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May 2, 2014

National Academy of Arbitrators
NAA Operations Center, Ste. 412
1 N. Main Street
Cortland, NY 13045

To Whom It May Concern,

Please find enclosed a proposal submitted on behalf of Cornell University and Dr. Alexander Colvin for a project titled "Understanding the Professional Practices and Decision-Making of Employment Arbitrators" The Impact of Institutional Environments and Workplace Context." Cornell's proposed funding amount is \$27,000.00 for a period of performance from June 1, 2014 to May 31, 2015.

Cornell appreciates your consideration of this proposal. Should this proposal be selected for funding, Cornell reserves the right to negotiate an award with terms and conditions that are appropriate for an educational institution and consistent with its policies, in particular those governing intellectual property, confidentiality, and publication. Please send any award documents to my attention.

If you have any questions or need additional information, please contact me at 607.255.2943 or by email at thf3@cornell.edu.

Sincerely,

Thomas H. Frank, Ph.D.
Senior Grant and Contract Officer

Please refer to OSP# 73504 in any future correspondence.

Research Proposal

Understanding the Professional Practices and Decision-Making of Employment Arbitrators: The Impact of Institutional Environments and Workplace Context

Alexander J.S. Colvin
ILR School, Cornell University

Mark D. Gough
ILR School, Cornell University

Introduction

The rise of employment arbitration represents a major transformation in the landscape of American workplace dispute resolution. Although debates have been intense over the adoption of arbitration procedures covering statutory employment rights as mandatory terms and conditions of employment, such procedures are legally well established and an increasingly common feature of the American workplace, covering a quarter or more of all employees (Colvin, 2007; Lewin, 2008). Despite the growing prevalence of employment arbitration, there continues to be many features of this new institution about which we know relatively little. Existing research has mostly focused on the outcomes of arbitration, analyzing data on who wins cases and what damages are awarded.¹ However we know relatively little about the emerging profession of employment arbitrators and the process of arbitral decision-making in employment cases. Notable exceptions are research by Wheeler *et al* (2004) and Seeber and Lipsky (2006), which identified the importance of examining the role of employment arbitrators as decision-makers and as an emerging actor in the employment relations system. In this study we propose to take up the call suggested by those authors for additional research on employment arbitrators to better understand these important new actors in workplace dispute resolution. In doing so, we focus on two major issues: *What are the backgrounds and professional practices of employment arbitrators like? What factors influence the decision-making processes of employment arbitrators?*

The first part of our research project will focus on the question of who are employment arbitrators? As Seeber and Lipsky (2006) observed, employment arbitrators are a new set of actors who do not as yet have the characteristics of a well-developed, integrated profession, in contrast to the long-standing professional community of labor arbitrators. Research by Wheeler *et al* (2004) provided some initial empirical evidence about the characteristics of employment arbitrators and show differences in decision-making between employment arbitrators and other types of employment dispute decision-makers such as jurors, labor arbitrators or human resource managers. To date however, this initial work has not been extended to provide a more complete picture of the current state of the employment arbitrator profession. We propose to gather new

¹ For a detailed review of the literature, see Colvin (2007).

data to answer key questions about the characteristics of employment arbitrators and provide a picture of how the profession has evolved. *What are the professional backgrounds of employment arbitrators? What type of education or training do they have? What proportion are full-time neutrals versus part-time arbitrators? What proportion of their practices consists of employment arbitration compared to other types of disputes or mediation work?* We also plan to go beyond descriptive statistics and look at how these characteristics relate to the cases handled by employment arbitrators and their decision-making processes. *Are there advantages to having full-time professional neutrals serving as arbitrators? What is the impact of arbitrator training programs? What is the impact of varied employment and work histories?*

The second part of our research project will focus on the adjudicative decision-making processes of employment arbitrators. In particular, we are interested in the question of how the organizational and workplace context in which the case arose affects the decision-making of arbitrators. Labor arbitrators famously are experts on understanding and applying the law of the shop, taking into account the realities of the workplace context in providing a fair adjudication of a grievance pursuant to the collective bargaining agreement. By contrast, in employment arbitration the arbitrators are tasked with adjudicating cases involving claims of violation of statutory and common law rights. Yet, these employment law cases also arise in an organizational and workplace context that affects the origins and development of the dispute. We plan to investigate how the organizational and workplace context of the dispute affects employment arbitrator decision-making. *Put alternatively, rather than mechanically applying abstract statutory principles, are employment arbitrators also engaged in a process of reacting to the context of the dispute and developing a new version of the law of the shop?*

