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SESSION ONE

AIRLINE GRIEVANCE PROCEDURES: SOME OBSERVATIONS AND QUESTIONS

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THE GRIEVANCE procedure is a vital section of every collective bargaining agreement. Both parties benefit when grievances are processed efficiently, and disputes involving the meaning and application of their current agreement are settled expeditiously, rationally and economically. Unfortunately, we sometimes find situations of conflict in which either party may decide to abuse the grievance procedure for short-term tactical objectives. For example, a union can generate lots of grievances as a coercive device. Conversely, management can deliberately insist on sending too many cases to arbitration, make each arbitration case more costly and, thus, deplete the union's treasury. My comments assume that airline unions, employees and management have a mutual interest in the effective operation of their grievance procedures.

I will, first, suggest how the Railway Labor Act has influenced the approach of unions and carriers to airline grievances; second, identify certain characteristics of the airline industry that have influenced the content and volume of grievances and how they are processed; third, pose some questions for airline unions and management about their pre-arbitration grievance machinery; fourth, offer some comments and questions about the typical system boards of adjustment; and fifth, present some comparative information in my closing remarks.

Most collective bargaining agreements in the United States provide for arbitration as the terminal step of the grievance procedure. This widespread acceptance of grievance arbitration was not the result of any affection for arbitrators. Rather, the use of arbitration evolved as the only practical way to avoid work stoppages over unsettled grievances during the life of a collective bargaining agreement. The no-strike clause and the arbitration clause are evidently complementary. Usually, where the parties choose to exclude a topic from arbitration—for example, the United Auto Workers and the major auto manufacturers will not arbitrate job standards or specific job pay rates—the union reserves the right to strike over such an unsettled grievance.

The strike option is not legally available to railroad and airline employees, however, because the Railway Labor Act obligates the parties to arbitrate

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all disputes "growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. . . ."[1] Only in these two industries do we have the compulsory arbitration of grievance disputes. The imposition of this legal obligation to arbitrate airline grievances preceded the onset of collective bargaining. The airline pilots, reacting in 1931 to a projected industry-wide pay cut, organized the industry's first union. Usually, a new union first seeks recognition and a contract. The Air Line Pilots Association (ALPA), however, found that it was more productive under existing conditions to concentrate on lobbying. One of its achievements was the legislative enactment of Decision No. 83 of the National Labor Board—the first effective federal minimum wage law, which created a wage floor for pilots. Another goal, vigorously sought since the early 1930's, was to bring air transportation within the scope of the Railway Labor Act. This was accomplished in Title II of the Act on 10 April 1936. Only after that did ALPA turn to the collective bargaining table, and the industry's first labor agreement was executed between ALPA and American Airlines on 15 May 1939. This first contract contained a somewhat awkwardly worded grievance procedure and a separate agreement for the ultimate disposition of grievances. It stated:

> (b) In compliance with Section 204, Title II, of the Railway Labor Act, there is hereby established a system board of adjustment for the purpose of adjusting and deciding disputes which may arise under the terms of the Pilots Agreement and which are properly submitted to it, which board shall be known as "American Airlines Pilots System Board of Adjustment". . . .[2]

This board was to consist of two members appointed by each party. In the event of a deadlock on any dispute properly referred to the board, however, there was no explicit requirement for the selection or appointment of a neutral fifth member. It was the board's duty to "endeavor to agree" within 30 days on a means of breaking the deadlock; but if it could not, the board would simply lose jurisdiction of that dispute.

This rather inconclusive machinery fell short of the parties' implied obligation under the Railway Labor Act to utilize a neutral in the event of a deadlock after the fashion of the National Railroad Adjustment Board, established under Title I of the Act in 1934. This defect was remedied in October, 1940 in the first United-ALPA contract with a system board agreement that established a negotiated panel of five potential referees ("referee" was the railroad word for arbitrator) from which the neutral board member would be chosen for each deadlocked case. Subsequently, the most common practice that emerged in the industry was to provide for the appointment of a referee by the National Mediation Board if the system board or the parties could not select one by mutual agreement.

