71-11,830

ERICKSON, Kai Lloyd, 1929-
A STUDY OF GRIEVANCE ARBITRATION AWARDS IN MICHIGAN PUBLIC SCHOOLS.

Michigan State University, Ph.D., 1970
Education, administration

University Microfilms, A XEROX Company, Ann Arbor, Michigan

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By

Kai Lloyd Erickson

A THESIS

Submitted to
Michigan State University
in partial fulfillment of the requirements
for the degree of

DOCTOR OF PHILOSOPHY

College of Education

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ABSTRACT

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Kai Lloyd Erickson

The purpose of the study was to investigate, analyze and describe the nature of grievance arbitration affecting teachers in Michigan public schools since enactment of that state's public employee bargaining law.

The study was exploratory and descriptive and the technique of content analysis by classification was used. The population consisted of 58 arbitration awards involving 65 grievances. To narrow the scope of the study, two objectives were developed--the first was to attempt to determine whether a new common law was being fashioned for school districts from the arbitration process. The second was to secure data dealing with the actual arbitration process itself, including such items as time periods required, costs, outcomes, and other information. The data, except for cost figures, were extracted from the contents of the arbitration awards.

A series of eleven questions were developed, the answers to which would assist in accomplishing the objectives of the study. Classifications for the information sought were developed and frequencies were recorded. Medians, ranges, totals, and percentages of responses were calculated.

The findings revealed:

1. The two most common sources for authority cited by arbitrators as basis for their decisions were the meaning of the contract language and the merits of the individual case. Precedence from industrial arbitration accounted for ten percent of the decisions, while no school arbitrations were cited as basis for decisions. No pattern of increased reliance upon industrial arbitration precedence was observed.

2. The most common issues submitted to arbitrators dealt with computation of basic wages and compensation for additional duties or assignments. Other issues included failure to reappoint teachers to non-tenure positions (particularly coaching), loss of leave or insurance benefits, letters of reprimand to teachers, and failure of a district to actively seek to employ black teachers, and others.

3. Teachers were successful in 42 of 65 arbitrated grievances in the study and were most successful in areas of compensation for additional duties, in disputes over basic wages and where teachers were threatened with

discharge or non-reappointment to non-tenure positions.

4. Where violations by school districts were determined by the arbitrators, the most common remedies were to order payment for lost wages, new computations for compensation, or reinstatement of improperly released teachers.

5. The most frequent defenses by school districts included management perogatives, parallel jurisdiction by another agency, or the merits of the case. Heavy reliance was also placed on past practice. A threshold argument of non-arbitrability was raised in nearly 30 per cent of the cases. The most common defenses proved the least successful. When school districts argued the meaning of contract language, used emergency conditions as excuses for non-compliance, or raised the sole issue of arbitrability, they were the most successful.

6. The median time period between the original filing of a grievance and the issuance of a final arbitration award was 212.5 days. The median time between an arbitration hearing and the issuance of an award was 36 days.

7. The fees and expenses of arbitrators ranged between $150 and $1,533 with the median cost at $450. Only nine attorney fees and expenses were located and the median figure for this limited data was $925.

8. Attorneys represented school districts in nearly 75 percent of the proceedings while teachers used attorneys

in only 44 percent of the cases. Both parties were represented by attorneys in 40 percent of the arbitrations.

9. Written briefs containing supporting arguments and documentation by the parties were mentioned in over half of the arbitration awards studied.

10. The services of the American Arbitration Association were used to secure arbitrators in approximately two-thirds of the arbitrations and the balance were selected by the local parties with two exceptions involving government agencies.

11. The arbitrators tended to be experienced, with nearly three of four grievances decided by arbitrators who held membership in the National Academy of Arbitrators. Seventy percent of the grievances were decided by arbitrators who were either attorneys or had legal training.

Conclusion of the study was that a new authority was present in school districts resolving grievances by arbitration. The authority of grievance arbitration has been supported by Federal and Michigan courts and is institutional in nature, bringing to the schools such established concepts as discharge for just cause, corrective discipline, and recognition of the right of management to manage. A new common law resulting from grievance arbitration in the "education industry" will likely define the role of school management, the role of teachers as distinct from their roles as private citizens, definition of professional duties,

appropriate teacher behavior, and a host of related matters of concern to the teaching profession.

Recommendations were made for permanent arbitration umpires for local school districts, geographic areas or at the state level to increase predictability and value of precedence. The Michigan Department of Education was suggested as a repository of all school arbitration awards to increase precedential value. A future study at a later period is recommended to determine the predicted impact of grievance arbitration upon school management, the teaching profession, and public education.

ACKNOWLEDGEMENT

Numerous preceding authors have unerringly identified and acknowledged the considerable sacrifice or irretrievable time spent away from their children and spouses in the preparation of a major study. Such was the case in this instance. Whether the sacrifice was either wise or justifiable can only be evaluated at a later period in life. Here the impact on the lives of my wife Patricia, my son Eric, and my daughter Martine, is acknowledged.

Doctoral committees composed of learned professors are created to assist, encourage, guide, stimulate and challenge their students. All those qualities were present in the author's committee and are here acknowledged. The keen interest and wise counsel by chairman Dr. Stanley Hecker, the expertise in labor relations by Dr. Daniel Kruger, and the willing and thoughtful guidance by Dr. David Smith and Dr. Charles Blackman were invaluable and necessary for the completion of this study.

Finally, the time and financial assistance of a sabbatical leave provided by educators of Michigan, who are members of the Michigan Education Association, cannot be adequately repaid. It is to these many patrons that most sincere appreciation and acknowledgement are extended.

Kai L. Erickson

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CHAPTER I

INTRODUCTION

It is the opinion of the writer that the 1960's will be recorded in the history of Michigan government and education as a time of particular importance. The passage of a state law extending formal collective bargaining to Michigan public school employees will be marked as one of significance to future scholars and students of Michigan education.

It is predicted that "no single factor will change the operating characteristics of American public school systems during the coming decades more than the outcomes of professional negotiations across the entire United States."[1]

Specifically in the state of Michigan it has been noted that the years of 1964 through 1967 have marked the beginning of a new era for Michigan teachers. The new laws of Teacher Tenure and Collective Bargaining have given teachers security and power to begin an extraordinary change in their status.[2]

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[1]James E. Heald and Samuel A. Moore II, The Teacher and Administrative Relationships in School Systems (New York: The Macmillan Company, 1968), p. 260.

[2]Jack E. Meeder, "A Study of Attitudes and Problems Relating to State-wide Tenure and Compulsory Bargaining for Teachers in Michigan," (unpublished Doctoral Dissertation, Michigan State University, East Lansing, 1968 - abstract.)

One scholar, in commenting on the impact of collective bargaining in Michigan education observed it was:

> . . . substantially altering the employer-employee relationship in governmental jurisdiction from one of master-servant to one of equal partnership. Probably the most seriously affected division of government service so changed was public education, especially board-teacher relationships.[3]

It was these predictions of an important historical event occurring in Michigan education that led to the selection of grievance arbitration as a focus for study. It is one important fact of the phenomenon of collective bargaining in Michigan public education.

Purpose of the Study

The purpose of this study is to investigate, analyze and describe the nature of grievance arbitration affecting Michigan teachers which has taken place in the Michigan public schools since the enactment of Michigan's Public Employment Relations Act of 1965.

A major objective of the study is to attempt to determine whether a new common law affecting school employee relations is developing as a by-product of collective bargaining in education. Is an educational counterpart of "industrial jurisprudence" emerging from the body of arbitration awards being issued in Michigan schools?

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[3]Charles T. Schmidt, Jr., "Organizing for Collective Bargaining in Michigan Education 1965-1967," (unpublished Doctoral Dissertation, Michigan State University, East Lansing, 1968), p. ii.

The United States Supreme Court has noted "the collective agreement covers the whole employment relationship. It calls into being a new common law--the common law of a particular industry or a particular plant."[4] Whether such a new common law in education is being fashioned through the relatively new grievance arbitration process is unknown. It is not known to what extent past practice in the schools is being upheld or swept aside by arbitrators in favor of other authorities.

Will the authority relied upon by arbitrators be the Michigan school code law or general Michigan statutes? Might federal statutes or even language contained within the Federal constitution or state constitution be considered persuasive?

Perhaps arbitrators will confine themselves to the local agreement and rely on dictionary definitions to determine the meaning of the parties. Will other arbitrators' decisions in private industry or in other school settings be considered persuasive? To what extent is past practice or the intent of the original negotiating parties considered by arbitrators?

A second objective of the study is to secure data dealing with the actual arbitration process. The culmination of this objective should reveal such information

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[4]United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 579.

regarding the arbitration process as the time period required for disposition of grievances through the arbitration process, the issues most frequently brought to arbitration, which parties represent the disputants, and an indication of the degree of formality in arbitration. The average costs for arbitration and the relative success of the parties in the outcome of arbitration proceedings are also of interest. Finally, the study will identify the arbitrators who render these decisions and their backgrounds and training.

It is for these purposes that this study was conducted. It is an exploratory and descriptive study.

The Problem and Its Setting

Since the advent of collective bargaining, extensive grievance procedures have been introduced, for the first time, in the administration of Michigan public schools.

It was estimated that for the school year 1968-69, over two hundred collective bargaining contracts between Michigan teacher organizations and their employing boards of education provided for binding arbitration as the terminal step in grievance procedures.[5] Additionally, the National Education Association reported that in the 1967-68

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[5]Unpublished Research Memo, September 23, 1969 by MEA Research Division, East Lansing, Michigan. (5 pages setting forth a list of 198 MEA units possessing arbitration clauses and 138 units which had contract provisions on agency shop.)

school year, 83.8 percent of 550 comprehensive agreements in a national study provided for grievance appeal to parties outside the school system.[6]

Although grievance arbitration is a relatively new process in the public school, it was reported to be one of the major issues contributing to the difficulties encountered in teacher contract bargaining in the autumn of 1969.[7]

The process of grievance arbitration is likely to continue to expand in Michigan public schools, in line with a national trend already noted.[8] One writer has predicted that teachers located in districts which do not have arbitration in their grievance procedures will likely press for that process in the future.[9]

Since grievance arbitration is a relatively new process in education, no studies were located which attempted to describe the current state of arbitration in Michigan education. Therefore, both parties engaged in

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[6]Grievance Procedures for Teachers in Negotiation Agreements, National Education Association, Research Report 1969 - R 8 (Washington, D.C., 1969), p. 13.

[7]Teachers Voice, Michigan Education Association, Vol. 47, No. 1 (East Lansing, Michigan, September 1, 1969).

[8]Grievance Procedures for Teachers in Negotiation Agreements, p. 8, table 5.

[9]Jack Steiber, "Collective Bargaining in the Public Sector," Challenges to Collective Bargaining, edited by Lloyd Ulman (Englewood Cliffs, New Jersey: Prentice-Hall, 1967), p. 85.

grievance arbitration had to rely either upon expert attorney assistance or draw upon the practices prevailing in the industrial sector. Lacking empirical information regarding the history of grievance arbitration in Michigan schools for the past four years, the parties were not able to draw the subtle distinctions which might exist between those industrial practices which might be applicable and those practices which may not be applicable for the school situation.[10]

Significance of the Study

The significance of this study is predicated upon the belief that arbitration of teacher grievances will continue to expand as the process by which disputes between teachers and their public employers are resolved. Arbitration is new to the field of education and has been resisted by many school authorities, is controversial in the literature and a major issue in teacher bargaining disputes.

As pointed out by Borg, "the major purpose of descriptive research in education is to tell 'what is'."[11]

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[10]To meet the demands of collective bargaining in the public sector may call "for the design of a whole new apparatus of institutional mechanisms, only part of which can be copied from the private sector." George H. Hildebrand, "The Public Sector," Frontiers of Collective Bargaining, edited by John T. Dunlay and Neil W. Chamberland (New York: Harper and Row, 1967), p. 154.

[11]Walter R. Borg, Educational Research (New York: David McKay Company, Inc., 1963), p. 202.

Descriptive studies serve several functions: in the face of conflicting claims regarding a new subject it is often of great value to know the current state of the subject. Secondly, it is often a preliminary step to be followed by more rigorous control and methods of study. Third, descriptive studies are widely used as the basis for internal evaluation and educational planning by alert school systems.[12]

It has been predicted that collective bargaining in the public sector will follow existing law governing private labor-management relations.[13] Should this study indicate such similarities, then educators will be in a better position to accept or reject the arbitration process or perhaps modify its future development to better coincide with their particular values and beliefs. In any event, intelligent reaction likely cannot occur without accurate information.

To highlight the significance of grievance arbitration in education, it is reported that, "this means many, if not most of the areas negotiated into the agreements will be subject to an appeal beyond the board of education."[14] When one considers that the scope of teacher bargaining is

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[12] Ibid., pp. 202-203.

[13] Stoiber, "Collective Bargaining in the Public Sector," p. 76.

[14] John Metzler, "What is Negotiable?" Michigan School Board Journal, Vol. 16, No. 4 (June, 1969), p. 23.

unprecedented in the history of American labor relations and covers such diverse areas as textbook selection, teaching hours, and pupil-teacher ratios,[15] the implications are potentially enormous.

These areas, coupled with the more conventional ones in the field of industrial relations, but unconventional in the field of education, i.e., union security, job posting, grievance procedures, and seniority, are all potentially subject to the outcomes of decisions by arbitrators. The controversy of grievance arbitration, the uniqueness of this process in education, the awesome scope of jurisdiction encompassed by the process, all point to its potentially profound impact on Michigan public education, upon school administration, and upon the Michigan teaching profession.

From this study some specific recommendations for legislation may be indicated. The views of arbitrators may suggest personnel problems not formerly known or recognized. The identification of school practices which are consistently upheld or rejected by arbitrators may assist in recognition of new common law precepts in education. The decisions by the parties of whether to arbitrate a grievance may be enhanced by information produced by this study. Later

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[15]William C. Miller," Curricular Implications of Negotiations," Educational Leadership, Vol. 23, No. 7 (April, 1966), pp. 533-536 and William F. Young, "Curricular Negotiations," Educational Leadership, Vol. 26, No. 4 (Jan., 1969), pp. 341-343.

researchers studying grievance arbitration in Michigan schools, as well as those conducting national studies, will have a starting place.

For these reasons, it seems that a thorough and scholarly exploration of this subject is not only justified but needed by the academic community, the school systems, and teacher organizations.

Methods and Procedures

The research technique utilized in this study was one of direct content analysis. The content analysis used for this study is referred to as a form of "documentary-frequency study" which is used to determine the frequency of occurrence of the studied phenomenon.[16] That is, the sought for information was taken from the contents of the original school arbitration awards, examined, classified, tallied, and is presented in Chapter IV of the study.

The population includes all known school arbitration awards affecting teachers issued between the period of the enactment of Michigan Public Employment Relations Act (hereinafter referred to as PERA) to the date of March 1, 1970. It was estimated that the study would include approximately fifty such awards.

The documents under examination were located at the

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[16]George J. Mouly, The Science of Educational Research (New York: American Book Company, 1963), pp. 282-284.

East Lansing headquarters of the Michigan Education Association (MEA), the Michigan Association of School Boards (MASB), and the Detroit headquarters of the Michigan Federation of Teachers (MFT), AFL-CIO. Permission was granted to visit and examine the awards and related data available to those agencies.

Because a major purpose of the study was to attempt to discover whether a new common law is emerging in school employee relations, attention was directed to examining the sources of authority cited as bases for arbitral decisions. The most common defenses relied upon by the defending school districts were classified and reviewed. The issues most frequently submitted to arbitration and the outcomes were reported. From the data a consistent pattern might be discerned regarding arbitral rulings and rationale.

A secondary purpose of the study was to discover information about the process of arbitration in education. These objectives were developed in question form and categories were constructed to secure data regarding such diverse areas as: time periods, costs, presence of briefs, remedies provided and other related information.

More specific elaboration of the methods and procedures used in the study are found in Chapter III of the study.

Terminology

Another aspect of the impact of collective bargaining

on education is the necessary assimilation of new terms and meanings of words.[17] Examples of such phrases as "corrective discipline," "unfair labor practices," "appropriate unit," "impasse," and others are appearing, often for the first time, in the vocabulary of educators.

Labor-management relations, similar to other areas of study, has over the years developed a language specifically designed to better specify the intent of words commonly used in personnel practice in the private sector. As noted by a compiler of industrial terms:

> The growth of job evaluations, time and motion study, the rapid expansion and development of the collective bargaining process, decisions by federal and state courts, and by arbitrators have been responsible for the widespread use of technical expression which is unfamiliar to the layman and occasionally even to the general practitioner who is not a specialist in any particular field.[18] (Emphasis supplied)

Definitions of many terms encountered in review of the literature attached to the field of arbitration are found in specialized legal and labor-management dictionaries as well as general dictionaries. Since collective bargaining has expanded into education, it appears logical to assume some of these terms and definitions will be borrowed intact from other fields while new and unique terms may be developed

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[17]Paul Prasow and Edward Peters, "Semantics of Contract Language," Chapter 5, Arbitration & Collective Bargaining (New York: Mc-Graw-Hill Book Company, 1970), pp. 60-77.

[18]Harold S. Roberts, Roberts' Dictionary of Industrial Relations, Bureau of National Affairs (Washington, D.C., April, 1967), foreword.

for the special nuances and subtle meanings peculiar to education.

A case in point might be the term "manager," which is most similar perhaps to the term "administrator" used in education. These terms are also often used synonymously with that of "supervisor." To further compound the problem, it should be noted that a Michigan Employment Relations Commission[19] ruling makes a further distinction, under collective bargaining for public employees, by distinguishing between "executives" and other supervisory and administrative personnel.[20] Suffice to state that definitions of such terms as "mandatory subjects of bargaining," "appropriate bargaining unit" and other difficult concepts inherent in the collective bargaining process are beyond the purposes of this study and could well be the subject of separate research. Therefore, the reader must be alert to the evolving language as it applies to collective bargaining in education, bearing in mind that each person encountered in the field--attorney, teacher, or arbitrator--may use subtle distinctions for his choice of an apparently common word.

Several examples of such overlap follow:

Arbitration (legal)--"is an arrangement for taking and

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[19]Formerly referred to as the Michigan Labor Mediation Board, the title was changed in accordance with the provisions of Act 181 of the Michigan Public Acts of 1969.

[20]Michigan Labor Mediation Board, Case No. R 67 D125 (City of Detroit).

abiding by the judgment of selected persons in some disputed manner, instead of carrying it to established tribunal of justice and is intended to avoid the formality, the delay, and expense and vexation of ordering litigation."[21]

Arbitration (legal)--"The submission for determination of disputed manner provided by law or agreement."[22]

Arbitration (labor-management)--"A procedure whereby parties unable to agree on a solution to a problem indicate their willingness to be bound by the decision of a third party."[23]

Arbitration (general)--"The hearing and determination of a case between parties in controversy by a person or persons chosen by the parties . . . "[24]

The first definition provides the rationale for arbitration, the second is so brief as to be unhelpful, the third definition is precise, while the fourth definition does not connote the sweeping authority normally attached to the term arbitration.

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[21] Bouvier's Law Dictionary, edited by Francis Rawle, Vol. 1 (Kansas City, Missouri: Vernon Law Book Company, 1914), pp. 225-226.

[22] Black's Law Dictionary, edited by Henry Campbell Black (St. Paul, Minnesota: West Publishing Company, 1951), p. 135.

[23] Roberts, Roberts' Dictionary of Industrial Relations, p. 27.

[24] Webster's New International Dictionary of the English Language, Second Edition unabridged (Springfield, Mass.: G. & C. Merrian Company, 1937), p. 138.

Another case in point regarding the confusion surrounding the use of terms is evidenced by the definition of "union" in the Dictionary of Industrial Relations.

> Union--see labor union
>
> Labor Union--In its widest and broadest use a labor union--is a continuous association of wage earners for the purpose of maintaining or improving the condition of their working lives. In current parlance this would include the responsibility of acting as the collective bargaining agent for its members and negotiating the wages, hours, and terms and conditions of employment for them. Unions constitute groups with a common interest and are established to further that interest.[25]

In education, the term "union" usually refers to those groups of employees and their organizations who are affiliated with the AFL-CIO. The majority of American and Michigan teachers and their organizations, however, are affiliated with the National Education Association and Michigan Education Association and are referred to as "Association."

It is for these reasons, therefore, that it is necessary to define the terms encountered in the study as perceived by the writer:

Arbitration--that process of settling grievances arising under the terms of a master agreement between a teacher organization and a board of education which provides for a binding decision by a third party.

Arbitrator--a person designated by the contracting parties

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[25]Roberts, Roberts' Dictionary of Industrial Relations, p. 214.

to issue a decision binding on both parties regarding the final disposition of an alleged grievance.

Bargaining--used interchangeably with Negotiating to denote the action required of school districts to arrive at a written agreement with a teacher organization.

Common Law--an unwritten body of opinion based on custom, usage and agreement over a period of time which is used as reference for decisions regarding current disputes.

Company--would be comparable to School District.

Fact-Finding--used interchangeably with Advisory Arbitration as a process by which a person upon testimony of both disputing parties, issues non-binding recommendations for settlement of a grievance or negotiations dispute.

Grievance--an alleged violation of a master agreement or master contract existing between a particular teacher organization and the employing school district.

Grievance Procedure--the written procedure contained within a master agreement which specifies how one or both of the parties may appeal alleged violations.

Manager--used interchangeably with Administrator and Supervisor to denote school employees with designated authority to direct the actions of others.

Mediation--the process by which a state-appointed person shall attempt to assist the contracting parties to reach agreement but acting only in an advisory capacity.

Other terms which are believed to be new or which

have significantly different meanings will be clarified as they are encountered in the body of the study.

Overview of the Study

The study is introduced by statements to the effect that the current events of assimilating collective bargaining into public education are believed to be of historical significance.

