PROCEDURAL AND DISTRIBUTIVE JUSTICE IN SEXUAL HARASSMENT ARBITRATIONS: EVOLUTION OF DECISIONS IN THE UNION CONTEXT

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ABSTRACT

We examine the evolution of labor arbitration decisions between 1988 and 2018 in which a union-represented employee was alleged to have committed sexual harassment. We find that management punished sexual harassment more stringently over time and that arbitrators became more sensitive to whether or not good procedure was followed by management over time. Distributive justice was also a major concern for arbitrators. The results suggest that it is essential for management to exercise procedural justice in disciplining employees, but that it is just as important for management to consider distributive justice when it comes to imposing discipline for inappropriate behavior.

Keywords: Sexual harassment; procedural justice; distributive justice; arbitration; discharge; discipline

Social and legal norms regarding sexual harassment have changed markedly over the past 30 years. Although sex discrimination became illegal with Title VII of the Civil Rights Act of 1964, the Supreme Court did not conclude that sexual harassment was a violation of Title VII until 1986. By 2017, however, the EEOC had reported that victims of sexual harassment were awarded over $46.3

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million in benefits from litigation awards (https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment new.cfm). The legal standards surrounding sexual harassment are evolving constantly. Social norms keep evolving too. Many contemporary discussions reference the *Me Too Movement* as leading to a sudden, marked shift in how society views sexual harassment.[1] By contrast, however, we contend that the shift in norms around sexual harassment has been evolutionary, occurring gradually over a long period of time.

Employers have multiple challenges in dealing with sexual harassment, particularly with the type of harassment that is examined in this paper – hostile environment sexual harassment claims involving one employee allegedly having harassed another. Employers also need to treat all parties to an alleged incident with organizational justice. It is often difficult for them to determine exactly what happened and whether or not that constituted sexual harassment according to legal standards. Research has shown that employees' perceptions of how fairly they are treated by the organizations for which they work matters for future organizational outcomes, so it is essential for organizations to treat both alleged victims and alleged perpetrators of sexual harassment fairly.

Moreover, almost all union collective bargaining agreements include a provision stating that employees can be disciplined or discharged only for ***just cause***, a concept directly related to the concept of organizational justice. Unions, like management, sometimes are in a difficult position with sexual harassment allegations between two different employees. If both are union members, the union has the duty to represent both the alleged perpetrator and the alleged victim. Nevertheless, unions often represent the member accused of harassment in the grievance arbitration system simply because they view themselves as upholders of a particular system of organizational justice – one that is akin to the "adversarial" Anglo-Saxon system of jurisprudence with its guaranteed representation for both the prosecution and the accused, unlike "inquisitorial" systems of justice in which the investigation of the complaint is made by the same party that determines the ultimate outcome (LaTour, 1978; Walker, Lind, & Thibaut, 1979).[2] That is, unions often defend alleged sexual harassers of other union members because they are thereby upholding the two-party system of justice that is core to US union identity.

This paper examines labor arbitration decisions in sexual harassment cases in order to present evidence on how decisions have changed over time: management's decisions, arbitrator's decisions, and ultimately, society's view of what sexual harassment is and what to do about this workplace problem. We hypothesize – and find – that procedural justice considerations have grown over time.

Specifically, we examine unionized workplaces in which an employee has been disciplined by an employer for allegedly having sexually harassed another person (usually a coemployee) and the union representing the employee has challenged that discipline. The basis for the union's challenge is that the employer violated the disciplinary provision in the union contract providing for just cause. We examine published arbitration decisions over the past 30 years using three

periods: 7/1/1988–6/30/1992 ("Early 90s"), 7/1/1999–6/30/2004 ("Early 21C") and 7/1/2013–6/30/2018 ("Most Recent"). First, however, we discuss organizational justice theory since concepts from it frame our research.

ORGANIZATIONAL JUSTICE THEORY

Organizational justice essentially refers to fair treatment of those who work in an organization; most definitions refer to perceptions of justice since no absolute standard of justice exists. We refer the reader to several excellent surveys of the organizational justice literature, as a complete review is not possible here (see Colquitt, Conlon, Wesson, Porter, & Yee Ng, 2001; Greenberg, 1990; Rupp, Shapiro, Folger, Skarlicki, & Shaq, 2017). The difference between procedural and distributive justice is a key element of this research.

Distributive Justice and Sexual Harassment

Distributive justice refers to fairness in organizational outcomes. Rupp et al. (2017) trace the origins of the distributive justice literature to relative deprivation theory developed in World War II, Homans' social exchange theory in the late 1950s, and Adams' development of equity theory in the 1960s. In the organizational context, much of the research in this area has involved perceived inequity in compensation, although job titles, office characteristics, performance appraisal ratings and other types of employee rewards have been studied as well. There is a small literature on organizational justice and employee discipline (Butterfield, Trevino, Wade, & Ball, 2005; Cole, 2008; Trevino, 1992). Greenberg (1990) reviews studies from the 1980s that established that procedural and distributive justice can be distinguished by managers; they also can be measured separately (that is, the measures are statistically independent constructs).

Union contracts are highly concerned with distributive justice. Typically, they set out pay for particular jobs, either as a fixed amount or within a fixed range of rates that vary based on some objective standard such as seniority, time of day the work is done, the way the piece rate is to be determined, etc. Unions tend to narrow inequality in compensation across jobs. In this way, union contracts reflect employees' general preference for greater equity discussed in distributive justice theory. While union contracts contain higher pay rates for some jobs than others, this relates to a union-management negotiated judgment that some pay differences are fair because of higher job requirements in terms of skill, effort, responsibility, education, etc. Historically, inferior status of women was one of the social norms that led to the acceptance of higher pay in "male jobs" than in "women's work." Nonetheless, unions have tended to narrow differences in pay across all personal characteristics, including gender, as a part of their commitment to distributive justice; today differences in compensation between men and women are substantially lower in union than nonunion contexts (Bivens et al., 2017).

In this study, we operationalize distributive justice as being the judgments by arbitrators as to whether or not there are mitigating factors, such as a long record of employment with otherwise good behavior, as to whether or not comparable employee violations have been treated similarly, and as to whether or not "the punishment fits the crime." In doing so, however, we attempted to be sensitive to changes in societal (and arbitrators') standards regarding "how wrong" are specific acts of sexual harassment. What is considered sexual harassment that violates the law clearly has changed in the last 30 years, in part because of evolution of norms regarding behavior. Statements, acts, or jokes that society expected recipients to tolerate years ago may now be deemed offensive enough to be actionable as sexual harassment. In short, we expect arbitration decisions on the "relative wrongfulness" of various types of harassment to conform to prevailing standards of ethics/morality, and these may well have changed over the years.