Even today, most airline labor agreements contain language in their grievance and system board procedures resembling and sometimes identical

[1] Railway Labor Act, § 3(i), 44 Stat. 578 (1926), *as amended*, 45 U.S.C. § 153 (1964).

[2] Labor agreement between Air Line Pilots Association (ALPA) and American Airlines (May 15, 1939).

to many of the provisions contained in the earliest pilot contracts that were written with little or no experience in grievance processing. This has been, in part, because it is often easier to borrow from contracts already in use. I also believe that the airlines have been no exception to an unfortunately widespread tendency to neglect grievance procedures at the bargaining table unless an actual crisis based on accumulated unresolved grievances has erupted. Only recently have there been some significant revisions of grievance procedures in airline contracts, which are designed to meet more effectively the joint needs and goals of the parties in this regard. The point I wish to emphasize by this brief reference to history is that the obligation to refer unsettled grievances to a system board was imposed on the airlines prior to any collective bargaining experience. Moreover, the carriers and unions apparently assumed that the Railway Labor Act obligated them to copy the railroad precedent which, in their view, meant the creation of a four-man board supplemented, when necessary, by a referee.

In perspective, I suggest that the role of the final step was emphasized when this legally induced and formidable "adjustment" machinery for grievances, was adopted at the outset of each collective bargaining relationship "in compliance with section 204, Title II" as unionism had spread to other "crafts and classes." In other industries most of the contractual agreements to arbitrate grievances evolved from the joint recognition, after some experience in grievance processing, that a definitive terminal step was desirable if the parties could not succeed in disposing of a grievance in the earlier steps of their machinery. Consequently, it is my impression that on many airlines there has been a tendency to neglect the role of the earlier grievance steps and to rely on the system board to dispose of a larger share of such disputes than is true of grievance arbitration in most other industries.

The substance and the processing of grievances should be examined in light of the relevant characteristics of the industry. The airlines have been growing rapidly, have been subject to stringent economic and safety regulation, have benefitted from direct federal subsidies (the major carriers until the early 1950's, the local service carriers today) and have been unsurpassed in the pace at which technological innovation is adopted and applied. For example, only two million passengers were carried by the industry in 1939, the year of the first collective bargaining agreement, while 154 million were carried in 1968. Passenger-miles of traffic exploded from only 755 million in 1939 to 130 billion in 1968, and the Federal Aviation Administration expects passenger-miles to reach 342 billion by fiscal 1979.

Innovation permeates every phase of the industry, not only in the massive waves of change in aircraft technology, but also in changes in air navigation, communications and traffic control, the computerization of passenger reservations and other operations, investments in new terminal facilities, baggage-handling methods and in many other areas.

Technological progress has enabled the airline to maintain extremely high rates of growth in output per employee. For the certificated United States industry, the average rate of increase was 8.2 percent per year from 1957 to 1966, or about two and one-half times the national rate. Fortunately for its work force, the growth in output per employee has been out-paced by the growth in the air transport market. Consequently, employment as a whole, and for most of the occupational categories, has grown substantially and rather steadily. There were 22,000 airline employees in 1940, 83,000 in 1950, 166,000 in 1960, and 300,000 at the end of 1968.

Each airline requires a wide variety of occupations, and among the categories that bargain collectively are pilots, other flight deck employees, flight attendants, mechanics, dispatchers, ramp and stores employees, communications employees, baggage handlers and, on some carriers, office and clerical employees. Major carriers negotiate from six to ten different labor agreements. United Air Lines, for example, has contracts with ALPA for its pilots, flight instructors and flight attendants; with the Transport Workers Union for its flight navigators; with the Society of Air Line Meteorologists; with the Communications Workers of America; with the Air Line Dispatchers Association and with the International Association of Machinists for its mechanics, ramp and stores employees, dining service personnel and guards. It would be impossible to generalize concerning grievance handling among these diverse groups. One consequence of the many contracts that airlines must negotiate and administer is that their labor relations negotiators and attorneys are kept exceedingly busy, and effective attention to grievance processing is frequently diluted by contract negotiation pressures.

Most airline unions' members are scattered among many domiciles and airports. This geographic fact makes the servicing of member grievances more difficult and more costly. It may reinforce the tendency already mentioned to defer top-level attention and complete preparation of a case until it is to be heard by a system board.

