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Winners and Losers
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Une analyse des tribunaux israéliens d'arbitrage volontaire
Un análisis contextual multivariado del tribunal israelí de arbitraje voluntario

Alan Kirschenbaum, Gedaliahu Harel and Niza Sivan

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Winners and Losers

A Multivariate Content Analysis of Israel's Tribunal for Voluntary Arbitration[1]

ALAN KIRSCHENBAUM, GEDALIAHU HAREL and NIZA SIVAN
Faculty of Industrial Engineering and Management, Technion-Israel Institute of Technology, Haifa, Israel.

The objective of this paper is to examine the arbitration process instituted in arbitration tribunals and propose a parsimonious model to enhance the predictive ability of theoretical factors affecting the outcome of public sector labour disputes. The basic data set was generated by a content analysis of 101 awards made by Israel's Tribunal for Voluntary Arbitration (TVA) during its first eight years of operation (1977-84). Results are discussed within the context of employee groups choosing arbitration over strikes as a means of winning demands.

Institutionalized voluntary arbitration to resolve labour disputes is primarily the product of industrial nations, promoted by governments and accepted by both the private and public sectors as one of many possible routes to resolve labour disputes. All arbitration agreements require the consent of both parties to a labour dispute to voluntarily enter into arbitration and accept the decision. Given the alternative means of resolving disputes (labour courts, strikes, sanctions, etc.), why do parties to a labour dispute choose to enter into voluntary arbitration? One possible explanation is that both sides to a dispute may believe they have a more than reasonable chance to succeed (Kolb 1983), especially when preliminary negotiations have reached a stalemate. What contributes to this perception of probable success is difficult to ascertain, but it is certain that a wide range of theoretical, contextual and process factors linked to the arbitration

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process are involved. Relevant theoretical variables cited in the literature affecting arbitration outcomes tend to favour macro- and micro-level structural factors which fall outside the actual content of the dispute. Thus, contributing factors have included: the demographic character as well as the past decision record of the arbitrator (Scott and Shadoan 1989; Dvorkin 1974; Heneman and Saunder 1982; Thornton and Zirkel 1990); the type of representative presenting a case (Thornicroft 1994; Block and Stieber 1987; McKelvey 1984); the size (strength) and character of the group initiating a case (Summers 1984; McCarthy 1968); the advantages to be gained from entering arbitration (Bruce 1992); the general climate for arbitration (Crow and Logan 1995); and even the types of tactics or strategy employed (Overton 1973). Other studies have focused on the arbitration process (Fleming 1984), the importance of precedents (Olson and Jarley 1991; Prasow 1974), the homogeneity of the plaintiffs (Galin 1980) and even the impact of arbitrator choice (Bemmels 1990; Coulson 1967). All of these factors have been put forward as critical variables in bringing about a decision favouring the plaintiff or respondent. Choosing the "right" representative, or making sure that the precedents are favourable, for example, increase the chance of success (Olson and Jarley 1991). The common denominator among these studies is that they focus on single explanatory variables and rarely explore the interaction or trade-off between competing variables in predicting an outcome. These variables, as will be developed below, encompass both interest and grievance arbitration factors. This possibility will be investigated here by utilizing multivariate analysis techniques.

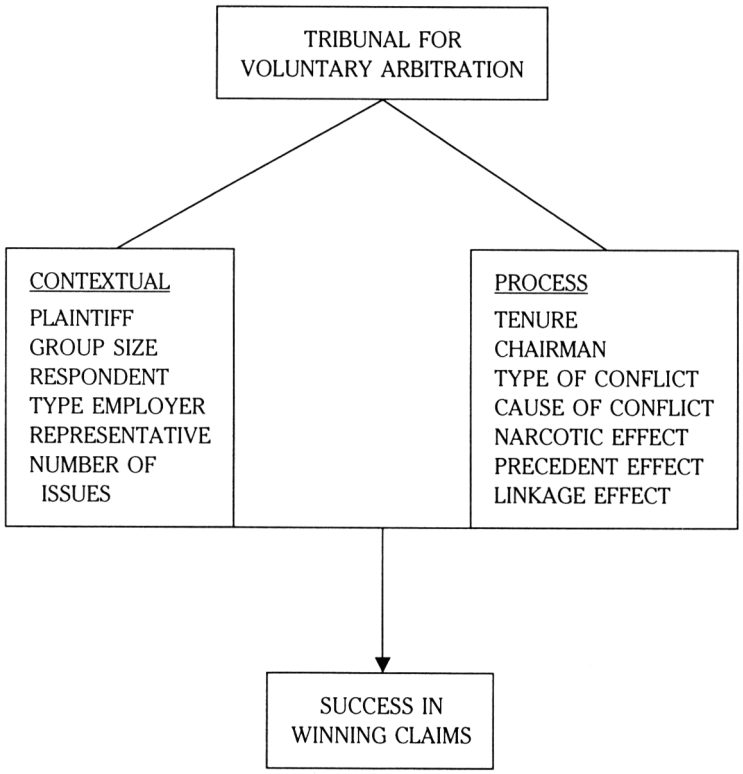
THEORETICAL MODEL OF ARBITRATION RESOLUTION

