

# System Board of Adjustment



Doug Mowery (PIT)  
Chairman, Grievance Committee

**Y**ou may have heard of the term, “System Board of Adjustment.” I know you have heard of the term “arbitration.” For those of you who are new to ALPA, I will use this month’s article to explain how these two terms apply to you, the US Airways pilot.

With regard to the resolution of disputes between management and labor, the airline industry falls under the federal law known as the “Railway Labor Act.” The Act defines two categories of disputes—major and minor. A “major” dispute, defined in Section 6 of the Act, pertains to contract negotiations. If an agreement is not reached (impasse), a 30-day cooling-off period may begin, after which both sides are free to engage in “self help,” i.e., an imposed contract by management, and the right to withhold services (strike) by labor.

Labor’s success or failure in a major dispute is totally dependent on you, the workers. Don’t ever forget that.

The Act also contemplates that during the term of an agreement, “minor” disputes regarding contract interpretation, etc., may occur (MAY occur?). The Act mandates that, at each company, a “System Board of Adjustment” be established as the final authority in resolving these issues. This is where I come in, as we refer to these “minor” disputes as “grievances.”

We have no right to strike over a grievance. The federal government does not want the rail and air traffic, which are so vital to our nation’s economy, disrupted except in the most extreme situations. Therefore, we are bound to pursue our unresolved grievances with the System Board, whose decisions are final!

The grievance process at US Airways basically works like this:

1. When you’ve been hosed, we encourage you to first attempt to resolve the issue yourself. (Every member of the Grievance Committee, including Vice Chair Mike Berryman and I, flies as much as possible. So, if you can solve things yourself, it will help our workload tremendously.) Remember, always write down the name of the person with whom you are talking, and the time of the conversation. If you don’t reach an early resolution, FILE A CLAIM!
2. Go talk to your supervisor (Chief Pilot’s Office). Don’t be scared—that’s what they are there for! If they can’t help, call us.
3. I tell my grievance guys to assess each situation, and determine whether *they* should talk to the Chief Pilot’s Office (CPO) also or just file a grievance with the senior director of Flight Ops. If the issue is small, I tell them to call the CPO. Oftentimes, the knowledge that ALPA is involved changes things (i.e., they know you’re serious, and a grievance is coming soon if your situation is not resolved). If the issue is large and we feel some written “case law” is in order, then we file your case straight to the senior director of Flight Operations.

Once upon a time, not long ago, chief pilots were very good at answering grievances in writing. Some of their decisions were excellent (i.e., correct), and appear in the Grievance Reference Manual. After WGN (Wolf, Gangwal, Nagin) appeared, the Chief

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Pilot’s Office literally became a shadow of its former self. They were stripped of their long-held power to solve grievances and administer discipline as *they* saw fit. The shift has been startling. We’ve migrated from most problems being solved at the Chief Pilot level to virtually no problems being solved there (at least officially). Make no mistake, the Company’s iron hand now rests with the Labor Relations Department in DC, and keeps our ALPA attorneys very busy. (Interesting observation: When chief pilots truly had the power to whop us upside of the head, most pilots took their lumps without filing a grievance appeal. They knew it was coming from a peer/pilot, and it was generally fair.)

4. If the grievance is filed with the senior director Flight Operations, a hearing is held. If the grievance is denied, we appeal the decision to the VP of Flight Operations. If the VP of Flight Operations denies the grievance, then we must appeal this decision within 30 days to the System Board of Adjustment.
5. The System Board composition and procedures are largely found in Section 21 of our agreement. There you will find references

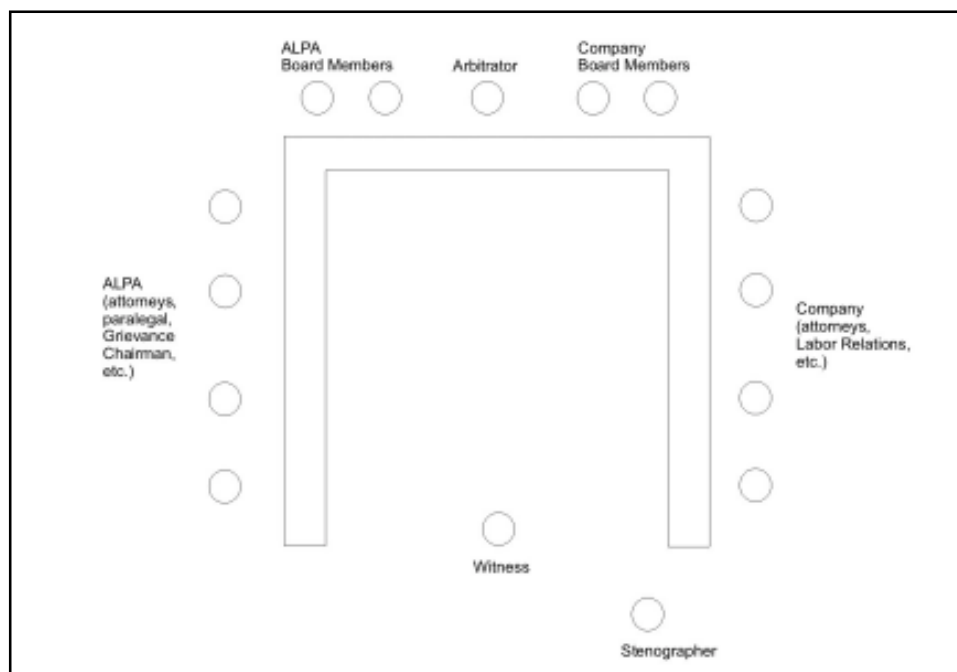
to a four-man Board, comprised of two company representatives and two ALPA representatives. No arbitrator presides over a four-man Board. Once upon a time, about 15 years ago, this process worked fairly well. With the growth of our airline, however, the relationship between company and ALPA Board members disintegrated into constant 2-2 deadlocks, requiring an appeal to a five-man Board with a neutral (arbitrator.)

