Justice and Dignity: Due Process Notions in the Administration of Collective Bargaining Agreements

INTRODUCTION

This Comment will examine an innovative development in collective bargaining popularly known as justice and dignity.[1] Under this contractual provision, an employee who has been suspended or discharged must be retained until any grievance relating to the disciplinary action has been resolved through the grievance and arbitration procedure. Such an employee may be removed from work if, by fighting, theft, or a concerted refusal to perform assigned work, he/she presents a danger to the safety of other employees or company equipment. Justice and dignity provisions have been negotiated into a number of major collective bargaining agreements providing comprehensive coverage in the can industry, along with limited coverage in the steel and copper industries.[2]

As private sector collective bargaining has evolved, unions and management have provided job security and stabilized the employment relationship by utilizing a just cause or good cause[3] standard for discharge. The contractual right to continued employment absent appropriate cause for dismissal is protected through grievance and arbitration procedures contained in collective bargaining agreements. If an employee protests his dismissal, the employer is required to demonstrate sufficient cause for his actions.

In labor arbitration, the definition of cause, good cause, and just cause developed from the past practices of the parties and the accumulation of countless arbitration decisions over time. More specifically, arbitrators determine the question of cause based on industry custom, plant practices, and their own sense of justice.[4]

The vindication of a wrongfully discharged employee's substantive rights through arbitration is relatively prompt, with decisions normally coming

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1. The phrase *justice and dignity*, as used throughout this Comment, refers to justice and dignity concepts embodied in clauses or provisions of collective bargaining agreements. The concept of justice and dignity applies to all persons in the labor force, regardless of race or sex. It is, however, especially applicable to workers subject to collective bargaining agreements who also suffer discrimination because of race and sex prejudices on the part of employers.

Proper implementation of the concept as described herein should reduce some of the hardships otherwise faced by minority group employees, who at various times during their employment careers may face the threat of dismissal.

2. At the time of this writing variations of the typical justice and dignity clause have been negotiated into collective bargaining agreements covering the following industries: the can industry, which includes Continental Can Company, American Can Company, National Can Company and Crown Cork and Seal Company; the steel industry, which includes United States Steel Company, Bethlehem Steel Company and Jones and Laughlin Steel Company; the fibre drum industry, which includes Continental Can Fibre Drum Company; the aluminum industry, which includes Aluminum Company of America, Reynolds Aluminum Company and Kaiser Company; and the copper industry, which includes Kennicott Copper Company.

3. The concept of *cause* refers to work-related justifications for discipline which would ordinarily be accepted as such under general industrial usages. *See* R. Gorman, BASIC TEXT ON LABOR LAW (1976).

4. *See Steelworkers Trilogy*: United Steelworkers of America v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

within four months to a year. However, this time period may impose drastic hardships upon an employee who is awaiting an opportunity to vindicate himself. If his grievance is successful, he may be made whole for wages lost due to the improper discharge, but only after the arbitrator has issued an award. The employee is without pay during the four months to one year that it takes for such a determination to be made. This is the problem that justice and dignity provisions in labor contracts seek to remedy.

I. Purpose of Justice and Dignity Provisions

In order to best ascertain the purpose and motivations underlying justice and dignity provisions, the comments made by Dee W. Gilliam who negotiated the clause into the 1981 Can Industry Master Agreement for the union should be illuminating:

> Many disciplined employees suffer greatly and unjustly from loss of earnings as well as family upheaval and social stigma, while their grievances are winding their way through the grievance procedure and are finally litigated. Let me give you a case in which I was involved which dramatizes these hardships.
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> Approximately 15 years ago, in a plant the Steelworkers represent on the West Coast, a young black employee was experiencing some problems with the Black Panther group. The alleged leader of the Panther group in the plant was discharged for absenteeism, and on the same day the young black was also absent. The company suspended both individuals with intent to discharge.
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> I presented the case of the alleged Black Panther leader before Alexander Porter and the grievance was denied. The grievant had also been the subject of an earlier arbitration case, approximately a year earlier, heard by Arbitrator Ralph Seward, who set aside the discharge and returned the grievant to work with full pay.
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> During the intervening year the grievant had a very poor attendance record and the second discharge was understandably upheld. However, the circumstances involved in the case of the young black who was discharged on the same day as the alleged leader of the Black Panther group were quite different.
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> The Company told me [that] on one occasion he had addressed a group of employees who were threatening to burn the plant down and persuaded them to return to work. The young man's wife was raped and developed a nervous problem. It frequently became necessary for him to be absent from work because of her condition. When the young man's case was finally heard and decided, he was put back to work with all lost earnings restored. However, during the time it took the parties to get to arbitration and receive a decision, the young man had lost his car, his home, and his family due to a divorce.
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> The ironic thing about his situation is that although the grievance was sustained and the grievant was put back to work with full pay; he was unable to get his car back, he could not get his home back, and [according to] the last report I received, he was unable to get his family back together.
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> This is the kind of problem which motivated the union to persist in seeking Justice and Dignity provisions in our labor agreements.[5]

