because if the suggestion is not taken, at some point you inevitably have to drop it.

Q: Would you recommend that the parties put that review procedure in the arbitration clause in the contract?

A (Jared): I don't think it should be in the contract. At one time in U.S. Steel this process was quite secretive because if the wrong person found out about it, he could make an issue of it by claiming that the company and the union were getting together and fixing the grievance. That is not what happens, of course, but to put it into the basic labor agreement enhances that risk. In terms of sitting down and negotiating a grievance procedure, however, it is certainly something to talk about. If it fits in with your arbitration arrangement, you could put it in a side-bar letter. We have several side-bar letters with the Steelworkers that are not published but are binding.

Kovacevic: One of the problems of the review procedure is that when the decision finally comes out, whether it's for management or union, people think that we had the power to change the bottom line decision. If they don't like the decision to begin with, they say, "How did you let that decision come out? You're the one who reviewed that decision." The purpose of the system is not to arrive at a decision any different from what the arbitrator would have. It is only to review the manner in which the rationale is handled or to take something out that is not necessary or may be damaging to the parties at a later time. It has to be handled quite delicately, so I would certainly advise against putting it in the contract.

Dybeck: There is another advantage. We don't always have transcripts in our cases. As a matter of fact, there is a rule that we have them only in incentive and discharge cases. I can have them in other cases at my discretion. But the review system is also educational for the parties, primarily for the union, because the representative, in reviewing a case, might find that facts didn't go in or arguments weren't made so that later he can go back to the local people and help them improve their presentation skills.

II. THE POSTAL SERVICE

J. EARL WILLIAMS*

It is an understatement to suggest that the United States Postal Service (USPS) is a large and complex organization. It is one of

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the largest employers in the world, approaching 750,000 employees at the present time. Every geographical area is represented; there are more than 30,000 post offices in 50 states, Guam, Puerto Rico, and the Virgin Islands.

About 90 percent of the employees are unionized. The two major unions are the American Postal Workers Union (APWU) and the National Association of Letter Carriers (NALC). Between them they represent more than 500,000 members. A third union is the National Post Office Mail Handlers, Watchmen, Messengers and Group Leaders Division of the Laborers International Union of North America AFL-CIO, which represents about 50,000 sorters and handlers. The fourth union is the National Rural Letter Carriers Association, representing more than 75,000. The Mail Handler arbitration load is minimal compared to the first two unions, and the National Rural Letter Carriers case load is extremely small, to some extent almost nonexistent. Add to this some 30,000 managers, and you have the basis for a very complex organization.

Arbitration in the USPS has labored under a handicap to some extent, since the grievance and arbitration procedure was late in developing. Even though unions represented employees in the Postal Service as early as the late 1800s, it was not until a 1963 presidential executive order that a procedure for advisory arbitration was set up. This resulted from an agreement between the former Post Office Department and six organizations certified as exclusive representatives at that time. The arbitrator's award could be appealed by any party to the Assistant Postmaster General for Personnel, whose decision was final. No one suggested that this was truly final and binding arbitration.

This changed dramatically in 1970 with the passage of the Postal Reorganization Act, which placed postal labor relations under the private sector National Labor Relations Act. Starting in 1971, there have been seven national agreements between the parties. All of them provided for final and binding arbitration. While there are those who suggest that, somehow, arbitration in the Postal Service is different and not quite the same as arbitration in the private sector, this is a misconception. Every conceivable kind of issue that can arise in the private sector (and perhaps a number which would not arise in the private sector) arise in the Postal Service. Consequently, from the beginning the problem has been how to manage the large number of grievances and arbitrations that arise from so complex an organization.

In 1971 the parties operated under a one-tier level of grievance arbitration, with all cases, regardless of the type, being heard in the same forum by one of the arbitrators on a small, mutually agreed-upon panel or occasionally by a mutually agreed-upon ad hoc arbitrator. All cases were scheduled from headquarters by a mutual letter, which caused such delays that there developed an ever-increasing backlog of cases.

Realizing the problem, the parties, in their 1973 negotiations, adopted an expedited arbitration procedure for hearing minor disciplinary cases beginning on January 1, 1974. This was a traditional kind of expedited arbitration, in that the hearings were to be informal with no transcripts or briefs. Decisions were to be short, noncitable, nonprecedential, and issued within 48 hours. Thirty panels of arbitrators were established throughout the country to hear these cases, and the panels have been enlarged continuously until today, when there are more than 150 arbitrators who hear only expedited cases.

Getting back to the 1971 agreement, it also stated that the contract was a complete agreement of the parties, and that neither party had any obligation to bargain about anything else during the life of the agreement. This did not bode well for an organization as complex as the Postal Service. So, the parties changed Article 19 in the 1973 agreement to allow for continuous revision of contract obligations through handbooks and manuals. This increased the need for expertise on both sides of the table, as well as the need for increased expertise on the part of arbitrators.