Chapter I contains the purpose of the study, which is to gather and present information regarding the results of four years of Michigan school experience in grievance arbitration. A major objective of the study is to determine whether a new common law in education is emerging from the body of arbitration experienced in the school sector. A second objective of the study is to gather additional information concerning the arbitration process, including such areas as time requirements, formality of proceedings, and other related information. The research technique to be used is that of direct content analysis and is applied to the total population of arbitration awards from July, 1965, to March 1, 1970. Definitions of terms are developed, with some discussion of the difficulty of studying this area, since it is affected by overlapping fields of study involving the legal, management-labor and education professions.

Chapter II is devoted to a review of the literature. This chapter is divided into four areas. The first area

deals with the general process of arbitration and rationale for its existence in employee-employer relations. The second deals with some of the problems which are encountered when utilizing this process. The third area discusses some other implications of the arbitration process upon management and concepts of doctrine accepted in the field. The fourth area treats the legal implications of arbitration and includes U.S. Supreme Court decisions and the legal history of school arbitration in Michigan. Three school district appeals of arbitration awards are reported.

In Chapter III the methods and procedures which are used in the study are explained in detail. Eleven questions are posed to assist in the collection of information to be determined in the study. The method of analysis consists primarily of classification. Various classifications are created and presented as applied to each area of interest. Frequencies, totals and median computations are to be applied.

Chapter IV presents the data which have been extracted from the arbitration awards. Following the presentation of data, additional observations are presented which emerge during the treatment of the data. A discussion of the findings is included.

Chapter V is devoted to a summary of the findings. Conclusions are drawn in relation to each of the stated objectives of the study. Finally, recommendations are

made, based on the findings, for the current parties to grievance arbitration in Michigan schools, as well as to future scholars in this area. Suggestions for additional research are offered.

The next chapter will present a review of the literature.

CHAPTER II

REVIEW OF THE LITERATURE

This chapter includes a review of the literature dealing with the arbitration process and further clarifications of terms encountered in the field. The dynamics of grievance arbitration are noted and the impact on management where grievance arbitration exists is reported. Search of the literature has included examination of materials on the general subject of arbitration, personnel management, and collective negotiations. Sources include texts on arbitration and articles in legal, labor and education publications. The review of the literature, while by no means exhaustive, is representative of the general nature of the grievance arbitration process.

A search of the literature reveals the subject of grievance arbitration is one which has received considerable comment and has been written on widely. Much of the literature on the subject has, understandably, been found in reference to the private and industrial setting and only more recently in the field of public employment or more specifically in the school setting.

The review is divided into four portions. The first portion deals with the arbitration process generally. The

second reviews some of the problems and issues in arbitration. The third section explores some of the implications of arbitration for both parties. The final portion of this chapter treats the subject of grievance arbitration from the legal point of view and includes a brief legal history of school arbitration in Michigan, as well as identifying three school arbitration awards which were appealed to the Michigan courts.

Finally, it should be noted that R. W. Fleming, an authority in the field of arbitration, states:

> Grievance is a more complex and sophisticated process than is generally recognized, and there are a great many things about it which we need to study if our understanding is to be complete.[1]

The Arbitration Process

The broad field of arbitration is considered to be divided into two areas: 1) labor arbitration concerned with disputes between employees and employers, and 2) commercial arbitration which is concerned with disputes involving commercial transactions. Businessmen, to save time and expense, bypass the courts and adjudicate disputes through arbitrators. Commercial arbitrators generally do not receive compensation, but the same informal pattern is followed as in arbitration of labor disputes. While labor arbitrators generally write detailed opinions, commercial

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[1] R. W. Fleming, The Labor Arbitration Process (Urbana, Illinois: University of Illinois Press, 1965), p. 199.

arbitrators usually render awards without opinions. It is estimated that the American Arbitration Association (AAA) case load breaks down into roughly 25 percent commercial arbitration cases and 75 percent labor arbitration cases.[2]

There are broadly two categories of labor disputes which are resolved by the arbitration process and are referred to respectively as "contract arbitration" and "grievance arbitration." A distinction is drawn thusly:

> The most significant distinction between contract arbitration and grievance arbitration is that the latter (alternately referred to as quasi-judicial arbitration or arbitration of rights) limits the arbitrator to interpretation and application of an existing agreement between the parties, whereas, the former (alternately referred to as quasi-legislative arbitration, arbitration of interest or terminal arbitration) calls upon the arbitrator to create the contract terms that are to govern the parties' relationship for the ensuing contract period.[3]

While the term "arbitration" has been defined in Chapter I, the term is used in conjunction with several modifying adjectives, and a clarification may be helpful to the reader. The terms "compulsory arbitration" and "advisory arbitration" are encountered frequently. "Compulsory arbitration" is a "legal requirement that a labor dispute be submitted to a decision which is binding."[4] At the time

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[2]Maurice S. Trotta, Labor Arbitration (New York: Simmons-Boardman Publishing Corporation, 1961), p. 35.

[3]Malcolm E. Wheeler, "Judicial Enforcement of Contract Arbitration Agreements," Stanford Law Review, Vol. 21, No. 3 (February, 1969), p. 673.

[4]"Glossary of Terms," The Pros and Cons of Compulsory Arbitration (Debate Manual published by the Brotherhood of Railroad Trainmen, Cleveland, Ohio, 1965), p. 170.

of this study, neither teachers nor school districts in Michigan were legally required to submit their disputes to arbitration, but the public's tolerance of repeated interruptions of essential public service was perhaps becoming sufficiently low as to make compulsory arbitration a future possibility.[5] The term "compulsory arbitration" generally refers to the making of a contract and not the interpretation of an existing agreement and therefore is not a subject of consideration for this study.

The term "advisory arbitration" refers to an arbitrator's recommendations which are only advisory to the parties. Neither party has agreed to, nor is obligated to accept the arbitrator's decision. An arbitrator, in commenting on the effect of advisory grievance arbitration in a school dispute in another state, termed this process an "exercise in futility." He commented:

> What about "Advisory Arbitration"? What does it do? The more kindly disposed among us may say that it is a step in the right direction and that it can pinpoint issues to be resolved at some future date. The undersigned, however, is persuaded that its inherent shortcomings far outweigh any benefits inuring to parties who would indulge in the proceeding. Why? The submitted issues, as in the instant case where the parties have indicated no intent whatsoever to either accept or reject the opinion of the arbitrator, are not settled. Furthermore, the grievants involved, having had their day in court, are nonetheless denied

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[5]For an interesting and balanced discussion of this topic read Robert C. Howlett, Arbitration in the Public Sector, (Reprint from proceedings of the Southwestern Legal Foundation 15th Annual Institute on Labor Law, New York: Matthew Bender & Company, Inc., 1969).

> relief. Neither party--winner or loser--is able to "breath easier," so to speak, because nothing has been determined.
>
> Nothing has been accomplished other than to deepen frustrations and do violence to the collective bargaining relationship. So-called "Advisory Arbitration" is, in the opinion of the undersigned, an exercise in futility. It has the potential to become, in and of itself, a part of the problem that final and binding arbitration is designed to mitigate.[6]

The grievance arbitration process is common and popular in private and industrial labor-management practices. It is estimated that 93 percent of all U.S. collective bargaining agreements contain grievance clauses, that an estimated 30,000 labor arbitrations took place in 1968, and that the total grows each year.[7] It is described as "one of the most effective systems yet developed in the U.S. for stabilizing labor relations."[8]

Arbitration of grievances has accompanied the introduction of formal collective bargaining in the public and school area. It is commonly recognized that:

> Every good collective bargaining agreement has its grievance procedure. And in the 90-odd percent of the contracts in the United States today, there are about 100,000 of them altogether, there is a provision as

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[6] Board of Education, Joint City School District No. 1, City of Superior, Wisconsin and Superior Federation of Teachers, September 4, 1969. (Reprinted in Negotiation Research Digest, National Education Asoociation, Vol. 3, No. 5, January, 1970, p. 9.)

[7] "Taking the Grief Out of Grievance," Business Week, No. 2062, (March 8, 1969), p. 78.

[8] Ibid.

> the last step in the grievance procedure, or the step after the last step in the grievance procedure, for the use of arbitration.[9]

The grievance arbitration appeal process for alleged violations by the employer of employee rights involves:

> . . . systematic union-management deliberation of a complaint at successively higher levels. At any of these levels the problem may be settled, and if not, the complaint may be submitted to an impartial outside party whose decision is final and binding.[10]

The grievance process is said to be entwined in the day-to-day relationships between employees and their supervisors and at the very heart of that continuous relationship.[11] Observing that it is only human to disagree, Clark states that "wise management provides the machinery, whatever it may be, for frank, full and fair consideration and adjustment of all differences, whenever they arise."[12] This fact is recognized by modern management and in discussion of this problem in regard to non-unionized employees, Walter Ronner of Revlon, Inc. advocates that companies provide a board of neutrals as the final step of company-instituted grievance

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[9] J. M. Braden, "Recurring Problems in Grievance Arbitration," edited by Davis, Gershenson, et al., Preparing and Presenting Grievances, Institute of Industrial Relations, (Berkeley: University of California, 1956), pp. 28-29.

[10] Wendell French, The Personnel Management Process (Boston: Houghton Mifflin Co., 1964), p. 375.

[11] Ibid.

[12] Neil Clark, Common Sense in Labor Management (New York: Harper and Brothers Publishers, 1919), p. 176.

procedures.[13] It is stated: "The right to present and have grievances redressed is fundamental in our society. It satisfies a vital need."[14]

The final step of appeal to an outside arbitrator is stated to have advantages for both teachers and supervisors.

> Its primary value to the organization (teachers') is that the organization can go beyond the board of education for an application and interpretation of a collective agreement without recourse to strikes, sanctions, or other extreme actions. By the same token, the administration is usually guaranteed uninterrupted service the duration of the agreement. Furthermore, the superintendent and his staff may get a much better view of staff relations at the school level through this process. Without grievance arbitration, the teachers may be reluctant to voice their dissatisfactions, especially since the administrators who are the cause of the grievance may also be the last court of appeal for correcting it.[15]

Another reason advanced for the widespread use of arbitration in employee relations is that:

> The principal characteristic of collective bargaining agreements is their incompleteness, resulting in part from the failure of the parties to foresee or provide for many future problems, and in part from their inability to reach real agreement on certain issues which they do foresee. Consequently, this necessitates and

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[13]Walter V. Ronner, "Handling Grievances of Non-Union Employees," Personnel, Vol. 32, No. 2 (March, April, 1962), pp. 56-62.

[14]David L. Cole, The Quest for Industrial Peace (New York: McGraw-Hill Book Company, Inc., 1963), p. 77.

[15]Educator's Negotiating Service (ENS), Educational Services Bureau, Washington, D.C., February 15, 1968), p. 8.

> legitimizes the use of arbitration as a necessary and creative function in completing an agreement.[16]

The human significance of the grievance process is further enlarged by the observation that grievances are the expression of deep-seated feelings and that many stem from perceived or injured feelings.[17] Still another observation, following analysis of grievance procedures in school districts, led the writer to conclude: "The catharsis provided by the process as well as the stark existence of the procedure itself, tend to reduce the conflict within the system, thus resulting in an improvement of the educational environment."[18]

Under the arbitration process, the teachers' organizations, if dissatisfied with school district resolution of a grievance, usually submit a "demand" for arbitration to the administering agency named in the collective bargaining contract, or, where one is not mentioned, notify the school district of their desire to submit the issue to arbitration as provided in the collective agreement. In most school grievance arbitration clauses, the administering

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[16]Clyde W. Summers, "Collective Agreements and the Law of Contracts," The Yale Law Journal, Vol. 78, No. 4 (March, 1969), p. 551.

[17]Cole, The Quest for Industrial Peace, p. 77.

[18]Howard J. Jamrich II, "An Analysis and Development of Grievance Procedures for Use in the Public Schools," (unpublished Doctoral Dissertation, University of Minnesota, Abstract, quotation found in Dissertation Abstracts International, December 30, 1969, Vol. 30, No. 6, 2292-A.)

agency named has been a commercial agency, the American Arbitration Association.[19]

This agency operates twenty-two regional offices throughout the United States and provides for specific procedures which are then followed by the parties upon receipt by that agency of the "demand" for arbitration.[20] Briefly, the rules include: a written request for arbitration and notice to the other party, an answer required of the defending party, selection of an arbitrator, fixing the time and place of the hearing, the arbitration hearing, and the procedure by which the written award is sent to the parties.[21] The costs for administration of the procedure are $33.00 to each party plus additional fees for postponement, overtime, additional hearings or use of AAA conference rooms.

In addition to the AAA, the United States Federal Mediation and Conciliation Service (FMCS) offers service as a clearing house for appointing arbitrators upon request but does not continue supervision beyond the appointment of an

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[19]66 percent of Michigan's school districts having binding arbitration clauses reported AAA as the administering agency in the school year 1967-68. Found at Grievance Procedures for Teachers in Negotiation Agreements. Research Report 1969 - R8, National Education Association, (Washington, D.C., 1969), p. 14.

[20]The Detroit regional office of AAA is located at Room 1035, Penobscot Building, Detroit, Michigan, 48226.

[21]Labor Arbitration Rules, American Arbitration Association, 140 West 51st Street, New York (as amended and in effect February 1, 1965).

arbitrator. This coordinating service is of no cost to the parties, who pay the arbitrator his fee directly. This service is available to Michigan school districts at two locations--a regional office at Chicago for Michigan's Upper Peninsula area and a Cleveland area office for service to parties located in the lower peninsula of Michigan.

The Michigan Employment Relations Commission also maintains a list of arbitrators and will, upon request, arrange arbitration services for the requesting parties in a fashion similar to that of the Federal Mediation and Conciliation Service.

During the first several years of collective bargaining in Michigan school districts, there was confusion regarding the role of the Michigan Employment Relations Commission in grievance resolution. This was due to language in Act 176 relating to services of that agency for arbitration of grievance disputes arising in the private sector[22] and Section 7 of Act 336 referring to that agency's responsibility to mediate grievances.[23] Under the provisions of PERA, fact-finding procedures may be invoked when all efforts at collective bargaining and mediation have been

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[22] 423.9D (17.454(10.3)) "Any dispute, other than a representation question, may lawfully be submitted to voluntary arbitration in the manner provided in this section . . . "

[23] 17.455(7) Section 7. "Upon the request of the collective bargaining representative . . . it shall be the duty of the labor mediation board to forthwith mediate the grievance . . . "

exhausted. However, on March 21, 1969, the Commission established a new policy regarding the use of grievance fact-finding. Because of its explanatory nature, it is reproduced here:

STATE OF MICHIGAN
LABOR MEDIATION BOARD
March 21, 1969

Fact Finding of Grievances - Board Policy Statement

Section 25 of the Labor Mediation Act, Act. No. 176 of the Public Acts of 1939, as amended, provides that as a condition to instituting fact finding it must "become apparent to the Board that matters in disagreement between the parties might be more readily settled if the facts involved in the disagreement were determined and publicly known." Based upon its experience of the last 4 years, the Board finds that in most cases involving fact finding of contractual grievances, the issues are narrowly confined to one or several employees and arise out of the application or interpretation of a collective bargaining agreement. Such cases, which generally are of primary interest only to the aggrieved employee and the employer, are not of such general public interest as to justify the expenditure of public funds; nor will publicizing the facts and recommendations more readily settle the dispute.

Therefore, fact finding applications involving grievances arising out of the application and/or interpretation of collective bargaining agreements (ordinances or resolutions incorporating any agreements reached) will no longer be processed by the Board unless, in the Board's judgment, publicizing the findings of facts and recommendations will more readily settle the dispute. The burden of proving compliance with the statutory condition will be on the applicant and fact finding of grievances will be authorized only in the rare and unusual case involving the public interest.

In addition to these major sources of arbitrators, a few school districts have provided for arbitration of grievances by a locally selected panel of townspeople;

however, these provisions are not common and not of sufficient significance to attempt to identify except as they are incorporated in the data presented in Chapter IV.

Arbitrators are selected in several fashions. In the large industries it is most common for the parties to select a permanent arbitrator or umpire for a specified period of time who can provide continuity to the contract interpretation process. However, in most other grievance disputes an arbitrator is selected anew each time the need for arbitration arises. Thus the temporary or ad hoc arbitrator is seldom the same person. In an early study of labor relations in the public utility field, Chamberlain observed:

> With respect to the settlement of grievances arising under the contract, arbitration as a final step is almost universally accepted. Except for a few departures from the rule, however, the arbitrator is appointed at the time the issue is raised, or, while designated in advance on an ad hoc basis. A permanent readily available court of last resort is still not a widely established institution in public utilities.[24]

School grievance arbitration in Michigan has consisted to date of ad hoc arbitration, but in New York City the school district and union agreed in 1962 to a permanent arbitration panel to provide more stability to the process.[25]

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[24]Neil Chamberlain, The Union Challenge to Management Control (New York: Harper and Brothers Publishers, 1948), p. 329.

[25]Reported by Charles Rhemus at the National Academy of Arbitrators Annual Meeting as reported in the Government Employees Relations Report, Bureau of National Affairs, Inc., Washington, D.C., No. 187, March 13, 1967.

In brief summary, the literature indicates there are several forms of arbitration. It indicates that grievance arbitration is a widespread and commonly accepted brand of justice in private employer-employee relations. Arbitration serves an important stabilizing function in collective bargaining contracts and is considered the alternative to possible strike action in contract interpretation disputes. Arbitrators are selected in several ways; one of the most common is through the American Arbitration Association. The most experienced and largest school system in the nation has moved from temporary or ad hoc arbitration to a permanent arbitration panel.

Some Problems Encountered in Grievance Arbitration

Arbitration, despite its long history[26] and common acceptance in private employee relations, has problems which are discussed in the literature. Despite several of the problems discussed in this section, it should be noted that no viable alternative substitute for arbitration has yet been found for resolving contract disputes and employee grievances which protects the rights of the two disputing parties and yet retains its voluntary aspects.

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[26]Read Chapter One, "Historical Background and Perspective," Maurice S. Trotta, Labor Arbitration (New York: Simmons-Boardman Publishing Corporation, 1961), and "The Collective Bargaining Agreement," Paul Prasow and Edward Peters, Arbitration and Collective Bargaining (New York: Mc-Graw Hill Book Company, 1970), pp. 1-16.

Length of Time Required for Arbitration.--One of the major advantages cited in favor of arbitration is that it is swifter than resolution of alleged breach of contract disputes through the courts. The 1968 Annual Report of the U.S. Mediation and Conciliation Service[27] indicates the total time between the original request for arbitration and the receipt of the award was 141.3 days in 1966, 147.4 days in 1967 and 157.46 days in 1968. When days are added for the total period between the original filing for the grievance and the request for arbitration, the total time between the actual filing of an alleged contract violation and date of award resulted in a grand total of 221.7 days in 1966, 227.7 days in 1967, and 235.42 days in 1968. The same report also indicated the average hearing time remained at one day but that arbitrators charged a fee based on three days, which included study time and travel time.

Davey reports that few arbitrators are actually able to honor demands for an award and opinion 30 days after completing an arbitration hearing and he states that three to four months is more common and in some instances nearly a year.[28] No information was located regarding the length of time elapsed in school arbitration awards but it would

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[27]Federal Mediation and Conciliation Service - 21st Annual Report, Superintendent of Documents, Washington, D.C.

[28]Harold W. Davey, "Restructuring Grievance Arbitration Procedures," Iowa Law Review, Vol. 54, No. 4, (February 1969), pp. 560-588.

seem reasonable that similar time lag difficulties might be experienced in the school sector.

R. W. Fleming reported observing a serious time lag problem developing in the field of arbitration and a general belief that undue formalities are taking over the process. He states that the arbitration process, "once known for its speedy resolution of disputed matters, now moves at a ponderous pace."[29] To compound this problem, it is reported that arbitration cases are increasing not only in number, but in importance and complexity as well.[30] Additionally, the group of arbitrators preferred by the parties is quite small in relation to the large number of arbitration cases annually processed.[31]

Difficulty of Securing Information.--Despite the widespread use of grievance arbitration, the process is still considered a private one and the award the property of the two disputing parties. "Arbitration . . . is a single incident in a continuing relationship--a private service paid for by its users."[32]

It is estimated that only approximately four percent

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[29]Fleming, The Labor Arbitration Process, p. 57.

[30]"Taking the Grief Out of Grievance," Business Week, p. 78.

[31]Trotta, Labor Arbitration, p. 69.

[32]"Taking the Grief Out of Grievance," Business Week, p. 82.

of the total number of grievance arbitration awards are published.[33] One reason stated for this condition is: "It appears obvious, that the publication of written arbitration awards by national services is primarily for the benefit of other arbitrators and other contracting parties who seek to understand common problems in labor relations."[34] Additionally, the writer indicated a belief that the awards are published by arbitrators as a means of advertising.[35]

Arbitration awards have been published for a number of years by the Bureau of National Affairs and the Commerce Clearing House[36] but the collection, as noted earlier, is incomplete. In recognition of the importance of knowledge of school grievance arbitration, a new publication service was instituted on March 1, 1970 by the AAA. Titled Arbitration in the Schools, it carries a summary of both arbitration awards and fact-finding recommendations.[37]

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[33] Bruce C. Hafen, "Labor Arbitration--The Values and the Risks of the Rule of Law," Utah Law Review, Vol. 1967, No. 2 (May, 1967), p. 231.

[34] Ibid.

[35] Ibid.

[36] Labor Arbitration Reports, The Bureau of National Affairs, Inc., Washington, D.C., Volumes to 52, and Labor Arbitration Awards, Commerce Clearing House, Inc., Chicago, Illinois through 1969.

[37] Arbitration in the Schools, American Arbitration Association, 140 West 51st Street, New York, N.Y., 10020 (published monthly).

The cost is $60.00 per year and a subscriber may receive a complete text of the award he is particularly interested in by payment of 30 cents per page. This venture is jointly sponsored by the National Education Association, American Federation of Teachers (AFL-CIO), and the National School Boards Association. Whether the reports will be confined only to awards rendered through the AAA is unclear but if true, this is another incomplete service.

At the time of this study, attempts to study consistency of approach by arbitrators, recurrent problems in contract interpretation, and to establish predictability in the outcome of school arbitration is, of course, seriously hampered by the difficulties in locating such awards for study.

