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Article abstract

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Grievance Arbitration in Nova Scotia

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and
L.P. Gillis

This paper introduces research evidence which characterizes grievance arbitration in Nova Scotia from 1980 to 1986.

In this paper, we shall examine grievance arbitration in Nova Scotia. To accomplish this task the paper will be divided into three sections. First, we review the current literature on grievance arbitration in Canada, and in doing so, identify surprising lacunae with respect to specific data. Accordingly our next section introduces research evidence which characterizes grievance arbitration in Nova Scotia from 1980 to 1986. The data under review is a complete inventory of cases for the period indicated. Finally, we offer some concluding observations and interpretation based on inferences drawn from the research findings.

It could be sensibly argued that industrial relations commentators have developed an obsessive preoccupation with the subject matter of 'rights' arbitration. Most textbooks which review 'contracted administration' do so with a remarkable concentration on grievance arbitration as opposed to the intrawork grievance process. This is despite the fact that it is estimated that only a small fraction of grievances ever reach the arbitration stage (Gandz, 1982). For example, the new edition of Craig (1986) carries a mere three pages on the grievance process, while waxing for 15 pages on arbitration. Likewise, Peach and Kuechle (1985) have a ratio 2:25. Two explanations can be offered for this enigma. First, to the extent that industrial relations in Canada is highly defined by legal parameters, it is plausible that legally enforceable arbitration provides an obvious focus for discussion. Secondly,

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with the paucity of research on plant based grievances, it might be supposed that grievance arbitration offers a greater amount of data which is reflected in different paradigms of effective third party assistance in contract administration, *i.e.* final offer selection, expedited arbitration, etc. (*e.g.* see LaBerge, 1978; Fischer, 1973). The former explanation for emphasizing grievance arbitration appears valid and reasonable. As argued below, however, the latter proposition is less convincing.

The majority of commentary and/or research into arbitration in the last two decades, falls into two categories. The first is concerned with the process of arbitration in terms of how it works (Fleming, 1965; Trower, 1974), where it fits into the Canadian judicial system (Brown and Beatty, 1977; Palmer, 1978) and how the process might be presented to the uninitiated (Labour Relations, 1978; Elkouri and Elkouri, 1973).

The second category is largely critical. Much has been written on the extensive delays which occur between sending the grievance to the final stage and fruition in terms of an arbitration decision (Goldblatt, 1974; Gandz, 1976; Williams, 1977). Coupled with this perspective are more general criticisms that the process is both costly and excessively legalistic and,therefore, too removed from the work setting (LaBerge, 1975; 1978; Craig, 1986, p. 244). A final criticism relates to the value of arbitration boards as opposed to a single arbitrator (Laskin, 1958) and indeed, the whims and preferences of the arbitrators themselves (Gandz and Warrian, 1977; Hilgert 1978; Bruce 1981; McGuicken, 1971).

The surprising omission is data concerning the results of the process. This type of information is fundamental to formulating any critical appraisal of grievance arbitration and more generally, theoretical discussions concerning the role of third party assistance in contract administration. Canadian data, however, has been difficult to access. It was reported by the Legislative Research Branch of the Department of Labour, that in 1972-73 only Québec, Ontario, Alberta, and British Columbia required the filing of grievance arbitrations decisions with Provincial Departments of Labour. Consequently, it is perhaps not surprising that Gandz has claimed that «in the extensive literature on grievance arbitration, there is very little empirical research reported» (1976, p. 649). H.D. Woods also recognized that the cogency of arguments which were critical of the arbitration process, would depend on accessing specific data. In this regard, however, Woods charged that the absence of data was also exacerbated by absence of mind. He strongly believed that grievance arbitration had «not yet excited the interests of research scholars» (1978, p. 697).

A further complication concerns the moment of transition when a grievance moves outside the realm of the union/management relationship into the jurisdiction of a third party. Researchers have continually pointed out that arbitration is part of a 'political' process, in that intra-plant grievances can spill over into arbitration for a multitude of reasons. (Gandz and Warrians, 1977; Kuhn, 1961; Peach and Livernash, 1974). And some of the prime motivations may not focus simply on the desire to win a case. Even so, notwithstanding the motivations of the parties, it is undeniable that the aggregated result of the arbitration process, «has substantial impact upon the administration of the collective agreement» (Arthurs *et al.*, 1984, p. 280). For this reason, this paper concentrates its research findings on arbitration decisions. The justification for this focus also reflects the fact that little evidence has been presented in terms of the results of arbitration.