To meet this need in the ever-increasing case load, and based upon a subcommittee's recommendation, the parties changed the grievance arbitration procedure in the 1978 labor negotiations. Scheduling was to be done by regions on a first-in, first-out basis, and submission letters were eliminated. Parties were encouraged to settle cases at the lowest possible level. The national parties also agreed that arbitrators would serve for the life of the contract plus six months. It was felt that this would give more stable expertise to the various panels. Finally, there were to be regular and expedited arbitration panels within each region. This included regional panels for removals, as well as contract cases, and a panel for impasses when the parties negotiate at the local level. These were in addition to the expedited panels.

Despite the variety of panels and the introduction of computerization for scheduling, the backlog continued to grow. By the

time of the 1981 negotiations, it was evident that the unions, during the life of the 1978 agreement alone, had appealed almost 40,000 cases to arbitration and 19,000 were backlogged. When you compare this to the fact that the Federal Mediation and Conciliation Service gets only about 30,000 requests for arbitration panels per year from all types of industries, the size and complexity of the postal grievance arbitration procedure is evident.

It appeared that cases were not being settled at the lowest possible level. In an attempt to reduce the backlog, the expedited system was expanded, in that certain contractual issues could be referred to expedited arbitration. In addition, an expedited backlog procedure with a separate panel was developed in agreement with the APWU and the NALC. The APWU procedure allowed the use of written fact sheets, containing facts and contentions, to be put before the arbitrator, and witnesses were to be used only for credibility purposes. While this procedure, over a couple of years, greatly reduced the number of backlog contract cases, the advocates were not happy with the system, because they had to rush through the hearings with little time for research and preparation, and the arbitrators, who felt that it was just another form of expedited arbitration, were not carried away with the system either. Consequently, the parties went back to the old system of sending all contract grievances with a few exceptions to full arbitration at the regional level.

From 1981 on the parties have experimented with a number of ways to stay on top of the arbitration case load. In recent years, for example, it was not at all unusual for at least 40,000 cases to be certified to arbitration at any given time. The problem is complicated by the fact that the sheer volume makes it difficult to relate to many of the cases until the last minute. As a consequence, as early as the period 1978 to 1981, only 47 percent of the discipline appeals and less than 7 percent of the contract appeals actually were arbitrated. It doubtless is true that less than half of each is arbitrated at the present time.

One of the ways the APWU and the Postal Service used to stay abreast of the case load was known as the "blitz." This brought together in one location a number of arbitrators and parties from all over the region, and arbitration might go on all day for up to a week. Hundreds of cases were scheduled, and hundreds of backlog cases, in the event that any was resolved at the last minute. While this seemed to have an appreciable effect on the

case load, it was extremely burdensome on the parties, for the sheer volume was too much to digest in a week's time.

Other procedures have been tried. For example, efforts have been made to set up a panel for a major city, such as New Orleans. In trying to cut down on expenses, the parties used only local arbitrators, many of whom were not qualified in Postal Service arbitration. Other cities are considering having a panel of arbitrators for their city chosen from the regional panels. In addition, a wide range of programs has been worked out between the parties in an attempt to settle grievances before they reach arbitration. Some of them have borne substantial fruit.

While this has been an extremely brief overview, the complexity of the labor relations organization and the enormity of the case load are obvious. However, as late as 1971 the parties in Postal Service labor relations were at essentially the same place as labor relations in the rest of the United States in the 1930s. They were starting from scratch. They learned their lessons well, and advocates have been continually trained. As a consequence, I feel that they have moved faster and more professionally than almost any labor relations group in the United States. At the same time, there are a number of inherent problems, which continue to make it difficult to stay on top of the case load and to find ways to reduce the number and cost of arbitration. Some of the problems are:

1. *Selection of arbitrators.* An overconcern with box scores of arbitrators, mixed with a little politics, has often affected the selection of arbitrators to regional panels. As a consequence, if an arbitrator greatly favors one side over the other, that side tends to shepherd and protect the arbitrator through thick and thin. This has had some effect on the quality of arbitrators and feelings about the system.

2. *Scheduling of arbitrations.* Arbitrations are scheduled by computer, which matches arbitrators with dates they have given in advance and locations. However, arbitrators are asked to give dates six months in advance, and they have no idea where the postal cases will be. Consequently, they are often boxed in with other cases, when they ultimately find out where they are scheduled on a certain date. In addition, the computer is not programmed for economy. As a result, one arbitrator may make a trip of a thousand or more miles each way, four times in a month, when the cases could be put back-to-back, saving the parties thousands of dollars. Since many of the postal arbitrators are

full-time arbitrators and can be flexible in their schedules, real economies could be realized, if the parties contributed to the salary of one person, who would call the arbitrators as their case loads came out of the computer and would work out travel schedules and back-to-back hearings. The monthly savings would more than offset an annual salary.