Costs of Arbitration.--There is concern expressed at the mounting costs of grievance arbitration.[38] This concern is most frequently expressed by employee organizations, which feel at an economic disadvantage in pursuing grievances through the arbitration appeal level.[39] The cost factor is, however, seen as a means of discouraging the prosecution

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[38]Davey, "Restructuring Grievance Arbitration Procedures," p. 560.

[39]"Taking the Grief Out of Grievance," Business Week, p. 82.

of weak grievances.[40]

A review by Fleming itemizes these costs as: arbitrator fees, counsel for the parties, court reporter costs where a transcript is requested, the parties' representatives' time for preparation, hearing room rent where required, service agency fees (AAA), and back pay costs where awards include same.[41]

Fleming conducted a study of arbitrator fees in 100 selected cases of discharge and found a per diem cost of $129.00 in 1962.[42] The average total arbitrator fee for all cases studied in that same period was $375.00. A more recent study of total arbitrator fees by the U.S. Mediation and Conciliation Service revealed the following average costs: $471.76 in 1966, $526.05 in 1967 and $513.12 in 1968.[43] It should be noted that the most common practice is for both parties to share the arbitrator's fee.

Fleming pursued the subject of attorneys' fees and found from 175 returns out of 400 mailed questionnaires that the labor union attorneys' average fee was $315 for an

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[40]Benjamin H. Wolf, "Grievance Procedures for School Employees," Employer-Employee Relations in the Public Schools, edited by Robert E. Doherty, New York State, School of Industrial and Labor Relations (Ithaca, New York: Cornell University, 1967), p. 138.

[41]Fleming, The Labor Arbitration Process, p. 16.

[42]Ibid., pp. 38-39.

[43]Ibid., p. 50.

arbitration case while $700 was the average fee for an arbitration case handled by management attorneys.[44] The fees also varied according to the size of city. This was the only study located regarding attorney costs. The National Education Association reported an estimate that legal fees averaged two and one-half times the arbitrator's fee.[45] That report also contained information that the total expense for a Warren, Michigan, school arbitration award cost over $3,500, of which 80 percent was for legal services and 20 percent for the arbitrator's fee and the arbitration filing fee.[46] It is not indicated whether this figure included attorney costs to the school district.

In Fleming's study in 1962, he added the three factors of arbitrator's fees, attorney fees and costs for court recorders and arrived at a cost figure of $640 for the union and $1,025 for the company for each arbitration case.[47]

Apparently the cost problem is not new, because the AAA issued a pamphlet in 1959 which included a series of tips on how to reduce arbitration costs. Tips included

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[44] Ibid., p. 46.

[45] Grievance Procedures for Teachers in Negotiation Agreements, Research Report 1969 R-8, National Education Association, Washington, D.C., 1969, p. 15.

[46] Ibid.

[47] Fleming, The Labor Arbitration Process, p. 50.

in that pamphlet for reducing arbitration costs were:

--move for swift resolution of grievances to reduce possible back-pay liabilities

--get a schedule of the arbitrator's fees in advance

--secure stipulation of as many facts as possible

--don't order transcripts of the hearing unless actually needed

--consider dispensing with a written opinion

--don't cite indiscriminate precedents

--avoid questions of arbitrability

--don't ask for postponements

--choose the arbitrator carefully[48]

The fact that arbitration of grievances has become a full-time occupation for some individuals, that arbitration has resulted in the creation of a large commercial agency, and that publishing companies find it profitable to report arbitration information would indicate that arbitration costs are not insignificant.

It is not unreasonable to assume that a small union or small school district could be easily discouraged from protecting its contract rights if costs are considered. In recognition of this problem, both Michigan teacher organizations report policies for helping their locals defray arbitration costs. The MEA has a policy of reimbursing its local associations for arbitration costs by

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[48] 9 Ways to Cut Arbitration Costs, American Arbitration Association, 140 West 51st Street, New York, August, 1959.

providing for reimbursement of 35 percent of all local arbitration costs up to a maximum of $250.[49] The President of the Michigan Federation of Teachers reported that organization provided free attorney services to its locals but that the local unit must pay the arbitrator's fee and any administrative expenses incurred.

Formality of the Process.--It has been stated that arbitrators are becoming excessively formal.[50] It is alleged that the merits of the dispute often get lost in arguments over whether a dispute is subject to arbitration in the first instance as well as, "the form of the grievance, technical rules as to admissibility of evidence, the use of precedence, and reliance upon briefs, transcripts and other proceedings."[51]

It is true that grievances which are processed to arbitration are subject to procedural limits set forth within the local agreement. Challenges by the employer as to time limits, for example, might be criticized as technical. This same criticism, however, might be leveled at any written rule, policy or regulation. It is also probable that the strict procedures for arbitration

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[49] P.N. Report, Office of Professional Negotiation, Michigan Education Association, East Lansing, Michigan, Report No. 2-69, March 3, 1969.

[50] Fleming, The Labor Arbitration Process, p. 57.

[51] Ibid.

under the auspices of AAA might be viewed as unduly formal but are doubtless the results of many years of experience and designed to provide protection to both parties. An example of this formality can be noted in AAA's Rule 26 of a series of 46 rules governing arbitration proceedings:

> Order of proceeding--A hearing shall be opened by the filing of the oath of the Arbitrator where required, and by the recording of the place, time, and date of the Demand and answer, if any, or the Submission.
>
> Exhibits when offered by either party, may be received in evidence by the Arbitrator. The names and addresses of all witnesses and exhibits in order received shall be made a part of the record.
>
> The Arbitrator may, in his discretion, vary the normal procedures under which the initiating party first presents his claim, but in any case shall afford full and equal opportunity to all parties for presentation of relevant proofs.[52]

"When the parties use lawyers to present their cases, insist upon formal procedures at the hearing and require stenographic records, the arbitrator is forced to become more legalistic."[53] "The term legalistic approach is used to imply strict conformance to rules and procedures emphasizing the need by the company to build up a case so the penalty will stand if challenged, maintaining records

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[52]Voluntary Labor Arbitration Rules, American Arbitration Association, 140 West 51st Street, New York (as amended and in effect February 1, 1965).

[53]Dallas L. Jones, Arbitration and Industrial Discipline, Report 14, Bureau of Industrial Relations (Ann Arbor: The University of Michigan, 1961), p. 169.

and accompanying emphasis on the rules."[54]

In a study of 300 arbitration cases regarding the frequency of the use of attorneys by the parties, the following figures were reported:

Percentage of cases in which counsel were present for one, both, or neither party:

	Neither	Union only	Company only	Both
1948	50.0	7.5	25.0	17.5
1956	35.7	5.4	26.8	32.1
1965	21.1	7.9	35.5	35.5 [55]

The figures clearly indicate the increasing use of attorneys in arbitration proceedings in the cases within the study, particularly by companies.

The study goes forward and examines the qualifications of arbitrators and finds that the percentage of arbitrators with legal training had increased from 53 percent to 66.3 percent over the same period.[56] This supports another writer's estimate that approximately two-thirds of the arbitrators who are members of the National Academy of Arbitrators are attorneys or have had legal training.[57]

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[54] Ibid., p. 233.

[55] Hafen, "A Study of Labor Arbitration--The Values and the Risks of the Rules of Law," p. 234.

[56] Ibid., p. 233.

[57] Robert Coulson, "Labor Arbitration: The Insecure Profession," Labor Law Journal, Vol. 18, No. 6, pp. 330-343.

Finally, the study reports that arbitrators who were attorneys relied more heavily on precedence than did arbitrators without legal training.[58] It was also reported that non-attorney arbitrators had increased their reliance upon precedence over the period studied.[59] The author concluded that this phenomenon was likely due to a series of U.S. Supreme Court decisions issued in 1960 which will be discussed in a later section of this chapter.

One suggestion for decreasing the time lag problem and formality of arbitration is to refrain from filing post-hearing briefs.[60] However, it is pointed out that, "if a party requests the privilege of filing a post-hearing brief, it must be granted, as part of a 'fair hearing'" . . . and that, "many arbitrations are closed without post-hearing briefs, but they are very desirable if the written statement prepared for the arbitrator prior to the hearing was not full, or in the light of matters which developed at the hearing should be for any reason supplemented."[61]

The Value of Precedence in Arbitration.--Writing in 1952 in

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[58]Nafen, "A Study of Labor Arbitration: The Values and the Risks of the Rules of Law," p. 234.

[59]Ibid.

[60]Davey, "Restructuring Grievance Arbitration Procedures," p. 573.

[61]Charles Updegraff, Labor Arbitration (Iowa City, Iowa: State University of Iowa, 1951), p. 17.

the foreword of a text on arbitration, law Professor Smith states:

> It is still too early to determine the full impact of arbitration on collective bargaining. The next decade should disclose whether the recorded and published decisions of arbitrators have developed some generalized thinking about collective bargaining problems which has become an important part of the utilized knowledge of bargainers and students of the subject. If experience with other bodies of accumulated knowledge is any criterion--and I can think of no valid reason why the field of labor relations should be set apart as an exception--we are likely to see just such a development. Some may view this prospect with alarm based on a fear of stereotyped thinking and undue reverence for precedent. This attitude seems to me to show a lack of understanding of the judicial process. It is simply contrary to every canon of progress to refuse in this field or any other to conserve the accumulated wisdom and experience of the problems as sound judgment may dictate.[62]

Seventeen years later, it is reported that arbitrators have ruled every which way on similar issues, precedents vary widely and there is suspicion of overemphasis on "legalisms."[63] Another writer comments:

> The precedential value of individual decisions is slight, partly because arbitrators pay less heed to precedent than courts do and partly because the great number of arbitrators means that on any given controversial issue, a variety of differing opinions can be found, making it very difficult to predict which, if any, will have an impact on the general trend of decisions. Since there is no formal hierarchy, each opinion is as significant as any other.[64]

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[62] Russell A. Smith, "Foreword to First Edition," Frank Elkouri, How Arbitration Works, The Bureau of National Affairs, Inc., Washington, D.C., 1952.

[63] "Taking the Grief Out of Grievance," pp. 78-82.

[64] Julius G. Getman, "The Debate Over the Calibre of Arbitration: Judge Hays and His Critics," Indiana Law Journal, Vol. 44, No. 2 (Winter, 1967), p. 185.

In the study earlier conducted by Hafen, the author concluded: "As a general observation it appears from the cases studied that arbitrators are rather cautious about exercising discretion beyond the legitimate use of contract interpretation, persuasive or authoritative precedents, or past practice."[65] The distinctions drawn by the author between persuasive and authoritative precedence were that the first was comprised primarily of other arbitration awards while the latter were defined as court cases and National Labor Board decisions. The author observed: "This suggests that although arbitrators are more concerned with justifying their decisions by the 'weight of authority' derived from general arbitration opinions, they have not yet begun to treat that authority as binding."[66]

Reference is made to the "common law" of arbitration[67] and it is recognized that past arbitration decisions, while not controlling, are considered by arbitrators in their deliberations. The value of the parties establishing a permanent arbitrator or "umpire" would appear to increase greatly the predictability in the outcome of arbitration. However, over-reliance on past precedence is discouraged by Arthur Goldberg, when acting as counsel for the American

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[65]Hafen, "A Study of Labor Arbitration: The Values and the Risks of the Rules of Law," p. 33.

[66]Ibid., p. 334.

[67]Ibid., p. 335.

Steelworkers Union, who stated the problem of arbitration precedence and predictability as follows:

> Every case is decided by a particular arbitrator. Every decision is based on particular facts on specific contract language and on an evaluation by the arbitrator of the arguments made to him by the persons who happen to represent the parties in dispute. All these factors are subject to variation as between contracts. Contracts change. Past practices vary. Bargaining history. The thinking of the arbitrators differs. Lines of argument not put forth in one case but advanced in another way may well lead to a different outcome . . . [68]

Goldberg then quotes from an arbitration award by Ralph Seward to state the case for precedence which is more prevalent in labor-management relationships which maintain a continuing or permanent arbitrator for a particular industry:

> Technically, of course, no prior decision is binding on the umpire. His task in every case is to decide the issues presented as fairly and wisely as he can. It is obvious, on the other hand, that one of the primary purposes of the umpire system is to aid the parties in reaching a clear understanding of the meaning of the agreement as applied in practice in the plant. Relitigation of decided issues--repeated attempts to persuade an umpire to change an established interpretation of the contract merely because one side or the other does not like it . . . cannot fail to defeat this purpose.[69]

Goldberg interpreted this quotation to his steelworker clients thusly:

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[68]Arthur Goldberg, "Introduction," Steelworkers Handbook on Arbitration Issues, (United States Steelworkers of America, Pittsburg, Pa., 1960), pp. xxvii-xxviii.

[69]Ralph Seward, Bethlehem Steel Company, Grievance 9266 and 9267.

> For this reason it is extremely important to know what arbitrators have said not only under a particular contract but under contracts in the steel industry when an issue of contract arises in the grievance procedure. For the reasons already stated, prior decisions may not provide the final answer, or the whole answer, but certainly they are a factor which should be considered.[70]

Goldberg then lists several clues to his clients on how to view arbitration awards: 1) heaviest weight should be given to prior decisions under the same contract by a permanent arbitrator, 2) decisions by other arbitrators or under other contracts have less weight and are less persuasive but are more so if the contract claims are the same, 3) isolated decisions by ad hoc arbitrators are of less significance, and 4) general statements made by an arbitrator in a different case should be treated with extra caution.

It is noted by one writer that both management and labor keep book on arbitrators' awards and performance,[71] thus indicating that both parties are aware of significant differences between arbitrators' interpretations as well as the importance attached to arbitration awards in their own industries.

An unusual recognition of the precedential value of arbitration is found in the Philadelphia school district contract, which states:

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[70]Goldberg, "Introduction," p. xxviii.

[71]Robert Coulson, "Labor Arbitration: The Insecure Profession," pp. 330-343.

> The Board agrees that it will apply to all substantially similar situations the decisions of an arbitrator sustaining a grievance and the Federation agrees that it will not bring or continue, and that it will not represent any employee in, any grievance which is substantially similar to a grievance denied by a decision of an arbitrator.[72]

The definition of "substantially similar" would appear to invite arbitration rather than discourage it under this language, but the intent of the parties is obvious.

Because of the increasing complexity of arbitration, the AFL-CIO established in 1969 an Arbitration Institute at the University of Illinois to give union representatives and staff members the special skills necessary to prepare and present arbitration cases.[73]

To briefly summarize--arbitration, as with any established institution--has some inherent problems. Among those which are recognized are costs, time to completion, difficulty in securing information and hence difficulty in predicting outcomes. The increasing use of attorneys and resulting "legalism" is identified as one area of concern. The value of precedence regarding earlier arbitration decisions is questionable, particularly in ad hoc arbitration and permanent arbitration panels or "umpires" are one way of increasing predictability in an industry or

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[72]"Philadelphia Teacher Contract," reproduced in Government Employees Relations Report, Bureau of National Affairs, Inc., Washington, D.C., No. 303, June 30, 1969, pp. 111-112.

[73]AFL-CIO News, Vol. 13:49 (December 7, 1968), p. 1.

occupation. Although the arbitration process contains problems, no suitable acceptable alternative has yet been conceived which adequately protects the disputing parties' rights and retains the voluntary aspects of conflict resolution.

Other Implications of Arbitration

The Michigan School Board Association has cautioned against the use of grievance arbitration and appears to prefer resolution of contract disputes through the courts.[74] This reluctance by public employers to embrace grievance arbitration was noted by MERC chairman and private arbitrator Howlett in a discussion of voluntary arbitration of interest:

> The opposition of public officials to arbitration as the terminal point in grievance procedure (an "A-B-C" of labor relations in the private sector), and the enthusiasm with which public employees, including professionals, have embraced the strike threat, does not augur well for resolution of collective bargaining issues by <u>voluntary</u> submission to an arbitrator.[75]

Some school boards' resistance to arbitration appears to be based on several factors, including the concept of a higher authority than a locally elected board, the unprecedented scope of issues subject to arbitration, and the potential loss of control over employees. Attorney Keller,

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[74]Clifford L. Cook, Jr., "From the Executive Director's Desk," <u>Michigan School Boards Journal</u>, Vol. XVI, No. 4 (June, 1969), p. 3.

[75]Howlett, <u>Arbitration in the Public Sector</u>, p. 262.

writing in the Michigan School Boards Journal, states,

> Compulsory arbitration means a transfer of governmental authority from the legislative body elected by the people to a panel of so-called experts operating on a case-by-case basis. This alone is enough to condemn compulsory arbitration in public employment . . . . Turning to another important problem, we should recognize that in public education there is a pronounced trend to control administrative decisions at the collective bargaining table. Included in this area are such vital matters as the selection of administrators, instructional requirements, curricular development and change, and teaching methods.[76]

In keeping with this concern for a very broad scope of bargaining issues subject to arbitral interpretation, it is stated: "Once wages, hours, benefits, and rights are established, curriculum and instruction will become the next logical areas in which to move."[77] Another writer commented:

> Professional employees, such as teachers, social workers, and nurses, have become more militant than ever before. No group of organized employees seems to have learned the art of negotiation faster than the professionals, nor has any group been more inventive in tactics or in expanding demands. Their organizations have introduced a significantly new principle in collective bargaining in the public service: to have a substantial voice in policy making. In the area of government in which these professionals are employed--especially in social service and education . . . the government mission, the manner of performance of the mission, and the technical devices used in the mission

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[76]Leonard A. Keller, "Public Collective Bargaining--A Management View," Michigan School Board Journal, Vol. XVI, No. 7 (September, 1969), pp. 11-12.

[77]Leslie J. Bishop, Collective Negotiation in Curriculum and Instruction, Association for Supervision and Curriculum Development, National Education Association, Washington, D.C., 1967, p. 4.

may be decided by the organized employees and the public administrator.[78]

These concerns recognize the likely possibility that arbitrators will be ruling in areas where they have had little technical experience but in which they will have broad contractural authority to render significant decisions in the field of education. One writer believes arbitration means that the ultimate power of government will rest with the arbitrator and that "arbitrator will begin to introduce a new common law shaping the manner of controlling management-employee relations."[79]

Two points of view exist regarding the scope of arbitrator authority authorized in the agreement. One position advocates the widest possible latitude in the definition of a grievance on the promise that any alleged grievance which is of sufficient concern to cause an employee or his organization to file a grievance is sufficiently important to require the parties, in the interest of good personnel relations, to discuss and resolve the issue.[80] The other position would advocate a very strict and narrow limitation of the power of the arbitrator and the subjects within the contract subject to grievance

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[78]Frank Zeidler, "Public Servants as Organized Labor," Personnel, Vol. 46, No. 4 (Pontiac, Illinois, August, 1969), p. 51.

[79]Ibid., p. 50.

[80]Davis, Gershenson, et al., "Recurring Problems in Grievance Arbitration," p. 28.

arbitration. Grand Rapids, Michigan, attorney Clary represents this point of view and cautions against acceptance of grievance arbitration without limiting its definition. He advocates very careful draftsmanship of the arbitration clause and urges that arbitration not be used as a substitute for authority of a public official.[81]

The impact of grievance arbitration upon management personnel is believed another significant implication of grievance arbitration. One person comments:

> Middle management and first line supervisors are no longer free to issue orders as they please; today they must do so with the contract or agreement constantly in mind. The unilateral perogatives of management to discipline or process grievances gives way when these functions come under the contract agreement.[82]

Another writer sees a less effective control by lay boards, a whittling away of discretionary authority of school boards and a pronounced trend to control administrative decisions.[83]

Apparently the mere existence of arbitration in a grievance procedure has an effect on administrative treatment of employees. Taylor observes that most managements

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[81]Jack R. Clary, "Pitfalls of Collective Bargaining in Public Employment," Labor Law Journal, Vol. 18, No. 7 (July, 1967), pp. 406-441.

[82]Zeidler, "Public Servants as Organized Labor," p. 51.

[83]Alan Rosenthal, "Administrator-Teacher Relations: Harmony or Conflict?", Public Administration Review, Vol. XXVII, No. 2 (June, 1967), pp. 154-161.

are, by and large, doing everything in their power to avoid arbitration and prefer to keep disputes "within the family."[84] Another writer in noting this effect comments that "the parties cannot help but be aware of the available legal sanctions (enforcement of an arbitration award) and while legal sanctions are rarely used, they significantly affect the relationship in many instances."[85] (Clarification supplied)

Neil Chamberlain conducted a study of the impact of unions upon management control which led him to conclude that erosion of traditional managerial authority had occurred. He further observed that management tends to attempt to preserve holding the line against union intrusion based on the following fears, "The safeguarding of unified final authority, the discharge of imposed responsibility, protection of efficiency, lack of union responsibility, inadequacy of union leadership, suspicion of union motives, and the fear of a changing economic system."[86]

Management, which were so inclined, attempted to carefully define management perogatives in this study. The reader, however, is left with the impression that such

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[84]James H. Taylor, "Preface," Arbitration and Industrial Discipline, Dallas L. Jones, Bureau of Industrial Relations (Ann Arbor: The University of Michigan, 1961), p. vi.

[85]Summers, "Collective Agreements and the Law of Contracts," pp. 533-534.

[86]Chamberlain, The Union Challenge to Management Control, p. 139.

attempts are likely not successful and that the only feasible approach was to leave the question up to the collective bargaining process, since the issues and relations between the parties are constantly evolving.[87]

Private sector arbitration appears to include emphasis on maintaining industrial discipline and control of the workers, while this factor does not appear to be a major issue in the public sector. AAA reports: "The most significant difference between grievance arbitration in the public and private sector is that discharge and discipline cases are extremely infrequent in the former."[88] This is believed to be due to the traditional forms of civil service and tenure protections given public employees against arbitrary discharge. Disciplinary issues, however, appear to be the single, most frequent issue in arbitration in the private sector.[89]

The implications of the application of a common law in arbitration to schools are noted by the Michigan School Boards Association[90] with concern, for it is contrary to past strict legal interpretation of public employer

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[87] Ibid., pp. 156-157.

[88] Morris Stone, "Foreword," Arbitration in Public Employment, edited by Estelle Tracy, American Arbitration Association, 140 W. 51st Street, New York, 1969, p. xi.