We no longer waste our time with the four-man Board. All convened System Boards now include an arbitrator.

The selection of an arbitrator is always entertaining. The panel, or pool from which we may select an arbitrator, always contains nine names. Occasionally, the Company and the Association will jointly agree to a certain arbitrator. This circumstance is rare, however, and most arbitrators are selected using the “alternate strike” method. With each case, we trade off as to who goes first. Neither side needs a reason to strike a particular individual. At your turn, you just announce which name you wish to strike.

Eventually, only one name remains. That person becomes the arbitrator for the particular case. Note that the order in which arbitrators are struck is important. If, for some reason,

The Board resembles the diagram below:



the selected arbitrator is unable to hear the case, the previously struck arbitrator is selected. Sound strategy dictates that, for the case in question, you strike your least preferred arbitrators early in the process. Watching who the Company strikes early is very entertaining. I am sure we provide them with the same level of entertainment.

The Board hearing is a fairly formal affair. While not a court of law, the procedures are similar. A stenographer transcribes everything into an *official* record, witnesses are sworn in, attorneys for each side present their cases (much like law shows on TV), and rules of evidence *generally* apply. Many arbitrators are looser than trial judges with respect to what evidence they will allow, as no Appeals Court exists to enforce strict interpretations of the law.

A few words about witnesses . . . most of our witnesses are “experts,” consisting of representatives from the various committees: Scheduling, Negotiating, Grievance, etc. Some witnesses are everyday line pilots, who we feel will demonstrate the effects of the Company’s errant policy on *you*—the line pilot. There is perhaps no greater calling than to be asked by the Association to be a witness before a System Board of Adjustment. Remember, if we lose, the decision is FINAL! There is no appeal. Consequently, when we get to this point, success is paramount. The lives of each and every one of you may be affected. Incredibly, some pilots *refuse* to testify! *When our attorneys view your experiences as materially germane to our case, failing to testify lets down each and every one of your ALPA brothers and sisters!*

I can’t put that any more bluntly. We work hard to obtain the best contract we can. We work equally hard to defend it! For a pilot to tell us he/she “doesn’t want to get involved” is a positively pathetic attitude.

Once the Board convenes, the Company bears the burden of proof in discipline cases, and goes first. On contractual matters, the Association bears the burden, and goes first.

Some Boards conclude proceedings in one or two days (we always schedule two to start). Some last quite some time, due to their complexity and the plethora of witnesses. On the second day of the recent Drug & Alcohol Test case, with \$500 damages, I was the *only* witness of the day—over six hours, plus one hour for lunch! Phew! Needless to say, that case is still in progress.

When the Board concludes, the stenographer prepares the transcript. When that is done, each side usually prepares written briefs for submission to the Board. (Oral briefs at the conclusion must be agreed to jointly.)

After the briefs are submitted, the arbitrator usually schedules an “executive session” with the other Board members (closed to only those five individuals.) It is at this point that we learn the arbitrator’s decision! If we lose the case, the probability that our Board members can persuade the arbitrator to change his mind is virtually zero. However, an arbitrator will generally offer the losers the chance to express their concerns. If we are concerned about a possible “domino effect,” the arbitrator will then craft a decision to mitigate damage in other areas. This process of “throwing a bone” to the losers evolves naturally from the earlier requirement to reach *some* mutual agreement in the selection process (remember the alternate strike method).

To put it bluntly, if an arbitrator really lays one on us, we won’t pick him anymore. We will strike him/her early, and eventually ask that he/she be removed from the “Panel of Nine.” Since they only get paid when they are picked, there is a tendency for arbitrators to walk as close to the middle of the road as possible, thus ensuring mutual acceptability and future employment.

This is also why a lot of cases “settle on the courthouse steps,” as even the winners sometimes lose something.

And this is also why I roll my eyes when I encounter the pilot who *knows his case will be a slam-dunk in arbitration*. There is NO such thing as a slam-dunk in arbitration. It does not exist!

Lastly, we receive the arbitrator’s written opinion, which is signed by the other Board members. The ability to appeal an arbitrator’s decision to Federal Court is one of the narrowest and toughest tests in all of law. So in reality, at this point, it’s over.

Hopefully, this article has helped you understand the process a little better, as well as some of the “problems” which both sides must face.

Lastly, when we offer you the opportunity to serve your fellow pilots, please accept the honor, and step up to the plate.

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