5. Address by Dee W. Gilliam, Director of U.S.W.A. Arbitration Department, 36th Annual Convention of the National Academy of Arbitrators, Bureau of National Affairs, Inc. (BNA), No. 97 (August 18, 1983).

The primary rationale underlying justice and dignity is embodied in the title itself. The provision creates a method of procedural due process which arises when a suspended or discharged employee contests the employer's disciplinary action. The term *justice* in this context is used to bring to bear upon disciplinary actions the concept that the accused is innocent until proven guilty. The term *dignity* is significant in that the surrounding humiliating consequences of a discharge shall not befall an accused prior to the administration of justice.

Discharge is the capital punishment of the workplace. It has far reaching and dismal ramifications upon the individual, the family unit, and the status of each within society.

II. Procedural Due Process in the Public Sector

The similarities between justice and dignity and public sector discharge law are especially interesting. Procedural due process in the public sector is grounded on the regulation of state action pursuant to the fourteenth amendment. The courts have not perceived a change in society sufficient to necessitate the declaration of a property interest in private sector employment. Private sector labor and management have articulated such a declaration via justice and dignity clauses. Through justice and dignity, it may be possible that labor and management, because of their particular societal roles, have recognized the elevation of the role of employment in society and have responded to that interest.

Over the last two decades the Supreme Court has decided several cases in favor of providing certain procedural safeguards creating job security for public sector employees.[6] The leading discharge cases in the public sector recognize that employees, under certain circumstances, have a substantive right to maintain continued employment and that an employee is entitled to procedural due process in the form of a hearing before his job is taken from him.

In *Perry v. Sindermann*,[7] the Supreme Court of the United States held that fourteenth amendment due process rights apply to public employees who have an identifiable property interest in their continued employment. Therefore, a hearing is required before the employee may be deprived of his property interests. In *Perry*, the Court ruled that a professor may have a property right in his teaching job based upon a de facto tenure system at the university. The university's faculty guide book guaranteed continued employment as long as his services were satisfactory. Therefore, the professor had a legitimate expectation that he would be discharged only for cause. The Court held that if the professor could establish such an expectation, then he could not be dismissed unless a hearing was held to determine whether just cause existed in fact.[8]

In *Board of Regents v. Roth*,[9] the Court stated:

> Property interests, of course, are not created by the Constitution. Rather, they are created, and their dimensions are defined by existing rules

6. Mount Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274 (1977); Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972); Connell v. Higgenbotham, 403 U.S. 207 (1971); Pickering v. Board of Educ., 391 U.S. 563 (1968).

7. 408 U.S. 593 (1972).

8. *Id.* at 603.

9. 408 U.S. 564 at 577.

> or understandings that stem from an independent source such as state law, rules, or understandings that secure certain benefits and that support claims of entitlement to those benefits.[10]

The Court further stated that due process rights also attach to an indentifiable liberty interest. The liberty interest protects an employee's right to his good name, reputation, and integrity from stigmatizing actions of a governmental employer.[11] Thus the effect of the liberty interest hearing is to provide the employee a forum in which to clear his reputation of false accusations.

The difficulty in meeting the burden of proving a property interest in one's job is evidenced by the case of *Bishop v. Wood*[12] which departs from the *Perry* and *Roth* holdings. This case involved a chief of police who had been employed under an ordinance classifying him as a permanent employee. The chief challenged his discharge from employment without a hearing. Despite the explicit contractual language, the Court found that the chief held his job at the pleasure of the city and, therefore, he had no property interest which could be protected through due process. The Court did not follow the *Perry* analysis since it did not look at the circumstances surrounding the employment relationship. Instead, the Court used a narrow reading of *Roth* to determine property interests. The *Bishop* Court looked solely to state law rather than the totality of circumstances surrounding the employment relationship which includes sources such as state law and the terms of the employment contract. The Court has also determined that the structure of the due process hearing need not be overly formal, or totally impartial to satisfy the fourteenth amendment.