3. *Top management instability.* It is well known that many changes have taken place at the top levels of the Postal Service from the Postmaster General down to postmasters and regional positions. This has made it difficult to maintain consistency of policy to the extent that lower level management would like.

4. *Details.* For the stated purpose of giving postal employees a broad experience over a number of areas, a great deal of detailing to other jobs is done in the Postal Service. Unfortunately, the net result, for example, may be that a very stable labor relations staff at a large post office is decimated by details out and inexperienced details in. On one occasion a few years ago I went to the Houston post office for cases and discovered that all the labor relations representatives were new details, and none of them knew the union representatives with whom they would be arbitrating that day. This obviously affects arbitration case loads.

5. *The political nature of unions.* While unions by their nature are and should be democratic, this results in problems for all unions. There often is a turnover of stewards and local presidents. A large number of cases must be arbitrated because of the political position of grievants and/or possible lawsuits or EEO complaints if they are not. A Supreme Court decision in *Bowen v. United States Postal Service*[1] held the APWU liable for damages in a breach of the duty of fair representation because the union had declined to take the grievant's case to arbitration. This has expanded the number of cases going to arbitration.

6. *Training.* Given the thousands of supervisors and shop stewards, it is an almost impossible job to train to the extent necessary to keep all of them abreast of the contract, workbooks and manuals, rules and regulations. This inevitably leads to a greater number of grievances and arbitrations.

7. *Expedited arbitration.* Experienced arbitrators generally are not interested in a steady diet of minor discipline in contract cases. No study time is allowed, and the cases are noncitable and nonprecedential. For the most part the expedited system is

[1]459 U.S. 212, 112 LRRM 2281 (1983).

where neophyte arbitrators are trying to break in. In a speech at the 36th Annual Meeting of the Academy in 1983, the General Manager of the Arbitration Division, Labor Relations Department, U.S. Postal Service, pointed out that many of the awards did not have a sound contractual basis. This mixture of noncitable, nonprecedential cases and dissatisfaction with many awards leads to arbitration of more and more cases. This problem is exacerbated when contract issues, such as denial of employee requests for miscellaneous leave, are thrown into the expedited system. This issue became a major regional issue and eventually went to the national arbitration level. Its inclusion as an expedited case encouraged local people on both sides to keep throwing the issues into the expedited system. Finally, as the manager said, the lower costs of expedited compared with regular arbitration panels encourages grievances, and people at the local level throw more and more expedited cases into the mill, so that the total cost is even more than it might be otherwise.

8. *Experiments with local panels.* In a few cities experiments were tried in the hope of reducing arbitration costs. Local panels were set up composed only of arbitrators living in the local area. In New Orleans, for example, none of them were postal arbitrators. Therefore, there was great dissatisfaction with the quality of the awards. This encouraged the thinking that there are no standards regarding most issues, causing ever-increasing arbitration. I understand that, at least in New Orleans, this problem is being corrected.

9. *Handbooks and manuals.* Like all federal agencies the Postal Service has myriad handbooks, manuals, rules, and regulations. Clearly some of them are needed because everything cannot be put into the national agreement. However, the problem is the lack of availability of these handbooks and manuals. At a recent National Academy regional meeting, a member chairing a postal panel discussed this problem:

> I remember the first time that the parties cited the Employee & Labor Relations Manual to me, and I said, "Well, let me have a copy of the manual." There was a pause followed by hysterical laughter. "This guy wants a copy of the Employee and Relations Manual, hoo, hoo, ha, ha!" I tell you, people, I would stand a better chance of getting an autographed copy of The Satanic Verses from the Ayatollah Khomeini. I have concluded that there is only one complete copy of the Employee and Labor Relations Manual, and it is locked up in a platinum chest in a missile silo under Cheyenne Mountain.

The net result is that arbitrators know only what is handed to them from the manuals on a case-by-case basis, and the parties spend a great deal of time searching through manuals trying to find additional justification for arbitrating a case that they think they will lose based solely on the national agreement.