In this regard, our approach echoes that of Jones' (1991) issue-contingent model of ethical decision-making in organizations. Ethical issues have greater moral intensity (in our terms, judged to be relatively more wrong) if they involve greater harm, and there is greater social consensus that the act is evil (bad). This is exactly what is involved when arbitrators think about whether or not a particular punishment "fits the crime."[3]

Procedural Justice and Sexual Harassment

Procedural justice generally refers to the idea that the **process** for deciding outcomes should be fair. The procedural justice literature is much more recent than that of distributive justice, commencing in the 1970s with the work of Thibaut and others. Much of the early examinations of procedural justice took place in the legal context, looking at different legal processes over matters that were not related to employment. For example, LaTour, Houlden, Walker, and Thibaut (1976) conducted an experiment to examine preferences for various types of dispute resolution systems and found that arbitration was the most preferred means of settlement, followed by moot, mediation, autocratic, and bargaining.[4] MacCoun and Tyler (1988) examined citizens' preferences for different types of jury systems and concluded that procedural fairness was the strongest predictor. One conclusion of this research was that when individuals had relatively more control over the process, they had greater perceptions of procedural justice (Thibaut & Walker, 1975, 1978).

Besides process and outcome control, additional elements of procedural justice that were identified by Leventhal (1980) and Leventhal, Karuza, and Fry (1980) include:

- Consistent procedures across people and time,
- Unbiased decisions, that is, ones not made for unrelated reasons,
- Decisions are based on sufficient and accurate information,
- Decisions are correctable if originally mistaken,
- Decisions conform to prevailing standards of ethics/morality, and
- Decisions take opinions of those affected by the finding into account.

Research on procedural justice in the organizational environment also found that procedural justice matters to employees. Employees who are represented by unions have multiple protections that would be considered procedural justice. The union that represents the accused employee can argue against the allegation in multiple steps in the grievance arbitration procedure and ultimately can bring these arguments to a neutral arbitrator. This element of procedural justice is present in all of the cases in this study.

Interactional Justice and Sexual Harassment

Today, organizational justice scholars recognize a third type of justice – interactional justice – a concept that developed as an outgrowth of procedural justice theory and is essentially a subset of it. Bies and Moag (1986) theorized that the quality of interpersonal treatment people receive in the justice process is important – they termed this "interactional justice." Further, Greenberg (1990) distinguished between two types of interactional justice – "interpersonal" and "informational." The first involves whether people involved in the justice procedure are treated with politeness, respect, and dignity. The second involves the information the people received about the nature of the procedures or the way outcomes are distributed. In this study, we treat interactional justice as an element of procedural justice because we rarely found cases in which interactional justice was discussed by the arbitrators and because justice scholars consider it to be related strongly to procedural justice (Bies, 2015; Rupp et al., 2017). Discussions of "procedural justice" that follow should be understood as including interactional justice.

Just Cause and Organizational Justice

Specific organizational justice concepts are used by arbitrators in what has become a standard understanding of just cause. Over 50 years ago, in *Enterprise Wire Co. and Enterprise Independent Union*, 46 LA 369 (1966), arbitrator Carroll Daugherty articulated what have come to be known as "the seven tests of just cause":

(1) Was the worker given advance warning of the probable consequences of his conduct?
(2) Was the controlling rule, order, or standard reasonably related to efficient and safe operations?
(3) Was the alleged violation of the rule or order fully investigated before discipline?
(4) Was the investigation fair and objective?
(5) Did the investigation uncover substantial proof of guilt?
(6) Was the employer's treatment even-handed and non-discriminatory?
(7) Was the disciplinary action reasonable related to the worker's records and the gravity of the offense?

Clearly, these speak to the concepts of organizational justice theory. Items 1, 3, 4, and 5 speak to procedural justice, whereas items 6 and 7 speak to distributive justice.

THE CURRENT STUDY AND THE DATA

We used these concepts from the organizational justice literature to try to understand better how the treatment of sexual harassment cases has evolved over time, in terms of both management behavior and arbitrator behavior – both of which we believe to be influenced by changing legal standards and social norms. We hypothesized that procedural justice has become more important over time; but beyond that, we hoped to be informed by the rich data available in arbitration decisions.

We used "Bloomberg – BNA Labor Arbitration Decisions" to obtain the cases used in our study. That database contains all labor arbitration decisions published by the Bureau of National Affairs and some published by the American Arbitration Association. Even though many labor arbitration decisions are contained in this database, many other decisions go unpublished. According to the editorial staff at Bloomberg, over 60,000 labor arbitration decisions are contained within the Bloomberg – BNA database. The staff explained that new arbitrators are somewhat more likely to publish decisions than experienced ones, in order to gain recognition, and that the number of published arbitrations has declined over time as union representation has declined – this may well account for the fact our search resulted in fewer cases in the last period than in the earlier ones. Certain decisions are not published because of the wishes of the parties or the agency that administers the arbitration procedure. In building the database, Bloomberg signed a contract with the American Arbitration Association (AAA). The AAA agreed to provide labor arbitration decisions from mid-2009 to present without the authorization of the involved parties, and Bloomberg agreed to redact the AAA decisions greatly prior to publication.[5]

Franklin (1999) points out that there are several services that publish arbitration decisions but that there is significant overlap among them. BNA was by far the largest in the period she studied, 1972–1997, and it has gotten more comprehensive since the AAA data have been added. While there are limitations in using only published arbitration decisions, these limitations are common to the extant research on sexual harassment in arbitration (Franklin, 1999; Lucero, Middleton, & Valentine, 2004).

Our search turned up 194 cases in three time periods selected to capture change over time, as is explained below. One author read all 194 cases and summarized each briefly regarding the alleged harassment, management's disciplinary action, and what the arbitrator ruled. For each case, we recorded the main reason for the decision, and we also noted any organizational justice issues that were mentioned by the arbitrator. Both authors then talked about how the cases should be categorized – this sometimes led to rechecking the written decision. We attempted to interpret organizational justice narrowly. For example, if the arbitrator did not find a witness credible, we did not categorize that as either a procedural or distributive justice issue – management did not necessarily violate norms of organizational justice by making a different determination. On the other hand, if management based its case solely on hearsay, for example, we treated that as a procedural justice issue. If an arbitrator reduced the punishment

because it was not clear which witness was telling the truth, we did not consider that to be a situation of either procedural or distributive justice. If a grievance was upheld because other employees with similar employment records had received different treatment or if punishment was reduced because the arbitrator determined that the punishment was excessive given the nature of the violation, then we categorized that as a distributive justice case. Table 1 shows the factors in the arbitrators' decisions that we used to place the cases in the various categories.

