

## CHAPTER 7

### OTHER ARBITRAL ISSUES

#### I. THE PREDICTABILITY OF GRIEVANCE ARBITRATION AWARDS: DOES ARBITRATOR EXPERIENCE MATTER?

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There is a considerable body of evidence showing that labor and management exhibit a strong preference for experienced, rather than inexperienced, arbitrators in grievance disputes. At the same time, however, some studies have shown that arbitration awards do not seem to vary according to the experience of the arbitrators.

The purpose of this study is to investigate more deeply the nature of the preference given to experience as a factor in arbitrator selection. Specifically, we seek to ascertain whether there are differences in the awards expected by labor and management in cases decided by inexperienced arbitrators and, if so, in what ways these awards are expected to differ from those handed down by experienced arbitrators. For the purpose of analyzing these questions, we used a sample of 232 labor and management representatives and asked them to predict the arbitrators' awards for a number of common arbitral cases. With respect to the sample size and the number of cases analyzed, we believe that this study is the largest undertaken on the subject.

#### **Prior Research**

As noted above, studies of the acceptability of arbitrators to labor and management have consistently found that previous

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experience is a significant factor in arbitrator selection. In a series of 35 interviews in 1967, Eaton discovered a general preference among the parties for "expert" arbitrators.<sup>1</sup> Similarly, based on a sample of 34 union and management representatives in 1971, King found that both sides expressed more favorable attitudes toward experienced arbitrators than toward their inexperienced counterparts.<sup>2</sup> The resistance to inexperienced arbitrators was much higher among the management representatives, however.

In a multiple regression analysis, Primeaux and Brannen found that the number of cases which their sample of 104 arbitrators handled in a given period was strongly and significantly related to their past experience—the implication again being that labor and management exhibit a marked preference for experienced arbitrators.<sup>3</sup> On the basis of interviews with 26 labor and management representatives, Rezler and Petersen discovered that experience was the most highly rated criterion considered in the selection of arbitrators.<sup>4</sup> Briggs and Anderson's survey of arbitrators found that visibility characteristics, such as number of awards published, were significantly related to acceptability, as measured by current caseload.<sup>5</sup>

From a subsequent survey of 36 labor and management representatives, Lawson also deduced that arbitral experience was an important factor in the arbitral selection process.<sup>6</sup> More recently, Nelson surveyed a group of 74 labor and management representatives and found that arbitrator experience received the highest ranking among the criteria used to select arbitrators.<sup>7</sup> The preference for experience was particularly strong within the management group. Most recently, the role of arbitral experience in the selection process was put in question by Berkeley's study, but his results are not presented fully enough to make an informed determination.<sup>8</sup>

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<sup>1</sup>Eaton, *Labor Arbitration in the San Francisco Area*, 48 LA 1381 (1967).

<sup>2</sup>King, *Management and Union Attitudes Affecting the Employment of Inexperienced Labor Arbitrators*, 48 Lab. L.J. 23 (1971).

<sup>3</sup>Primeaux & Brannen, *Why Few Arbitrators Are Deemed Acceptable*, 98 Monthly Lab. Rev. 27 (1975).

<sup>4</sup>Rezler & Petersen, *Strategies of Arbitrator Selection*, 70 LA 1307 (1978).

<sup>5</sup>Briggs & Anderson, *An Empirical Investigation of Arbitrator Acceptability*, 19 Indus. Rel. 163 (1980).

<sup>6</sup>Lawson, *Arbitrator Acceptability: Factors Affecting Selection*, 36 Arb. J. 22 (1981).

<sup>7</sup>Nelson, *The Selection of Arbitrators*, 37 Lab. L.J. 703 (1986).

<sup>8</sup>Berkeley, *Arbitrators and Advocates: The Consumers Report*, in *Arbitration 1988: Emerging Issues for the 1990s*, Proceedings of the 41st Annual Meeting, National Academy of Arbitrators, ed. Gladys W. Gruenberg (Washington: BNA Books 1989), 300-301. He

Why does there exist such a strong preference for experienced arbitrators? The evidence here is mixed, but King observed that the decisions of inexperienced arbitrators were often considered to be "unpredictable."<sup>9</sup> Further, his observation that management representatives were particularly resistant to inexperienced arbitrators<sup>10</sup> was borne out by Nelson's finding that inexperienced arbitrators were more likely to reinstate the grievant, at least in the single hypothetical discharge case which he tested on his sample of arbitrators.<sup>11</sup> Primeaux and Brannen have argued that management and labor perceive experienced arbitrators as more likely to be "fair" in their awards.<sup>12</sup> Whatever the reasons, the preference for experience exists and is quite strong.