[89] Dale S. Beach, The Management of People at Work (New York: Macmillan Company, 1965), pp. 564-565.

[90] Cook, "From the Executive Director's Desk," p. 3.

rights. In arbitration common law it is stated that the concept of just cause is gradually being developed on a case-by-case basis. "Today there is a growing acceptance of the concept of corrective discipline and also that the employee should not be disciplined or discharged except for just cause . . . "[91]

The importance of being familiar with common law principles in arbitration must be recognized by employers:

> The arbitrator exerts great influence upon a company's disciplinary policy. Because he usually has the power to determine the validity of a rule under the contract as well as the appropriateness of the penalty, disciplinary policy must be shaped to meet the demands of arbitration and particular arbitrator.[92]

A major premise underlying arbitration of contract grievance as a stabilizing factor in employee relations is that the employer may wreak a wrong on the employee and this perogative is upheld. He may later be found guilty of a contract violation and required to make restitution. However, his original right to wreak the wrong is retained. To wit,

> An employee must attempt to comply with the rules and performance standards in good faith. He must obey orders, even those he believes are incorrect, unless compliance with an order will endanger his health or safety. If he believes he is being treated unjustly, he must use the grievance procedures and must not attempt to take matters into his own hands; i.e., he must perform and then grieve.[93]

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[91]Maurice S. Trotta, "Insubordination," Management Personnel Quarterly, Vol. 4, No. 1 (Spring, 1965), p. 20.

[92]Jones, Arbitration and Industrial Discipline, p. 21.

[93]Ibid., pp. 17 and 18.

Other aspects of common law of arbitration apparently include: corrective discipline, due process including formal charges, burden of proof for discipline and discharge rests with the employer, consistency, a penalty considered equitable by "just and reasonable men," no cause for action outside the workplace, and proof of deliberate disobedience.[94] These can be stern tests for a previously unfettered employer.

It has been reported that grievances are sometimes processed by employee organizations for political purposes. "Union officers, if they are responsive to membership pressures, as they must be in a democratic organization, are forced to represent an individual even at times to the extent of taking his case to arbitration when they actually believe that such actions is not warranted."[95] Two reasons are advanced for this: 1) the fact that an individual pays his dues and is entitled to help from the union and the union is obligated to provide it--it is a major function of a union, and 2) the fear and known hardship of unemployment prompts members to feelings of sympathy and belief that an individual should be given another chance.[96] Despite the recognition of the political context in which some grievances are pursued to arbitration, Jones concluded

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[94] Ibid., pp. 16-20.

[95] Ibid., pp. 141-165.

[96] Ibid., p. 141.

". . . although political consideration plays an important part in the decision to arbitrate some cases, the desire to correct believed injustices is also an important reason for arbitration. In fact, it would appear to be the basic reason in most instances."[97]

To capsule the literature in this area--Arbitration of grievances does restrict management's right to freely change conditions of employment. The employer must be conscious of the rules of the relationship with employees and the fact that an arbitrator has the authority to provide justice to the employee if abuses are perceived. Some school boards are fearful of the scope of jurisdiction held by arbitrators over their employee relationships and educational mission. Knowledge of the common law in arbitration is important for management to operate effectively. Political or tactical reasons may exist for the pursuit of an apparently meritless grievance but in most instances grievances are generally appeals for correction of alleged injustices.

Arbitration and the Law

While arbitration appears to be a judicial process and the arbitrator a judge, it is actually a form of self-government agreed upon by the contracting parties. In arbitration the parties have no right to a jury trial, the

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[97] Ibid., p. 131.

arbitrator is both judge and jury. In a court of law the procedures are formal and in arbitration may be quite informal. Further, a judge is required to follow precedence by other judges while the arbitrator is under no obligation to follow precedented opinion by other arbitrators. In courts of law there is the opportunity to appeal to higher levels of the court system while there is no appeal beyond the arbitrator except in special cases.

Since arbitration may be considered as a form of self-government under which both parties resolve their differences, questions arise concerning under what circumstances an arbitrator's authority might be overruled. What is the practice when one of the parties, upon receipt of an adverse ruling, refuses to comply with the award or even to participate in arbitration, where that party believes arbitrator authority is unwarranted? These and other questions have arisen through the history of labor arbitration and the courts have been called upon to clarify the legal status of labor arbitration.

It should be noted that:

> . . . the law does not enter the picture unless it is summoned by one of the parties. The law is available for the purpose of forcing a party to arbitration when he is unwilling to do so, and of forcing the party to obey an arbitration which he is refusing to oblige. The law is called to the scene when only one of the parties is dissatisfied with the working of the arbitration process. As long as arbitration and its results are voluntarily accepted by the parties and

> as long as neither party resorts to the courts the law leaves them strictly alone.[98]

The jurisdiction of the arbitrator is determined solely by the parties. "He has no right to exceed the powers expressly granted to him. If exceeded, his award can be set aside."[99] As might be expected, individual collective bargaining agreements vary widely in their language and hence the jurisdiction of the arbitrator for the interpretation of the contract may also vary widely. The following clause would represent a broad jurisdiction: "Any difference or dispute arising between the district and the Association or its members shall be resolved on acceptance of the following grievance procedure." Under this type of clause, the arbitrator is placed under few limitations and may determine practically any matter of dispute between the parties.[100]

A more restrictive clause might be: "The arbitrator is limited to the interpretation and application of the express terms of this Agreement, and he has no power to alter, add to, or subtract from or modify any terms of the agreement . . . "[101] This type language may be overly restrictive and it is suggested that a far more effective

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[98]Paul R. Hays, Labor Arbitration--A Dissenting View (New Haven, Conn.: Yale University Press, 1966), pp. 20-21.

[99]Trotta, Labor Arbitration, p. 81.

[100]Ibid., p. 81.

[101]Ibid., p. 83.

way to limit the range of arbitrator authority is to state exactly which matters he is not to handle.[102] It should be further noted that such attempts to limit the arbitrator's authority may well be for naught because of a growing but unorthodox view that the arbitrator must not only consider the language of the contract but all existing state and federal law as well.[103]

Since the state and federal court system hierarchy is ultimately subservient to the United States Supreme Court, it seems desirable at this point of review to look to that body for information regarding its view of labor arbitration. Particularly is this pertinent if one accepts Steiber's analysis of trends in public employee bargaining and his belief that the developing trend is to follow existing laws governing labor-management relations in the private sector except for the prohibition against the strike.[104]

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[102] Ibid., p. 84.

[103] Read the arbitration award by Robert Howlett in Warren Consolidated Schools (67-1 ARB & 8228 1967). Howlett pursues this reasoning in Simonizing Company (701-ARB 8024 1969) where he concluded limitation on hours of work of female employees under state law was superseded by the provisions of federal law, the Civil Rights Act, and Equal Protection Clause.

[104] Jack Steiber, "Collective Bargaining in the Public Sector," p. 65.

Important Federal Court Decisions

While it is not within the scope of this study to attempt an analysis of various court decisions regarding grievance arbitration, it is helpful to briefly note those which are considered of particular significance to labor arbitration.

The writers of labor law arbitration commonly view the first of a series of significant U.S. Supreme Court decisions as that of the Lincoln Mills case in 1957.[105] An interpretation of that decision was that the Court affirmed four basic principles:

1. That either party could sue in the federal courts for enforcement of a collective agreement.
2. That federal rather than state law should be controlling in such suits.
3. That an agreement to arbitrate disputes is enforceable in federal courts under federal law rather than in state courts under various state laws.
4. That the Norris-LaGuardia Act, which limits the issuance of injunctions by federal courts in labor disputes, does not apply to a union's suit seeking enforcement of an employer's promise to arbitrate.[106]

It should be noted that while this case and others considered by the U.S. Supreme Court deal with issues arising under collective bargaining contracts subject to the federal

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[105] Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957).

[106] Prasow and Peters, Arbitration and Collective Bargaining, p. 246.

Taft-Hartley Act, the controlling view of that court would be followed by the state court system where a public employee bargaining law is basically similar to the federal law. Such is the case in Michigan.

A series of three concurrent decisions by the U.S. Supreme Court in 1960, generally referred to as the Trilogy or Steelworkers Trilogy[107] are commonly viewed as the most significant for determining the general attitude of that court toward the arbitration process. The following extracts from those decisions appear to place that body squarely in favor of encouraging and supporting labor arbitration:

> The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for.
>
> The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim. The agreement is to submit all grievances to arbitration, not merely those which the court will deem meritorious. The processing of even frivolous claims may have therapeutic values of which those who are not a part of the plant environment may be quite unaware.

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[107] United Steelworkers v. American Manufacturing Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

> The union claimed in this case that the company had violated a specific provision of the contract. The company took the position that it had not violated that clause. There was, therefore, a dispute between the parties as to the "meaning, interpretation and application" of the collective bargaining agreement. Arbitration should have been ordered. When the judiciary undertakes to determine the merits of a grievance under the guise of interpreting the grievance procedure of collective bargaining agreements, it usurps a function which under that regime is entrusted to the arbitration tribunal.[108]

The above case was brought by the union to compel arbitration as was the following:

> Courts and arbitration in the context of most commercial contracts are resorted to because there has been a breakdown in the working relationship of the parties; such resort is the unwanted exception. But the grievance machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government. Arbitration is the means of solving the unforeseeable by molding a system of private law for all the problems which may arise and to provide for their solution in a way which will generally accord with the varient needs and desires of the parties. The processing of disputes through the grievance machinery is usually a vehicle by which meaning and content are given to the collective bargaining agreement.
>
> Apart from matters that the parties specifically exclude, all the questions on which the parties disagree must therefore come within the scope of the grievance and arbitration provisions of the collective agreement. The grievance procedure is, in other words, a part of the continuous collective bargaining process. It, rather than a strike, is the terminal point of a disagreement.[109]

Finally, the third of the series dealt with a union, which after winning a favorable arbitration award, was compelled to seek court assistance to gain compliance with the

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[108] United Steelworkers v. American Manufacturing Co.

[109] United Steelworkers v. Warrior & Gulf Navigational Co.

award:

> The refusal of courts to review the merits of an arbitration award is the proper approach to arbitration under collective bargaining agreements. The federal policy of settling labor disputes by arbitration would be undermined if courts had the final say on the merits of the awards . . . the arbitrators under these collective agreements are indispensable agencies in a continuous collective bargaining process. They sit to settle disputes at the plant level--disputes that require for their solution knowledge of the custom and practices of a particular factory or of a particular industry as reflected in particular agreements.
>
> When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations. The draftsmen may never have thought of what specific remedy should be awarded to meet a particular contingency. Nevertheless, an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrator's words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award.[110]

Thus it would appear that the highest court shows great reluctance to intervene into what is considered a private contractual agreement between the parties to settle their disputes by arbitration.

The Supreme Court also recognized the necessity of requiring the parties to exhaust arbitration before seeking court relief by stating in a later opinion that the

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[110] United Steelworkers v. Enterprise Wheel & Car Corp.

individual must attempt the use of the grievance procedure,[111] and in that same opinion also recognized the problem of parallel jurisdiction which creates opportunities for employers to delay the implementation of an award.

It is conceivable that a teacher grievance alleging a disciplinary action by a school district could involve the filing of an unfair labor practice before the Michigan Employee Relations Commission, the submission of a grievance to an arbitrator, recourse to the state or federal courts for alleged breach of contract or denial of constitutional rights and also referral to the Michigan Tenure Commission. The attitude of restraint by the courts is, of course, helpful in such a situation. While no cases could be located where the MERC has ruled on the subject of parallel jurisdiction, its chairman has indicated a desire to remain aloof from such questions should that agency be confronted with the problem.[112] It is not known what the attitude of the Teacher Tenure Commission might be if faced with such a hypothetical situation.

Michigan Decisions

In Michigan the question of whether arbitration was even possible for public employees was raised as an issue

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[111] John Wiley & Sons, Inc., v. Livingston, 337 U.S. 543 (1964).

[112] Robert G. Howlett, "State Labor Relations Boards and Arbitration," Labor Law Journal, Vol. 17, No. 1 (January, 1966), pp. 22-35.

in 1967. Prior to that time there were no court rulings and cautious or conservative school districts took the position that, lacking specific authority, schools were not legally eligible to enter into arbitration. Other school districts took a more liberal position that the districts had the power to engage in any action not specifically prohibited to them.

At the request of State Senator Bursley, Michigan Attorney General Kelley was called upon to answer the question: "Do Boards of Education have lawful authority to include in their master contracts with representatives of their employees a clause calling for compulsory arbitration." The Attorney General issued an opinion that districts did not have such authority[113] and thereby created considerable confusion among the school districts during the 1967 bargaining period. As noted by labor relations specialists, the attorney general's opinion was not clear on one major point--it did not differentiate between compulsory and voluntary arbitration nor was the usage consistent with the definition in the practice of industrial relations.[114]

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[113]Opinion of the Michigan Attorney General, No. 4578, May 26, 1967.

[114]Charles T. Schmidt, Jr., Hyman Parker, and Bob Repas, A Guide to Collective Negotiation in Education (Social Science Bureau, Michigan State University, East Lansing, Michigan, 1967), p. 12.

Compounding the confusion during this period was a ruling one month earlier by the Michigan Employment Relations Commission finding the Oakland County Sheriff's Department guilty for refusing to bargain on grievance arbitration and striking down that department's argument that grievance arbitration was illegal.[115] This condition of conflicting rulings likely contributed to the collective bargaining difficulties encountered by school districts in the summer of 1967.

Finally, in October of that same year, Berrien County Circuit Court handed down a decision specifically ordering a school district to arbitrate a grievance arising under a collective bargaining agreement; this repudiated the earlier opinion of the Michigan Attorney General. Embodied in the decision by Judge Kerns were the following comments:

> Unless the law of this state prohibits school districts from agreeing to binding arbitration of grievances of their employees under their collective bargaining agreements the defendant in this case is by the terms of its written contract . . . obligated to proceed with . . . binding arbitration of the grievances . . . .
>
> In other matters (contract claims, valuation disputes, insurance claims, etc.) the Michigan legislature and courts have favored arbitration as an efficient, fair, and usually inexpensive means to resolve disputes.
>
> The Attorney General's opinion is as to conditions and rights before the contract, not after the contract itself is voluntarily made.

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[115] Matter of Oakland County Sheriff's Department, CLMIS Case No. C-66 F63, April, 1967.

> Certainly where no law or public policy prohibits a contract on behalf of public employees containing a provision for binding arbitration of issues within the contract itself, the contract, like any other contract, must be enforced by the court.

and,

> Having found that the parties hereto could have entered a contract providing for binding arbitration of disputes within the terms of the contract itself and did so, the prayer of plaintiff for an order directing defendent to proceed with final and binding arbitration of the grievances . . . is granted.[116]

Appeals from Michigan School Arbitration Awards

To date three school districts in Michigan have initially refused to comply with arbitration awards. These awards are included in the population of this study.

In the Dearborn #8 school district an arbitrator sustained teacher grievances regarding disputes over compensation for extra duty and ordered the district to pay twelve teachers monies ranging from $400 to $1,295.25 for a total amount of $9,029.09.[117] Following a four-month refusal by the school district to pay the award, the Association sought a court order of summary judgment. On February 5, 1969, a circuit court judge ordered a partial summary judgment for three of the grieving teachers in a total amount of $3,229 plus five percent (5%) interest from May 27, 1968,

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[116]Decision of Circuit Court Judge Kerns, Local 953 and Council 55 of AFSCME v. School District of Benton Harbor, October 12, 1967, Berrien County, Michigan.

[117]Dearborn #8 Education Association, AAA #5430 0113 68 (M. David Keefe, 1968).

to date of payment and adjourned the other pending action until a later date.[118]

In the Flint public school system, a grievance was filed by the Association on behalf of 200 community college teachers who had requested payment for loss of vacation time when the school district unilaterally changed the opening date of school. The arbitrator found for the teachers and ordered the school district to pay the 200 community college teachers an average sum of $200 each for a total cost of $40,000. The school district appealed the award to the Genesee County Circuit Court. Circuit Court Judge Newblatt upheld the award, rejected the school district's contention the arbitration was illegal and emphasized:

> . . . the parties bargained for binding arbitration. They did not bargain for arbitration subject to judicial review of the findings of the arbitrator . . . . If the board dislikes it, if it thinks the arbitrator was unwise or inept, it cannot complain because the board nevertheless received what it bargained for.[119]

The third known appeal of an arbitration award in the Michigan public schools has occurred in the Flint suburban school district of Carman, where two grievances were ruled upon simultaneously by an arbitrator. The teachers grieved non-compliance with the collective bargaining

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[118] Dearborn #8 Education Association v. Dearborn #8 Board of Education, Civil Action No. 121191, Circuit Court Judge, Victor J. Baum, February 5, 1969, Wayne County, Michigan.

[119] Flint Education Association v. School District of the City of Flint, Civil Action 12744 Circuit Court Judge Stuart A. Newblatt, 1970, Genesee County, Michigan.

agreement for not re-employing two probationary teachers. The arbitrator split the decision, upholding the district's right to terminate the services of one teacher but ordering the district to offer the other teacher a contract for the 1969-70 school year, pay the difference between the amount the teacher received by teaching in another school district in 1968 and what she would have rightfully received if employed at the Carman district and to pay mileage at the rate of ten cents a mile for any additional miles she had to travel to and from work.[120]

The district filed a motion to reverse the arbitration award in Genesee County Circuit Court. There, following appearances by both parties, Circuit Court Judge Baker held for the district,[121] stating the arbitrator had exceeded his authority and citing an Appeals Court ruling[122] currently on appeal by the MEA before the Michigan Supreme Court on a similar issue. Thus the outcome of this overruling of an arbitrator's award in a Michigan school district was not final at this writing.

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[120] The Carman Education Association and the Board of Education of the Carman School District, Flint, Michigan, AAA No. 5430 0318 68, (Howard A. Cole, 1969).

[121] Carman Education Association and Thomasine Kalidzich v. Carman School District, Civil Action 14389, (Circuit Court Judge John W. Baker, October 29, 1969), Genesee County, Michigan.

[122] Munro v. Elk Rapids Schools, 17 Mich. Appeal 368.

Summary of the Literature

This chapter has dealt with a review of the literature on grievance arbitration both in the general context and as it relates to arbitration in the Michigan school districts. It is noted that arbitration is a complex process involving a number of considerations.

The first area of review contains further definition of voluntary grievance arbitration as distinguished from commercial, rights, interest, ad hoc, advisory, permanent, and compulsory arbitration. Inclusion of grievance procedures in labor agreements are identified as a necessary stabilizing factor in the collective bargaining process. The major sources for securing arbitrators are identified and the American Arbitration Association was reported to be the primary source of arbitrators. During clarification of the role of the Michigan Employment Relations Commission in mediation, fact-finding and arbitration, it was revealed that agency no longer accepted requests for resolution of grievances arising from existing contracts.

The second portion of the review considers some of the problems encountered in the arbitration process. Time-lag difficulties, high costs, excessive formality and the ambiguous place of precedence in arbitration are identified. In 1968 the Federal Mediation and Conciliation Service reported an average grievance took 235 days from date of filing to resolution by an arbitration award. Only four

percent of all grievance arbitration awards issued are reported to be published and available for inspection, making substantial research in this area difficult. Arthur Goldberg, when acting as general counsel for the U.S. Steelworkers, commented on the subject of arbitration precedence and recommended highest priority be given to awards in the same industry, by the same arbitrator under a common contract. The persuasive value of ad hoc arbitration awards are questionable. A figure of $513.12, as the average arbitrator fee in 1968, is reported but figures for attorney fees, administrative costs and attendent expenses probably push the total bill for arbitration much higher.

Other implications of grievance arbitration are discussed in the third area of review. Arbitration is reported to have impact on management freedom, restricting some freedom previously enjoyed. Several writers, representing school board concerns, have commented regarding the usurption of publicly elected authority by private arbitrators over a broad scope of bargaining issues--much broader than is common in industrial bargaining. It is reported that discipline and discharge are the most frequent issues in industrial arbitration while that is not true for public sector arbitration. A common law does exist in arbitration and includes such concepts as "just cause," requirements for employee obedience absent danger to health and safety, and progressive discipline.

The final portion of this chapter deals with the legal aspects of grievance arbitration. A contrast between the judicial and arbitral process was presented and a brief review of the landmark decisions by the United States Supreme Court regarding arbitration was made. It appears that courts will enforce arbitration awards and do encourage private resolution of collective bargaining contract disputes. The potential for conflict due to parallel jurisdictions with labor agencies and various courts is pointed out to the reader.

A brief legal history of school arbitration in Michigan was presented, including the conflicting opinions of MERC and the Attorney General, with final resolution by a circuit court enforcing the school district obligation to arbitrate contract disputes where an arbitration clause is included in their contract.

Finally, three Michigan school district appeals of arbitration were reported, showing in two instances the courts had upheld arbitration awards and that, while the third court overruled the arbitrator, the issue is unresolved because of a similar issue presently before the state Supreme Court.

The next chapter will present the methods and procedures used in the study.

CHAPTER III

METHODS AND PROCEDURES

This chapter deals with a description of the methods and procedures used within the study. It sets forth the population, sources of data, and the manner in which the data are compiled. The objectives of the study are stated and classifications are developed for determining the specific relationships to the problems posed. Finally, the assumptions and limitations of the study are described.

Procedures

No hypotheses were generated for this study due to the early exploratory nature of the study and the fact that no cause and effect relationships were expected to be discovered.[1] The study includes the total population of arbitration awards under examination and therefore sampling techniques were not used nor were tests of hypotheses required. Generalizations to a population other than those of the study are not to be inferred.

The study utilizes that technique referred to as

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[1]George J. Mouly, The Science of Educational Research (New York: American Book Company, 1963), p. 88.

direct content analysis,[2] which requires the establishment of precise classification, and is in keeping with the intent of the study, which was to establish the present state of grievance arbitration affecting teachers in Michigan public schools. This technique is reported to be of particular benefit in descriptive studies for use by administrators and of particular value to the field of education.[3]

The format of the study and reference notation follows that recommended by Turabian,[4] as suggested by the Michigan State University School for Advanced Graduate Studies.[5]

Population of the Study and Sources of Data

The sources of data for the study were comprised of the original arbitration awards as reported to the two major teacher organizations in Michigan, and to the Michigan School Boards Association. A further search was conducted in Michigan newspapers and labor and arbitration periodicals in the event additional, but unknown, awards

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[2]Walter R. Borg, Educational Research (New York: David McKay Company, Inc., 1963), pp. 256-260.

