Proceedings

Thirty-Third
annual meeting

Transportation Research Forum (TRF)

Halloween In New Orleans

October 31 -
November 2, 1991
New Orleans, LA

Editor:
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NONUNION GRIEVANCE ARBITRATION SYSTEMS IN THE TRANSPORTATION SECTOR: A PROCEDURAL ANALYSIS

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Introduction

The words arbiter and arbitrator are derived from the Latin word *arbitrari*, meaning "to make a decision." An arbitrator is a neutral third party who renders a decision between two contending parties who cannot mutually arrive at a satisfactory resolution of their conflict.

A mediator, from the Latin *mediare*, meaning "to be in the middle," is a neutral third party who, while lacking authority to render a decision, assists the parties in achieving one of their own choice.

Arbitration and mediation have an honorable connotation. The biblical injunction, "Blessed are the peacemakers," is applicable to them. They are related in their purpose, which is to convert conflict into harmony, but different in their methods. It is necessary, if arbitration is to be meaningful, that it possess the attribute of finality, what is called "binding arbitration," in which the contending parties, however grudgingly, agree to accept the arbitrator's decision, preferring it to continuing conflict.

Mediation, on the other hand, inasmuch as it cannot render a decision, depends for its usefulness upon the mediator's ability, combined with the reasonableness of the contending parties, to steer them into their free acceptance of a decision proposed by one of them or by the mediator. A memorable example of mediation was President Theodore Roosevelt's invitation in 1905 to the parties in the Russo-Japanese War to meet with him at Portsmouth, New Hampshire, where, after a month of discussion, the parties signed a peace treaty. And in 1978 Pope John Paul II successfully mediated a territorial dispute which was threatening war between Argentina and Chile.

The obvious advantage of arbitration over mediation is the former's guarantee that a decision will be attained, while the obvious disadvantage is that the contending parties must relinquish

their control over their own destinies into the hands of a third party. That disadvantage looms sufficiently large in the minds of some persons on both sides of the employer-employee relationship to weaken their enthusiasm for arbitration. Nevertheless, arbitration remains a sensible option which disputants should always consider. The speed with which it functions is a definite asset for both parties, and its low cost is very attractive in comparison with the expense of dragging a dispute through a time-consuming civil court suit.

However hopeful a party may be of obtaining a favorable arbitrated decision, there is always an element of uncertainty, and the choice is between it and having the dispute drag on indefinitely. Uncertainty exists because it would be unreasonable to expect that even professional arbitrators of equal ability and experience would all render identical decisions in a given case, a unanimity of opinion which it is difficult for judges in a multijudge tribunal to attain, split decisions being more common. In fact, it is the very element of uncertainty which makes arbitration feasible. No one would submit to it knowing the decision would be against him.

An important feature of arbitration is that the scope of the arbitrator's investigative authority and the facts to which he is limited in designing his decision are stipulated by the contending parties. For example, he may be instructed to determine whether an employee is entitled to remuneration because of hardship resulting from a factory being moved to a new location, while at the same time he is denied authority to consider the separate issue of whether the plant should be moved.

In general, the selection of an arbitrator is by mutual agreement of the parties, but in some instances management may reserve that prerogative to itself in a dispute with an employee. Legally, anyone may serve as an arbitrator, but it is "the better part of wisdom" to select a person who is a member of a professional arbitrators' association, because the essential characteristic of such an association is the indispensable attribute of impartiality. The association can be helpful by suggesting a few names of arbitrators experienced in the parties' type of dispute.

Representative Nonunion Arbitration Procedure in the Transportation Sector

This section is an analysis of the arbitration procedures stipulated in the employee-relations policy manuals of some leading nonunion transportation companies here in the United States.

The field research consisted of three elements. First, examination of relevant documentation, including employee-relations manuals and other accompanying primary sources of written archival information relating directly to the procedural requirements of

transportation nonunion grievance systems, provided by six of the leading nonunion domestic transportation companies; second, interviews with transportation managers and human resource executives where needed in order to clarify, explain, and supplement the primary sources of information; and third, interviews with informed neutral parties.

