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ABSTRACT

The first known analysis of a substantial number of arbitration awards in higher education is presented in an effort to determine whether arbitrators have confined their awards within the contract limitations. All of the arbitration awards generated by the four-year colleges of the State University of New York as well as the awards of the Pennsylvania state colleges were reviewed. Twelve two-year SUNY colleges also responded to a letter requesting arbitration decisions, and additional cases were found in back issues of "Arbitration in the Schools." Less than half of the awards surveyed involved academic judgment issues. The majority concerned traditional contract interpretation questions such as the length of contract-mandated paid vacations, eligibility for pension benefits, and the necessity of paying for overtime work. Cases where academic consequences grew out of basically non-academic grievances are reported briefly. It is shown that the very presence of arbitration has had direct impact on academic decisions, some of which has been beneficial. Tenure and promotion decisions have been affected by the introduction of due process elements into academic personnel decisions. If the traditional system of faculty participation in decision making is to be maintained, steps must be taken to establish appropriate boundaries between academic officials' and arbitrators' authority. (LBH)

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ACADEMIC JUDGMENT AND GRIEVANCE ARBITRATION IN HIGHER EDUCATION

by

Harold Levy

One of the most often repeated concerns which trustees, campus presidents, and governmental officials have stated relative to academic collective bargaining is directed at binding arbitration as a final method of settling grievances. Opponents of arbitration have stated that arbitrators, responsible neither to government nor to trustees, may be making critical academic decisions thereby reducing the capability of duly appointed officials to effectively manage the university. To avoid this criticism negotiators have worded contract clauses specifically to limit the scope of arbitration. Mr. Levy offers the first known analysis of a substantial number of arbitration awards in higher education in an effort to determine whether or not arbitrators have confined their awards within the contract limitations.

George W. Angell
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Sponsored by the Association of American Colleges, the American Association of State Colleges and Universities, and the National Association of State Universities and Land Grant Colleges. Funded by the Carnegie Corporation of New York.

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As faculty unions have spread to an increasing number of campuses, they have brought with them many industrial collective bargaining constructs. As an example, their contract clauses have drawn heavily from industrial labor contracts. The use of traditional contract language probably results from familiarity with certain well-litigated contract clause formulations and the unions' desire to assert unequivocally their perceived "union rights." However, in some ways academia presents a unique environment in which some traditional elements of collective bargaining agreements have assumed new significance which were unanticipated and perhaps unwanted by some parties. Particularly in the field of grievance arbitration, colleges and universities, with their long history of collegial faculty self-governance, present a new constellation of problems for contract negotiators on both sides of the table.[1]

How the interface between faculty governance and contract arbitration is accomplished bears heavily upon the continued existence of traditional academic governance systems. As the scope of faculty collective bargaining agreements expands to include new topics for negotiation and the number of faculty members covered by such agreements increases, it will be important for contract negotiators to bear in mind how the method of enforcement of these new contracts and contract provisions will affect higher educational institutions generally. The impact on faculty decision-making bears especially careful scrutiny because of its importance in the American system of higher education. Somewhat surprisingly the critical relationship between the faculty's time-honored role in making so-called "academic judgments" and contractually-based grievance arbitration decisions has been virtually overlooked in literature.[2]

In those faculty contracts where the chosen method of dispute settlement is outside third-party grievance arbitration, the potential for jurisdictional overlap with the faculty in its decision-making capacity is obvious.[3] Many peer group decisions, which faculty members consider essential to academic excellence, are also decisions, the substance of which are properly "terms and conditions of employment." These then may not only be proper subjects for bargaining but also for grievance arbitration. Employment decisions involving academic judgment include those decisions relating to tenure, promotions, individual contract renewals, class assignments, merit raises, selection of department chairmen, and determination of academic policy. Indeed the potential for clashes between contractual agreements and collegial academic decision-making appears to be almost inherent in the phrase "faculty collective bargaining." It is in the process of contractual grievance arbitration that the [illegible] most readily perceived.