Then, we divided the cases into three different time periods: 65 in the "Early 90s," 84 in the "Early 21C," and 45 in the "Most Recent." The reasons we chose these three periods are explained below.

Changes over Time in the Treatment of Sexual Harassment

In order to discern how the treatment of sexual harassment may have changed over time, we examined cases from three time periods: "Early 90s," "Early 21C," and "Most Recent." For each time period, a five-year period was utilized to obtain a large enough number of cases for analysis in each of these periods. The rationale for the "Most Recent" group (7/1/2013–6/30/2018) was simple – to garner as current a sample as possible. Rationales for other periods were based primarily on legal history and are discussed below.

Table 1. Justice Categorization of Sexual Harassment (SH) Cases in the Study.

Procedural Justice	Distributive Justice	Neither
Adequacy/inadequacy of employer investigation	Discipline was too severe given nature of act	Arbitrator believed one witness over another (credibility of witnesses)
Timeliness of complaint and investigation	Grievant had long, unblemished work record	Arbitrator not sure SH happened – general lack of evidence
Employees informed/not informed of SH policy	Discipline inconsistent – other employees did the same thing and were punished less or not at all	Would a "reasonable person" be offended by behavior?
Impartial/not-impartial investigator		Behavior was inappropriate but not SH
Company did not follow own SH policy		Process mentioned in passing but not key to decision
Grievant did not get to confront accuser (right in CBA)		
Evidence was hearsay		
No SH policy or training		
Grievant not informed of why discharged		
Investigation gave/did not give due process		
Employees not informed that an ambiguous act would be considered SH		

Note: Author judgments based on the main reasons for the decision given by the arbitrator.

Rationale for the 7/1/1988–6/30/1992 or "Early 90s" Period

The "Early 90s" group was based on the consequential Supreme Court's decision in *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). *Meritor Savings Bank* is the case in which the Supreme Court held for the first time that an employer could be held liable to an employee for "hostile environment" sexual harassment. Prior to *Meritor Savings Bank*, many courts had held that employees could recover for sexual harassment from an employer only if they could demonstrate that they had suffered some form of "tangible employment action" because of the sexual harassment (*quid pro* cases). In *Meritor Savings Bank*, a unanimous Court held that "hostile environment" sexual harassment is actionable against an organization if one of its employees sexually harasses another – the victim need not demonstrate any adverse, tangible employment consequence as a result of the sexual harassment. This seminal case marked a significant legal change, so our third period commences approximately two years after the *Meritor Savings Bank* opinion. The *Meritor Savings Bank* opinion was announced late in June 1986, and that decision changed the sexual harassment legal landscape so greatly that we selected cases starting two years after the decision was announced.

In short, the "Early 90s" period begins when the current legal standards were established – when employers nationwide first became clearly liable for hostile environment sexual harassment cases. Both before and during this period, however, union contracts contained a just cause standard for dismissal, a standard that requires both procedural and distributive justice.

Rationale for the 7/1/1999–6/30/2004 or "Early 21C" Period

The dates for the "Early 21 Century" group were based on the date of the Supreme Court's opinions in *Burlington Industries, Inc. v. Ellerth*, 524 US 742 (1998) and *Faragher v. City of Boca Raton*, 524 US 775 (1998). In *Ellerth* and *Faragher*, the Court set out the standards for determining when an organization is liable to an employee for sexual harassment and those standards are used to the present. Since these decisions were announced on June 26, 1998, we chose a five-year period beginning one year later, giving organizations time to adapt to the standards set out in the cases.

It is noteworthy that the standards set out by the Court in *Ellerth* and *Faragher* for determining an organization's liability in sexual harassment cases speak to both distributive and procedural justice. Those standards hold that an organization is automatically liable to a victimized employee for sexual harassment if the victim suffers some type of adverse tangible employment such as discharge or demotion (*quid pro cases*); but if no tangible employment action is taken (hostile environment cases), the organization may avoid liability caused by a supervisor by proving (1) that the organization exercised reasonable care to prevent and promptly correct any sexual harassing behavior and (2) that the plaintiff/employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer.

By holding that the organization is automatically liable to a victim in *quid pro quo* cases, the Court took account of the fact that sexual harassment which results

in tangible employment consequences is likely the worst type of sexual harassment a victim can suffer. Therefore, the organization is unable to insulate itself from liability in these cases. Hostile environment cases, on the other hand, do not impact the victim economically (tangibly), so there is an affirmative defense that employers can use in these cases. This is consistent with the notions of distributive justice discussed above.

The affirmative defense available to employers in hostile environment cases also takes procedural justice into account. This two-part affirmative defense essentially states that the organization can avoid adverse legal consequences in hostile environment cases if it handles sexual harassment situations with procedural justice when responding to, or attempting to prevent, hostile environment sexual harassment. This defense increased the incentive for employers to focus on procedural justice and encouraged arbitrators too to be sure to weigh the procedures used by employers more heavily in their decisions.

What Type of Sexual Harassment Occurred in the Cases We Found?

The cases in our data set involve a subset of all sexual harassment cases. They typically are hostile environment cases in which one employee interacted with another in a manner that the victim deemed sexually harassing. The employer then disciplined the employee, and the cases arose from a union claim that the employer violated the disciplinary clauses in the collective bargaining agreement in disciplining the individual who was found to have been a sexual harasser. A vast majority of cases here involve men who allegedly harassed women; the other situations are too infrequent to be categorized.[6] Only two involved the union defending the accuser rather than the alleged harasser.

While our data involve a subset of sexual harassment cases, it is not an atypical or unusual subset. In a recent Consensus Study Report, the National Academies of Science, Engineering & Medicine found that harassment by coworkers is more common than harassment by supervisors. Moreover, as in our data, the vast majority of incidents involve men harassing women, and the least common form of harassment was sexual coercion (Johnson, Widnall, & Benya, 2018, p. 43). The most common type is actually "gender harassment," which is an expression of direct hostility toward women, and the second most common type is unwanted attention based on sexual attraction (Johnson et al., 2018, p. 27) – examples of the latter two types are found in the arbitrations in this study, but as in other research, gender harassment expressing animosity toward women doing a particular job was especially common.