Since the inception of formal frameworks for voluntary arbitration — primarily in Western industrialized nations under various ideological justifications — diverse sectors of workers and employers have sought to settle their disputes by arbitration instead of strikes. Such has been the case in Australia (Caiden 1971), New Zealand (Shand 1968), Great Britain (Lowry 1983), Canada (Anderson 1981), the United States (Kochan 1980), Western Europe (Crispo 1971), Africa (ILO 1980) and Israel (Harel and Cohen 1980). The historical development and application of these various arbitration institutions have been widely studied (see Fazzi 1995; Coleman and Haynes 1994). Specific cases have been analysed. Yet, a comprehensive theoretical framework which would allow an examination of factors linked to and predictive of dispute resolutions is lacking. Reviewing the literature has led us to propose a set of independent variables which represent structural variables involved in how resolutions come about in the arbitration process. One set of theoretical variables are associated with the structural

context of an arbitration setting. In addition are a series of what we call "process" variables associated with how a decision comes about. Figure 1 illustrates the theoretical model.

FIGURE 1

Flow Model of Arbitration Process in Resolving Public Sector Labour Disputes



In its simplest form, the model distinguishes between what we have termed context and process variables, and their link to an arbitration outcome. A decision can either favour the plaintiff, the respondent or, in some cases, be a compromise solution. Success, therefore, needs to be viewed as a unidirectional interval variable and for consistency will be viewed in terms of the degree to which judgments favour employees. Context variables reflect structural conditions that are external to the actual dispute brought before an arbitrator. These factors represent key characteristics of the contestants themselves. Such factors as the local/national character of

the plaintiff, who is the respondent, who represents the sides, etc., form the input context within which the arbitration process proceeds. Process variables, on the other hand, focus on the development of the decision. These variables are theoretically important as they reflect the heart of the arbitration process by having a direct impact on the courts' decision. Thus, we have included such factors as the type and cause of the dispute as well as the intervention of the "narcotic," "precedent" and "linkage" effects on a ruling. Each of the separate components which fall within a context and process framework are themselves independent variables having a direct link to the success of the decision. Interactively, both sets of context and process variables, we argue, contribute in differing degrees in explaining a decision outcome. The robustness of such explanations will be investigated below.

ISRAEL'S TRIBUNAL FOR VOLUNTARY ARBITRATION

Following a considerable period of labour unrest in Israel, a collective agreement was signed (1977) between the government of Israel and the General Federation of Labour establishing a Tribunal for Voluntary Arbitration (TVA) whose purpose was to deal with disputes in the public service sector. A basic concession was that no court costs would be charged in order that access would not be constrained by financial constraints. Moreover, a 30-day limit was put on the Tribunal to issue its arbitration decision. The Israel TVA began operating in 1977 (Harel and Cohen 1980). The mode of operation is based on arbitration, which can be initiated by the government of Israel, or any another public-service employer, a national labour organization, a national labour union, a labour council, or a national committee belonging to the Histadrut, any group of workers employed by a public-service employer, or anyone who has not signed the arbitration agreement but has secured the consent of the other party to bring the case before the TVA. The unique character of the TVA is that parties may bring before the tribunal both interest and rights arbitration disputes. On the one hand, disputes may encompass issues concerning wages, hours, working conditions, and fringe benefits, so long as an agreement was not reached in the bargaining process. On the other hand, the parties can bring grievances, or what is called in the original agreement "legal disputes" before the TVA provided there is explicit prior consent by both parties.

During the period of 1977-1984, there were 488 strikes, 342 work sanctions and 137 cases brought before the Tribunal. Of the total of 967 labour disputes, the TVA contributed to resolving 15% of the disputes. After this period, the TVA played a less active role in resolving public sector labour disputes. Of the 137 cases brought before the Tribunal in 1977-1984, 36 were

resolved before a judgment was rendered and 101 were arbitrated. An average of 17 cases per year were presented before the Tribunal with an average of 12.5 judged and 4.5 voluntarily resolved. The majority of the cases brought before the Tribunal were resolved by agreement to the decision by both sides to the dispute (36%) or concession by one party in the dispute (28%). The remainder were resolved by claimants joining together on a set of common issues, settled due to technical problems or as a last resort went to a labour court.

METHODOLOGY

Data Source

Since its inception, records have been kept of all disputes brought before the Tribunal. These records, published from 1977 to 1984, formed the basic data set employed in the analysis. To more clearly understand the mechanism of arbitration and the factors involved in the resolution of disputes, interviews with key persons involved in the arbitration process were conducted. This guaranteed that the analysis of the cases would reflect not only the single outcome of the dispute resolution but also the process involved. Each of the 137 cases brought before the TVA, and decided over its first eight years, was carefully read and classified according to key conflict resolution concepts found in the arbitration and labour relations literature. Particular attention was paid to obtaining precise details on the variables proposed in the theoretical model based on carefully delineated instructions concerning classification criteria (consensus protocols) which were set up and evaluated by outside referees. These evaluations provided face validity for the concepts. In cases where classification was not immediately clear, outside referee judgments (by labour judges and lawyers) were used making sure that if specific inconsistencies remained, they would be included in the data base for further analysis. As the charter of the TVA guaranteed that all recorded information would be standardized, this problem rarely arose. Careful attention was paid to the rules governing the content analysis (Krippendorff 1980) of these documents, resulting in a set of 16 independent variables. The content analysis of each case reflected both the internal content of the dispute as well as external conditions which may have affected the outcomes. These variables were then employed in bivariate analysis and later introduced into a multivariate regression model.