Most faculty contracts recognize this potential conflict by including language aimed at shielding academic judgments. In order to study the extent to which colleges and universities with

collective bargaining arbitration clauses in their faculty contracts have successfully insulated their academic decisions, a survey was made of contract grievance clauses and all available higher education arbitration awards to mid 1974.[4] Through the cooperation of several individuals currently involved in higher education collective bargaining, 119 arbitration decisions, from both 2-year and 4-year institutions, predominantly located in the northeastern United States, were accumulated.[5]

All of the arbitration awards generated by the 4-year colleges of the State University of New York (SUNY) as well as the awards of the Pennsylvania State Colleges were reviewed. In addition, of the 30 2-year SUNY Colleges, 12 responded to a letter requesting all pertinent arbitration decisions from the SUNY Assistant Vice Chancellor for Personnel and Staff Relations. A total of 26 awards was received. Finally, a substantial number of cases were found in the back issues of Arbitration in the Schools, including some of the more important cases arising from the City University of New York (CUNY) and various Michigan and Illinois community colleges.

For purposes of analysis the cases were grouped by institution, and by junior and senior college status, where appropriate. The need to distinguish between junior and senior institutions arose out of the fact that CUNY and SUNY include both 2-year and 4-year colleges. However, the SUNY 2-year colleges each constitute separate bargaining units, while the 4-year colleges together constitute a single statewide bargaining unit. This is unlike the CUNY system, where all 4-year and 2-year colleges are covered by the same agreement.

Interestingly, less than half of the awards surveyed involved academic judgment issues. The vast majority of the awards concerned traditional contract interpretation questions such as the length of contract-mandated paid vacations, eligibility for pension benefits, and the necessity of paying for over-time work. As these awards did not bear on the issue of the faculty's role with regard to "academics," they were not analyzed in depth. However, in those cases where academic consequences grew out of basically non-academic grievances the whole case was studied. This final category of cases proved to be the most interesting of the sample and are reported briefly herein.

The Goal of Academic Employers: Insulate Academic Judgments

In virtually all of the cases analyzed, the underlying objective of the academic employers appeared to be the avoidance of arbitral review of certain "academic judgments." The actual issues intended to be beyond the arbitrator's grasp seemed to differ from college to college, and from contract to contract. In addition, the strategies used in the contractual arbitration clause to accomplish this insulation of academic judgments also differed widely, even within the same bargaining unit from contract to contract.

Overall, there were three distinct approaches used to carve out an area beyond the arbitrator's authority. The first was aimed at

excluding certain specified grievance topics from arbitral review; the second imposed restraints on the nature of the review itself, usually distinguishing between "substantive" and "procedural" grievances; and the third limited the arsenal of remedies available to the arbitrator either by explicit denial of certain powers or by cataloging the remedial powers available. While many of the contracts reviewed relied on a combination of approaches, most of the contracts seemed to depend heavily on one particular form of restraint.

The topical approach to limiting the arbitrator's jurisdiction was the most straight-forward. Under this scheme, the most critical "academic judgments" were listed as being excluded from arbitral review. Such important topics as tenure, promotion and reappointment decisions were catalogued as being "exempted" from arbitration. Some contract negotiators chose to be less specific and merely excluded all "academic judgments" from review. The most common topical approach was the insertion of a standard managements rights clause. The 1971 Southeastern Massachusetts University contract language was typical:

> "The arbitrator shall limit his decision strictly to the application and interpretation of the provisions of this Agreement.
>
> ...[N]othing in this agreement shall derogate or impair any power, right or duty heretofore possessed by the Board or by the Administration except where such right, power or duty is specifically limited by this contract..."[6]

The second technique for restraining the arbitrator sought to distinguish between substantive and procedural issues; limiting the neutral to reviewing only the latter. Such "procedural arbitration" is a technique borrowed from industrial labor relations where it is often found as a standard clause in industrial contracts. Several of those collective bargaining agreements which opted for this type of arbitration clause grafted onto the standard clause a "substitution of judgment" provision. This merely strengthened the basic distinction by instructing the arbitrator that not only shall he confine himself to reviewing procedure, but in addition he shall not substitute his "judgment" or discretion for that exercised by the faculty or institution. Presuming that the specified academic judgments were "substantive" rather than procedural in nature, the inclusion of a "substitution of judgment" provision added little other than emphasis to the contract.