The two most widely referenced papers are Gandz and Warrian (1977) and Goldblatt (1974). The latter report was issued by the Labour Council of Toronto covering Ontario Arbitration cases filed with the Labour-Management Arbitration Commission between 1971 and 1973 (for summaries see Phillips 1981, p. 222; LaBerge, 1975). Both studies discovered that there was about a 60:40 split in wins in favour of management and that the union fared worse on questions of seniority, winning less than 30% of the time. The Ontario study showed that only 37% of cases were heard by a single arbitrator, and 63% by tripartite Board. Gandz and Warrian found that nearly 33% of all cases were of a discipline and discharge nature while wages and overtime accounted for only 11% of the cases reported. Finally, it was established that only a small number of arbitrators heard the bulk of cases.

We felt that our own research should aim to test whether the above findings could be corroborated with more recent data and more importantly that we should introduce other grievance variables so that a clear characterization of grievance arbitration could be presented. In order to preserve the notion of comparative data analysis we adopted a similar win/lose criteria to that established by Gandz and Warrian (1977) and Goldblatt (1984). For example, in terms of discharge and discipline cases, it has been established for some time now that arbitrators can amend an excessive penalty imposed by an employer (See *Port Arthur Shipbuilding vs. Arthurs*, 1968 D. L. R. (2d) 693 and the *Ontario Labour Relations Act* Section 44(9)). In our view, a grievor who attains such mitigation, largely succeeds in terms of achieving his/her objective, *i.e.* a favourable alteration to management's original decision. Finally, we also felt that we should try and develop a manageable index of issues which could cover the many categories set out by the *Canadian Law Book* (*i.e.* Labour Arbitration Cases).

THE RESEARCH BACKGROUND

Since 1980 all arbitration decisions in Nova Scotia have had to be lodged with the Provincial Department of Labour. Prior to this, few cases were ever reported, and before 1970 no formal record of arbitration in Nova Scotia exist at all[1]. In the six year period under review, there were 730 arbitrable cases lodged with the Department of Labour. Some cases under Federal jurisdiction were also on file but excluded from the data base. A number of cases emanating from the Civil Service and Teachers are included, although these groups are covered by different provincial statutes which do not include mandatory filing of arbitration decisions. In recent years, however, it has been informal practice for these groups to file with the Department of Labour and we estimate that the number of excluded cases is insignificant. We therefore estimate that the 730 cases provide a definitive picture of grievance arbitration in Nova Scotia between 1980-86.

In order to develop conceptual clarity and to load the data for SPSS^x processing, we worked the grievance issues into three levels of analysis, from the disaggregated to aggregated level. All of the research findings indicated below are significant at the .05 level or above. Table 1 indicates the rationale employed and the frequencies for each category.

Clearly, a considerable amount of rationalization had to be done in order to work the data into a digestible and accessible format. The basic dichotomy between economic and control issues (Level 3) is perhaps the most contentious since it reflects the predilection of the authors. Nevertheless, it has been argued elsewhere, for example, that punitive measures reflect management's fundamental right to manage and that these issues are rooted in workplace control (Swann, 1982; Dimick, 1978; Gilson, 1985). And Hyman (1975) has argued more generally that control is at the root of job property rights and workers' desires to protect their interest against managerial prerogatives. A sophisticated analysis of overtime and wage issues might also reveal implicit control issues, and indeed, the figures do show some cross-over of issues, however, in vulgar terms, simple money issues in our reasoning, remain distinct. Table 1 shows that the largest category is that of wages and benefits (24.4%). At Level 2, however, punitive issues dominate (34.%). Over the six year period there was no discernible trend apart from a small increase in the number of contracting out, seniority and lay-off cases.

