Grievance Mediation of Contracual Disputes in Public Education

Sylvia Skratek
GRIEVANCE MEDIATION OF CONTRACTUAL DISPUTES IN PUBLIC EDUCATION

Sylvia Skratek, PhD*

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This summary provides an overview of the findings of the study. There are, of course, many findings in the body of the report which are not summarized here, and interested readers are encouraged to examine the full report for these details.

1. Grievances that were referred to mediation prior to arbitration were resolved faster, less expensively, and with less overall time consumption than grievances that were resolved in arbitration during the same time period.

2. Grievances that were resolved as a result of mediation were resolved one to two months faster than grievances that were resolved through arbitration only.

3. The amount of time expended by management and union advocates in preparation activities was considerably less for mediation than arbitration. Advocates who resolved grievances through mediation spent 19 to 26 less hours in preparation activities than the advocates who resolved grievances through arbitration.

4. Grievances that were successfully resolved as the result of a mediation conference yielded a sizeable reduction of the average cost of grievance resolution.

5. The participants in the mediation conferences were satisfied with the procedural aspects of the process, with the union advocates and grievees being the most satisfied.

6. Union advocates had a higher level of satisfaction with the substantive aspects of mediation than with the same aspects of arbitration. The other participants in the conferences or hearings showed little preference substantively for either process.

7. None of the participants in either a mediation conference or an arbitration hearing were dissatisfied with the psychological aspects of either process.

8. Arbitration's inability to surface the problem that is underlying the grievance is viewed by those closest to the grievance as being a deficiency of the arbitration process.

9. The large majority of all of the participants in a mediation conference or an arbitration hearing prefer mediation as a step prior to arbitration for the resolution of grievances rather than mediation only or arbitration only.

10. All grievance issues are appropriate for mediation provided that the parties want to settle the grievance.

11. Mediation's greater ability to deal with the problem that is underlying the grievance is one of its major advantages over arbitration. Other advantages of mediation include: its ability to lay the foundation for ongoing discussions between the parties, and its “win-win” focus, which serves to improve overall employee morale.
II. INTRODUCTION

This report presents the results of a study conducted to answer the following general question:

*How will the introduction of grievance mediation as a step in the grievance procedure prior to arbitration affect the resolution of public school grievance disputes?*

Three factors were studied over a time period that encompassed one school calendar year. Those three factors were: time elapsed and expended, costs involved, and satisfaction. Each of these factors was studied within the context of the two processes, mediation and arbitration, both of which were available for the resolution of grievances during the study year.

A total of thirty grievances proceeded through one of the grievance resolution channels (see Appendix A) that were available during the study year: fifteen grievances were referred to mediation and fifteen grievances were submitted to arbitration. Of the fifteen grievances that were referred to mediation, eleven were settled as a result of a mediation conference; two were unresolved and were subsequently resolved through arbitration; and two were unresolved, but were neither scheduled for arbitration nor withdrawn.

Several school districts and local associations signed the Experimental Agreement for the Mediation of Grievances (see Appendix B) but did not have any grievances during the study year that proceeded to a third party.

Seven management advocates representing districts ranging in size from seventy-two certificated personnel to 858 certificated personnel rejected the process of mediation and instead proceeded directly to arbitration. The only reason that was given for the rejection was “not interested.” A large percentage (seventy-three percent) of the management advocates who proceeded directly to arbitration during the study year were attorneys. The districts that did participate in mediation during the study year ranged in size from seventeen certificated personnel to 958 certificated personnel.

Initially, all of the mediation conferences were scheduled through the Mediation Research and Education Project (MREP). The parties could either select a pre-scheduled conference date with a pre-assigned mediator or could mutually agree upon a date and request the assignment of a mediator for that date. Under both circumstances, the parties had knowledge as to who would be the mediator. As the study year progressed, three grievances were referred to mediation without the use of MREP. The advocates instead selected a mediator themselves and contacted him directly to schedule a conference date.

All of the participants in a mediation conference or arbitration hearing were surveyed by telephone regarding the three factors of time, cost and satisfaction. The participants were assigned to a category according to type of respondent:
A. Advocates
1. union non-attorney
2. management non-attorney
3. union in-house attorney
4. management in-house attorney
5. independent union attorney
6. independent management attorney

B. Grievants

C. Grievees

Respondents in categories A.1 and A.2 are individuals who are employed directly either by the local school districts, the local unions, the Washington State School Directors' Association (WSSDA) or the Washington Education Association (WEA). Respondents in categories A.3 and A.4 are also directly employed by one of the preceding employers, but those respondents have identified themselves as being attorneys. Respondents in categories A.5 and A.6 are attorneys who are employed by law firms and are retained on an independent basis to represent either management or the union in a contractual grievance dispute.

The grievant was defined as the person or persons who had actually filed the grievance that was referred to a third party. In the event that the grievance had been filed by the union, then the person who appeared at the conference or hearing on behalf of the union was identified as the grievant.

The grievee was defined as the person named in the grievance as the management representative responsible for the action that was being disputed. In the event that the grievance had not named any specific individual, then the person who appeared at the conference or hearing on behalf of management was identified as the grievee.

All of the mediators were contacted through a mail questionnaire to obtain their input about the mediation process. Additionally, a focus group session was conducted by Professor Stephen Goldberg of Northwestern University\(^1\) with the advocates who had participated in mediation conferences.

The participation rate ranged from sixty-seven percent to one hundred percent depending upon the type of respondent. The data obtained from the participants was supplemented by the cost accounting records of the union.

A limitation of the study was the fact that fifteen cases proceeded to mediation and fifteen cases proceeded to arbitration. While these are relatively small numbers, they represent all mediation and arbitration cases in Washington State public education that occurred during the study year. Statistical treatments and presentations of the data were selected to conform with the small number of cases.

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\(^1\) Professor Stephen Goldberg is a professor of law at Northwestern University. In the early 1980s he had conducted a grievance mediation study in the bituminous coal mining industry which was used as a model for this study. Goldberg served as a consultant for this study.
A. General Findings

The introduction of grievance mediation as a step prior to arbitration will yield faster, less expensive and less time consuming resolutions to all grievance disputes that are resolved without proceeding to arbitration than would the use of arbitration only to resolve the same disputes.

