

# An experiment in the mediation of grievances

*Under the aegis of the U.S. Department of Labor, analysts examined the merits of grievance mediation relative to arbitration in the coal mining industry, a frequently combative labor relations environment*

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Grievance mediation proved substantially faster and less expensive than arbitration, according to a 1980 test of the mediation procedure in the Appalachian coal fields. Of 37 grievances submitted to mediation during the 6-month experimental period, 32 were resolved—a success rate of 86 percent. And, on average, mediation consumed only about one-fourth of the time and cost normally required to obtain the final resolution of a grievance in binding arbitration.

For these and other reasons, persons directly involved in the test were positive about the experience. A majority of company labor relations personnel, union grievance representatives, and rank-and-file miners expressed satisfaction with every aspect of mediation, and a preference for mediation over arbitration as a means of dispute resolution.

## **Rationale for the test**

A high rate of grievance arbitration imposes substantial burdens on both employers and unions. In the coal mining industry, for example, the costs of arbitration under the 1974 contract have been estimated at approximately \$2 million per year.<sup>1</sup> A heavy volume of arbitration also leads to substantial delay in the resolution of those grievances that are arbitrated. At four coal mines previously studied by the authors, the average time

from grievance filing to the arbitrator's decision ranged from 138 to 204 days.<sup>2</sup>

Outside the coal mining industry, those employers and unions which have been concerned about the excess cost and delay resulting from a heavy volume of arbitration have predominantly turned to expedited arbitration as the solution. Pioneered in the steel industry in 1971,<sup>3</sup> expedited arbitration procedures normally provide that the arbitration hearing shall be informal in nature, that the rules of evidence shall not apply, that there shall be no stenographic transcript, and that posthearing briefs may not be filed. The arbitrator is required to decide the grievance either immediately or within a brief period of time, and that decision is usually without precedential effect. However, because of the parties' concern with hasty decisions of a final and binding nature, access to expedited arbitration has normally been limited to grievances of little contractual significance, primarily those involving minor discipline.<sup>4</sup>

Grievance mediation is another device sometimes used to reduce the cost and delay associated with a heavy volume of arbitration.<sup>5</sup> The grievance mediator seeks to assist the parties to resolve their differences in a mutually satisfactory fashion, without resort to arbitration. If successful, mediation can be comparatively fast and inexpensive because it eliminates the delay and cost associated with a written arbitration decision.

Mediation can also reduce the frequency of resort to arbitration in more fundamental ways. Often, a heavy volume of arbitration reflects a combative relationship

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in which the parties approach grievances in a highly adversarial fashion. The mediation process, however, compels a different approach by eliminating the concept of "winning" a grievance, and substituting the concept of resolving the grievance in a mutually satisfactory manner. Because the procedure requires each party to consider, and attempt to satisfy, the legitimate interests of the other, it is possible that experience with mediation will so accustom the parties to dealing with grievances as problems to be resolved, rather than disputes to be won, that they will resolve a higher proportion of grievances without resort to either arbitration or mediation. It is also possible that the mediation approach, because it focuses on the problem underlying the grievance as well as on the grievance itself, will sometimes lead to a resolution of the underlying problem that is both broader and more satisfactory than could be achieved in arbitration.

Another advantage of mediation over arbitration, even expedited arbitration, is that mediation is less formal. At a minimum, expedited arbitration procedures require that the facts giving rise to the grievance be elicited by the traditional means of examination and cross-examination.<sup>6</sup> This can be exceedingly frustrating to a worker or foreman who only wants to tell the story in his or her own fashion. Mediation allows for just this.

Whether grievance mediation will provide any or all of the benefits mentioned above depends upon its success in two fundamental respects. First, the mediation process must be capable of bringing about the final resolution of a substantial proportion of those grievances that are mediated. If mediation is simply a stopping off point on the way to arbitration, it will only add to the total cost and delay of grievance resolution, and might even persuade the parties that there is little to be gained from serious efforts to attain a mutually satisfactory resolution. Second, the availability of grievance mediation should not substantially lower the frequency with which grievances are settled within the firm at internal steps of the grievance procedure. The risk of a decreased internal settlement rate is obvious. A party which might settle a grievance internally on terms proposed by the other, rather than incur the substantial cost and delay of arbitration, might reject that same proposal if mediation were available, calculating that the prospect of a more favorable outcome warrants the comparatively brief delay and low cost associated with mediation. Despite the savings expected from mediation relative to arbitration, any substantial shift from internal settlement to mediation might actually drive up the overall cost and time of grievance resolution.