[3]Mouly, The Science of Educational Research, pp. 281-282.

[4]Kate L. Turabian, A Manual for Writers, 3rd Edition Revised (The University of Chicago Press, 1967).

[5]Patricia Fitzpatrick, University Guide to the Preparation of Theses (School for Advanced Studies, Michigan State University, East Lansing, 1968).

existed; however, no additional awards were located.

Inquiry was directed to Mr. Hyman Parker, executive director of the Michigan Employee Relations Commission, to determine whether that agency had assigned an arbitrator to a school grievance dispute and no referrals were reported.

Contact with the Detroit area office of the Federal Mediation and Conciliation Service resulted in referral to the Washington, D.C. headquarters. A written communication was received from that agency indicating no knowledge of Michigan public school arbitration awards which had been administered by that agency. Copies of arbitration awards administered by that agency are forwarded from the regional offices to Washington, D.C., held for one year, and then forwarded for file storage at Fort Monmouth, New Jersey. There, the awards are arranged by file number, making further search difficult. This step was considered to be probably unproductive for purposes of this study.

Inquiry was directed to the Detroit regional office of the American Arbitration Association, resulting in a refusal by that agency to permit examination of their files. Two reasons were advanced: first, the awards are filed by an assigned number so that without prior knowledge of the number such a search would be difficult in view of the large volume of awards administered by that agency each year; secondly, the arbitration awards are considered the property of the participating parties and could only be

released by one of the parties.

Contact was established with Detroit Federation of Teachers requesting arbitration information and it was learned no arbitration awards have been rendered affecting teachers in the Detroit public school system since the introduction of formal collective bargaining in that district. Mrs. Riorden, DFT president, reported the Detroit collective bargaining contract does not contain grievance arbitration except when both parties agree to submit an issue to arbitration.

Visits were made to the East Lansing headquarters of the Michigan School Boards Association, the East Lansing headquarters of the Michigan Education Association and to the Detroit headquarters of the Michigan Federation of Teachers. At these offices the arbitration awards in the files of the organizations were examined and the specific information sought for the study was recorded from each arbitration award. Mr. Clifford Cook of the MSBA, Mr. Thomas Patterson of the MEA, and Mr. Henry Linne of the MFT were the persons contacted who made access to the information for this study possible.

It should be noted that only the MEA had a systematic policy of filing arbitration awards, due primarily to that association's policy of sharing costs with its local units of grievance arbitration costs. Therefore the cost data for arbitrator's fees are limited primarily

to school districts where MEA affiliated units were the representative teacher organization.

The search produced a total of 58 school arbitration awards affecting Michigan teachers, in which 65 grievances were involved. Preliminary examination of the awards resulted in discarding one award involving the Pentwater school district because it was concerned with interest arbitration. Another award issued for the Oscoda Area school district was determined to be a non-teaching employee grievance and was discarded. Finally, an arbitration award issued in the Royal Oak school district was not included because it was limited to advisory arbitration. A list of the awards contained in the study, including the school district, date of award, grievance issue, and outcome are contained in Appendix A. The awards are arranged in chronological order.

Objectives of the Study

As noted in Chapter I, the purpose of the study was to explore, investigate, analyze and describe the nature of grievance arbitration in the Michigan public schools since the enactment of the Michigan public Employee Relations Act of 1965. The objectives of the study were derived from the search of the literature on grievance arbitration as revealed in Chapter II of the study.

Two objectives were identified. The first was to attempt to determine whether a new common law arising from

grievance arbitration could be discerned in the awards rendered in the public schools. The second objective was to secure specific information about the arbitration process itself from the body of awards.

For purposes of determining the answer to the first objective it was considered necessary to establish which authorities were relied upon most frequently by arbitrators in arriving at their decisions. In addition to the authorities revealed, it was considered necessary to determine the nature of the disputes and their outcomes, and the most common defenses relied upon by school district authorities for their action prompting the grievance. Finally, the remedy ordered where a violation was determined by the arbitrators would reveal the extent of arbitral authority and import.

It was assumed that from this information a pattern could be discerned as to whether arbitrators ruled with any degree of consistency on certain classification of disputes and the general nature of remedies ordered thereof. Consistent patterns of defense by school district authorities and their relative successes could also be examined. Therefore data were extracted from the awards in the study to answer the following questions:

I-1. Which authorities were relied upon by arbitrators as basis for decisions they have rendered in Michigan public school grievance disputes?

I-2. What types of issues were most often in dispute as evidenced by their frequency of appearance in arbitration awards?

I-3. What were the outcomes of the disputed issues?

I-4. What were the nature of the remedies provided by arbitrators when they decided that a violation of the collective bargaining agreement had occurred?

I-5. What were the most common employer arguments raised in defense of a disputed action?

To secure information regarding the second objective it appeared appropriate to center upon the problems identified in Chapter II to determine their prevalence in school arbitration. It was deemed to be of interest to examine the actual time periods involved in school arbitration, as well as costs involved, and the degree of formality attached to the process. Additionally, the background of legal training and experience possessed by arbitrators would be of interest in the study. Finally, the method of selection of arbitrators would likely reveal the location of information for future research, should one or several primary sources be so indicated.

Therefore, the data were examined to answer the following questions:

II-1. What were the time periods involved in resolution of contract disputes which utilize the arbitration process?

II-2. What were the costs attached to arbitration of school grievances?

II-3. What persons were being used by the parties of dispute in presenting their relative positions?

II-4. How often were written briefs used in school arbitration proceedings?

II-5. What procedures were being used for the selection of an arbitrator by the parties?

II-6. What was the background and training of the arbitrators?

The classification and analysis of the data would proceed in accordance with the objectives stated above and in answer to the specific questions posed in the study.

Classification and Analysis of the Data

I-1. To secure definitive information regarding the source of authority used as the basis for an arbitral decision the following classifications were created. The frequency of response would indicate the major authorities relied upon by arbitrators. The determination of classifying this area was considered the most difficult task in the study.

A - State Statutes and Judicial and Agency Decisions

B - Federal Statutes and Judicial and Agency Decisions

C - Past Practice in Local School

D - Industrial Arbitration Precedence

E - School Arbitration Precedence

F - Contract Language

G - Merits of Instant Case

H - Intent of the Parties

I - Other

I-2. To obtain classification of issues submitted to arbitration, the following were created. The frequency of occurrence would identify the most disputed areas and permit reference to the outcome of the disputes. The issues were classified as follows:

A - Leave Benefits

B - Compensation for Additional Duties

C - Discharge

D - Transfer and Promotion

E - Definition of Working Day

F - Non-reappointment to Non-tenure Position

G - Basic Wages

H - Other

I-3. The outcome of the issues submitted to arbitration were simply classified as "sustained" and "denied" to indicate whether the moving party (employee) was supported in his grievance. The total for outcomes was noted as well as the percentage for each issue clarification.

I-4. The remedies which were ordered by arbitrators upon finding a violation had occurred were classified as follows:

A - Reappointment

B - Back Pay

C - Additional Payment

D - Cease and Desist Protested Practice

E - Take Affirmative Action

F - Other

I-5. For purposes of classifying the most common arguments used by school authorities in defense of a disputed action, it was anticipated that several defense arguments might be raised. The problem of discerning what appeared to be the major defense was considered a most difficult process in the examination of awards. The following arguments were anticipated:

A - Past Practice

B - Intent of the Parties

C - Contract Language

D - Emergency Conditions

E - Non-arbitrable

F - Other

It was anticipated that a common defense might be that the issue was not subject to arbitration.

To secure information regarding the actual arbitration process in school arbitration, these categories were created:

II-1. To permit an assessment of the actual time transpiring in the grievance process, it was determined to ascertain the length of time involved from the original filing of the grievance to the final date of the award.

Additionally, it was considered of interest to determine the length of time from the original filing of a grievance to date of hearing and the time period between the hearing and the final date of award. Median times and extreme ranges were to be noted.

II-2. To determine costs of arbitration it was decided to assemble the information on file with the cooperating organizations and present that which was available.

II-3. To determine the degree of attorney utilization by the parties, notation was made in each instance as to whether the parties' representatives were attorneys or otherwise and those instances where neither party was represented by an attorney. The frequency of use was to be reported in percentage form.

II-4. The simple presence of written briefs was indicated as another aspect of the problem of formality identified in Chapter II.

II-5. For determining the method of selection of arbitrators, the American Arbitration Association and local determination were the categories for separation.

II-6. To determine the background and training of arbitrators, they were classified as attorneys or non-attorneys.[6] In addition their membership in the National Academy of

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[6]Found at Labor Arbitration Cumulative Digest and Table of Cases, The Bureau of National Affairs, Inc., Washington, D.C., 1969, p. 1169.

Arbitrators would be noted to indicate arbitration experience and professionalism.[7]

Assumptions and Limitations

The study was based on the assumption that it contained the total population of all grievance arbitration awards issued as a result of disputes arising from interpretation and applications of collective bargaining agreements existing between public school teacher organizations and their respective employers. This presumed that all the awards in the study would be known to their respective state organizations. The possibility this would not be true was considered remote, as only eleven non-affiliated teacher bargaining units were reported in the state.[8]

It was further presumed that the sought information would be included in the text of the arbitration awards. Limitations to this assumption included recognition that arbitration costs were not included in the awards but gained from the files of the Michigan Education Association. Preliminary examination of several arbitration awards

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[7]Thirty-two members of Michigan residence in National Academy of Arbitrators (Membership lists 1969-70), 2412 Grant Building, Pittsburg, Pennsylvania, 15219.

[8]Unpublished Report to MEA Board of Directors, December 10, 1969, listing those as follow: North Dearborn Heights, Bridgeman, Frankenmuth, Kingston, Mancelona, Dickenson-Iron County Intermediate, Baldwin Township, Grand Rapids Junior College, Macomb County Community College, Oakland University and Schoolcraft Community College.

revealed they varied in length and, therefore, comprehensiveness in the amount of information contained in the awards.

As noted in an earlier study of the formality of arbitration, the examination of the decision making process is subject to qualification regarding the true basis for a decision. The author noted that his study, as this study, was limited by

> . . . the fact that the weights and sources of given precedents are not always clear from written opinions; that prior cases may be followed or rejected without any indication to that effect in the written award; that arbitration decisions are not necessarily attempting to conform to the procedural or substantive standards of a common law.[9]

Nevertheless, the material presented here should further knowledge of what has occurred in arbitration in the Michigan public schools and promote a more knowledgeable discussion of the subject.

Summary

This chapter has presented the methods and procedures used within the study. The procedures used included classification and analysis of data to provide an empirical base of information in the exploration and description of grievance arbitration in the Michigan public schools since enactment of PERA. The population of the study includes all

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[9]Hafen, "Labor Arbitration--The Values and the Risks of the Rule of Law," p. 231.

known arbitration awards issued to March 1, 1970. The sources of data are derived from analysis of the arbitration awards on file at the two state teacher organizations' headquarters and at the headquarters of the Michigan School Boards Association.

To accomplish the overall purpose of exploring and analyzing grievance arbitration in Michigan school districts, the technique of frequency analysis was used. Five questions were prepared, the answers to which would clarify whether a common law was emerging from the body of arbitration awards under study. The issues, the most common defense of school districts, the arbitrators' decisions, the authorities cited as basis for the decisions and the remedies ordered were analyzed.

Six questions were developed to seek additional information about the arbitration process. The costs, the length of time required for arbitration, the degree of attorney participation in the proceedings, the frequency of written briefs, and the manner of selecting arbitrators were sought in those questions. In addition, the background and training of the arbitrators was to be determined.

Assumptions and limitations were listed with attention directed to the problem of presenting quantitative data arising from the decision making process. It was assumed the desired information would be contained in the arbitration awards under examination, although it was

anticipated the quantity of information contained within the awards would vary.

Chapter IV presents the findings.

CHAPTER IV

PRESENTATION AND DISCUSSION OF THE FINDINGS

This chapter contains the findings. The data extracted from the arbitration awards under study are contained in Appendices B and C of this study. A listing of the awards examined in the study is found in Appendix A, along with the code number assigned to each award for classification purposes. It should be noted that each award examined did not contain all the information sought and therefore attention should be directed to the total response for each category of findings.

This chapter is divided into four parts. The first part presents the findings determined as necessary for clarification of the first objective of the study, while the second part presents the findings related to the second objective of the study. A third portion of the chapter contains additional information which emerged during the treatment of data. The fourth portion contains a discussion of the findings.

Objective #1 - A New Common Law

In seeking clarification as to whether a new common law in education is emerging from the body of arbitration awards rendered to date in Michigan's public school, five

questions were developed. The questions and the findings are presented.

Which Authorities Were Relied Upon by Arbitrators as Bases for Decision They Have Rendered in Michigan Public School Grievance Disputes?

From the data contained in Appendix B-1 the following table is presented:

TABLE I.--Authority Cited as Basis for Arbitrator's Decision

Authority and Classification	Number	Percent
A. State Statutes, Judicial and Agency Decision	0	0
B. Federal Statutes, Judicial and Agency Decision	4	6.16
C. Past Practice	7	10.77
D. Industrial Arbitration Precedence	7	10.77
E. School Arbitration Precedence	0	0
F. Contract Language	24	36.92
G. Merits of Instant Case	20	30.77
H. Intent of the Parties	2	3.07
I. Other	1	1.54
Total	65	100.00

The two most common sources of authority used by arbitrators were the meaning of local contract language and the merits of the instant case (67.69%). Industrial arbitration precedence accounted for ten percent of the decisions, while no school arbitration precedence were used as a basis for decisions.

No industrial arbitration precedence was cited for 13 grievance decisions in 1967, 2 of 18 in 1968, 4 of 28 in 1968, and 1 of 6 in 1970 resulting in no reliable pattern of increased reliance on this source.

What Were the Major Issues Submitted to Arbitration?

From the data contained in Appendix B-2, the following table is presented:

TABLE II.--Issues Submitted to Arbitration

Issues and Classification	Number	Percent
A. Leave Benefits	6	9.23
B. Compensation for Additional Duties	12	18.46
C. Discharge	3	4.61
D. Transfer and Promotion	4	6.15
E. Definition of Working Day	5	7.69
F. Non-reappointment to Non-tenure Position	7	10.77
G. Basic Wages	14	21.54
H. Other	14	21.54
Total	65	99.99

Two of every five arbitrations (Items B and G [40%]) dealt with compensation. Over one of every five issues submitted to arbitration were unanticipated and dealt with such diverse areas as employment of black teachers, insurance coverage, letters of reprimand and others. Leave benefits (9.23%) and failure of districts to reappoint teachers to non-tenure positions (10.77%), (generally coaching)

together accounted for one of every five grievances in the study.

What Were the Outcomes of Disputes Submitted to Arbitration?

From data contained in Appendix B-2 the following table is presented:

TABLE III.--Outcomes of Issues Submitted to Arbitration

Issues and Classification	Sustained		Denied	
	Number	Percent	Number	Percent
A. Leave Benefits	3	7.31	3	12.50
B. Compensation for Additional Duties	9	21.95	3	12.50
C. Discharge	3	7.31	0	0
D. Transfer and Promotion	2	4.87	2	18.33
E. Definition of Working Day	1	2.44	4	16.66
F. Non-reappointment to Non-tenure Position	6	14.63	1	4.16
G. Basic Wages	10	24.39	4	16.66
H. Other	8	17.07	6	29.16
Total	42	99.97	23	99.97

Teachers were sustained in 42 of 65 grievances in the study or were 64.41 percent successful. They were most successful in the areas of compensation for additional duties, in disputes over basic wages, and where teachers were threatened with discharge or non-reappointment to non-tenure positions. School districts were more successful where disputes involved the definition of the teachers' working day.

What Were the Nature of Remedies Where Grievances Were Sustained?

From data contained in Appendix B-3, the following table is presented:

TABLE IV.--Types of Remedies Ordered by Arbitration

Remedies and Classification	Number	Percent
A. Reappointment	3	6.97
B. Back Pay	12	27.91
C. Additional Payment	15	34.88
D. Cease and Desist Protested Practice	1	2.33
E. Take Affirmative Action	8	18.60
F. Other	4	9.30
Total	43 *	99.99

* Partial Award in Denial--Arbitration Code 38.-A

As noted in tables II and III, the most common issues involved compensation and teachers were generally successful in these type grievances. Data in Table IV indicate nearly two of every three remedies ordered by arbitrators required either additional payment to teachers or back pay. The next most frequent remedy was for arbitrators to order school districts to take some type of action, i.e., reposting of an improperly filled vacancy, sending dismissal notices to teachers not paying representation fees, or providing a withheld benefit.

What Are the Most Common Defenses Used by School Districts?

From data contained in Appendix B-4 the following table is presented:

TABLE V.--School District Defenses

Defense Argument	Number	Percent
A. Past Practice	15	23.07
B. Intent of the Parties	5	7.69
C. Contract Language	15	23.07
D. Emergency Condition	3	4.62
E. Non-arbitrable	6	9.23
F. Other	21	32.31
Total	65	99.99

The most frequent defenses (nearly one-third of the cases) were not anticipated and included such diverse areas as management perogatives, parallel jurisdiction by another agency or the merits of the case. Additionally, heavy reliance was placed on past practice and the language of the contract. Examination of the data in Appendix B-4 reveals that a threshold defense was raised regarding the arbitrability of an issue in 19 cases or nearly 30 percent of the grievances in the study.

The relative success of these defenses is found in the following table and are derived from data found at Appendix B-4 and Appendix B-2:

TABLE V-A.--School District Defenses and Outcomes

Defense Argument	Successful		Unsuccessful	
	Number	Percent	Number	Percent
A. Past Practice	4	17.39	11	26.19
B. Intent of the Parties	1	4.35	4	9.52
C. Contract Language	8	34.78	7	16.66
D. Emergency Condition	2	8.70	1	2.38
E. Non-arbitrable	4	17.39	2	4.76
F. Other	4	17.39	17	40.48
Total	23	100.00	42	99.99

The most common defense, which included management perogatives, parallel jurisdictions or the merits of the case proved to be the least successful. Heavy reliance on past practice was also relatively unsuccessful. When school districts argued the meaning of the contract language, used emergency conditions, or raised the issue of whether a grievance was arbitrable, they were more successful.

Objective #2 - Additional Information About the Arbitration Process

In seeking further clarification regarding the arbitration process, six questions were developed. The questions and the findings are presented.

What Are the Time Periods Involved in Resolution of Contract Disputes Which Utilize the Arbitration Process?

From the data contained in Appendices C-1 and C-1-A the following tables are presented:

TABLE VI-A.--Time Between Filing of Grievance and Arbitration Hearing

Days	Number	Percent of Total
0- 99	6	20.69
100-199	10	34.48
200-299	11	27.93
300-399	1	3.45
400-499	0	0.00
500- Up	1	3.45
Total	29	100.00

Actual Median - 184 days
Range - High - 549 days
Low - 3 days

TABLE VI-B.--Time Between Arbitration Hearing and Awards

Days	Number	Percent of Total
0- 29	20	40.82
30- 59	19	38.77
60- 89	6	12.24
90-119	2	4.08
120-149	0	0.00
150-179	1	2.04
180- Up	1	2.04
Total	49	99.99

Actual Median - 36 days
Range - High - 228 days
Low - 6 days

TABLE VI-C.--Total Time Required Between Filing of Grievances and the Issuing of the Arbitration Award

Days	Number	Percent of Total
0- 99	3	7.50
100-199	15	37.50
200-299	16	40.00
300-399	4	10.00
400-499	1	2.50
500- Up	1	2.50
Total	40	100.00

Median - 212.5 days
Range - High - 586 days
Low - 47 days

Aside from two unusually long instances, the pursuance of contract grievances reaches the arbitration hearing stage in less than 300 days in 93.0 percent of the cases studied. Following the arbitration hearing, an award was issued within 90 days in 91 percent of the cases. The total time taken from the original date of filing a grievance to final decision had a mean time of 212.5 days, but over 5 percent of the grievances in the study required longer than a calendar year to receive a decision.

What Are the Costs Attached to Arbitration of School Grievances?

From data contained in Appendix C-2 the following tables were constructed:

TABLE VII-A.--Arbitrator Fees and Expenses

Costs	Number of Awards	Percent of Total
0-$199	1	3.45
200- 399	10	34.48
400- 599	12	41.38
600- 799	3	10.34
800- 999	2	6.89
1000- Up	1	3.45
Total	29	99.99

Actual Median - $ 450.00
Range - High - $1,533.00
Low - 150.00

In approximately 80 percent of the arbitrations studied the arbitrators' fees were less than $600.00; however, in one of ten arbitrations the fees and expenses exceeded $800.00.

It must be noted that a very small and limited number of responses was available and all but one of these were fees of attorneys employed by teacher organizations affiliated with NEA.

TABLE VII-B.--Attorney Fees and Expenses

Costs	Number of Cases	Percent of Total
0-$ 499	3	33.33
500- 999	2 *	22.22
1,000- 1,499	2	22.22
1,500- 1,999	0	0.00
2,000- 2,499	1	11.11
2,500- Up	1	11.11
Total	9	99.99

(* Including a school district attorney fee)

Actual Median - $ 925.00
Range - High - $2,812.50
Low - $ 111.83

What Persons Are Being Used by the Parties to Present Their Cases to an Arbitrator? How Often Are Written Briefs Mentioned in the Arbitration Proceedings?