Our next task was to introduce a number of variables which are indicated in Table 2. First, we felt that an appropriate distinction to make

1 There are a handful of cases reported in the first volumes of *Labour Arbitration Cases* 1948-.

Table 1

Level 1			*Level 2*			*Level 3*		
Wages & Benefits	(178)	24.4%	Financial	(224)	30.7%	Economic	(224)	30.7%
Overtime	(46)	6.3%	Issues			Issues		
Discharge	(145)	19.9%						
Discipline	(96)	13.1%	Punitive	(248)	10%			
Probation	(7)	1%	Issues					
Contracting Out	(68)	9.3%	Bargaining					
Work Stoppage	(5)	.7%	Unit Issues	(73)	10%			
						Control Issues	(506)	69.3%
Seniority	(57)	7.8%						
Transfer	(21)	2.9%	Job					
Job Posting	(38)	5.2%	Property	(150)	20.5%			
Layoff	(25)	3.4%	Rights					
Recall	(4)	1.2%						
Dues	(1)	.1%						
Working Conditions	(26)	3.6%	Misc.					
Leave of			Issues	(35)	4.8%			
Absence	(7)	1.0%						
Retirements	(1)	.1%						
Total:	(730)	100%		(730)	100%		(730)	100%

would be between the public and private sectors of the economy in Nova Scotia. This might provide a comparative picture in terms of union, management and indeed arbitrator practices when dealing with grievances matters. Our second aim was to investigate the extent of single arbitration hearings and more particularly to inquire if there were any discrepancies in decisions between single arbitration and arbitration boards. Third, we wanted to identify those arbitration cases where the arbitrator was called upon to rule over a grievance which did not pertain to contract interpretation, *i.e.* an entirely new situation not covered by the collective agreement, and lastly if more than one grievor was involved in certain grievance categories.

From Table 2 we can see that 2/3 of all cases are in the private sector, despite the fact that in Nova Scotia there are approximately an equal number of trade union members in both sectors of the economy. In terms of

Table 2

	Sector		*Grievance Size*		*Arbitration Form*		*Contract Language*		*Who Won*	
	Pub.	*Priv.*	*Ind.*	*Group*	*S.A.*	*A.B.*	*Int.*	*Ext.*	*Union*	*Manag.*
Financial Issues	27.7	72.3	42	58	65.2	34.8	91.1	8.9	54.9	45.1
Punitive Issues	35.5	64.5	84.7	15.3	59.7	40.3	98.4	1.6	61.3	38.7
Bargaining Unit Issues	15.1	84.9	15.1	84.9	84.9	15.1	90.4	9.4	71.2	28.8
Job Property Rights Issues	40.7	59.3	70.7	29.3	69.3	30.7	98.7	1.3	44.7	55.3
Miscellaneous Issues	42.9	57.1	37.1	62.9	68.6	31.4	82.4	17.1	42.9	57.1
Total % of grievances in this category	32.5	67.5	59.5	40.5	66.3	33.7	94.7	5.3	56	44

grievance size, over 40% of all cases involve groups of workers. This is most pronounced in financial issues (58%) and perhaps not surprisingly bargaining units issues (84.9%). It could be, that workers see the grievance procedure up to and including arbitration as another bargaining arena for money (see Hyman, 1972) rather than as a clearing house for contentious work-place disagreements. On the other hand, the group response may simply be a logistical formality in terms of placing names alongside an issue which is likely to have implications for a whole class of workers as opposed to an individual. One method of finding out if the group response is based on a conscious process of solidarity or otherwise, would be to follow a group grievance from its inception to conclusion, measuring work involvement, interest and reaction.