The main empirical research component of this project will be a survey of practicing employment arbitrators. As an initial step in the survey development process we will conduct a series of in-depth qualitative interviews with practicing employment arbitrators to focus our investigation, identify key issues for the survey, and further the development of our survey instrument. We then plan to use a mixed web and hard-copy mail based approach for administering our survey. This will build on the experience of the survey administration methods we used in a 2013 survey of plaintiff attorneys concerning their experiences with employment arbitration, which received 1258 responses at a strong response rate of 47%. We have already developed a list of arbitrator names to be surveyed consisting of all employment arbitrators who decided a case administered by either the American Arbitration Association or JAMS in the past two years. Based on our experience conducting a similar survey of plaintiff attorneys, we believe we will be able to complete this study of employment arbitrators during a 12 month timeframe.

Part 1: Understanding the Employment Arbitrator Profession

Employment arbitrators wield an awesome power to interpret statutory law determined at the local, state, and federal level, which until recently was the exclusive domain of public courts and administrative agencies. Yet despite the prevalence of employment arbitration, very little is known about the men and women who serve as arbitrators. Consequently, we intend to describe

basic characteristics of individual employment arbitrators and the developing profession as a whole. Indeed, this study will advance the field by shining a light on this emergent, but underexplored, profession and will allow for a better understanding of the contemporary dispute resolution environment.

Our survey responds to the needs described by Seeber and Lipsky (2006) and Wheeler *et al* (2004) in their own analyses of employment arbitrators. And while Seeber and Lipsky (2006) describe the rise of employment arbitration and provide valuable insights regarding whether employment arbitrators can be considered a profession, their analysis is frustrated by the dearth of data on arbitrators themselves. For example, when approaching the simple question of how many employment arbitrators practice full-time, Seeber and Lipsky (2006) respond with: “The number doing so must be very small and might even be zero. We know personally dozens of arbitrators and we do not know a single one that works full time as an employment arbitrator.”² A main goal of this proposal is to overcome such casual observation and provide solid empirical answers to these types of questions.

Wheeler *et al* (2004) have surveyed employment arbitrators directly and provide the only available independent statistics on employment arbitrators. However, only a small number of questions were asked in their survey³ and, equally significant, the authors provide no analysis concerning how these few characteristics affect arbitrator decision-making.⁴ Our proposed survey will provide a more thorough and broader understanding of employment arbitrator characteristics and use this general information to provide additional insights into the decision-making calculus of arbitrators.

Specifically, we are interested in the following aspects of the employment arbitrator profession: professional background and work histories (especially previous experience as a neutral and employer- or employee-side advocacy), alternative occupation(s), membership in professional associations/organizations, certificates and certifications received, ethical standards, and forum rules and procedures, among others. It strikes us as a major oversight that such a basic description is absent from the literature. Not only will this proposed project allow a glimpse into the development of a new profession, it will also provide much needed information for academic and public policy debates embroiling employment arbitration.

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³ The following six factors are an exhaustive list of arbitrator characteristics reported by Wheeler *et al* (2004): average length of service as an arbitrator, average number of cases heard, history as a labor arbitrator, history as a judge, history as an advocate, graduate degree held.

⁴ The main focus of the Wheeler *et al* (2004) analysis is on how decision-making varies *between* employment arbitrators, labor arbitrators, peer review panels and juries. The present study, however, is interested in how decision-making varies *within* the employment arbitrator profession.

Part 2: Employment Arbitrator Decision-Making: The Impact of the Institutional and Workplace Context of the Dispute

Traditional models of judicial decision making assert judges decide cases in predictable ways based on rigid adherence to the objective facts of a case, the black letter of the law, and judicial precedent (*stare decisis*) (Segal and Spaeth, 2002; Nielson et al, 2010; Edelman *et al*, 2011). In such a formal legal model, judges, or arbitrators, are a monolithic force that simply applies the relevant law to the facts presented without personal biases, interpretation, or regard to the economic, social, or organizational context. This formal legal model has long been viewed with skepticism and scholars have increasingly begun to develop more nuanced theories of judicial decision making (Scott and Shadoan, 1989; Spaeth and Segal, 1999; Steffensmeier and Herbert, 1999; Guthrie *et al*, 2007). In this study, we seek to contribute to advancing a similarly more nuanced perspective on the adjudicative process in the context of employment arbitration.