Carrier A

An employee may invoke arbitration only if the grievance is that of having been discharged, and only if the employee has at least two years of seniority. Arbitration may not be invoked if the cause of discharge was violation of rules regarding attendance and theft. The employee must tender a written request to management, or postmark it, within 48 hours after receiving a notice of discharge.

The arbitrator is selected by management, which requests three names from a "recognized" arbitration association and selects one "at random" within two weeks after receiving the three names.

The date on which the selected arbitrator will hold the hearing is agreed upon between the arbitrator and management. The arbitrator may direct that a transcript of the hearing be made, but its publication in summary form or otherwise requires the consent of both management and the employee. Persons not "directly involved" with the employee's discharge may not attend the hearing.

The employee "may" present evidence, summon and examine witnesses, argue the merits of his or her position, have prior access to his or her personnel file, and receive the assistance of a member of management in case preparation.

Management "shall" pay the arbitration costs, comply with the arbitrator's decision, and comply with the employee's "reasonable" requests for information and witnesses.

The issue before the arbitrator is whether the employee was "discharged for just cause," and in making the decision the arbitrator shall be governed by the plant's policies, rules, and disciplinary procedures as published, and call additional witnesses or conduct such other investigation as he deems necessary.

If the arbitrator determines that there was not a "just cause for discharge," an order of "reinstatement and/or back pay" may be given. Back pay is calculated by what the employee should have earned without discharge less income he or she earned, or could have earned "with reasonable diligence," since time of discharge.

The arbitrator's decision must be made without delay and within 30 calendar days of the hearing, with concurrent mailed notice to management and the employee.

Analysis of Carrier A. The critical feature is that an employee may request arbitration only if the grievance is that of being discharged, but not if the discharge was for violation of attendance and theft rules.

Another feature is that management selects the arbitrator, doing so "at random" from a list of three persons suggested by an arbitration association.

A third important feature is that management pays the arbitration costs.

Carrier B

The manager may "invoke" arbitration and the employee may "request" it. The situation is that either the manager or the employee is appealing to arbitration from a recommendation for settling the employee's grievance which was made by a "peer group" in the company. If it is the employee who is initiating arbitration, it must be done within ten days of the "peer group's" recommendation.

The employee selects the arbitrator from a list provided by the American Arbitration Association.

The decision is binding. Only the employee, his or her supervisor, and "necessary" witnesses may participate in the hearing. There will not be a posthearing brief nor any stenographic record. Normally, the hearing should be completed in one day, but the arbitrator may, "in unusual circumstances and for good cause shown," hold a second hearing within five days.

Arbitration may proceed if a party who received due notice fails to be present, but an award shall not be made solely on the default of hte party, and the arbitrator may require the attending party to submit supporting witnesses.

The arbitrator's decision is limited to questions involving the "application or interpretation" of the company policy at issue. The arbitrator will not judge its "reasonableness or propriety."

Unless the parties agree otherwise, the arbitrator's decision shall be made not later than 30 days after the hearing. It shall be in writing, mailed to the parties. The arbitrator's "opinion," if any, shall be in summary form, and it and the decision shall be made known only to management and the employee.

Management shall pay the arbitration expenses.

Analysis of Carrier B. The interesting feature is that, although the company has established a "peer group," the members of which are employees, to settle employees' grievances, both management and an employee may appeal over the "peer group's"

decision to arbitration.

Company A's arbitrator is selected by management but the employee makes the selection in Company B.

An unusual feature is that arbitration may proceed if only one of the two parties is present. It would seem to be unlikely that management would fail to appear if it initiated the arbitration, and it would appear proper to cancel the arbitration if it was initiated by the employee and he failed to attend the hearing.

Carrier C

The headquarters of this very large company issued a companywide employee-relations manual which includes provision for the arbitration of employees' grievances.

An employee may appeal to arbitration from the highest internal office in the company which reviews and decides employees' grievances. That office, which is staffed by three top executives in the division of the company in which the employee concerned works, is called a Management Appeals Committee. The employee must appeal from the committee's decision within five working days in writing, which is to be a clear, concise statement of the facts, "the issues to be resolved by an arbitrator," and the desired remedy.