WHAT WE FOUND

To reiterate, we categorized sexual harassment decisions on what management did in each case, on how the arbitrators ruled, and on whether procedural or distributive justice reasons were cited by the arbitrators in their decisions. Our categories were used to produce Tables 2–4. Table 2 contains data from all of the arbitrations we found in the three time periods, Table 3 focuses only on cases in

Table 2. All Arbitration Cases in the Study.

	Early 90s [Percent (Number)]	Early 21 Cent. [Percent (Number)]	Most Recent [Percent (Number)]	All Cases over 30 Years [Percent (Number)]
Management Action	**100% (65)**	**100% (84)**	**100% (45)**	**100% (194)**
Discharge	63% (41)	80% (67)	**87% (39)	76% (147)
Suspension	26% (17)	18% (15)	**9% (4)	19% (36)
Other	11% (7)	2% (2)	4% (2)	6% (11)
Arbitrator Action	**100% (65)**	**100% (84)**	**100% (45)**	**100% (194)**
Upheld	66% (43)	46% (39)	51% (23)	54% (105)
Penalty reduced	25% (16)	36% (30)	31% (14)	31% (60)
Overturned	9% (6)	17% (14)	18% (8)	14% (28)
Main reason for Arbitrator decision	**100% (65)**	**100% (84)**	**100% (45)**	**100% (194)**
Procedural justice	0% (0)	19% (16)	**29% (13)	15% (29)
Distributive justice	20% (13)	15% (13)	16% (7)	17% (33)
Both	5% (3)	4% (3)	2% (1)	4% (7)
Neither	74% (48)	62% (52)	53% (24)	64% (125)

Note: Significant difference using a Chi-Square test from early 90s to the most recent period: at the 0.10 level = *; at the 0.05 level = **.

Table 3. Arbitration Cases Where Management Action Was Overturned by an Arbitrator.

	Early 90s [Percent (Number)]	Early 21 Cent. [Percent (Number)]	Most Recent [Percent (Number)]	All Cases over 30 Years [Percent (Number)]
Management Action	**100% (6)**	**100% (14)**	**100% (8)**	**100% (28)**
Discharge	33% (2)	64% (9)	75% (6)	61% (17)
Suspension	50% (3)	36% (5)	13% (1)	32% (9)
Other	17% (1)	0% (0)	13% (1)	7% (2)
Main reason for Arbitrator decision	**100% (6)**	**100% (14)**	**100% (8)**	**100% (28)**
Procedural justice	0% (0)	29% (3)	*38% (3)	29% (8)
Distributive justice	0% (0)	7% (1)	13% (1)	7% (2)
Both	0% (0)	7% (1)	0% (0)	0% (0)
Neither	100% (6)	64% (9)	50% (4)	64% (18)

Note: Significant difference using a Chi-Square test from early 90s to most recent: at the 0.10 level = *; at the 0.05 level = **.

which the arbitrator completely overturned management's initial decision, and Table 4 focuses only on cases in which the arbitrator upheld the finding that the grievant was guilty of sexual harassment but reduced the penalty. We looked at proportions of cases by category over time for evidence on shifts in the treatment of sexual harassment by management and by arbitrators.

Table 4. Arbitration Cases Where the Penalty Was Reduced by an Arbitrator.

	Early 90s [Percent (Number)]	Early 21 Cent. [Percent (Number)]	Most Recent [Percent (Number)]	All Cases over 30 Years [Percent (Number)]
Management Action	**100% (16)**	**100% (30)**	**100% (14)**	**100% (60)**
Discharge	75% (12)	90% (27)	93% (13)	87% (52)
Suspension	19% (3)	7% (2)	*0% (0)	8% (5)
Other	6% (1)	3 % 1)	7% (1)	2% (3)
Main reason for Arbitrator decision	**100% (16)**	**100% (30)**	**100% (14)**	**100% (60)**
Procedural justice	0% (0)	30% (9)	*21% (3)	20% (12)
Distributive justice	50% (8)	27% (8)	43% (6)	37% (22)
Both	6% (1)	10% (3)	7% (1)	8% (5)
Neither	44% (7)	33% (10)	35% (4)	40% (21)

Note: Significant difference using a Chi-Square test from early 90s to most recent: at the 0.10 level = *; at the 0.05 level = **.

Management Behavior

Looking at Table 2, sexual harassment decisions that go to arbitration typically are those in which management has discharged or suspended the harasser (between 89% and 96% of the cases in all three time periods involve either discharge or suspension).[7] At the same time, it is evident that management has become more stringent in how it has punished instances of sexual harassment by employees over the past 30 years. Comparing the most recent period to the early 90s, management discharged the harasser in a greater proportion of sexual harassment cases recently, whereas suspension or other types of discipline were more common earlier. Management discharged the alleged harasser 87% of the time in the most recent period, whereas the alleged harasser was discharged only 63% of the time in the early 90s.[8]

According to Table 2, it would appear that there was a greater change between the Early 90s and the Early 21C than there was between the Early 21C and the most recent period. The change is gradual over time, but the percentage of discharges increased much more between the first and second periods than between the second and third. Although we cannot say for certain, it is likely that the change that occurred in the Early 21C period was brought about by the Court's decisions in *Faragher* and *Ellerth*. As pointed out earlier, those decisions refined the standards for determining when an organization is liable for hostile environment sexual harassment under Title VII and greatly expanded organizations' liability (Mesker, 1999). In addition, they gave employers an affirmative defense that they could use to insulate themselves from sexual harassment liability under that statute. These decisions therefore gave employers incentive to punish alleged perpetrators of sexual harassment more severely, perhaps attempting to insulate themselves from liability under the law.

Arbitrator Final Decisions

Did arbitrators also treat sexual harassment more stringently over time? We realize that this question cannot be answered with finality because the cases may have changed and because management's treatment of the alleged harassers may have changed, but we can draw some tentative conclusions.

Arbitrators' behavior with regard to the ultimate decisions that they reached has not changed over time, in a statistically significant sense, in terms of the proportion of cases in which they upheld management action, completely overturned it, or found the grievant responsible but reduced the penalty.[9] Arbitrators decided cases based on a variety of factors, many of which we did not consider to be procedural justice or distributive justice. In many cases, the arbitrators stated that they could not determine precisely what had taken place to cause the initial charge of sexual harassment because of inadequate evidence, differing testimony, or not entirely credible witnesses. Decisions not categorized as having been based on procedural or distributive reasons were the majority in our data.

Arbitrators upheld a somewhat greater proportion of management actions in the early 90s compared to recently (see Table 2), although the decline over time is not statistically significant. A bare majority of management disciplinary actions (54%) were upheld in all periods, which is consistent with earlier evidence (Franklin, 1999) that in sexual harassment arbitrations between 1972 and 1997, the original penalty was upheld 52% of the time (and 54% of the time when the original penalty was discharge).