Table 3

Overall — Union Wins: 56% **Union Wins**

			Win Percentage	*Arbitration Form*		*Sector*		*Grievance Size*	
Level 3	*Level 2*	*Level 1*		*S.A. (58.3%)*	*A.B. (51.6%)*	*Public (53.6%)*	*Private (57.2%)*	*Ind. (54.8%)*	*Group (57.8%)*
Economic			62.4%	--	--	--	--	--	69%
	Financial		54.9%	56.2%	--	--	54.3%	--	57.7%
		Wages & Benefits	55.1%	54.8%	55.6%	61.2%	52.7%	49.3%	58.7%
		Overtime	54.3%	61.3%	40.0%	38.5%	60.6%	56.0%	52.4%
Control			53.2%	--	--	--	--	--	49.4%
	Punitive		61.3%	62.8%	--	--	63.8%	--	63.2%
		Discharge	64.8%	67.4%	61.0%	62.2%	66.0%	63.6%	76.9%
		Discipline	59.4%	57.6%	62.2%	59.0%	59.6%	58.9%	60.9%
		Probation	28.6%	50.0%	20.0%	0.0%	100%	40.0%	--
	Bargaining Unit		71.2%	75.8%	--	--	75.8%	--	72.6%
		Contracting Out	72.1%	78.0%	33.3%	40.0%	77.6%	66.7%	72.9%
		Work Stoppage	60.0%	33.3%	100%	100%	50.0%	50.0%	66.7%
	Job Property Rights		44.7%	48.1%	--	--	42.7%	--	43.2%
		Seniority	43.9%	41.0%	50.0%	57.7%	32.3%	44.9%	37.5%
		Transfer	38.1%	58.3%	11.0%	0%	53.3%	36.4%	40.0%
		Job Posting	42.1%	46.4%	30.0%	44.0%	38.5%	33.3%	63.6%
		Layoff	44.0%	44.4%	42.9%	--	44.0%	50.0%	38.5%
		Recall	77.8%	85.7%	50.0%	75.0%	80.0%	100%	--
	Miscellaneous		42.9%	41.7%	--	--	35.0%	--	36.4%
		Dues	--	--	--	--	--	--	--
		Working Conditions	34.6%	38.9%	25.0%	28.6%	36.5%	20.0%	38.1%
		Leave of Absence	57.1%	40.0%	100%	66.7%	0%	57.1%	--
		Retirement	100%	100%	--	100%	--	100%	--

Gaps in the Table are due to no cases recorded in this category, or a level of significance outside accepted tolerance limits.

Not unexpectedly we found that 84.7% of punitive and 70.7% of job property rights grievances were individual in nature.

Although over 2/3 of all cases are now heard by a single arbitrator, at the Level 2 classification, single arbitrators hear bargaining unit (84.9%) and job property rights categories (69.3%) more frequently. The overwhelming number of cases during 1980-86 were of the contract interpretation-type (94.7), while the remainder called for the arbitrator to «extend» the collective agreement to take into account a novel situation. Apart from the miscellaneous category, which was no central theme to its components, management only win a majority of cases in the job property rights category (55%) — over 11 percentage points better than their over-all performance. (For further elaborations, see discussion below).

WHO WINS?

Perhaps the variable with the greatest degree of interest for purposes of public and organizational policy is that of «Who Wins?». Over all, unions won 56% of all cases — a 16% improvement from the Ontario Study. Table 3, however, reveals a clearer picture at the disaggregated level and how the results differ across the other variables which we introduced. For example, we can see that at Level 2, unions constantly score better in the financial (54.9%), punitive (61.3%) and bargaining unit (71.2%) categories, whereas managements clearly fair better on job-property rights issues (union 44.7% win). This latter finding corroborates the earlier studies although to a lesser extent. It has also been argued elsewhere that seniority is usually dealt with in collective agreements with complex language and that managements are reluctant to forfeit their prerogatives in this regard (Peach and Keuchle, 1985). Indeed, the evidence here suggests that this is one of the few areas where managements have successfully persuaded arbitrators to accept their interpretation of contract language. Our findings also suggest that managements are able to win transfer, job posting and lay-off issues more often that unions. Moreover, these results provide some insight into the development of arbitral jurisprudence concerning the 'management (residual) rights' versus 'equal rights' debate (for summary, see Simmons, 1986; Cripso, 1978, p. 380-1). According to Arthurs (1984), arbitrators have been reluctant to tamper with the 'residual rights' theory which tends to accept managements interpretation of job property issues as long as they acted honestly and reasonably. Swann (1982) and Weiler (1969) however, have argued that managements rights have been restricted by the development of the doctrine of 'fair administration' (for example, see *Great Atlantic and Pacific*, (1976) 76 C.L.L. para 14,056 (Ont. Div. Ct.)). Swann concludes

that this opens up to the possibility for a fundamental change in contract administration, arguing that «although much scope is left for managerial initiative, and there remains an element of arbitral deference to management decisions in some areas, the overall effect has been to limit the way in which management runs the enterprise» (1982; p. 278).