The arbitrator is selected jointly by the company and the employee. If a selection is not agreed upon within 24 hours after the meeting held for that purpose, the company will request from "an appropriate source" a list of five arbitrators. First the employee will delete a name from the list, then the company will do so, after which the employee will delete another name, leaving two names from which the company will select the arbitrator.

The arbitrator's function is defined as determining whether company policies, practices, rules, or regulations have been complied with "in the case of your grievance." The arbitrator's decision is "conclusive and binding," and it will be limited to "the precise issue which is submitted for determination."

The arbitrator "may" interpret the various policies and rules, but does not have the power to change them or to limit in any manner management's authority to establish or revise such policies and rules.

The arbitrator is "requested" to render a decision within 30 days after the hearing is concluded and briefs, if any, are submitted.

Analysis of Carrier C. It is the employee who lays out "the issues to be resolved by an arbitrator," and the latter is limited to "the precise issue which is submitted for determination.' There

is not necessarily a conflict in changing from the plural to the singular, but the inference is that only the employee may raise one or more issues. It is questionable whether, as appears to be the situation here, the company should waive its right to present issues deemed pertinent by it.

An axiom states that "Justice delayed is justice denied." The company may feel no urgency to settle an employee's grievance, but the 30 days which the company's arbitration rules allocated as a maximum for the arbitrator's decision may cause an employee serious hardship, especially if the decision is to be in his or her favor.

Carrier D

This company's employee-relations manual indicates that the prescribed arbitration rules apply specifically to hourly paid employees. Arbitration is permitted only in "cases not involving determinations in the general conduct of the Company's business." Employees have the option of a written request for an "impartial arbitrator."

An arbitrator is selected jointly by the company and the employee, and if they fail to agree on a choice they then jointly request the American Arbitration Association to designate an arbitrator. Arbitration expenses are paid by the company. The decision is binding.

The arbitrator is provided with a written statement of the "issues to be resolved," signed jointly by the company and the employee.

Arbitration is not permitted regarding the company's retirement plan and the decisions of its medical director, although in the latter situation arbitration is provided in fact, even though not in name, by a third physician jointly selected by the company's doctor and the employee's doctor.

The company exercises caution in delineating the scope of an arbitrator's authority:

> The arbitrator shall have jurisdiction and authority to interpret the written policies, rules, regulations and procedures of the Company as they apply to the case of the employee being reviewed. He may not consider or decide matters which are solely and exclusively the responsibility of the Company in the management and conduct of its business.
>
> The arbitrator shall have no power to rescind, amend, alter or supplement existing written Company policies, rules, regulations, or procedures, including wage scales. The arbitrator shall, however, have the power to decide whether the application of such policies, rules, regulations, and procedures by the Company was arbitrary or discriminatory and,

if so found, make his decision in conformity with such written policies, rules, regulations, and procedures of the Company.

The arbitrator may determine if a job description is properly written and rated.

Analysis of Carrier D. The employee-relations manual quoted above can be read "between the lines" to reveal something of the company's attitude, even if not a conscious attitude, toward its hourly employees. It is a small point, but there is a tinge of condescension in informing employees that they may request an "impartial" arbitrator, as though there were any other kind and as though the employees do not appreciate the fact that the very purpose of invoking third party intervention is to achieve impartiality.

In addition, it is obvious that the company left it to the discretion of its attorney to draft the long quotation cited above regarding the scope of an arbitrator's authority, the result of which is to overwhelm with "legalese" diction the average hourly rated employee, for whom "rules, regulations and procedures" indiscriminately mean merely rules, while the word "change" would be less intimidating than, and just as meaningful as, "rescind, amend, alter or supplement." The intention here is obviously not to make the employees happy but only to make the company's attorney happy.

An employee-relations manual should be written by the human resources management department, which, among all the company's departments, can best be depended upon to exercise appropriate sympathy toward employees' problems.