The now expired 1971-4 contract negotiated at SUNY presents an example of this type of clause:

> "Where the provisions of Policy Articles call for the exercise of judgment, the arbitrator shall not substitute his judgment for that of the official making such judgment but shall confine himself to a determination that the procedural steps specified by Policy Articles (Trustee Policies and/or local By-laws) have or have not been followed."[7]

The final category of arbitration clauses limited the arbitrator's available remedial powers. Unlike the other two approaches, an arbitrator's jurisdiction was not affected by such a provision alone. Thus, theoretically, an arbitrator would be able to review the issues, determine the equities, but be without power to act on some of his conclusions. In fact, this type of clause was usually coupled with some attempt at curtailing arbitral jurisdiction.

Just as with the topical approach, the scope of remedies may be restricted by means of explicit exclusion or explicit inclusion. The most common such clause placed "granting tenure" outside the arbitrator's power, while the strictest possible form would probably have a very short list of the possible alternative remedies, from which the arbitrator was instructed to choose.

How Successful the Insulation?

It must be said at the outset that the key to achieving success in keeping arbitrators away from academic decisions is simply decreasing the number of cases that go to arbitration. The fewer cases arbitrated, the less likely it is that contractual limitations on arbitration will be exceeded. Arbitration provisions are included in collective bargaining agreements because they may someday be invoked, however, and negotiators cannot rely on a hope that the clause will never be tested. As will be seen from the contractual acrobatics that some arbitrators are capable of, this is worth keeping in mind.

As a general rule, it is fair to say that when an arbitrator finds something wrong, he has a strong inclination to right it, regardless of what the contract says relative to his authority. As a result, any clause must be strong enough to withstand this urge, otherwise it is not worth negotiating.

One case which demonstrates the difficulty inherent in trying to keep an arbitrator within his realm is the 1970 City University of New York "Perlin Case." It involved a female member of the Brooklyn College Art Department who filed a grievance alleging sex-discrimination as manifested by improper procedures being used in her tenure review. She complained that she had not been told of the review, never had an evaluation conference, and had never been told her job performance was unsatisfactory. The Art Department's Personnel & Budget Committee first denied, then conceding some impropriety, recommended her reappointment and tenure. The College Committee subsequently turned her down and she grieved. The arbitrator ordered her reappointment with tenure despite a restrictive arbitration clause which combined elements from all three approaches. The contract confined academic judgment grievances, including those involving tenure, to procedural questions only. In addition, it limited the arbitrator's power in such cases to "remanding the matter for compliance with established procedures." Summarizing his reasoning, the arbitrator said:

> "This conclusion was reached after much agonizing over the consequences of this remand and its impact upon the University's committee system that jealously guards its standard of excellence in the grant of tenure. But short of awarding a nominal remand that would continue the denial of rights to Miss Perlin and relieve the University from its restorative obligation, there is no other recourse under the Nota Bene (the arbitration clause)."[8]

While the case was overturned on appeal by the courts, the award does demonstrate the ineffectiveness of restrictive contractual language, no matter how strong, at the hands of an arbitrator who perceives a wrong to be righted.[9] In addition, the cost and time involved in seeking legal redress from an arbitrator's decision make judicial review feasible only in the most significant cases.

Some clauses are, however, more difficult than others to circumvent. And presumably, if the contract language is tight enough, most arbitrators will respect the parties' intentions. However, certain clauses have a deceptive air of security about them. The substantive/procedural dichotomy, for example, provides less protection than is evident at first glance. One reason for this is that in a significant number of situations, the "procedure" vitally affects academic substance. In one reappointment grievance which did not result in the grievant's reinstatement, the evaluation procedure itself was challenged. According to the contract, however, it had been established "by the bargaining unit" itself, in this case the department faculty. Moreover, despite the existence of an arbitration clause which denied the arbitrator the power to reinstate, the arbitrator took jurisdiction, saying:

> "Generally, so long as a grievance is firmly anchored to contract provision said to be violated, the grievance is arbitrable...What relief the arbitrator may award is another matter. But difficulty of framing relief does not impair arbitrability."[10]

Although the arbitrator denied relief on the merits of the grievance, the case demonstrates both the potential substantive overtones of procedure and the vulnerability of a scope of remedy restriction standing alone. Arbitrators are not always willing to confine their decisions to a sterile analysis of procedure without concerns as to substance. Indeed if this were not the case there would be little reason, except a misdirected interest in formalism, to pursue procedural grievances.