Variable Definition

A content analysis of each of the 137 case files went about systematically screening each recorded dispute, classified each variable and catego-

rized the information. As the objective was to create a data set for analysis, every effort was made to categorize the independent and dependent variables in a consistent manner. The dependent variable, "success," measured the degree to which employees were successful in winning their claims through the Tribunal. This was a 9-point scale measuring the degree to which a judgment was either in favour/against the employee claims. This scale allowed a midpoint "compromise" rank. The scale ranged from complete rejection (1) to complete acceptance (9). A compromise decision (5) represented equal weight given to each side in the dispute. Levels of rejection (2-4) were scaled by the number of points in favour of the claimants while degrees of acceptance (6-8) included varying numbers of objections to specific points.

The set of independent variables were conceptually divided into broad content and process categories. Each category reflected a differing aspect of the arbitration decision outcome process by focusing on the external character of the contestants and separately on the factors affecting the internal arbitration process. This was done on the assumption that it was possible to unlink the complex arbitration process into its component parts. The set of *context factors* reflect external structural conditions which are not directly involved in a decision but nevertheless have been shown to be important in the arbitration outcome. These include (1) the local/national character of the plaintiff, (2) the impact of a judgment for other public sector employees, (3) the government/public sector type of employer, (4) the socio-demographic character of the respondent, (5) the employee's representative, (6) management representation, and (7) the number of issues involved in the case. *Process factors* focus on conditions more or less directly involved in the decision process of the Tribunal. These include information on (1) the Tribunal's accumulative case load/years of experience, (2) the chairman of the proceedings, (3) the type of conflict, and (4) the reason for the dispute. Also included are factors which explore (5) the narcotic effect, (6) the precedent effect, and (7) the linkage effect on judgments. Table 1 provides a detailed explanation of these variables and their measures.

EMPLOYER-EMPLOYEE SUCCESS

The data in Table 2 is based on the original 176 cases submitted to the TVA for judgment (averaging 22 cases per year). Thirty-nine pre-arbitration agreements were concluded before the dispute reached the discussion stage at the Tribunal, and an additional 36 cases were closed for legal discrepancies (or irrelevance) leaving 101 cases actually brought for arbitration. As in previous studies (Katz and Lavan 1991; Dilts and Leonard 1989),

TABLE 1

List and Definition of Research Variables

Variable	*Definition*
Plaintiff	The local, sectorial or national character of the plaintiff
Group Size	The number of employees involved in a claim
Respondent	The organization(s) being sued-single/multiple
Type of Employer	Government employer, public non-profit organization
Employees Rep.	Involvement of lawyer, individual, or both
Number of Issues	Single or more (up to 10) issues
Tenure of TVA	Accumulative experience by years
Chairman	An internal or external head
Type of Conflict	Economic, legal or combination
Cause of Conflict	Issues of salary, promotions, legal, work conditions
Narcotic Effect	Influence of accumulative claims (numbers)
Precedent Effect	How prior judgments affect success (numbers)
Linkage Effect	Claims linked to other group success
Success	Favouring employee/employer on point scale

the picture we obtain is that decisions mainly favoured the employer over the employee: 42% favoured the employer, 30 percent favoured the workers and 29% represented a compromise. This pattern is also supported when examining the weighted raw data (ranked success on a 9-point scale by the number of cases). Here we find that the average ranked success is 4.5 (SD 2.9), slightly below the compromise rank 5. What appears to be a greater chance for employers to attain a favourable decision by the TVA may be premature. This is supported by the 41 cases which favoured the public sector employee in contrast to 49 favouring the employer. Moreover, the fact that less than one-third (27%) of the judgments completely rejected the workers' claims suggests an arbitration pattern that is neither pro- or anti-labour. It leaves considerable room for both sides in a dispute to hope that judgments will favour their side. This even-handed distribution in resolving disputes by the TVA leaves open a basic question: can such judgments be predicted given the circumstances involved in the disputes? The focus of our paper is to investigate variables which lead to success in the arbitration process, once the parties have agreed to go to arbitration and without

resorting to alternative dispute resolutions available to them (i.e., mediation, strikes). To explore this possibility, it is necessary to examine the basic contextual and process components involved in this process.

