

CHAPTER 6

ARBITRATION AND LABOR RELATIONS IN THE POSTAL SERVICE: WHAT DOES THE FUTURE HOLD?

AMEDEO GRECO, MODERATOR

PANELISTS: GUS BAFFA, WILLIAM FLYNN, ELIZABETH POWELL, DOUG A. TULINO,
AND WILLIAM H. YOUNG*

I. INTRODUCTION

This panel brings together the individuals who negotiate the contracts, oversee the grievance process, and resolve the highest level grievances in one of the largest and most complex labor relations systems in the United States—the United States Postal Service. The panelists discuss the problems confronting that system today and discuss such topics as: the expectations that they hold of arbitrators; backlog issues and new initiatives to reduce the backlog of arbitration cases; the value of interest arbitration in the system and the potential of the strike; and a number of technical issues that cause repeated problems.

II. THE PANEL DISCUSSION

Amedeo Greco: What do you expect from arbitrators in Postal Service cases?

William Young: What the National Association of Letter Carriers (NALC) expects from arbitrators is what we've been getting from them. We want you to listen to the facts of the case and render a decision based on the merits of the case put in front of you. That's

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all we expect arbitrators to do. We are somewhat different from other organizations in that we don't expect arbitrators to worry about the parties' relationships. That's a matter the parties themselves should deal with. I'm pretty proud of the fact that the Postal Service is finding ways to do that.

Gus Baffa: I agree, but I also look at consistency, consistency in the decisions especially pertaining to the same issue. There's nothing more frustrating than getting a decision on an issue that the same arbitrator had decided differently before.

William Flynn: I want clear, concise language. We don't need rhetoric. We don't need copies of the language in the contract because all that does is take up pages. Answer the question in clear, concise language.

Elizabeth Powell: That can be said for all of us. A decision that is clear is a decision that we do not have to take to another arbitrator to explain what the first decision meant. We don't need decisions that leave the remedy up to anyone's interpretation. The Postal Service interprets it one way and the union another way, and we often end up filing another grievance or contacting the arbitrator for clarification. We want a fair and just hearing and an award that anyone can read and understand exactly what the arbitrator meant.

Doug Tulino: Make a decision predicated on the facts of the case. We don't need rhetoric, we don't need decisions that force us back into the arbitration forum to get clarification. Our reliance on arbitration is a failure on the parties' behalf, but once we get there, we are looking for clear, concise decisions that are predicated on the facts of the case.

Amedeo Greco: Do you exercise some discipline over arbitrators by not reappointing arbitrators who give you decisions that you do not want?

Doug Tulino: We do have a process under which arbitrators are analyzed at the end of their term. We sit down and we make determinations jointly about whether those arbitrators are going to continue on the panel or not.

William Young: Let me give a different view here. Either party has the right to strike an arbitrator during the joint process that Doug described. I'm proud of the fact that the National Association of Letter Carriers has stricken very few arbitrators over the years. I think most arbitrators are doing what we ask. Some of them have given awards that are unclear and cause us to revisit the issue in another case. Most of the time, I think, that happens with

arbitrators who are trying to persuade the parties to do what they think they should have done in the first instance. That is what our organization wishes you wouldn't do. Just render a decision based on the merits, state it clearly and concisely, and let the decision speak for itself. We don't want you to give us an idea and tell us we should work it out ourselves. If we could have done that, we wouldn't have needed you.

William Flynn: We will remove them if they don't adhere to their contract. We just had a postal service matter where we removed an arbitrator from one of the panels because of delay in providing the decision. The delay was in excess of 2 years.

Amedeo Greco: Are there any major differences between rights cases and interest cases in the Postal Service and, if so, what are they?

Elizabeth Powell: Rights arbitration is limited to disputes over contractual language or the application of the language. Interest arbitration, where we negotiate over the contract itself, requires a lot more preparation and a lot more evidence. Yes, there is a difference.

William Young: The burden in interest arbitration is more on the parties than it is in rights arbitration. There must be some pretty compelling reasons to have an arbitrator alter the existing contract. Absent these reasons, my experience has been that most arbitrators won't alter the existing agreement.

Amedeo Greco: Do the panelists see any major differences between arbitration in the Postal Service and elsewhere?

William Young: Nobody relies on you as much as we do. I'm proud of the fact that I'm trying to put you out of business. We have due process. We have a dispute resolution process in which a management and a craft employee actually write decisions. You should see some of them because they are as well written and as concise and on point as the decisions we expect from you. If that process continues to succeed, there will be less work with the National Association of Letter Carriers for outside arbitrators.

Doug Tulino: I echo Bill's comments. Today we have approximately 88,000 cases backlogged for arbitration. We're actually down from about 106,000 at the start of this fiscal year. We've turned the corner and are moving in the right direction.