There is some evidence from Canada, from the records of some U.S. State mediation agencies, and for individual firms that grievance mediation is capable of re-

solving a high proportion of grievances without resort to arbitration.<sup>7</sup> Evidence as to the effect of mediation on the internal settlement rate is more sparse, but suggests that the availability of inexpensive mediation does not result in a substantial shift away from internal settlement efforts.<sup>8</sup> Until now, however, there has been no systematic study of the effect of grievance mediation on the internal settlement rate, or of the capacity of mediation to resolve grievances short of arbitration.

### **The mediation experiment**

The coal mining industry provides an ideal setting for further experimentation in the use of grievance mediation. The frequency of arbitration is great, labor relations are often highly combative, and expedited arbitration is not used except in the case of grievances protesting the discharge of an employee.

Accordingly, in November 1980, the authors began an experiment in grievance mediation in the coal industry. The project, which was jointly funded by the U.S. Department of Labor and by a J.L. Kellogg Research Professorship at Northwestern University, was designed to determine whether mediation could resolve a substantial proportion of grievances more promptly, less expensively, and more satisfactorily than arbitration; how the availability of mediation would affect the settlement rate at the final step ("step three") of the internal grievance procedure; and how employers, union representatives, and workers would react to a radical change in dispute resolution procedures.

*Mediation procedure.* As presented to potential participants, the mediation procedure was to be this: after the final step of the internal grievance procedure, the parties would have the option of going to mediation rather than directly to arbitration. The mediation procedure would be as informal as possible, eliciting relevant facts in a narrative fashion, rather than through examination and cross-examination of witnesses. The rules of evidence would not apply, and no record of the proceedings would be made. The grievant would be encouraged to participate fully in the proceedings, stating his or her views and asking questions of other participants in the hearing.

The mediator's primary purpose would be to assist the parties to settle the grievance in a mutually satisfactory fashion. If no settlement were possible, the mediator would give the parties an immediate oral advisory opinion, based on their collective bargaining agreement, as to how the grievance would be decided if it went to arbitration. The advisory opinion could be used as the basis for further settlement discussions or for granting or withdrawing the grievance. The parties would be free to arbitrate grievances not resolved in any of these ways. If they did so, the mediator could not serve as ar-

bitrator, nor could anything said or done by the parties or the mediator during mediation be used against a party at arbitration.

*Choosing the participants.* United Mine Workers of America (UMWA) Districts 28 (Virginia) and 30 (eastern Kentucky), and the nine major coal mine operators<sup>9</sup> in those districts, were invited to participate in the mediation experiment. The two districts were selected because they were both in the Appalachian coal fields, and similar in that respect, yet quite different in their relations with employers. Labor relations in District 28 have been comparatively tranquil in recent years, while those in District 30 have been turbulent, marked by a high rate of arbitration and by frequent wildcat strikes. Using both districts in the study would provide some evidence of the capacity of grievance mediation to succeed in substantially different labor relations climates.

The parties accepted the experiment proposal, and agreed, in principle, to mediate unresolved grievances for a 6-month period, subject to the qualification that no grievance would be submitted to mediation without the mutual consent of the employer and the union. The participants also agreed on a detailed set of rules to govern the mediation procedure.<sup>10</sup> The project directors then met with the grievance representatives of the participating UMWA districts and employers to familiarize them with the rules and procedures of mediation, thus lessening the likelihood of subsequent disputes as to proper interpretation of the rules.