But does arbitrator experience really make a difference in actual award outcomes? Empirical research on this question has put the efficacy of the experience criterion somewhat in doubt. For example, in his early study of discharge cases, Teele noted that "busy" and "less busy" arbitrators were remarkably similar in terms of the bases for their awards.<sup>13</sup> In his widely cited "experiment" in 1965, Fleming observed that 75 percent of his law students came to the same decisions as experienced arbitrators, a finding which led Fleming to conclude that experience in arbitration does not necessarily make a difference in the award granted.<sup>14</sup> In another interesting experiment, Westerkamp and Miller found that attorneys could not distinguish the decisions of experienced arbitrators from those of the inexperienced.<sup>15</sup> More recently, Heneman and Sandver found that experience-related variables, such as membership in the National Academy of Arbitrators and previous experience as a labor or management employee, were not significantly related to

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found that prearbitration background was the most important characteristic and that NAA membership was relatively unimportant. However, he did not report the specific results for most of the variables, including number of awards issued.

Although our focus is grievance arbitration, similar findings have been obtained in studies of interest arbitration. See, e.g., Bloom & Cavanagh, *An Analysis of the Selection of Arbitrators*, 86 Am. Econ. Rev. 408 (1986).

<sup>9</sup>*Supra* note 2 at 27.

<sup>10</sup>*Id.* at 25-26.

<sup>11</sup>*Supra* note 7 at 707.

<sup>12</sup>*Supra* note 3 at 30.

<sup>13</sup>Teele, *The Thought Processes of the Arbitrator*, 17 Arb. J. 85 (1962).

<sup>14</sup>Fleming, *The Labor Arbitration Process* (Urbana: Univ. of Ill. Press, 1965), 81. In a second experiment, Fleming found that two attorney assistants without any arbitration experience reached the same result as he, based on the same case materials. *Id.* at 86.

<sup>15</sup>Westerkamp & Miller, *The Acceptability of Inexperienced Arbitrators: An Experiment*, 22 Lab. L.J. 763 (1971).

award outcome.<sup>16</sup> And most recently, Thornton and Zirkel found that the decisions of grievance arbitrators did not seem to be significantly related to the experience of arbitrators.<sup>17</sup>

In the sections that follow, we delve more deeply into the nature of this apparent preference for experience. Given that experienced arbitrators are preferred even though the actual decisions do not appear to be a function of experience, just what are the perceptions of labor and management? Do they expect different awards from experienced versus inexperienced arbitrators? Does management, for example, see inexperienced arbitrators as more inclined to uphold a grievant's case, as Nelson's limited evidence suggests? Or does the preference simply reflect a feeling that the awards of inexperienced arbitrators tend to be more "unpredictable"? Finally, do there seem to be differences between labor and management in their perceptions of either the inclinations or the unpredictability of inexperienced arbitrators?

### Method

For the purpose of analyzing the questions above, the authors gathered a random sample of 200 labor and 200 management representatives from the active national records of the American Arbitration Association. Each of the representatives was sent a questionnaire and was asked to predict the arbitrator's award for a number of common arbitral cases.

The survey instrument provided two grievance arbitration scenarios, each with two additional factual variations.<sup>18</sup> Each scenario was approximately 300 words in length and consisted of the facts of an actual case. The two factual variations of each scenario were constructed by adding two material facts—one in the grievant's favor and one in the company's favor.

The first scenario was a just cause dismissal case based on excessive absenteeism. The company had a no-fault attendance

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<sup>16</sup>Heneman & Sandver, *Arbitrators' Background and Behavior*, 4 J. Lab. Res. 115 (1983).

<sup>17</sup>Thornton & Zirkel, *The Consistency and Predictability of Grievance Arbitration Awards*, 43 *Indus. & Lab. Rel. Rev.* 294 (Jan. 1990).

Further, providing peripheral support was a study reporting that members of the NAA tended to be notably more experienced than nonmembers but which found no evidence that their awards would differ from those of nonmembers. Sprehe & Small, *Members and Nonmembers of the National Academy of Arbitrators: Do They Differ?* 39 *Arb. J.* 25 (1984).