"Confidentiality cases" demonstrate how seemingly non-academic procedural issues can have important consequences. These grievants either directly or in the course of thier proceedings come to attack the rule of confidentiality which protects faculty review committee deliberations and reports. In a case which arose at SUNY, a faculty member grieved the fact that he was denied access to all of the contents of his file, as was his contractual right. He had been denied a promotion to full professorship and when he asked to see his

personnel file, three external letters of recommendation were withheld from his review. He filed a grievance arguing that he had an explicit right to see all of the contents of his file, with the exception of letters of recommendation regarding "original appointment," but not excluding letters received from external sources regarding promotion.[11] Regardless of the decision in one particular case, the very fact that confidentiality of statements is being reviewed and criticized will make reference writers more cautious.

Another case at CUNY raised a similar issue in the context of sex discrimination. There the grievant maintained she had received an adverse decision from her departmental evaluation committee because of her sex. She was unable to elicit sufficient evidence to prove her case, perhaps because the arbitrator refused to direct a committee member to reveal the substance of the deliberations.[12] One cannot help but wonder whether another arbitrator or a court would have felt similarly confined.

Another reason why the substantive/procedural distinction fails to adequately insulate academic judgment issues is the different kinds of provisions which have been incorporated explicitly or by reference into collective bargaining agreements. As a result, there have been cases where a schedule for arriving at a certain tenure ratio was determined to be within the arbitrator's authority as a "procedure required by the contract"[13] as well as cases where a decision to terminate a faculty member's employment was reversed because the contract contained criteria for faculty dismissal which the arbitrator determined had not been followed.[14]

One of the more egregious invasions of academic prerogatives occurred in a case where the college's by-laws had been incorporated by reference into the collective bargaining agreement containing a strong arbitration clause. The issue was whether a community college, faced with budgetary retrenchment could terminate tenured before non-tenured faculty. The question came down to a choice between two history professors, one tenured and one not tenured, only one of whom, the college argued, was qualified to teach the history courses necessary to maintain a "full range of course offerings." The arbitrator overruled the decision of the college, reinstated the discharged grievant and declared:

> "It does not seem to us (the Arbitrator) that Professor (of European Medieval and Renaissance History) Terek's assignment to the teaching of American History is analogous to requesting a dermatologist to perform brain surgery."[15]

As was seen in the City University "Perlin Case," the remedy limitation on arbitral discretion has also been violated from time to time. The explanation given in such cases by the arbitrator is that he fears merely remanding the grievant's case for consideration "consistent with proper procedures" by the official or faculty committee found to have been in violation of the procedures, would be a futile gesture. This reasoning is particularly cogent in the instance where the arbitrator finds a violation of procedure grounded

in discrimination. In a Pennsylvania State College grievance, an arbitrator ordered a promotion and back pay for a faculty member who had been denied a promotion allegedly because of anti-union discrimination by the college president, a member of the review committee. The arbitrator ruled that the president's statement at the committee meeting, to the effect that the grievant's union activity could not be considered as having the "same magnitude" of contribution to the college as participation in the faculty senate, required a finding for the grievant rather than a remand.[16] The arbitrator concluded that his only alternative was to promote with back pay, despite the contract clause barring arbitral promotions.[17]

"Topical" clauses have not fared much better. Their success at constraining arbitrators to defer on academic questions is undermined by the fact that the arbitrator is the interpreter of what was meant by the inclusion of the clause. Consequently, a term such as "academic judgments" despite being contractually defined to include faculty appointment decisions made by academic officers, may be found not to include those appointment decisions which were made "without appropriate documentation" at hand and which were reached in "too short a span of time." This is precisely what happened in at least one situation. A faculty evaluation committee was constituted by the head of a college's black studies program. It in turn made recommendations relative to the hiring of certain individuals to the college's dean of faculties. Within several hours and without having complete dossiers in his possession, the dean denied the appointments. After receiving a favorable telegram from the committee, one black female candidate claimed never to have received notice of her non-reappointment by the dean. Alleging race and sex discrimination, she filed a grievance demanding back pay. The arbitrator took jurisdiction of the case claiming that the decision made by the dean was not an academic one.

