

GRIEVANCE ARBITRATION IN K-12 EDUCATION
CASES: DO SELECTED CASE CHARACTERISTICS
MAKE A DIFFERENCE?

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ABSTRACT

Based on a sample of 244 published grievance arbitration awards, this study revealed some commonly identified case characteristics—grievants' gender and status—were not significantly related to case outcomes, whereas others—multiple versus single grievants, attorney representation, and issue category—were.

Several studies have analyzed grievance arbitrations according to award, or outcome, without attempting to determine whether their outcomes were related to case characteristics [e.g., 1, 2]. Many of these studies encompassed published awards without distinction between private and public sectors. Moreover, some of them limited their analyses to wins and losses, ignoring or subsuming compromise awards [e.g., 2, 3]. Other studies analyzed the awards into three outcomes, including the intermediate compromise category. For example, Zirkel found the following distribution of outcomes for a random sample of 400 AAA cases nationally: upheld, 25 percent; compromise, 21 percent; and denied, 54 percent [1].

A smaller number of studies, usually not particular to a specific sector, including the relationship between outcomes and one or more case characteristics. Block and Stieber, for example, found that attorney representation on one side or the other (but not when attorney's represented both sides or neither side) had a significant but relatively small relationship to the outcome of discharge cases in

Michigan [4]. In line with their winning that these findings may not hold true for a wider range of grievance arbitration cases, Zirkel's national studies revealed that attorney representation did not make a significant difference in grievance arbitration awards generally [1, 5]. Similarly, Katz and Lavan [6] found that case outcomes of public sector grievance cases were significantly less favorable to employers for grievants of higher, as compared to lower, employment status and for multiple, as compared to single, grievants [6]; yet Zirkel and Breslin's more comprehensive sampling yielded no significant difference in terms of single versus multiple grievants [5]. In addition, the many studies of "gender effects" on arbitrable outcomes have obtained mixed results [e.g., 3, 5, 7]. Finally, Zirkel and Breslin's study found a significant difference between the outcomes of contract interpretation cases as compared to those of discipline cases [5].

Only two studies examined outcomes in relation to case characteristics specifically within the education category of the public sector [8, 9]. Brodie and Williams in a national sample of published awards found, in the context of public schools, that the outcome was unrelated to the issue on the merits of the case [8]. Overall, they found the grievance was upheld in approximately 54 percent of the cases and was denied in the remaining 43 percent. They did not explain the missing 3 percent of their cases and noted that they subsumed compromise outcomes in the upheld category [8]. In contrast, Annunziato's study of 312 American Arbitration Association (AAA) cases in the public school context in Connecticut revealed educator grievants had a lower overall arbitration success rate than their school board employers: 45 percent to 53 percent [9]. Moreover, his results revealed the respective victory rates (46% to 54%) when the union or the board had attorney representation paralleled the overall rates, but he did not provide analyses to distinguish outcomes where both sides had an attorney from those where one (or neither) side had an attorney [9]. He also found the board's victory rate was higher for discipline (59%) and contract interpretation (56%) cases than for arbitrability (19%) [9]. However, his study was limited to a single state; he subsumed compromise outcomes in the upheld or denied categories and he did not use inferential statistics. Thus, more extensive research is needed for this specific and important subsector.

METHOD

The purpose of this study was to determine whether there is a statistically significant difference in case outcome (including a separate, compromise category) in terms of various case characteristics for a national sample of published labor arbitration awards in the kindergarten through grade 12 (K-12) education sector.

The sample consisted of 244 published arbitration awards for a ten-year period in the elementary/secondary education context. Specifically, the source of the awards consisted of the volumes of Commerce Clearing House's *Labor*

Arbitration Awards for 1989-98. The sample excluded private school and interest arbitration cases.

The selected case variables, including outcome, were as follows:

- *grievant's gender*: male or female
- *number of grievants*: single or multiple
- *grievant's role*: teacher, specialist, paraprofessional, and classified
- *attorney representation*: union only, employer only, both employer and union, and neither employer or union
- *issue category*: procedural or substantive arbitrability, discipline, or contract interpretation
- *outcome*: grievance upheld, compromise award, or grievance denied

The percentage distributions were subjected to the chi-square analysis.

FINDINGS

The gender distribution of the grievants was: male, seventy (43%); female, ninety-five (59%). The remaining cases except for one, where the grievant's gender was not ascertainable, were attributable to multiple grievants.

Specifically, the majority ($n = 157$, or 64%) of the cases had individual grievants, whereas the other eighty-seven (36%) cases had multiple grievants, ranging from two individuals to the entire unit.