Safety considerations, especially in connection with the operation and maintenance of aircraft, pervade the handling of many airline grievances. This criterion, together with the fact that basic safety practices are subject to federal regulation and that deficient performance can cause not merely some scrap product, but a catastrophe, encourages the carriers in particular to exert stringent efforts to win grievances where they believe that safety elements are involved. Many categories of airline personnel have a highly vested interest in those jobs where specialized skills are not readily transferable at the same earning level. Finally, many kinds of contract interpretation cases involve substantial costs and benefits in earnings and/or working conditions. All of these factors contribute, I believe, to a rather hard-nosed stance in grievance handling that often makes settlements more difficult to obtain prior to arbitration.

To summarize this background section, I would emphasize that rapid growth, technological change, public regulation, class-or-craft unionism,

scattered memberships, safety considerations and the implications of grievances for job conditions and for costs create an environment in which one would not expect the handling of grievances to be relatively simple and routine.

The manner in which a grievance is handled, when and where it originates, deserves a good deal of attention. The employee who files a grievance should be obligated to do so on a standard form with the assistance of an available union steward or the equivalent. This form should set forth the pertinent facts, cite the applicable contract provisions and specify the desired remedy. To my knowledge, the use of such a form is standard practice for many ground employee units but is totally absent among flight employees. When, at a system board hearing, I have been handed the "submission" of a flight employee, that submission usually contains no more than a bare statement of the issue to which is appended two or three successive letters by company officials in which, of course, the grievance has been denied. I have the definite impression that many airline grievances are not well investigated, nor is the information appropriately recorded during the early steps of the grievance procedure. The prompt and efficient investigation of a grievance requires that someone from each party who is competent have the time and the access to pertinent sources for such an investigation. Hopefully, a full and timely investigation will clarify the facts and the issues, and thus, lead to an early settlement. Even if early settlement is not achieved, the residual differences will have been clarified, and the ultimate presentation to the system board can be more efficient and more economical in its preparation. Although this objective may not be easily achieved at outlying locations with only small numbers of employees in the particular bargaining unit, the additional training in grievance investigation which the union and management representatives will receive may produce a substantial yield.

I raise two questions in purely general terms, having no clear impression that they are warranted: (a) Are the management spokesmen at each step of the procedure reluctant to grant a well-founded grievance and/or unable or unwilling to seek informal guidance from their superiors and from the central labor relations staff; and (b) are the union representatives politically able to reject unsound grievances and do they have adequate access to staff assistance and advice? I would also ask the parties to consider whether or not any step in their grievance procedures is largely perfunctory and merely adds to the delay in grievance processing. A statistical examination of the number and proportion of grievances that are disposed of at each step can contribute usefully to this inquiry. Is the language of the grievance procedure readily understandable to those who wish to use it and to those who must implement it? Are the time limits reasonable so that they can be met while, at the same time, needless delay can be avoided? Are the communication procedures clearly prescribed, so that arguments will not arise over claims that timely responses were not received? Finally, does the grievance machinery encourage a vigorous effort to dispose of the dis-

pute at the step prior to its referral to the system board? There are many advantages to both parties, of course, in avoiding arbitration. Apart from the additional costs and delays which I do not minimize, there is always the risk of a bad decision. Moreover, a solution negotiated by the parties can often deal with the underlying problem in a manner that arbitration machinery is not authorized to do. The parties can compromise a specific dispute, for example, either on a non-precedent basis or by an understanding that modifies their contract. Full employment for arbitrators should not be a goal of the parties. Something needs to be corrected when a high proportion of grievances ends up in the system boards.