From data contained in Appendix C-3 the following tables were constructed:

TABLE VIII-A.--School District Representatives in Arbitration Proceedings

Party	Number	Percent
Attorney	42	73.68
Consultant	8	14.03
District Employee	7	12.28
Total	57	99.99

TABLE VIII-B.--Teacher Organizations' Representatives in Arbitration Proceedings

Party	Number	Percent
Attorney	25	43.86
State Representative	20	25.08
Local Officers	12	21.05
Total	57	99.99

TABLE VIII-C.--Attorney Representation in Arbitration Proceedings

	Neither	School Districts Only	Teachers Only	Both	Total
Number	13	19	2	23	57
Percent	22.81	33.32	3.51	40.35	100.0C

In three of four arbitration proceedings, school districts are represented by attorneys while teachers rely on their own officers and staff in more than half of the arbitrations. Both parties were represented by attorneys in 40 percent of the cases studied, but in one of five instances neither side used attorneys to present their cases.

From Appendix C-3 it was noted that in 30 arbitrations, or over half of those included in the study, briefs were written and filed by the parties.

What Procedures Are Being Used for the Selection by the Parties of an Arbitrator?

From data contained in Appendix C-4 the following table was constructed:

TABLE IX.--Selection Procedures for Arbitrators

Selection	Number	Percent
American Arbitration Association	38	65.52
Federal Mediation and Conciliation Service	1	1.72
Michigan Employment Relations Commission	1	1.72
Local Selection by the Parties	18	31.03
Total	58	99.99

Nearly two of every three arbitrators included in the study were selected through the American Arbitration Association, while the balance were generally selected by the local parties. Governmental agencies supplied a negligible number of arbitrators.

What Are the Backgrounds and Training of the Arbitrators?

From data contained in Appendix C-4 the following tables were constructed:

TABLE X-A.--Grievance Decided by Arbitrators with Legal Training

Arbitrator	Number	Percent
Attorneys	42	70.00
Non-attorneys	18	30.00
Total	60	100.00

TABLE X-B.--Grievances Decided by Members of the National Academy of Arbitrators

Arbitrator	Number	Percent
Member	48	73.84
Non-member	17	26.15
Total	65	99.99

Seven of ten arbitrators had legal training in their background and nearly three of four arbitrators were experienced and professional as indicated by their membership in the National Academy of Arbitrators.

Additional Findings Embodied in Arbitrator Language

This section contains language and additional findings which were encountered in the examination of the data. One area of special interest, which emerged during the study, dealt with the perceptions of the arbitrators as

they began to practice their profession in the public schools. With an obvious sense of history the first known arbitration was described as follows:

Warren 2/12/67 (Robert G. Howlett)

> This is, I believe, the first arbitration between a Board of Education and the exclusive representatives of Board of Education employees since the enactment of the Public Employment Relations Act which became effective July 23, 1968. The arbitration was conducted under the rules of the American Arbitration Association, and a hearing was held at the Association offices in Detroit. Both parties were represented by highly competent counsel, each of whom presented excellent opening statements and post-hearing briefs. In this instance, contrary to some arbitration which I have heard, I believe all relevant testimony was produced at the hearing; and all arguments, both legal and evidentiary, presented to the arbitrator.

As noted earlier, grievance arbitration has been resisted by some school authorities and their arguments might well be contained in the comments by an arbitrator who was confronted with such resistance:

Evart 10/20/68 (E. J. Forsythe)

> The Board cites the contract language as calling for attempting to mutually agree on an arbitrator before involving the assistance of the American Arbitration Association for two reasons. First, arbitration in public education is new. Consequently, says the Board, the American Arbitration Association has no panel of experienced public education arbitrators. The Board says all it can provide is a list of industrial arbitrators. Secondly, the Board argues that the Contract between the parties has devised a grievance procedure which makes it possible for the parties to first attempt to find a man knowledgeable in school affairs--recognizing that this might not always be possible, the parties then have provided for resort to the American Arbitration Association as a "last resort." The Board says "a prime reason for the parties to mutually agree on an arbitrator was to offer some protection to the Board over who would interpret their contract.

> The Board complains of the expense of the American Arbitration Association with its filing fee, a fee for each postponement, and the matter of the arbitrator's fee. The Board counsel says he knows of several instances where the parties were able to secure the services of a qualified local citizen or area resident who was willing to assume the responsibilities and obligations of the arbitrator as a public service to the community--with no cost involved.
>
> The Board argues that the Association made absolutely no attempt to mutually select an arbitrator before invoking the American Arbitration proceedings.
>
> . . . In this case the Board of Education is requesting outright dismissal of the grievance. It argues enough time and effort have already been spent on this matter. It argues that among the reasons for dismissing the grievance in the present case include the fact that collective bargaining is new in public education; therefore, the viability of the entire grievance procedure, the very heart of the Agreement, is at stake. (pp. 9 and 10)

An economics professor at the University of Michigan, while acting as the first arbitrator in a local school system, commented on the impact of arbitration on typical school practices and appears to show great perception to the problems posed:

Greenville 11/9/67 (William Haber)

> While this agreement is between the Board of Education functioning under public law, and the Association of Teachers, its provisions are essentially similar to those which have characterized collective bargaining contracts in non-teaching activities for more than half a century. The Board has statutory obligations under the Michigan law. It has, however, the authority to make a contract with the Greenville Education Association, and agrees in Article XIV to carry out its legal functions and its reserved rights in such a manner "that no action shall violate any of the expressed terms of the Agreement." This Arbitrator, a member of the teaching profession, recognized that an agreement between a teachers' association and a school board, a relatively new development in our country, dramatically changes the relationship between

> the teacher and the school authorities. The adjustment will not be easy. It will require patience and understanding on the part of both parties if the strain and tension often associated with collective bargaining relationships are to be avoided. It is clear that in making such a contract, the School Board has undertaken to treat, by consultation, negotiation, and mutual agreement, many matters which heretofore it could have decided unilaterally.

The problem of parallel jurisdiction with other laws and authorities was recognized by one arbitrator who commented:

Waterford 8/1/67 (Robert G. Howlett)

> I recognize that in interpreting the contract, it has been necessary to consider the Public Employment Relations Act, the Tenure of Teachers Act, and the 1955 School Code in order to render an intelligent decision.

Another arbitrator was faced with arbitrating an issue which was at that very time before the Michigan Court of Appeals and stated his position thusly:

Southgate 4/29/69 (Leon J. Herman)

> This award is in no way to be considered as a predetermination or infringement of any court or Labor Department proceeding, finding or judgment . . . in explanation of the foregoing decision I wish to state that I make at this time no decision as to the validity or legality of the agency shop provisions. The matter is now pending before the courts and the State Labor Board. Their decisions would in any event have superior authority. My role here is simply to interpret the contract as the parties intended it. (Emphasis supplied)

In most instances the issue was rather clearly and succinctly stated by the arbitrator, for example:

Lincoln Park 4/6/69 (Harry N. Casselman)

> Was the appointment on October 2, 1967, of the Varsity Baseball Coach, Thomas Noland, by the Lincoln Park Board of Education for the school year 1967-68 invalid

under Article VII of the collective bargaining agreement of the parties? If so, what is the proper remedy?

However, the very question of whether an issue was arbitrable appeared in several instances and in three awards in the study it was the sole issue. The question of arbitrability might be posed as was the following:

Harper Creek 5/27/69 (Harry N. Casselman)

1. Is the grievance of John Wachsmuth, filed February 13, 1968, arbitrable under the provisions of the contract?

2. Did the School Board violate the agreement of the parties by failing to provide Blue Cross-Blue Shield health insurance for the period between October 21, 1967 and November 10, 1967?

Answer in the same case:

1. The grievance of John Wachsmuth filed February 13, 1968, is not arbitrable because his grievance was not filed within ten days of the occurrence of the events constituting the grievance as specified in Article IV C of the Agreement of the parties.

2. Since the grievance is not arbitrable the merits of the grievance is not reached.

If the issue is found to be arbitrable then the arbitration moves to discussion and decision of the main issue. How another timeliness argument was handled is shown here:

Lincoln Park 9/6/68 (Robert S. Rosenfield)

> The Employer suggests the grievance is untimely because it was not filed within 20 days of the day grievant signed his contract. This suggestion is based upon Article XV of the contract which requires that a grievance be brought to the attention of the School Board not later than 20 working school days after the event or occurrence which is the basis of the alleged grievance. This suggestion is without merit. Since a wage

> dispute continues in effect each time the grievant receives what he claims to be an erroneous rate of pay, his grievance is not untimely even though it was not filed within the 20 day period referred to.

The effectiveness of this argument, when raised, in blocking resolution of the dispute is recognized by arbitrators:

Chippewa Valley 6/2/68 (M. David Keefe)

> In this case, both sides resorted to technical objections which, if upheld, would either have prevented any hearing at all or would have effectively prevented the arbitrator from making any decision without risk of exceeding his authority.

It is a legitimate argument and must be treated where raised. The comments by this experienced arbitrator help clarify this area:

Lakeview (Battle Creek) 8/8/68 (Harry N. Casselman)

> We must first determine the threshold question of arbitrability. It is always a pertinent inquiry unless waived expressly or by conduct constituting proper grounds for estoppel . . . My own view is that unless a court has passed on arbitrability affirmatively, the issue is necessarily before the arbitrator and that this may be true even in cases where a court has ordered arbitration, since implicitly the jurisdictional issued may have deferred to the arbitrator by the court on the theory that his "greater experience" in labor relations issues was bargained for by the parties.

Further examination of the arbitration awards leaves unclear whether the burden of proof rests on the School Board or the teachers' organization. Examples of two points of view were found:

Birmingham 3/15/67 (David G. Heilbrun)

> Since the Association is the moving party in these grievances it is the Board, its administrative personnel, and their techniques, which are to be scrutinized.

Bloomfield Hills 1/27/69 (Harry N. Casselman)

> The BHEA as proponent of the grievance has the burden of proving that the Board violated the agreement of the parties as alleged.

It is apparent that the burden of proof rests squarely with the School District when it attempts to discipline or discharge teachers as noted in the language of the following two opinions:

Warren 5/25/68 (Richard Mittenthal)

> The School Board removed Novak from his position in the mistaken but good faith belief that it had complete and unfettered discretion with respect to extra-curricular coaching assignments . . .
>
> There is another serious flaw in the School Board's case. James maintains that Novak's performance as Head Football Coach grew progressively worse between 1964 and November 1966 . . .
>
> He issued some memoranda to Novak, complaining about his failure to take proper care of the equipment, his failure to attend league meetings, and so on. He spoke to him about some other matters. But not once in this entire period did he apprise Novak that he was dissatisfied with his overall performance or warn Novak that he would recommend his dismissal if no improvement took place. Novak was never really put on notice that he was in danger of losing his coaching position. He was never made aware that he had to perform his work better in order to retain his coaching position. Such notice, such advance warning, is an essential ingredient in any fair disciplinary procedure.
>
> The School Board concedes that the removal of Novak as Head Football Coach was "disciplinary action." Because most of the charges against him have not been borne out by the evidence and because the School Board failed to provide him with any notice of the need for improvement, I find that the discipline was neither "fair" nor "for just cause."

Carman (Flint) 1/31/69 (Howard A. Cole)

> On the question of whether there is just cause for the considered action against Mrs. _____ the Board must be

> held to have the burden of proof . . . the arbitrator has found in the record a substantial amount of the evidence against Mrs. _____ to be either trivial in nature or without probative value . . . But he has also found sufficient probative and significant evidence to establish that Mrs. _____ was guilty of lacking tact in dealing with her fellow teachers, and (more importantly) improper attitudes toward the Principal, to the extent that her discharge was justified. (pp. 9 and 16)

The flexibility and speed of the arbitration process emerged in the unusual instance where one school district changed the opening date of school in violation of the agreement with its teachers. Recognizing the dislocation which might result from ordering a further change in the opening date, the arbitrator permitted the district to proceed but its violation cost the district an estimated $40,000. The award was wired four days following the hearing.

Flint 8/24/68 (M. David Keefe)

> Were it not for the fact that consideration of this case came before the Arbitrator too late to avoid public confusion through 11th hour postponement (and because the Association provided alternate proposals for relief, based on not disrupting the scheduled opening), the Arbitrator as the observer of a bargained agreement on this starting date, would have been forced to rule that the opening date of August 26, 1968 should be set aside and put back to September 3, the day after the Labor Day Holiday.

The personal attitudes of arbitrators are apparent factors in at least some of their decisions. Direct contradiction is found in two arbitration decisions regarding whether teachers should receive extra salary credit for college credits which have little to do with teacher preparation.

In Lake Orion (5/14/69) Arbibrator Whiting discussed the issue and observed that one of the prime reasons for salary schedules based upon educational attainment is to encourage teachers to continue their studies and thereby improve their teaching capabilities. He found the district had failed to be specific in the requirements for salary credits for college credits and awarded the grieving teacher salary credit for 33 hours of college credit taken in a college of nursing between 1951 and 1954.

In the Lincoln Park school district, a similar dispute was resolved against the teacher and the award contained this language:

Lincoln Park 9/6/68 (Robert S. Rosenfield)

> . . . the hours were incidental prior to time grievant determined to become a teacher. To adopt the Union's (Association's) view would penalize the student who comes to the teaching profession after straight forward completion of the minimal educational requirements for certification as compared to the student who is uncertain of his desires and comes to the profession after meandering through a number of surplus college credits, 15 of which the Union now claims would entitle such a student to a higher starting rate of pay. (Clarification supplied)

Another observation in a study of the awards indicated that arbitrators, at times, retain jurisdiction of an issue--particularly in back pay awards. An example:

Warren 2/16/67 (Robert G. Howlett)

> I reserve jurisdiction to determine the amount due to each of the teachers entitled to salaries in excess to the salaries received during the 1966-67 school year in the event the parties are unable to make such determination.

Still another and very significant indication of an arbitrator's attitudes toward what constitutes proper teacher behavior includes an instance where two community college probationary teachers were denied full contract status and among the reasons stated by administrators was that they had signed anti-war posters carrying the statement "F___ War."

Schoolcraft Community College 8/22/69 (Leon J. Herman)

> There is no reason to assume that a probationary teacher should be bound by a higher standard of conduct than a full status teacher. Both are instructors of the same students and both are expected to meet certain standards as to personal conduct.
>
> I am not altogether satisfied that the complaints against the Grievants should be removed from their files. I believe it is as least poor taste and a demonstration of poor judgment indicating a lapse of professional integrity for a school teacher to sign a poster such as this in the school building at the behest of a student of the school. The language used may be in current usage among the younger generation, but it is not the type of language which should be fostered in common usage by the teachers in the school, who are expected to demonstrate by their own acts and speech a higher standard of behavior and a disapproval of vulgarity. I do not disapprove of the sentiment expressed in the poster, nor would I disapprove of the language were it not for its use by a teacher in a public school.
>
> I am not impressed by the contention that Grievants should be free of condemnation because they acted as citizens and not as teachers . . . . Their rights as citizens must be respected, but their conduct as teachers as it affects their school is subject to managerial control.

Other arbitration concepts encountered for the first time in schools included:

Buena Vista 2/7/70 (Harry N. Casselman)

> Furthermore, in arriving at the parties' intent, it is a cardinal rule of construction that an instrument is most strictly constructed against the author of the document. It is therefore incumbent on the representatives of the School Board to choose language in the memorandum which objectively demonstrated their subjective intent, or be bound by the implication flowing from the language chosen. (Emphasis supplied)

Flint 8/24/68 (M. David Keefe)

> The Board has regarded that the managements' rights clause relieves it of the duty of (the) following past practice. As a mandatory subject of bargaining, determination of school calendars is clearly not a topic appropriately for sole management discretion and therefore falls within the range in which the past practice concept is applicable.

Kent City 6/26/69 (M. David Keefe)

> Whether this can be accepted as a valid explanation depends upon the result of scrutinizing the applicable portions of the Agreement. Since no part of this can be read out of context (single clauses are commonly modified by other relevant sections . . .) this requires the arbitrator to take an overview of the total Agreement so as to determine the equities of the matter.

The precedential value and importance of arbitration on succeeding school practices was obviously carefully noted by this arbitrator:

Waterford 8/26/67 (Billie S. Farnum)

> Further, that the statement of the Waterford Education Association during the hearing, that should this grievance be resolved in its favor it would not establish precedence or cause for any other summer school project participant for further grievance against the Waterford Township School District Board of Education is hereby issued as a decree and made a part of this award.

The unorthodox views of one arbitrator raises the question of whether an arbitrator must confine himself to questions of intent of the parties, merits of the issue and

contract language or be aware of all existing law. In this instance the arbitrator cited one Supreme Court decision, five federal district court decisions, six different state court decisions and the Cincinnati Municipal Court to support his decision:

Warren 2/16/67 (Robert G. Howlett)

> I base decision on the ground that the Warren Education in exerting the Agreement containing the disputed language signed the contract which included a provision which contravenes the Federal and State Constitution equal protection provision and that these are applicable to public employees. (Emphasis supplied)

The impact on school management can be discerned in the comments of an arbitrator regarding what he perceived to be clumsy administrative action by an elementary school principal:

Carman (Flint) 1/31/69 (Howard A. Cole)

> Page 2 of the Self Evaluation Sheet, under GENERAL COMMENTS, seems to represent the perfect capsulation of a totally ineffective and inefficient attempt at teacher evaluation finally culminating in a dismissal. These remarks represent a pitiful effort to say something like, "She isn't a bad teacher, but she doesn't seem to be too happy in my building; and, since I'm so rushed for time, she had better go someplace else next year." Again, there is nothing of substance in these "general comments" that represent the last remarks to accompany the dismissal recommendation for a teacher. It is with some real degree of professional embarrassment and shame that I make any remarks relative to the quality of the comments found on page 2 of the Self Evaluation Sheet.

Still another revealing attitude of at least one arbitrator toward the concept of management control is contained in his comments regarding a teacher's failure to re-do lesson plans as requested by her principal.

Crestwood 10/20/69 (M. David Keefe)

> She was told, in no uncertain terms to re-do her "lesson plans" and return them by 3:45 p.m. of Tuesday, March 25. This she failed to do. Neither did she proffer any excuse, or ask for an extension or, even, register a protest. She ignored the order as if it had never been given. This is a clear case of insubordination . . .
>
> Under such circumstances, Management is within its rights to impose discipline. Indeed, it is Management's responsibility to maintain order in the work-force. A one day time off penalty under the total circumstances would, in this arbitrator's opinion, be improper to revoke and could expect to be sustained, based on the fact that deliberate insubordination was resorted to by the employee. The recourse for the aggrieved individual is the Grievance Procedure--and not self-help. Refusal to carry out a direct order is (with notable exceptions which would not be pertinent to this case through listing) a flagrant offense which exposes the violator to almost certain time off, if not discharge.

Nor are arbitrators reluctant to state their opinion as to what constitutes professional work and what does not. In deciding whether teachers should be reimbursed at their regular teaching salary rates or a lesser rate the following comments were offered:

Saginaw 5/28/69 (Leon J. Herman)

> I agree with the Board, however, that the work that the teachers were doing in supervising halls and cafeterias was not professional service and was in the same class as ticket taking and selling . . . . It consists of no more than patrolling halls and watching students in the cafeterias. This does not require professionals, requires no training and can be done by anyone with or without a teaching certificate. It is my opinion that the work may properly be paid for on an hourly rate and, except in one respect, the grievance should be denied.
>
> The exception I refer to is the use of a teacher during lunch recesses to conduct singing groups or glee clubs or the like. This is not a non-professional operation and is one which a teacher is peculiarly fitted to handle.

Discussion of the Findings

The findings indicate that the areas most often in dispute were concerned with compensation for extra duties and salary computation of basic wages and benefits, or largely economic items. Arbitrators, in the main, were confining themselves to the actual contract language contained in local agreements, or facts of the matters as they were presented in proceedings. Reliance upon past practice in the local school districts and upon industrial arbitration precedence were the next most common bases for decisions by arbitrators. In several instances arbitrators retained jurisdiction of the disputes following the award of back pay to assist in resolving any computational problems.

School districts in defense relied most heavily on arguments of management perogatives and parallel jurisdictions, the contract language as they interpreted it, and past practice in the local school districts. This reliance upon management perogatives and parallel jurisdictions, and upon past local practice were generally unsuccessful and these arguments were rejected by arbitrators in most instances.

Where there is a difference over interpretation of the contract language each party has fared nearly equally well. Where school districts attempted to discharge teachers or attempted to not reappoint teachers to non-tenure positions the arbitrators have, with only one exception,

overruled school districts because they failed to prove just cause following an adequate warning procedure as is required by arbitration common law.

School districts have often raised threshold arguments concerning the jurisdiction of arbitrators to hear the merits of the dispute. These arguments have generally been unsuccessful.

The median period for resolution of a contract dispute through arbitration is 212.5 days, or nearly seven months, which is a long time. The major period of delay appears to exist prior to an arbitration hearing. Once an arbitration hearing is held the decision is forthcoming relatively soon.

Costs of arbitration are difficult to assess due to the limited access to information in this area. The median arbitration fee of $450 does not appear prohibitive but the highest fee--$1,533--seems a disproportionate cost. In the latter instance, however, the arbitration involved a class action and required several days of hearing and perhaps represented a fair cost for "justice."

When one considers that nearly three-fourths of the school districts are using attorneys to represent them in arbitration proceedings, then approximately $1,000 must be added to each party's cost of a grievance arbitration where attorneys are utilized. In two instances, teacher organizations paid in excess of $2,000 each for attorney

representation. Additionally, it should be noted that approximately two-thirds of the arbitrations were administered through the American Arbitration Association, resulting in additional costs to the parties of $33 each.

Either for financial reasons or because of greater confidence in their abilities to present their cases, teacher organizations use attorneys less frequently than school districts. The presence of written supporting briefs, mentioned in over one-half of the arbitration awards, appears to indicate an evidence of formality and legalism in the process.

While the American Arbitration Association is the most common agency for selecting arbitrators, substantial numbers of arbitrators are selected by the parties themselves. The services of arbitration provided by governmental agencies appear to be generally ignored.

The arbitrators who are rendering decisions in school contract disputes are quite experienced in the arbitration process, as evidenced by the high degree of membership in the National Academy of Arbitrators. Additionally, these arbitrators tend to be attorneys or have had legal training and can be expected to be familiar with the most significant labor statutes and judicial decisions regarding employee relations.

A further examination of the data revealed that two-thirds of the school grievances were decided by six

arbitrators, indicating that some consistency in the application of rules of interpretation is already present.

