dissatisfaction, it helps management identify areas for potential workplace improvement.

Conclusion

As with any dispute resolution mechanism, such a procedure can be abused by the parties. Employers can ignore the neutrals' conclusions and unions can use the process to burden management. Still, the procedure represents a positive step toward workplace democracy by allowing employees more voice in managerial actions and decisions which affect their organizational lives. It is certainly not appropriate for all employer/employee relationships, but, in cases where employees' noncontractual complaints are going unresolved, a review procedure such as that described herein may be useful.

[The End]

Grievance Mediation: A Route to Resolution For the Cost-Conscious 1980s

By MOLLIE H. BOWERS, RONALD L. SEEBER, and LAMONT E. STALLWORTH

Ms. Bowers is with George Washington University. Mr. Seeber is with Cornell University. Mr. Stallworth is with Loyola University of Chicago.

SINCE WORLD WAR II, most labor relations practitioners have considered arbitration to be the favored means for resolving disputes over the interpretation and application of contract terms. Grievance arbitration was appealing partly because it was believed that use of this procedure would limit government intervention in the workplace and, thus, perpetuate the tradition of industrial self-regulation. Moreover, experience showed that arbitration was both efficient in terms of the time and cost expended and equitable in terms of the results obtained.

Over time, however, the parties' heavy reliance upon arbitration has significantly eroded the efficiency of the process and, as a consequence, has tended to result in the assumption of additional liabilities where employee morale and cost are concerned. Furthermore, the characteristic informality of grievance arbitration has been transformed by widespread interjection of legalism into the process, and government regulation has reemerged so that some types of cases are now subject to retrial through administrative agencies and the courts.[1]

Thus far, efforts to cope with these consequences have been focused primarily upon providing options which are intended to restore the attributes of grievance arbitration which made this procedure attractive in the first place. Although the use of expedited arbitration has produced some very satisfactory results, the haunting question remains. That is, whether or not there are other alternatives which can as well or better meet the needs of the parties in some cases. Obviously, this question will not be answered unless at least two critical conditions are met.

[1] See, for example, *Alexander v. Gardner-Denver Co.*, 415 US 36 (US SCt, 1974), 7 EPD ¶ 9148, and *Barrentine v. Arkansas Best Freight, Inc.*, No. 79-1006, *Daily Labor Report* No. 65 (April 6, 1981).

These conditions are that other options are suggested and that sufficient experimentation with such options occurs to provide a valid basis for assessment of the capability and consequences of utilizing grievance dispute resolution procedures other than some type of arbitration.

The purpose here is to consider the use of one such alternative procedure known as "grievance mediation." There are at least four ways in which this can be implemented. They include the intervention of: upper level labor and management advocates; federal or state mediators; private mediators; or arbitrators. Our research has concentrated on the second option, but none of them is new to the American industrial relations system. Prior to 1945, mediation was frequently incorporated into grievance procedures as either an intermediate step before a strike or as a final step. Since then, however, the widespread use of voluntary arbitration has supplanted grievance mediation in all but a small minority of bargaining relationships.[2]

In recent years, there has been a rekindling of both academic and practical interests in grievance mediation.[3] The purpose of this exploratory study is to ascertain from federal and state mediators their general perceptions of and experience with grievance mediation.

Survey

Federal and state mediators from cooperating agencies[4] were asked a series of questions. The general areas of inquiry were: geographic areas of usage; industries in which grievance mediation is most often used; issues which appear to be most suitable for resolution through grievance mediation; environmental and procedural factors important to the successful mediation of grievance cases; perceived benefits of grievance mediation; and future prospects of grievance mediation.

Mediators from the Federal Mediation and Conciliation Service and from state agencies were surveyed because it was known in advance that these neutrals have handled the majority of cases where grievance mediation is used. By surveying both state and federal mediators, it was also possible to gather data concerning grievance mediation activities in the public sector as well as the private sector. No sophisticated sampling techniques were used, but the responses reflect the attitudes and perceptions of neutrals who have had considerable experience with grievance mediation.