TABLE 2

Distribution of TVA Cases Outcomes and Year

Year	*Favouring Workers*[1]	*Compromise*[2]	*Favouring Employer*[3]	*Total %*	*Number of Cases*
1977	20%	15%	65%	100%	20
1978	27	9	64	100	11
1979	50	10	40	100	10
1980	27	—	73	100	11
1981	55	11	33	100	9
1982	46	15	39	100	13
1983	50	21	29	100	14
1984	62	—	38	100	13
Total	41%	11%	48%	100	
N	41	11	49		101

(1) rankings of 6-9 on the 9-point success scale
(2) 5 on the success scale
(3) rankings of 1-4 on the success scale

CONTEXTUAL FACTORS

Arbitrator's Influence

It has been a long-standing proposition that the chairperson of an arbitration panel can have an extraordinary influence on both the decision-making process and its outcome (Thornton and Zirkel 1990; Zack 1984; Harel and Cohen 1980). In our case, the TVA director's mandate was to select a chairperson, along with an additional panel of two arbitrators, who, within 30 days, would render a judgment. It was expected that, over a period of time, the director of the TVA would create teams specializing in certain contested areas. During the eight-year period we examined, 19 separate panels of arbitrators were active (from a pool of 8 arbitrators) and chaired by either the director or associate director of the TVA (75% and

25% respectively). Only one case occurred without the involvement of either the chairperson or his associate. In addition, over 50% of the cases were convened by a three-member panel of arbitrators, with an additional 25% involving a four-member panel. This trend suggests a fairly high degree of concentration of power in the hands of a small number of arbitrators and of arbitrating panels.

The Plaintiff: Local or National Union

It has been variously argued that larger (national) rather than smaller (local) unions — due to their greater resources and ability of the former — have greater leverage in an arbitration dispute (Summers 1984). This point can be explored as the Israel arbitration agreement allows for practically any organized union to bring its case before the TVA. Of the 101 cases examined, 97 were in fact initiated by worker unions; half by either single local (22%) or national unions (26%), and half by combined groups of local/general (27%) and industry/nation-wide (25%) unions. This diversity of plaintiffs suggest that affiliation does not hamper employees from entering into the arbitration process. In fact, there apparently was a tacit understanding during its formation that the TVA would act as a forum for union grievances if normal bargaining procedures between unions and management failed (Harel 1996). How this variable affects outcomes will be examined later.

Numbers: Magnitude of Consequence

Linked to but theoretically distinct from the possible effect of the local/national character of the plaintiffs on a decisions, is the number of employees who are involved in a claim. Again, size may be associated with resources and ability to influence a decision (McCarthy 1968). It may also weigh against employees in terms of the possible consequences a decision will have when applying the decisions to other groups in the public sector labour force. In the cases explored here, close to 70% of the employee groups bringing a claim had fewer than 500 workers. Thirty-five percent represented groups of between 10 and 100 employees and another 35% representing groups of between 500 and 7000. What appears is a predominance of cases involving worker groups of relatively small, organized unions and, by implication, limited consequences of the decisions made for the general public sector labour force.

The Employer: Government vs. Non-Governmental Agencies

The arbitration agreement specifies that all public employers are potential plaintiffs in the arbitration process. But, as we have noted, most

cases were initiated by employee unions and not the government. However, it would be misleading to portray the process in terms of union organizations challenging the government, for the process is not monolithic. A review of the arbitration cases shows that it is multifaceted, including: the government (11 branches), public authorities (4 agencies), public institutions (7) and quasi-public agencies (3). Even within each category there are specific work organization having varying organizational structures and work conditions. Overall, the distribution of employee claims are primarily against ministerial offices of the government (60%) and public agencies (20%) with the number of arbitration claims made to the Tribunal being fairly consistent over the years. The focus on challenging the government is likely because it is the largest and most diverse employer.

The Respondent

Another tactic to improve the chances of success can take the form of a strategic selection of the respondent. Should a claim be made on a single employer, a general organization, or even your own union? As a way of examining this problem, the content analysis took into account the type of respondent chosen by the plaintiff. It appears that three-quarters of the cases involved a single respondent, either a direct employer (17%) or an umbrella organization representing groups of employees (58%). The remaining 25% involved multiple respondents, primarily combinations of the direct employer, an umbrella organization and unions themselves. Apparently, most plaintiffs sought out and focused on single targets.

Representatives

Another potential factor affecting arbitration outcomes is who presents the case before the Tribunal. Will an impassioned plea by a single worker be more effective than a battery of lawyers? On the government side, there is the general prosecutor's office which can utilize a pool of lawyers to back its claims. Unions also have this option, but usually employ lawyers in an adjunct capacity. For the civil servant employee as well as the government, several alternatives are available: each side in the case can have (1) a representative(s) solely from their union/government agency; (2) a union/government member(s) along with a consulting lawyer; (3) a lawyer alone. The data from the 101 cases are highly skewed in favour of the use of lawyers — 90% for the government and 66% for unions. These figures rise to nearly 99% and 75% if we include cases in which a lawyer was only indirectly involved. It is of interest to note that the trend over time has been toward the greater use of lawyers. Their impact on the arbitration award

process, however, has been disputed (Thornicroft 1994; Block and Stieber 1987) leading us to incorporate this variable in our study.

