Teamster Joint Committees: The Legal Equivalent of Arbitration*

Gerry M. Miller†

The author describes the joint committee system used by the Teamsters Union to decide grievances. He describes some of the advantages a joint committee has over a neutral arbitrator and attempts to rebut several common criticisms made about the fairness of joint committee decisions. Finally, the author stresses the importance our national labor policy places on allowing the parties to a collective bargaining agreement self-determination in handling the disputes that arise under their contract.

Teamster joint committees come in many sizes, shapes, and varieties. Some decide grievances under the multi-employer or industry collective bargaining agreements such as the National Master Freight Agreement; others under companywide contracts such as the United Parcel Service agreement. Some are “open-ended” procedures, meaning that the parties are permitted economic recourse if the joint committee deadlocks at the final stage of the grievance procedure; others provide for arbitration by a neutral in some or all cases if the joint committee cannot reach a majority decision. Some operate in tiers, at local or state, area, and national levels; others decide, if they can, all cases that cannot be settled at the local level, without further review.

Joint committees share certain typical characteristics. First, they provide for hearings before a committee which consists of an equal number of employer and union appointees; final and binding decisions are made by majority vote. Second, officials of the local union and representatives of the company involved (or, under companywide agreements, the facility at which the grievance arose) do not sit on any of their own cases. Rather, they will present and advocate their respective positions to the committee. Substitute members are appointed as necessary by the committee’s union or employer co-chair. Third, the proceedings before the committee are transcribed, tape-recorded, or summarized in detail by the committee’s secretary, and the panel announces its decision on each case immediately after holding an executive session at the close of the hearing. Typically, written minutes of the decisions are distributed later


† Goldberg, Previant, Uelman, Gratz, Miller & Brueggeman s.c., Milwaukee, Wisconsin.
to the parties. Most have written rules of procedure which contain regulations covering such matters as docketing deadlines, postponements, substitutions, reporting procedures, and rehearings. Fourth, committee members are not paid for their services. Fifth, the committees meet on a regular basis, usually monthly or quarterly, and a written agenda which briefly describes the nature of each case is circulated in advance. Committee members from both sides tend to be active, and often revealing, in their questioning of the parties and the grievant concerning facts and positions. Sixth, although live witnesses may be heard, exhibits presented, and prehearing written arguments filed, in most cases representatives of the parties orally present the facts. (Only rarely is there disagreement on what they are.) Signed statements from witnesses will normally be accepted. Seventh, attorneys for the parties and the grievant may be present and advise their clients but do not present the cases. Finally, the grievant is notified of the hearing and given the right to appear and be heard in his own behalf.

The National Master Freight Agreement (NMFA) contains the most highly developed joint committee procedure in the Teamsters. That contract covers hundreds of thousands of members working for hundreds of freight companies coast to coast. Although it is one contract covering a multi-employer bargaining unit, there are area or regional supplements and numerous local or company riders. In the thirteen-state Central Conference area, for example, there are over-the-road and local cartage supplements covering highway as well as city and dock employees, and an iron, steel and truckload rider covering drivers who haul solid loads directly from the shipper to the consignee. The first 39 articles, known as the "national master," as well as the monetary package are negotiated nationally by a committee representing the Teamster freight locals with representatives of an employer association authorized to bargain on behalf of the freight industry nationally. The area supplements, conference-wide except in the East, are negotiated by representatives of the freight locals in that geographical area. State and local riders are negotiated at those levels.

The NMFA joint committees exist at virtually every level at which part of the contract is negotiated. All grievances that cannot be settled at a "local level" meeting of company and union officials may be referred to and hear before a state or multi-state joint committee, which in most cases meets monthly.\(^1\) A majority decision there is final and binding. However, cases deadlocked at the state or multi-state committee are referred to a joint area committee, which is established for each of the four