The average ages of federal and state mediators were 48.9 and 47.5 years, respectively. The average number of years of education beyond high school was 4.05 years for state mediators and 4.01 years for federal mediators. A majority of all the respondents has had

[2] *Basic Patterns in Union Contracts* (Washington, D. C.: Bureau of National Affairs, 1979), p. 15.

[3] William Simkin, *Mediation and the Dynamics of Collective Bargaining* (Washington, D. C.: Bureau of National Affairs, 1971), p. 300; Arnold M. Zack, "Suggested New Approaches to Grievance Arbitration," *Arbitration—1977*, Proceedings of the 30th Annual Meeting, National Academy of Arbitrators (Washington, D. C.: Bureau of National Affairs, 1978), pp. 105-20; James P. O'Grady, "Grievance Mediation by State Agencies," *Arbitration Journal* 31 (June 1976), pp. 125-30; Stephen B. Goldberg, "Mediation of Grievances in the Coal Mining Industry," a proposal submitted to the U. S. Department of Labor, October 14, 1980; and Mollie H. Bowers, "Grievance Mediation: Settle Now, Don't Pay Later," *Federal Service Labor Relations Review* 3 (Spring 1981), pp. 25-35.

[4] The federal agency is FMCS. Other cooperating agencies are in Alabama, California, Florida, Illinois, Iowa, Massachusetts, Michigan. Minnesota, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Wisconsin.

their most recent prior work experience representing either labor or management.

At the outset, we anticipated that federal and state mediators would differ in their views and perceptions of grievance mediation. However, analysis of the data showed that with very few exceptions there were no significant differences between the two groups of mediators. Consequently, most of the results reported here reflect the combined experience and perceptions of all the respondents.

The geographic areas where grievance mediation appears to be used the most are the Pacific states,[5] Mid-Atlantic states,[6] and the North Central states.[7] According to state mediators, the industry where grievance mediation is used the most is the public sector, followed by the food, health care, construction, and aerospace industries. Federal mediators identified the lumber industry as the most significant user of grievance mediation, followed by steel, printing, automobile, and food. The issues which appear to be most suitable for resolution through grievance mediation are discipline and seniority-related matters, followed by work-rule, layoff, and overtime issues. However, federal mediators indicated that equal employment opportunity issues (employment discrimination) ranked among the issues most frequently submitted to grievance mediation.

Interestingly, when asked what issues are not suitable for grievance mediation, both federal and state mediators shared the opinion that employment discrimination issues are not as suitable as some other issues for voluntary resolution. Other issues which were considered not particularly suitable for mediation were related to fundamental management rights, union security, union jurisdictional disputes, dues checkoff, pensions, and subcontracting.

Important Factors

There were a host of factors which were perceived to be important to successful grievance mediation. These factors have been grouped into the following categories: organizational environment, arbitration and strikes, procedural and technical skills, and relationship between the mediator and the parties.

Two factors dominated the environmental category. One was the interest dispute case load of government mediators. A large number of the respondents indicated that they often had little time for involvement in grievance cases in addition to their regular responsibilities. However, it is reasonable to suggest that the currently declining strike rate may ameliorate this situation. Nevertheless, budgetary and staffing limitations placed on many mediation agencies may still constrain involvement in grievance cases. The other factor which was frequently cited was a lack of support for, and even pressure to avoid, grievance mediation by peers and supervisors. This response was particularly prevalent among federal mediators. It is evident from these results that positive support from decisionmakers who have the power, authority, and resources is critical to the success of government-sponsored grievance mediation activity.

With respect to the second category, the results overwhelmingly support the conclusion that dissatisfaction with regular arbitration is an important catalyst for experimentation by the parties with grievance mediation.[8] Neither the

[5] Washington, Oregon, and California.

[6] New York, New Jersey, Pennsylvania, and Delaware.

[7] Ohio, Indiana, Illinois, Michigan, and Wisconsin.