Number of Issues

Is is strategically more advantageous to focus on one major issue or on sets of issues? Each can be argued to be a better strategy. In our case, about 40% of the cases brought before the Tribunal and over 70% which were decided (101) involved a single issue. An additional 25% of the actual cases involved 2-4 issues. In one case, 10 issues were involved and in two cases, there were 8 issues. The data strongly indicate that arbitration is set in motion predominantly over one major issue.

INTERNAL PROCESS FACTORS

Type of Conflict

The TVA is mandated to deal with three basic types of conflicts: (1) strictly economic, (2) a combined legal-economic conflict and (3) purely legal matters. In some cases, so as to avoid disputes usually dealt with in the labour courts, both sides must agree to arbitration. Examining the types of conflicts reveals that close to 80% dealt with strictly economic issues, 15% concerned a mixed economic-legal topic and about 5% involved purely legal conflicts (in which both sides agreed to go to arbitration). Given the extreme overload of the labour courts (17,000 new cases per year) and the lengthy time for a judgment, it is surprising that more cases are not brought to the TVA.

Cause of Dispute

The TVA deals with disputes involving a broad category of causes which are related to wages, hours and working conditions. There are no constraints on the type of issues brought before the TVA. This led us to distinguish five major categories of direct causes for a dispute: (1) wages, (2) promotions, (3) working conditions, (4) renegotiating a new agreement, and (5) a combination of causes. These categories reflect the "official" cause as stated in the plaintiff's arguments put before the Tribunal, but may well represent a broad hidden agenda of labour-management tensions. For example, Feuille and Schwochau's findings (1988) on interest arbitration of police cases show that unions are more likely to prevail on salary issues, while employers prevail on non-salary issues. The content analysis also shows this to some extent, with the major cause of disputes before TVA

related to wages (57%) followed by issues of promotion (15%), combined causes (14%), new agreement (9%) and working conditions (6%).

Narcotic Effect

The narcotic effect reflects a growing concern that the TVA has become a favourable arbitration tool, especially when disputes are settled in a plaintiffs favour. This effect represents a stochastic model where success in one dispute leads to its repeated use. The data in Table 1 reveal that a total of 30 groups have repeatedly used the TVA over the years. The intensity of that use varies: 90% of these groups applying to the TVA have used its services at least twice, suggesting that a narcotic effect is present. This is supported by the fact that over one-half of all the judgments involved only five groups who have repeatedly presented their cases (6-10 times [24%] or over 10 times [27%]) before the arbitration panels. An additional 15 groups have likewise brought their cases before the TVA 2-5 times. By examining the data more carefully, the impact of a narcotic effect is made clearer; over 70% of all the rulings made represent *at least* a second decision for the same group of plaintiffs. This effect varies in intensity, ranging from 20% to 7%, from two to over 10 decisions per group. This pattern is a clear indication that a narcotic effect is not only present but is viewed as a major strategy in successful bargaining.

Precedent Effect

In the legal system in Israel (as in most other nations) the use of precedents as stepping stones to help resolve future cases is deeply entrenched. The records of each arbitration decision also included in its protocol whether precedents were employed in a ruling. Despite the fact that the by-laws of the TVA do not require reliance on prior rulings, such precedents were employed and recorded. The argument that previously favourable rulings will act to encourage groups to enter into bargaining can now be examined. The content analysis led to the conclusion that the precedent effect is substantial but not overwhelming. Of all the cases decided, two-fifths (42%) were decided on the basis (partially or wholly) of precedents; 33% on the basis of independent rulings by the TVA alone and 9% on non-TVA rulings. Most cases (59%) did not include any precedents. In addition, the rulings in which precedents were cited were ranked in terms of the intensity of the precedent effect. Thus, examples of extreme dependency on precedents were found in two rulings, which cited precedents 3-4 times in each ruling. Nine additional cases, reflecting a strong precedent effect, cited precedents 2-3 times each. Finally, 31 cases with low levels of precedent dependency cited one precedent each.

Linkage Effect

This concept reflects the plaintiffs' desire through their claim to link, and at the minimum equate, the conditions of their own sector to the achievements of others. It is a situation in which employees involved in the arbitration process aspire to achieve the salary and working conditions attained by other worker groups, be they similar or different from their own occupational sector. This linkage effect was clearly visible in the first three years of the TVA's operation when over 70% of the disputes involved such linkage claims (Harel and Cohen 1980). Despite statements by TVA chairmen against such a linkage, 88 of the 101 cases did include a linkage effect. In fact, the proportion rose from 80% in 1977 to 92% in 1984. Apparently, this effect has become institutionalized in the arbitration process.