I have one specific suggestion in this connection. Ideally, the spokesman for each party at the last step of its grievance procedure should also be the spokesman (or at least the adjacent advisor of the spokesman) before the system board if the case goes that far. Each of these spokesmen should have the competence, the authority and the incentive to get a settlement at the last step. Also, there must be full access to the assistance each requires to be effective. Of course, for this settlement to occur, the case needs to have been fully investigated before the final step takes place; and the parties should not hesitate, at this stage, to recess for an opportunity to obtain any additional information that is required before deciding that the system board must be utilized. An effective grievance procedure that promptly disposes of most grievances tends to reduce the number of grievances that are filed and to improve the morale of employees and management personnel. Good grievance handling does not come easily in the dynamic and fragmented context of the airlines, but it deserves more attention and resources than some grievance procedures have been given. I want to close this part of my remarks, however, by noting that I have been playing the devil's advocate. There are good airline grievance procedures; however, my mission is to raise constructive questions and not to praise what has already been accomplished under some agreements.

I turn now to the design and operation of airline system boards of adjustment. Here, too, I will primarily raise questions that the parties might consider. For many of these questions, there are no general answers because arbitration machinery has to be tailored to the volume and complexity of cases, to the desirability of reasonably expeditious decisions and to the resources of the parties. On the typical and traditional system board, each case is first heard at the four-man level by the appointees of the two parties. Some four-man boards produce a significant number of decisions, while others deadlock in almost every case. It is becoming increasingly common, as a result of the latter situation, to by-pass the four-man level and present cases directly to a five-man board containing a referee. Whether or not this by-passing is a desirable shortcut should be decided on the basis of experience at the four-man level.

The hearing before a five-man system board is invariably a relatively formal proceeding with a court reporter, the swearing of witnesses, an attorney representing each party and the customary rules of evidence and

procedure applicable to such occasions. The hearing is considered a trial *de novo*, and it is not unusual to have evidence presented that had not been previously considered by both parties. The parties often wish to submit post-hearing briefs. After the transcript is available, the briefs (if any) received and the record studied, it is the usual practice for the board to meet in executive session for a candid discussion of the case. Sometimes, the referee will already have prepared a draft opinion for this occasion. More commonly, and probably more prudently, the referee prepares a draft opinion after the executive session and circulates this by mail among the board members for their comments. The final decision, signed by the referee, is then sent, in most cases, to the board member who is serving as its chairman. He obtains the other signatures and distributes the decision.

A tripartite arbitration board has advantages, especially in an industry with a host of unique practices, problems and nomenclature, and in which some grievances present issues that are complex in content and far-reaching in their implications. (Let me hastily note my awareness that arbitrators should be concerned about contractual obligations and rights and not with the consequences for the parties, but there are occasions when the nature of the consequences bear upon the reasonableness of a given contract interpretation.) A referee's colleagues on the board often help to clarify the facts and the issues. Moreover, the partisan board members can serve as an avenue of communication and education for their respective parties that will contribute to their understanding of the process and its results. It is also true that the five-man system board and its procedures constitute a relatively elaborate, expensive and slow process for the arbitration of grievances. On large carriers, where increasing numbers of grievances in many bargaining units are referred to a single board, bottlenecks have developed at the board level. The advantages of a system board have to be balanced against the costs and the time involved.

On this basis I now raise some questions, emphasizing again that the respective answers are not the same for all parties. Does a five-man board have any distinct advantage over a three-man board? Since the early 1960's, a three-man board, including a neutral referee who participates from the outset, has been established under most airline contracts to which the International Association of Machinists is a party. As to the role of partisan board members, do the qualifications and the contributions of the partisan appointees to system boards correspond to the expectations of the appointing party? Some parties appear to regard this function as limited to registering an automatic dissent whenever the referee fails to support their position. In such a case, their qualifications are irrelevant. In my own experience, the most productive and helpful partisan board members are usually those who have acquired considerable experience in this role, who have appropriate background and who regard their board function as an important service.