It is proper for the draft of the manual to be reviewed by the company's attorney, but, in contrast with the sympathetic viewpoint of the employee-relations staff, his training in the legal system is more inclined to render his viewpoint controversial and adversarial.

Thus, while a member of the employee-relations staff will deem that he has earned his pay by informing the employees in a few utterly simple words that "an arbitrator may not change the company's rules," the attorney feels impelled to exhaust the dictionary, and also at least inadvertently intimidate the employees, by stating that "arbitrator may not rescind, amend, alter or supplement the company's rules, regulations and procedures."

A similar defect in company D's manual is the statement that arbitration is permitted only in "cases not involving determinations in the general conduct of the Company's business." The company's attorney will undoubtably be happy to explain, upon request, what that means, but this is of no help to a nervous employee who is reading and rereading the employee-relations manual

at home in an agonized effort to determine whether he or she qualifies for arbitration.

It is interesting to note that, for an unexplained reason, company D has determined it advisable to single out job descriptions as a specific area of concern for arbitrators regarding whether they are "properly written and rated."

Carrier E

Arbitration is made available only to "Production and Maintenance employees" and only if their grievance is their dismissal from the company after having completed their probationary period of employment. Arbitration is permitted only after a discharged employee has exhausted "all appeals available through the company's complaint procedure." The written request for arbitration must be submitted within two weeks of the effective date of the discharge.

A statement of the grievance and a statement of the company's justification for the discharge are submitted to "a panel of three community residents" to determine if there is "reason for a full-scale hearing" (meaning arbitration).

If that panel recommends arbitration, the employee may make a selection from "a list of nationally known arbitrators."

The function of the arbitrator is to determine if the discharge was for "just cause." The company will accept the arbitrator's recommendation for retroactive pay.

The company pays the arbitration expenses, except that the employee is responsible for the fee of a counsel whom he or she retains.

Analysis of Carrier E. A very important feature in company E's employee-relations manual is that arbitration is available only after the discharged employee has exhausted "all appeals available through the company's complaint procedure." Attention is here called to this feature because, while all companies do not make this specific statement in their manuals with respect to discharge and all other kinds of causes of employees' grievances, nevertheless the statement is certainly implicit in all employee-relations manuals. It is obvious that it is not proper procedure for a company to outline in its manual the "steps," a commonly used word, in the process of initiating a grievance and appealing from an unfavorable decision, if the selection of which "steps" the employee is to adopt are left solely to his or her own discretion. While various companies differ considerably in their appeal "steps," it is essential in each company that its published grievance procedure be adhered to, partly to achieve orderliness in the company and partly to achieve uniform treatment of all grievances.

A very unusual provision in company E's employee-relations manual is that the decision regarding whether an employee's request for arbitration shall be granted is left to the discretion of "a panel of three community residents" after they review "a statement of the grievance and a statement of the company's justification for the discharge." This is "tying a string" to an employee's request for arbitration which requires the employee, in effect, to struggle through not one but actually two arbitration proceedings. Furthermore, the official arbitrator, if the case gets to him or her, is faced with the inference that the "panel of three community residents" believes that the employee has an argument worthy of consideration.

Although the "panel of three community residents" is of major importance to employees who seek arbitration, there is nothing in the employee-relations manual to indicate the criteria by which the panel is selected by management. The panel is a hurdle over which an employee must leap on his progress toward arbitration, and a peculiar aspect of the overall situation is that the management selects the panel, but if the panel favors the employee by recommending arbitration, management permits the employee to select the arbitrator. That is not necessarily an even trade if the panel rules against the employee.

Carrier F

This is a small company with 85 employees. Its employee-relations handbook states:

> If you are not satisfied with the decision...you may ask that your problem be considered by an impartial arbitrator from outside the company. To do so, simply make your request in writing to the general manager within five (5) working days of receiving the ... decision. Within ten (10) working days thereafter, the general manager will request, in writing, that the American Arbitration Association designate an impartial arbitrator to decide the matter. The arbitrator will investigate the matter in full, including interviewing you and any other employees involved in the case. If you need help presenting your position to the arbitrator, you may ask a co-worker or your supervisor to help you.