10. *Language in the national agreement.* While the local parties have no control over the language in the national agreement (and this is not unusual in labor relations), some of the language contained in the national agreement leads to grievances and arbitration. For example, an article in the national agreement is devoted to the assignment of light-duty work to ill or injured employees. It is the most liberal language related to light duty that I have ever seen. As a consequence, this tends to encourage employees to grieve every time light duty is requested and denied. On the opposite side, the language related to shortages in fixed credits is the toughest that I have ever seen. In fact, postal arbitrators generally hold that the very fact of a shortage in fixed credit is a rebuttable presumption that the employee has not exercised reasonable care and, therefore, is guilty of the shortage. It goes without saying that every employee who is disciplined and/or ordered to pay a fixed credit shortage files a grievance and pursues it to arbitration.

11. *Technical approaches.* Although the parties probably did not plan to be technical, they have wandered into technicalities, which appear to increase grievances and arbitration, as a result of detailed language and/or procedures. Some of them are:

(a) The language as to how one goes from Steps 1 to 3 in the procedures which must be followed, is extremely detailed. It includes making known all facts, contentions, provisions, and exchanging relevant papers and documents. Consequently, a favorite approach of some advocates is merely to say, "The information presented by the other side is not in my file. Therefore, it cannot be considered." Advocates from both sides have told me, "It is a game we play."

(b) At any time either party can conclude that an interpretive issue under the national agreement, or some supplement thereto, may be of general application and send the case to Step 4 of the grievance procedure. More often than not, Step 4 is used for strategic and political purposes rather than bona-fide national interpretive issues. This prolongs and duplicates the process.

(c) There is a national level arbitration panel, which was set up for the purpose of hearing cases with interpretive issues of general application. Yet, this essentially is what Step 4 does. So, there is duplication of effort here. There is also confusion among the parties and the arbitrators as to the precise role of the national interpretive arbitration panel. I have taken the position that the parties established the panel for the purpose of making a final and binding decision to be used by all regional arbitrators regarding interpretive issues. However, until the parties and all regional arbitrators accept this role of the national panel, many issues will continue to be arbitrated unnecessarily. There needs to be a clarification.

(d) Then, there is the battle of awards. Since regional awards are citable and precedential, most regional arbitrators receive an avalanche of awards. I have received as many as 15 or 20 from each side in a single case. In an attempt to develop order out of chaos and to have standards, which say, "This is where we are on this issue," I have written a number of standards. However, even if the evidence on a particular issue is clear in that most arbitrators decide one way, this has not stopped the other side from throwing in its handful of winning awards. Fewer grievances would be pursued to arbitration and much money saved, if the parties could find a way to recognize standards in terms of certain issues.

(e) Finally, the procedure appears to be that for every kind of issue there should be a separate grievance. For example, employees absent from work who are not excused may suffer two penalties. First, they will not receive paid leave for the absence, and, second, they may be subject to discipline for unauthorized absence. But, the employee will have to file two separate grievances, which may go to two separate panels for two separate arbitrators to decide essentially the same fact, that is, whether the employer should have approved the employee's request for leave. The same is true on a wide range of issues, such as AWOL/discipline or disciplinary action (including fights or drugs), in which five, eight, ten, or more are involved in the same situation. Yet, there might be five, eight, or ten different grievances and the same number of arbitrators.

Summary

Despite the many problems, in terms of case load and the complexity of the system, many arbitrators feel as I do that the

Postal Service and its advocates and arbitrators form a family. We don't like to be criticized by outsiders, and we are working on our problems constantly. Consequently, this has been a short summary of some of the problems one member of the postal arbitration family feels other members of the postal arbitration family should consider. If working together we can find ways to resolve some of these problems, as well as to implement the innovative measures that Postal Service advocates are currently proposing, great progress will be made in the reduction of the case load and the cost of arbitration.

[*Editor's note:* Those who participated in the panel discussion of Postal Service arbitration, besides Williams, were: William J. Downs, Director, Office of Contract Administration, U.S. Postal Service, Washington, D.C.; Thomas A. Neill, Industrial Relations Director, American Postal Workers Union, Washington, D.C.; Thomas B. Newman, Regional Manager, Labor Relations, Central Region, U.S. Postal Service, Chicago, Illinois; and Lawrence Hutchins, Vice President, National Association of Letter Carriers, Washington, D.C.]

III. THE RAILROADS

MARTIN F. SCHEINMAN*

Our topic today is arbitration in the railroad industry. To give you some familiarity with this unique area with long experience in arbitration, I will begin with a historical overview.

Most of the conferences on railroad arbitration have focused on the problems of the process—the delays in hearings, the delays in rendering decisions, inadequate funding, excessive resort to the grievance procedure, failure of the organizations to screen grievances, failure of the carriers to provide due process in discipline, objectives perceived by the parties as antiquated and no longer relevant. I expect we will hear more of these complaints today.

However, I believe that there is another side, and I think we should start with that. Many of the basic tenets of arbitration that we know about, such as just cause in discipline, relationship between language and practice, local practice versus systemwide

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