Elizabeth Powell: Seventy-three thousand of those cases belong to the American Postal Workers Union (APWU). The differences that I find between arbitration in the postal system and other systems lie in our own system. It goes back to the word "consis-

tency.” We have arbitrators across the country ruling on identical issues but coming up with different opinions. I don’t know how to accomplish it, but I would like to give them all cases at the same time and get the same answer. Each one of our regions has at least 10 arbitration panels. Different precedents develop in different regions and this inconsistency creates a problem.

From the Floor: One of the things I’ve seen in several years of arbitrating for all four postal organizations is that you keep taking the same case to arbitration over and over again: casuals in lieu of, postmaster doing bargaining unit work, etc. Is there any hope that any of these issues will be resolved by agreement at the national level?

Elizabeth Powell: If we believed that management was complying with the contractual language there would be no need to keep taking the same issue to arbitration. The decision should be applied throughout the country, and, if it is, we won’t have to repeat the process. The APWU and the Postal Service are trying to work on settling these cases at the lowest possible level.

Doug Tulino: When you have a heavy reliance on arbitration to resolve differences, as we do, you’re going to have many repetitive cases filed that may result in decisions that vary depending on the fact circumstances of the case. That’s a natural consequence of utilizing the arbitration forum to resolve disputes. Arbitrator Das is in the room. He gave us a national arbitration ruling on the issue of “casuals in lieu of.” Because of that decision, many cases scheduled for regular arbitration have been resolved. In an institution as large as the Postal Service, repetitive cases are one of the consequences you have to deal with. Do some unions grieve the same issues time and time again? I think the numbers speak for themselves. And when you have the same issue coming up time and again, you are bound to get inconsistent decisions.

William Young: I have a different approach to the same issue. We use the Joint Contract Administration Manual (JCAM). The JCAM is the product of the parties’ sitting down, analyzing previous arbitration decisions, and deciding the appropriate result. We do not allow anyone to testify about the JCAM because the document speaks for itself. The language is clear, the language is concise, and in a majority of the cases it resolves the issue. Remedy issues still occur, but we’ve dealt with those issues in the JCAM too. The Postal Service and the NALC have had more than their share of conflicts over article 8 (overtime). There are probably a hundred arbitra-

tors in this room who are experts on the provisions of article 8 because we've grieved it and arbitrated it so many times over so many years. The fact of the matter is that the parties can develop the relationship and deal with the problems. Look at the JCAM and see how many provisions in the contract we can agree with at the national level as compared to how many are not in there and make the judgment for yourself.

William Flynn: The Mail Handlers and the Postal Service have just about finished developing our JCAM. We call it the Contract Interpretation Manual and we will roll that out in July. It has not been easy: it has taken 4 years to come to agreement on what was to be included in that manual. We put a lot of work, time, and effort, and we are hoping that the Manual will weed out many of these repetitious grievances.

Gus Baffa: We at the Rural Letter Carriers have seen the success the city carriers have had with their JCAM. We've asked the Postal Service to do a JCAM with us but at this time they're not interested. We don't have the number of cases that the other unions have. We probably have less than 100 area and national cases pending, with only 15 pending at the national level. The JCAM is a good product. Hopefully the Postal Service will change their mind.

Elizabeth Powell: That might be a good bargaining chip. The parties are working jointly on a JCAM for the American Postal Workers Union as well. We have one that applies to the lower level and we hope that the one we complete at the headquarters level will resolve many of our repetitive grievances. At the national level, we know what our language means. If the parties at our level can agree on exactly what the language means and communicate their understandings down, we can reduce the repetitive grievances through policy changes.

Amedeo Greco: Do postal arbitrators automatically retain jurisdiction or not? Is that a problem?

William Young: Arbitrators routinely retain jurisdiction in NALC cases and that's not been a problem. Once in a while we have a dispute between the local parties, but if the relationship exists at the national level, we can give them some guidance.

Gus Baffa: In most cases our advocates insist that the arbitrator retain jurisdiction.

Amedeo Greco: What are the major changes affecting the Postal Service and how do those changes affect the bargaining relationship?

William Young: I became president of this union in December 2002, and I've spent just about every hour addressing this situation. I'll try to be concise, but it's not easy. Every year the Postal Service adds 1.8 million new addresses to its delivery network and that means more vehicles, more deliveries, and more post offices. The engine that drives that growth is first class mail. While those deliveries are being added, revenue for first class mail deteriorates because of e-mail and other Internet alternatives. On top of that, we are hampered by a Postal Reorganization Act that was enacted in 1970, when e-mail and the Internet were a distant dream. The immediate problem confronting the U.S. Postal Service is finding alternative revenues to replace the loss of first class revenues. If we don't find a way to increase revenues, the Postal Service, as you know, is at risk. A presidential commission is looking into this matter. No one knows what its recommendations will be and whether Congress will take action on its recommendations. The postal unions are going to be very active and aggressive in the pursuit of the right things for the Postal Service.