Our results in this area of arbitral jurisprudence indicate that managements do still win a majority of these cases (See Table 3). Over the period of the study however, we could find no discernable trend either way other than a slight fall in management wins from 1980 (67.7%) to 1985 (58.3%). More directly, the fact that unions fail to achieve parity over job property rights issues suggests that the residual rights theory remains pervasive.

Perhaps one of the surprises is that managements fail to win a majority in the punitive category, particularly discharge cases (35.2% where arbitrators appear reluctant to impose the maximum punishment available (Crispo, 1978, p. 439). Contracting out also seems to be an issue which unions can hope to win. Indeed, a win rate of 72.1% commends union members to challenge any attempts by management to undermine 'bargaining unit' work. This seems to contradict the widely held view that «the arbitral approach is that in the absence of any explicit limitation in the collective agreement, an employer may enter upon a legitimate contracting out of work» (Arthurs, 1984; p. 300). (See *Russelsteel,* (1966) 17 L.A.C. 253)

ARBITRATION FORM

Interestingly, there are some marked differences between the arbitration forms. To begin with, single arbitrators are marginally more likely to favour unions (58%), but this is even more marked in cases involving overtime (61.3%), discharge (67.4%), contracting out (78%), and job transfer (58.3%). By way of contrast arbitration boards have only awarded 11% of the transfer cases to unions, job posting 30%, working conditions 25% and contracting out 33%. The latter category differs considerably from single arbitrators (78%, as above). Thus, it would seem that unions would indeed favour the development of single arbitrators replacing the tripartite board system. Overall, arbitration boards are more prevalent in the public sector (46%) and now occur only 27.8% of the time in the private sector.

SECTOR

Unions do marginally better in the private sector winning 57.2% of cases although they lose 51% of cases if they are heard by an arbitration board. Interestingly, unions fair much better with seniority cases in the public sector (57.7%) than in the private sector (32.3%). Unions also won a healthy majority of wages and benefits (61.2%) and discharge cases (62.2%) in the public sector. In the private sector unions post higher than expected win percentages in the categories of discharge (66%), overtime (60.5%) and contracting out (77.6%) while losing out on seniority (32.3%) and job posting (38.5%). Some of these differences may be attributed to the varying complexities of contract provisions between the public sector and the private sector. Craig (1986; p. 249) also notes that public sector statutes such as the *Public Service Staff Relations Act* enshrines the rights of individuals to take grievances such as discipline and discharge 'all the way to adjudication' (Sections 90 and 91). Ponak has further argued that the collective bargaining objectives of some professional employees are more related to intrinsic job issues and that this is also reflected in grievance volume and type. Any detailed review of the nature of sectoral differences would necessitate a disagreggated analysis of individual cases. Comparisons could then be made on the basis of the relative strength/weaknesses of respective collective agreement clauses.

GRIEVANCE SIZE

It would appear that for unions, group grievances are more likely to succeed in the area of discharge (76.9%), discipline (60.9%), bargaining unit issues (72.6%) and job posting (63.6%). Individual grievances appear to be proportionately less successful in almost every Level 1 category. This might suggest that in most situations arbitrators are less likely to rule against the union of there are a number of grievors involved in a case.

In attempting to account for the majority of union wins[2] we reviewed the possible impact of legal representation. We found that of the 730 cases over 60% were conducted by one law firm in the province, who were extremely adept at advocacy — not only in terms of the arbitration process itself but in highlighting which cases were 'winnable' and those which

2 As a footnote to «Who Wins», we tested for the probability of 'best bet to win'. Unions, filing a contracting out issue, lodged as a group grievance, under a single arbitrator in the private sector could expect to win 80% of the time. Management, defending a seniority issue as an individual grievance, under an arbitration board in the private sector could expect to win 70% on this type of case.

should be discarded. This implies that unions in Nova Scotia may have been dissuaded from taking losing cases to the final stage. Furthermore, it suggests that the political nature of the grievance process passes through an intermediate stage (involving legal advocacy) before passing into arbitral jurisdiction.