Comments by arbitrators in their awards reveal they are not hesitant to render opinions as to what constitutes the nature of "professional" work, usefulness of college class credits, proper management actions, proper teacher behavior, and a host of related subjects which are often subjects of concern and debate in the education profession. At least several of the principal arbitrators are keenly conscious of the impact of collective bargaining on education and are attempting to provide fair and reasonable rules for the education work place.

It would be highly speculative whether these arbitrators might be more acceptable if they had backgrounds of training in education. Arbitrators who had professional education backgrounds might possess greater insights into the school problems with which they are confronted. However, an equal danger appears to exist, that without the untarnished eye of a third, outside and uncommitted party, the school systems may not be sufficiently responsive to the demands for a contemporary brand of justice which places a lesser value on older established school practices.

The conclusions, summary and recommendations of the study are included in the next and final chapter.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Summary

The purpose of this study was to investigate, analyze, and describe the nature of grievance arbitration affecting teachers since the enactment of the Michigan public employee bargaining law.

A review of the literature on grievance arbitration, as distinguished from commercial, interest, and compulsory arbitration, revealed that arbitration is considered necessary for stability of employee relations, the quid pro quo for the strike and a basic democratic answer to unilateral employer action. Additionally, arbitration provides clarification of ambiguities in the collective bargaining contract, assists in the development of rules of procedure and accommodates a basic conflict between the rights of employees and the rights of management.

The literature revealed concerns for excessive time lag, high costs, overformality and the uncertain value of precedence in arbitration. In spite of these problems, it was pointed out that no viable alternative process has yet been invented which protects the basic rights of the disputing parties as well as arbitration.

Arbitration was reported to contain political aspects, restrictions on management discretion and to raise philosophical questions regarding the sovereignty of public employers. The common law of arbitration was identified. A brief review of the major United States Supreme Court cases and major Michigan court cases indicate courts will, with few exceptions, observe and support the private process of grievance arbitration.

The study was exploratory and descriptive, the technique of content analysis by classification was used. The population consisted of 58 arbitrations involving 65 grievances. To narrow the scope of the study, two objectives were developed--the first was to attempt to determine whether a new common law was being fashioned for school districts from the arbitration process. The second objective was to secure data dealing with the actual arbitration process itself, including such items as time periods required, costs, outcomes, and other information. The data were extracted from the contents of the arbitration awards except for cost figures.

A series of eleven questions was developed, the answers to which would assist in accomplishing the objectives of the study. Classifications for the information sought were developed and frequencies were recorded. Medians, ranges, totals and percentages of responses were calculated.

The findings revealed:

1. The two most common sources for authority cited by arbitrators were the meaning of the contract language and the merits of the individual case. Precedence from industrial arbitration accounted for ten percent of the decisions, while no school arbitrations were cited as basis for decisions. No reliable pattern of increased reliance on industrial arbitration precedence was observed.

2. The most common issues submitted to arbitrators dealt with computation of basic wages and compensation for additional duties or assignments. Other issues included failure to reappoint teachers to non-tenure positions (particularly coaching), loss of leave or insurance benefits, letters of reprimand to teachers, failure of a district to employ black teachers and others.

3. Teachers were successful in 42 of the 65 arbitrations in the study and were most successful in areas of compersation and additional duties, in disputes over basic wages and where teachers were threatened with discharge or non-reappointment to non-tenure positions. School districts were more successful where disputes involved the definition of the working day.

4. Where violations by school districts were determined by the arbitrators, the most common remedies were to order payment for lost wages, new computations for compensation or reinstatement of improperly released teachers.

5. The most frequent defenses by school districts

included management perogatives, parallel jurisdiction by another agency, or the merits of the case. Heavy reliance was also placed on past practice. A threshold argument of non-arbitrability was raised in nearly 30 percent of the cases. ost common defenses proved the least successful. When school districts argued the meaning of contract language, used emergency conditions as excuses for non-compliance, or raised the sole issue of arbitrability, they were the most successful.

6. The median time period between the original filing of a grievance and issuance of a final arbitration award was 212.5 days, with the shortest period 47 days and the longest period 586 days. The median time between an arbitration hearing and the issuance of an award was 36 days.

7. The fees and expenses of arbitrators ranged between $150 and $1,533 with the median cost at $450. Only nine attorney fees and expenses were located and revealed the lowest cost at $111.83 and the highest at $2,812.00. The median figure for this limited data was $925.

8. Attorneys represented school districts in nearly 75 percent of the proceedings while teachers used attorneys only 44 percent of the cases. In 40 percent of the arbitrations both parties were represented by attorneys.

9. Written briefs containing supporting arguments and documentation by the parties were mentioned as being filed in over half of the arbitration awards studied.

10. The services of the American Arbitration Association were used to secure arbitrators in approximately two-thirds of the arbitrations and the balance were selected by the local parties with two exceptions involving government agencies.

11. The arbitrators tended to be experienced, with nearly three of four grievances decided by arbitrators who held membership in the National Academy of Arbitrators. Seventy percent of the grievances were decided by arbitrators who were either attorneys or had legal training.

The conclusions drawn from this information are presented in the following section:

Conclusions

The study establishes, without question, that a new authority is present in the school setting. This can be discerned by the nature of the remedies and the outcomes of those few instances where grievances have been appealed to Michigan courts. That new authority is the presence of an outside arbitrator who acts as judge and jury in resolving disputes over teachers' rights and the rights of their public employers.

The new authority of arbitration is revealed in the literature to be institutional in nature and represents doctrines established over long years of practice in the non-public sector. This doctrine includes such concepts as just cause, due process, corrective discipline, management's right

to manage including the right to discipline and discharge workers.

It seems reasonable to assume that experienced arbitrators, as were a majority of those in the school arbitrations studied, bring with them to the school setting many of these established principles of common law existing in the private sector. Support of this conclusion is evident in the fact that 10 percent of the grievances were determined on the basis of precedence in industrial arbitration. As the practice of arbitration in the schools continues to function and grow, a new set of rules in the school work place will be established.

The rate of growth of a new common law in schools from the arbitration process will depend on several factors. These include the commonality of collective bargaining contract language in the school "industry," the replacement of ad hoc arbitration with permanent arbitrators, and the extent to which school arbitration awards are published and available to arbitrators and the parties to arbitration. Evolving from case-by-case resolution of grievances should be clearer guidelines as to what constitutes a teacher's job, under what circumstances school administrators may discipline teachers, and what constitutes appropriate behavior of a teacher as divorced from his role as a citizen. The issue of job rights of teachers will likely occur, should sub-contracting of instructional activities develop in the

future.

The impact of grievance arbitration on school management appears profound in nature and should basically shape the future course of school personnel relations.

School administrators' abilities to assign, discipline, and supervise teachers will be subject to review by arbitrators, a phenomenon which is totally new to these administrative employees. Previously unfettered discretion subject to few limitations, the principal one being the Teacher Tenure Act, will be restricted and shaped to meet the arbitrators' demands of fair and reasonable action.

The impact of arbitration on the teaching profession appears equally profound. Whether the teaching profession will be content to permit arbitrators to determine if certain teaching activities are of a professional nature, or what constitutes appropriate behavior by teachers in the conduct of their duties, and perhaps even a determination of their competence, is unknown. Over the years teachers, as an occupational group, have been singularly unsuccessful in obtaining control over teacher licensure or of developing a meaningful code of ethics governing appropriate teacher conduct. In the absence of teachers' ability to control their own activities, it appears likely that arbitrators will determine these areas for them. At the time of this study, it appeared that the arbitration process was the cutting edge for determination of these important subjects

to the profession.

The arbitration process is complex, can be lengthy, expensive, formal and legalistic in nature. Much of the determination of the process rests in the hands of the parties. If nearly seven months for resolution of a grievance is the median time required (and one grievance consumed nearly one and one-half years) then the parties should take steps to reduce the processing time. If costs are considered prohibitive, then reduction of the use of attorneys and more utilization of administrative employees and teacher organization personnel are in order. Should the parties, however, equate the quality of arbitral justice directly with its cost, then arbitration costs will continue to mount.

The criticisms of excessive formalism and legalisms can be reduced by refraining from employment of attorneys and by not engaging in extensive research of legal and industrial arbitration precedence for supporting arguments as well as avoiding those arbitrators who appear preoccupied with peripheral federal interpretations and reports of decisions by courts in other states on possible similar circumstances.

It has been estimated that only approximately 200 of Michigan's school districts have grievance arbitration as the terminal step in resolving disputes over the rights of the parties. In those school districts where arbitration does not exist one must conclude that resolution of such disputes is a unilateral one by the public employer--the school

district. On the basis of information from this study, teachers have been quite successful in appealing their grievances, leading to the conclusion that a number of violations of teachers' rights, at least as perceived by experienced arbitrators, likely exist in those school districts where arbitration of disputes does not exist. In these districts (a majority of Michigan's school districts) the fundamental foundations of democratic appeal do not exist and the rights of teachers so located cannot be protected short of expensive and time-consuming recourse to the Michigan courts.

Recommendations

As a result of the information obtained from this study, the following courses of action appear worthy of consideration:

1. To speed the growth of an arbitration common law unique to the school environment, it seems desirable to provide a common repository for the classification and storage of school district arbitrations. A logical location would be under the direction of the Michigan State Department of Education, possibly in the Michigan State Library. At this central location, all parties could visit and examine the awards and copies could be purchased or received for study. An annual summary could be published and mailed to all Michigan school districts and interested parties. Such a service would provide an excellent opportunity for the Michigan State Department of Education to render a valuable

service to education in the state.

2. To improve the predictability of arbitration in the school, several approaches should be considered by the parties. They should consider the replacement of ad hoc arbitration with the appointment of a permanent arbitrator at the local level or a panel of arbitrators at the intermediate or state level. If appointed at the state level, arbitrators could be selected by the State Superintendent of Public Instruction upon the recommendations of the Michigan School Boards Association and the major teacher organizations, who would pay for this service. The arbitrators should be available for conferences to discuss their observations of arbitration in the schools and to offer suggestions for improving the process. The consistency of approach and the available body of rulings would facilitate the reduction of uncertainty commonly present in current ad hoc arbitration.

3. The Michigan legislature, if it continues to deny public employees the rights of strike, should take steps to declare as the public policy of the state of Michigan that disputes arising from interpretations of collective bargaining agreements between its local branches of government and its citizens employed therein are best resolved through arbitration of such disputes. A major reason for the widespread use of grievance arbitration has been to provide stability of personnel relations in the face of potential work stoppages arising from disputes under contracts. With

Michigan citizens employed by government denied the freedom of refusing to work in the face of alleged employer abuses, such alternate means of providing fair and equitable justice should be vigorously encouraged.

4. Universities which provide programs for the preparation of school administrators have responsibilities and obligations to instruct potential school managers in the study of arbitration, its implications, standards and outcomes. Failure to do so will likely leave them unprepared for fulfilling their administrative functions. Correspondingly, colleges and universities which prepare teachers assume equal responsibilities to instruct them in their rights and responsibilities as citizens of the school community. Expectations of teachers regarding their behavior, the scope of their job and other important and real considerations in the profession should be adequately covered in their instruction so as to assist them in making a successful transition from the university to their occupational practice.

5. School districts, which to date have opposed grievance arbitration, should re-examine their positions on the issue. When one considers the alternatives--the possible provocation of illegal strikes by teachers who see no other way of protesting alleged employer abuses, or the continued suppression of what is considered in today's society a fundamental democratic right of appeal to an impartial body--both alternatives seem less healthy, less contributing

to a school environment which demands the scholarly pursuit of excellence by teachers and the idealization of human rights and democratic values to their students.

6. Those school districts which have arbitration of grievances in their agreements with teachers should consider the consequences of engaging in superfluous technical defenses and address themselves to basic resolution of employee complaints. To do otherwise is to risk the development of a cynical attitude in their district toward the good faith desires of the parties to treat each other honestly and fairly. These same recommendations apply to the leaders of teachers' organizations who should be principally concerned with protecting their members' rights with a just and reasonable system of appeal.

7. The vast bulk of grievances is now being handled by school district administrators who have had no formal training in these areas. School districts, where they are not doing so, should engage in extensive inservice education of their administrators regarding the arbitration process, the need for consistent interpretation of contract terms, and to assist in making them feel more comfortable with knowledge of this new authority in education. Districts may also wish to assign one administrator the principal responsibility of maintaining personnel records and preparing and presenting the districts' positions in arbitration proceedings rather than to continue to rely on outside attorneys. Arbitration

of grievances concerns the day-to-day relationship of teachers and their administrators and seems best handled by permanent and skilled employees of the districts.

8. School administrator and teacher organizations should publicize significant arbitration rulings to familiarize their members with the respective rights and responsibilities of teachers and administrators as determined by the arbitrators. Their conferences should include sections on the subject of arbitration and their publications should alert members to this important new aspect of their daily lives.

Suggestions for Further Study

1. The most difficult aspect of the study has dealt with the necessarily subjective determination of classifying the major bases for arbitration decisions, major defenses by school districts and the issues themselves. It is suggested that a panel of arbitrators might be enlisted to assist in categorizing these areas to reduce what is likely the major limitation of the study.

2. At the time of this study, arbitration awards did not contain a consistent format, including the date of grievance filing, date of hearing, presence of the parties represented, specific reference to written briefs, or the address of the arbitrators. Cost information was difficult to obtain, particularly regarding the costs of attorneys and

the total costs of remedies ordered by arbitrators. It is suggested that future researchers be alert to these difficulties.

3. A study is suggested to compare the differences which might be present regarding morale and attitudes of school personnel which are employed in school districts which provide arbitration of employee grievances as contrasted to employees in school districts which do not provide arbitration of grievances.

4. A study is suggested to identify those colleges and universities which include in their prepration programs for school administrators the study of grievance arbitration. Comparisons of the relative success of these graduates might be made with school administration graduates who have not had the opportunity for study in this area.

5. A study is suggested to determine the perceptions of the arbitrators who practice their profession in both the school and non-school setting to determine whether substantial differences are encountered.

6. It is suggested that a study of similar nature be conducted in 1975 and at future periods to contrast the results of the studies and assist in determining the rate of growth of arbitration and its implications for the parties and for public education.

The completion of this study should be viewed as only the first of necessarily many studies of the complex authority of arbitration in the school setting.

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APPENDICES

APPENDIX A

POPULATION OF ARBITRATION AWARDS IN THE STUDY

Assigned Number in the Study	School District Name	Date of Award	Arbitrator
1.	Warren	2/7/67	Howard A. Cole
2.	Warren	2/12/67	Robert G. Howlett
3.-A	Birmingham (2)		
-B		3/15/67	David G. Heilbrun
4.	Saginaw	5/6/67	Robert G. Howlett
5.	Warren	5/16/67	Gordon N. Alexander
6.	Warren	6/10/67	Richard Mittenthal
7.	Pinconning	6/26/67	David G. Heilbrun
8.	Highland Park	7/6/67	Ronald Haughton
9.	Wayne	7/17/67	Robert G. Howlett
10.	Waterford	8/1/67	Robert G. Howlett
11.	Waterford	8/26/67	Billie S. Farnum
12.	Greenville	11/9/67	William Haber
13.	Lincoln Park	2/5/68	David G. Heilbrun
14.	Lincoln Park	4/6/68	Harry N. Casselman
15.	Beecher (Flint)	5/8/68	M. S. Ryder

Assigned Number in the Study	School District Name	Date of Award	Arbitrator
16.	Chippewa Valley	5/13/68	M. David Keefe
17.	Clintondale	5/22/68	Dudley E. Whiting
18.	Warren	5/25/68	Richard Mittenthal
19.-A	Dearborn #8 (2)		
-B		5/27/68	M. David Keefe
20.	Reese	6/3/68	Leon J. Herman
21.	Lakeview (Battle Creek)	8/8/68	Harry N. Casselman
22.	Godwin Heights	8/9/68	Benjamin M. Becker
23.	Beecher	8/17/68	E. J. Forsyth
24.-A	Flint (2)		
-B		8/24/68	M. David Keefe
25.	Bay City	8/26/68	Howard A. Cole
26.	Lincoln Park	9/6/68	Robert S. Rosenfield
27.	Hartford	10/14/68	David Grier
28.	Evart	10/20/68	E. J. Forsythe
29.	Beecher	1/2/69	E. J. Forsythe
30.	Bloomfield Hills	1/27/69	Harry N. Casselman
31.-A	Carman (Flint) (2)		
-B		1/31/69	Howard A. Cole
32.	Garden City	4/7/69	M. David Keefe
33.	Fraser	4/22/69	Harry N. Casselman
34.	Warren	4/22/69	E. J. Forsythe

Assigned Number in the Study	School District Name	Date of Award	Arbitrator
35.	Southgate	4/29/69	Leon J. Herman
36.	Lake Orion	5/14/69	Dudley E. Whiting
37.	Harper Creek	5/27/69	Harry N. Casselman
38.-A	Saginaw (2)	5/28/69	Leon J. Herman
-B			
39.-A	Taylor (2)		
-B		5/29/69	Alan Walt
40.	Carrollton	6/2/69	Howard A. Cole
41.	Van Buren	6/6/69	Harry N. Casselman
42.	East Detroit	6/10/69	Harry N. Casselman
43.	Wayne	6/20/69	Harry N. Casselman
44.	Kent City	6/26/69	M. David Keefe
45.	Trenton	6/30/69	David G. Heilbrun
46.-A	Beecher (2)		
-B		7/1/69	E. J. Forsythe
47.	Portage	7/15/69	Robert G. Howlett
48.	Grandville	8/23/69	Howard A. Cole
49.	Schoolcraft College	8/22/69	Leon J. Herman
50.	Saginaw Township	8/26/69	David G. Heilbrun
51.	Crestwood	10/20/69	M. David Keefe
52.	Melvindale	12/11/69	Alan Walt
53.	Crestwood	1/7/70	M. David Keefe

Assigned Number in the Study	School District Name	Date of Award	Arbitrator
54.	East Detroit	1/20/70	Robert G. Howlett
55.	Lansing	1/20/70	Leland W. Carr, Jr.
56.	Buena Vista	2/7/70	Harry N. Casselman
57.	Northwest (Jackson)	2/16/70	David G. Heilbrun
58.	Howell	2/25/70	James P. Tryand

APPENDIX B-1

CLASSIFICATION

A - State Statutes and Judicial and Agency Decisions
B - Federal Statutes and Judicial and Agency Decisions
C - Past Practice in Local School
D - Industrial Arbitration Precedence
E - School Arbitration Precedence
F - Contract Language
G - Merits of Instant Case
H - Intent of the Parties
I - Other

Assigned Number in the Study	Major Basis for Arbitral Decision	Classification
1.	Contract language, specific precedent over general provision	F
2.	Federal Constitution and State Constitution provisions	B
3.-A	Past practice in the system	C
3.-B	Merits of the record and testimony	G
4.	U.S. Supreme Court case and 17 federal district court decisions	B
5.	Past practice and custom	C
6.	Contract language and testimony at hearing	F
7.	Contract language	F
8.	Contract language	F
9.	Merits of the record and grammatical construction	G

Assigned Number in the Study	Major Basis for Arbitral Decision	Classification
10.	Contract language and grammatical construction	F
11.	Merits of the record	G
12.	Established past practice	C
13.	U.S. Supreme Court decision and school arbitration case	B
14.	Merits of testimony	G
15.	Contract language	F
16.	Merits of the record, including testimony and exhibits	G
17.	Contract language	F
18.	Failure to prove just cause	D
19.-A	Contract language	F
19.-B	Merits of the record and testimony	G
20.	Merits of the record and untimely filing	G
21.	Merits of the record, including testimony by grievant	G
22.	Contract language	F
23.	Contract language	F
24.-A	Contract silence and management rights clause	D
24.-B	Contract language and past practice	C
25.	Investigation of merits of instant case	G
26.	Intent of the original negotiating parties	H
27.	Contract language creates unequal status of teachers	I

Assigned Number in the Study	Major Basis for Arbitral Decision	Classification
28.	Contract language	F
29.	Contract silence and past practice	C
30.	Contract language	F
31.-A	Just cause proven by the record	G
31.-B	Failure to prove just cause in record and testimony	G
32.	Violation in effect under old contract preventing jurisdiction	F
33.	Contract language	F
34.	Contract language	F
35.	Contract language	F
36.	Minutes of the bargaining sessions	H
37.	Contract language	F
38.-A	Contract language and merits of the record	F
38.-B	Merits of the instant case	G
39.-A	Burden of proof not sustained by school board	D
39.-B	Clear reading of the contract	F
40.	Merits of the record of testimony	G
41.	Management perogative absent evidence of arbitrary or capricious action	D
42.	Merits of instant case	G
43.	Contract language	F
44.	Failure to provide sufficient proof of just cause	D

Assigned Number in the Study	Major Basis for Arbitral Decision	Classification
45.	Past local practice	C
46.-A	Contract language	F
46.-B	Contract language	F
47.	Timeliness--Non-arbitrable (contract language)	F
48.	Merits of the instant case	G
49.	Merits of the instant case	G
50.	Industrial arbitration practice and precedence	D
51.	Merits of instant case and contract requirements	G
52.	Merits and testimony of instant case	G
53.	Merits of instant case	G
54.	Federal Constitution, Civil Rights Act and U.S. testimony	B
55.	Merits of testimony and record	G
56.	Contract language	F
57.	Five supporting industrial arbitration awards	D
58.	Past practice	C

APPENDIX B-2

CLASSIFICATION

A - Leave Benefits
B - Compensation for Additional Duties
C - Discharge
D - Transfer and Promotion
E - Definition of Working Day
F - Non-reappointment to Non-tenure Position
G - Basic Wages
H - Other

Assigned Number in the Study	Issues Submitted to Arbitration by Teachers	Outcome	Classification
1.	Loss of preparation period--geometry class assignment	Sustained	E
2.	Full salary credit for outside teaching experience	Sustained	G
3.-A	Definition of working school day for counselors	Denied	E
3.-B	Definition of working school day for librarians	Denied	E
4.	Released time for lunch for Junior High teaching personnel	Denied	E
5.	Loss of salary for counselors and coaches during strike	Denied	G
6.	Is non-reappointment of coach an arbitrable issue?	Sustained	F
7.	Football coach pay during summer practice	Sustained	B