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1. Under a number of the 13 Eastern Conference supplements, the bottom tier committee is termed a "joint area" rather than a state committee but must be distinguished from the Eastern Conference Joint Area Committee, which hears deadlocked cases under all ECT supplements.
Teamster conference areas, meets for several days quarterly at a central location, and conducts de novo hearings. The term joint area committee is something of a misnomer since it actually consists of between three and five separate committees. In the Central Conference area, for example, there are (1) the local cartage committee which hears grievances arising under the national master provisions and local cartage supplement; (2) the over-the-road committee which considers cases that involve the national master and over-the-road supplement; (3) the iron and steel committee, which has comparable jurisdiction over the iron, steel, and truckload rider; and (4) a change of operations committee which hears employer requests for changes of operations within the conference area arising under Article 8, Section 6 of the national master. In the Central Conference area a fifth committee exists, largely for historical reasons, that hears all grievances involving companies that belong to a particular employer association. Majority decisions of the joint area committees are also final and binding and cannot be appealed.

Most cases deadlocked at the joint area committee level and all questions of interpretation of the national master provisions are referred to the national grievance committee, which sits as the “supreme court” of the system and meets quarterly, usually in Washington, D.C. Unlike its subordinate committees, the national tribunal does not hold hearings. Rather, it sits as an appellate body and decides cases on the basis of the record made at the joint area committee level or made before a specially designated hearing panel. Cases involving particularly sensitive issues—respecting picket lines, subcontracting and wildcat strikes—can be promptly moved to the national committee or must be initiated there. Interpretations of the NMFA made by the national grievance committee are binding on all subordinate committees. Contract guides or files containing article by article summaries of significant national and joint area committee rulings are maintained by the parties. If the national committee deadlocks, the contract provides that "either party shall be entitled to

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2. The Eastern Conference JAC has three subcommittees: local cartage, over-the-road, and miscellaneous. The Joint Western Area Committee has five: over-the-road, pick-up and delivery (local cartage), change of operations, discharge, and "main" (cases under the national master).

3. Under this section "present terminals, breaking points or domiciles" cannot be transferred or changed without approval of the change of operations committee, which is authorized to "determine the seniority of the employees affected" but must "observe the Employer's right to designate home domiciles and the operational requirements of the business." Changes involving more than one conference area are heard by a multi-conference committee. Change of operations cases, unlike grievances, do not involve violations of the collective bargaining agreement. See Kirkland v. Arkansas Best Freight Sys. Inc., 629 F.2d 538 (8th Cir. 1980), cert. denied, 450 U.S. 980 (1981), where the Eighth Circuit reversed a damage judgment entered by one of its own judges (Heaney, J.) because the change, although irregularly approved, did not violate the contract.

4. Discharge cases deadlocked at the Joint Western Area Committee are referred to arbitration rather than the national committee. Only one such case, however, has been deadlocked in the last two years.
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all lawful economic recourse to support its position in the matter," except that by majority vote the national committee may refer a discharge or suspension case to arbitration by a neutral.

The NMFA joint committee procedure disposes of a very large volume of grievances. For example, in the Central Conference, the largest of the Teamster conferences, 555 cases were on the Central States' Joint Area Committee docket for its March 1984 three-day session and 142 decisions were rendered (exclusive of 117 "change of operations" rulings). Of the 142, 87 or 62 percent upheld the union's position and the company prevailed in 55 or 38 percent of the cases. Most of the rest were "settled and/or withdrawn" or "held/pending"; many in the latter group involved companies in bankruptcy where the automatic stay had not been lifted. Only 22 cases were deadlocked. In the June 1983 Central States JAC sessions, 804 cases were docketed, 194 decisions rendered, and, of those, 86 or 44 percent upheld the union's position. Only 13 cases were deadlocked. Strikes over grievances or interpretation matters deadlocked at the national level have been rare because that committee rarely deadlocks. For example, at its sessions last August, the national committee deadlocked on only one of 61 cases. Deadlocks and resulting strikes or lockouts do occur, however, and are an impetus to make the system work.