I want to expand on this latter point in light of some of my experiences

as a neutral on airline system boards. At one local service carrier there had been an admitted violation of seniority, and the dispute involved the nature of the remedy. The union had proposed five remedies. I found that a modified form of one of the proposed remedies was appropriate but rejected the other four. The union appointees on the system board agreed with me that three of the proposed remedies should be denied, and they also accepted my modification of the one remedy that I approved. They advised me that they would file a dissent only in regard to my rejection of a request for a cease and desist order. When the dissenting opinion was issued, however, it blasted me for every rejection or modification of the union's proposals. This dissenting opinion, which had evidently been written by the union's attorney, obviously contradicted the views that the union's system board appointees had expressed to me, and indicated that these particular colleagues on the board were viewed by their party's attorney as non-entities. On another occasion, at a major trunk carrier, I received a rather nasty dissenting opinion, obviously from the attorney, and learned at a later hearing with the same parties that the board members whose names had appeared as the signers of that dissent had not seen the text until long after its issuance. In still another case, a partisan board member responded to a draft of the proposed decision by sending me a rather extreme letter of denunciation addressed to all of the key officials of his organization with a statement that this letter would be sent out if the final decision corresponded with my draft. I cite these examples to illustrate some existing problems where board members and/or parties do not have a proper understanding of how system boards should function, or where a union or company does not treat the board, or its own appointees on the board, with proper consideration. I have also encountered efforts by board members to introduce in executive session evidentiary material not on the record instead of using their expertise to assist the board in evaluating evidence that is in the record; and in a few instances, a partisan colleague was unable to understand why I would not reply upon such off-the-record assertions or documents. Most of the time, however, I have found my executive sessions helpful and sometimes invaluable. Moreover, unanimous decisions, even in cases formerly deadlocked at the four-man level, have not been unusual.

Are there some kinds of cases in which the interests of the parties might best be served if they are heard by a sole arbitrator serving as the "board?" Perhaps the parties should consider waiving the tripartite board on a case by case basis, by mutual agreement only; or perhaps the expense and delays inherent in using boards justify a switch to sole arbitrators for all except special cases. The 1966 Braniff-IAM contract, covering mechanics and related employees, has dispensed entirely with a system board in favor of a single neutral selected on an ad hoc basis.

Is the expense and the delay involved in the preparation of a verbatim transcript essential in all cases? In other industries, a majority of arbitration cases are heard without a court reporter. In relatively simple cases,

especially where many of the facts can be jointly stipulated and where each party prepares a written opening brief, could not the transcript be waived by mutual agreement? Would it expedite the hearing if the spokesmen for each party were to meet prior to the hearing for the purpose of exchanging exhibits, preparing a joint statement of the issue if possible, and discussing various aspects of the hearing procedure? They could determine the need for a transcript in that particular case, the best location for the hearing, the starting time, the use of a sole arbitrator (if permitted) instead of the full broad, and so forth.

Should the parties establish more than one system board for large bargaining units? A recent example is contained in the 1966 agreement between American Airlines and the Transport Workers Union. This contract establishes a three-man system general board of adjustment (on which the referee is one of three agreed arbitrators named in the contract) with jurisdiction over all cases not falling under the jurisdiction of other boards; three three-man divisional boards, each with a named referee, with respective jurisdiction over (a) overtime and rate-of-pay cases, (b) scope, work assignment and seniority cases and (c) discipline other than discharge cases; and four area boards (New York, Chicago, Tulsa and Los Angeles), each of the three-man type, for discharge cases.

Finally, should the parties review their procedures for the designation of referees? The negotiation of an agreed panel of potential referees, from which the referee is selected for a particular case by mutual agreement or by rotation, appears to have been a helpful method for some parties. Western and United are now using a single "permanent" referee under their ALPA pilot contracts. Obviously, if the parties find that they can readily agree on ad hoc referees who are available, or can obtain qualified and acceptable ad hoc designees promptly from such agencies as the National Mediation Board or the American Arbitration Association, they may prefer to retain ad hoc selection. But a negotiated panel of neutrals or a single named referee may provide quicker and more knowledgeable service. One disadvantage of a single permanent neutral is that the parties lose their investment in him when he becomes either unavailable or unacceptable, and also lose contact with other arbitrators.

I would urge the parties to re-examine all of their system board rocedures with a view to restricting the time required to process cases after they have been submitted. The Air Transport Association estimated for 1963 that "most cases are concluded within 4 to 12 months."[3] This estimate corresponds to my own observation, except that the upper end of this range, perhaps eight to eleven months, is probably most common. If we remember that three months have usually elapsed between the filing of a grievance and its referral to a system board, the value to both parties of expediting their procedures becomes evident. Incidentally, the parties

[3] Statement of J. L. O'Brien, Vice President, Air Transport Association of America, *Hearings on Railway Labor Act Amendments Relating to the National Railroad Adjustment Board Before the Subcomm. on Transportation and Aeronautics of the House Comm. on Interstate and Foreign Commerce*, 89th Cong., 1st Sess. (1965) [hereinafter cited as *Hearings on Railway Labor Act*].

should never overlook the possibility of a direct settlement after the case has been heard by the system board, but before the board has rendered its decision. I am aware of only one instance in which this has actually occurred.