Doug Tulino: I think Bill hit the nail on the head. The business model that guided us over the last 30 years under the Postal Reorganization Act is no longer adequate to handle the problems we face in today's business environment. For years, we depended on the increase in first class mail volume to give us the money and the revenue that we needed to support the infrastructure that provides service to the American public. That is no longer the case. We face competition and technological changes that are impacting first class mail volume. It is not going to go away, and it is going to have a major impact on the Postal Service in the years to come. The technology and competition will change the size of the institution and the number of people we need. It's going to change a lot of things that impact the bargaining relationship. We are following our transformation plan in order to continue to do the right things under the current statute, to cut our costs, and to be efficient. What we're looking for in the future is some pricing flexibility and the ability to retain our earnings, and that requires legislative changes to remove our breakeven mandate. We don't think we're going to be able to generate the revenue that we need to compete in the future if those things are not modified. That will require change to the current statute. We are all waiting anxiously to see what recommendations come from the presidential commission.

Amedeo Greco: What do you mean by retained earnings?

Doug Tulino: The money that we make. Being able to retain the earnings, invest it, and do the things that other private businesses do.

Amedeo Greco: What do you do now? Do you turn the money over to the federal government?

Doug Tulino: We are under a break-even mandate. We are expected to lose money in some years and to make money in other years. At the conclusion of the rate cycle we should break even. In years that we make money, we can use the surplus for operating expenses or to pay down debt.

William Flynn: The changes that should be made should be limited to changes that provide the Postal Service with additional flexibility in pricing, the freedom to design and introduce new postal products, and the ability to borrow and invest with fewer constraints. However—and most important—the statutory rules governing collective bargaining of postal employees should remain unchanged. The labor relationship should continue to operate without legislative or executive interference.

Elizabeth Powell: If there has ever been a time when the Postal Service and this union should come together, that time is now. The presidential commission's report is supposed to be submitted on July 31. We do not believe that there should be any modification to our collective bargaining system. While the number of grievances in the system may indicate that the system doesn't work correctly, we can make it work if we jointly concentrate on doing that. In my 30-plus years with the APWU, I have seen major changes introduced in the Service through automation and other technological advances. We know that change is not going to go away. We have a provision in the contract that now allows the employer to reassign employees from one place to another when it's necessary and they have done that.

It's not just about the workers. It's about us all. If you have no mail or you have nothing to transport, our letter carriers have nothing to deliver and our people have nothing to sort. If no trucks are coming in, our mail handlers have nothing to unload and our rural carriers have no mail to take out. And the reductions affect management as well. We are all affected. I would like to think that, while we are faced with these challenges, our everyday relationship is continuing to be the best relationship that we could possibly have.

William Young: I want to take the opportunity to thank three distinguished members of your panel. When the presidential commission was investigating collective bargaining, three members of the National Academy of Arbitrators (NAA) with postal experience were asked to testify, and all three testified that the correct procedure for resolving interest disputes was collective bargaining and binding arbitration. I know that it must have been uncomfortable for those arbitrators to testify in front of the presidential commission, but they did and they did the right thing. They were honest and they had integrity and they testified to what they believed. The rest of you ought to be proud of that because the alternative was the Railway Labor Act, which doesn't even work for the railways or the airlines.

Amedeo Greco: I want to ask Gus Baffa a question. You told me something last night that I never heard of before. There was a dispute between the NALC and the rural carriers over a work jurisdiction issue, and the parties picked two arbitrators—Dick Mittenthal and Nick Zumus—who issued a decision that was binding on the parties even though there were two separate bargaining units.

Gus Baffa: I'm sure there will be a difference of opinion as to how that worked out. Somebody who has been around longer than I may correct me, but I think this was a first. We had a territorial jurisdiction problem with the city carriers. The Postal Service agreed with us but we could not decide whose arbitrator to use, theirs or ours. So we agreed to use both. We thought it worked out well, because the decision favored us, but even the NALC will agree that it worked out well.

William Young: The decision didn't favor us so I'm not as delighted with it as Gus is, but I don't rail against it. Here's the issue. If the Postal Service allowed the NALC to present its grievance in front of our arbitrator and our arbitrator ruled that we were right, they would have to take that territory away from the rural carriers. The rural carriers then would have filed a grievance under their arbitration system and maybe their arbitrator would have ruled that they were right. This would leave the Postal Service holding two bags of nothing.

In this case, I think the Postal Service and the rural carriers got together and forced the NALC to support the decision. The bottom line is this: since this time we've found a way to use a different system to handle just those disputes between the two unions. We hired a neutral arbitrator to handle just those dis-

putes—not one of theirs and not one of ours. In this case, I do not think that the process messed up. It was the issue, and maybe the letter carriers were on the wrong side of that issue.