The savings of time and money, however, will be offset if grievances are not resolved as a result of a mediation conference, or if grievances that would not have been submitted to arbitration are referred to mediation. The satisfaction level of the participants with each of the processes varies depending upon the type of respondent and the satisfaction aspect being reviewed.

The findings of the study for each of the factors (time elapsed and expended; costs involved; and satisfaction) will be summarized briefly.

III. Findings: Time Elapsed and Expended

Research Question 1: A. Will grievance mediation shorten the amount of time elapsed and expended between the initial filing of a grievance and the final resolution of the grievance?, or B. Will grievance mediation lengthen the amount of time elapsed and expended between the initial filing of a grievance and the final resolution of the grievance?

A. Time Elapsed

FINDINGS: During the study year, grievances that were resolved as a result of mediation were resolved 27.6 days faster than grievances that were resolved through arbitration only.

Table 1 depicts the amount of time that elapsed at various stages of the processes during the study year. The stages begin with the submission or referral of the grievance to an administrative agency, such as the American Arbitration Association or the Mediation Research and Education Project. The final stage of either process is the resolution of the grievance, achieved either through an arbitrator's award or the settlement of the grievance.

If one were to compare the average number of days elapsed in arbitration as reported by the advocates based upon their overall experience with arbitration, with the average number of days elapsed in mediation during the study year, one would find a difference of 49.1 days, with mediation, again, being the faster process.

In calculating the average number of elapsed days for the stages, it was discovered that some of the advocates had selected the time period of 

2. A preliminary survey was administered at the beginning of the study year to union and management advocates which addressed their overall experience with arbitration.
or more days.” One stage in particular, “neutral appointment until hearing or conference held,” had a high number of responses from the study year arbitration advocates in that category: forty-five percent. This response may reflect difficulty with obtaining an arbitration hearing date or it may reflect the advocates’ postponements of the hearing date. The uncertainty as to the time period that is covered by “61 or more days” made it impossible to include that time period in the calculation of average number of days. Therefore, the days on table 1 have been calculated using only the responses that reflect a specific period of time: 10 days or fewer; 11-20 days; 21-30 days; 31-40 days; 41-50 days and 51-60 days.

Such a calculation has the effect of providing a limited view of the time elapsed at various stages of a process. Elimination of the “61 or more days” category from the calculations will necessarily result in a shorter elapsed time at all stages of the process and a shorter estimate of total time elapsed. This calculation of elapsed time is biased most favorably toward arbitration. Even with this favorable bias, arbitration still has a longer elapsed time than mediation.

However, grievances that are not resolved as a result of mediation, that are subsequently submitted to arbitration, will cause the total elapsed time to increase slightly. The amount of this increase is unknown because of the limited number of cases (two) that fit this description during the study year.

**TABLE 1**

**ELAPSED TIME**

<table>
<thead>
<tr>
<th>Stages of Process</th>
<th>Elapsed Time in Average # of Days^a</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Overall Arbitration Experience</td>
</tr>
<tr>
<td></td>
<td>Study Year</td>
</tr>
<tr>
<td></td>
<td>Arbitration</td>
</tr>
<tr>
<td>Agency filing until neutral appointment</td>
<td>28.3</td>
</tr>
<tr>
<td>(N = 78)</td>
<td>(N = 20)</td>
</tr>
<tr>
<td>Neutral appointment until hearing or conference held</td>
<td>42.4</td>
</tr>
<tr>
<td>(N = 70)</td>
<td>(N = 13)</td>
</tr>
<tr>
<td>Hearing or conference held until award received or grievance settled</td>
<td>37.4</td>
</tr>
<tr>
<td>(N = 75)</td>
<td>(N = 20)</td>
</tr>
<tr>
<td>Estimate of total elapsed time</td>
<td>108.1</td>
</tr>
</tbody>
</table>

^aThe calculation of the average number of days does not include responses of “61 or more days.”

^bTwo grievances were not resolved in mediation and were subsequently submitted to arbitration and two grievances are still pending arbitration. These four grievances have not been included in the calculations, therefore, N = 22 reflects all respondents.
It is reasonable to assume that the increase will depend partially upon the contractual agreement between the parties, which may either provide for the simultaneous filing for both processes or may require the holding in abeyance of the timelines for submission to arbitration. In the two cases that have been resolved in arbitration after an unsuccessful mediation conference, the amount of elapsed time from the date of the mediation conference until the arbitration award was received was approximately five to six months, which is somewhat longer than the total elapsed time for arbitration that is reflected in Table 1.

B. Time Expended

FINDING: The amount of time expended by the advocates in preparation activities was considerably less for mediation than arbitration.

Advocates who resolved grievances in arbitration during the study year spent nineteen to twenty-six more hours in preparation activities than the advocates who resolved grievances through mediation during the study year (see Table 2).

A mediation conference, itself, was on the average 1.7 hours longer than an arbitration hearing, but still could be completed within an eight hour work day. The average amount of time spent in an actual arbitration hearing was 5.23 hours compared to an average amount of time spent in a mediation conference of 6.93 hours. This additional 1.7 hours expended in a mediation conference can be subtracted from the time expended for the arbitration preparation activities and still yield a time savings by the mediation process of seventeen to twenty-four hours.

| TABLE 2
<table>
<thead>
<tr>
<th>EXPENDED TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>Activity</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>Preparing for hearing</td>
</tr>
<tr>
<td>or conference</td>
</tr>
<tr>
<td>Preparing post-hearing</td>
</tr>
<tr>
<td>brief (arbitration only)</td>
</tr>
<tr>
<td>Estimate of total expended time</td>
</tr>
</tbody>
</table>

*Three respondents selected the category “41 or more hours” and are, therefore, not included in the calculations for this group.

bOne respondent refused to answer.

cTwo respondents “Didn’t know.”

dThe mediation process does not permit post-hearing briefs.
In the two cases that proceeded to arbitration after an unsuccessful mediation conference, the time expended by the advocates increased slightly beyond what would have been expended if the cases had proceeded directly to arbitration. This increase was because of the additional time expended in preparation for the mediation conference and the time expended in the mediation conference itself. The advocates in these cases spent on the average seven to eight hours in mediation preparation and 6.23 hours in the conference itself, thereby presumably increasing their expended time by approximately thirteen to fourteen hours. What is not known is whether there was a decrease in the time expended by the same advocates in either the arbitration preparation activities or the arbitration hearing itself because of the use of mediation prior to arbitration.