WINNING AND LOSING

Each of the contextual and process variables can be linked theoretically to a successful conclusion for either employers or employees in the arbitration proceedings. Alternative theoretical arguments can be made regarding whether single vs. multiple or small vs. large plaintiff groups should have a better chance at a successful outcome when presenting their cases before the TVA. From the descriptive data, certain trends and consequences of the utilization of the Tribunal are apparent: a trend toward permanence and stability of Tribunal panels, union plaintiffs initiating arbitration, restricted application of decisions to other public sector employees, concentration on a single target (government ministries) and single (economic) issues, and the growing impact of the narcotic effect. But these trends do not automatically assure us that they are "best" predictors of an arbitration outcome, be they successful for the worker or employer. To assess this, we began by employing a bivariate analysis based on mean ranks of actual decision outcomes (see Table 3). The average ranked success in TVA arbitration cases, as previously noted, was 4.5 on a 9-point scale over the eight year period for which published data was available. Annual success outcomes for workers varied but improved over time, averaging 3.8 in its first four years and 5.2 toward the end.

As Table 3 reveals, employees achieved an above average success rate in arbitration under the following conditions: (1) the director of the TVA was chairman; (2) the plaintiff was a single local union or combination of local unions; (3) the union initiating the arbitration had less than 500 members; (4) the type of employer sued was the government or a public authority; (5) the respondent sued was a single direct employer or umbrella organization; (6) the unions was represented by a lawyer; (7) the focus was on a small number of issues; (8) if the type of conflict centred on a legal-economic issue; (9) if

TABLE 3

Means of Ranked Arbitration Success* by Context and Process Variables

CONTEXT VARIABLES	*MEAN*	*SD*	*PROCESS VARIABLE*	*MEAN*	*SD*
PLAINTIFF			***TENURE OF TVA***	4.5	2.9
SINGLE:			***CHAIRMAN***		
Local	5.5	2.4	VAT	4.7	2.9
Sectorial/National	3.6	2.6	Other	3.9	2.9
MULTI:					
Local/National	5.3	2.8	***CONFLICT TYPE***		
Sectorial/National	3.9	3.0	Economic alone	4.6	2.9
			Economic/legal	5.3	3.1
SIZE			Legal only	1.6	1.5
1-10	5.7	2.1			
11-50	4.8	2.9	***CAUSE OF DISPUTE***		
51-100	3.8	3.1	Salary	4.3	3.0
101-500	4.8	3.0	Rank	5.4	3.1
501-1000	4.2	3.0	Work Conditions	4.0	2.5
1001-5000	3.9	2.4	Renegotiations	3.0	1.0
5001+	4.8	3.5	Mixed	5.4	2.1
EMPLOYER			***NARCOTIC EFFECT***		
Government	4.7	2.9	None	3.7	2.7
Public Authority	4.3	2.5	Weak	4.9	2.9
Public Institution	4.4	3.1	Mild	4.2	3.0
			Strong	4.9	2.5
RESPONDENT			Very Strong	5.0	0.0
SINGLE:					
Direct Employer	4.6	2.9	***PRECEDENT EFFECT***		
Umbrella Organization	4.7	3.0	None	4.5	2.8
MULTI:			Weak	4.3	3.0
Direct & Umbrella	3.3	2.5	Mild	5.0	3.4
Varied Employers	3.4	2.5	Strong	3.5	3.5
Worker Union	4.6	2.2			
			LINKAGE EFFECT		
EMPLOYEE			None	4.1	3.0
REPRESENTATIVE			Exists	4.5	2.9
Lawyer alone	4.7	2.9			
No lawyer	4.4	2.9			
Includes lawyer	3.2	2.6			
NO. OF ISSUES					
One issue	4.4	3.1			
2	5.1				
3	5.0				
4	4.6				
5-10	1.8				

* The range of success: 1-4 = favour employers; 5 = compromise; 6-9 = favour employee.

the reason underlying the arbitration related specifically to ranking promotion paths or combined two or more reasons, such as salary, work conditions, etc.; (10) if a narcotic or (11) linkage effect was present. Such differences provide a first set of clues of the potential impact of each independent variable on winning a successful judgment. They do not, however, provide us with knowledge of their interrelationships.

Examining the relationship between these process and context variables as regards success provides two additional sets of linkages. The data in Table 4 not only demonstrate the direction and size of the relationship of these variables to arbitration success, but also whether such a link is statistically significant. In general, the direction of the coefficients support the initial findings which relied on ranked mean success. In the small number of cases where this is not true, the correlation coefficients are extremely small and not significant. What is conspicuous, however, is that only two of the variables — the local/national character of the plaintiffs and the type of conflict brought before TVA — are significant. Apparently, the link between most of the independent variables and worker success is weak at best and certainly not reliable. What does appear important is that if plaintiffs represent a local union and if the case brought to the TVA involved economic/legal disputes, the chances of succeeding are significantly greater than in other situations.

