

**Researching the Arbitrator:
The Chicken Noodle Soup Approach**
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Each year, the U. S. Federal Mediation and Conciliation Service (FMCS) receives from 15,000 to 16,000 arbitration requests in the area of labor-management relations (Traynham, 2012). The American Arbitration Association, permanent umpire panels, Judicial Arbitration and Mediation Services, the U.S. Postal Service and its unions handle approximately a similar number of arbitration requests. From all sources, one can reasonably estimate that two-thirds of these arbitration cases are scheduled, yet subsequently settled or withdrawn prior to a hearing. Based on per case cost estimates for that time frame, this means that unions and employers regularly spend more than \$200 million USD for arbitration services.

Typically, after receiving a panel request from the parties in dispute, the FMCS will send bios of 7 to 10 arbitrators so that they may select a mutually acceptable arbitrator through a striking procedure. For the most part, arbitrators are jointly chosen by the parties for a myriad of often conflicting personal and professional reasons. The most usual selection procedure is for each side to alternately strike a name until an acceptable individual is chosen as the impartial arbitrator. Obviously, this mutual selection process means that neither side is likely to get its first choice as an arbitrator. If an arbitrator's name is unknown to either party, the union or management advocate might spend much time and effort "researching" the arbitrator's background, personal characteristics, experience, and previous awards. Their goal is usually to detect some bias or prejudice that would either preclude or support a selection choice. Again, the probability of both parties picking their "most desirable" arbitrator is highly unlikely.

If Arbitrators were robots who adhered to objectively determined “cookie cutter” principles and standards in reaching their decisions, the arbitration selection process would be relatively simple, because one arbitrator would think very much like another. However, arbitrators are humans with values, attitudes, and not the least, emotions that influence an arbitrator’s decision making to varying degrees. Most arbitrators’ personal bias is probably, “I don’t believe that I have a bias or inclinations in my awards,” whereas the advocates’ bias concerning arbitrators is, “There are biases or perspectives that arbitrators show over time and can be discovered through careful research.”

Of course, the *Code of Professional Responsibility for Arbitrators of Labor-Management Disputes* does not discuss the role of “subjective factors” in arbitrator decision making. In Article I, section 1, under “General Qualifications,” all arbitrators are required to demonstrate the following personal qualifications (2003: 8):

1. “Essential personal qualifications of an arbitrator include honesty, integrity, *impartiality*, and general competence in labor relations matters

An arbitrator must demonstrate ability to exercise these personal qualities faithfully and with good judgment, both in procedural and in substantive decisions...

2. An arbitrator must be as ready to rule for one party as for the other on each issue, either in a single case or in a group of cases. Compromise by an arbitrator for the sake of attempting to achieve personal acceptability is unprofessional.”

Although not recognized by the Code of Professional Responsibility, this paper explores the subjective factors that are commonly assumed by many advocates to influence a particular arbitrator’s decision making. Secondly, the paper also considers whether such variables can be used to *predict* the probability of how an Arbitrator might rule in a particular case.

First, the very thought that researching an arbitrator’s personal characteristics and professional history is a valuable use of an advocate’s time is controversial, to say the least. There

are at least three perspectives regarding the validity of researching an arbitrator's personal characteristics as a consideration in the selection process: 1) it is worthwhile as a predictor of bias or mindsets, 2) it has no value because the set of facts in each case is different, 3) or the "chicken soup" approach; there is no evidence that eating chicken soup works when you are ill, but it won't do any harm and you could feel better. We shall return to this issue at the conclusion of this paper.

The factors sometimes considered by union and management advocates when selecting an arbitrator can be categorized as follows: 1) personal characteristics, 2) published awards and rating services, 3) reputation and track record, 4) and the nature of the issue.

Personal characteristics

An arbitrator may or may not be chosen because of an advocate's own bias against certain personal characteristics, such as: personal and professional backgrounds, age and experience, demographics or education. For example, an advocate may believe that arbitrators with advanced degrees in economics, sociology, political science, and law are more sympathetic to unions, or that arbitrators with degrees in business administration or management lean toward the employer. Others may prefer graduates of Ivy League or West Coast universities, while others seek Midwest or Southern universities.