At the focus session, the advocates commented that mediation did have an impact upon the arbitration process:

Union advocate: “The thing it did for me was help me prepare the arbitration better, because in the grievance mediation process we got into a lot more detail than I had gotten into in the grievance investigation. So, I learned time, frankly, was shorter and it was an easier case to present at the arbitration.”

Management advocate: “You learn a lot that’s going to be very useful to you in preparing for the arbitration. . . .”

These comments suggest that the use of mediation prior to arbitration may decrease the amount of time expended by the advocates in preparation for a subsequent arbitration hearing which may mitigate the time increase caused by an unsuccessful mediation conference.

CONCLUSION: Research Question I asks whether grievance mediation will shorten or lengthen the amount of time elapsed and expended between the initial filing of a grievance and the final resolution of the grievance. It is evident that time will be shortened through the use of grievance mediation provided the grievance is resolved in mediation. In this study, eleven of the fifteen grievances referred to mediation were resolved without subsequently being submitted to arbitration.

On the average, the advocates spent from nineteen to twenty-six hours less in preparation for mediation than arbitration. The amount of time elapsed between the initial filing of a grievance with an administrative agency and the final resolution of the grievance is also less for cases that were resolved in mediation.

The mediation conference itself, however, required on the average one and seven-tenths more hours than an arbitration hearing which lessened somewhat the time savings of the mediation process. The average mediation conference was completed within an eight hour workday, but did require approximately thirty percent more time than an arbitration hearing.

There is an increase in both the time elapsed and the time expended for grievances that are not resolved in mediation which are subsequently resolved.
through arbitration. Not only does the total elapsed time increase, but also it is reasonable to assume that the expended time will include not only the time spent in preparation for mediation and in the mediation conference itself, but also the time spent in preparation for arbitration and in the arbitration hearing itself.

The advocates stated at the focus session that the mediation process did make their arbitration preparation easier and, therefore, the amount of expended time may not be as great as it would be for an arbitration hearing that had not been preceded by a mediation conference. Nonetheless, it cannot be denied that the total time elapsed and expended will increase for grievance cases that are not resolved through mediation and are subsequently resolved through arbitration. *It is, therefore, advisable for advocates to carefully screen the grievances that will be referred to mediation.*

IV. FINDINGS: COSTS INVOLVED

*Research Question II*: A. Will grievance mediation of public school contractual disputes result in a reduction of the average cost of grievance resolution?, or B. Will more grievances be referred to mediation than would normally be submitted to arbitration, thereby increasing the average cost of grievance resolution?, or C. Will grievances that were referred to mediation be resolved successfully, or will a significant number be left unresolved, requiring submission to arbitration, thereby increasing the average cost of grievance resolution?

**FINDING**: *Grievances that are successfully resolved as the result of a mediation conference will yield a sizeable reduction of the average cost of grievance resolution.*

The cost reduction to the union averaged $855 per case or seventy-three percent of the union’s average cost of an arbitration; the cost reduction to management averaged $1,125 per case or sixty-five percent of management’s average cost of arbitration (see Table 3).

These cost reductions, however, could be mitigated or even negated if the parties refer grievances to mediation that they would not submit to arbitration, or if grievances are not resolved through mediation and are subsequently resolved through arbitration. In both of these instances, mediation as an additional step prior to arbitration would be increasing the average cost of grievance resolution. The parties would incur additional costs that would not have been incurred if mediation had not been available.

While Table 3 reflects the advocates’ responses to the surveys and provides their estimate of the average cost, Table 4 illustrates the cost to the union in a more specific manner and also takes into consideration grievances that were referred to mediation and subsequently resolved in arbitration and the grievances that the union advocates referred to mediation that would not have been submitted to arbitration.
TABLE 3
COSTS INCURRED

<table>
<thead>
<tr>
<th>Process</th>
<th>Union</th>
<th></th>
<th>Management</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>$</td>
<td>N</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>Arbitration overall experience*a</td>
<td>36</td>
<td>1330</td>
<td>49</td>
<td>2500</td>
<td></td>
</tr>
<tr>
<td>Arbitration study year*a</td>
<td>12</td>
<td>1170</td>
<td>9</td>
<td>1720</td>
<td></td>
</tr>
<tr>
<td>Mediation study year*b</td>
<td>15</td>
<td>315</td>
<td>13</td>
<td>595</td>
<td></td>
</tr>
<tr>
<td>Estimated average cost difference</td>
<td>855</td>
<td>1125</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>during study year</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*aAverage cost includes arbitrator fees, attorney fees, witness fees, transcript costs and administrative costs.

*bAverage cost includes mediator fees, attorney fees, witness fees and administrative costs.

Utilizing the data compiled through the union's cost accounting system, it was possible to isolate the average cost to the union of grievance resolution. These costs include the administrative costs and the arbitrator/mediator fees and reflect only the union's share of the costs of the process. Assuming that the parties share these costs equally, one can simply double the cost incurred by the union in order to determine the total costs incurred in mediation, arbitration or both.

During the study year, two grievances were referred to mediation that the union advocates would not have submitted to arbitration which increased the union's total cost of grievance resolution by an average amount of $726; and two grievances were not resolved in mediation and were subsequently submitted to arbitration which also increased the union's total cost of grievance resolution by the total average costs of the two mediation conferences: $726. The total cost savings to the union were, therefore, reduced by $1,452. Even with this reduction in savings, the union still enjoyed a total cost savings over the previous year of $4,805 or thirteen percent of the total costs of grievance resolution for 1983-84.

CONCLUSION: Grievance mediation will result in a reduction of the average cost of grievance resolution, however, that reduction will be offset or even negated if grievances are referred to mediation that would not have been submitted to arbitration or if grievances are resolved in arbitration after being referred to mediation.