While most management findings were upheld, the proportion of disciplinary actions that were completely overturned doubled – from 9% to 18% – in this 30-year period. Perhaps arbitrators have been reacting to increased harshness on the part of management; we are not sure. Overall, arbitrators' most common decision was to uphold management's findings over the period we studied. On the other hand, they modified the penalty in a rising proportion of their decisions – often citing procedural or distributive justice rationales or both.

Arbitrator Decisions and Procedural Justice

It would appear from our data that the reasons for arbitrators' decisions have changed over time and that procedural justice has grown in importance to arbitrators over time. As shown in Table 2, arbitrators relied on procedural justice considerations 29% of the time in recent years, whereas that ***never*** was the main reason for arbitrators' decisions in the early 90s.[10] Distributive justice also was a consideration to arbitrators, but the proportion of cases in which it played a major role in the decision has remained relatively constant over time. Generally, distributive justice played the deciding factor in about 17% of the cases we examined in each of the three periods.

The growing importance of procedural justice is highlighted when we look more deeply into the data. Deficiencies in procedural justice played the dominant role in cases in which arbitrators totally overturned management decisions

(Table 3); such deficiencies also often led to a reduction in the penalty meted out to the perpetrator of harassment (Table 4). Procedural justice was especially important in decisions in which management's action was overturned altogether during the most recent period, constituting the main reason 38% of the time in these cases (see Table 3).

AT&T Mobility, 134 BNA LA 1720 (2015) illustrates the importance procedural justice has come to play in these decisions. In that case, the employer discharged the grievant on June 13, 2013 as a result of three separate complaints of sexual harassment made against him by employees of a subcontractor. All three of the women working for the subcontractor had submitted written statements to AT&T accusing the grievant of sexual harassment. AT&T investigated the situation and discharged the grievant immediately. The three accusers did not testify at the hearing, however, and the union argued that this denied the grievant his due process rights. Ultimately, the arbitrator fully sustained the union's grievance, awarded him full back pay and seniority. The arbitrator explained:

> In the instant grievance, the Company chose to terminate a tenured employee, who had never been disciplined prior to his termination, based solely on hearsay evidence and unproven claims. Moreover, the accusers failed to substantiate their allegations by not testifying at the arbitration hearing. Accordingly, your arbitrator must value the Grievant's testimony over the accusers' charges.
>
> In conclusion, I find that the company's decision to terminate the grievant was based on evidence that could not be proven to support the charges. Additionally, I find that in light of the Record made in this case, the disciplinary action taken was excessive and unjustifiable.

In short, the grievance was upheld based primarily on procedural considerations. The discipline was excessive because there was inadequate proof of the alleged conduct, not because of distributive justice considerations per se.

Distributive Justice

Although distributive justice played a relatively constant role in arbitrators' decisions overall, we noticed that it was rare for arbitrators to overturn management actions entirely for reasons related to distributive justice alone. In fact, this happened only twice in our data (see Table 3). But distributive justice took on much more importance in those cases in which the arbitrators decided that the employee involved was responsible for sexual harassment but that the penalty imposed by management was too harsh – either too harsh for what happened or too harsh in light of the employee's length of service and absence of prior violations. This is distributive justice. According to Table 4, distributive justice played a large and relatively constant rationale for this type of decision – it was cited in 43% of these cases in the most recent period.

Employer and Police, FOP Lodge, 2015 BNA LA Supp. 119114 (2015) illustrates how distributive justice sometimes is used by arbitrators to reduce a penalty, even if the arbitrator believes that sexual harassment occurred. In that case, an employee was discharged for having viewed pornography on his computer at

work on numerous occasions and the arbitrator agreed that the employer had proven its case. Nevertheless, the arbitrator reduced the penalty to a suspension without pay stating

> …[my] conviction is further supported by the disparity between [the grievant's] offenses and whatever harm the [employer] may have suffered as a result, [given] his lengthy prior service, and his lack of prior discipline.

In another example, *In the Matter of the Voluntary Arbitration between Employer and Union*, 2016 BNA Supp. 199484 (2016), an employee had been discharged for referring to a female supervisor as a "bitch," "stupid bitch," "cunt," and "asshole." Again, the arbitrator agreed with the employer that the grievant had committed these offenses but reduced the penalty to a six-month suspension in light of the fact that other employees had used similar names and because the grievant was a very long-term employee. But this case is an example of something that we observed throughout – often, sexual harassment is not really about sex per se. Instead, it is often mostly about harassment and using sex to denigrate women.

PROCEDURAL JUSTICE AND SUMMARY DISCHARGE OF HARASSERS

Procedural justice considerations clearly have become more important to arbitrators in deciding the outcome in sexual harassment cases. Just the courts increasingly have been penalizing employers for not having a written sexual harassment policy, providing sexual harassment training, or investigating sexual harassment allegations in a prompt and fair manner, arbitrators also have pointed to inadequate employer procedures much more frequently, in either completely overturning (Table 3) or in modifying (Table 4) the penalty management imposed for sexual harassment. This is a relatively recent development – as late as 1990 such considerations were rarely determinant in arbitrations.

Furthermore, management clearly punished perpetrators of sexual harassment most severely in the most recent time period. It is not hard to explain why employers did this. Employers often want to do the right thing by promoting a less toxic and more productive work environment; they also want to avoid both costly legal decisions and bad press. It has become easier for victims of sexual harassment to recover damages from their employers as legal standards have evolved.[11] Starting with *Meritor Savings Bank v. Vinson* (1986) and continuing with each successive Supreme Court sexual harassment decision, it has become more likely that victims of sexual harassment will prevail against the organizations that employed them. In an effort to shield themselves from liability to victims of sexual harassment therefore, organizations have had an incentive to punish perpetrators of it more stringently, both to attempt to prevent bad behavior on the part of other employees and to demonstrate to the courts that they take the prevention of sexual harassment seriously. In short, more severe

treatment of sexual harassers by management clearly is linked to the increasing importance of procedural justice.