<sup>18</sup>The survey instrument contained the same six case situations used in the companion study by Thornton & Zirkel, *supra* note 17.

policy that had been only recently enforced, resulting in the grievant being progressively disciplined. After several months of satisfactory attendance, the grievant called in sick. However, he was reportedly seen at a local bar, resulting in his termination. Based on Scott and Taylor's study,<sup>19</sup> the following two alternative factual variations of the first scenario were then presented:

- the fact that the company had not conducted an impartial investigation prior to the employee's dismissal;
- the fact that the company had been consistently strict for the past several years in enforcing its attendance policy.

The second scenario was a contract interpretation case based on modified seniority. The grievant had applied for a promotion to a posted position, but an outside applicant with considerably more experience and training was selected for the job. The contract put a priority on company seniority for applicants deemed to be qualified by a management committee and was ambiguous as to whether a trial period was required. Based on the work of Elkouri and Elkouri,<sup>20</sup> the two alternative factual variations for this scenario were:

- the fact that the contract contained a nondiscrimination clause and the grievant was a member of a minority group;
- the fact that the contract clearly required a trial period for qualified applicants.

All in all, the two scenarios, each with two factual variations, resulted in a total of six cases for the survey instrument.

The 200 labor representatives and 200 management representatives to whom the instrument was sent were divided beforehand into two equal subsamples. The members of one subsample were asked to predict the awards which they would expect for each of the above six cases from a "relatively experienced" arbitrator. "Relatively experienced" was defined to characterize "an arbitrator who had decided at least 20 cases this past year and at least 100 cases in his/her career." This definition was largely based on the previous research discussed in the prior section. The members of the other subsample were asked to predict the awards which they would expect for each of the six

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<sup>19</sup>Scott & Taylor, *An Analysis of Absenteeism Cases Taken to Arbitration: 1975-1981*, 38 Arb. J. 61 (1983).

<sup>20</sup>Elkouri & Elkouri, *How Arbitration Works*, 4th ed. (Washington: BNA Books, 1985), 625-628 and 643-645.

cases from a "relatively inexperienced" arbitrator, with "relatively inexperienced" having the obverse definition.

After first being field tested on nine respected members of the labor-management community, the survey instrument was mailed to the 200 labor and 200 management representatives. The instrument was accompanied by an American Arbitration Association cover letter that referred to the purpose of the study as "part of our efforts to understand and improve the profession of arbitration." This unobtrusiveness, along with an accompanying promise of confidentiality, was provided to minimize effects relating to social desirability. Two follow-up mailings were sent to initial nonrespondents. Usable responses were obtained from 232 (58 percent) of those to whom the instrument was sent—108 from the labor group and 124 from the management group.

### Results and Discussion

Table 1 presents information on the distributions of the expected awards for the full sample of 232 respondents. Of the sample, 109 respondents had been presented with the "inexperienced arbitrator" assumption, and 123 with the "experienced arbitrator" assumption. The table is broken down in the following fashion. The columns represent the six case variations discussed earlier—the two principal scenarios and the two factual variations of each scenario. The rows contain the distribution of awards which the respondents predicted would be made by the arbitrator. The three possibilities for the awards were: 1) expect grievance to be upheld, 2) expect grievance to be partially upheld and partially denied (split award), and 3) expect grievance to be denied. Each major row grouping thus compares the distribution of awards expected from an inexperienced arbitrator versus the distribution of awards expected from an experienced arbitrator. For example, in the original grievance involving just cause dismissal, 12.0 percent of those respondents asked to predict how an inexperienced arbitrator would rule expected the grievance to be upheld, while only 6.5 percent of those respondents predicting how an experienced arbitrator would rule expected the grievance to be upheld. The layout of the table makes it easy to compare the expected awards for the six cases by assumed arbitrator experience level.

First of all, it can be seen from Table 1 that there is a fairly substantial degree of variability—i.e., unpredictability—in the

**Table 1**  
**Distribution of Awards Expected from Inexperienced Versus Experienced Arbitrators, Full Sample (n = 232)\***

	<i>Original Just Cause Scenario</i>	<i>No-Impartial- Investigation Variant</i>	<i>Strict Adherence- to-Policy Variant</i>	<i>Original Contract- Interpretation Scenario</i>	<i>Minority- Group Variant</i>	<i>Trial Period Variant</i>
Percentage Expecting Grievance to be Upheld by:						
Inexperienced Arbitrator	12.0	23.9	12.8	55.1	57.8	69.7
Experienced Arbitrator	6.5	22.0	12.2	52.0	54.5	78.1
Percentage Expecting Split Award from:						
Inexperienced Arbitrator	63.9	55.0	28.4	11.9	12.8	11.0
Experienced Arbitrator	68.3	55.3	23.6	8.1	8.9	7.3
Percentage Expecting Grievance to be Denied by:						
Inexperienced Arbitrator	24.1	21.1	58.7	33.0	29.4	11.3
Experienced Arbitrator	25.2	22.8	64.2	39.8	36.6	14.6
	$\chi^2 = 2.14$ (p = 0.34)	$\chi^2 = 0.16$ (p = 0.92)	$\chi^2 = 0.83$ (p = 0.66)	$\chi^2 = 1.67$ (p = 0.43)	$\chi^2 = 1.84$ (p = 0.40)	$\chi^2 = 2.15$ (p = 0.34)