During the study year, the union did experience a reduction of $188 per case from the previous year in the average cost of grievance resolution. This reduction occurred even though two grievances were resolved in arbitration after a mediation conference and two grievances were referred to mediation...
TABLE 4
UNION COSTS OF GRIEVANCE RESOLUTION BEFORE AND DURING THE AVAILABILITY OF MEDIATION

<table>
<thead>
<tr>
<th>Grievance Disposition</th>
<th>1983-84* Costs</th>
<th>1984-85 Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># Cases</td>
<td>Total</td>
</tr>
<tr>
<td>Resolved in arbitration</td>
<td>35</td>
<td>37692</td>
</tr>
<tr>
<td>Resolved in mediation</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Resolved in mediation that would not have submitted to arbitration</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Referred to mediation but ultimately resolved in arbitration</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>35</td>
<td>37692</td>
</tr>
</tbody>
</table>

*September-June.

bBased upon costs incurred by the union for arbitrator expenses and administrative fees.

cBased upon costs incurred by the union for mediator expenses and administrative fees.

dAverage cost of mediation plus the average cost of arbitration.

eDoes not include the two grievances that are not scheduled for arbitration. If they are eventually resolved in arbitration, then the costs for 1984-85 will increase. Conversely, if they are resolved prior to arbitration, then the costs for 1984-85 will decrease.

that would not have been submitted to arbitration. Presumably, the cost reduction would be greater if it were possible to screen more carefully the grievances that are referred to mediation.

V. FINDINGS: SATISFACTION WITH PROCESS

A. Procedural Satisfaction

Research Question III A: How satisfied will the participants in a mediation conference be with the procedural aspects of that process and how does that compare to the extent of satisfaction with the procedural aspects of the arbitration process as expressed by the participants in an arbitration hearing?

Procedural satisfaction was defined as being satisfaction with the specific grievance resolution procedures which give order to the resolution process...
FIGURE 1
LEVEL OF SATISFACTION WITH SPEED OF PROCESS

- Very Satisfied
- Somewhat Satisfied
- Somewhat Dissatisfied
- Very Dissatisfied
prior to, during and after the resolution process. The advocates were asked a series of questions which focused upon: 1) any delays that might have occurred prior to the mediation conference or arbitration hearing, 2) the amount of time elapsed and expended prior to, during and after the hearing or conference, and 3) the level of formality that was present during the hearing or conference.

FINDINGS: The union advocates expressed the most dissatisfaction with the speed of the arbitration process and found the speed of the mediation process to be much more satisfactory. Management advocates were consistently satisfied with the speed of both processes (see Figure 1).

All respondents found the level of formality and the length of the arbitration hearings and mediation conferences to be “about right.”

The union advocates and grievees were one-hundred percent satisfied with the manner in which the mediation conferences proceeded, while the grievants and management advocates were respectively seventy-five percent and 78.6 percent satisfied with the manner in which the mediation conferences proceeded. Each group of respondents was satisfied with the manner in which the arbitration hearings proceeded as follows: union advocates, 86.6 percent; management advocates, one hundred percent; grievants, ninety-one percent; and grievees, ninety percent (see Table 5).

CONCLUSION: The participants in a mediation conference are satisfied with the procedural aspects of that process. Union advocates and grievees are the most satisfied (one-hundred percent) with mediation, which is greater than their respective levels of satisfaction with the procedural aspects of arbitration. This high satisfaction level of the union advocates with mediation may be due in part to the speed of the process. Speed is the one procedural area where the union advocates indicated a difference between the two processes.

**TABLE 5**

PERCENTAGE SATISFIED WITH MANNER IN WHICH CONFERENCE/HEARING PROCEEDED DURING STUDY YEAR

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Arbitration Satisfied</th>
<th>Arbitration Dissatisfied</th>
<th>Mediation Satisfied</th>
<th>Mediation Dissatisfied</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Union Advocate</td>
<td>13</td>
<td>86.6</td>
<td>2</td>
<td>13.4</td>
</tr>
<tr>
<td>Management Advocate</td>
<td>11</td>
<td>100.0</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Grievant</td>
<td>10</td>
<td>91.0</td>
<td>1</td>
<td>9.1</td>
</tr>
<tr>
<td>Grievee</td>
<td>9</td>
<td>90.0</td>
<td>1</td>
<td>10.0</td>
</tr>
</tbody>
</table>
Management advocates and grievants are also satisfied with the procedural aspects of mediation; however, both of these groups have a higher level of satisfaction with the procedural aspects of arbitration.

Management advocates might be more satisfied with the procedural aspects of arbitration because of the high number of attorneys (eight attorneys out of eleven advocates) present within the group that proceeded to arbitration during the study year. Five of the fourteen advocates within the management group that proceeded to mediation during the study year were also attorneys. Three of these five attorneys expressed dissatisfaction with the procedural aspects of mediation, representing the only "dissatisfied" responses from the management advocates. One might speculate that management advocates who are attorneys are more comfortable with a procedure such as arbitration, which is similar in nature to litigation.

Of the four grievants who expressed dissatisfaction with the procedural aspects of mediation, only one grievant was a party in a case which did not settle as a result of the mediation conference. The other three grievants were parties in cases that settled and, therefore, their dissatisfaction with mediation's procedural aspects cannot be attributed to a failure to reach a settlement. The grievants' higher level of satisfaction with arbitration might be explained by their "day in court." Mediation may not provide that same satisfaction, since it is not structured to be a "day in court."

B. Substantive Satisfaction

Research Question III B: How satisfied will the participants in a mediation conference be with the substantive aspects of the mediation process and how does that compare to the extent of satisfaction with the substantive aspects of the arbitration process as expressed by the participants in an arbitration hearing?

Substantive satisfaction was defined as satisfaction with the content or substance of the final grievance resolution. The surveys addressed this area by focusing upon the participants' level of satisfaction with: the arbitration decision or mediation outcome; whether that decision or outcome had resolved the issue presented by the grievance; and whether that decision or outcome had resolved the underlying problem that led to the grievance.

FINDINGS: The union advocates and grieveres, again, had a higher level of satisfaction with mediation while the management advocates and grievants had a higher level of satisfaction with arbitration. Only the union advocates, however, demonstrated any noteworthy difference in their satisfaction with the two processes. The other groups showed very little difference in their satisfaction level with either process. That is not to say that they are satisfied with the processes, but only that their level of satisfaction with the substantive aspects of either process does not vary a great deal. Presumably, it would
make little difference substantively to the management advocates, grievants and grievees which process was used to resolve a grievance.