Amedeo Greco: Did you ever consider using the AFL-CIO internal mechanism for working out union jurisdictional disputes?

William Young: I think the system we adopted works better than the system used in the AFL-CIO, even though it resulted in a decision we didn't like.

Gus Baffa: Plus we're not members of the AFL-CIO.

Amedeo Greco: Someone told me this morning that there is a new mechanism for trying to work out grievances at the local level, and it's fairly successful.

William Young: It's not one area; it's nationwide. Last year, we changed the grievance procedure in our contract between the Postal Service and the NALC. We now have an alternate resolution process. This is a joint product and we do joint training. Every person that serves as a replacement for the arbitrator in this process is called a Step B representative. These representatives must go through a week's training, and they have to pass a competency test. People have failed this test and when they fail, we thank them for their participation and send them home.

Cases are sent to the Step B Representatives and they have a very short time to render concise decisions. These representatives today resolve over 75 percent of all the issues presented to them. It used to be 85 percent, but there has been a little slippage. Our union paid half the cost of putting JCAMs into every post office in America that employs city letter carriers, and that was not cheap. We update the manual every year, utilizing your arbitration decisions as the wisdom for settling disputes that were not in previous editions. The manual can be introduced in arbitration but it cannot be testified about. It speaks for itself; it says what it says. I'm very excited about this process. In 1998 we had almost 30,000 cases pending arbitration in the 15 regions in my union. We now have fewer than 7,000 and they go down each day. I can actually see something that looks like light at the end of the tunnel. Both parties have to want to do this; both parties decided we did want to do this and we are doing it, and I hope that some day all the unions will adopt a similar process. Last year, the Postal Service spent a billion dollars arguing over grievances. That doesn't make sense to me in an institution with financial problems.

Doug Tulino: What drove us in that direction was the 30,000-case backlog. We arbitrate probably less than 1 percent of those cases

and that told us that the early stages of the grievance mechanics had broken down. When you get to the courthouse steps the parties suddenly are enlightened and find a way to settle a case before going to arbitration. With that thought in mind, both parties said that we need to make the lower steps of our grievance process more efficient so that people are forced to do the right thing and come to the conclusions that we've already agreed to on a national basis. With that in mind, we built a grievance process around three or four significant objectives.

The major objective was to stop relying on the arbitration process to resolve our disputes. We had already agreed to a great many things. We put them in a book and told everybody to follow that book whether you are a front-line supervisor, a general manager, a union steward, or a union president. That is the cornerstone of the process. Then, at the second step of the grievance process, one person from the Postal Service and one from the union sit down and use that "bible" to make decisions. We've gone from a 30,000-grievance backlog with the NALC to under 7,000, and we are going to continue the process. It's not perfect but it's a step in the right direction, and I think that's the direction that gives the parties the best opportunity to resolve grievances at the lower steps.

William Flynn: The Mail Handlers do not buy into that process. For 10 years we've been asking that Step 2 and Step 3 grievances be taken out of the hands of the operations people and given back to labor relations professionals. The operations people were writing the grievances and then making the Step 2 decisions. After screaming for the last 10 years to give these cases back to labor relations professionals, we believe that this change will make a lasting impact on the number of cases that are backlogged and that are heard.

Doug Tulino: I want to clarify a point. When I say that is the direction we want to go, it doesn't mean that the specific mechanics that we worked out with the NALC have to be the same for all the unions. It's the understanding that the lower steps of the grievance process have to be more efficient if the institution is to survive. We have to have the right decisions made early as opposed to having them all proceed to arbitration.

Gus Baffa: I'm beginning to feel like a stepchild here. We had asked the Postal Service to try to implement an alternative dispute resolution system similar to the one with the city carriers, and we were told they weren't interested. Maybe there's a change of heart that we're not aware of.

Doug Tulino: Gus, you're a product of having a great relationship with us and a great union. We just don't have the issues with the rural carriers that we have with the rest of the unions. Since I don't have contract administration responsibilities with the rural carriers but I do with the APWU and the NALC, I can't respond any further to your question, but I will look into it.

Amedeo Greco: Doug, maybe you could answer this. What is the difference between your national arbitrators and area arbitrators? Could you explain the different systems you use for arbitration?

Doug Tulino: Our contract calls for several different arbitration panels. We have field arbitration panels, which deal with cases where contract interpretation is not an issue but the facts are in dispute. Those field panels include expedited arbitration panels and regular arbitration panels that deal with the contract cases and discipline cases of a more severe nature (for example, removals and adverse actions). At the national level, there are arbitrators who determine contract interpretation issues.

Amedeo Greco: How do you decide if a case involves contract interpretation or a factual situation?