With regard to role, 141 (58%) of the grievants were teachers, with the most frequent subject areas being physical education and special education. On a similar status level as teachers, specialists were the grievants in fifteen (6%) cases, with the most frequent subcategory being guidance counselors. On the next, lower level in terms of status, seventeen (7%) grievants were paraprofessionals, typically being instructional aides. Finally, sixty-seven (27%) grievants were clerical or other classified employees, such as bus drivers and custodians. In three cases (1%), the role of the grievant(s) was either unascertainable or mixed.

In terms of attorney representation, the cases were distributed as follows: only the union, sixteen (7%); only the board, 126 (52%); both parties, fifty-two (21%); and neither party, forty-eight (20%). In two cases (1%), the attorney representation was not listed.

In terms of issue, arbitrability was decided in twenty-three (9%) of the cases, with the majority ($n = 13$) being procedural arbitrability and the rest being solely ($n = 9$) or also ($n = 1$) substantive arbitrability. For the 228 cases where the arbitrator reached the merits, either directly or after ruling in favor of arbitrability, contract interpretation accounted for 179 (79%) and discipline (including discharge) accounted for forty-nine (21%). In cases where the two issues on the merits overlapped, the more specific category, discipline, was used. Moreover,

the total exceeded 244, due to the eighteen cases that were decided in favor of arbitrability and also on the merits.

The overall outcomes were as follows: upheld, 105 (43%); compromise, twenty-five (10%); and denied, 114 (47%). Thus, the odds of clear victories or losses were almost evenly divided, with the slight difference favoring the school board.

The distribution and chi-square analysis for gender are shown in Table 1. As Table 1 reveals, the distributional difference between the outcomes for males and those for females was not statistically significant.

The distribution and chi-square analysis for the number of grievants are presented in Table 2. As shown in Table 2, the distributional difference between the outcomes for single and those for multiple grievances was statistically significant at the .01 level. Further examination of Table 2 reveals that the difference is attributable to the more favorable outcomes for multiple, as compared to single, grievants.

The distribution and chi-square results for grievant role, or status, are shown in Table 3. Table 3 shows that the distributional differences among the four role groups were not statistically significant.

The distribution and chi-square analysis for attorney representation are presented in Table 4. As shown in Table 4, there was a statistically significant difference (at the .05 level) among the outcome distributions for attorney representation. Post-hoc analysis revealed this statistical significance was attributable to the differences between the outcomes for employer-only and

Table 1. Outcome Distribution for Gender

	Grievance Upheld	Compromise Award	Grievance Denied	Chi-Square
Male	36% (<i>n</i> = 25)	23% (<i>n</i> = 16)	41% (<i>n</i> = 29)	9.86 ns
Female	40% (<i>n</i> = 37)	10% (<i>n</i> = 9)	50% (<i>n</i> = 45)	

ns = not significant

Table 2. Outcome Distribution for Number of Grievants

	Grievance Upheld	Compromise Award	Grievance Denied	Chi-Square
Single	41% (<i>n</i> = 65)	10% (<i>n</i> = 15)	49% (<i>n</i> = 77)	9.99**
Multiple	46% (<i>n</i> = 40)	11% (<i>n</i> = 10)	43% (<i>n</i> = 37)	

**p* < .05

***p* < .01

Table 3. Outcome Distribution for Grievant Role

	Grievance Upheld	Compromise Award	Grievance Denied	Chi-Square
Specialist	73% (<i>n</i> = 11)	0% (<i>n</i> = 0)	27% (<i>n</i> = 4)	9.86 ns
Teacher	47% (<i>n</i> = 66)	10% (<i>n</i> = 14)	43% (<i>n</i> = 61)	
Paraprofessional	35% (<i>n</i> = 6)	6% (<i>n</i> = 1)	59% (<i>n</i> = 10)	
Classified	36% (<i>n</i> = 24)	15% (<i>n</i> = 10)	49% (<i>n</i> = 33)	

ns = not significant

Table 4. Outcome Distribution for Attorney Representation

	Grievance Upheld	Compromise Award	Grievance Denied	Chi-Square
Union Only	31% (<i>n</i> = 5)	31% (<i>n</i> = 5)	38% (<i>n</i> = 6)	15.58*
Employer Only	39% (<i>n</i> = 49)	10% (<i>n</i> = 13)	51% (<i>n</i> = 64)	
Both Sides	38% (<i>n</i> = 20)	10% (<i>n</i> = 5)	52% (<i>n</i> = 27)	
Neither Side	60% (<i>n</i> = 29)	4% (<i>n</i> = 2)	35% (<i>n</i> = 17)	

**p* < .05

***p* < .01

neither side represented by an attorney, and between union-only and neither side represented by an attorney. More specifically, the outcome tended to be more favorable where neither side was represented by an attorney than where either side exclusively was represented by an attorney.