Table 6 presents the data obtained from the participants in a more specific manner. Any comparison of the advocates' responses regarding their overall arbitration experience with their responses during the study year must be done by noting the use of two different scales. The two scales are referenced in Table 6.

**TABLE 6**

**SUBSTANTIVE SATISFACTION**

<table>
<thead>
<tr>
<th>Aspect of Process</th>
<th>Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Advocates</td>
</tr>
<tr>
<td></td>
<td>Union</td>
</tr>
</tbody>
</table>
| **Overall Arbitration**
| Satisfaction | N = 37 | N = 51b |
| with arbitrator’s decision | 3.78 | 3.98 | — | — |
| decision resolved issue | 3.51 | 3.82 | — | — |
| decision resolved | 2.73 | 3.08 | — | — |
| underlying problem (N = 48) | |
| **Arbitration Study Year**
| Satisfaction | N = 15b | N = 10b | N = 11 | N = 9b |
| with arbitrator’s decision | 2.87 | 3.27 | 2.82 | 2.33 |
| decision resolved issue (N = 11) | 2.67 | 3.60 | 3.00 | 3.67 |
| decision resolved | 1.86 | 3.20 | 2.55 | 2.50 |
| underlying problem (N = 14) (N = 8) | |
| **Mediation Study Year**
| Satisfaction | N = 11b | N = 10b | N = 16b | N = 13b |
| with mediation outcome | 3.36 | 3.07 | 2.63 | 2.85 |
| (N = 14) (N = 14) | |
| settlement | 3.91 | 3.80 | 2.73 | 3.44 |
| resolved issue (N = 11) (N = 9) | |
| settlement | 3.00 | 2.60 | 2.70 | 2.75 |
| resolved underlying problem (N = 10) (N = 8) | |

aWeighted responses were calculated based upon the following scale: always = 5, often = 4, half-the-time = 3, seldom = 2, never = 1.
bUnless otherwise noted.
cWeighted responses were calculated based upon the following scale: very satisfied = 4, somewhat satisfied = 3, somewhat dissatisfied = 2, very dissatisfied = 1.
dIncludes all mediation cases, even those that were not settled as a result of the conference.
eIncludes only mediation cases that were settled as a result of the conference.
CONCLUSION: During the study year, it is evident that the union advocates had a higher level of satisfaction with the substantive aspects of mediation than they had with the substantive aspects of arbitration.

The management advocates, however, had a higher level of satisfaction with arbitration, except in the area of the resolution of the issue where they had a higher level of satisfaction with mediation.

The grievants also had a higher level of satisfaction with arbitration in two of the three substantive areas: the arbitrator’s decision as compared to the mediation outcome and the resolution of the issue.

The grievees had a higher level of satisfaction with mediation except in the area of resolution of the issue.

The union advocates and grievees, therefore, had a higher level of satisfaction with the substantive aspects of mediation, while the management advocates and grievants had a higher satisfaction level with arbitration. This is consistent with the parties’ level of satisfaction with the procedural aspects of arbitration.

It should be noted that only the union advocates demonstrated a difference of one point or more in their satisfaction with the substantive aspects of the two processes. On a four-point scale, this difference is significant and indicates that mediation’s substantive aspects are much more satisfactory to union advocates than arbitration’s substantive aspects.

The remaining three groups do not differ more than six-tenths of a point in mean responses for each aspect of the two processes. A determination as to which process is substantively preferable on an overall basis for any one of these three groups can be made but must be viewed in conjunction with the limited differences in their mean responses. For example, a point difference of .15 between the two processes is exhibited by the grievants regarding the aspect of resolution of the underlying problem. Such a minute fluctuation does not establish a clear mandate that arbitration is substantively more satisfactory to the grievants for the resolution of the underlying problem. It would be advisable to view such minute fluctuations cautiously so as not to attribute to any of the three groups a significantly higher level of satisfaction with any one of the processes.

C. Psychological Satisfaction

Research Question III C: How psychologically satisfied will the participants in a mediation conference be with the mediation process and how does that compare to the extent of psychological satisfaction with the arbitration process as expressed by the participants in an arbitration hearing?

Psychological satisfaction was defined as how the involved parties feel once a grievance has been resolved. The surveys addressed this area by focusing upon the participants’ level of satisfaction that: the grievance issue had been understood by the neutral; the neutral had acted fairly during the conference
EDUCATION GRIEVANCES

or hearing; the underlying problem had been brought out during the conference or hearing.

The Overall Arbitration Experience Survey asked the advocates how often they were satisfied that each of the above aspects had occurred.

FINDINGS: There is no dissatisfaction by any of the respondents with either of the processes. The union advocates were, again, the most satisfied with the mediation process, particularly as to its ability to surface the underlying problem. The management advocates and grievees were also more satisfied with mediation than arbitration, while the grievants were more satisfied with arbitration.

Table 7 shows that there was a general agreement among all of the

**TABLE 7**

**PSYCHOLOGICAL SATISFACTION**

<table>
<thead>
<tr>
<th>Aspect of Process</th>
<th>Respondents</th>
<th>Advocates</th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Union</td>
<td>Management</td>
<td>Grievant</td>
<td>Grievee</td>
</tr>
<tr>
<td>Overall Arbitration*</td>
<td>N = 37b</td>
<td>N = 51b</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>How often arbitrators understood issue</td>
<td>4.11</td>
<td>4.08</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>arbitrators act fairly</td>
<td>4.22</td>
<td>4.27</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>underlying problem not brought out</td>
<td>2.73</td>
<td>2.37</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arbitration Study Yearc</td>
<td>N = 15b</td>
<td>N = 11b</td>
<td>N = 11</td>
<td>N = 10</td>
<td></td>
</tr>
<tr>
<td>Satisfaction that arbitrator understood issue</td>
<td>3.29</td>
<td>3.50</td>
<td>3.36</td>
<td>3.00</td>
<td></td>
</tr>
<tr>
<td>arbitrator acted fairly</td>
<td>3.53</td>
<td>3.82</td>
<td>3.73</td>
<td>3.90</td>
<td></td>
</tr>
<tr>
<td>underlying problem brought out</td>
<td>2.67</td>
<td>3.64</td>
<td>3.27</td>
<td>3.50</td>
<td></td>
</tr>
<tr>
<td>Mediation Study Yearc</td>
<td>N = 15</td>
<td>N = 11b</td>
<td>N = 11</td>
<td>N = 10</td>
<td></td>
</tr>
<tr>
<td>Satisfaction that mediator understood issue</td>
<td>3.87</td>
<td>3.71</td>
<td>3.67</td>
<td>3.77</td>
<td></td>
</tr>
<tr>
<td>mediator acted fairly</td>
<td>3.93</td>
<td>3.93</td>
<td>3.44</td>
<td>3.69</td>
<td></td>
</tr>
<tr>
<td>underlying problem brought out</td>
<td>3.80</td>
<td>3.54</td>
<td>3.31</td>
<td>3.31</td>
<td></td>
</tr>
</tbody>
</table>