*Mediator selection and training.* Four mediators were selected by the project directors, with the advice and consent of the participants, to serve in both participating districts. All four had substantial experience in arbitration, both in the coal industry and elsewhere, and two also had mediation experience.<sup>11</sup> In October 1980, the mediators met in Washington, D.C., with the project directors and an experienced mediator from the Federal Mediation and Conciliation Service for a 1-day training and familiarization session. At this meeting, they discussed mediation techniques and agreed upon responses to anticipated problems.<sup>12</sup>

*Mediation charges and scheduling.* To minimize the cost and increase the speed of mediation, the parties were told that up to three grievances would be scheduled for mediation each day, but that, on request, a particular grievance could be scheduled to take up to an entire day. The mediator's fee was to be \$375 per day, plus travel expenses, divided among the parties presenting grievances on that day. Contrary to the practice in arbitration, the mediator was not to charge for travel time, and because he was not required to provide a written decision, there would be no fee for study or writing

time. Thus, the average charge for mediating a grievance was expected to be \$125, plus one-third of the mediator's travel expenses.

To increase the speed of mediation, conferences were scheduled regularly so that the parties would not have to wait until a mediator had a day available to consider their grievance. Based on the anticipated volume of grievances, conferences were scheduled 1 day per week in District 30 and 1 day every other week in District 28. To ensure that mediators would be available on the scheduled conference dates, they were guaranteed payment for those dates, whether or not their services were needed. This guarantee was provided by the funding agencies to encourage the parties to use the mediation process, without subjecting them to liability for the payments if the frequency of mediation were not as great as anticipated.

The mediators were assigned to the scheduled mediation dates on a random basis, and the identity of the mediator was kept secret until the date of the conference. The secrecy was at the request of the parties, who wished to guard against scheduling maneuvers by any party to bring a grievance before a particular mediator it believed to be sympathetic to its position.<sup>13</sup> The parties telephoned requests for mediation to the project staff, and were provided with the first available date and time for mediation. The staff was also responsible for notifying the mediators of their assignments, and for collecting the data that the parties had agreed to provide for purposes of evaluating the mediation procedure.

*The experimental period.* The mediation of grievances began on November 1, 1980, and continued until March 27, 1981, when the 1978-81 contract expired, and the UMWA called a nationwide strike. A new contract was signed on June 6, 1981, but the parties did not begin mediating again until September. At the end of September, the 6-month experiment in grievance mediation was concluded.

During the experimental period, the following data were collected for the participating employers in Districts 28 and 30: rate of final resolution at mediation; nature of the final resolution (compromise settlement or acceptance of the mediator's advisory decision); congruence between the mediator's advisory decision and the arbitrator's final and binding decision in those grievances that went both to mediation and arbitration; mediator techniques; cost and time of mediation; nature of the issues involved; and attitudes towards mediation of the parties' grievance representatives and of miners whose grievances had been mediated. To compare mediation with arbitration, similar data relevant to arbitration were collected from both participating and nonparticipating employers in the experimental districts both during the experimental period and for the two 6-month

periods that preceded it.<sup>14</sup>

Finally, to determine if any of the changes observed in Districts 28 and 30 with respect to step-three settlement rates and the time and cost of arbitration were taking place elsewhere as well, and so might not be attributable to the availability of mediation, pertinent data were collected in District 29 (southern West Virginia)—where mediation was not available—both during the experimental period and for 6 months preceding it.

### The findings

*Results of mediation.* The vast majority of grievances that were submitted to mediation were finally resolved in the mediation process. A total of 37 grievances was submitted to mediation, 21 in District 28, 16 in District 30. Of those, five went on to arbitration, four in District 28, one in District 30. Thus, mediation succeeded in bringing about the final resolution of 32 out of 37 grievances, an overall success rate of 86 percent—81 percent in District 28 and 94 percent in District 30.

Approximately 70 percent of the grievances that were mediated were settled by the parties without the need for an advisory decision by the mediator; 54 percent of the conferences resulted in a compromise settlement, and another 16 percent ended in a noncompromise settlement, in which the grievance was either withdrawn by the union or granted in its entirety by the employer. Twenty-four percent of the conferences resulted in the issuance of an advisory decision, and another 5 percent concluded with neither a settlement nor an advisory decision, a situation permitted by the mediation rules at the joint request of the parties only when a possible settlement was being negotiated which might have been adversely affected by the issuance of an advisory decision.

In those instances in which the mediator did issue an advisory decision, that decision was nearly always that the grievance would be denied if it went to arbitration. In 3 of 5 such cases which the union took on to arbitration, the arbitrator denied the grievance as the mediator had predicted.