The hearing deemed appropriate by the courts to satisfy procedural due process requirements is likewise a component of the justice and dignity clause. Thus, employees under both models may not be deprived of employment unless a hearing is granted. In the public sector, these rights arise from constitutional concerns with the regulation of state activity and protection of the employees' private property. However, in justice and dignity clauses, no such constitutional considerations are present. In the private sector, the protection provided by such clauses has been gained through free collective bargaining.

III. Employment as a Property Right

There is a recognized legal interest, albeit ambiguous, of an employee to maintain his job. The nature of that legal interest is very important in determining the need for procedural as well as substantive protections.

Commentators Hermann and Sor recognize that some may be tempted to claim a property right in employment arising from moral considerations; but ultimately the right to a job would depend on the law's recognition of such a right. They seem to advocate a sensible rationale that the law might embrace to give rise to such rights. They argue that the joint activity of those employed along with the efforts and investment of employers produces more than the value of wages and profits. A social product is reflected in the value of the ongoing enterprise in which those associated with the enterprise have a vested property interest, including interest in employment as well as good will, and

10. *Id.* at 577.
11. *Id.* at 573.
12. 426 U.S. 341 (1976).

the value of the ongoing enterprise.[13]

Commentators Glendon and Lev argue that recent changes in the laws governing the termination of employment are part of a broader change in the bonding of the employment relationship. They believe that the web of relations that bind an individual's job to him and, more subtly bind him to his job are becoming tighter and more highly structured. This fundamental change has brought about a shift in the relative importance of job and family as determinants of wealth, standing, self-esteem and security.[14] Charles Reich, a commentator upon whom Glendon and Lev rely states:

> Today more and more of our wealth takes the form of rights or status rather than tangible goods. An individual's profession or occupation is a prime example. To many others, a job with a particular employer is the principle form of wealth. A profession or job is frequently far more valuable than a house or bank account, for a new house can be bought, and a new bank account created, once a profession or job is secure[d]. For the jobless, their status as governmentally assisted or insured persons may be the main source of subsistence.[15]

Reich further elaborates that the individual's increasing dependence upon his job is precarious unless legal protection similar to that afforded property rights, is extended to the new societal status of employment relations.

Despite persuasive arguments by commentators in favor of a judicial declaration of a property interest in private employment, the courts have refused to take this position. The inertia of the courts in this area may be due to an inability to perceive the change in relationship between employment and status in society. However a better explanation might be a reluctance on the part of the courts to usurp the legislative function.

IV. Scope of a Justice and Dignity Clause

The protections of a typical justice and dignity clause do not extend to all employees who are suspended or discharged. In the case of suspensions and discharges, motivated by serious misconduct, the companies and unions agree that the justice and dignity provisions should not apply.

A typical justice and dignity clause reads as follows:

> An employee whom the Company suspends or discharges or whom it contends has lost his/her seniority under Article XII, section 5 of the Master Agreement or Article XI of the applicable Local Supplemental Agreement shall be retained at or returned to active work until any grievance contesting such suspension, discharge, or break in service is finally resolved through the grievance and arbitration procedure.
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> However, the employee may be removed from active work (without pay) until the resolution of the grievance protesting the suspension or discharge if his alleged cause for suspension, discharge or termination presents a danger to the safety of employees or equipment in the plant due to theft, fighting, or concerted refusal to perform their assigned work.
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> Grievances involving employees who are retained to work under this provision will be handled in the Expedited Arbitration Procedure unless the

13. Hermann & Sor, *Property Rights in One's Job: Limiting Employment-at-Will*, 24 ARIZ. L. REV. 763 (1982).

14. Glendon & Lev, *Changes in Bonding of the Employment Relationship; An Essay on the New Property*, 20 B.C.L. REV. 457, 458 (1979).