The basic advantages of the NMFA joint committee procedure are rather plain. First, grievances are decided promptly, frequently within a month at the state committee level and within another three months at the joint area committee level. This compares quite favorably with the results of the 1979 survey in showing that, in a representative sample of cases, the average elapsed time between the filing of a grievance and the issuance of the arbitration award was over eight months. Second, there are significant cost advantages. Participation in the joint committee procedure costs the parties little more than the time and expenses of its officials. In contrast, the survey showed that the arbitrator's fees and expenses averaged $1000 per case; of course, those charges have increased substantially since then. More important, those charges most likely are only the tip of the iceberg when, as has become all too prevalent, attorneys and court reporter fees, lost time expense, and preparation costs must be paid. If it is important that grievances be resolved

5. 289 were "hold/pending." This category includes cases not decided or postponed for any of a number of reasons. 117 of this unusually high number were a backlog of cases accumulated over many sessions because the companies were in bankruptcy and the automatic stay provisions of the bankruptcy code had not been lifted. Many others were "held" at the request of one party, concurred in by the other, to permit further settlement discussions.

promptly and inexpensively, the joint committee procedure must be given quite high marks.

Another significant advantage relates to the nature of the collective bargaining agreement in question and the employers, or employer, it covers. Where a complex agreement covers an entire industry or a large multi-facility company, grievance decisions by those who participate in the negotiations, who are familiar with the past practices, and who know the industry are likely to reflect an expertise and fidelity to the bargainers' intent that an ad hoc arbitrator or even a permanent umpire will not have. For example, in the 1940's an eminent arbitrator, Professor Feinsinger, was permanent umpire under the Teamsters' Central States Area Freight Agreement for several years. I am authoritatively advised that it was the employers that insisted upon returning to the open-ended procedure after he issued an award interpreting certain complicated pay provisions of the contract in a manner they thought contrary to the negotiators' understanding.7 No permanent umpire, no matter how renowned, has fared well under the Teamster freight agreements. Arbitrator Sam Kagel served as permanent umpire to resolve deadlocked grievances under the Western Conference Freight Agreement from 1958 to 1961. The parties eliminated the umpire system from their next agreement, in part because of its cost.8

There is also an element of responsiveness or accountability to the employees that comes from the fact that elected officials participate in making the decisions, albeit not in their own cases. Union officers, even those who are elected or appointed by those elected at higher union echelons, must live with the grievance decisions they make or, sometimes even worse, with others who must live with those decisions. I believe a similar set of checks and balances applies to employer committee members. Committee members are not free, as an ad hoc arbitrator is, to make an award that one side or the other cannot live with and just walk away from an awkward situation.

Critics of the procedure dwell principally upon its claimed potential for sacrificing individual rights; for example, the possibility that committee members will trade off one grievance for another, instead of deciding each grievance on its merits. On this point, not even professional arbitrators have been immune from criticism.9 More importantly, the same potential exists in virtually all grievance screening and settlement procedures above the local level where large numbers of grievances must be resolved and the consequences of deadlock to the parties are expen-

7. The source is my partner David Previant who was a close friend of Professor Feinsinger until his death and counsel to the Central States Drivers Council at the time.
8. The source is George R. Rohrer, Western Master Freight Division Chairman, who serves as Union Chairman of the Joint Western Area Committee.
sive, risky, or both. Compromise is the essence of collective bargaining. If you accept the Trilogy view that the grievance procedure including arbitration is part and parcel of the collective bargaining process itself, and if you trust the process, the possibility that there will be an occasional unremedied or even unremediable injustice in this respect will not be disturbing. As Professors Summers has argued, indiscriminate horse trading may violate the union’s duty of fair representation. Nevertheless we have found no reported case involving joint committees where this claim has been judicially sustained. In their critique of Hoffa and the Teamsters, Professors Ralph and Estelle James nonetheless acknowledged that Hoffa’s grievance decisions were seldom arbitrary or capricious, that he generally “call[ed] the shots as he s[aw] them, and because of his intelligence and because he thoroughly underst[ood] the problems of the industry and the contract, his decisions [were] likely to be more sensible than those of an impartial but less well informed outside arbitrator.”