*Speed of mediation.* Mediation proved substantially faster than arbitration. The average time between the request for mediation and the mediation conference was 13 days, compared to an average of 49 days between a request for arbitration and the arbitrator's decision.<sup>15</sup>

The time saving achieved through mediation was the result of two factors. Initially, the regular scheduling of mediation conferences resulted in an average time of 13 days from the request for mediation to the mediation conference, compared to 25 days from the request for arbitration to the arbitration hearing. Additionally, an average of 23 days after the arbitration hearing was required for the issuance of the arbitrator's written deci-

sion, while no written decision was issued after a mediation conference.<sup>16</sup>

To be sure, the time lost in unsuccessful mediation should be taken into account in determining the overall time savings of mediation. If the days lost in unsuccessful mediation are subtracted from the days saved in successful mediation, there is still an average saving of 28 days for mediation compared to arbitration.<sup>17</sup>

*Cost of mediation.* The average cost (mediator's fee and expenses) of mediation was \$250 per grievance, compared to an average arbitration cost (arbitrator's fee and expenses) of \$1,025. Thus, each grievance that was resolved through mediation saved the parties an average \$775 over arbitration.

Mediation was relatively inexpensive, in part because the mediators could consider up to three grievances per day, rather than one as is the practice in arbitration, and also because no written decision was required.<sup>18</sup> This was true despite the fact that the mediator's daily fee of \$375 was substantially greater than the average daily arbitrator's fee of \$275.<sup>19</sup>

Again, it is appropriate to take into account the cost of those grievances which were not successfully resolved in mediation. When the amount so lost was subtracted from the amount saved in successful mediation, mediation was still found to have saved the participating union districts and employers \$23,550, an average \$636 per grievance.<sup>20</sup>

The payments to mediators for those dates when mediation was scheduled but did not take place has not been included in calculating the financial saving of mediation over arbitration because those payments were borne by the funding agencies to encourage the parties to employ mediation during the experimental period. However, because the parties in District 28 chose to continue the mediation arrangement at their own expense after the experiment was completed, it is possible to measure that portion of the district's current costs of mediation accounted for by the fees paid to mediators for scheduled, but unused, mediation dates. At this writing, the amount of those fees has been \$1,275, and the saving otherwise attributable to mediation has been \$8,400. The net savings have thus been \$7,125 for the 12 grievances mediated to date, an average of \$594 per grievance.<sup>21</sup>

*Effect on the step-three resolution rate.* The availability of mediation does not appear to have lowered the frequency with which grievances were settled at step three. As shown in table 1, the step-three settlement rate among those companies participating in the experiment was 75 percent between October 1979 and March 1980, 73 percent during the 6-month period immediately preceding the experimental period (April–September 1980),

and 76 percent during the experimental period. Thus, there is no evidence that the availability of high-speed, low-cost mediation would result in the mediation of grievances that otherwise would have been settled at step three. To the contrary, table 1 shows that, during the experimental period, the number of grievances taken to arbitration declined by approximately the number of grievances taken to mediation. It thus appears that those grievances which went to mediation were those which would otherwise have gone to arbitration.<sup>22</sup>

*Attitudes towards mediation and arbitration.* Attitudes towards mediation and arbitration were tested among three groups: company personnel who had represented their companies in both arbitration and mediation, union personnel who had performed the same function for the UMWA, and miners who had had a grievance processed through mediation, arbitration, or in a few instances, both.

As shown in table 2, a higher proportion of both union representatives and miners were satisfied with mediation than with arbitration, while company representatives were equally satisfied with both. Turning to specific aspects of the two procedures, a higher proportion of each of the three groups preferred mediation to arbitration, in every respect but one: a slightly higher percentage of company representatives thought that arbitrators understood the grievances presented to them than thought that mediators did. When directly asked which procedure they preferred, all three groups preferred mediation over arbitration.