Legal sociologists posit that determination of whether there has been a violation of employment rights, such as workplace discrimination, is socially constructed through a process embedded in a larger organizational environment (Edelman *et al*, 1999; Hirsh and Kornrich, 2008). If there is a questionable employment action taken against an employee, it will not be perceived in a vacuum; rather, the action will be viewed in the context of the firm's overall workplace conditions. This analysis has been used to help understand the behavior of regulatory agents such as the EEOC and also the judiciary (Edelman, 1992; Edelman *et al*, 1999; Hirsh and Kornrich, 2008). Adopting this social construction perspective, it follows that employment arbitrators are likely to be influenced by the organizational environment of claims just as are judges and regulatory agents such as the EEOC. This is not to say that employment arbitrators fail to evaluate the merits of a cases; rather, various workplace policies and conditions can suggest non-discriminatory practices, legal compliance, and adherence to social norms, influencing whether an arbitrator finds a particular claim credible and convincing (Bisom-Rapp, 1999; Hirsch and Kornrich, 2008; Edelman, 1990, 1999; Sutton *et al* 1994, 1996).

This sociological view should be familiar to labor law and labor relations scholars, who have long acknowledged that conflict in the workplace does not come in prepackaged forms with automatic meanings and should be understood in light of the social relations of the workplace. Labor scholars understand the organizational environment may – and in fact should – affect judicial/arbitrator decision-making with regard to workplace disputes. The very idea that labor arbitrators are to recognize and develop the “common law of the shop” and disputes should be resolved with “reference to the practices of the particular industry and of the various shops covered by the agreement” not only sanctions, but encourages, arbitrators to incorporate into their decision-making process the institutional environments of claims.⁵

⁵ United Steelworkers of America v. Warrior and Gulf and Navigation Co., 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960)

Prior research suggests that factors such as the degree of formalization of personnel policies, the extent of gender and racial diversity at the workplace, and the presence of affirmative action plans and/or dispute resolution procedures may influence arbitrator valuation of cases. Because formalized personnel policies require adherence to published objective criteria, increased formalization should protect against illegal considerations, such as race or sex, in employment decisions (Pfeffer, 1977). The presence of formalized personnel policies should signal to arbitrators that workplace decisions are free from improper considerations, making them less likely to rule in favor of plaintiffs with employment discrimination claims. Similarly, gender and racial diversity throughout all levels of the firm may be interpreted as evidence of fair employment practices. This is, in fact, what Hirsh and Kornrich (2008) report with respect to EEOC officials and initial assessment of discrimination charges. Hirsh and Kornrich (2008) show that EEOC officials view the presence of affirmative action plans as evidence of employer compliance with EEO laws, regardless of the actual and gender racial composition of the workplace. There is no statutory requirement that employers establish internal dispute resolution programs. Yet Edelman (2002) reports that courts frequently cite the mere existence of internal dispute resolution channels as evidence against the inference of discrimination.

Employment discrimination laws and the arbitration forum provide a suitable context to explore these questions because they provide broad and often ambiguous principles that give decision makers discretion to help construct the meaning of compliance and discrimination (Edelman, 1992, Bison-Rapp, 1999). This will help advance the field in several ways. First, this exercise will complement our descriptions of basic characteristics of employment arbitrators by providing further insight into their decision-making process. On a theoretical level, as Hirsch and Kornrich (2008) originally noted, the primary focus of the literature has been on determinants of employee perceptions of disputes and propensity to file, the literature is comparatively mute on how (or if) the organizational environment affects assessments of claims by external agents. Lastly, the only two existing studies investigating the effects of organizational environments on adjudicator decision-making have noted the limitations of their methods and findings. While examining real world cases offers some advantages, it is often difficult or impossible to ascertain from a written decision the exact nature of the offense, the underlying merits of a case, quality of representation, or underlying logics and considerations that were never explicitly written down. As such, it is difficult to provide adequate controls and be confident in the measures used. Described in more detail in the proceeding section, our proposed methods will allow us to make strong casual claims that previous scholarship is unable to support.