Critics have also charged that the joint committee procedure can be manipulated to punish dissident members and disfavored or small employers. Again, however, the opportunity to retaliate against dissidents is not at all unique to the joint committee system; it exists whenever union officials control the grievance procedure and must sift through a large number of cases. Indeed, the more the screening process is shrouded at higher levels in bureaucracy and paperwork rather than conducted in open and recorded hearings, the more difficult it will be to prove that retaliatory manipulation has occurred. Imagine the potential for covert retaliation that exists where, as in several unions, a few national office staffers decide which of over 7,000 grievances will be referred to neutral arbitration each year. Again, the disfavored employer as

11. Joint committees have been deciding grievances under the national contract since 1964 and under many of its predecessor area or local agreements since 1944 at the latest. Any neutral arbitrator, no matter how scrupulous and talented, will misfire occasionally. Obviously a few misfires by joint committees over 40 years of operation do not suggest any basic unsoundness in the procedure.
14. Bowen v. United States Postal Serv., 459 U.S. 212 (1983), illustrates the problem but not the particular abuse. Bowen, apparently not a dissident, was indefinitely suspended for assaulting a co-worker during an altercation. Arbitration was recommended by local and regional union officials but a national office staffer, undoubtedly while screening numerous grievances for arbitration, dropped the case after a half-hour review of a 67 page and cassette-tape file simply because he thought from prior experience an arbitrator would uphold the discharge. Obviously, the union carefully investigated the grievance and made a decision on the merits in what probably was a close case involving delicate credibility determinations, although the jury found the union to have acted in “reckless and callous disregard” of Bowen’s rights. If the alleged union breach in Bowen stretches the duty beyond all reasonable bounds as I think it does, it also shows how the grievance screening
well as the dissident member have legal recourse where joint committee
decisions have been retaliatory and our research has unearthed no re-
ported joint committee cases where such claims have been upheld. Indeed,
because litigation can be expected in these cases, dissident
grievances may be handled more gingerly or indulgently than others,
although preferential treatment is hardly their due.

The joint committee system has also been criticized because ex parte
contacts and lobbying of the members can occur. That this often hap-
pens is doubtful; it has been found in only one reported case. But assume
that it does for purposes of argument. In my view this is not a significant
criticism of the institution. People lobby decision-makers, i.e., inform
them of their views on issues of importance, at most levels of our society
without undermining the acceptability of their decisions. With respect to
grievances in particular, informed discussion in advance with a knowl-
dgeable committee member as to the prospects of a successful decision
at once promotes the settlement process in much the same manner as
grievance mediation does and serves to inform decision-makers of the
kinds of noncontractual considerations that the Trilogy indicates an arbi-
trator should take into account. And what is the discussion at a pre-
decisional meeting of a tripartite arbitration panel if not lobbying of the
neutral? Joint committee members, like arbitrators, are third parties
who decide grievances under a collectively bargained agreement; they do
not wear black robes.

With respect to the contention that joint committee rulings are
merely grievance settlements, the parties to the grievance dispute, i.e.,
officials from the grievants' local union and employer officials directly
involved, do not sit on their own cases. Conversely, it is the local union,

process can be used to mask retaliation against a dissident. The union gave perfectly plausible
reasons for not taking Bowen's case to arbitration, reasons that could have been given had he been a
dissident and which normally are acceptable. Had Bowen's grievance been aired before a NMFA
state or joint area committee, the transcript would likely show the reasons for the decision with
substantially more particularity than his union's national office gave.

claim against the local union was remanded for trial and the lawsuit eventually settled. In Banyard
v. NLRB, 505 F.2d 342 (D.C. Cir. 1974), the joint committee rulings were not deferred to because
contrary to perceived public policy, not because of the grievants' dissidency. Unquestionably, the
stringent terms of the NMFA's discharge and suspension provisions (progressive discipline from a
written warning for most offenses; written warnings expire after nine months; and strict procedural
safeguards) make it difficult to manipulate the rules in the kind of cases that are of paramount
individual concern. The Central States JAC's recent track record in such cases is indicated by the
results of a special hearing on July 22, 1981 limited to discharge cases. Of the 12 cases heard, five
grievants were reinstated, three cases were settled and withdrawn (which usually means return to
work); two were deadlocked, one held, and one denied. Since all of these cases had been deadlocked
at the state level, they were presumably among the more troublesome. From the individual mem-
ber's perspective this record compares favorably, I estimate, with the results reached by most neu-
trals in a similar number of difficult discharge cases.