In giving the reasons for their preference of procedures, 50 percent (7 of 14) of the miners referred to the speed of mediation compared to arbitration, as did 50 percent of the union representatives (4 of 8), and 33 percent (4 of 12) of the company representatives. Other characteristics of mediation referred to favorably were its low cost (company representatives, 42 percent; union representatives, 38 percent; miners, 21 percent); informality (company representatives, 42 percent; union rep-

resentatives, 63 percent; miners, 14 percent); opportunity for full discussion of the problem that led to the grievance (company representatives, 25 percent; union representatives, 50 percent); opportunity for the parties to resolve the problem by negotiation, rather than submit to the directed resolution of a third party (company representatives, 17 percent; union representatives, 25 percent; miners, 15 percent); and the chance for the grievant to be fully heard (company representatives, 8 percent; union representatives, 25 percent; miners, 14 percent).

Only two criticisms of mediation were voiced with any frequency. Twenty-five percent of the company representatives complained that mediation did not ensure a final resolution of the grievance, as did 12 percent of the union representatives and 28 percent of the miners. Twenty-five percent of the company representatives and 7 percent of the miners also commented that the mediator sometimes encouraged the parties to compromise without regard to the contractual merits of their respective positions.

*Mediation techniques.* The techniques used by the mediators to obtain grievance settlements were, for the most part, the same as those typically used in mediating contract negotiation disputes. Thus, in 30 of the 37 cases, the mediator met separately with union and company representatives, and in 26 of the cases, the mediator both encouraged the parties to work out a compromise settlement and suggested the terms of such a settlement.

However, there were some respects in which the mediators employed techniques not typically used in contract negotiations. One such technique was the advisory decision, in which the mediator advised the parties of the likely outcome if the grievance were arbitrated. The advisory decision was usually given at the close of the conference, after all efforts to work out a settlement had proven unsuccessful. The advisory decision did not normally lead to further negotiations, but to a decision by the "loser" either to accept the advisory decision or to proceed to arbitration. As previously noted, the advisory decision was accepted in four cases, while in five cases the grievance was taken to arbitration.

There were some grievances in which the mediator did not issue an advisory decision, but did advise the parties privately of the likely outcome in arbitration. This technique enabled the parties to adjust their negotiating position in light of their contractual strength, and was reported by several of the mediators to have been quite successful in bringing about settlements.<sup>23</sup>

In 31 of the cases, the mediator discussed with the parties the nature of the underlying problem that had led to the grievance, and how that problem might be dealt with in the future. In some of these cases, this technique resulted in a mutually satisfactory resolution

**Table 1. Distribution of grievances by method of resolution before and during the grievance mediation experiment**

Method of resolution	Number of grievances		
	Oct. 1, 1979– Mar. 31, 1980	Apr. 1, 1980– Sept. 30, 1980	Oct. 1, 1980– Mar. 31, 1981
Step three .....	216	226	260
Mediation .....	0	0	28
Arbitration .....	72	82	57
Percentage of grievances resolved at step three ...	75	73	76

<sup>1</sup> This number does not reflect the 4 grievances which were resolved at mediation in September 1981.

**Table 2. Results of the attitude survey taken among participants in the mediation experiment**

Query and response	Company representatives	Union representatives	Miners
<i>Were you generally satisfied with mediation (arbitration)?</i>			
Percent satisfied:			
Mediation .....	83	100	72
Arbitration .....	83	25	48
<i>Do you think the mediators (arbitrators) generally understood the grievance(s)?</i>			
Percent "Yes":			
Mediation .....	83	100	54
Arbitration .....	92	38	49
<i>Do you think that in general all the important facts came out in the mediation conferences (arbitration hearings)?</i>			
Percent "Yes":			
Mediation .....	92	100	65
Arbitration .....	83	38	33
<i>Do you think the mediation conferences (arbitration hearings) were too formal, not formal enough, or just about right?</i>			
Percent "Just about right":			
Mediation .....	92	100	81
Arbitration .....	42	37	72
<i>Do you think the mediators (arbitrators) were in any way dishonest or unfair?</i>			
Percent "No":			
Mediation .....	92	87	77
Arbitration .....	84	50	63
<i>All things considered, which procedure do you like better—mediation or arbitration?</i> <sup>1</sup>			
Total (percent) .....	100	100	100
Mediation .....	50	75	64
Arbitration .....	33	12	14
Undecided .....	17	12	21