TABLE 4

Correlation Coefficients of Independent Context and Process Variables with Arbitration Success Criteria

Independent Variable	*Correlation Coefficient*
Context	
Plaintiff (1 = local)	0.26*
Size (scaled)	0.01
Employer	0.08
Respondent (1 = single)	0.11
Employee Rep (1 = only lawyer)	0.12
Employer Rep (1 = lawyer)	0.08
No. of issues (scaled)	-0.03
Process	
Tenure (scaled)	0.19
Chairman (1 = VAT)	0.11
Type of Conflict (1 = economic/legal)	0.28**
Cause (1 = salary)	0.09
Narcotic (scaled)	0.11
Precedent (1 = yes)	-0.01
Linkage (1 = yes)	0.05

* $p > 0.05$ ** $p > 0.01$

PARSIMONIOUS MODEL

Putting this finding to a further test, we entered these independent context and process variables into a regression model to assess their explanatory power with the aim of creating a parsimonious explanatory model of success (see Table 4). Fourteen variables were entered explaining approximately 25% of the variance of success. Of these, five were marginally significant ($p > 0.10$) while two — the character of the plaintiff and type of conflict — were highly significant. These two variables alone explained 15% of the total variance.

TABLE 5

Regression Model Incorporating Context and Process Independent Variables to Explain Success in Arbitration Tribunal Decisions

Independent Variables	R^2	β	*P*
Intersect		0.74540	
Context			
Plaintiff	.069	1.38395	.007
Size	.000	0.00002	.235
Employer	.006	0.64515	.110
Respondent	.011	0.76303	.100
Worker Rep.	.015	0.40690	.120
Employer Rep.	.006	0.06442	.125
No. of Issues	.001	-0.22512	.108
Process			
Tenure	.191	0.04027	.127
Chairman	.036	0.67777	.112
Type of Conflict	.013	3.77056	.000
Cause	.076	0.58792	.103
Narcotic Effect	.012	0.01803	.111
Precedent Effect	.000	-0.52274	.244
Linkage Effect	.003	-0.40802	.119

cumulative $R^2 = 0.248$

More importantly, the data suggest that chances for a successful ruling on the part of workers claims are significantly greater if it is made on behalf of a local union and if the claim made before the Tribunal is predominantly

economic (or mixed with a legal claim) in nature. The remainder of the independent variables which are marginally significant in explaining success (e.g., number of issues, who is chair, the cause of the dispute, the employer and respondent) only minimally contribute to the theoretical model. What is also important is the absence of the remaining variables as statistically robust explanatory predictors of success.

CONCLUSIONS AND IMPLICATIONS

The utilization of voluntary arbitration to help resolve labour disputes has long been examined an effort to enhance its use and to understand the underlying mechanisms affecting the decisions. In this endeavor, researchers have discovered and accumulated evidence of empirical linkages between various contextual and internal process conditions affecting arbitrators' decisions which tend to favour the plaintiff or respondent. These linkages have, for the most part, been viewed as unidirectional explanatory events. For example, a narcotic effect was found in certain arbitration proceedings. Others found that large and wealthy unions have better chances to succeed in arbitration than small poor ones. Each factor stands on its own, but is rarely matched against competing factors in an effort to isolate the best set of explanatory variables. One objective here was to move beyond this stage by creating a data set in which competing explanatory variables could be analyzed.

Based on fourteen major independent theoretical variables which have been linked to arbitration outcomes, the published records of Israel's Tribunal for Voluntary Arbitration, since its inception until 1984, were meticulously examined. Employing a content analysis of each file, we were able to generate a reliable data set. These variables were then matched against the dependent variable, the extent of success that employees attained in the decisions made by the Tribunal. By ranking "success", rather than making it a dichotomous variable, we were able to mimic the realities of how decisions were made. As the results demonstrated, most of the arbitration decisions were in fact mixed. Overwhelming "for" or "against" decisions were a minority of the total judgments.

This implies that employees tend to overestimate their chances to completely attain their demands. What the findings suggest is that by entering into arbitration, workers do in fact make gains. Thus, the evaluation made by employees (or their unions) as to their chances of succeeding is basically correct. What would strongly augment their chances would be to restrict the character of the plaintiff (local) as well as to focus on economic-legal issue. Less visible but also crucial is the absence of explanators which have been frequently cited in the literature, but which

failed to be of significance in explaining decision outcomes by the Tribunal when set alongside other variables. While each may be independently linked to success, their contribution to a favourable ruling is marginal at best.

What is less apparent from the data set is the fact that the Israel TVA has been a springboard for unions to press their claims when normal bargaining negotiations have either broken down or come to an impasse. By implication, any decision favouring the union employees are above and beyond what they gained through normal union-management bargaining procedures. That over 50% of the judgments favour the union workers can be translated into an unprecedented success rate. The TVA gives a distinctive edge to unions in their claims. And, as the empirical evaluation of the theoretical model has shown, it is primarily by unions being local in nature and focused on narrow claim issues.

These findings underscore several assumptions and orientations of the theoretical model. The unique character of Israel's TVA which deals with both interest and rights arbitration issues compels the model to incorporate variables associated with both issues. This is an advantage when investigating the overall issues but may be a disadvantage for understanding formal interest or rights arbitration institutions. In addition, we have assumed in building a "success model" that both parties have agreed to go to arbitration and that each party does so in terms of how they perceive the chances of success. This assumes an equal "risk aversion" by both parties to possible loss in the arbitration process with arbitration depending on "offers" by the parties and not possible perceived gains through a strike. It is for these reasons that the results should be taken within this context.