*Weighted responses were calculated based upon the following scale: always = 5, often = 4, half-the-time = 3, seldom = 2, never = 1.

bUnless otherwise noted.

cWeighted responses were calculated based upon the following scale: very satisfied = 4, somewhat satisfied = 3, somewhat dissatisfied = 2, very dissatisfied = 1.
advocates that the arbitrators understood the issues presented by the grievances and that the arbitrators acted fairly during the hearing.

The third aspect, the underlying problem, was worded in a negative fashion on the overall arbitration survey: "Some people say that there are times when the underlying problem that led to the grievance is not brought out at the arbitration hearing. In your experience, does this happen: always, often, about half-the-time, seldom, never?" Therefore, the low weighted responses in Table 7 of 2.73 and 2.37 are actually an indication that the failure of the underlying problem to surface during the arbitration hearing occurs less than half-the-time. This weighted response, however, is deceptive. It can be said that the parties are, for the most part, satisfied that the underlying problem is brought out during the hearing. The most dissatisfied groups are the union non-attorneys and the management in-house attorneys. Table 8 depicts the responses of each of these groups on a percentage basis.

Viewing the data in this manner makes it clearer that there is a leaning towards dissatisfaction: 54.5 percent of the union non-attorneys did not believe that the underlying problem was brought out on a half-the-time or more basis. While the data can be conversely calculated to indicate that 75.7 percent of the union non-attorneys believed the underlying problem was brought out, this fails to take into consideration what constitutes an acceptable level. For purposes of this study, half-the-time was considered to be unacceptable and is, therefore, being viewed for this question with the unacceptable levels of "often" and "always," thereby showing a leaning towards dissatisfaction by 54.5 percent of the non-attorneys. In a similarly calculated manner, sixty percent of the management in-house attorneys are leaning towards dissatisfaction.

It is possible to speculate that the closer an advocate is to the grievance, the more knowledge the advocate would have about the underlying problem that led to the grievance and, therefore, the more certain she/he would be as to whether the underlying problem was brought out at the hearing. This speculation obtains more credence when one considers the weighted response of 2.23 (N = 22) which is given by the independent management attorneys and which indicates a strong leaning towards satisfaction. The independent management attorneys are usually the advocates who are brought into the grievance resolution process only at the arbitration step. Conversely, the union non-attorneys and management in-house attorneys would be involved in the earlier steps of the grievance procedure and would presumably have more knowledge of the underlying problem than would the independent management attorneys.

CONCLUSION: During the study year, the union advocates who referred grievances to mediation were more psychologically satisfied than the union advocates who submitted grievances to arbitration. The major difference between the two processes was the surfacing of the underlying problem. This psychological satisfaction with mediation is consistent with the views of
the union advocates regarding the previously presented procedural and substantive satisfaction factors.

*The management advocates and the grievants demonstrated a higher level of satisfaction with mediation in two of the three areas while the grievees demonstrated a higher level of satisfaction with arbitration in two of the three areas.* There is, however, only a slight difference in the weighted responses for any of the three aspects within these groups and, in fact, *there is no dissatisfaction by any of these respondents with either process.*

**TABLE 8**

**FREQUENCY THAT UNDERLYING PROBLEM NOT BROUGHT OUT**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Always</th>
<th>Often</th>
<th>Time</th>
<th>Seldom</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td>Union</td>
<td>3.0%</td>
<td>21.2%</td>
<td>30.3%</td>
<td>42.4%</td>
<td>3.0%</td>
</tr>
<tr>
<td>non-attorney (N = 33)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Management in-house attorney</td>
<td>—</td>
<td>20.0%</td>
<td>40.0%</td>
<td>40.0%</td>
<td>—</td>
</tr>
<tr>
<td>(N = 10)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
A. Discussion

On an overall basis, the management advocates exhibited a slightly higher level of satisfaction with arbitration, which might be attributable to the high number of attorneys within that group who participated in the mediation conferences and arbitration hearings. One might speculate that attorneys are more comfortable with the structure of an arbitration proceeding which parallels, to some extent, the structure of a court proceeding. At the focus session, one of the management non-attorneys reinforced this speculation:

There is [sic] a great number of management attorneys in this area that are not that familiar with the concept [of mediation] or how it works and they are very hesitant to advise their clients to go that direction when they don’t really understand it.

A management attorney stated:

What we need is Elkouri and Elkouri to write HOW MEDIATION WORKS and put it in the same cover [as HOW ARBITRATION WORKS] and mail it out and it’ll work.

It appears as if the comfort level of attorneys with the mediation process needs to be raised in order for the process to be as satisfactory to them as arbitration. Or, as was suggested at the focus session, perhaps attorneys should be precluded from participation in a mediation conference. One management non-attorney stated:

I view it as a golden opportunity to disregard attorneys’ advice which I don’t always agree with . . . it is a real money saver not to use an attorney.

Another management non-attorney found mediation to be devoid of the legalistic aspects of arbitration and agreed, therefore, that the use of an attorney in mediation was not warranted.

The higher level of overall satisfaction with mediation exhibited by the union advocates was not surprising. They had exhibited the most dissatisfaction with arbitration at the beginning of the study year and had cited the time consumption of arbitration as being their greatest dislike of the process. Therefore, it was no surprise that they were more satisfied with mediation than arbitration, particularly because of the relative speed of the mediation process.