<sup>1</sup> This question was asked only of miners with experience in both procedures. Due to rounding, sums of individual items may not equal 100.

of both the grievance and the problem which had led to that grievance. For example, a number of grievances concerned the assignment of idle-day work, and in some of those, the parties entered into a settlement which substantially restructured their idle-day work assignment procedure. One grievance, which originated as a dispute over shift starting time, led to a discussion of the procedure by which management decisions affecting employees were made and communicated to the employees, and culminated in the settlement dealing with both of those matters as well as the original dispute. Still another grievance, which was filed to protest the employer's failure to assign the grievant to a temporary vacancy, resulted in an agreement with respect to the filling of all temporary vacancies occurring in the next 6 months. The device of an agreement to try a particular approach for a limited time, with the option of abandoning it if it proved unsuccessful, was frequently used

by the mediators to encourage the parties to enter into a settlement that appeared to satisfy the concerns of each, but that one or both were reluctant to agree to on a permanent basis.

*Issues mediated.* The issues presented by those grievances that were mediated were essentially the same as those presented by those grievances that were arbitrated. Thus, during the experimental period, grievances presenting the following issues were arbitrated: discharge, discipline less than discharge, vacation pay, personal or sick leave, job bidding, idle-day or overtime work assignments, layoff or realignment, supervisor doing classified work, contracting out, and the "wrong" employee doing classified work (jurisdictional disputes). Grievances presenting these issues were also mediated, with the exception of personal or sick leave, jurisdictional disputes, and discharges.

**Directions for further research**

Despite the apparent success of the mediation experiment, there remain some unanswered questions about the value of mediation as a means of grievance resolution. Because the number of grievances mediated and the number of persons who participated in mediation during the experimental period were not great, it is possible that with more experience, problems will develop that are not presently apparent. Furthermore, the only grievances that were mediated during the experimental period were those which both the employer and the union agreed to submit to mediation. This requirement of mutual consent maximized the likelihood of settlement by bringing to mediation only those grievances for which both parties contemplated the possibility of a settlement. It also minimized the risk that the availability of mediation would result in a decrease in the step-three settlement rate, because either party could respond to a refusal to settle at step three by refusing to agree to mediation. Thus, it cannot be determined whether grievance mediation, if available on a basis other than mutual consent, would achieve comparable results.

This is a question of considerable importance, because there are substantial advantages to providing for mediation on a basis other than mutual consent. Under a mutual consent approach, mediation would be precluded whenever one party believes its position to be so clearly right, and not susceptible to compromise, that mediation would be a waste of time. Similarly, mediation could not be used whenever discussion of a particular subject is sufficiently acrimonious that one party reacts to any suggestion of the other—including the suggestion that mediation be attempted—with a negative response. To the extent that mediation is preferable to arbitration as a dispute resolution mechanism, any procedure that increases the proportion of unresolved

grievances going to mediation, rather than to arbitration, is desirable.

Data collected after the experimental period shed some light on the effect of providing for mediation on a basis other than mutual consent. Since the end of the project, UMWA Districts 11 and 12 and three employers operating in those districts have begun a self-funded experiment in the mediation of grievances. Two of the employers and the union districts agreed to substitute for the mutual consent requirement a provision that either party could submit a grievance to mediation. During the first 5 months under that procedure, 21 of 25 grievances were successfully resolved in mediation, a settlement rate of 84 percent.

Additional evidence is provided by UMWA District 28 and the participating employers in that district, who agreed to continue experimenting with grievance mediation on a self-funded basis after their role in our project was ended. Their agreement provided that, for a period of 6 months, all grievances not settled at step three would be submitted to mediation, except for discharge grievances and those grievances that both parties agreed not to mediate.<sup>24</sup> During the first 3 months under that provision, 12 grievances were submitted to mediation, all of which were finally resolved, a settlement rate of 100 percent. Thus, initial indications are that easier ac-

cess to mediation will not drive down the frequency with which grievances are resolved in mediation. However, data are not yet available on the effects on the step-three settlement rate.