It is part of the folk myth of many advocates that personal characteristics of arbitrators can be correlated with particular biases and predispositions. For example, consider the following survey responses made by several union advocates that reveal more about their own biases than those of the arbitrator (Reeves, 2009: 6):

- "What law firm has an arbitrator worked with; was it a union firm or a management firm?"

- “I look for the educational background of an arbitrator, the schools attended, and the political reputation of that school: liberal vs. conservative, left-wing vs. right-wing, are important.”
- “As a business agent, I give preference to local arbitrators and I distrust arbitrators out of Texas.”
- “As a business agent for AFSCME, I am concerned with arbitrators who sat on labor boards; I do not want to hire someone who is influenced by a position he holds on any particular board.”
- “I review how many arbitrations that individual arbitrator has done with city unions. Also, by going outside the State of New Mexico; he has to consider that each state has a different political environment, which is particular for that state. Political problems in each state will affect how an arbitrator views situations with unions. For example, ‘Texas is more conservative, and in general, Texans do not favor unions and the positions that unions take. I also stated that I do not like arbitrators from Kansas City, Oklahoma, or Colorado.’”
- “I prefer arbitrators who have been union presidents and ones who work as university or college professors. To me, this is likely to be someone with extensive background on union history and how unions have progressed as organizations in the course of their history. They have experienced what it is to be a union member and moved on to a higher professional standard through becoming an arbitrator.”

These beliefs and opinions are in contrast to a number of research studies, which to a greater or lesser degree indicate that there is no significant linkage between an arbitrator’s personal characteristics and trends in their awards. The following research is pertinent:

- Rezler and Petersen (1983) found that only with newer arbitrators that advocates in their sample sometimes relied upon demographic characteristics to influence the selection process.
- Heneman and Sandver’s study (1983) applied 87 tests of significance and discovered little evidence of linkages between arbitrator characteristics and their decisions.
- Block and Stieber (1987) found significant differences among discharge cases in arbitration awards, but these were not related to the personal characteristics of the arbitrators.

- Bemmels (1990) discovered “little evidence of significant relationships between the characteristics of arbitrators and their decisions.” Bemmels concluded that the results, “raise serious doubts about the usefulness of . . . investigating arbitrators’ backgrounds as part of the arbitrator selection procedures.”

There is no objective research data to support such predispositions by arbitrators, yet advocates sometimes assume this type of reverse bias. For instance, analyses of demographic characteristics, i.e. education, profession, age, and gender are not valid predictors of particular biases or predisposition, yet some advocates continue to rely on demographic characteristics of arbitrators when making their selections.

Also, predisposition should not be confused with the human tendency for an arbitrator to form opinions, experience feelings and emotions, and articulate thoughts to themselves throughout the arbitration hearing process, ones that are never expressed openly to the parties. If they are candid, most arbitrators will admit that they mentally begin writing awards long before drafting the written document begins. Similarly, arbitrators gain impressions of the issues as the case proceeds and they develop and evaluate positions well before all the evidence is presented or closing arguments are given. These human tendencies are quite different from the arbitrator who brings his/her personal predispositions and biases/ prejudices into the hearing room and allows them to influence the outcomes of arbitration decisions.

Another personal characteristic that many advocates and arbitrators assume correlates with “better” arbitration awards is *professional experience*. Arbitrator Fred Ahrens (2009) typifies this view, “Representation of employees in private practice, experience in labor relations in private industry as a company or union representative, and the number of years of experience as an arbitrator are all important factors in determining the ability of the arbitrator to understand the workplace and the issues” Ahrens reflects a longstanding preference for more experienced

arbitrators, as was reflected by Rezler and Petersen's (1978) survey of union and management advocates, which found a clear preference for arbitrators with whom they were already familiar and considered "experienced." Many advocates only choose arbitrators who are members of the National Academy of Arbitrators (NAA), whose minimum requirements for membership include "at least five years of arbitration experience and a minimum of 60 written decisions in a time period not to exceed six years, at least 40 of which must be "countable labor-management arbitration awards."