not the joint council, conference, or national union bodies which appoint union members to the committees, that is chargeable with the duty of fair representation in administering the NMFA, higher union bodies have been held only to the duty to assure that contractual procedures are observed.\textsuperscript{17}

Lastly, joint committees have been criticized for the brevity, or even obscurity, of their rulings. We know from the \textit{Trilogy} that arbitrators have no obligation to the court to give their reasons for an award, although well-reasoned opinions may engender confidence in the integrity of the process and aid in clarifying the underlying agreement.\textsuperscript{18} In other words, the contents of a grievance decision, although not the definiteness of the award, are left to the arbitrator’s discretion if no stricter requirements are spelled out in the collective bargaining agreement; they are not dictated by law. In this regard practicalities are important of course. Joint committee members, like appellate judges and even Supreme Court Justices, may find it easier to agree on a result than on the reasons for it. Moreover, it would be physically impossible for members to write full-dress opinions explaining 150 decisions and perform their other functions in the several days that the committees are assembled; since most grievances involve disputes over narrow issues, the parties are more in need of prompt resolution and high volume than full ritual and rigorous detail. Another practicality worthy of note is that, when challenged judicially, there are times when a terse decision will be less vulnerable than a neutral’s fully articulated opinion.\textsuperscript{19} Since grievance decisions are part of the collective bargaining process rather than creatures of law, they must be written in language that communicates to working people, not philosopher kings. Although joint committee rulings are typically terse and, unless formal interpretations, not particularly useful as precedents, neutrals’ awards too, to say nothing of Labor Board rulings these days, are often of very limited precedential value if


\textsuperscript{18} United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593, 598 (1960). Indeed, nothing in the \textit{Trilogy} implies that the quality of arbitral justice turns on the length of the award, or for that matter on the length of the hearing that precedes it. One of the advantages of the joint committee procedure is that committee members bring with them expertise in the industry and the contract that permits them to reach the essential facts and issues in much less time than an outsider normally requires. To suggest that committee hearings or rulings must be as lengthy as increasingly attenuated NLRB hearings and decisions to be worthy of deference is as arbitrary a measure of justice as the length of a chancellor’s foot would be of distance.

\textsuperscript{19} The Sixth Circuit in particular is inclined to flyspeck neutral opinions for lack of evidentiary support and, resurrecting the \textit{Cutler-Hammer} doctrine, for departures from the “plain meaning” of contract language. \textit{See, e.g.,} Detroit Coil Co. v. International Ass’n of Machinists, 594 F.2d 575 (6th Cir.), \textit{cert. denied,} 444 U.S. 840 (1979).
any. Like the parties, arbitrators and even courts make decisions that say they are not to be used as precedents. If the parties, as appears to be the case where joint committees decide grievances, have confidence in the integrity of that process and largely agree on how the contract should be interpreted, brief rulings are sufficient.

Professor Aaron has accurately compared the American system of labor-management dispute adjustment with those in other countries as emphasizing self-determination:

In the USA . . . what the collective bargaining parties prize most about their prevailing system of private voluntary arbitration is its inherent diversity; each employer and union can, by mutual agreement, fashion a disputes settlement mechanism that meets their particular needs. This system works, however, because so many aspects of the employment relations are established, not by statute, but by collective agreement. Statutory rights, which for the most part simply protect employees against various types of employment discrimination, rather than conferring employment benefits, must necessarily be enforced by administrative agencies such as the NLRB and by the courts. The chief criticism of the system is not its diversity, but its failure to provide adequate statutory protection in respect of basic conditions of employment for the great majority of workers who are unorganized.²⁰

This is not merely Professor Aaron's perception of what we Americans value, it is federal labor policy as declared in our basic labor statute. Section 203(d) of the Taft-Hartley Act provides:

Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement.²¹

Note that section 203(d) says nothing about arbitration, with or without a neutral. It refers to the method of final adjustment agreed upon by the parties.