Doug Tulino: We have a mechanism in our grievance procedure that allows the parties to determine whether the issue in dispute is interpretive. If one party or the other determines that the dispute is interpretive, that issue is submitted to the national parties for determination, resolution, or national arbitration.

William Young: It is a slippery slope. It's really the difference between interpreting and applying. In order to apply, you have to interpret. So, in a majority of cases that are heard at the region, the arbitrators will be given guidance from the advocates as to cases that have already interpreted the provision. Then it's just a matter of application. When Doug gets a decision he doesn't like, he says that the arbitrator is interpreting the agreement and he should not have done that, and when I get a decision I don't like, I do the same thing.

Doug Tulino: To follow up, what happens sometimes is that a case is being heard at a "regular" arbitration hearing at the local level, but an argument is posed that changes the issue, where one or both parties feel the issue is now an interpretive matter. The advocates and the parties have the right at that time to send that case to the interpretive step for determination of the interpretive issues by the national parties.

Amedeo Greco: Suppose the arbitrator does that?

Doug Tulino: I'm scanning my mind for all of our contracts under article 15 and I don't believe we've given that right to the arbitrator.

William Young: Yes, we have. In regional arbitration any arbitrator can determine that something is an interpretive issue, and the arbitrator has the authority to send it to the national level. I believe that's in all the contracts.

Doug Tulino: I don't think that's correct.

William Young: They must have changed it then.

Amedeo Greco: How about the APWU?

Elizabeth Powell: Ours is different. The answer for the APWU is that the arbitrator does not have that decisionmaking power.

From the Floor: At the expedited level, I know that the APWU does give the arbitrator the right to send cases to the regional level if it turns out that there's a matter of complexity or interpretation of the contract.

Elizabeth Powell: A case can be referred from the expedited panel to the regular panel, but to be referred from the arbitration hearing to the headquarters for determining the issue, the answer is no. Only the parties can make that decision.

Amedeo Greco: How do the parties feel about the so-called redress program that's currently in effect with the Equal Employment Opportunity Commission (EEOC)?

William Young: I'm not a big advocate of the redress program. To me, the redress program is nothing more than an opportunity for an employee to go in with the mediator and feel good by telling his or her supervisor that they were aggravated by something they did to them and they wish they'd stop doing it. It's a feel-good process. It eliminated many of the EEO cases, but my union doesn't use the EEO process as frequently as other unions do. I will tell you this. I met with and I aggravated myself with the Inspector General and gave her a lot more time than she will ever get from me again. She wanted to force this redress program on our union, telling me that it's better than what I've got. I let her know that she doesn't know what she's talking about. She ought to go to the horse races and do other things.

Gus Baffa: We are not a party to the redress program.

William Flynn: Neither are the Mail Handlers, and we have no interest in it.

Elizabeth Powell: Neither does the APWU. We have a contract and the contract provides for a way to address any issue regarding employees. We don't need a separate process.

Doug Tulino: Since I have to bargain with all these folks, I know that we don't have a chance of getting a redress process. The elements that you have in a redress process consist of things that you do to resolve a dispute before it goes that final step. We have done that with the NALC in our grievance process. We have used the characteristics of redress, but we've put them into the grievance mechanics and the grievance language and allowed people to use those characteristics and provisions to resolve disputes at the lowest possible level.

Amedeo Greco: Do you have a grievance mediation system?

Doug Tulino: We do not have a grievance mediation system except for a co-mediation process that we negotiated with the APWU in 1994. We do not use outside mediators. We train internal people to be mediators. This means that we have mediation principles and concepts being utilized in the grievance process. I'm sorry to report that we haven't used it with any great degree of success.

Elizabeth Powell: Believe it or not, our collective bargaining agreement has a provision in article 15 for the use of mediation, but neither side has ever used that provision. Speaking for myself, I found that the co-mediation process created an atmosphere for our local unions and our local management people to sit down and talk to each other. Failure to communicate at the local level has been one of our biggest problems. I hope that in the future we can convince our principals to buy into that process.

William Young: Let me offer a different wrinkle here. I testified before the presidential commission and they asked me about mediation. My response probably will not surprise anyone in this room. I said that mediation was good when the parties needed a mediator unless the parties were determined not to agree. I've been in the presence of some people that I believe are well-respected mediators. Mediator Horowitz comes immediately to mind. But despite his best efforts—and he's a very talented man—he was not able to get the national parties to an agreement when we were disputing over the level of the letter carriers.

We have a new process that goes along with alternative dispute resolution. It's an intervention process and, notwithstanding its success, we still have pockets out there where people think they live in a different world. I call them war zones, where they continue to file grievances, dragging out the same old thing over and over, notwithstanding the JCAM. This has the effect of overloading the Step B processes. We're currently developing an intervention process to deal with this.