Moreover, as noted earlier, society's ideas about what constitutes sexual harassment and the degree to which specific behaviors are unduly offensive have evolved. Scholars of sexual harassment have pointed out that in recent years, more people are recognizing that sexual harassment often is not particularly about sexual coercion, but rather is an act of what is now termed "gender harassment." Gender harassment is behavior conveying insulting, hostile, and degrading attitudes about women, including sexist hostility and crude comments. Gender harassment has been found to be the most common form of contemporary sexual harassment, particularly in heavily male organizations (Johnson et al.,2018 p. 25, p. 40). It is especially common where women are now doing jobs that were once considered to be "men's work." We noticed that in some early cases, arbitrators found that gender harassment behavior (that is, an expression of hostility toward women) did not constitute sexual harassment; it was just inappropriate or rude. The idea that sexual harassment must involve unwanted sexual attraction is an idea that once was common but has become less common over time.

In the matter of the Arbitration between – *Bethlehem Steel Corporation*, 3 567-7542 – 33,260 and 7580 – 32,069, 1993 BNA LA Supp. 112774 (1993) illustrates this change in arbitrators' view of what constitutes sexual harassment. The grievant was discharged in 1992 for "continuing harassment of two female security officers." Among the allegations against him were that at one point, he grabbed his genitals (through his clothing) and after he got the female guards' attention stated, "this is for you." The grievant denied everything of which he was accused. In his decision, the arbitrator acknowledged that the grievant may well have committed the offenses of which he was charged, but stated:

> Nevertheless, the facts of the present case do not rise to the level that can be said to constitute sexual harassment. Not only were the Security Officers in question accustomed (from their pre-Bethlehem work experience) to dealing with a variety of behavior from the public, but also the job of Security Officer, by definition, promises some encounters with workers who are unruly, rude, or aggressive. Grievant's actions, while not to be condoned, were not beyond the range of things that a Security Officer would expect to have to cope with, and there was very little evidence, if any, that the actions were exaggerated because the Security Officers were female. Certainly, his actions were not raised to such a pitch that the work environment for the Security Officers, as females, was rendered intolerable.

It is difficult to believe that a similar conclusion would be reached today.

ISSUES TO PONDER

One might wonder whether the changing notions of what constitutes "sexual harassment" (and increased recognition that it not always contains an element of sexual desire) is related to the increased number of women in all types of jobs. Clearly, there is no way we can address that question based on the data we have.

Similarly, perhaps this is related to the increasing number of women who serve as arbitrators. We can only speculate about this because the gender of the arbitrators is not given in our data.

We have been asked about the implications of our findings for employment arbitration in nonunion contexts – arbitrations in which the alleged victim of sexual harassment brings an action against the employer in arbitration rather than in a civil lawsuit. That is a difficult question to answer. The data that exist on employment arbitration do not include the nature of the dispute, so there are no comparable data to ours in the world of nonunion employment arbitration (Colvin & Gough, 2015). What follows is informed speculation.

We would expect that procedural justice plays at least as large a part in nonunion arbitrations as it does in labor arbitrations and most likely it is even more important. Nonunion employment arbitrations are much more akin to court cases concerning sexual harassment than they are to labor arbitrations. The issues both in court cases involving sexual harassment and in nonunion employment arbitrations are the same – whether or not sexual harassment occurred and whether or not the organization was responsible for that harassment. The issue in labor arbitrations, however, is whether the discipline of the alleged harasser was in accordance with the disciplinary clauses in the collective bargaining agreement. In addition, there is currently considerable dissatisfaction on the part of plaintiffs about nonunion employment arbitration in sexual harassment cases, precisely because management can point to things like sexual harassment policies, sexual harassment training, established procedures for responding to complaints of harassment, and discharge of the alleged harasser in defense of a claim. In short, we would anticipate that if anything, procedural justice is even more important in employment arbitration cases than it is in labor arbitration.

Franklin (1999, p. 1571) points out that labor arbitrators and courts look at discipline for alleged sexual harassers in different ways:

> In the context of Title VII cases, courts do not analyze whether the level of discipline imposed by the employer *exceeded* what was needed to constitute prompt and appropriate corrective action. Rather, courts determine whether the employer has taken *sufficient* steps – including disciplining the harasser – to eliminate the hostile environment. Thus, under Title VII, courts do not acknowledge the possibility of imposing too much discipline. Arbitrators, on the other hand, ask whether the discipline was excessive.

In our opinion, nonunion employment arbitration should evolve so that arbitrators rule on whether or not lower level employees are being treated fairly when they are disciplined by employers for allegedly creating a hostile environment for coworkers or other sexual harassment. That is not the situation at present because these nonunion employees are not protected by a contract insuring "just cause" and employment arbitrators are enforcing the law, not a contract that provides protections to the alleged harasser.

As Rachel Arnow-Richman (2018, p. 85) points out, "companies have taken swift and severe disciplinary action against alleged harassers, raising questions in some instances as to whether their responses were justified." As long as alleged

harassers are at-will employees themselves and not top executives protected by a variety of means including individual employment contracts, there are serious issues of fairness for the accused given all the legal incentives employers have to demonstrate that they have procedures for swiftly halting sexual harassment. Arnow-Richman interprets the evidence from labor arbitrations as indicating that the danger of excessive and disproportionate discipline against lower level employees is real – after all, arbitrators upheld only slightly more than 50% of management actions. Surely, there is, if anything, a greater danger of excessive discipline in an at-will employment environment.

FINAL THOUGHTS

This study contains implications both for the law and for management practice. The results suggest that various court decisions have made it increasingly important for management to exercise procedural justice in disciplining employees. We contend that it is also important for both the law and management to consider distributive justice when it comes to imposing discipline for allegedly inappropriate behavior. In a union context, discharge is not likely to be upheld for an otherwise good employee if the behavior involved is judged to be "not all that wrong." The emphasis in union contracts on distributive justice reflects a broader norm in society about the proportionate consequences of different types of conduct – punishment is only just if its severity is proportionate to the crime. This is also a general legal norm that needs to be recognized as the law and practice of nonunion employment arbitrations evolve. None of this is to say that fair treatment and proper procedures are unimportant. They should not be the only concern of management and the courts in sexual harassment cases, however.

These thoughts extend beyond our results. And our results are limited by the fact we examined arbitration in union workplaces, and that sexual harassment complaints which go to arbitration and result in a published decision are a small proportion of all situations of sexual harassment that occurs. Law should not only require that key information on employment arbitrations be published in all states (and not just the few that require this now) but also that the nature of the dispute be part of the record. This would greatly facilitate needed research on employment arbitration.

Nonetheless, it is clear that contra much of the discussion in the press about "Me Too" and recent highly publicized sexual harassment situations, the change in social attitudes toward sexual harassment has been gradual over the last 30 years, and not simply something that changed abruptly in the last year or so. Change has involved a greater emphasis on procedural justice in law, management behavior, and arbitrator behavior. Hopefully, changing norms have led to changed employee behavior, and this will continue into in the future. Nonetheless, sexual harassment is still a problem in many work organizations. We believe it deserves further attention from both researchers and professionals in our field.