The arbitrator's decision must be based upon the company's policy as outlined in the employee-relations handbook, and it is binding on "both you and the company."

Arbitration expenses are paid by the company except that, if the decision favors the company, "your share will be $25.00 and the company will pay the rest of the cost."

This procedure is available for use by "all employees" -- nonsupervisors as well as supervisors.

Analysis of Carrier F. In this very small company of only 85 employees, it may be assumed that employer-employee relations are conducted on a first-name basis, with the president highly visible and internal affairs conducted with maximum informality.

It is not surprising, therefore, that, whereas the employee-relations manuals previously outlined herein rather impersonally discuss employees' rights in grievance cases in the third person -- "the employee may or may not do such-and-such" -- in this company's manual (called a handbook) the grievance procedures are discussed, in a refreshingly informal and friendly manner, in the first person: "If *you* need help presenting *your* position to the arbitrator, *you* may ask a co-worker or *your* supervisor to help you" (emphasis added).

The informal and friendly spirit of this company's employee-relations manual is uniform throughout. It is probable that, when an employee in one of the other companies reviewed above examines the arbitration procedure outlined in his or her employee-relations manual, one has the disturbing feeling of being annoying and even antagonizing management by requesting arbitration, but in company F the employee is told: "Simply make your request in writing to the general manager." It is almost as if management is putting its arm around the shoulder of an employee and saying: Grievances between you and us cannot be completely avoided, but when they arise let's not allow them to disturb our basic mutual friendship.

This informally managed company does not want any red tape in the selection of an arbitrator, and it leaves the selection to the discretion of the arbitrator's association.

It is interesting that this company permits arbitration in the case of management personnel at the supervisory level.

Integrative Analysis

This chapter is concerned exclusively with the use of arbitration as a means of disposing of employees' grievances in representative nonunion transportation companies. In all cases in actual practice, as well as in theory, arbitration is the final step in those companies that permit arbitration.

Arbitration is an action that is performed *outside* of a company in neutral territory with respect to the relationship between employees and management. This fact is not impaired by the circumstance that, as a matter of convenience, the arbitrator uses a desk inside the company.

It is important to differentiate between arbitration and mediation. The universally accepted nature of an arbitrator's decision is that it is "binding" upon the two contesting parties. Having failed by their own effort to arrive at a mutually satisfactory solution of their problem, and sensibly desiring the

problem to be resolved, they invoke the "good offices" of a neutral third party in establishing a solution.

Mediation, on the other hand, lacks the "binding" feature of arbitration, and is intended to assist the parties in arriving at something more desirable than a third party's decision, namely, the parties' own mutual decision. The function of a mediator is to cool minds, and to suggest helpful ideas to assist the parties in making their own decision.

It should be obvious that, if an arbitrator senses an opportunity to solve a case on which he is working by injecting a dose of mediation, he most certainly should make the effort before, as his last resort, rendering his binding decision.

The potential value of the arbitration function is very substantial. It is expeditious, and relatively inexpensive. Not only can it dispose of a dispute in a few weeks, in contrast with the year or more often required in a civil suit, but, moreover, it can do so at a fraction of the legal expense. It is obvious that arbitration, unlike civil suits, avoids the axiom that "justice delayed is justice denied." All of these considerations are of interest to management, and arbitration offers an employee with a grievance the opportunity to have his case considered by an outside, neutral, and impartial tribunal in a situation in which it would be impracticable for him to utilize a court of law.

Professional arbitrators are frequently attorneys, and should be in cases in which the issues are involved with local or national laws, but such a qualification is not required in various other situations, one of which is the issue of whether an employee, or management in the opinion of an employee, has deviated from the officially published rules of a company.

It is noteworthy that those companies that permit employees' grievances to go to arbitration stipulate that an arbitrator must consider a company's rules "as written," that is, interpreting what they appear to state on the basis of impartial and reasonable judgment, but without authority to change them. An arbitrator should, of course, after rendering his decision, advise the company that a rule is subject to varying interpretations to a degree which renders it advisable for the rule to be more carefully written.