A few carriers and unions have in recent years instituted significant revisions in grievance handling after growing dissatisfied with the experience under their former procedures. However, most airline grievance procedures have not been subjected to serious self-study, and comprehensive data for the industry have not been available.[4] Consequently, comparisons with the experience of other industries, even on a purely quantitative basis, can't be offered in this paper. Nevertheless, for illustrative purposes, it may be helpful to relate the recent experience of General Motors and the United Auto Workers. During 1968, the GM-UAW Master Agreement covered about 400,000 workers in 130 plans, or more employees than in the entire United States airlines industry. The number of written grievances filed during 1968 was 230,754, an average of 56.7 per 100 employees. These grievances were disposed of as follows:[5]

Settled at Step 1 and 1½ (Shop Floor)	177,432	73.2%
Settled at Step 2 (Management-Shop Committee)	49,174	20.3%
Settled at Step 3 (Appeal Committee)	16,040	6.5%
Settled at Step 4 (Umpire)	16	0.01%

Evidently, the parties to the GM-UAW Master Agreement have learned how to make the grievance procedure highly effective at every step, and thus present only a handful of cases to their permanent umpire. Most of this handful, incidentally, involves discipline and discharge cases, not contract interpretation issues. I am not implying that the airlines can or should copy the GM-UAW approach; I am merely verifying by example that the use of arbitration can be minimized. Rough estimates by the Air Transport Association for 1963 are that 4,000 grievances were filed in the airlines that year (only one per 44 employees, as against more than one per two employees at GM), but that 250 were ultimately determined by a system board with a referee (compared with only 16 in 1968 at GM under the UAW Master Agreement).[6]

Northwest Airlines and ALPA inaugurated some major grievance procedure revisions in their agreement of 1 November 1966. Where a pilot has been disciplined or dismissed, his written request for an "investigation and hearing" goes directly to the Company's Vice President for Flight Operations; and, if denied by this Vice President, it goes to the system

[4] John Hill will present, later this morning, some of the findings of a recent survey conducted by the Air Transport Association at Mr. Hill's instigation, in order to produce useful data for this symposium.

[5] Data supplied by General Motors Corporation Central Labor Relations Staff (March, 1969).

[6] Statement of J. L. O'Brien, Vice President, Air Transport Association of America, *Hearings on Railway Labor Act, supra* note 3.

board. One additional step has been retained for grievances on non-disciplinary issues, including the following requirements:

> (1) A request for investigation setting forth a full and complete statement of the facts out of which the grievance arose, the provision or provisions of the Agreement upon which the grievance is based and a specific request for relief shall be filed with the pilot's immediate supervisor with a copy to the Vice President-Flight Operations Department.

The System Board is to consist of five members including a referee, however,

> [a]t the election of the Association to be set forth in the petition of submission, the System Board of Adjustment as constituted for a specific dispute may consist of three (3) members, one (1) appointed by the Company, one (1) appointed by the Association and the neutral member. When the Company and the Association agree, a combination of cases may be presented to a neutral member.[7]

Such changes appear to be in the right direction: Flexibility in procedure tailored to the requirements of each case, clarity as to the basis of the complaint, the elimination of excessive (and probably perfunctory) steps and the economy of submitting, when mutually acceptable, a number of cases at one time.

The grievance procedure is well suited to joint study by the parties away from the contentious atmosphere of collective bargaining negotiations. Perhaps the time is ripe, under many airline labor agreements, for the creation of joint union-management study committees assigned to review their experience, to diagnose procedural problems and to prepare recommendations for improving the handling of grievances.

[7] Labor Agreement between ALPA and Northwest Airlines (November 1, 1966).