, some comments are appropriate regarding our shared concerns regarding that process. The first area, wrestled with by both management and the unions over the past few years, is the identification of the types of cases which can and should be arbitrated under the expedited system. Several contractual areas

agreed to during negotiations are now included in expedited arbitration, and other areas for future consideration may be identified during ongoing discussions with the unions.

From the employer's viewpoint, preparation and presentation of expedited cases involve work and skills similar to those in the usual arbitration. Cases are presented in the same fashion—that is, the parties present evidence and testimony through witnesses. The witnesses, if they would otherwise be working, are compensated for the time actually spent testifying at the hearing. As primary and backup cases are scheduled for each hearing day, advocates may prepare several cases not knowing until the hearing date which ones will actually go forward. Side agreements between regional union and management representatives have allowed a case docket approach wherein all open appeals from that union and a specific post office are listed in the order appealed. The parties begin with the oldest case and proceed down the list.

Another concern, given the large volume of appeals we receive, is our ability to ensure that there is a sufficient number of experienced arbitrators who are able to supply available dates as well as meet the contractual requirements in terms of compensation, the hearing, and the issuing of an award. As the parties at the national level must agree upon the selection or deletion of all arbitrators serving on postal panels, this can be a time-consuming process. The benefit of a "quick" system is rapidly dissipated if arbitrators delay excessively in issuing their awards. Less than a third of our arbitrators on the expedited panels issue decisions within 48 hours, as mandated by the provisions of our contract.

The scheduling and rescheduling of cases has necessitated increasing dependence on computers and other mechanisms that will move large numbers of cases rapidly. The national agreement confers upon the Postal Service the responsibility, in consultation with the unions, for maintaining appropriate dockets of grievances, as appealed, and for administering the system so as to ensure efficient scheduling and hearing of cases by arbitrators at all levels. Originally, the parties worked with the American Arbitration Association and the Federal Mediation and Conciliation Service in scheduling all levels of arbitration hearings. Under the past two contracts—1978 and 1981—the scheduling has been done completely in-house, with most of it being handled by the regions. This has resulted in streamlining the proce-

dures, allowing the regions to move cases far more efficiently and at less cost. Regional scheduling involves the use of an increasingly complex and sophisticated national computer programming system which takes the available dates of all arbitrators, approved by one or more unions on one or more panels, and matches them to the oldest open cases. All regional arbitration is scheduled in the order in which the case was appealed. The first open case is assigned to the first available arbitration date, thus not allowing either party the opportunity to match certain cases to particular arbitrators.

Backup cases are assigned as well, because of our past experience with cases being settled or withdrawn once they were scheduled. Since the 1978 agreement, 47 percent of discipline appeals and less than 7 percent of all contract appeals were actually arbitrated. Thus we have learned that flexibility is required on the part of all three parties—the union, the management, and the arbitrator—as schedules can and do change daily, with new locations and cases coming upon relatively short notice.

The reality of the expedited process, from the employer's viewpoint, is that the system works well as a process to facilitate the handling of large volumes of arbitration appeals. With the scheduling of several cases on each date and with the contractual requirement that expedited cases be completed within one day, the parties have to be willing to streamline presentations and arguments as well as be prepared to go forward on scheduled cases. The success of this expedited process depends upon arbitrators who are able to hear and decide simple discipline and contract cases within this format, and our experience with it has given us the opportunity to evaluate these individuals before their possible elevation to our regular regional arbitration panels. With the recent addition of some 1981 contractual issues being heard in the expedited procedure (as well as the backlog agreements covering past agreements), we have been able to further evaluate how these arbitrators approach expedited contractual issues.

This ability to evaluate becomes increasingly important as we find that, in general, experienced arbitrators are not overly interested in working in a system that brings a steady supply of minor discipline cases, which often are substituted or cancelled before the hearing date, where study time is not paid, and where their awards are not citable and are nonprecedential. We have found that the majority of people interested in expedited ap-

pointments are neophytes looking to establish an arbitration "record."

We have found that some of these arbitrators, in their efforts to establish their "acceptability" to both parties, have distorted their awards from a sound contractual basis to reflect their own sense of "equity" or fairness. Several examples should suffice. An arbitrator decided that a grievant's behavior did not warrant discipline, but that the grievant should apologize in public to other bargaining unit employees as a condition of receiving a portion of his back pay. The portion was tied to the percentage of employees who received the apology. Obviously, the award created numerous contractual issues far exceeding the simple discipline that had been arbitrated—for example, who was to pay for assembling the employees, and when and how was the apology to be made. Another arbitrator sustained a grievance of an employee who was disciplined for being AWOL, but went on to place the grievant on sick-leave restriction (an administrative action which the employer had not invoked). Still another arbitrator decided that the grievant had a "good" reason for not working and expunged the discipline, but then instructed the grievant to repay the employer for the three hours of wages he had received.

Other arbitrators have not exercised the requisite control over the hearing or the advocates, which commonly results in multiple hearing days which, on expedited matters, is not in compliance with the contract provision limiting hearings to one day. And some have allowed an issue to be expanded beyond the fact situation of the issue appealed and have gone into matters properly belonging in national or regional arbitration.

We have found the expedited system to have a lower per case cost, due primarily to the fact that arbitrators of expedited cases are not paid for their study time and hear multiple cases in one hearing day more often than do other arbitrators in other forums. As our appeal rate continues to grow, however, we have found that the lower cost per case is far offset by more cases going to arbitration, thus increasing our overall costs.

The goals for the Postal Service, in the reality of expedited arbitration, include decisions within the contractual 48-hour period, clearly written and reflecting the facts and evidence of the parties adduced at the hearing, appropriate to the issue submitted by the parties, and finding their basis in provisions of our national agreement.

In summary, the benefits of expedited arbitration often turn out to be liabilities as well. In our case, a process designed to handle cases rapidly and to reduce the large volume has had to deal, during each successive contract year, with an increase in the number of appeals to arbitration, thus defeating its intended purpose. Under this system, some union as well as management representatives have chosen to avoid making decisions at the first, second, or third step of the grievance procedure and to allow the arbitrator to resolve the dispute.

The actual lower cost per case in expedited arbitration is far offset by the expense involved in processing a greatly increased number of cases. Also, this increased volume has necessitated the use, in some instances, of unsophisticated arbitrators and advocates as well as additional hearings which, in turn, have led to awards that have little value or consistency in guiding the parties. The end result of a supposedly quick and inexpensive method of hearing a large volume of appeals has been to create a system that, in reality, feeds upon itself, encouraging the parties to become increasingly more reliant upon an arbitrator's decision rather than upon each other in resolving grievances arising under their collective bargaining agreement.

IV. U.S. POSTAL SERVICE—A UNION PERSPECTIVE

WILLIAM BURRUS*

Expedited arbitration, like law, is a response to the felt needs of our time. There are some who contend that the expedited arbitration process represents not a new development, but a return to the original concept of arbitration—a process that is informal, inexpensive, and speedy. Whichever of these two views is correct, it seems clear that the advent of the expedited process was caused by the extensive use of the full panoply of transcripts, briefs, participation by lawyers on both sides, and emphasis on legalism and court-like hearings. At least in large industries, such as steel and the Postal Service, heavy grievance caseloads triggered the introduction of expedited arbitration.

Steel was the pioneer among large enterprises in instituting expedited arbitration as a method of resolving certain types of

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