> "...[I]t is impossible for me to conclude that an 'academic' decision had been made rather than an abrupt, arbitrary administrative exercise of authority. To find otherwise would be to make any negative determination by one or another level of authority at the University a final and binding act completely invulnerable to review simply by reference to the status of the individual rendering it... The fact that it is a decision by the Dean of Faculty does not, however, per se make it an 'academic' type of determination."[18]

One wonders what type of decision requires more academic judgment than the selection of a person to fulfill teaching responsibilities.

Why Include Restraints in Arbitration Clauses?

The results of the study indicate that the effect of grievance arbitration awards on college and university governance to date has been neither uniform nor substantial. However, the potential for an increasing impact on academia in the near future is growing with each new arbitration decision. In order to evaluate the significance

of the changes, however, it is necessary to understand why there is a desire on the part of many faculty members as well as college and university administrators to preserve "academic judgments," whatever they may be, for the academicians.

One of the more cogent defenses of academic prerogative was stated in the context of the reasons given faculty members or candidates for faculty positions after they receive an adverse "academic judgment":

> "Yet the principal response to the dissatisfied individual has necessarily been made in the form of a reminder that the institution is entitled to be selective in recruiting and maintaining a strong faculty and that the judgment in each case is the product of an evaluative process in which the individual's own peers have done their best to act wisely and fairly."[19]

The institution's argument for preserving intact at least certain aspects of the faculty's traditional decision-making role is that their special training and experience in that institution are essential in judging the relative value of a condidate's scholarship and teaching abilities in terms of the special needs of the institution's programs and students. Since faculty have a vested interest in preserving and furthering institutional excellence, decisions of that nature can, per se, be entrusted to them. And since no one outside the institution can claim these same qualifications, the argument is that academic judgments should be immune from arbitral review.

This is not to say that arbitrators are necessarily less understanding of academic traditions. Many arbitrators are, in fact, academicians themselves. Rather, there may be an inherent value in a faculty collectively governing itself. This is the same principle which underlies any democratic organization. Democratic academic governance requires, at the very least, broad consultation with faculty-peers. A final decision on substantive matters arrived at by an individual arbitrator who is outside the process appears at least, to undermine the principle of democratic self-governance and may be injurious to the institution's capacity for achieving public expectations.

The basic task facing both college and union negotiators who wish to restrain arbitral discretion is that of finding the right device or group of devices to do the job. In doing this there are many options available; one's imagination is the only limit. Each option has its own implications, both hidden and overt. The successful contract hopefully prepares for all eventualities, while not deviating from the basic principle of separation of responsibility.

Suggestions for Those Who Wish to Negotiate Limits to Arbitration

On balance, I would encourage campus negotiators who wish to restrain arbitrators, to include both an affirmative statement as to what is within the arbitrator's jurisdiction and a negative statement of examples as to what is not within his jurisdiction. The

negative statement would not preclude imaginative responses but it would specify that all other matters (with examples) are not within his purview. In this respect, a special restriction clause holding the arbitrator to the items listed in the contract could be helpful. In other words, it appears best to state explicitly the topics an arbitrator is authorized to review as well as the topics an arbitrator is forbidden to review, rather than to permit any alleged grievance about any clause in the contract to be open to arbitration. If this line had been sharply defined a large number of the problem cases encountered in this study would have never come to pass.

It is also suggested that negotiators include in the contract an explicit list of permissable and nonpermissable remedies. As an example, the listing of tenure, promotion, or reappointment as non-permissable awards would help to prove at a later date that the negotiators had no intention to permit arbitrators to rule on such matters requiring institutional judgment. On the other hand, if a permissable remedy is a campus review and/or an award of money to remedy a lack of fair hearing it indicates that the negotiators had agreed that the arbitrator should limit his remedies to those offered. When shaping this type of agreement both parties should attempt to provide a broad spectrum of remedies to encourage flexibility and imagination. Discrimination cases probably should be on the list of non-arbitrable issues since few arbitrators have the experience and capacity to handle such cases properly, and since the federal (and many state) government(s) have provided inexpensive and easily available remedial services.