From the viewpoint of political philosophy, the justification for a company to insist that an arbitrator interpret a company rule "as written" is that it may be said that an implied contract exists between management and its employees, the essence of which is that management on its part and the employees on their part will adhere to the company's officially published rules. It is not surprising, therefore, that most of the six companies reviewed in this paper permit an employee's grievance to go to arbitration only with the limitation which the employee-relations manual of company B stipulates as follows: "The arbitrator's decision will be limited

to questions involving the *application or interpretation* of the company policy at issue. The arbitrator will not decide on the *reasonableness or propriety* of the policy itself" (emphasis added).

In other words, if the essence of an employee's grievance is that a company's policy or rule is in itself inherently unfair, the grievance is not subject to arbitration even though in various other situations arbitration is permitted by a company having the above-quoted policy. Among the six companies reviewed in this paper, only company E does not have the above-quoted limitation on an arbitrator's authority: company E's employe-relations manual states only that the arbitrator will determine whether the company had "just cause" for its action which generated the employee's grievance. It would be advisable for company E to clarify what it intends to say in its manual in this matter.

One of the very interesting features in the attitude of the six transportation companies regarding the arbitration of employees' grievances is that two of them permit arbitration only if the employee's grievance is of being discharged from the company. A third, company D, permits arbitration only "in cases not involving determinations in the general conduct of the Company's business," a statement which may be interpreted to be sufficiently vague to allow the company to determine whether an employee's grievance is arbitrable.

Why were only six companies surveyed which provide for arbitration of employees' grievances? The first thing to keep in mind is that this research pertains only to nonunion transportation companies.

One way to look at the six companies is to say they are the exception to the rule, but another way is to see them as the vanguard in a progressive trend in the area of transportation employer-employee relations and human resources management. This latter view is supported by the fact that company C accepts arbitration as a means for the settlement of employees' grievances and, moreover, does not limit it to cases of discharge.

The first page of company C's employee-relations manual, signed by both the chairman of the board and the president, states: "In its more than 45-year history _____ has earned a reputation as a good place to work. This reputation is based upon challenging work, fair treatment of every employee, and *respect for the dignity of the individual* (emphasis added). It may be that it was that "respect for the dignity of the individual" which caused company C, while retaining the privilege of final selection of an arbitrator, to recognize the stake of the employee in the selection:

> If you and the company are unable to agree upon an arbitrator within 24 hours after meeting for that purpose, the company will request from an appropriate source a list of five persons from which an arbitrator will be chosen. The employee will

delete the first person from the list of five, then the company, then the employee, leaving the company with the final choice between the two remaining persons.

To continue the discussion as to why so few transportation companies accept arbitration as a practical way to resolve employees' grievances, a few points should be considered. It is certainly not probable that the executives in those companies have been actively conscious of the availability of arbitration, have researched its pros and cons, and have arrived at the conclusion that it lacks value for their companies.

On the contrary, arbitration is like any other item which is available in the marketplace, in the sense that it requires selling effort, advertising, and sales promotion techniques. These tasks are perhaps the responsibility of the arbitrators, and, at least, specifically of their professional associations. It should be kept in mind that the particular market for the arbitrators' commodity which is here being examined is employees' grievances in nonunion companies, and in order to expand the arbitrators' participation in that market they should tailor their merchandising techniques specifically to it.

Arbitration has a long history as a reputable technique for resolving disputes involving persons and institutions. Before leaving the subject, it is appropriate to note that the state of Florida encourages apartment owners in a condominium to settle disputes among themselves or with the management of the condominium by means of arbitration. Rule no. 7D-50.04 of Florida's Division of Florida Land Sales and Condominiums states: "The intent of the arbitration process is to secure the *just, speedy and inexpensive* settlement of internal condominium disputes" (emphasis added). And Florida's statute no. 718.112 stipulates that the bylaws of a condominium "shall further provide, and if they do not, shall be deemed to provide for *voluntary binding arbitration* of internal disputes (emphasis added). The state employs a fulltime staff of arbitrators for this purpose and, because of the complexity of the state's laws and regulations pertaining to condominiums, requires these arbitrators to be attorneys.