\*The values in the table in any one column represent the percentages of respondents in the respective assumed arbitrator-experience categories expecting the various award outcomes.

awards expected for both assumed levels of experience. Since the data are nominal data, conventional measures of dispersion (such as the standard deviation) are inappropriate. However, a simple, yet satisfactory, indicator of the degree of dispersion is the percentage of responses differing from the modal response. In each of the six cases, an award other than the modal award was expected by from 25 to 50 percent of the respondents. In other words, the arbitral awards for these cases exhibit a large element of unpredictability. But the important point here is that the degree of unpredictability of the awards is unrelated to the assumed experience level of the arbitrator. On average, about 40 percent of the respondents expected an award other than the modal award to be given by an unexperienced arbitrator, while about 38 percent expected an award other than the modal award from an experienced arbitrator. King's claim<sup>21</sup> that experienced arbitrators are preferred because their decisions are more "predictable" is not strongly supported by the evidence which we see here.

However, it can be inferred from the first four rows of the table that the inexperienced arbitrator was perceived as more likely either to uphold the grievance or to split the award than the experienced arbitrator. This was so for five of the six cases, the sole exception being the trial period variant of the contract interpretation case. This finding, of course, is consistent with that of Nelson,<sup>22</sup> who saw inexperienced arbitrators as more likely to reinstate the grievant. However, it should be noted that the differences are in most cases fairly small. And as the  $X^2$  values at the bottom of each column indicate, the award distributions do not differ significantly by assumed experience at conventional significance levels.

We next analyzed the expected award distributions separately for the labor and the management representatives. This was done to see whether any of the differences in the expected awards could be attributed to the orientation of the respondents. In Table 2, we have listed the award distributions predicted by the labor representatives. As in the case of the full sample, there is a considerable degree of variability in the awards expected, with again from 25 to 50 percent of the respondents expecting an award other than the modal award. However, the awards

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<sup>21</sup>*Supra* note 9.

<sup>22</sup>*Supra* note 11.

**Table 2**  
**Distribution of Awards Expected from Inexperienced Versus Experienced Arbitrators, Labor Representatives Only (n = 108)\***

	<i>Original Just Cause Scenario</i>	<i>No-Impartial- Investigation Variant</i>	<i>Strict Adherence- to-Policy Variant</i>	<i>Original Contract- Interpretation Scenario</i>	<i>Minority- Group Variant</i>	<i>Trial Period Variant</i>
Percentage Expecting Grievance to be Upheld by:						
Inexperienced Arbitrator	10.0	28.0	8.0	60.0	66.0	76.0
Experienced Arbitrator	12.1	36.2	8.6	62.1	65.5	84.5
Percentage Expecting Split Award from:						
Inexperienced Arbitrator	68.0	54.0	28.0	16.0	16.0	10.0
Experienced Arbitrator	63.8	44.8	29.3	3.4	5.2	8.6
Percentage Expecting Grievance to be Denied by:						
Inexperienced Arbitrator	22.0	18.0	64.0	24.0	18.0	14.0
Experienced Arbitrator	24.1	19.0	62.1	34.5	29.3	6.9
	$\chi^2 = 0.23$ (p = 0.89)	$\chi^2 = 1.03$ (p = 0.60)	$\chi^2 = 0.04$ (p = 0.98)	$\chi^2 = 5.58$ (p = 0.06)	$\chi^2 = 4.52$ (p = 0.10)	$\chi^2 = 1.63$ (p = 0.44)

\*The values in the table in any one column represent the percentages of respondents in the respective assumed arbitrator-experience categories expecting the various award outcomes.

expected from an inexperienced arbitrator were no more "unpredictable" than those expected from an experienced arbitrator.