Methods

To answer general questions about the professional characteristics, perceptions, and decision-making processes of employment arbitrators, we will conduct qualitative interviews with employment arbitrators followed by a survey to be administered via the internet and traditional mail. We have compiled a list of active employment arbitrators from the American Arbitration Association (AAA) and JAMS case reports. Together, these two provider agencies

are responsible for administering a majority, approximately 70%, of all employment arbitrations in the country.⁶

In total, we have relevant information for 868 unique arbitrators who are not only listed in the AAA and JAMS rosters, but have actively presided over at least one employment case conducted within the last two years. If required, we can expand the survey frame to include all employment arbitrators on the rosters to increase the number of responses. However, the response rate to a recent survey that we administered in Fall 2013 to practicing employment attorneys was 47%, whereas a survey administered in 2004 to employment arbitrators obtained a response rate of 22% (Wheeler *et al*, 2004). Using these as high and low estimates, respectively, we are confident we will have an adequate number of responses to produce valid results and identify robust statistical trends.

Preliminary qualitative interviews will be used to develop the content of the proposed survey, providing opportunities to refine existing and generate new lines of questioning. Specifically, we are interested in the following aspects of the employment arbitrator profession: professional background and work histories, alternative occupation(s), membership in professional associations/organizations, certificates and certifications received, ethical standards, and forum rules and procedures, among others.

With regard to testing the influence arbitrator characteristics and organizational and institutional variables have on assessments of employment discrimination claims,⁷ we propose a two-tiered approach consisting of (1) having arbitrators respond to hypothetical situations presented in a series of vignettes and (2) having arbitrators describe key characteristics of their most recent arbitration cases.

First, we propose developing hypothetical cases involving employment discrimination claims and asking practicing employment arbitrators to respond to questions related to their decision-making process and whether they would ultimately find in favor of the employee or employer. Valid concerns can certainly be raised as to whether, or in what degree, subjects' responses to hypotheticals accurately reflect how they would respond in reality; however, studies have shown that subjects are able to accurately anticipate how they would behave in response to hypothetical situations when they have had previous experience making similar decisions. In the case of employment arbitrators, the hypothetical cases will be carefully generated to present scenarios that are representative of typical cases presented before them.

⁶ We recently conducted a survey of employment plaintiffs' lawyers and, based on 1,258 responses, found that the American Arbitration Association was the administering organization in 50% of attorney respondents' most recent arbitration case and JAMS was named as the arbitration provider in 20% of cases. The remaining arbitrations were conducted Ad Hoc (i.e., no arbitration provider was used) or used a variety of smaller and local arbitration provider agencies.

⁷ We restrict our analysis to employment discrimination claims because they make up a majority of statutory employment arbitration cases (Colvin and Pike, 2014).

Specifically, we will present employment arbitrators with a series of brief vignettes describing hypothetical discrimination cases with random institutional/organizational manipulations. Arbitrators will be asked to respond to these randomly-manipulated cases with their perception of case merits, relevance of factors, the likelihood that they would rule in favor of the employee, and the content of their award, if any. These vignettes will contain manipulations on plaintiff characteristics (race/age/gender),⁸ employer size (75 employees/250 employees/ 6500 employees), employer formality (informal policies/formal policies), presence of internal conflict management systems (peer review/mediation/management review or appeals procedures/none), voluntary equal employment opportunity policies (Yes/No), and the racial and gender segregation of the workplace (high segregation/low segregation).

These responses to hypothetical cases will be used in conjunction with data collected on actual arbitration cases to complement our analysis. We will ask employment arbitrators to record key information relating to their most recent employment discrimination case. Specifically, we will ask arbitrators to indicate plaintiff characteristics such as occupation, salary, race, age, and gender; defendant characteristics such as size, presence of conflict management and equal employment opportunity policies; attorney involvement (i.e., pro se status); content of claim(s); underlying merits of claim(s); presence of due process (e.g., discovery); case disposition; and content of award, among others. To strike the appropriate balance between thoroughness and arbitrator confidentiality concerns, we will rely on our past experience with plaintiffs' attorneys and use the qualitative interviews to test arbitrators' comfort with this set of questions. Collecting data using these two methods will make our analysis more robust and our eventual conclusions more convincing.

Collectively, the various components of this survey will allow us to investigate the characteristics of the employment arbitrator profession and explore how these characteristics and the institutional environment of claims affect arbitrator decision-making.