Assigned Number in the Study	Issues Submitted to Arbitration by Teachers	Outcome	Classification
8.	Salary payment to teachers for extra hour assignment (X)	Sustained	B
9.	Definition of teaching load for elementary teachers	Denied	E
10.	Master contract requirement teachers sign individual contracts	Denied	H
11.	Salary rate difference between summer and Federal Project rates	Sustained	G
12.	Is summer schedule hours for day arbitrable (X)	Sustained	
13.	Method of personnel selection for Federal Project	Denied	D
14.	Reappointment methods for football coach	Sustained	F
15.	Compensation for loss of free period	Sustained	B
16.	Additional pay for advanced training (X)	Sustained	H
17.	Supplemental pay for music assignments	Sustained	G
18.	Non-reappointment of a coach	Sustained	F
19.-A	Compensation for assignment over regular school assignment	Sustained	B
19.-B	Additional pay for advanced training	Sustained	G
20.	Adverse Teacher Evaluation report	Denied	H

Assigned Number in the Study	Issues Submitted to Arbitration by Teachers	Outcome	Classification
21.	Compensation for study hall assignment during preparation hour (X)	Sustained	B
22.	Additional compensation for counselors	Denied	G
23.	Compensation for loss of released preparation time	Sustained	B
24.-A	School District change of opening day of community college	Denied	H
24.-B	School District change of opening day of school--compensation	Sustained	G
25.	Method of transfer and appointment to vacant positions	Sustained	D
26.	Additional pay for advanced college credits	Denied	G
27.	Salary credit for outside teaching experience	Sustained	G
28.	Does arbitrator have jurisdiction of stated grievance (X)	Sustained	H
29.	Compensation for teaching in lieu of substitute	Denied	B
30.	Loss of sick leave credit	Sustained	A
31.-A	Non-reemployment of probationary teacher	Denied	F
31.-B	Non-reemployment of probationary teacher	Sustained	F
32.	Summer school assignment and pay computation	Denied	B

Assigned Number in the Study	Issues Submitted to Arbitration by Teachers	Outcome	Classification
33.	Loss of personal leave credit	Denied	A
34.	Definition of "wages" for negotiation purposes	Sustained	H
35.	Discharge notification to 51 teachers for failure to pay agency shop fees	Sustained	C
36.	Salary credit for college course credits	Sustained	G
37.	Health insurance protection for injured teacher	Denied	H
38.-A	Teaching compensation for noon hour duty	Denied	B
38.-B	Loss of personal leave for hunting purposes	Denied	A
39.-A	Loss of personal leave used in protest action	Sustained	A
39.-B	Discharge of 10 teachers for failure to pay agency shop fees	Sustained	C
40.	Reappointment of driver education teacher for summer employment	Sustained	G
41.	Transfer request to vacant biology section	Denied	D
42.	Salary credit for law school study	Sustained	G
43.	Payment computation for summer employment	Sustained	B
44.	Re-appointment of football coach	Sustained	F
45.	Payment for coaching services	Sustained	B

Assigned Number in the Study	Issues Submitted to Arbitration by Teachers	Outcome	Classification
46.-A	Loss of sick leave credits	Sustained	A
46.-B	Procedure for filling staff positions	Sustained	D
47.	Incomplete insurance benefits (X)	Denied	H
48.	Use of personal leave	Denied	A
49.	Denial of tenure status to probationary teachers	Sustained	C
50.	Salary credit for past teaching experience	Denied	G
51.	Discipline for insubordination--one day loss of pay	Sustained	H
52.	Pay for time lost honoring picket line of non-teaching employees (X)	Denied	H
53.	Improper filling of coaching positions (X)	Sustained	F
54.	Employment of black teachers	Sustained	H
55.	Letter of Reprimand in teaching personnel file	Sustained	H
56.	Salary schedule credit for less than "B" college course work	Sustained	G
57.	Full family insurance for spouse	Sustained	H
58.	Pay for additional duties	Sustained	B

(X) Denotes a threshold issue of arbitrability raised

APPENDIX B-3

CLASSIFICATION

A - Reappointment
B - Back Pay
C - Additional Payment
D - Cease and Desist Protested Practice
E - Take Affirmative Action
F - Other

Assigned Number in the Study	Remedies Ordered by Arbitrators where Teacher Grievance was Sustained	Classification
1.	Desist misassignment and provide preparation period as required	D
2.	All teachers so located to have salaries recomputed for new salary (X)	B
6.	Ruling--issue is arbitrable	F
7.	Payment for disputed time	C
8.	Pro rata payment for extra assignment	C
11.	Payment for difference between summer and Federal Project rate	C
12.	Ruling--issue is arbitrable	F
14.	Continue appointment, Supt. to submit recommendation to Board	A
15.	Payment for additional assignment	C
16.	Salary recomputed to new rate	C
17.	Additional payment for extra duty	C

Assigned Number in the Study	Remedies Ordered by Arbitrators where Teacher Grievance was Sustained	Classification
18.	Reappoint coach and make whole for lost wages	A
19.-A	Reimbursement for all time worked over regular assignment	B
19.-B	Recomputation and new placement on salary schedule	C
21.	Back pay for all teachers so located (X)	B
23.	Back pay and continued new rate	B
24.-B	Compensate all teachers for one week loss of vacation	B
25.	Vacate Board appointment and re-examine applicants	E
27.	Basic pay for all teachers so located	B
28.	Ruling--issue is arbitrable	F
30.	Back pay for lost days (retained jurisdiction)	B
31.-B	Reappoint teacher and pay for unmitigated damages	B
34.	Ruling--"wages" include all forms of compensation	F
35.	Board ordered to notify teachers of intent to dismiss	E
36.	Place all teachers so affected on new and improved schedule step	C
38.-A	Partial Award in Denial--music teachers to get pro-rata salary rate	C
39.-A	Back payment to all teachers for loss of personal time	B

Assigned Number in the Study	Remedies Ordered by Arbitrators where Teacher Grievance was sustained	Classification
39.-B	Board ordered to discharge teachers within 10 days if fees not paid	E
40.	Back pay ordered for all wages lost because of non-reappointment	B
42.	New salary rate computed on retroactive basis	C
43.	Payment of differences between old and new rate	C
44.	Reinstatement of coach and payment for lost wages	A
45.	Disputed payment ordered	C
46.-A	Payment ordered for period under dispute	B
46.-B	Board ordered to follow contract in filling vacancies	E
49.	Board ordered to offer tenure contracts to probationary teachers	E
51.	Board ordered to pay lost wages	C
53.	Reinstatement of coach with lost back wages	A
54.	Board ordered to actively seek to employ black teachers	E
55.	Board ordered to remove adverse comments from teacher's file	E
56.	Placement of teacher on higher salary rate	C
57.	Institute immediate payment of full insurance premiums (X)	E
58.	Additional payment ordered	C

(X) Denotes Arbitrator retained jurisdiction

APPENDIX B-4

CLASSIFICATION

A - Past Practice
B - Intent of the Parties
C - Contract Language
D - Emergency Conditions
E - Non-arbitrable
F - Other

Assigned Number in the Study	Most Common Major Defense Relied Upon by the Defending School District	Classification
1.	Contract language	C
2.	Classification not considered legally discriminatory	F
3.-A	Past practice	A
3.-B	Past practice	A
4.	Clear language of the contract	C
5.	Management Perogative (X)	F
6.	Past practice and custom	A
7.	Intent of the parties	B
8.	Past practice in emergencies	A
9.	Emergency conditions and record of attempt to comply	D
10.	Clear language of the contract	C
11.	Summer Federal Project no different than other summer employment	A

Assigned Number in the Study	Most Common Major Defense Relied Upon by the Defending School District	Classification
12.	Silence in contract--authority under Michigan School Code	F
13.	Contract language	C
14.	No vacant position existed	F
15.	Contract meaning of "normal"	C
16.	Past practice (Timeliness) (X)	A
17.	Past practice	A
18.	Poor teaching performance	F
19.-A	Contract language (X)	C
19.-B	Intent of the parties	B
20.	Merits of the Case (Timeliness) (X)	F
21.	Past practice (X)	A
22.	Contract language	C
23.	Loss of millage resulting in equivalent time off	D
24.-A	Contract silence--management rights clause	F
24.-B	Contract silence--management rights clause	F
25.	Managerial discretion	F
26.	Intent of the parties	B
27.	Prior past practice and consent of the individual	A
28.	Issue non-arbitrable--merits of issue never discussed (X)	E

Assigned Number in the Study	Most Common Major Defense Relied Upon by the Defending School District	Classification
29.	Contract silence and past practice	A
30.	Contract was never ratified (Timeliness) (X)	F
31.-A	Non-arbitrable, Tenure Commission Jurisdiction (X)	E
31.-B	Non-arbitrable, Tenure Commission Jurisdiction (X)	E
32.	Non-arbitrable due to untimely filing	E
33.	Contract language	C
34.	Contract language	C
35.	Issue pending before state labor board and Appeals Court (X)	F
36.	Administrative error and not intent of the parties	B
37.	Non-arbitrable because of timeliness (X)	E
38.-A	Contract language	C
38.-B	Administrative necessity	D
39.-A	Unauthorized strike	F
39.-B	Not determined in court of competent jurisdiction	F
40.	Merits of the Case (Timeliness) (X)	F
41.	Managerial perogative (Timeliness) (X)	F
42.	Contract language	C
43.	Past practice and lesser level of work performance	A
44.	Management perogative (Timeliness) (X)	F

Assigned Number in the Study	Most Common Major Defense Relied Upon by the Defending School District	Classification
45.	Contract language	C
46.-A	Contract language	C
46.-B	Attorney General Decision placing issue in question	F
47.	Untimely filing of grievance (X)	E
48.	Contract language	C
49.	Management perogative	F
50.	Past practice (Timeliness) (X)	A
51.	Management Perogative	F
52.	Contract language (Timeliness) (X)	C
53.	Board perogative (X)	F
54.	Past practice	A
55.	Failure to follow school policy	A
56.	Intent of the parties	B
57.	Past practice	A
58.	New duties do not require additional pay	F

(X) denotes where arbitrability is raised as a threshold question

APPENDIX C-1

TIME DATA INCLUDED IN THE ARBITRATION AWARDS

Assigned Number in the Study	Date of Filing Grievance	Date Indicated of Arbitration Hearing	Date of Issue for Award
1.		1/13/67	2/7/67
2.	9/21/66		2/12/67
3.-A	9/19/66		3/15/67
3.-B	9/29/66		3/15/67
4.	9/7/66		5/6/67
5.	10/13/66	2/7/67	5/16/67
6.	10/22/66		6/10/67
7.			6/26/67
8.	9/27/66	5/9/67	7/6/67
9.	11/27/66	5/23/67	7/17/67
10.	4/17/67		8/1/66
11.	6/7/67	8/11/67	8/26/67
12.		9/16/67	11/9/67
13.	8/7/67		2/5/68
14.	10/4/67	2/8/68	4/6/68
15.		4/26/68	5/8/68
16.	10/17/67	4/19/68 *	5/13/68

Assigned Number in the Study	Date of Filing Grievance	Date Indicated of Arbitration Hearing	Date of Issue for Award
17.	9/25/66	5/9/68	5/22/68
18.	10/22/66		5/25/68
19.-A		5/21/68	5/27/68
19.-B		5/21/68	5/27/68
20.	1/26/68	5/10/68	6/3/68
21.		2/17/68	8/8/68
22.			8/9/68
23.		7/26/68	8/17/68
24.-A		8/13/68	8/24/68
24.-B		8/13/68	8/24/68
25.	2/14/68	7/12/68	8/26/68
26.			9/6/68
27.		9/30/68	10/14/68
28.	4/18/68	11/4/68	11/20/68
29.	4/30/68	12/12/68	1/2/69
30.	3/4/68	11/20/68 *	1/27/69
31.-A	4/16/68	11/9/68 **	1/31/69
31.-B	4/18/68	11/9/68 **	1/31/69
32.	7/10/68	2/19/69	4/7/69
33.		3/4/69	4/22/69
34.		2/14/69	4/24/69
35.	1/3/69	4/10/69	4/29/69
36.	9/19/68		5/14/69

Assigned Number in the Study	Date of Filing Grievance	Date Indicated of Arbitration Hearing	Date of Issue for Award
37.	2/13/68	2/10/69	5/27/69
38.-A		4/28/69	5/28/69
38.-B		4/28/69	5/28/69
39.-A		5/20/69	5/29/69
39.-B		5/20/69	5/29/69
40.	7/8/68	5/1/69	6/2/69
41.	6/12/68	3/17/69	6/6/69
42.	9/23/68	5/1/69	6/10/69
43.		4/21/69	6/20/69
44.	9/25/68	5/7/69	6/28/69
45.		5/7/69	6/30/69
46.-A	3/13/69	5/18/69	7/1/69
46.-B	5/15/69	5/18/69	7/1/69
47.	12/20/68	6/24/69	7/15/69
48.		7/11/69	8/23/69
49.		7/1/69	8/22/69
50.			8/26/69
51.	4/30/69	9/30/69	10/20/69
52.	6/6/69	11/5/69	12/11/69
53.	12/30/68	5/14/69	1/7/70
54.	5/23/69		1/20/70
55.	6/14/68	12/15/69	1/21/70

Assigned Number in the Study	Date of Filing Grievance	Date Indicated of Arbitration Hearing	Date of Issue for Award
56.	10/28/68	12/2/69	2/7/70
57.	9/16/69		2/16/70
58.			2/25/70

* Two day hearing

** Three day hearing

APPENDIX C-1-A

TIME INTERVAL DATA COMPUTATIONS (DAYS)

Assigned Number in the Study	Grievance to Hearing	Hearing to Award	Total Time Period Grievance to Award
1.		25	
2.			144
3.-A			177
3.-B			167
4.			241
5.	117	94	211
6.			231
7.			
8.	225	28	253
9.	117	55	232
10.			106
11.	65	15	80
12.		56	
13.			182
14.	127	57	184
15.		12	
16.	184	24	208

Assigned Number in the Study	Grievance to Hearing	Hearing to Award	Total Time Period Grievance to Award
17.	226	13	239
18.			185
19.-A		6	
19.-B		6	
20.	104	24	128
21.		172	
22.			
23.		22	
24.-A		11	
24.-B		11	
25.	148	45	193
26.			
27.		14	
28.	200	15	215
29.	73	21	94
30.	261	68	329
31.-A	207	83	290
31.-B	205	83	288
32.	224	47	271
33.		49	
34.		69	
35.	97	19	116

Assigned Number in the Study	Grievance to Hearing	Hearing to Award	Total Time Period Grievance to Award
36.			237
37.	362	106	468
38.-A		30	
38.-B		30	
39.-A		9	
39.-B		9	
40.	297	32	329
41.	278	81	359
42.	212	40	252
43.		60	
44.	224	50	274
45.		54	
46.-A	66	44	110
46.-B	3	44	47
47.	186	21	207
48.		43	
49.		52	
50.			
51.	159	20	179
52.	152	36	188
53.	125	228	353
54.			242
55.	549	37	586

Assigned Number in the Study	Grievance to Hearing	Hearing to Award	Total Time Period Grievance to Award
56.	67	35	102
57.			153
58.			

APPENDIX C-2

DATA INDICATING COSTS OF ARBITRATION

Assigned Number in the Study	Arbitrator Fees and Expenses	School District Attorney Expenses	Teacher Attorney Expenses	Other
1.				
2.	$ 649.18		$2,812.50	
3.-A	675.00		2,351.25	
3.-B				
4.				
5.				
6.				
7.	361.40		261.52	
8.				
9.				
10.				
11.	440.00			
12.				
13.	300.00			
14.				
15.				
16.				
17.				

Assigned Number in the Study	Arbitrator Fees and Expenses	School District Attorney Expenses	Teacher Attorney Expenses	Other
18.				
19.-A				
19.-B				
20.				
21.			500.00	
22.	988.55			
23.	322.80			
24.-A				
24.-B	555.00			
25.				
26.	300.00			
27.	150.00			
28.	340.00	$925.00		
29.	322.80			
30.	900.00			
31.-A				
31.-B	1,533.00			
32.	450.00			
33.	450.00			
34.				
35.	450.00			
36.				

Assigned Number in the Study	Arbitrator Fees and Expenses	School District Attorney Expenses	Teacher Attorney Expenses	Other
37.	450.00		1,079.33	$128.00
38.-A				
38.-B	477.90			
39.-A				
39.-B				
40.				
41.	525.00			
42.				
43.	525.00			
44.	645.00			
45.	250.00			
46.-A				
46.-B	321.60			
47.				
48.	405.10		452.51	
49.				
50.				
51.				
52.				
53.				
54.				
55.	250.00		1,270.34	
56.	555.00		111.83	

Assigned Number in the Study	Arbitrator Fees and Expenses	School District Attorney Expenses	Teacher Attorney Expenses	Other
57.	470.40			
58.	240.00			

APPENDIX C-3

REPRESENTATION OF THE PARTIES TO ARBITRATION, AND PRESENCE OF BRIEFS

Assigned Number in the Study	School District		Teacher Association		Presence of Written Briefs
	Attorney	Other	Attorney	Other	
1.	X			Local Teacher	
2.	X		X		Yes
3.-A	X		X		Yes
3.-B	X		X		Yes
4.		Superintendent		Local Teacher	
5.	X		X		Yes
6.	X		X		Yes
7.		Consultant	X		
8.	X		X		Yes
9.	X		X		Yes
10.	X		X		
11.		Superintendent		Local Officer	
12.	X		X		Yes
13.	X			MEA Representative	Yes

Assigned Number in the Study	School District		Teacher Association		Presence of Written Briefs
	Attorney	Other	Attorney	Other	
14.	X			MEA Representative	Yes
15.		Consultant		Local Officer	
16.	X			MEA Representative	
17.	X			MEA Representative	Yes
18.					
19.-A					
19.-B	X			MEA Representative	
20.		Consultant		Local Officer	
21.	X		X		
22.					
23.		Consultant		Local Officer	
24.-A					
24.-B	X			Local Officer	
25.	X		X		Yes
26.	X			MEA Representative	
27.		Superintendent		Local Officer	
28.	X			MEA Representative	Yes

Assigned Number in the Study	School District		Teacher Association		Presence of Written Briefs
	Attorney	Other	Attorney	Other	
29.		Consultant		MEA Representative	
30.	X		X		Yes
31.-A					
31.-B	X			MEA Representative	Yes
32.	X			MEA Representative	Yes
33.	X			MEA Representative	Yes
34.	X		X		Yes
35.	X			MEA Representative	
36.		Superintendent		MEA Representative	Yes
37.	X		X		Yes & transcript
38.-A		Asst. Supt.		Local Officer	
38.-B					
39.-A					
39.-B	X		X		
40.	X			MEA Representative	
41.	X			MEA Representative	Yes
42.	X		X		Yes
43.	X			Local Officer	Yes

Assigned Number in the Study	School District		Teacher Association		Presence of Written Briefs
	Attorney	Other	Attorney	Other	
44.	X			MEA Representative	Yes
45.	X			MEA Representative	
46.-A					
46.-B		Consultant		Local Officer	
47.	X		X		
48.	X		X		Yes
49.	X		X		Yes
50.		Consultant	X		Yes
51.	X			Local Officer	
52.	X		X		
53.	X		X		Yes
54.	X		X		
55.	X		X		Yes & transcript
56.		Consultant		MEA Representative	Yes
57.		Asst. Supt.		MEA Representative	
58.		Superintendent		MEA Representative	

APPENDIX C-4

SELECTION OF ARBITRATORS AND THEIR BACKGROUNDS

Assigned Number in the Study	Selection		Background		National Academy Membership
	AAA	Other	Attorney or Legal Training	Other	
1.	X		X		X
2.	X		X		X
3.-A					
3.-B		Local Selection	X		
4.		Local Selection	X		X
5.	X		X		X
6.	X		X		X
7.	X		X		
8.	X			Labor Specialist	X
9.	X		X		X
10.		Local Selection	X		X
11.		Local Selection		Management Specialist	
12.		F.M.C.S.		Professor - Economics	X
13.	X		X		X

Assigned Number in the Study	Selection		Background		National Academy Membership
	AAA	Other	Attorney or Legal Training	Other	
14.	X		X		X
15.		3 Man Panel		Labor Specialist	X
16.	X			Arbitrator	X
17.	X		X		X
18.	X		X		X
19.-A					X
19.-B	X			Arbitrator	X
20.	X		X		X
21.		Local Selection	X		X
22.	X			Unknown	
23.		3 Man Panel		Professor - Economics	X
24.-A					X
24.-B		Local Selection		Arbitrator	X
25.	X		X		X
26.	X			Unknown	
27.		3 Man Panel	X		
28.	X			Professor - Economics	X
29.		3 Man Panel		Professor - Economics	X
30.	X		X		X

Assigned Number in the Study	Selection		Background		National Academy Membership
	AAA	Other	Attorney or Legal Training	Other	
31.-A					X
31.-B	X		X		X
32.	X			Arbitrator	X
33.	X		X		X
34.		Local Selection		Professor - Economics	X
35.	X		X		X
36.		MERC 263	X		X
37.	X		X		X
38.-A		Local Selection	X		X
38.-B					X
39.-A					
39.-B		Local Selection		Unknown	
40.	X		X		X
41.	X		X		X
42.	X		X		X
43.	X		X		X
44.		Local Selection		Arbitrator	X
45.	X		X		
46.-A					X
46.-B		3 Man Panel		Professor-Economics	X
47.	X		X		X

Assigned Number in the Study	Selection		Background		
	AAA	Other	Attorney or Legal Training	Other	National Academy Membership
48.		Local Selection	X		X
49.	X		X		X
50.	X (panel)		X		
51.	X			Arbitrator	X
52.	X			Unknown	
53.	X (panel)		X		X
54.	X		X		X
55.		Local Selection	X		
56.	X (panel)		X		X
57.	X		X		
58.		Local Selection	X		