Similarly, it was not surprising that the grievees exhibited a higher level of satisfaction with mediation than arbitration. This conclusion is consistent with the findings of Stephen Goldberg in his study in the coal mining industry in which company personnel (grievees) preferred mediation over arbitration six to one. 4

What was surprising, however, was that the grievants who had participated in an arbitration hearing had a higher level of satisfaction with arbitration than the grievants who had participated in a mediation conference had with mediation. It was expected that the grievants who had participated in mediation conferences would be more satisfied than the grievants who had participated in arbitration hearings primarily because it was believed that the grievant would prefer a less formal, less adversarial process, such as mediation, rather than arbitration.

The grievants in a mediation conference were more satisfied (eighty-one percent) with the extent of their participation in a mediation conference than the grievants in an arbitration hearing were with the extent of their participation in an arbitration hearing (seventy-two percent). Their high satisfaction with the extent of their participation in a mediation conference, however, was insufficient to raise their overall satisfaction with mediation above 75.1 percent.

While the grievants are not dissatisfied with mediation, it is surprising that they were not more satisfied. It should be noted that the grievants in the arbitration hearings, during the study year, had no exposure to mediation and the majority of the grievants (eighty-two percent) in the mediation conferences during the study year, had no exposure to arbitration. Therefore, their expressions of satisfaction with the respective processes were based upon their one-time experience and must be viewed accordingly.

Since the majority of the grievants had been exposed to only one of the two processes during the study year, the surveys presented a description of the process in which they had not participated and asked the grievants to indicate their preferred route for any future grievances that they might have. Eleven of the sixteen grievants who had participated in a mediation conference stated a preference for mediation as a step prior to arbitration; eight of the eleven grievants who had participated in an arbitration hearing also stated a preference for mediation as a step prior to arbitration. Therefore, there is sufficient interest on the part of the grievants to continue the availability of mediation as a step prior to arbitration, even though the grievants who had participated in a mediation conference did not have as high of a level of satisfaction with the process as the grievants who had participated in an arbitration hearing had with that process.

VII. General Questions

Several additional questions were generated by the introduction of grievance mediation as a step prior to arbitration:
1. Why was one process for dispute resolution chosen instead of the other process or prior to the other process?
2. Why did mediation succeed or fail in resolving a dispute?
3. Do some grievance issues lend themselves more readily to mediation than others?
A. Decision To Mediate Grievance

Table 10 presents the factors that were given by the union and management advocates that were a moderate to major cause of their decision to refer a grievance to mediation prior to arbitration.

A few additional factors were given by some advocates and included: the need to address an underlying problem which could not be addressed in arbitration; and the belief that the matter should have settled earlier and mediation might provide an additional opportunity for settlement.

Union advocates who did not refer a grievance to mediation, but instead proceeded directly to arbitration, most frequently cited management's refusal to agree to mediation as the factor. Management advocates who proceeded directly to arbitration responded most frequently that they had no interest in the mediation process.

**TABLE 10**

**FACTORS THAT WERE A MODERATE TO MAJOR CAUSE OF DECISION TO MEDIATE GRIEVANCE**

<table>
<thead>
<tr>
<th>Factor</th>
<th>Number of Advocates Reporting Factor as Causea</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hope of achieving a quicker resolution than arbitration</td>
<td>Union: 15</td>
</tr>
<tr>
<td></td>
<td>Management: 10</td>
</tr>
<tr>
<td>Mediation is less formal than arbitration</td>
<td>Union: 14</td>
</tr>
<tr>
<td></td>
<td>Management: 8</td>
</tr>
<tr>
<td>Mediation is a new process being tested in the State of Washington</td>
<td>Union: 13</td>
</tr>
<tr>
<td></td>
<td>Management: 7</td>
</tr>
<tr>
<td>Hope of achieving less expensive resolution than arbitration</td>
<td>Union: 12</td>
</tr>
<tr>
<td></td>
<td>Management: 11</td>
</tr>
<tr>
<td>Hope of saving arbitration case preparation time</td>
<td>Union: 12</td>
</tr>
<tr>
<td></td>
<td>Management: 11</td>
</tr>
<tr>
<td>Mediation is less adversarial than arbitration</td>
<td>Union: 11</td>
</tr>
<tr>
<td></td>
<td>Management: 8</td>
</tr>
<tr>
<td>Need to assess ability to win in arbitration</td>
<td>Union: 11</td>
</tr>
<tr>
<td></td>
<td>Management: 7</td>
</tr>
</tbody>
</table>

*Total possible responses for union = 15 and for management = 14.

Other factors cited by the advocates for not referring a grievance to mediation prior to arbitration included: grievance issue was inappropriate for mediation; contract restrictions prohibit mediation; and the parties are too polarized for mediation to work.
B. Factors That Affected Settlement

The advocates who did refer a grievance to mediation were asked their opinions regarding the factors that were a cause of settlement as a result of the mediation conference or a cause of the failure to achieve a settlement. Their responses are presented in Table 11, along with the opinions of the grievants and grievees.

The mediators were also asked their opinions regarding the factors that caused the success or failure of mediation. The most frequently cited factors

\[
\text{TABLE 11}
\]

FACTORS THAT WERE A MODERATE TO MAJOR CAUSE OF MEDIATION EITHER SUCCEEDING OR FAILING

<table>
<thead>
<tr>
<th>Factor</th>
<th># of Respondents Reporting Factor as Cause</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Advocates</td>
</tr>
<tr>
<td><strong>Mediation Succeeded</strong></td>
<td></td>
</tr>
<tr>
<td>Open discussion was encouraged</td>
<td>10</td>
</tr>
<tr>
<td>New ideas for settlement were provided</td>
<td>10</td>
</tr>
<tr>
<td>Other party was convinced of lack of merit in its positions</td>
<td>9</td>
</tr>
<tr>
<td>New information was provided</td>
<td>6</td>
</tr>
<tr>
<td><strong>Mediation Failed</strong></td>
<td></td>
</tr>
<tr>
<td>Other side was locked into its position</td>
<td>9</td>
</tr>
<tr>
<td>Difficulty of the grievance issue</td>
<td>8</td>
</tr>
<tr>
<td>My side was locked into its position</td>
<td>8</td>
</tr>
</tbody>
</table>

\[\text{\textsuperscript{a}Includes all cases that were settled prior to arbitration. Total possible responses: union = 11; management = 10; grievant = 11; grievee = 9.}\]

\[\text{\textsuperscript{b}Includes any cases that did not settle on date of mediation conference. Total possible responses: union = 10; management = 10; grievant = 9; grievee = 9.}\]
by the mediators for the success of the process were: encouraging open discussion; providing new ideas for settlement; and one party being convinced of the lack of merit in its position. The factors cited for the failure to reach settlement included: the difficulty of the grievance issue; the union being locked into its position; and management being locked into its position.