It follows that the negotiators should specify in the contract a procedure to be followed in "non-arbitrable cases." The existence of an alternative procedure which offers real potential for doing justice, unlike the simplistic CUNY and SUNY "remands," may act as an additional inducement to keep the arbitrator "in his domain."

Another element in constructing an arbitration clause, which addresses the desire to prevent arbitrators from invading the faculty's traditional territories, is the use of clear definitions as to the meaning of the terms used in outlining the arbitrator's jurisdiction. If the powers available to the arbitrator are hinged to what is arbitrable, then it becomes crucial that the terms used to restrict arbitrable issues be clearly defined. "Academic freedom," for example, should not go without at least some language explaining which academic freedoms should be protected. Similarly, the meaning of "academic judgment" should be stated. Without definitions, arbitrators will be free to read unintended meanings into these terms. While these dual-meaning phrases may be useful during negotiations in arriving at a compromise, their side effect has been to encourage arbitral "wandering."

Other parts of the agreement, which seemingly have no relationship to grievance arbitration, should be brought into line with the arbitration clause. For example, some authors have pointed to the inclusion of faculty by-laws, faculty handbooks, anti-discrimination clauses, and even retirement plans in the contract as having unforseen

implications, once enforced by the grievance machinery. Because these documents are often-times incorporated into the contract by reference or appendix, they are easily forgotten while writing an arbitration clause. Care should be taken either to keep them outside the scope of the grievance arbitration clause, or appropriate protection for academic judgments should be included.

Remarks

It is clear to this observer that the very presence of arbitration "in the groves of academe" has had direct impact on academic decisions. It is also clear that some of this impact has been beneficial. Tenure and promotion decisions, for example, have long been characterized by an informality which has been too easily abused. The simple existence of a review mechanism often forces the members of a faculty personnel committee to be more attentive to detail as well as to purpose. Introducing elements of due process into academic personnel decisions has obvious merit consistent with the goals of higher education.

If the traditional system of faculty participation in institutional decision-making is to be maintained, however, steps must be taken to establish appropriate boundaries between the decision-making authority of academic officials and that of arbitrators.

Footnotes

1. I have used the terms "collegial faculty self-governance," "academic judgments," etc. rather loosely to cover the whole spectrum of academic decision-making from departmental tenure reviews to academic calendar decisions. The reason for the vagueness in language is made necessary by the desire to encompass both the situation of those major universities where faculty "governs" as well as the small community college where the faculty "input" into academic decisions is of a purely advisory nature. See VanAlstyne,W. W., "Tenure and Collective Bargaining," in G.K. Smith (ed.) New Teaching, New Learning, San Francisco: Josey-Bass, 1971; Lieberman, M. and Moskow, M., Collective Negotiations, An Approach to School Administration, Chicago: Rand-McNally, 1966; Boyd, W. B., "Collective Bargaining in Academe": Liberal Education 306-318, 1971.

2. While there have been some speculative articles on the potential for harm or good, there has been no broad-based empirical research effort to cull the now fairly numerous awards and determine what their impact has been. See Mints, Benjamin, "In Defense of Academic Judgment," 22(2) Buffalo Law Review, 523 (Winter, 1973) and the response by Benewitz, Morris 22(3) Buffalo Law Review, 102.

3. Not all arbitration clauses provide for third-party arbitration. Indeed one means by which some colleges have sought to restrict the impact of the arbitration clause is by use of "in-house committees" to do the decision making.

4. Table 1: Breakdown of Cases by School

City University of New York (CUNY) 4-year schools	13
CUNY 2-year schools	4
State University of New York (SUNY) 4-year schools	9
SUNY 2-year schools	26
Pennsylvania State Colleges	13
Other 2-year schools (non-NYS)	49
Other 4-year schools	5
	119

Breakdown of Cases by Source

CUNY	Arbitration in the Schools: incomplete set.
SUNY (4-yr)	Caesar Naples, SUNY Assistant Vice Chancellor for Personnel Staff Relations: This is a complete set of cases.
SUNY (2-yr)	Ibid.: This is a complete set of cases.
Pa. State	Chris R. Dunlop, Pa. Bureau of Labor Relations: This is a complete set.
All Others	Arbitration in the Schools: incomplete set.