[8] This result may be influenced by extensive involvement of some FMCS respondents in mediating grievances in the forest products and lumber industries.

availability of the right to strike nor arbitration as a final step was perceived to be an impediment to the serious use of grievance mediation as an intermediate step. However, federal mediators tended to think that the existence of a grievance mediation step made the parties less conscientious in resolving grievances at the lower levels of the grievance procedure prior to grievance mediation.

Among those factors categorized as procedural and technical skills, defining the issue(s) to be resolved in grievance mediation was mentioned most frequently by both federal and state mediators. Restricting the grievance mediator's authority to the defined issue ranked second. This result is interesting because it appears to be a carryover by the mediators or the parties, or both, from arbitration. Additional research is encouraged to determine whether this is the case or it reflects a lack of understanding of the potential for mediation to resolve other issues or some, as yet unidentified, motivation.

The manner in which recommendations for settlement are made by mediators was also considered to be an important factor. The respondents thought that it was appropriate to provide written recommendations only at the request of the parties. They also believed that any proposed recommendations which were to be made in joint sessions should be "cleared" first with the parties.

Other Areas of Inquiry

The survey also provided information on factors concerning the parties and the mediator. Regarding labor and management, there was a consensus among the respondents that it is essential for the parties to understand and to accept mediation as a process. A willingness by the disputants to attempt to resolve differences voluntarily ranked second in importance. Interestingly, the mediators reported that their personal skills and acceptability were important, but not as important as the parties' understanding and acceptance of the process. This result also raises some challenging avenues for subsequent research. For example, if the parties believe in both mediation and arbitration, is the acceptability of the neutral a less critical factor in the former than in the latter procedure and, if so, why?

The preponderance of the respondents indicated that a minimum of five years neutral experience was important to be successful as a grievance mediator.[9] They also felt that involvement in joint labor-management programs/committees provided valuable experience for those who aspire to be grievance mediators. Other considerations such as knowledge of the bargaining history and of the principles of contract interpretation and application were mentioned but were not primary considerations for the respondents.[10]

For potential consumers of the process, the paramount interest is the perceived benefits or advantages which may be derived from utilizing grievance mediation. Strengthening the parties' reliance on collective bargaining to resolve their own problems was considered to be the most important advantage of grievance mediation by the respondents. This was followed closely

[9] The state mediators who responded were successful, on average, in resolving 87.4 percent of the grievance cases in which they were involved. The comparable figure for FMCS mediators is 25.5 percent.

[10] Some FMCS mediators tend to believe that, once a neutral can mediate one type of dispute, he/she can mediate any dispute. Potential pitfalls of narrowly adopting this type of thinking are illustrated by the case of *T & T Industries, Inc.*, 235 NLRB 517 (1978), 1978 CCH NLRB ¶ 19,154.

by the significant decrease in the amount of time it takes to obtain a grievance mediator as compared to an arbitrator. The resolution of more "basic" problems in the collective bargaining relationship ranked third as a positive advantage of this procedure. The opportunity to consolidate grievances and, thus, to reduce the number of requests for arbitration panels was also cited as an important advantage.

The fact that a mediated grievance(s) could be resolved in one day or less was considered a benefit because of the saving of both time and cost. The respondents also indicated that, generally, attorneys are not used in grievance mediation so that there is a decrease in the cost of time spent by retaining legal counsel.

It is also worthwhile to note that the mediators did not believe that use of grievance mediation increased the chances that duty of fair representation charges would be filed against parties electing to use this procedure. This may in large part be due to the fact that the mediators generally agree that the grievant should always be informed of tentative settlements before the union accepts the offer of settlement.[11] This is an important consideration given the problems unions, in particular, often face in this area.[12]

The future prospects for the expanded use of grievance mediation was the last area of inquiry. Although the mediators did not support legislation mandating grievance mediation, they did suggest several conditions under which grievance mediation may gain further acceptance. First among these was positive support by key labor and management representatives for use of this procedure. This was followed by the endorsement of other neutrals and government officials such as the Secretary of Labor, heads of neutral agencies and professional organizations, etc.[13] The respondents were also asked to identify sources of grievance mediators. Predictably, the federal and the state mediators each thought that they should be the preferred source but listed private mediators and arbitrators as lower ranking possibilities.