The most notable feature of the arbitration rules of the six transportation companies reviewed herein is their uniformity regarding three basic elements in the arbitration process: first, arbitration may be invoked by an employee only after he has exhausted the steps in the grievance procedure provided in the company's employee-relations manual; second, the arbitrator's assigned function is to determine whether the employee or management violated a published rule of the company, and he may not consider whether the rule is unfair or unreasonable, the obvious explanation for this limitation being that no company would consent to permitting an outsider to write or rewrite the rules under which it operates; and the third element is that the arbitrator's decision is binding on both parties, thereby finally closing the

employee's grievance. By definition, it is the binding characteristic of arbitration that distinguishes it from the merely advisory function of mediation.

Five of the six companies pay the arbitration expenses, while company F, with only 85 employees, requires the employee to contribute $25 toward the expense if he loses the case.

The principal lack of uniformity in the six companies is in the methods prescribed for the selection of an arbitrator:

Carrier

A Arbitrator selected "at random" by management from three names recommended by a "recognized" arbitration association.

B Employee selects the arbitrator from a list provided by the American Arbitration Association.

C Arbitrator selected jointly by the company and the employee. If they fail to agree within 24 hours, company requests a list of five arbitrators from "an appropriate source." Employee strikes a name from the list, then the company does so, and then the employee does so again, with the company selecting an arbitrator from the two remaining names.

D If the company and employee fail to agree on the selection of an arbitrator, they jointly request the American Arbitration Association to designate one.

E After the employee requests arbitration, "a panel of three community residents" determines whether there is a "reason for a full-scale hearing," meaning arbitration. If the panel recommends arbitration, the employee selects an arbitrator from "a list of nationally known arbitrators."

F The company requests the American Arbitration Association to designate the arbitrator.

The most peculiar system in the above tabulation is company E's "panel of three community residents." It is an extra hurdle that the company requires an employee to leap over in processing his or her grievance, and information should be provided in the employee-relations manual regarding what criteria are used by the company in selecting the members of the panel, and what criteria the company instructs the panel to use in determining whether the employee's grievance should be arbitrated. Moreover, no time limit is prescribed for the panel.

In general among the six companies it is the employee, and not management, who has the right to invoke arbitration. A plausible assumption in this situation is that the companies have confidence in their internal procedures for resolving employees' grievances. An exception is company B, and a plausible assumption to explain this company's asserting its right to initiate arbitration is that

the company lacks confidence in the impartiality of the last step, prior to arbitration, in the procedure for resolving employees' grievances, which is a review by an employee's "peer group," namely, a panel of his fellow employees.

Conclusion

In closing this paper, it is appropriate to refer again to the opinion of the state of Florida that arbitration is a "just, speedy and inexpensive" method of settling disputes. While Florida was referring specifically to condominium residents, the three adjectives undoubtedly can be applied to all disputes.

There is a natural tendency for individuals and organizations to be hesitant in relinquishing their destiny into the hands of a third party, including an arbitrator. A dispute is carried into a court of law only by a party who expects that the decision will be favorable. In the case of an employee who has carried a grievance all the way through his company's dispute-resolving procedure without securing the decision desired, it may be said that, if the company permits arbitration, the employee has "everything to gain and nothing to lose" by invoking it.

But what inducement is there for a company to permit its employees to invoke arbitration? The inducement is that arbitration is "just, speedy and inexpensive," and, beyond that, its availability should assure employees that their company is fair-minded to the degree of willingness to have their grievance settled on neutral ground. The final consideration is that an employee's grievance, even in the case of discharge, can be the proverbial monkey wrench in a company's otherwise smooth operations, especially if it affects the morale of other employees. Consequently, a company should leave no stone unturned in its efforts to dispose of employees' grievances promptly.

The essence of arbitration is its impartiality. Impartiality is the motto of the professional arbitrator. It is the only commodity that he or she has to sell to the public. It is the source of pride and sense of accomplishment.