Ethics Compliance

Our survey and qualitative interviews will be confidential. Only aggregate data analysis results will be reported, with no individual identifying information. To reduce confidentiality concerns, we will not ask for any identifying information about individual arbitration cases. To ensure ethics compliance, our research plan will be submitted to and reviewed through Cornell University's Office of Research Integrity and Assurance for approval before data collection begins.

⁸ While plaintiff characteristics are not related to the institutional or organizational context of a case, they will provide interesting insights into the phenomena being investigated.

Project Timeline

June-August 2014: Preliminary qualitative interviews with practicing employment arbitrators.

August-November 2014: Administration of survey.

November 2014-February 2015: Analysis of survey data.

February-May 2015: Drafting of final research report.

Project Expenses

Travel to conduct qualitative interviews and to present final report at NAA annual meetings.

-\$6,000

Survey administration, including printing and mailing

-\$12,000

Graduate assistant stipend (assistance with interviews and data analysis)

-\$6,000 (200 hours @ \$30/hr)

Undergraduate assistant stipend (survey data entry)

-\$3,000 (200 hours @ \$15/hr)

Total project expenses: \$27,000

Research Project Deliverables

We will produce three main products from the research project:

1. A final research report, written to be accessible to a general audience. To be delivered in May 2015. Our goal would be to have this report ready to be presented at the 2015 NAA annual meetings if invited by the Academy.

2. A law review article, designed to communicate the results of the study to a legal academic and practitioner audience. Targeted publication date in August 2015.

3. A peer-review article, targeted at an empirical journal, designed to provide a leading academic reference on this topic. In our past experience in this field, we found that when our study results have been referenced in Congressional hearings and court cases, one common initial objection was to question whether the research was published in a peer reviewed journal. Having past research published in a 2011 article in *Journal of Empirical Legal Studies* and planned publications in the *Industrial and Labor Relations Review*, leading peer-reviewed journals in the field, was important for getting it accepted in these forums. Our plan is to target producing a similar publication in 2015-16 from this proposed study.

Researcher Backgrounds

Full C.V.'s for the principal investigators, Prof. Alex Colvin and Mark Gough, are attached. In addition to our other past research work on employment arbitration, during 2012-13 we conducted a similar research project examining the experience of plaintiff attorneys with employment arbitration. Similar to this proposed study, that project involved administration of a web and mail based survey to a large national population of plaintiffs' attorneys. The survey was very successful, receiving 1262 responses for an overall response rate of 47%. In that survey we tested a number of survey questions and hypothetical case scenarios that we plan to draw on in this proposed research project. We delivered a research report based on that project and have two articles forthcoming in the *Berkeley Journal of Employment and Labor Law* that report findings from it. Our experience with conducting that research project enhances our confidence that we will also be able to execute this proposed project as planned.

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Curriculum Vitae
Alexander J.S. Colvin

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ACADEMIC EMPLOYMENT

- 2013-present: Martin F. Scheinman Professor of Conflict Resolution, ILR School, Cornell University.
- 2011-present: Associate Editor, *Industrial and Labor Relations Review*.
- 2009-2013: Chair, Department of Labor Relations, Law, and History, ILR School, Cornell University.
- 2012-present: Professor of Labor Relations and Conflict Resolution, ILR School, Cornell University.
- 2008-2012: Associate Professor of Labor Relations and Conflict Resolution, ILR School, Cornell University.
- 2005-2008: Associate Professor, Department of Labor Studies and Employment Relations, The Pennsylvania State University.
- 1999-2005: Assistant Professor, Department of Labor Studies and Industrial Relations, The Pennsylvania State University.

EDUCATION

- Ph.D., 1999 School of Industrial & Labor Relations, Cornell University, Ithaca, N.Y., U.S.A. Dissertation: *Citizens and Citadels: Dispute Resolution and the Governance of Employment Relations*.
- M.I.R., 1995 Centre for Industrial Relations, University of Toronto, Toronto, Ontario, Canada.
- J.D., 1992 Faculty of Law, University of Toronto, Toronto, Ontario, Canada.
- B.Sc., 1989 Department of Physics, University of Toronto, Toronto, Ontario, Canada.

MAJOR AWARDS

Industrial Relations Research Association (IRRA) Outstanding Young Scholar Award, 2003.

Industrial Relations Research Association (IRRA) Best Dissertation Award, 2000.