I heard Mr. Burrus, President of the APWU, comment on this problem last year at the Pittsburgh meeting of the NAA. You should understand that we do not control the shop stewards and they are elected officials. I've got to be able to convince the stewards in my union that there's a different way of doing things—that they should learn to disagree without being disagreeable. In these war zones there's culpability on both sides.

We're currently developing an intervention process and I think mediators may play a major role in the future in our union. There's been no decision yet, but I can see circumstances where conditions have deteriorated to the extent that a mediator can be very valuable to both parties. I've got to believe that there will be occasions in the very near future where there might be that kind of work for those of you who are mediators as well as arbitrators.

William Flynn: The Mail Handlers have used the independent process since 1998. It's worked well just by having discussions with the people locally and getting them to commit their grievances to writing. In a lot of cases we have not had to go on site to solve them.

Amedeo Greco: It's always been my impression that your unions, at one time or another, have had a difficult bargaining relationship with management. How would you rate the situation today and are things better or worse?

Doug Tulino: One big misconception is that we have poor labor-management relations in the Postal Service. I think we have excellent labor-management relations, particularly at the national level. Bill Young and I have been able to resolve numerous issues over the past 4 years, and that sets the tone of cooperation for our respective organizations. We negotiated a contract with the NALC for the first time in 15 years. We had contract extensions with the APWU and the Mail Handlers Union over the last 6 months. We can sit down and do business and get things accomplished. This is a philosophy that comes from the highest levels of the Postal Service. The Postmaster General believes in the philosophy of working things out jointly, and I think we've done that over the last 3 or 4 years.

William Young: If you detected some cynicism in my description of my encounter with the Inspector General a few minutes back, that's what aggravated me the most about her report. She sent people over to probe the old General Accounting Office report from 1994 that said that the bargaining relationship between the parties was in chaos. I believe that report was accurate in 1994, but

I also believe that we have made substantial improvement since then. The Inspector General ignored all of that progress.

Having said that, you must understand that there are 850,000 employees in the United States Postal Service and there are 38,000 post offices. It's an enormous network and there are very few comparable organizations. It doesn't surprise me and it should not surprise you that we could have decent relationships at the national level but by the time those decisions are translated to the lower levels, those decisions could be the opposite of what was intended at our level. You have to have some understanding and respect for the enormity of the organization. Are there problems out there? You bet there are. Do we need to do more work to fix them? Yes, we do. Will you be secure in your positions as arbitrators for many years? Yes, you will. Notwithstanding, significant progress is being made. It's wrong not to acknowledge that and it sends the wrong message.

William Flynn: Since 1970 the Mail Handlers have negotiated or bargained with the Postal Service on 13 agreements, including the recent extensions of contracts from 2003 to 2006. Our membership ratified the last agreement by a vote of nine to one. I don't think collective bargaining has broken down in the Postal Service. We enjoy very good relationships with our counterparts.

Gus Baffa: The problem is not at the national level. Our last negotiations went to arbitration, but that's only the second time in the last 18 years or so. The problem is in the field. There's absolutely no accountability when the Postal Service rewards managers who violate the agreement blatantly and openly. We sometimes have a rogue steward, and we try to take care of that. But on the management side, we do not see the same kind of accountability. There are too many cases where managers are either promoted or moved to another position and the grievances follow that person. You will see some changes only if the Postal Service holds those managers accountable for their blatant and open violations of the agreement.

Elizabeth Powell: For the last couple of days we picked up a phrase from a conference that said "it is what it is and it says what it says." But sometimes that phrase can be misleading. I work at the headquarters level. This means that we deal with all the post offices in the northeast region—New England and New York state. I can be naïve sometimes, but I think that the relationship at the headquarters level is marked by good intent where decisions are

made and agreements are reached. But all too often, people at lower levels in the organization fail to comply with the intent of that agreement. We adopted a contract extension in December and are still waiting for some of the things that were intended in that agreement to happen. And problems like this go back to President Burrus's level for resolution at that level. I agree with my brothers here. One of the biggest problems is the supervisor on the work-room floor. These problems often are not intentional. Sometimes they come about because somebody forgets to tell A and A doesn't tell B, who fails to tell C. Relationships fluctuate—we have good days and we have bad days. Bill always says the struggle will continue and we'll continue to struggle through this.

Doug Tulino: I would dispute what Gus and Elizabeth said about a lack of accountability in the management ranks. As Bill Young said, we have an enormous organization and it's no easy task to control everything that goes on in an organization as large as ours. You can't achieve the kind of performance that we have achieved over the last couple of years without having accountability from your managers.

Amedeo Greco: Do some of your managers not do the right thing?

Doug Tulino: Absolutely. Some of our folks don't do the right thing but we are willing to deal with them. I think we're moving in the right direction, but an organization as large as ours doesn't turn around in a week, a month, or even a year. But I think that the roots are planted, that we're moving in the right direction, and that we will get there.