A survey of NAA members by Mei Liang Bickner and colleagues revealed that arbitrators, management advocates, and union advocates agree that "the extent of an arbitrator's arbitration experience" was the most influential variable in selecting an arbitrator (2003: 254). However, the related variable of "age" can cut both ways:

"Age can be a factor, on either end of the spectrum. A youthful arbitrator may have acceptability problems because of the perception they may lack the 'air of authority' to control a fractious hearing. But youth can be positive if the parties have a case of evolving law, or be more likely to be on top of new issues and developing law, or be more likely to take a different approach than an older, established arbitrator who has developed a settled attitude toward certain issues."

However, Zirkel and Thronton's (1989) study regarding the preference of parties for more experienced arbitrators concluded that arbitration awards did not seem to vary appreciably according to the experience of the arbitrator, even though more experienced arbitrators were more likely to be selected by both union and employer representatives.

The survey by Bickner, Boone, and West (2003) found that arbitrators believed an arbitrator's race/ethnicity or gender was a more important variable in selection than did advocates, who tended to downplay the importance of such factors. As one arbitrator commented:

“As to the race and gender issues, we would all like to think that we arbitrators are being selected on a race- and gender-neutral basis. I have been told; however, that I was selected for certain cases because I was a woman, and have been told by certain advocates that their clients don’t like women arbitrators. It’s a shame we are not covered by Title VII.”

A particular advocate might believe that a female arbitrator might be more favorably inclined in a sexual harassment case.

However, several research studies bring that assumption into question. Allen Ponak (1987/June) found, that of the factors affecting an arbitrator’s decision to reinstate a discharged employee, the strongest proved to be gender, “Women were more than twice as likely as men to be reinstated” (39). Private sector studies of gender and grievances, especially disciplinary appeals, found “females fare better than males on similar appeals of disciplinary action or in simulation exercises” (Dalton and Todor, 1985; Larwood, Rand, and Der Hovanessian, 1979).

This finding is corroborated by other research in the criminal justice literature, which suggests that female offenders receive more favorable treatment from the justice system than male offenders (Dickerson and Cayer 1988). The subjective influence of gender on an arbitrator’s ruling is particularly remarkable when one considers that men are far more likely than women to grieve in the first place. One theory to be explored is that women are much more hesitant to become adversarial by filing a grievance, and this is an advantage because they are more likely to win when they do.

Finally and as indicated, some advocates are more confident in selecting arbitrators who are lawyers rather than non-lawyers. These advocates assume that non-lawyer arbitrators are preferable in discipline and discharge cases, while lawyers have more expertise in resolving contract disputes, especially those that are more complex. In approximately half of arbitration proceedings, the grievant is represented by a non-legally trained union advocate and the

employer is represented by legal counsel. One might hypothesize that the party represented by an attorney might have an advantage, especially if the arbitrator also is a lawyer by training, as are a majority. There is some evidence for this perspective (Ponak, 1987: 46), but it is not conclusive in nature.

However, Petersen and Rezler's survey (1983) of practitioners in the Chicago area revealed the following (29):

“Over 60 percent of the participants could not discern a difference in the award writing of lawyer and non-lawyer arbitrators. Union attorneys and non-lawyer management and union representatives were least likely to perceive any differences. The participants felt there were advantages to each type of arbitrator background. Interestingly, some respondents felt that non-lawyer arbitrators wrote better than their lawyer counterparts, while others saw it just the opposite way.”

There is no conclusive evidence one way or the other, only anecdotal folk wisdom that lawyers make better representatives than non-lawyers in arbitration hearings.

In summary, although many advocates may rely on demographic and personal characteristics to help select an arbitrator, the available research does not show any correlation between any of these factors with how an arbitrator will eventually decide.

Published awards and rating services

Publication of an arbitrator's awards and subsequent analysis in order to discern trends to rule more frequently in favor of either management or labor has a long and controversial history. There are two facets of this issue, beginning with the publication of arbitration awards by organizations such as the Bureau of National Affairs, Commerce Clearinghouse, LRP Publications, and others. Still others, i.e., R.C. Simpson, Inc., take the additional step of rating arbitrators by which party prevailed and the arbitrator's won-loss ratio. One arbitrator received a solicitation from R.C. Simpson, Inc., for “...his bio, a list of his cases, and copies of his awards” [and noted that] “this

information is for the exclusive benefit of employers and their legal counsel who may have occasion to select an arbitrator in a matter in which they become involved” (Goldman, 2011: 19). He refused to comply as it would be an ethical violation of NAA standards.