Finally, the distribution and chi-square analysis for issue category are presented in Table 5. Table 5 shows that the outcome distributions for the issue category were statistically different at the .05 level. Post-hoc analysis revealed that this statistical significance was attributable to the difference between the procedural arbitrability category and the merits categories. More specifically, the outcomes tended to be more favorable when the issue was procedural arbitrability than where the issue was in either the discipline or contract interpretation categories.

DISCUSSION

The overall outcomes tended to slightly favor the boards of education (47% to 43%), while neither side won a majority of the cases. This advantage and the proportion in the compromise category (10%) were less pronounced than for a

Table 5. Outcome Distribution for Issue Category

	Grievance Upheld	Compromise Award	Grievance Denied	Chi-Square
Procedural Arb.	85% (<i>n</i> = 11)	0% (<i>n</i> = 0)	15% (<i>n</i> = 2)	14.11*
Substantive Arb.	70% (<i>n</i> = 7)	0% (<i>n</i> = 0)	30% (<i>n</i> = 3)	
Discipline	45% (<i>n</i> = 22)	16% (<i>n</i> = 8)	39% (<i>n</i> = 19)	
Contract Interp.	42% (<i>n</i> = 76)	9% (<i>n</i> = 17)	48% (<i>n</i> = 86)	

p* < .05*p* < .01

cross-sector sample [1]. The difference may be attributable to not only the more homogeneous sector [10] but also the published sample in this study; the latter factor raises questions of representativeness [11]. The results are difficult to compare to those of previous studies specific to the public school sector [8, 9], in light of sampling differences as well as their failure to segregate the compromise category. Nevertheless, to the disputed extent that a compromise award is viewed as favoring the union, the results of this study seem to support Brodie and Williams' findings [8].

The case characteristics that yielded statistically significant differences in outcome were single versus multiple grievants and attorney representation. More specifically, the union tended to be more successful in cases of multiple, as compared with single, grievants and when neither side, rather than when only one side or the other, was represented by an attorney. The more favorable finding for multiple than single grievants squares with Katz and Lavan's results for a more comprehensive sample [6]. One possible explanation for this pattern is that the union may devote a higher priority, including resources, to cases on behalf of a group of grievants, inasmuch as they represent a higher proportion of the constituency. The statistically significant difference for attorney representation did not square with previous research; however, the other studies [1, 4, 5] were not specific to the public, much less the K-12 education, sector. In any event, association should not be confused with causation. Rather than a randomly assigned experimental treatment, use of an attorney depends on various factors, including the budgetary resources or orientation of the organization and the perceived difficulty or priority of the case. For example, in the cases in this study where only one side used an attorney, the board did so eight times more frequently than did the union. Nevertheless, the union's relatively high victory rate when neither side used an attorney, harking back to the original, nonlegalistic model of grievance arbitration, is rather striking.

The statistically significant difference in terms of more favorable outcomes for arbitrability, as compared with the merits, generally comported with previous research. For example, the pro-arbitrability results in this study squared exactly

with Zirkel's 85 percent rate for procedural arbitrability in a public sector sample [12] and came quite close to Annunziato's 81 percent rate for generic arbitrability in a school sector sample [9]. In partial contrast, the lack of significant differences between the two broad issue categories on the merits parallels Brodie and Williams' findings in the K-12 education sector [8], not those of Zirkel and Breslin for a cross-sector sample [5].

The other case characteristics that did not yield statistically significant differences in terms of outcomes were grievant gender and grievant status. The first finding, which is supported by other recent research [3, 5], appears to reflect a lack of gender discrimination by arbitrators. The robust proportion (61%) of female grievants in the education-sector sample also adds strength to this conclusion.

However, the finding in terms of the grievants' status conflicts with Katz and Lavan's results for a broader public sector sample [6]. Perhaps the seeming difference is attributable to the higher homogeneity of this education-sector sample; for example, the difference between a counselor and custodian in a public school may not be as extreme as the difference between a unionized doctor and an orderly in a public hospital. Moreover, the number of specialists and paraprofessionals in the present study's sample was relatively low, possibly obscuring inter-role differences.

In conclusion, the relationship between case characteristics and outcomes of grievance arbitration in the public school sector is partially the same as, and partially different from, that for grievance arbitration in wider contexts. The more muted success ratio for school boards as compared to a wider array of employers may be attributable to the more homogeneous, professionally oriented nature of the bargaining units. Suggested avenues for further research are a follow-up study with a higher education sample and a more in-depth, perhaps even quasi-experimental, study of attorney representation. A more school-specific subject that appeared to warrant attention was the arbitration awards of teacher evaluation cases.

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