5. I must extend a special note of appreciation to both Caesar Naples, Assistant Vice Chancellor for Personnel Staff Relations of the State University of New York and to Prof. June Weisberger, University of Wisconsin Law School, for their help in compiling these awards.

6. See Southeastern Massachusetts University and the SMU Faculty Federation, Thomas Kennedy, arbitrator, March 10, 1971, AAA No. 1139-0490-70, Arbitration in the Schools, No. 17-K-8.

7. Agreement between the Executive Branch of the State of New York and the Senate Professionals Association (SPA) August 1971. Expired June 30, 1974. Interestingly, the contract makes no reference to the State University. In addition, the New York Public Employment Relations Board decisions themselves only refer to the State University parenthetically, thereby making the employer the "State of New York," whoever that is.

8. Board of Higher Education of the City of New York and Legislative Conference, Benjamin C. Roberts, arbitrator, December 1, 1970, AAA No. 1139-0706-70, Arbitration in the Schools, No. 15-R-12.

9. Board of Higher education and Professional Staff Congress (City University of New York) Fact-Finder's Report, PERB Case No. M-72/711, May 17, 1973. Fact-finders included: Arnold M. Zack, Eva Robins, Jean T. McKelvey. A so-called "Box Score" of the 58 arbitration awards involving the Nota Bene was offered by the panel members as proof of "divergent results...depending upon the differing views of the arbitrators as to the scope of their authority."

Outcome of Arbitration Involving the Nota Bene

Award	Legislative Conference	United Federation of College Teachers	Total
Reappoint	1	15	16
Remand for compliance with established procedures	10	3	13
Grievance Denied	14	15	29
Total	25	33	58

10. Cook County and Chicago City College Teachers Union, Willard J. Lassers, arbitrator, July 17, 1969, AAA No. 51-30-0113-69, Arbitration in the Schools, No. 3-AD-3.

11. Senate Professionals Association (Yash P. Meyer) and the State of New York (SUNY at Albany) Louis Yagoda, arbitrator, March 11, 1974, Office of Employee Relations File No. A-9.

12. Board of Higher Education and Legislative Conference (CUNY), Milton Friedman, Arbitrator, August 21, 1973. AAA No. 1339-12-78-72, Arbitration in the Schools, No. 47-MX-1.

13. Faculty Federation of the Erie Community College and County of Erie, N.Y., Robert Rabin, arbitrator, February 20, 1973, AAA No. 15-39-0175-72, Arbitration in the Schools, No. 41-AX-4.

14. Board of Trustees of Schoolcraft College Faculty Forum, Leon Herman, arbitrator, August 22, 1969, AAA No. 5430-0177-69.

15. Fulmont Association of College Educators and Board of Fulton-Montgomery Community College (New York), Sumner Shapiro, arbitrator, June 17, 1973.

16. Pennsylvania and the Association of Pennsylvania State College and University Faculties/Pennsylvania Association for Higher Education and the Commonwealth of Pennsylvania, (Bloomsburg State College), Eli Rock, arbitrator, Iebruary 6, 1974.

17. It is worth noting that the grievant was promoted by the committee a year after the grievance denial. This occurred before this arbitration award was handed down. Thus, this action was only for back pay for a one-year period. The arbitrator wrote the award, however, so as to reveal this fact only in the last sentence. Consequently, he left the impression at least that it was not of central importance to his decision.

18. United Federation of College Tecahers, Local 1460, AFL-CIO, and CUNY, Thomas G. S. Christensen, arbitrator, June 17, 1970, AAA No. 1339-0206-70. Arbitration in the Schools, No. 7-AE-22.

19. Car, Robert K. and VanEyck, Daniel K., Collective Bargaining Comes to the Campus, American Council on Education, Washington: 1973, p.224.

20. United Steelworkers v. American Manufacturing Co., 363 U.S. 564, 80 S.Ct. 1343 (1960. United Steelworkers v. Warrior and Gulf Navigation Co., 363 U.S. 574, 80 S. Ct. 1347 (1960. United Steelworkers v. Enterprise Wheel and Car Corp., 363 U.S. 593, 80 S. Ct. 1358 (1960).