Arbitrators fall into three groups regarding the publication of their awards. Some arbitrators refuse to submit any awards for publication (Ahrens, 2009; Tener 2011) and others publish a large number of their awards (Petersen 2012). Still others, such as this researcher, have published only a representative sample of awards. Although on one hand, the publication of awards may be seen by some as promoting a “steady, reasoned, predictability” of arbitral precedent, it may suffer from potential distortion if used to keep track of who “wins or loses.” Of course, the classic, *How Arbitration Works* by Elkouri and Elkouri could only be written because of the willingness of arbitrators to publish selected arbitration awards.

As Kimberley Hunter, managing editor of BNA’s Labor Relations Reporter observes, deriving a rating for an arbitrator based his or her published awards is inherently flawed (2009):

- “Many parties will not give the arbitrator permission to publish awards that do not turn out in their favor, which further skews the results;
- It is very difficult to decide who “wins”. If an employee was discharged, but the discharge was reduced to a suspension by the arbitrator, who wins? The employee whose job was saved or the employer who’s right to discipline the employee in some fashion was upheld? These arbitrary distinctions do not seem helpful if the nuances of the arbitrator’s decision are lost.
- Any arbitrator worth his or her salt will not have a very discernable bias toward either union or management so how would a “win-loss” statistic even help?”

Knowing that rating services who rate arbitrators based on the number of their published awards is inherently distorted, and “it is impossible to predict how an arbitrator will rule on any

individual case,” (Posthuma & Dworkin, 2000), why do arbitrator rating services remain popular with so many advocates?

One hospital labor relations representative gave the following rationale (Reeves, 2009:7):

“I know that most of this information is outdated, but it gives us a better background on who we select and not select as an arbitrator. We usually call our professional contacts within our government community and solicit information on arbitrators. I use a combination of the bio, an arbitrator’s reputation and a rating service. I would break it down for me as follows:

NPELRA/FMCS bio=20% (map)
 Reputation of the arbitrator=30% (compass)
 Peer ratings=50% (direction)”

Of course, reliance on arbitrator ratings is primarily used when selecting arbitrators who are unknown to an advocate. If an advocate is already familiar with an arbitrator’s work, it is either an arbitrator’s positive or negative reputation that becomes the determining factor in the selection decision.

Reputation and track record

Thus, among personal characteristics of arbitrators, of most importance to the parties when selecting, or not selecting, an arbitrator is her or his *reputation*. The advocate may personally know the arbitrator and form an opinion concerning reputation. Or, if an arbitrator’s name is unfamiliar, an advocate may likely seek opinions from friends, colleagues, or even complete strangers. If trusted associates can vouch for an arbitrator as being professional and fair, other personal and demographic characteristics become inconsequential. Similarly, a negative reputation as an arbitrator among advocates or references will lead to almost certain rejection.

Negative reputation: expendability and blacklisting

Informal private “blacklisting” and “expendability” is widespread among a variety of management associations and unions. Names of arbitrators on either list are kept strictly

confidential on a “need to know” basis only. Basically, the distinction between the two related practices is as follows:

- *Expendability* concerns the private decision of a union or employer to avoid selecting a particular arbitrator in future arbitrations, most usually because of a unpopular recent award;
- *Blacklisting* is the practice of actively attempting to influence one’s peer organizations not to ever hire a certain arbitrator in the future.

The reasons for using both negative techniques by unions and management are similar, yet differ slightly. Of course, blacklisting is much more serious to an arbitrator’s reputation and career.

Blacklisting of arbitrators by unions has been around for some time. As early as 1958, the Proceedings of the National Academy focused on the problem of blacklisting, wherein Professor Robert M. Segal offered a “union viewpoint” of the several reasons why a certain arbitrator might be secretly blacklisted by particular union:

“The arbitrator who tries to mediate; who neglects to write an opinion; or who sends the case back to the parties.

Certain arbitrators are scratched because they have been too busy and have not been readily available for an immediate hearing or who forgets that the arbitration process should be simple, speedy and economical, for unions expect quick as well as just decisions.

