

## CHAPTER 10

### REDUCING THE COSTS OF DISPUTING

#### I. INTRODUCTION

**Moderator:** I.B. (Beber) Helburn, NAA Member, Austin, Texas

**Panelists:** Lisa Blomgren Bingham, Keller-Runden Professor of Public Service, School of Public and Environmental Affairs, Indiana University, Bloomington, Indiana

Kevin B. Rachel, Manager, Collective Bargaining & Arbitration, U.S. Postal Service, Washington, D.C.

Michael Gan, General Counsel, National Rural Letter Carriers Association, Peer & Gan, Washington, D.C.

Karen Casselman, Director of Labour Relations, Canada Post Corporation, Ottawa, Ontario, Canada

**Helburn:** I am an arbitrator out of Austin, Texas. To paraphrase something you might hear on a plane, if you are not intending to hear information about the postal service, this would be a good time to depart and find the appropriate gate.

The growth of private delivery services such as FedEx and UPS and the exploding popularity of faxes and e-mail have placed both the United States and Canadian postal services under immense pressure. High-tech advances such as more highly automated and sophisticated sorting and distribution machinery and low-tech advances such as the use of outdoor cluster boxes and curb-side residential boxes have resulted in more efficiency and, along with increases in the cost of postage, provide a response to deficits that have become an ever-increasing concern.

Another way of attacking the expenses of doing business is that of reducing the cost of disputing with the thoroughly unionized workforce. These efforts have been on-going for some time and

seemingly have had a great impact on payment to third-party neutrals. Although generalizing from a sample of one is always dangerous, my own experience—which I know will be supplemented at least by some data that Kevin Rachel will present—may provide some insight into what has been going on.

In 2001, I heard 21 American Postal Workers Union, AFL-CIO (APWU) cases, while another 24 dates were cancelled. I heard 7 letter carrier cases and had 17 additional dates cancelled. And, I heard 2 rural carrier cases with 6 additional dates cancelled. I didn't, at that time, keep track of dates that were offered and then given back without a case being scheduled; but, frankly, I don't remember that that was going on five or six years ago. This year, through June, I will have had 11 APWU dates returned to me; another 4 cancelled; 2 heard; and 1 to be heard through the end of June, with those last three all coming off one scheduling letter. I have had 8 carrier dates returned; 2 cancelled; 3 more heard; none to be heard in June. I am not now hearing rural cases; so I can't talk about those. Without bothering with percentages, it is clear that I've seen a dramatic decrease in the dates needed for arbitration cases, particularly with the Postal Workers Union. And anecdotally, as I talk to my colleagues on the postal panels, I am reasonably convinced that they are seeing a good deal of what I have seen. Necessity does appear to be the mother of invention.

To explore the impact of pressures in the industry on the cost of disputing, we have a panel that departs in composition from past postal panels at our national meetings. Their bios are in the conference materials with the exception of Karen Casselman, who is a late addition to the panel. I will introduce everybody at the outset in order of presentation, which is from my immediate left on down the table.

Professor Lisa Blomgren Bingham is the Keller-Runden Professor of Public Service and Director of the Indiana Conflict Resolution Institute at Indiana University. Lisa has her BA magna cum laude from Smith College and her law degree from the University of Connecticut Law School. Lisa and her colleagues have done extensive research into the operation of the REDRESS system adopted by the United States Postal Service. She has prepared a paper, which is a part of your conference materials.

Kevin Rachel is the Manager of Collective Bargaining and Arbitration for the United States Postal Service and is a frequent participant in postal panels at our meetings. His good judgment is shown, among other things, by his decision to stay within the con-

finer of the UT Law School while pursuing his law degree and his decision not to venture over to the business school at Texas in my labor relations courses. I am eternally grateful because given my reasonably long service on the postal panel, he probably has saved me a lot of instances of disclosure.

Michael Gan is the senior active partner in the union-side law firm of Peer and Gan in Washington, D.C. Mike has his undergraduate degree from the University of Michigan and his law degree from Boston University. The firm represents, among others, the National Rural Letter Carriers Association, trying almost all of the union's arbitration cases throughout the 50 states. Because historically the rural carriers have been very careful in screening cases that go to arbitration, I've asked Michael to talk about that union's approach to dispute resolution, among other things.

Karen Casselman is the Director of Labour Relations with a grievance and arbitration portfolio as well as a corporate projects and initiatives portfolio for the Canadian Post Office. I'm told she is the one in the Canada Post to whom arbitrators on their panel mail their awards. So, she is most familiar with the Canadian postal panel. Karen brings 30 years of experience in labor relations to the table this afternoon.

It is my pleasure to turn the podium over to Lisa.

## II. MEDIATION OF DISCRIMINATION COMPLAINTS AT THE USPS: PURPOSE DRIVES PRACTICE

LISA BLOMGREN BINGHAM,\* CYNTHIA J. HALLBERLIN,\*\* AND DENISE A. WALKER\*\*\*

### Introduction

There is currently a vibrant dialogue among scholars of employment law and dispute resolution regarding aspirations for justice in the new social compact at work. At issue are questions of the fairness of mandatory arbitration, the justice of mediation, and

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