In sum, our test of the grievance mediation procedure has demonstrated that, at least under a provision for mutual consent to mediation, the mediation procedure is capable of resolving a high proportion of grievances more promptly and less expensively than can conventional arbitration, without a substantial decrease in the internal settlement rate. And, followup evidence suggests that mediation can be successful in resolving disputes even if it is available on a basis other than mutual consent.

The implications of these findings are profound. Initially, they indicate the desirability of further experimentation with grievance mediation in the coal mining industry. Our results also suggest the desirability of further experimentation with mediation in other industries. The coal industry is not unique in having a high volume of arbitration, and there appears to be no reason why a carefully designed grievance mediation procedure, tailored to fit the needs of employers and unions in other industries, should not be equally successful in resolving grievances promptly, inexpensively, and to the mutual satisfaction of the parties. □

—FOOTNOTES—

<sup>1</sup> The total cost of arbitrating 2,700 cases per year for a 3-year period starting in 1974 would be approximately \$5,550,000. See Federal Mediation and Conciliation Service, *33d Annual Report* (Washington, 1981), p. 37.

<sup>2</sup> Jeanne M. Brett and Stephen B. Goldberg, "Wildcat Strikes in Bituminous Coal Mining," *Industrial and Labor Relations Review*, July 1979, p. 477.

<sup>3</sup> See Ben Fischer, "Arbitration: the steel industry experiment," *Monthly Labor Review*, November 1972, pp. 7-10.

<sup>4</sup> Marcus Sandver, Harry Blaine, and Mark Woyar, "Time and Cost Savings Through Expedited Arbitration Procedures: Evidence From Five Industrial Settings," *Arbitration Journal*, December 1981, pp. 11-20.

<sup>5</sup> See Gordon Gregory and Robert Rooney, "Grievance Mediation: A Trend in the Cost-Conscious Eighties," *Labor Law Journal*, August 1980, p. 502; James O'Grady, "Grievance Mediation Activities by State Agencies," *Arbitration Journal*, June 1976, p. 125; and William McPherson, "Grievance Mediation Under Collective Bargaining," *Industrial and Labor Relations Review*, January 1956, p. 200.

<sup>6</sup> Sandver, Blaine, and Woyar, "Time and Cost Savings."

<sup>7</sup> The most powerful evidence comes from British Columbia, where grievance mediation is made available by the Labour Board. Since 1976, slightly more than 600 grievances per year have gone to mediation, with an average settlement rate of 71 percent. See Paul Weiler, "The Role of the Labour Board as an Alternative to Arbitration," *Avoiding the Arbitrator: Some New Alternatives to the Grievance Procedure*, Proceedings, 30th Annual Meeting (National Academy of Arbitrators, 1977), pp. 72-80; and, letter to the authors from the Labour Relations Board of British Columbia, Mar. 11, 1981.

Data from State mediation agencies, which show settlement rates of 75 percent or more, are reported in O'Grady, "Grievance Mediation Activities," pp. 125-28; Gregory and Rooney, "Grievance Mediation: A Trend," p. 502; and, letter to the authors from Edward W. Allen,

Supervisor, California State Mediation and Conciliation Service, May 18, 1981. Reports on the results of mediation procedures used by individual firms are contained in Arnold Zack, "Suggested Approaches to Grievance Arbitration," *Avoiding the Arbitrator: Some New Alternatives to the Grievance Procedure*, Proceedings, 30th Annual Meeting (National Academy of Arbitrators, 1977), pp. 105-12; and, William McPherson, "Grievance Mediation," pp. 200-04.

<sup>8</sup> See Weiler, "The Role of the Labour Board," pp. 117-20.

<sup>9</sup> The firms participating in the experiment were: Beth-Elkhorn Corp., Carbon Fuel Co., Clinchfield Coal Co., Eastern Coal Corp., Kentland-Elkhorn Coal Corp., Rebel Coal Co., Robert Coal Co., Scotts Branch Co., and Westmoreland Coal Co..

<sup>10</sup> Those rules are presented in the appendix to the complete report on the study, on which this article is based. See Stephen B. Goldberg and Jeanne M. Brett, *An Experiment in the Mediation of Grievances, Final Report to the U.S. Department of Labor under Contract No. J-9-P-1-0034* (January 1982), pp. 53-57.