Our study also tested for grievance trends against the rate of change of unemployment in the province of Nova Scotia and also the rate of change in the consumer price index. No statistical correlation of significance could be found. Indeed, the data exhibited no trends of any kind. This suggests that the varying lengths it takes for each case to reach an arbitration decision negates any clear-cut relationship between intra-work place issues and economic variables. A future longitudinal study of greater magnitude using time series analysis may, however, reveal trends not discernible in a six-year survey.

Finally, in line with earlier studies we found that 3 arbitrators heard 48% of cases and that 9 handled 74%. Only 16 people handled more than 10 cases and these accounted for 89% of the total cases between 1980-86 (there were 48 arbitrators used in total).

JUDICIAL APPEALS

In recent times, concern has been expressed that the golden age of labour arbitration has now passed and that the law courts have increasingly interfered by way of judicial appeals. Through the Quick Law (Q.L.) reports data base (N.R.S.), we assessed exactly 200 management appeals (27.4% of the total number of cases) in the six years under review. The majority of these appeals fall into two categories. The first, that of seniority and job postings, buttresses the earlier finding that managements are tenacious in their assumed prerogatives to control the parameters of 'job property rights'. The second is that of benefits, particularly in the public sector where, for example, cases of pyramiding sick-leave with vacation pay, if conceded by public sector employers, may result in a precedent which could cost thousands of public dollars. This is particularly the case in the hospital sector where many employees are covered by master collective agreements which would automatically bring them within the fabric of the appeal decision. From a management perspective, an appeal of this nature would save money and prevent a form of 'back door bargaining' to improve fringe benefits.

Interestingly there has been a perceived fall in the number of appeal cases in the last 2-3 years. This has been attributed to the influence of the

Supreme Court of Canada which as a matter of policy has apparently attempted to reduce the level of interventions in terms of striking down arbitration decisions. A second argument offered, is that the vast majority of Supreme Court judges in Nova Scotia were formerly arbitrators themselves, and they are therefore reluctant to interfere with a process which is familiar to them. Indeed only 33 cases had their original decision overturned.

DISCUSSION

Our research findings confirm that single arbitrators are now firmly in the majority by a factor of 2:1 over arbitration boards. We are also able to confirm that there are only a handful of arbitrators (almost all of them lawyers) who hear the vast majority of cases in the province. However, this study seems to be alone in discovering that unions now enjoy winning the majority of arbitration decisions. Moreover, we have developed an index which shows that the unions win specific categories while losing others. Most notably, managements do much better on job property rights issues such as seniority and job posting, and working conditions. This phenomena may well reflect existing arbitral jurisprudence in terms of the continuation of the 'residual rights theory', coinciding also with the recession period of the late '70s and early 1980s, where managements may have been less than reticent in insisting on their rights to manage and control the development of workplace industrial relations. And it can also be seen in terms of the seniority and job posting issues which managements tend to take to the judicial appeal stage. All other major categories show union victories and in some cases, by a large margin. We also found that unions do better under single arbitrators; when the grievance is located in the private sector and when a number of grievors are involved.

This might suggest that unions in Nova Scotia view the grievance arbitration process with some degree of satisfaction. Unions, however, may be miserly with respect to the number of cases they actually press to arbitration. More research will be necessary to see how many cases unions concede at the final intra-plant stage. Victories at arbitration hearings may, therefore be less than sweet if a large number of cases have been abandoned, leaving original grievances to fester. Unions inability to successfully challenge management over job property rights issues also helps to locate their results in a more sobering context.

The number of judicial appeals by management may also serve to frustrate and delay the process of arriving at grievance decisions, thus impairing the efficiency of contract administration.

Further inter-jurisdictional research might reveal if the nature of grievance arbitration in Nova Scotia typically reflects Canada as a whole or otherwise.

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L'arbitrage des griefs en Nouvelle-Écosse

Cet article examine les résultats du fonctionnement des mécanismes de règlement des griefs en Nouvelle-Écosse. Une revue de la littérature sur le sujet révèle que le service d'arbitrage soulève beaucoup de critiques, mais on y trouve une absence quasi totale de données statistiques.