Amedeo Greco: I'm going to ask each of the panelists. If you could change one thing in the bargaining relationship, what would it be? And why would you want to change?

William Flynn: Take away mediation and factfinding. It serves no purpose. We've always agreed with the Postal Service to forgo it and go right into arbitration.

Amedeo Greco: Why don't you explain that.

William Flynn: I'm not sure how the factfinding process works because we've never used it.

William Young: Maybe I can help, at least with an explanation of the process. Factfinding is something that's available to the parties when they reach an impasse in bargaining over a new contract at the national level. And the reason the parties don't utilize factfinding is because they don't want to put their case on twice. There are arbitrators in this room who have gone through the process of

trying to arbitrate one of our national contracts. And with no disrespect intended to those of you who haven't had the opportunity, you have no clue as to how involved and detailed that is. There are times when we have had 28 days of hearings and I don't know how many pages of economists speaking a language that's foreign to anyone I know. You talk about smoke and mirrors!

The thing that I would like to see changed is all this conversation about a wage premium. It's all nonsense—based on some hocus pocus thing called a regressionary economic model. There's not a man or woman in America that pays wages based on this model, but a lot of arbitrators seem to be convinced. It's a powerful argument, but it leads to a destructive end. It convinces the members that I represent that their value to the U.S. Postal Service is disrespected by management, and that is wrong.

Every day in America, the postal employees that we four represent go well beyond the call of duty. We rescue people from fiery holes, we stop runaway vehicles, or we do a food drive. Our union sponsors a food drive that raises 70 million pounds of food for the hungry and we contribute to muscular dystrophy in untold amounts. The other unions could all tell you the same kinds of stories. We're involved in our communities. My members have a program called carrier alert. When an elderly patron's mailbox starts filling up with mail, they call senior citizens' centers to have somebody check on them, and many times we find them paralyzed on the floor in their homes. There's no doubt in my mind that postal employees are as hard-working and dedicated as any employees in America today in any field. I'm aggravated by this entire concept of a wage premium for postal employees. As far as I'm concerned, based on the way they perform and the value they bring to the organization, they can't be paid too much.

Doug Tulino: I think I'll get back to the question at hand: What could we change, if anything? I think Bill brings out a good point. You have failed at the bargaining table when you negotiate for 90 days and still have to rely on the interest arbitration process to get a contract you're going to live by for the next 3 or 4 years. When the parties battle, it gets uncomfortable for everyone. You're doing battle to win. So, if there's one thing I'd like to change, it is not having to rely on interest arbitration to get a contract because that process distracts the parties from doing business with each other because of the preparations for interest arbitration. If I could change anything, it would be, let's be more successful at the bargaining table and have negotiated contracts, the way we have

the last two or three contracts. You can live a lot easier with each other for the next 3 or 4 years when that happens and you can get things accomplished. When you are going into interest arbitration regularly, you can't get a lot done in the interim period because you're worrying about getting your case ready for the next interest arbitration. When both parties come to an agreement, the opportunity to change the organization and move it in right direction is a lot greater.

Elizabeth Powell: I would like to see the day come when every employee of the United States Postal Service is treated with dignity and respect, and that goes for management as well as our employees. What happens to one happens to us all, and it affects those who come after us. I would like to see the commitments that are made by the parties at every level complied with. It removes a lot of stress and tension in our relationship when that happens. More importantly, I would like to see the day come when personalities are taken out of the way we do business and when we realize that it's nothing personal, it's just business, and move on.

Amedeo Greco: Given the difficulties you've had in negotiating, would any of you welcome a change in the law that gave the unions the right to strike and management the right to lock out?

William Flynn: Hell, no. Do we look crazy?

William Young: The right to withhold one's labor, the right to strike, the right to lock out are almost human rights in America. But I'm against it because it would not serve the American public well. Nine percent of the gross national product in our country comes from postal or postal-related services. Does anyone in this room believe that we could have a strike or a lockout on something that affects 9 percent of the economy and not have a detrimental effect to the country we live in? If you do, your view is different from mine! In a lot of ways I would like to have the right to strike for my members, but it's not realistic, it's not going to happen, and it's certainly not in the interest of this country. So, notwithstanding my strong labor leanings, I have to compromise, because what has to happen here is what's best for America, which has to come first. So I don't think it's even a subject that's seriously considered.

Doug Tulino: We've looked at various bargaining models to resolve contract disputes at the end of a contract term and we've come to a similar conclusion. Any bargaining model that culminates in a strike or lockout provision is contrary to our public policy mandate, which is to deliver mail to the American public 6 days a

week. Anything that results in that not happening would be contrary to our mandate and would be very problematic.

William Flynn: The U.S. Postal Service is a \$900 billion system and employs millions of employees. If you shut that down, more than the Postal Service will be affected. The Postal Service is one of the great success stories in America and deserves the support of everybody. I have struck, I have been out, I have walked the line for 15 days. It's not worth it. I'd rather work to keep the system running.