15. Reich, THE NEW PROPERTY (1964), *quoted in* Glendon & Lev, *supra* note 14.

> Union Staff Representative and the applicable Regional or Area Manager of Labor Relations mutually agree otherwise. If the arbitrator upholds the suspension or discharge or break in service under Article XII, Section 5 of the Master Agreement of Article XI of the applicable local Supplemental Agreement of an employee retained at work the penalty shall be instituted after receipt of the arbitration decision.
> The above references to suspensions, discharges and terminations are examples and are not intended to be all inclusive but indicate how various types of issues will be handled.[16]

Under this language, the discharged employee must be retained on his/her job until the grievance contesting the action has been resolved through the grievance and arbitration procedure. However, an employee may be removed from work if the cause for the discharge or suspension involved a danger to the safety of other employees or to the company's equipment.

The benefits derived from the above-mentioned limitation on the scope of justice and dignity bear out the old adage that sometimes "less is more." By excluding those accused of danger-producing misconduct, the company has no fear of damage to its physical facilities and thus is more willing to agree to a justice and dignity clause. The union on the other hand has shown a proper concern for the health and safety of both its organized employees and management personnel.

V. INTERPRETATION AND APPLICATION OF THE CLAUSE[17]

A. *Case 1*

The first case arbitrated under a justice and dignity provision arose from a six-day suspension of an employee with intent to discharge. A grievance was timely filed and the sole question before the arbitrator was whether the employee should have been returned to work for the balance of the six-day suspension. The arbitrator reasoned that the question of whether the grievant should have been returned to work during the suspension period could not be decided solely upon the wording of the suspension notice. The company was required to substantiate the charges contained in the notice, thereby proving that the conduct was sufficient to remove the employee from the protection of the justice and dignity clause.

The arbitrator ruled that the charge that the grievant had tried to cover-up the bad cans he had run by taking them to the warehouse did not present a danger to the safety of employees or equipment in the plant. Thus, the grievant should not have been removed from work pending resolution of his grievance.[18]

B. *Case 2*

Here the company discharged the grievant alleging that he had been a party to certain improper cash payments to a supervisor of the shipping department. The company refused to retain the employee at work and later de-

16. Cahn, *Justice and Dignity*, 38 ARB. J. Dec. 1983, at 52.

17. Special attention will be granted to the can industry clauses because of the availability of relevant information.

18. National Can Co. v. United Steelworkers of America [Local __], 22 Steelworkers Arb. Awards, 1707, __ (1983) (Crane, Arb.).

nied the grievance. The arbitrator examined the language of the provision and concluded that the clause establishes a general rule that an employee is entitled to be retained at work, despite suspension or discharge, pending a resolution of his grievance against the company's action. The exception to the rule recognizes management's right to remove an accused employee from the plant, but only if the nature of his alleged misconduct indicates that his retention in the plant would present a danger to the safety of employees or equipment. In order for the exception to apply, the case must be one where "it can reasonably be anticipated that the employee (if retained) would repeat the misconduct and thereby present a danger to the safety of employees or equipment." Therefore, the company's refusal to retain the grievant was a violation of the justice and dignity clause.[19]

C. *Case 3*

In this case it was held that despite company allegations that the grievant left his work station without permission and produced excessive scrap, he was not outside the protection offered by the justice and dignity provision. The grievant's conduct toward a nurse, however, was such as to instill fear of bodily harm. The arbitrator reasoned that the grievant's conduct did present such a danger and the motivation for such conduct was immaterial. The grievant was excluded from protection under the provision.[20]

D. *Case 4*

Here the company charged the employee with unauthorized possession of company files, and suspended her. It is important to note that the charge was not theft, but rather unauthorized possession. The arbitrator held that such conduct does not fit the exceptions of the justice and dignity provisions and therefore the grievant should have been retained on the job pending resolution of the grievance.[21]

E. *Case 5*

The issue in this grievance is identical to the one which arose in case 1 above.[22] Here, as in that case, the grievant filed a justice and dignity grievance after being suspended. When those suspensions were converted to discharges the company claimed that the conversions to discharge were separate actions which required the filing of an additional grievance. The Master Agreement stated that a discharge had to be protested within two work days. The union argued that the grievant did not have to file a second grievance relating to the discharge since the original grievance was sufficient to protect her until final resolution of the dispute.