Furthermore, an arbitrator who has failed to give the union a ‘full hearing,’ which includes much irrelevancy, speechmaking, and even hearsay, is often not invited back.

In addition, a union...resents an arbitrator who says too much by giving gratuitous advice in a decision; for example, the arbitrator who decides a case against the employees, then adds morally the employer should pay these employees, risks the capital punishment of labor relations at the hands of the union, especially if in fact the employer does not follow this unnecessary gratuitous advice.

Arbitrators who write lengthy, philosophical, and unclear opinions may be put out of business.

In addition, misinterpretations of written decisions read coldly without a proper consideration of the background circumstances, the peculiarly individual factors involved in a given case and not expressed in the written opinion, have caused arbitrators to lose their positions unfairly.

Another reason...is the 'bad decision.' An arbitrator may be discharged when he renders what a union considers to be an 'unconscionable' opinion or decision [i.e.] that the union accepts resentfully, for the decision fails to appreciate the real issues involved, rely on procedure rather than merit, overlook the union-management relationship..., neglect substantial factors in the case which may have been inarticulately presented, reverse prior decisions without adequate distinctions, disturb the parties' continuing relationship, or are abstractly correct but impractical in the day-to-day application of the agreement."

Professor Shulman argues that, "General acceptance and satisfaction with the award is an attainable ideal. Its attainment depends on the parties' seriousness of purpose to make their system of self-government work, and their confidence in the arbitrator."

Management blacklisting or "do not use" lists of arbitrators evidently also are commonly used. For example, the Rocky Mountain Public Employers Labor Relations Association (NPELRA) routinely places the names of arbitrators that it considers have made egregious decisions on a "do not use" (DNU) list and circulates among its member public entities. In 2008, an arbitrator was placed on NPELRA's DNU list because:

"First, he med/arb'd, which we believed was against the New Mexico Public Employees Bargaining Act (PEBA), and so far the Second District Judge has agreed (it is currently at the NM Supreme Court).

Secondly, he made us move in areas that we had not intentions on moving.

Thirdly, he seemed to be very union friendly and advised the Union where to move in their position.

Fourthly, since "med/arb" was not identified in the NM PEBA, he applied med/arb process and "loosely" interpreted NM law.

Fifthly, he was very costly; instead of one-day arbitration, he expanded the process to several days lasting two months so he could mediate the issues.”

Another arbitrator was placed on the “do not list” list by RMPELRA because:

“(1) the Arbitrator lacked jurisdiction to hear the matter because the parties were not at impasse at the time of the arbitration; (2) the arbitrator engaged in misconduct that prejudiced the rights of the Defendant and exceeded his authority by acting as a coercive mediator during the arbitration; and (3) the arbitrator’s award is void as against public policy because the ‘bonus’ payment it grants violates Articles IV § 27 and IX§ 14 of the New Mexico Constitution.”

In summary, certain arbitrators will inevitably be made “expendable” by a particular employer or union, most usually because they are unhappy with the arbitrator’s last award. Although blacklisting or do-not-use listing by an entire industry or group seems unfair to most arbitrators, it is not likely to go away.

Still, some advocates believe that arbitrator neutrality or objectivity can be gauged over time with a large number of cases, if his or her awards achieve near a 50/50 split between grievant and employer (Ashenfelter 1987). Indeed, there are certain arbitrators who routinely “split the baby.”

For example, arbitrations involving the Chicago and Houston police departments show a “net reduction of discipline and discharge cases fifty (50) percent of the time (Iris, 2002: 132).

However, as Dilts and Deitsch’s (1989) research first indicated, such is not usually the case.

Factors such as the issue in dispute, who bears the burden of proof and the political and legal environments, influence the case processing. Therefore, such factors must also be considered in any legitimate evaluation of an arbitrator’s track record.

Nature of the issue

The nature and type of issue considered by the arbitrator affects arbitral decision making in several ways. First, issue determines the *quantum* or standard of proof necessary for the *moving party*, management in discipline and the union in contract violation cases, to prevail or

meet its burden of proof. An issue where a grievant's *reputation in the community* is threatened if found guilty of wrongdoing will generally require a higher standard or "quantum" of proof for management to meet than those where reputation will not be harmed.