Amedeo Greco: Would the panel like to tell us anything about the way regional arbitrators are following binding national precedent at Level 4 agreements? Are you happy with the way we're doing it? Should we change anything? And what effect if any does precedent have in the labor arbitration system?

William Young: I said that the NALC doesn't like to remove arbitrators and we have a history of not doing that. But we have, in isolated instances, removed arbitrators and you have just hit the reason why. According to the contract with the NALC, regional arbitrators do not have the right to ignore national binding arbitration decisions and when some of the members of this Academy have insisted on doing so, they have been removed. You are supposed to follow all of the national arbitration decisions, not just the ones you like, not just the ones you agree with. That's the mandate, that's what the words of that agreement say, and if you continually fail to do that, one of the parties will remove you.

Doug Tulino: We are not dissatisfied with the regional arbitration cases that we've had. If we are dissatisfied, we try to get those decisions vacated, but we do that very infrequently. When you have the number of arbitration cases that we have, no one is always going to be happy about every decision. When you rely on that forum to tell you what to do and how to do it, you are going to get some decisions that you don't agree with, but that's the way it is. However, if you figure out how to make the decision at your own level without the intervention of somebody else, you don't have to worry about it. That's my philosophy.

Elizabeth Powell: Most of our arbitrators in the northeast region consider national-level decisions and apply them to their decisions. I would like arbitrators to maintain jurisdiction over their regular arbitration cases. We want to go back to the original arbitrator when we have a problem and we need clarification rather than

going before another arbitrator to interpret the first arbitrator's award.

Amedeo Greco: I thought everybody said that arbitrators always retain jurisdiction.

Elizabeth Powell: Some of our arbitrators do retain jurisdiction, but only a handful. We would like to see them do that regularly, especially where there's an issue that may need clarification.

Amedeo Greco: Can't the unions and management agree that all arbitrators in the postal sector retain jurisdiction?

Elizabeth Powell: Thus far we haven't agreed to that.

William Young: At the end of an arbitration hearing, either side's advocate can request or can argue against an arbitrator's retaining jurisdiction, and that can become an issue in the case. Retention of jurisdiction is a relatively common practice in industry. It doesn't preclude either advocate from arguing that they don't want to have the arbitrator retain jurisdiction in a specific case.

From the Floor: As an arbitrator for the Postal Service system since 1980, I have strived to be clear, consistent, and unequivocal in awards and, after Mr. Young's comment, I intend to pay more attention to national precedent. One of the dilemmas that arbitrators face is that many cases are fact-driven. I'm sure that all of us who serve as arbitrators have sat with two or more cases involving the same general issues but the burden-of-proof questions, the way that the case is presented, the way in which the advocates cite appropriate precedent and communicate how it applies all vary. We've all sat on cases in which the parties will give us a dozen or more national awards, but they don't have any application to the facts for the present case.

William Young: That's what justifies the difference of opinion. Maybe I should have weighed in on Doug when he said if you rely on arbitration as much as we do, you're going to get different results. I have some knowledge and some understanding of this process. I did 288 arbitration cases as a Regional Administrative Assistant and Business Agent in California. I took the same general issue to arbitration on a number of occasions and I'd be lying if I didn't say that I got different decisions. But, you arbitrators will be delighted to know, most of the time, the facts presented in each case were different and it was those differences that resulted in different awards. It got so much so that I thought that I could be put on automatic pilot. I knew that if I didn't have certain facts, I wasn't going to win, but if I did have those facts, I would prevail. After a while you don't have to be hit with a freight train—you know what

arbitrators are looking at. It doesn't surprise me that we get different awards on the same thing. I think what Liz is talking about is the remedy side of it, where one arbitrator will look at a violation and give a remedy and the other arbitrator will not. But again probably the facts or the culpability are different.

Doug Tulino: I don't want to leave this audience with the impression that the Postal Service does not understand that it can get different decisions on the same issue due to differences in the circumstances present. We understand that that can happen because the facts of one case differ from another. I think what Bill was referring to is regional arbitrators giving their spin on the intent of national level awards that interpret a specific contract provision. That's when we have a problem. We understand that you can get different results in similar cases when the facts are different, particularly if you're talking about discipline.

William Young: I want to thank the arbitrators for inviting me back notwithstanding the fact that I'm trying to put you out of business. I want to thank you for the job that you do. It's a difficult job and you cannot satisfy everybody. When I look back, I have no animosity. Under the circumstances, you do a good job. I will leave you with one admonition, because I might not get another invitation to return. We are having a significant problem with expenses from some arbitrators. Particularly there are abuses in the area of study time. I'll just speak of one. It's beyond my belief that somebody gives a stipulated award at arbitration and charges 3 days' study time.