RESEARCH AREAS OF INTEREST

My research has primarily focused on employment dispute resolution procedures, with a particular emphasis on the adoption, use and impact of procedures in nonunion workplaces. I have a strong interest in the relationship between the legal environment and employment relations in organizations. I use a range of methods in my research including: organizational level surveys; case studies; industry studies; comparative cross-national research; and empirical legal research methods. Additional areas that I have examined in my research include: employee turnover; manager-work pay differences; and employee-organization alignment.

BOOKS

Katz, Harry C., Thomas A. Kochan and Alexander J.S. Colvin. *Labor Relations in a Global World: An Introduction Focused on Emerging Countries*, forthcoming. ILR Press.

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*Batt, Rosemary, Alex Colvin, Harry Katz, Jeffrey Keefe. 2004. *Telecommunications 2004: Strategy, HR Practices & Performance*, Research report to the Alfred P. Sloan Foundation.

Colvin, Alexander J.S. 2003. "The Dual Transformation of Workplace Dispute Resolution." *Industrial Relations*, Vol. 42, No. 4, pp. 712-35.

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Colvin, Alexander J.S., and Katherine Van Wezel Stone. 2002. "Das amerikanische Arbeitsrecht aus der Perspektive historische und zukunfziger Entwicklungen." ["Looking Forward and Backward at American Labor Law"] *WSI-Mitteilungen*, Vol. 10/2002, 608-615.

Batt, Rosemary, Alexander J.S. Colvin, and Jeffrey H. Keefe. 2002. "Employee Voice, Human Resource Practices, and Quit Rates: Evidence from the Telecommunications Industry." *Industrial and Labor Relations Review*, Vol. 55, No. 4, pp. 573-94.

Colvin, Alexander J.S., Rosemary Batt, and Harry C. Katz. 2001. "How Human Resource Practices and Industrial Relations Institutions Affect Managerial Pay." *Personnel Psychology*, Vol. 54, pp. 903-34.

Colvin, Alexander. 2001. "Gerechtigkeit ohne Gewerkschaft und Betriebsrat? Konfliktschlichtung in gewerkschaftsfreien Betrieben in den USA." *WSI-Mitteilungen*, Vol. 12/2001, 743-49.

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Colvin, Alexander. 2001. "The Relationship between Employment Arbitration and Workplace Dispute Resolution Procedures." *Ohio State Journal on Dispute Resolution*, Vol. 16, No. 3, pp. 643-668. [Reprinted as: Colvin, Alexander. 2001. "The Relationship between Employment Arbitration and Workplace Dispute Resolution Procedures.", pp. 587-615 in Samuel Estreicher and David Sherwyn, editors. 2004. *Alternative Dispute Resolution in the Employment Arena: Proceedings of New York University 53rd Annual Conference on Labor*. The Hague, NL: Kluwer Law International.]

*Batt, Rosemary, Alex Colvin, Harry Katz, Jeffrey Keefe. 2000. *Telecommunications 2000: Strategy, HR Practices & Performance*, Research report to the Alfred P. Sloan Foundation.

Colvin, Alexander. 1998. "Rethinking Bargaining Unit Determination: Labor Law and the

Structure of Collective Representation in a Changing Workplace.” *Hofstra Labor & Employment Law Journal*, Vol. 15:2, pp. 419-90.

WORK IN PROGRESS

Colvin, Alexander J.S. and Mark Gough. “Individual Employment Rights Arbitration in the United States: Actors and Outcomes.” Under review.

Colvin, Alexander J.S. “Employment Arbitration and Inequality in Justice.”

COURSES TAUGHT

Cornell University (2008-present)

ILRLR 2050: Collective Bargaining – SP09, FA09, SP12, FA12, FA13

ILRLR 6012: Managing and Resolving Conflict – SP09, SP11, FA11, SP13

ILRIC 6333: Comparative Labor and Employment Law – SP10, FA10, FA13

ILRLR 7070: Seminar on Dispute Resolution – FA08, SP11, FA13

ILRLR 7090: Labor and Employment Law Policy Seminar – SP12

Penn State University (1999-2008)

Undergraduate:

Industrial Relations

Employment Law

Alternative Dispute Resolution

The Workplace of the 21st Century (Freshman seminar)

Graduate:

Industrial Relations

Employment and Labor Law

Human Resource Management

Research Methods (data analysis)

PROFESSIONAL and UNIVERSITY SERVICE

Professional Service:

2013-present Labor and Employment Relations Association Board Member.