Reputational issues involving discharge, from an arbitrator's perspective, are generally considered to be the most difficult to decide. As Garbutt and Stallworth (1989: 31) conclude, "An employee who is permanently tagged with the stigma of being a thief might find it difficult to ever again secure meaningful employment." Unless the employer has produced unequivocal evidence of theft, an arbitrator may reverse a termination and order reinstatement of the grievant to his/her former position, even though the official standard stated in the collective bargaining agreement is simply "preponderance of evidence." If employer work rules against employee theft are vague or there has been inconsistent application of penalties, an arbitrator may lean toward leniency.

Normally in disciplinary arbitration, the stated standard/quantum of proof is a *preponderance of evidence*, which is considered to be less than the standards of *clear and convincing evidence* and especially *beyond a reasonable doubt*. The preponderance criterion simply means "that the fact sought to be proved is more probable than not" (Black, 1979: 1064). This standard is usually applied in assessing whether management demonstrated just cause in such issues as attendance, poor performance, or inattentiveness to duty.

However, in reputational issues as drug use, sexual harassment, theft, fraud, or watching internet pornography while on duty, an arbitrator often applies the higher standard of clear and convincing proof. This is because a disciplinary charge involving the grievant's civil liberties and ability to find another job or status in the community compels many arbitrators to be completely certain of employee wrongdoing. Thus, the arbitrator strives for clear and convincing proof of

wrong doing before upholding discipline or discharge, even though the language of the contract might state only that a preponderance of evidence support the discipline imposed by management.

For example, discipline or discharge for sexual harassment represents the type of highly-charged issue that evokes feelings and emotions of arbitrators, victim, and alleged perpetrator, not to mention affecting the reputations of all involved. A study by Nowlin (1988) of arbitrator awards in sexual harassment found that women grievants win in an overwhelming number of cases. Arbitrator Nowlin's study also concluded that arbitrators (31):

- Do not sustain discipline for sexual harassment stemming from consensual relationships that sour;
- Are sensitive to victims charged with misconduct when the charge arose from the repulsing of a sexual harasser;
- Sustain discipline short of discharge for workers accused of creating a hostile and intimidating work environment
- Almost always sustain discipline for sexual harassment that includes unwanted and unwelcome physical contact.

Only the arbitrator can introspectively examine his or her views and values regarding the alleged perpetrator and victim sexual harassment in cases to decide whether to apply the *preponderance of evidence* or *clear and convincing evidence* standards.

The Birkner, Boone, and West survey of arbitrators and advocates (2003; 260) found that advocates often track how a particular arbitrator rules in discipline cases and by certain types of issues. Knowing that a certain arbitrator "unofficially" applies a *clear and convincing standard* as opposed to *preponderance of evidence* in cases involving civil liberties and reputation can be useful information in the selection process. It is undoubtedly true, that "learning an arbitrator" is much easier in an arena such as the U.S. Postal Service and its unions that is characterized by frequent interaction among the same pool of arbitrators and advocates regarding similar issues.

Increasing arbitrator acceptability and selection predictability

The following suggestions are meant to assist advocates in picking arbitrators whose decisions will be more predictable. As such, they are opinions offered by one arbitrator with the intention of generating dialogue:

- If an arbitrator is unknown, learn about him/her from a variety of sources; the era of being limited to information listed on a bio is over. Use social media as a fountain of knowledge. “Google” an arbitrator’s name to uncover more information, try LinkedIn, Face Book, and other social media. Awards appealed to the Federal Labor Relations Authority remain accessible on-line for years.
- Read an arbitrator’s published awards for clarity and insights. However, remember these are awards submitted by the arbitrator and will be what is considered his/her best awards. As such, they are probably more useful as citations when writing post-hearing briefs on a particular issue than as selection tools.
- Beware of arbitrator ratings and rating services. They always rely on distorted sample of the arbitrator’s body of work. This arbitrator has issued hundreds of awards involving discipline and discharge in the states of New Mexico and Oklahoma. For completely unknown reasons, his track record in New Mexico is a decided majority in favor of management, whereas in Oklahoma the outcomes have been more frequently in the pro-union column. Although the reason is decidedly unknowable, it is certain that this arbitrator does not become a different person upon crossing state lines.
- Many arbitrators write their awards, in part, so that the losing party will understand why they failed to prevail. If an advocate is still confused by the arbitrator’s reasoning, politely ask the arbitrator if he or she would be willing to discuss the award.
- Participate in arbitrator/advocate training conferences, such as the Southwest Regional Training Conference of the National Academy of Arbitrators, or those held by the AAA or FMCS. Arbitrators and advocates are afforded an opportunity for exploring new topics and to get to know each other.
- If your organization is a party in many arbitrations each year, consider the potential for creating a permanent panel of arbitrators, an equal number selected by union and management, to serve on a rotating basis. The benefit is consistency and continuity as well as the time-consuming process of arbitrator selection.