Conclusion

The data gathered and analyzed in this study give considerable support to the idea that grievance mediation can serve a useful role in resolving grievances. The results also indicate that, where grievance mediation has been used, the parties have derived some noteworthy benefits from the experience. These benefits include a saving in both time and money which are critical issues to both parties under the economics of severe constraints and should be at other times as well. More importantly, it is apparent that grievance mediation yields an even greater benefit, that is, making labor and management more reliant on the process of collective bargaining and thereby to resolve more of their problems.

As we enter the 1980s, it is abundantly clear that more emphasis must be placed upon deregulation and less litigation and relitigation of issues. This will

[11] See, for example, Robert Coulson, "Satisfying the Demands of the Individual Grievance," LABOR LAW JOURNAL, Vol. 30, No. 8 (August 1980), pp. 495-97.

[12] See generally Jean T. McKelvey, ed., *The Duty of Fair Representation: Papers from the National Conference on the Duty of Fair Representation,* sponsored by the New York State School of Industrial and Labor Relations, Cornell University, April 28-29, 1977, New York City; John Truesdale, "Address of NLRB Member John Truesdale Titled: 'The Duty of Fair Representation: Must It Be Effective to Be Fair?'" *Daily Labor Report* No. 50 (March 13, 1979), pp. A11-12, F1-4.

[13] See, for example, Zach, "Suggested New Approaches . . ." and Goldberg, "Mediation of Grievances . . . ."

mean that labor and management must endeavor to resolve more of their own disputes, including such statutorily related issues as equal opportunity, without immediate government intervention. Mechanisms such as arbitration and, where appropriate, grievance mediation can serve an important positive purpose not only to labor and management but also to the greater society.[14]

The practical application of grievance mediation to the labor-management arena certainly is a positive alternative which deserves serious consideration, support, and experimentation to meet the needs of the consumers of grievance dispute resolution mechanisms in the 1980s. Realistically, however, the bottom line remains constant that none of us will know what the economies and consequences of settling now rather than arbitrating later will be unless advocates and neutrals are willing and able to attempt to settle now rather than pay later. **[The End]**

A Discussion

By LaVERNE ROLLE ALIAN

American Arbitration Association

IT WAS RECOGNIZED in the early 1940s and 1950s that a system was needed which would settle problems in the workplace in a fair, swift, and cost-effective manner.[1] Arbitration filled the bill when litigation and strikes were found to be counterproductive to employer and employee alike. Time has passed and the industrial community is again looking for "the way," arbitration being so formalized that it is picking up the attributes of its predecessors.[2] This discussion will focus on two papers suggesting alternative techniques that may be of assistance to the industrial community in settling/solving grievances short of rights arbitration. They deserve note.

Grievance mediation is a technique used primarily in three sections of the United States utilizing federal and state mediators. Although it may be found in a number of industries, it is used primarily by the "public sector [and] food industry, health care, construction, and aerospace" on the state level, and "the labor industry, steel, printing, automobile, and food industries" on the federal level. Only certain issues appear to lend themselves to grievance mediation: "discipline and seniority-related matters, followed by work rules, layoff, and overtime issues."

Mediation usually takes no more than one or two days. There is an 87.4 percent success rate by the state mediators and a 25.5 percent rate for federal mediation. The costs are low due primarily to the few days involved in

[14] See, for example, Chief Justice Warren Burger, "Isn't There a Better Way?" Annual Report on the State of the Judiciary at the Midyear Meeting, American Bar Association, January 24, 1982, Chicago. In this report Chief Justice Burger strongly advocates the expanded use of mediation and arbitration to resolve civil matters without litigation through the courts.

[1] Elkouri and Elkouri, *How Arbitration Works*, 3rd ed. (Washington, D. C.: BNA Books, 1974), p. 7.

[2] James L. Stern and Barbara D. Dennis, eds., *Truth, Lie Detectors, and Other Problems in Labor Arbitration*, Proceedings of the 31st Annual Meeting, National Academy of Arbitrators (Washington, D. C.: BNA Books, 1978), pp. 32-33.