2011-2013 Coordinator, Work and Employment Relations (WER) Network interest section, Labor and Employment Relations Association.

2010-2012 Nominating Committee member, Labor and Employment Relations Association.

2010-2014 Awards Committee member, Labor and Employment Relations Association.
2003-07 Finance and Membership Committee member, Labor and Employment Relations Association.

Cornell University:

2013-present Member, FACTA committee (University level tenure reviews).
2011-present Member, University Financial Conflicts of Interest (fCOI) committee.
2009-2013 Chair, Department of Collective Bargaining, Labor Law, and Labor History
2010-11 Co-Chair, Committee to Review the ILR Review
2010-present Member, ILR Graduate Committee
2009, 2010 Chair, Search Committee for Tenure Track Faculty Position in Collective Bargaining
2009 Member, ILR Student Services Task Force

Penn State University:

2002-07 Undergraduate Program Officer, Department of Labor Studies and Industrial Relations, Pennsylvania State University
2000-02 Undergraduate Committee member, Department of Labor Studies and Industrial Relations, Pennsylvania State University
1999-2000 & 2002-07 Graduate Committee member, Department of Labor Studies and Industrial Relations, Pennsylvania State University
2001 & 2004 Strategic Planning Committee member, Department of Labor Studies and Industrial Relations, Pennsylvania State University

PROFESSIONAL AFFILIATIONS

Labor and Employment Relations Association
Canadian Industrial Relations Association
Academy of Management
Industry Studies Association

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EDUCATION

Ph.D., 2010 - 2015 (<i>anticipated</i>)	School of Industrial and Labor Relations, Cornell University, Ithaca, NY. <u>Dissertation</u> : “Employment Rights Enforcement: Forums, Actors and Outcomes” Committee: Alexander Colvin (Chair, Labor Relations), Harry Katz (International and Comparative Employment Relations), Stewart Schwab (Outside Member, Law)
M.S., 2006 - 2008	Department of Labor Studies and Employment Relations, The Pennsylvania State University, University Park, PA.
B.A., 2004 - 2008	Department of Labor Studies and Employment Relations, The Pennsylvania State University, University Park, PA.
B.A., 2004 - 2008	Department of Economics, The Pennsylvania State University, University Park, PA.

WORK HISTORY

Consultant, 2008 - 2010	Bates White, LLC – Labor/Employment and Product Liability Practices <ul style="list-style-type: none">• Researched corporate and labor histories to quantify asbestos liability• Maintained large (over one million observations) database of asbestos claims and claimants using SQL, STATA, and Python coding languages
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AREAS OF SPECIALIZATION

Employment and Labor Law, Alternative Dispute Resolution and Negotiations, Conflict Management Systems, Collective Bargaining

ADDITIONAL RESEARCH & TEACHING INTEREST

Empirical Legal Studies, Research Methods, Labor Economics, International and Comparative Industrial Relations

PUBLICATIONS

(*signifies alphabetical authorship)

- *Colvin, Alex and **Mark Gough**. 2014. "Individual Employment Rights Arbitration in the U.S.: Actors and Outcomes." *Industrial and Labor Relations Review*. (Revise and Resubmit)
- Gough, Mark**. 2014. "The High Costs of an Inexpensive Forum: An Empirical Analysis of Employment Discrimination Claims Heard in Arbitration and Civil Litigation." *Berkeley Journal of Employment and Labor Law*, forthcoming Summer 2014.
- Gough, Mark**. 2013. "Mainstreaming Creative Conflict Resolution: The Growth and Controversy of Employment Arbitration." Association for Conflict Resolution of Greater New York, New York, NY.
- Shapiro, David, **Mark Gough**, and Roger Pongi. 2011. "Gender, Education, and the Labour Market in Kinshasa." *African Population Studies*, Vol. 25, No. 2, pp. 487-508.
- Branch, Rapheal, James Buszuwski, Albert E. Schwenk, and **Mark Gough**. 2008. "Transitional Employment Cost Indexes for Seasonal Adjustment." *Monthly Labor Review*, April 2008, pp. 25-39.

WORKS IN PROGRESS

- "Employment Disputes in Arbitration and Civil Courts: A Tale of Two Forums." *Analysis Stage*.
- "Employment Plaintiff Attorneys: Neglected Actors in U.S. Industrial Relations." *Analysis Stage*.
- "Employment Plaintiff Attorney Case Selection: Moderating Effects of Workplace Conditions and Institutional Environments." *Analysis Stage*.