The arbitrator held that the initial grievance protesting the suspension

19. American Can Co. v. United Steelworkers of America [Local __], Arb. Case No. JJS-24, 5/21/82 (Sherman, Arb.)

20. National Can Co. v. United Steelworkers of America, Arb. Case No. LC-14, 7/30/82 (Crane, Arb.)

21. National Can Company v. United Steelworkers of America, Arb. Case No. LC-19, 9/8/82 (Crane, Arb.)

22. LC-12 arose as a result of the conversion of the suspension to the discharge of the grievant in Case 1, *supra*.

was adequate to protect the employee from her six-day suspension and the two-day filing period. But a grievance filed under the justice and dignity provision is inadequate to protest the company's decision to discharge. The arbitrator further ruled that the justice and dignity provision and the two-workday limit in which to file a grievance after notification of discharge should be read together. Therefore, since the second grievance had been filed more than two days after notification of the discharge, it was untimely and the company discharge should have been considered final.[23]

VI. ANALYSIS

From an examination of the purpose, scope and arbitral interpretations of the can industry justice and dignity provision, certain preliminary observations may be drawn. These observations will then be utilized in an attempt to assess the usefulness of the provisions to date, and to predict specific obstacles to broader acceptance of justice and dignity.

First, justice and dignity provisions eliminate the psychological and economic horrors which may befall grievants who have been suspended or discharged and must wait four to twelve months to learn of their ultimate fate.

Second, provided that the grievant's conduct does not present a danger to the safety of employees or equipment, a company is required to retain the grievant at work until the soundness of his/her discharge or suspension is resolved through arbitration.

Third, the offenses, outlined in the exceptions phrase to the justice and dignity language (fighting, theft, concerted refusal to perform work) are only examples and are not intended to be all inclusive.

Fourth, if the ultimate grievance is sustained, under a justice and dignity provision, a company is not required to make the affected employee whole through back-pay. Prior to the award the company has received the benefit of the grievant's continued production. Conversely, if the ultimate grievance is denied, the grievant has benefited by maintaining economic stability until such a decision is made.

Fifth, the requirement that an employee file two grievances—one to invoke the justice and dignity clause, and another to protest the ultimate discharge, was limited to the specific provision negotiated between the union and one particular can company. In subsequent negotiations for the new Master Agreement, the aberrant provision was brought into conformity with the pro-

23. These decisions, LC-17 and LC-12, find their basis in three important procedural determinations: 1) The union filed the justice and dignity grievance during the six-day suspension in protest of the Company's removing the grievant from work; 2) The company subsequently converted the suspension to a discharge; 3) Article XVI section 3 requires an employee who wishes to protest the conversion of a suspension to a discharge to file a grievance within two workdays after such a conversion. Therefore the arbitrator found the initial grievance to be ineffective after conversion.

This writer believes that the above rationale, whether due to poor draftsmanship or faulty interpretation, created a procedural mechanism for avoiding the goals of justice and dignity. By handling discharges in the fashion mentioned above a company could place the burden on an unknowing worker to solve a tricky procedural hurdle in order to secure rights which had been negotiated. This writer further argues that such a result was contrary to the intent of the parties and the negotiated principles from which justice and dignity evolved. Support for these propositions may be found in the fact that in the subsequent negotiations for a new three-year Master Agreement, the parties themselves remedied the situation by modifying the contract language. At this point one grievance is sufficient to invoke justice and dignity protection throughout the disciplinary procedure.

visions agreed upon by the other participating members of the can industry. The initial problem arose only when an employee's suspension was later converted to a discharge. This situation required the arbitrator to read certain articles of the contract as one, resulting in procedures contrary to the intent of the parties.

Sixth, despite warnings that the adopted language was ambiguous and unworkable, arbitrators have had only one significant problem in the interpretation or applicaton of the provisions. That problem dealt with the effect of the company's act of converting a suspension to a discharge, upon the filing of the original justice and dignity grievance.

VII. The Future of Justice and Dignity Clauses

In light of the above-mentioned observations it appears that the advent of justice and dignity may be a significant development in private sector collective bargaining. The question arises as to what the underlying motivations are which cause private parties to contractually agree to require the procedural safeguard of a hearing. The clause may indicate the willingness of the parties to collective bargaining agreements to utilitize cooperation rather than their adversarial skills in order to resolve disciplinary cases.

Both management and labor benefit from justice and dignity provisions. Unlike many of the other benefits sought by unions, employees are cognizant of this negotiated benefit every workday.

For example, the dedicated employee, with a family to support, should realize that the welfare of his family normally will not suffer due to a mistake of management in imposing discipline. All realize, and most importantly the employees realize, that no one is perfect. Prior to justice and dignity, employees were aware that they stood to lose a great deal through a mistaken or erroneous allegation. Now, with the justice and dignity clause, a mistaken allegation will not visit economic hardship upon the employee and his family during the interim period before he is vindicated in arbitration.