Perhaps in this way, the hit-and-miss process of arbitrator selection can become more predictable and less like taking chicken noodle soup and then hoping for the best.

References

- Bemmels, Brian (1990/Spring), "Arbitrator Characteristics and Arbitrator Decisions," *Journal of Labor Research*, vol. 11, no. 2, 181-193.
- Bickner, Mei Liang, W. Daniel Boone, John B. West (2003) "Arbitrator Acceptability: Arbitrators and Advocates' Perspectives," *National Academy of Arbitrators: Papers from the 2003 Fall Education Meeting*, 247-276.
- Block, Richard N. and Jack Stieber (1987/July) "The Impact of Attorneys and Arbitrators on Arbitration Awards," *Industrial and Labor Relations Review*, vol. 40, 543-555.
- Cayer, N. Joseph and Dickerson, Sherry (1988, April) "Gender and Grievances: Differential Outcomes of Appeals in the Merit Systems Protection Board," paper presented at the annual conference of the *Western Social Science Association*, Denver, Colorado.
- Code of Professional Responsibility for Arbitrators of Labor-Management Disputes*, (2003/June).
- Dalton, David and William Todor (1985) "Gender and Workplace Justice: A Field Assessment," *Personnel Psychology*, vol. 38, 133-151.
- Elkouri, Frank and Edna Elkouri (2003) *How Arbitration Works*, 6th ed., Washington, DC: Bureau of National Affairs.
- Goldman, Barry (2011/Spring) "Heard on the E-Street," compiled by Howard Foster, *The Chronicle*, 19-20.
- Heneman, Herbert G., III, and Marcus Sandver (1983/Spring) "Arbitrators' Background and Behavior," *Journal of Labor Research*, vol. 4, 115-124.
- Hunter, Kimberley (2009/March 10), electronic communication to T. Zane Reeves.
- Iris, Mark (2002) "Police Discipline in Houston: The Arbitration Experience," *Police Quarterly*, vol. 5, no. 2, 132-151.
- Larwood, L., Rand, P., and Der Hovanessian, A. (1979) "Sex Differences in Response to Simulated Employee Discipline Cases," *Personnel Psychology*, vol. 32, 539-550.

Petersen, Donald J. and Julius Rezler (1978) "Strategies of Arbitrator Selection," *Labor Affairs Reports*, vol. 70, Washington DC: Bureau of National Affairs, 1307-1320.

_____ (1983/June) "Arbitration Decision Writing: Selected Criteria," *The Arbitration Journal*, vol. 38, no. 2, 18-29.

Ponak, Allen (1987/June) "Discharge Arbitration and Reinstatement in the Province of Alberta," *The Arbitration Journal*, vol. 42, no. 2, 39-46.

Reeves, T. Zane (2009/March 26-29) "Researching the Arbitrator," *Federal Mediation and Conciliation Service*, 32nd Annual Labor-Management Conference, Southwest/Rockies Region, National Academy of Arbitrators, Hobby Airport Hilton, Houston, Texas, 6-7.

Tener, Jeff (2011/Spring) "Heard on the E-Street," compiled by Howard Foster, *The Chronicle*, 19-20.

Traynham, Vella M. (2012/March 1-3) *Federal Mediation and Conciliation Service*, 35th Annual Labor-Management Conference, Southwest/Rockies Region, National Academy of Arbitrators, Hobby Airport Hilton, Houston, Texas.

Zirkel, Perry and Robert Thornton (1989) "The Predictability of Grievance Arbitration Awards: Does Arbitrator Experience Matter?" *Proceedings of the National Academy of Arbitrators*, 147.

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