CONFERENCE PRESENTATIONS

- Gough, Mark**. "Empirical Analysis of Employment Discrimination Claims in Arbitration and Civil Litigation" Presentation at the 10th Annual Inter-University Graduate Conference. Cornell Law School, Ithaca, NY. April 2014.
- Gough, Mark**. "Putting Employment Arbitration Policy in Perspective: Why American Courts Should Learn From Europe" Presentation at Marco Biagi Conference, Modena, Italy. March 2014.

Gough, Mark. "Diluted Justice: An Empirical Assessment of Pre-dispute Mandatory Employment Arbitration." Presentation at symposium of Berkeley Journal of Employment and Labor Law. Berkeley School of Law, Berkeley, CA. February 2014.

Gough, Mark, and Alex Colvin. "Individual Employment Rights Arbitration in the U.S.: Actors and Outcomes." Presented at the 6th Annual People and Organizations Conference (Roundtable). Wharton School of Business, Philadelphia, PA. October 2013.

Gough, Mark, and Manfred Elfstrom. "Conflict and Conflict Resolution: New Trends and Actors." Presented at the Labor and Employment Relations Association 15th Annual PhD Student Consortium, St. Louis, MO. June 2013.

Gough, Mark. "Mainstreaming Creative Conflict Resolution: The Growth and Controversy of Employment Arbitration." Presented at the Association for Conflict Resolution of Greater New York, Benjamin N. Cardozo School of Law, New York, NY. June 2013.

Gough, Mark. "Employment Disputes in Arbitration and Civil Courts: A Tale of Two Forums." Presented at the 2nd Spring School of the German Industrial Relations Association. Freie University, Berlin, Germany. March 2013.

Colvin, Alex, and **Mark Gough**. "Individual Employment Rights Arbitration in the U.S.: Actors and Outcomes." Presented at the International Labor and Employment Relations Association, Philadelphia, PA. July 2012.

AWARDS, GRANTS, & FELLOWSHIPS

2014 LERA Student Paper Competition First Prize Winner (\$300)	2014
Center for Teaching Excellence (CTE) Graduate Teaching Assistant Fellowship, Cornell University (\$2,000)	2011-2013
Association for Conflict Resolution of Greater NY (ACR-GNY) Graduate Student Paper Competition First Prize Winner (\$250)	2013
ILR Travel Grant, Cornell University (\$500)	2012-2013
College Marshall for the College of Liberal Arts, Pennsylvania State University (selected as top student among the 27 departments comprising the College of Liberal Arts)	2008
College Marshall for Department of Economics, Pennsylvania State University	2008
College Marshall for the Department of Labor and Employment Relations, Pennsylvania State University	2008
Arlene Smith Educational Enhancement Endowment, Pennsylvania State University (Full tuition and stipend)	2008
Fulbright Finalist, English Teaching Assistantship in Thailand	2008
Evan Pugh Award, Pennsylvania State University (Given to the top .5 percent of Junior/Senior class)	2007-2008
John Shultz, Sr. Graduate Fellowship in Labor Studies, Pennsylvania State University (Full tuition and stipend)	2007

RESEARCH GRANTS ASSISTED

"Case Selection Procedures of Employment Plaintiff Attorneys." (Principal Investigator: Alexander Colvin). American Association for Justice. Awarded: \$43,060. March 2012.

RESEARCH EXPERIENCE

Cornell University, School of Industrial and Labor Relations Fall 2010, Summer 2010-2013
Research Assistant to Professor Alexander Colvin

Cornell University, School of Law Summer 2012
Research Assistant to Dean Stewart Schwab

Cornell University, School of Industrial and Labor Relations Spring 2012
Research Assistant to Professor Kate Griffith

TEACHING EXPERIENCE

Cornell University, School of Industrial and Labor Relations Spring 2011-Fall 2014
Teaching Assistant
Introduction to Collective Bargaining (Undergraduate Level)

Cornell University, Center for Teaching Excellence Fall 2011-Spring 2013
Graduate Teaching Assistant Fellow
Various Teaching-Centered Workshops (Graduate Level)

AFFILIATIONS

Labor and Employment Relations Association
The Association for Conflict Resolution of Greater New York
National Employment Lawyers Association
Industry Studies Association

PROFESSIONAL REFERENCES

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