Overall, the content analysis of 101 case files over an extended period in Israel's TVA system has clearly demonstrated that specific contextual and process variables affect the outcome of arbitration. The chances of a favourable ruling depend on specific qualities of the parties involved in arbitration as well as the type of conflict involved. By first focusing on those independent variables which tend to increase chances of a favourable ruling (e.g., choosing a lawyer, selecting cases with precedents, etc.) an accumulative effect no doubt will occur. By generating a parsimonious explanatory model of the arbitration outcomes, however, we sought to refocus attention on the interactive nature of theoretical factors intimately involved in an arbitration decision. For policy makers — be they the Tribunal members, the union or management — such a parsimonious model can be utilized as an empirical basis for policy decisions.

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RÉSUMÉ

Une analyse des tribunaux israéliens d'arbitrage volontaire

L'arbitrage volontaire de règlement des conflits fait depuis longtemps l'objet d'études tant pour encourager son utilisation que pour comprendre les mécanismes sous-jacents à ses décisions. On a alors mis à jour des liens empiriques entre différentes conditions théoriques, contextuelles et internes influençant les décisions de l'arbitre en faveur d'une partie ou d'une autre. Généralement, on a vu ces liens comme des événements explicatifs unidirectionnels. Par exemple, on a trouvé un effet « narcotique » pour certains arbitrages. D'autres ont conclu que les grands syndicats riches ont de meilleures chances de succès en arbitrage que les plus petits et moins riches. En somme, on regarde les facteurs un à la fois et il est rare qu'on tente une analyse multivariée afin d'isoler le meilleur ensemble de variables explicatives. Nous tentons ici de dépasser cette étape en créant un ensemble de données où des variables explicatives concurrentes sont analysées.

Nous avons examiné les dossiers des tribunaux israéliens d'arbitrage volontaire depuis leur institution, en 1977, jusqu'en 1984, au moyen de quatorze variables indépendantes importantes liées aux résultats de l'arbitrage. C'est en utilisant l'analyse de contenu pour chaque dossier que nous avons généré un ensemble de données fiables. Ces variables furent ensuite appariées à la variable dépendante, i.e. le degré de succès atteint par les employés dans les décisions arbitrales. En établissant le succès par rang plutôt que d'en faire une variable dichotomique, nous avons été capables de reproduire la forme des décisions. Comme le démontrent les résultats, la plupart des décisions arbitrales sont mixtes, les décisions toutes « pour » ou toutes « contre » constituant la minorité.

Cela implique que les employés ont tendance à surestimer leurs chances de gagner complètement leurs causes. Les résultats suggèrent qu'en

recourant à l'arbitrage, les travailleurs font des gains. Alors, l'évaluation des employés (ou de leurs syndicats) quant à leurs chances de succès est correcte à la base. Ce qui augmenterait leurs chances serait de restreindre le caractère du plaignant (local) et de se centrer sur les questions économico-juridiques. Moins visible, mais cruciale, est l'absence de facteurs explicatifs souvent cités. Mais lorsque ceux-ci sont reliés de façon concurrente, ils sont d'aucune signification pour expliquer les décisions du tribunal.

Ce qui ressort moins de l'ensemble des données est le fait que les syndicats aient utilisé ces tribunaux d'arbitrage comme tremplin pour leurs demandes lorsque la négociation normale a échoué ou a abouti à une impasse. Cela explique que toute décision favorable aux syndiqués est supérieure à ce qu'ils auraient obtenu par la négociation normale. Le fait que plus de 50% des décisions aient été en faveur des syndiqués représente un taux de succès sans précédent. Les tribunaux d'arbitrage volontaire avantagent donc les syndicats, surtout les syndicats locaux avec des revendications pointues.

En somme, l'étude de contenu de 101 dossiers sur une période assez longue d'arbitrage volontaire en Israël démontre clairement que des variables contextuelles spécifiques et les variables de processus influencent le résultat de l'arbitrage. Les chances de gain en arbitrage dépendent de qualités spécifiques des parties impliquées et du type de conflit. En portant d'abord l'attention sur les variables indépendantes qui accroissent les chances de succès (v. g., le choix du procureur, le choix des cas selon les précédents, etc.), on note sans aucun doute un effet cumulatif. En termes de politique publique, on peut utiliser un tel modèle comme base empirique de décision.

RESÚMEN

Un análisis contextual multivariado del tribunal israelí de arbitraje voluntario

El objeto de este documento es examinar el proceso de arbitraje instituido en los tribunales de arbitraje y proponer un modelo adecuado para aumentar la habilidad de los factores teóricos que afectan el resultado de las disputas laborales en el sector publico. La información de base fue obtenida de un análisis contextual de 101 disputas y los juicios obtenidos por la parte del tribunal israelí a cargo del arbitraje voluntario (TVA) durante sus primeros ocho años de operación (1977-84). Los resultados son discutidos en el contexto de grupos de trabajo que escogieron el arbitraje en lugar de la huelga para obtener sus demandas.