

APPENDIX V — Alternative Collective Bargaining Models

Introduction

There are a number of collective bargaining models other than the one employed currently by the Postal Service. This appendix provides a broad description of various types of collective bargaining processes (models) currently being used and identifies elements of those processes that may be utilized to improve the negotiating process used in the Postal Service.

Types of Models

All collective bargaining processes utilize different mechanisms to create incentives to encourage parties to reach agreements. Typically, a critical component of these incentives is a penalty that will be imposed on both parties in the event that they are unable to reach agreement. Additionally, each of the collective bargaining processes contains mechanisms that are supposed to assist the parties in narrowing and clarifying disputed issues as well as facilitating a resolution of those issues.

Models representing different types of collective bargaining processes can be placed along a continuum depending upon the type of penalty or negative situation that the parties will face if they do not reach an agreement:

Private sector model. This model utilizes the avoidance of economic self-help (strike/lock out) as the ultimate incentive for the parties to reach agreement. A series of notice and mediation requirements are used to assist parties in coming to an agreement.

Public sector model. This model is used principally by states and municipalities where public employees are prohibited from striking. Under this model, if negotiations reach an impasse and mediation attempts have been unsuccessful, an interest arbitrator decides the unresolved collective bargaining issues and effectively writes the collective bargaining agreement for the parties. In theory, the threat of having an outsider who is not as familiar with the issues as the parties themselves make critical decisions is supposed to provide an incentive for the parties to come to an agreement. Depending on the statutory scheme, a variety of different intermediate steps are used to assist the parties in narrowing and sharpening issues, as well as facilitating a resolution of disputes. In addition, some state statutes contain “guidelines” which attempt to limit the arbitrator’s discretion by enumerating considerations that arbitrators must take into account in arriving at their decision.

Hybrid model. This model contains aspects of both public and private sector models. The Railway Labor Act (RLA), which governs labor relations in the airline and railroad industries, is perhaps the best known example. Under the RLA, the parties have the right to engage in strikes and lockouts if they are unsuccessful in negotiating an agreement. However, the RLA has an elaborate system of “hurdles” that the parties must surmount before the right to engage in economic “warfare” is triggered. These hurdles serve the purpose of assisting the parties in reaching agreement, as well as subjecting them to various sorts of pressure from interested groups. The process is

especially long and drawn out, creating an additional incentive for the parties to voluntarily reach agreement prior to exercising self-help.¹

Variants of these models. The descriptions above are not intended to provide an exhaustive list of all types of collective bargaining processes. As described below, elements of various different processes can be (and have been) combined in any number of ways. However, whatever elements are chosen, they should perform one or more of the following functions: 1) assist the parties in sharpening and narrowing the issues; 2) facilitate the parties in reaching agreement; and/or 3) make the failure to reach agreement sufficiently onerous that the parties will have an incentive to reach an agreement.

Problems with the Current Postal Service Collective Bargaining Process

The current collective bargaining process used by the Postal Service does not have an incentive or penalty sufficient to induce the parties to negotiate agreements. In addition, it permits one individual, a third party who is not accountable, to decide critical economic issues, while the interest arbitration process also encourages parties to take extreme positions in negotiations in anticipation of the fact that disputes will ultimately be resolved by an interest arbitrator.

Elements to Be Considered for Possible Solution

The following elements can be “mixed or matched” in any number of combinations. The introduction of most of the elements described below would require legislative action.

Hybrid (RLA) model. While this hybrid (RLA) model might be attractive to unions, since it offers the possibility of striking, it is also a long and arduous collective bargaining process. It often culminates in a Presidential Emergency Board (PEB) process, whereby third parties effectively decide issues, and there is a danger that the process may be politicized as a result of the presidential selection of neutrals and the possibility of Congressional enactment of PEB recommendations.

Statutory guidelines for interest arbitrators. A series of statutory guidelines would limit the discretion of an arbitrator to issue awards by requiring arbitrators to consider certain factors and might well clarify the arbitration process.

Judicial review. The possibility of a decision being judicially overturned would provide some mechanism to ensure that arbitrators stay within guidelines.

Multiple neutrals sitting on the same interest arbitration panel. Using the model of a PEB, it is possible that several neutrals would be selected for the interest arbitration panel. Presumably, this would provide a check on any one neutral making an unreasonable decision.

¹ Under the RLA, the National Mediation Board (NMB) will appoint a mediator to work with the parties upon the request of either party. If the NMB does not believe that further mediation efforts will be successful, it will offer the parties an opportunity to proceed to interest arbitration. If either party rejects the proffer of interest arbitration, the NMB will release the parties into a 30-day cooling off period. After such time, self-help is permitted, unless the president appoints a presidential emergency board (PEB) which delays the right to self-help until 30 days after the PEB issues its award. The PEB proceeding resembles an interest arbitration, except that the recommendation of the PEB is not binding. However, these recommendations frequently form the basis of settlement or provide the government and the public with a way of evaluating the merits of the parties' positions. After issuance of the PEB award, the parties have 30 days to attempt to reach a peaceful solution. If unsuccessful, the parties have the right to engage in self-help. However, when the resumption of hostilities has threatened the economy, Congress has on occasion intervened and either imposed a legislative solution based on the PEB award or established another procedure to assist the parties in reaching an agreement.