Sous ce dernier aspect, le présent article vise à combler les lacunes actuelles de la recherche en révisant les résultats de la procédure de règlement des griefs lorsque ceux-ci ont été soumis à l'arbitrage en Nouvelle-Écosse au cours de la période 1978-1985. On y découvre que, pendant ces années, on a entendu 730 affaires diverses. De façon à mettre au point un exposé conceptuel clair et précis, l'article établit des catégories distinctes à l'intérieur desquelles il dispose l'ensemble des affaires étudiées par les conseils d'arbitrage ou par les arbitres uniques. D'une façon générale, on y fait la distinction entre les questions économiques et les matières de contrôle ou de vérification. À un niveau intermédiaire on y divise les affaires en quatre catégories: questions d'ordre pécuniaire (30.7%), questions de discipline (34.0%), questions relatives aux unités de négociation (10%), questions se rapportant à la sécurité d'emploi (20.5%).

Afin d'obtenir une caractérisation plus précise des arbitrages de griefs, on y a inclus plusieurs autres variables: secteur public et secteur privé, griefs individuels et griefs collectifs, arbitres uniques ou tribunal d'arbitrage, interprétation et étendue des conventions collectives et, finalement, gains des employeurs ou des syndicats.

Pour mieux juger les résultats obtenus, l'article utilise le rapport des gains comme point de repère principal aux fins de discussion analytique. Contrairement aux études antérieures, on s'est rendu compte que les syndicats avaient eu gain de cause dans la majorité des affaires (56.0%). Cela est surtout marqué lorsqu'il s'agit de mesures disciplinaires (61.3%), les affaires portant sur l'unité de négociation (71.2%), les questions de nature économique (62.4%). Au contraire, les employeurs l'emportèrent dans la majorité des affaires reliées à la sécurité d'emploi (55.3%), principalement en ce qui avait trait aux questions spécifiques d'ancienneté et de mutation.

L'article soutient que ces résultats tendent à confirmer que la théorie des droits résiduaires conserve toujours sa valeur et que, malgré le nombre considérable de gains syndicaux, le domaine clé de l'autorité des employeurs dans le milieu de travail reste une chasse gardée et que les syndicats ont du chemin à faire pour obtenir gain de cause dans les décisions arbitrales s'y rapportant.

Les constatations de l'étude démontrent aussi que les arbitres uniques sont plus enclins à favoriser les syndicats, principalement si le grief est présenté par un groupe d'employés plutôt que par un individu isolé. Les syndicats réussissent mieux, quoique de façon marginale, dans les griefs provenant du secteur privé.

Un des éléments les plus significatifs que l'on ait noté et qui peut expliquer la majorité des gains syndicaux, c'est que 60% de toutes les affaires furent soumises au préalable à une étude juridique qui a passé au crible les divers griefs potentiels en retirant ceux qui risquaient d'être renvoyés. Ceci indique que le dépôt des griefs peut comporter un processus politique requérant le recours à des opinions juridiques.

On a aussi noté que 27.4% de toutes les affaires furent soumises à la révision judiciaire, ce qui a donné lieu à des délais quant au moment de la mise en vigueur d'un certain nombre de décisions arbitrales. La plupart de ces recours portaient sur la sécurité d'emploi, ce qui confirme qu'il s'agit là d'un des plus importants domaines de la jurisprudence arbitrale pour les employeurs.

Les constatations ont aussi confirmé, tout comme les études antérieures, que la grande majorité des affaires (74%) n'ont été soumises qu'à neuf arbitres différents. Même plus, trois d'entre eux ont disposé de 48% d'entre elles.

Finalement, les constatations tirées de la recherche ont fait l'objet d'une confrontation avec les taux de changement du chômage et des prix à la consommation. Sur ce point, on n'a pu découvrir une corrélation valable. Ce qui sous-entend que, du moins à court terme, il n'existe aucune relation entre ce qui se passe en milieu de travail et les indicateurs économiques externes.

L'auteur conclut en demandant que soient effectuées des recherches supplémentaires afin de vérifier si ce qui se passe dans l'arbitrage des griefs en Nouvele-Écosse correspond à ce qui se produit au Canada en général.