Inherent in the employee's constant awareness of his important new right is the notion that his union is working and producing benefits which are truly in his best interest. Therefore one would argue that justice and dignity protections which make their presence felt daily on the shop floor translate into votes of confidence in the union's favor.

Viewing the benefits derived from these provisions by the union and its members, one might ask why the cost-conscious and highly skilled management of a major company would agree to justice and dignity. This writer has concluded that it is in fact cost-conscious, sophisticated employers who have realized that the benefits of the provisions flow to the company as well. Prior to the adoption of the justice and dignity clause, the employer who discharged an employee had to replace the discharged employee with another in order to continue production. The replacement often required training of the new employee. This meant a loss of productivity until the trainee's proficiency equaled the level of proficiency exhibited by the original employee. Further, the replacement's former job had to be filled also. In order to accomplish that, more retraining may have been required.

The employer must also consider the fact that should the grievant's position be sustained in arbitration, the employer may have been faced with a back

pay award equivalent to four months to one year of the grievant's salary. It appears obvious that justice and dignity is cost-effective from the employer's standpoint. Applying the provision to the discharge example above, the employee upon filing his grievance would return to work. There is no need for replacement or training. The company realizes the continued productivity of the discharged employee. If the grievance is sustained, the company owes no back pay. Some employers are aware that without justice and dignity a wrongful discharge which resulted in a back pay award would require the company to pay two men to do one job. Thus, although the employer may be required, under a justice and dignity provision, to retain an unwanted employee on the payroll for a number of months, this disadvantage is outweighed by numerous other advantages to management under the new procedures.

T.S. Hoffman, Jr.,[24] who represented Continental Can Company in the 1981 Master Agreement bargaining arrangement with the United Steelworkers of America, offers some interesting insights into why his company found justice and dignity to be agreeable. Mr. Hoffman cites the economic hardships of the times coupled with keen competition, which required an innovative management response.[25] It was Continental Can's belief that in order to survive, union-management relations must move from an adverserial posture to a cooperative problem-solving posture. To this end, management felt it had to demonstrate a change in direction before it could gain renewed credibility in the bargaining process. Another reason why management agreed to the provision was that Continental's employees had an average length of service of seventeen years and an average age of forty-seven. Therefore, the employees were viewed as a mature, committed, and capable group who required very little discipline.

It appears that the age of the work force, the evolution of goal-oriented negotiations (as opposed to adversarial negotiations), and of course, cost-effectiveness are considerations which might positively influence companies to agree to justice and dignity provisions.

CONCLUSION

This writer views the future of justice and dignity with optimism. It appears that changing societal conditions are setting the stage for the adoption of such clauses in many collective bargaining agreements. The elevation of the job to such great importance in society requires new safeguards to protect an employee's interests.

Further, the negotiated provisions in practice are quite analogous to the procedural due process safeguards enjoyed by millions of government workers.

It is impossible to predict the future of justice and dignity without posing a few questions which will only be answerable after the clause has developed a track record.

—Will the clause positively or negatively motivate use of the grievance and arbitration process? To date, management and the unions claim that

24. Vice-president of Human Resources, Continental Packaging Company.

25. Address by T.S. Hoffman, Jr. to 26th Annual Convention of the National Academy of Arbitrators, Bureau of National Affairs, Inc. (BNA), No. 997 (August 18, 1983).

there has been no rush of frivolous grievances or foot-dragging. Their statistics for the first three years under the agreement support this contention.[26] However, these statistics will become much more reliable as time passes and all concerned are more familiar with the provision.

—What effect, if any, does the clause have on an arbitrator hearing a discharge case? This writer agrees with those who argue that the arbitrator is more likely to retain a grievant at work in a borderline case. This contention is based on the fact that pending the hearing, the grievant will still be on the job. Therefore, it would require an affirmative act on the arbitrator's part to discharge the employee rather than uphold the discharge as is the case in normal arbitrations.

—What effect does knowledge of these rights have upon the lower-level supervisor's ability to maintain discipline?

Although the answers to these questions will not be available for some time, it appears that the justice and dignity clauses negotiated in 1981 have been considered successful by both management and labor.

Based on the reasons above, the future appears bright for the increased acceptance of justice and dignity provisions in collective bargaining agreements.

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26. U.S.W.A. in-house statistics and memoranda (1983).