NOTES

1. For instance, Hemel and Lund (2018) start the abstract of their recent paper, "The year 2017 marked an inflection point in the evolution of social norms regarding sexual harassment."

2. The latter system exists in many continental European nations and in nonunion workplaces; LaTour (1978) found that inquisitorial systems have lower levels of observer satisfaction than adversarial systems.

3. One difference between how organizational justice theory is usually applied and our use of this theory is that we are looking at how a third party, an arbitrator, acts based on his or her perceptions of justice or injustice, rather than looking at the perceptions of a particular group of employees.

4. According to the authors, "moot" is "a process which involves all parties in the decision-making. This is a more informal procedure of discussion and unanimous consent common in small groups and subgroups of larger organizations" (LaTour et al., 1976, p. 320).

5. The search request was "sexual harassment," which returned any labor arbitration decision in which the phrase "sexual harassment" appeared anywhere within the decision. Cases in which that phrase was not a factor in the case (e.g., because it was a phrase in a company policy) were not used. Our search also turned up a small number of cases involving racial harassment or some other type of harassment (e.g., based on national origin) but we did not include those cases in our final analysis.

6. At the outset of this project, we had hoped that evidence on the number and type of sexual harassment cases that go to arbitration might be interesting in and of itself. Has the number of sexual harassment cases increased as society has gotten more concerned about this type of behavior? What proportion involve same-sex harassment, for instance, or what proportion involve women harassing men, or what proportion involve supervisors? Such questions cannot be answered with these data given that publication rates may have changed, and AAA cases are only in the third period. Moreover, union representation has declined over time. And few of the cases here involved supervisors as harassers. Outside the public sector in a few states, few supervisors are represented by unions.

7. Franklin (1999) reports that between 1972 and 1997, 86% of all sexual harassment cases in her arbitration database involved a penalty of some sort.

8. The increase in discharges is statistically significant using a Chi-square test.

9. The change is not significant according to a Chi-square test.

10. The difference is statistically significant.

11. A colleague pointed out that it is still not "easy" for a victim to win these cases and we are not claiming it is. Nevertheless, it is easier than it once was.

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APPENDIX

Table A1. Recent Sexual Harassment Cases.

Case	Whom Allegedly Harassed	Employer Action	Arbitrator Finding	Organizational Justice Reason?
4638040	coworker	disch	upheld	
138LA439	coworker	disch	upheld	procedural
20174633807	student	disch	upheld	
138LA225	coworker	disch	upheld	procedural
138LA168	coworker	susp	upheld	
138LA243	coworker	disch reduced to susp	penalty reduced	
201155-AAA	student	disch reduced to susp	penalty reduced	
201148-AAA	coworker	disch	upheld	procedural
201146-AAA	coworker & subordinate	disch	upheld	
138LA32	coworker	disch	upheld	
137LA1085	customer	disch	penalty reduced	distributive
200843	student/coworker	disch	upheld	
200846	customer	disch	penalty reduced	procedural
137LA676	vendors	susp	overturned	procedural
200681	coworker	disch	penalty reduced	procedural
200693	coworker; other offenses	disch	upheld	procedural
200612	coworker	disch	penalty reduced	
205239	coworker	disch	upheld	
205071	student	disch	upheld	
205012	coworkers	indefinite susp	overturned	
199484	worker harassed supervisor	disch	penalty reduced	distributive
137LA535	residents of apt complex	disch	upheld	
135LA949	inmates of a prison	disch	upheld	
199266	student	disch	overturned	
135LA1648	student	disch	overturned	
199114	n/a	disch	penalty reduced	distributive

Table A1. *(Continued)*

Case	Whom Allegedly Harassed	Employer Action	Arbitrator Finding	Organizational Justice Reason?
135LA839	coworker	disch	upheld	
199107	cadet	disch	upheld	
135LA607	coworker	disch	upheld	
199041	coworker	disch	upheld	
135LA649	coworker	disch	overturned	distributive
191540	student	disch	upheld	procedural
166018	customer	disch	overturned	
135LA640	worker harassed supervisor	disch	penalty reduced	both
134LA1720	contract workers	disch	overturned	procedural
134LA941	coworker	disch	overturned	procedural
133LA1663	coworker	disch	upheld	
133LA1257	worker harassed supervisor	disch	upheld	
165789	coworkers (2)	disch	penalty reduced	
134LA349	coworkers (2)	demotion & susp	penalty reduced	distributive
133LA916	coworker	5 day susp	upheld	
133LA217	students (2)	letter of reprimand	penalty reduced	procedural
1515624	third party	disch	penalty reduced	distributive
132LA1728	worker harassed supervisor	disch	upheld	procedural
148518	inmates of a prison	disch	upheld	procedural
148141	Subordinate	disch	penalty reduced	distributive
132LA1	city resident	disch	upheld	procedural

Table A2. Early 2000s Sexual Harassment Cases.

Case	Whom Allegedly Harassed	Employer Action	Arbitrator Finding	Organizational Justice Reason?
110851	coworker	10 day susp	upheld	
119LA1145	grievant	n/a	upheld	procedural
119la1389	coworker	Disch	upheld in part	
100916	coworker	Disch	overturned	
119LA1371	coworker	Disch	upheld	
119LA737	coworker	Disch	penalty reduced	distributive
119LA1303	student	Disch	penalty reduced	procedural
100873	coworker	Disch	overturned	
119LA724	coworker	Disch	penalty reduced	
119LA1050	coworker	Disch	upheld	
118LA1761	coworker	Disch	upheld	
100536	coworker	30 day susp	upheld	
110422	nonemployees	Disch	penalty reduced	both
118LA1541	coworker	Disch	upheld	procedural
118LA1227	coworker	Disch	upheld	
110686	customer	Disch	penalty reduced	
110441	resident	Disch	penalty reduced	
118LA1712	coworker	Disch	upheld	procedural
114992	coworker	Disch	penalty reduced	both
118LA1702	coworker	10 day susp	upheld	distributive
118LA911	coworker	Disch	penalty reduced	distributive
118LA699	coworker	1 day susp	penalty reduced	
110397	nonemployees	Disch	upheld	
110155	coworker	Disch	upheld	
118LA506	n/a	5 day susp	upheld	
110143	coworker	Disch	upheld	
110097	nonemployees	Disch	upheld	
117LA1569	n/a	Disch	upheld	distributive
100968	nonemployees	Disch	upheld	
117la1601	coworker	Disch	penalty reduced	distributive
117LA1072	students	susp/letter of repmd	overturned	
11/25/2200	n/a	3 day susp	upheld	
117AL1214	coworker	Disch	upheld	
109878	coworker	14 day susp	upheld	
109957	citizens	Disch	penalty reduced	procedural
110104	coworker	Disch	overturned	procedural
117LA71	various people	Disch	penalty reduced	
109543	subordinates	susp/demotion	penalty reduced	
116LA1697	coworker	Disch	penalty reduced	distributive
11092-6	coworker	Disch	penalty reduced	
109766	coworker	Disch	upheld	
109290	coworker	Disch	upheld	
109580	coworker	Disch	upheld	
116LA1331	coworker	Disch	upheld	