Interestingly, as an examination of the table will show, there is no strong indication of a perceived "leaning" of experienced arbitrators toward upholding the grievance. It is true that in five of the six cases the labor representatives expected an experienced arbitrator to be more likely to uphold the grievance than an inexperienced arbitrator. Conversely, in four of the six cases the labor representatives also expected a slightly higher percentage of experienced arbitrators to deny the grievance. Generally the difference was not substantial, however; and in most cases again the  $X^2$  values indicate that the expected award distributions do not differ significantly by assumed experience level.

Table 3 shows the award distributions expected by the subsample of management representatives. Here the results are particularly interesting. First, the same substantial degree of award unpredictability is evident on the part of management. However, in five of the six cases the management respondents expected the inexperienced arbitrator to be more likely to uphold the grievance than the experienced arbitrator. In several cases (particularly the original just cause scenario) the difference is quite substantial. Conversely, in five of the six cases the experienced arbitrator was seen by management representatives as more likely to deny the grievance. However, only once do the distributions of expected awards differ significantly by assumed experience level ( $p = .03$  for the original just cause scenario).

Taken together, Tables 2 and 3 reveal that the expectations of labor and management with respect to arbitral awards are somewhat dissimilar. The labor representatives perceived only limited differences between experienced and inexperienced arbitrators with respect to the tendency to uphold or deny a grievance. However, management representatives saw experienced arbitrators as less likely to uphold a grievance and more likely to deny it. Although the differences are for the most part not statistically significant, the pattern that shows management representatives expecting a more favorable award from experienced arbitrators for most of the cases is still striking. Since arbitration awards do not in fact seem to vary according to the experience of the arbitrators, our results suggest that the preference for experience may be due to a mistaken perception, at least on the part of management. In any case, our findings square

**Table 3**  
**Distribution of Awards Expected from Inexperienced Versus Experienced Arbitrators,<sup>1</sup> Management Representatives Only (n = 124)**

	<i>Original Just Cause Scenario</i>	<i>No-Impartial- Investigation Variant</i>	<i>Strict Adherence- to-Policy Variant</i>	<i>Original Contract- Interpretation Scenario</i>	<i>Minority- Group Variant</i>	<i>Trial Period Variant</i>
Percentage Expecting Grievance to be Upheld by:						
Inexperienced Arbitrator	13.8	20.3	17.0	50.9	50.9	66.4
Experienced Arbitrator	1.5	9.2	15.4	43.1	44.6	72.3
Percentage Expecting Split Award from:						
Inexperienced Arbitrator	60.3	55.9	28.8	8.5	10.2	11.9
Experienced Arbitrator	72.3	64.6	18.5	12.3	12.3	6.2
Percentage Expecting Grievance to be Denied by:						
Inexperienced Arbitrator	25.9	23.7	54.2	40.7	39.0	23.7
Experienced Arbitrator	26.2	26.2	66.2	44.6	43.1	21.5
	$\chi^2 = 6.95$ (p = 0.03)	$\chi^2 = 3.09$ (p = 0.21)	$\chi^2 = 2.19$ (p = 0.34)	$\chi^2 = 0.95$ (p = 0.62)	$\chi^2 = 0.50$ (p = 0.78)	$\chi^2 = 1.48$ (p = 0.48)

<sup>1</sup>The values in the table in any one column represent the percentages of respondents in the respective assumed arbitrator-experience categories expecting the various award outcomes.

nicely with King's earlier observation<sup>23</sup> that the resistance to inexperienced arbitrators was higher among management than among union representatives. Our findings also at least partially overlap with those of Nelson, who found that inexperienced arbitrators are more likely to uphold the grievant's case.<sup>24</sup>

### Conclusion

With regard to awards in grievance arbitration, the experience factor may be largely a myth. Both labor and management have a pronounced preference for experienced arbitrators. Nevertheless, other research reveals that the parties cannot distinguish between the awards of experienced arbitrators and those of inexperienced arbitrators. More importantly, experience does not seem to be significantly related to arbitral outcomes.

Although generally improving notably upon previous research, the design of the present study has limitations. Most involve tradeoffs with the need for economy and variety in the presentation of the case situations. For example, the abbreviated scenarios provide the distilled facts, but not the full flavor of "real world" cases. Similarly, the factual variations may have produced a carryover effect on the responses to the extent that respondents may have thought, based on the alternating structure, that certain responses were expected.