The seminal opinions of the Supreme Court in the Steelworkers Trilogy emphasized that the labor policy of this nation is to give labor and management the autonomy to shape, through collective bargaining, their own means of bringing disputes and grievances to a final, binding resolution.²² The reasoning of these opinions, as well as those that followed, accorded respect to arbitration awards as the method of final adjustment agreed to by the parties in collective bargaining; the rationale was not founded on any characteristics of neutral arbitrators as such, but on the fact that they derive their authority solely from the collective agreement.

The Supreme Court upheld a joint committee decision as final and binding on the parties in *Humphrey v. Moore.* The decision had determined the relative seniority rights of the employees of two companies which were merging and eliminating some bargaining unit positions. The aggrieved employees of one of the companies who would not retain positions obtained a state court injunction preventing the joint committee decision to dovetail seniority lists from taking effect. The Supreme Court reversed finding that the collective bargaining agreement provided for final and binding determination of such controversy by the joint committee. Since no breach of the union's duty of fair representation was shown, the Court found that the joint committee's decision, as the contractually provided means of adjustment, was binding on the employees, and was due the same respect from the courts as any arbitrator's award would receive under section 301. Thus, the Court in *Humphrey* squarely applied the Trilogy policies to the joint committees.

Finally, in *Hines v. Anchor Motor Freight,* the Court treated a joint committee decision in a discharge grievance as an arbitration award, despite an amicus brief by Prod, Inc. urging the court to treat joint committee rulings as mere grievance settlements not due the judicial respect given the awards of neutral arbitrators. Justice White, speaking for the majority of the Court, said that the joint committee's decision would have no less finality than any contractually provided means of final adjustment of grievances unless the plaintiffs could show that a union breach of its duty of fair representation had undermined the integrity of the process.

Joint committee decisions have been treated by the Supreme Court as the contractually provided means of adjustment of grievances agreed to by the parties and therefore due the same binding effect as arbitration awards. Courts have also treated the joint committee as analogous to arbitration on other issues. At least two circuits, the Third and the Seventh, have held that the same statute of limitations governs the enforcement of joint committee rulings and awards by neutral arbitrators. The standards derived from *Vaca v. Sipes* have been applied to duty of fair representation challenges to the results of the joint committee process.

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23. 375 U.S. 335. Actually, the Court's decision in General Driver's Local 89 v. Riss & Co., 372 U.S. 517, 519 (1963) was the first to make clear that joint committee rulings are entitled to as much judicial respect as neutral awards under § 301. It is the "parties' chosen instrument for the definitive settlement of grievances" that federal labor policy favors, not arbitration as such.


25. Id. at 567-69.


27. 386 U.S. 171 (1967).
most notably in *Hines*; similarly, *Riss & Co., Humphrey*, and their progeny clearly apply the *Trilogy* standards to enforcement of a Joint Committee decision. Finally, the reported court decisions have accorded joint committees and their members the same immunities as neutrals to the extent these issues have been litigated.

In sum, despite some critical scholarship and a pre-*Hines* Eighth Circuit footnote dubitante, the Teamsters' joint committee procedure is the legal equivalent of arbitration because, where the system exists, it is the agreed-upon method of final adjustment. Even in the frame of reference of today's topic, "arbitration" does not require a neutral. Webster's, like the courts, defines it as the "hearing and determination of a case between parties in controversy by a person or persons chosen by the parties." The joint committee procedure, like arbitration before a neutral, is an agreed-upon method of grievance adjustment because it involves the hearing and final determination of a case by third persons chosen by the parties to the dispute, that is, the union representing the grievant and his employer. It is not a settlement of the grievance agreed upon by those parties or necessarily an interpretation of the labor agreement agreed upon by the parties that negotiated it. It is certainly not a decision to drop the grievance short of agreed-upon resolution by a third party.

In closing, it is my thesis that the joint labor-management committees created under the collective bargaining agreements between the Teamsters and the freight industry reflect a mature and enlightened method to resolve industrial disputes. These institutions implement the national labor policy as mandated by Congress and will be given maximum respect by the courts.

Those are not my words; they are the words of the United States Court of Appeals for the Third Circuit.

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