Table A2. *(Continued)*

Case	Whom Allegedly Harassed	Employer Action	Arbitrator Finding	Organizational Justice Reason?
109116	coworker	Disch	upheld	
109122	coworker	Disch	upheld	
116L906	coworker	Disch	penalty reduced	
109193	coworker	Disch	upheld	
116LA271	n/a	Disch	penalty reduced by a lot	procedural
108968	coworker	Disch	overturned	procedural
108791	3rd party	Susp	overturned	
109227	interns, coworkers	Susp	overturned	procedural
114LA1225	3rd party	Disch	overturned	
115LA1308	coworker	Disch	upheld	
115LA1346	coworker	15 day susp	overturned	
108851	coworker	Disch	upheld	
115LA1039	coworker	Disch	penalty reduced to susp	distributive
109524	coworker	Disch	penalty reduced to susp	distributive
108563	n/a	Susp	overturned	
118240	n/a	Disch	upheld	
115LA198	coworker	Disch	overturned	both
115LA886	subordinate	Disch	overturned	
115LA393	coworker	Disch	penalty reduced	procedural
115LA1	n/a	Disch	penalty reduced	distributive
108686	n/a	Disch	penalty reduced	distributive
109053	coworker	Disch	Upheld	procedural
108575	coworker	Disch	Overturned	
114LA1584	coworker	disch	Upheld	
114LA1508	coworker	disch	Overturned	
108298	coworker	susp and other things, no discharge	penalty reduced	
114LA769	n/a	disch	Upheld	procedural
114LA819	coworker	disch	penalty reduced	distributive
114LA481	coworker	disch	penalty reduced	
114LA440	n/a	susp	Upheld	
114LA725	coworker	disch	Upheld	
114LA761	n/a	5 day susp	penalty reduced	procedural
114LA501	customer	disch	Upheld	
13LA1040	coworker	disch	penalty reduced	procedural
113LA1169	subordinate	disch	penalty reduced	distributive
104735	citizens	disch	Upheld	
113LA833	n/a	disch	penalty reduced	both
113LA961	coworker	5 day susp	Upheld	procedural
113LA737	3rd parties	disch	penalty reduced	
113LA129	coworker	disch	Upheld	distributive

Table A3. Early 90s Sexual Harassment Cases.

Case	Whom Allegedly Harassed	Employer Action	Arbitrator Finding	Organizational Justice Reason?
105168	coworker	5 day susp	Upheld	
112774	nonemployees	discharge	overturned	
101LA564	n/a	2 week susp + probation	penalty reduced	
112904	coworker	5 day susp	Upheld	
102157	coworker	discharge	Upheld	
112790	students	discharge	Upheld	
105439	n/a	discharge	Upheld	
107731	coworker	discharge	penalty reduced	
100LA905	coworker	warning letter	penalty reduced	
102087	coworker	suspension	upheld	
112702	n/a	discharge	upheld	
101LA6	citizen	10 day susp	upheld	
100LA568	coworkers	discharge	upheld	
115343	coworker	discharge	penalty reduced	distributive
103LA316	subordinate	discharge	penalty reduced	
107735	coworker	discharge	upheld	
100LA291	customer	suspension	penalty reduced slightly	distributive
105389	coworker	discharge	upheld	
112632	coworker	discharge	upheld	
100LA444	students	discharge	penalty reduced	distributive
105115	coworker	5 day susp	overturned	
100LA102	2 coworkers	5 day susp	penalty reduced	
112111	2 coworkers	discharge	upheld	
99LA969	3rd party	discharge	upheld	
100LA63	subordinate	discharge	penalty reduced	distributive
99LA1161	coworker	discharge	upheld	distributive
100LA48	carrier	2 week susp + probation	upheld	
116847	customer	discharge	penalty reduced	
100LA866	coworker	3 day susp	upheld	
115906	coworkers (2)	discharge	upheld	distributive
114651	coworker	discharge	upheld	distributive
105310	coworker	discharge	upheld	
115233	customer	discharge	upheld	
99LA134	2 students	discharge	upheld	
114387	employee (H.S.student)	5 day susp	overturned	
105440	3 employees	discharge	upheld	
113153	coworker	5 day susp	upheld	
98LA1129	subordinate	n/a	overturned	
98LA440	coworkers (2)	discharge	penalty reduced	
114416	subordinates	discharge	upheld	
106988	coworkers (2)	reprimand & transfer	upheld	
106854	coworker	discharge	upheld	

Table A3. *(Continued)*

Case	Whom Allegedly Harassed	Employer Action	Arbitrator Finding	Organizational Justice Reason?
102490	coworker	demotion	upheld	
106811	coworkers (2)	discharge	upheld	
97LA957	contract workers (3)	discharge	upheld	
98LA337	coworkers (3)	discharge	upheld	distributive
114531	customer	discharge	upheld	
97LA617	coworker	discharge	penalty reduced	distributive
106756	coworker	discharge	penalty reduced	distributive
114405	coworker	discharge	overturned	
112243	coworkers (2)	discharge	upheld	both
106895	subordinates (2)	3 day susp	upheld	
114451	coworker	discharge	penalty reduced	distributive
96LA112	students	susp	upheld	
95LA1097	coworkers (2)	discharge	penalty reduced	
95LA510	coworkers (2)	discharge	penalty reduced	both
94LA826	coworker	written warning	upheld	
106921	coworker	discharge	upheld	
94BNA451	workers (by prisoners)	reconfigured prison cells so grievants exposed to SH	grievance upheld in part	
94LA289	coworker	susp	upheld	
93LA1204	coworker	susp	overturned	
93LA721	coworker	discharge	upheld	
92LA1090	employee of subcontractor	discharge	penalty reduced	distributive
91LA1391	coworker	susp	upheld	
91LA1097	coworkers	no severance	upheld	