The line drawn between arbitral experience and inexperience, although generally an accepted standard, was a limited definition; more numerous categories might have produced more robust results. Moreover, including possible interaction variables, such as the previous labor-management experience of the arbitrator and the extent of prior arbitral selection experience of the respondents, would have been useful. Similarly, asking the respondents for estimated indices of the closeness of the case and the confidence of the prediction would have increased the richness of the results. Finally, the effect of the unobtrusive technique, where the respondents did not readily know that the study was comparing expectations for inexperienced versus experienced arbitrators, is subject to speculation.

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<sup>23</sup>*Supra* note 10.

<sup>24</sup>*Supra* note 11.

Nevertheless, the present study adds to the array of empirical evidence against the preference for arbitral experience by finding substantial variability in award expectations, a variability that was not significantly linked to the experience of the arbitrator. Although there was some tendency for management to expect experienced arbitrators to be more likely to rule in its favor, this finding was outweighed by the general lack of statistically significant differences between the expected awards of inexperienced versus those of experienced arbitrators.

Perhaps the experience factor is important in other ways than the actual or expected outcome of the case. It may be that experienced arbitrators are more skillful in conducting the hearing, although Sprehe and Small's study revealed only limited differences between members and nonmembers of NAA with respect to the conduct of the hearing.<sup>25</sup> It may be that experienced arbitrators are more efficient than inexperienced arbitrators, but Bognanno and Smith's survey results do not show overall economic advantages for using nonexperienced arbitrators.<sup>26</sup> It may be that experienced arbitrators are more coherent and cogent in their opinion writing, although Westerkamp and Miller's exploratory study seems to suggest otherwise.<sup>27</sup> It may be that the thought processes of experienced arbitrators are more predictable, but the studies to date<sup>28</sup> have not included comparisons based on experience, and the thought process is secondary to the persuasiveness and accuracy of the award.

Perhaps the most likely explanation is that experience is important because the parties and their clients/constituencies think it is important. The ultimate cornerstone is selection of an individual arbitrator, based on the interaction of various factors including, but not at all limited to, arbitral experience. As long as the persons doing the selecting believe that experienced arbitrators are more predictable and otherwise preferable (e.g., politically defensible), experience as an arbitrator will be impor-

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<sup>25</sup>Sprehe & Small, *supra* note 17.

<sup>26</sup>Bognanno & Smith, *Demographic and Professional Characteristics of Arbitrators in North America*, in *Arbitration 1988: Emerging Issues for the 1990s*, Proceedings of the 41st Annual Meeting, ed. Gladys W. Gruenberg (Washington: BNA Books, 1989), 284.

<sup>27</sup>*Supra* note 15.

<sup>28</sup>See, e.g., Hauck & South, *Arbitrating Discrimination Grievances: An Empirical Model for Decision Standards*, in Proceedings of the 39th Annual Meeting, Industrial Relations Research Association, ed. Barbara D. Dennis (Madison, Wis.: IRRRA, 1987) (also appearing in 16 *Pol'y Stud.* 511 (1988)); Cain & Stahl, *Modeling the Policies of Several Labor Arbitrators*, 40 *Acad. Mgmt. J.* 140 (1983).

tant, whether or not it is justifiable on an objective basis. The results of this study and the authors' earlier, companion study challenge the "experience myth" in relation to actual and expected arbitration outcomes. Is this preference a bias? Is there a bias against finding out?

## II. REMEDIES, TROUBLED EMPLOYEES, AND THE ARBITRATOR'S ROLE

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### Background: The "Just Cause" Standard

The standard of review for most, if not all, discharges is that of "just cause." The term "just cause" is generally held to be synonymous with "cause," "proper cause," or "reasonable cause." While there is no uniform definition of just cause, a sampling of arbitral opinion indicates some basic notion of fundamental fairness as the underlying criterion for evaluating dismissals.

Arbitrator William Belshaw, in *Hiram Walker & Sons, Inc.*,<sup>1</sup> sustained the dismissal of a fork lift operator—a capable, intelligent, long-term employee (25 years)—who was found to be under the influence while on the job. Belshaw noted that "he [the grievant] blew the deal not once but twice [the grievant had one other alcohol-related incident], and, despite that, made a really insufficient effort to either solve the problem or save his job (the same thing)." What is particularly instructive is the arbitrator's analysis and approach in ruling as he did. Addressing the concept of just cause, Belshaw had this to say:

There are many definitions of "just cause." All of them, however, sooner or later, get back to some evaluation of industrial punishment in the light of mores, those behavioral rules that structure a society, like it or not. And it is a very individual process, in arbitration, at least, because the determiner is, indeed, both single and final.

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<sup>1</sup>75 LA 899, 900 (Belshaw, 1980).