<sup>11</sup> The mediators selected to participate in the experiment were David Beckman, James Scearce, Rolf Valtin, and Stephen Goldberg.

<sup>12</sup> During the experimental period, a similar meeting was held to discuss common problems that had arisen, and to exchange ideas for possible solutions.

<sup>13</sup> The mediator's lack of power to impose a settlement would appear to make his views of little importance, but the parties, perhaps because their prior experience was exclusively with arbitration, were concerned about the mediator's perceived sympathies.

<sup>14</sup> We collected data on step-three settlement rates beginning on Oct. 1, 1980, on the theory that those grievances that were ready for mediation by November 1 would probably have reached step three some time in October. We terminated the data collection period for step-three settlement rates on Mar. 31, 1981, because the UMWA strike of April-June rendered the April-September 1981 period atypical.

<sup>15</sup> These statistics do not include discharge grievances because the wage agreement provides an expedited procedure for the arbitration of such grievances.

<sup>16</sup> If mediation were as successful in other industries as it has been in coal, the time saved in resolving grievances through mediation, rather than arbitration, would average 108 days. The average time from the request for arbitration to the arbitration hearing for the experimental districts (25 days) was achieved at least partially because a permanent arbitration panel is provided for in the UMWA-BCOA contract. The comparable time for U.S. industry in general was 69 days. Similarly, while the average time from the arbitration hearing to the issuance of the arbitrator's decision in the experimental districts was 23 days, the average for all industries was 52 days. See Federal Mediation and Conciliation Service, *33rd Annual Report* (Washington, 1981), p. 39.

<sup>17</sup> The total time lost in unsuccessfully mediating five grievances was 115 days. Subtracting the 115 days lost from the 1,152 days saved in the 32 successfully mediated grievances results in an overall saving of 1,037 days for 37 grievances.

<sup>18</sup> No data are available for the coal mining industry on the proportion of the arbitrator's fee that is attributable to the time necessary to write a decision. However, nationwide data show that in 1980 the average arbitrator charged 1.33 days per grievance for travel and hear-

ing, and 1.88 days for study and decision writing. Because the nationwide data also show that the average daily arbitrator's fee was \$275, the average charge for a written decision was \$517. See Federal Mediation and Conciliation Service, *33d Annual Report* (Washington, 1981), p. 37.

<sup>19</sup> Federal Mediation and Conciliation Service, *33d Annual Report*, p. 37.

<sup>20</sup> This result is calculated by the same method as the time saving result calculated in note 17: subtracting the \$1,250 cost of unsuccessful mediation of five grievances from the \$24,800 saved in the 32 successfully mediated grievances results in overall financial savings of \$23,550 for 37 grievances.

<sup>21</sup> This figure also takes into account an increase in the mediator's fee from \$125 to \$200 per grievance.

<sup>22</sup> Just as for the participating companies, step-three settlement rates of a control group of nonparticipating companies remained remarkably constant during the 18-month period preceding and including the experimental period.

<sup>23</sup> The frequency with which private outcome prediction was used, and the effect of this technique, was, unfortunately, not measured. It will be measured in future experiments.

<sup>24</sup> Discharges may be submitted to mediation by mutual agreement.

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### Settlements are the norm

To many Americans, the strike epitomizes the union. Headlines are made in industrial disputes. They are the sensational aspects of union policies and managerial counterpolicies. Yet, strikes are surprisingly few in comparison to either man-days worked or the number of collective agreements negotiated. For example, the average annual number of man-days lost in the United States because of strikes during 1935-36—a period of great labor unrest—was 16.9 million, or 0.27 percent of the total annual estimated working time. In 1946, the worst strike year in our history, man-days lost totaled 116 million, or 1.43 percent of the annual estimated working time. In 1959, despite the impact of a steel strike that shut down that industry for several months, man-days lost totaled 68 million, or only 0.61 percent of the annual estimated working time. Almost every hour while strikes occur, a collective bargaining agreement is being peacefully negotiated by a union and a company.

—GORDON F. BLOOM AND HERBERT R. NORTHRUP  
*Economics of Labor Relations*,  
9th ed. (Homewood, Ill., Richard D. Irwin,  
Inc., 1981), p. 171.

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