C. Appropriate Grievances Issues for Mediation

During the initial survey that addressed the overall arbitration experience of the advocates, the respondents were asked in what types of grievance cases they would use the mediation process. Twenty-five of the sixty-six respondents to the question stated that they would use it in "almost all" or "all" cases. Ten respondents stated that they would use it for cases that involved personality conflicts and ten others said they would use it whenever compromise was possible or desirable. Other responses given on a less frequent basis included: where the parties have a sophisticated relationship; whenever one party was being unreasonable; and any cases except discharge.

During the study year, the advocates who participated in a mediation conference were, again, asked in what types of grievance cases they would use the mediation process. The two most frequent responses were the same as were given to the initial Overall Arbitration Experience Survey: all cases (10 out of 22 responses) and personality conflicts (5 out of 22 responses). Other responses given by advocates who had participated in a mediation conference included: compensation cases and contract interpretation cases.

When asked why they wouldn't use the mediation process, the advocates did not cite specific types of cases, but rather cited the situations under which they would not use mediation: when the parties are locked into their positions (6 out of 29 responses); and when the case is an "obvious winner" in arbitration (7 out of 29 responses).

The mediators were evenly divided in their responses to similar questions. Approximately one-third believed all cases to be appropriate for mediation, one-third believed discipline/discharge cases were appropriate and one-third believed contract interpretation cases were appropriate. Conversely, the same mediators responded that the following cases were not appropriate for mediation: contract interpretation cases; discharge cases; arbitrability cases; and cases where the parties are locked into their position.

The variety of responses to the same questions from all of the respondents indicates that it may be necessary to make a determination on a case-by-case basis, not necessarily focusing on the grievance issue, but rather focusing upon the situation surrounding the grievance issue.

D. Grievance Issues: Discussion

There is ongoing discussion about issues that are either appropriate or inappropriate for grievance mediation. This study did not find any consensus
among the participants as to any specific issues which are inappropriate for the process.

During this study year, the following issues were referred to mediation: discipline; evaluation; compensation; workload; assignment and transfer; subcontracting; and leave of absence. None of the advocates found the particular issue in which they were involved to be inappropriate for mediation. The difficulty of the issue may have made it harder to settle the grievance, as is reflected in Table 11, but the difficulty of the issue did not necessarily prevent settlement of the grievance. Only four grievances that were referred to mediation were unresolved through that process. Table 11, however, shows that eight union advocates and six management advocates considered the difficulty of the grievance issue to be a cause of the failure to reach a settlement of the grievance on the date of the conference. Since some of the issues were resolved after the date of the conference, it is reasonable to assume that the difficulty of the issue did not prohibit settlement, but only made it harder to settle.

Although the advocates did not find any of the study year issues to be inappropriate for mediation, they did find a circumstance under which mediation would most likely not work. One management advocate succinctly stated that circumstance as being one in which "the union did not meaningfully attempt to resolve the issue." Presumably, either side can be guilty of fostering this circumstance. As another management advocate stated: "Both parties must want to settle." This is consistent with the data on Table 11 which shows that either party being locked into its position will be a cause of the failure to reach a settlement through the mediation conference.

VIII. WILLINGNESS TO TRUST THE PROCESS

There has been some discussion that it is also necessary for the parties to be willing to compromise in grievance mediation, but that fails to take into consideration that in some circumstances, mediation may actually clarify the issue which may lead to one side recognizing the lack of merit in its position.

Nothing within the mediation process requires compromise by either party, but the process does imply the necessity of the parties being willing to explore the situation and its possible resolution. Although several of the advocates stated that they would use grievance mediation whenever compromise was possible, it might be more appropriate to use the process for any case in which both parties want to settle.

At the focus session, one management advocate discussed the mediation case in which he had participated even though he knew that he could not compromise on the grievance issue. It was his opinion going into the conference that the grievance was not appropriate for mediation and he advised the union advocate of his opinion. The grievance was resolved as a result of the conference without any compromise on the part of the management
advocate. The union advocate in the case indicated that he had used the process to emphasize for the local union and the grievant, the lack of merit in the union’s position.

This may raise some questions as to the appropriateness of the use of mediation for such a purpose, but it was the consensus of the focus group that such circumstances are not uncommon in public education disputes. The grievant or grievee who will not listen to their respective advocates as to the lack of merit of their case may be convinced by an independent mediator.

Some industries may hesitate to include mediation as a step prior to arbitration for such a purpose, but in public education, it may have not only educational value, but also therapeutic value. Such value cannot be discounted, particularly if it prevents expending time and money for an arbitration hearing that most likely should not have been held.

There must be a distinction made between “wanting to settle” and “willing to compromise.” Parties who enter mediation willing to compromise will most likely have an easier time in the mediation process, but that does not necessarily suggest that the parties must compromise in order for mediation to be successful. An indication by the parties that they want to settle may provide an opportunity for full exploration of the grievance. Such exploration may surface alternative resolutions that do not require compromise or may serve to precipitate the granting of the grievance by management or the withdrawal of the grievance by the union.

An underlying factor that is necessary for success when the parties want to settle is a willingness to trust the process. The presence of trust implies that a full exploration of the grievance will be forthcoming, and that exploration may lead to a resolution of the grievance. The Experimental Agreement (Appendix B) clearly states at item 10 that:

Nothing said or done by the mediator may be referenced or introduced into evidence at the arbitration hearing and nothing said or done by either party for the first time in the mediation conference may be used against it in arbitration.

If the parties agree to this provision, there should be a willingness to trust that the grievance can be freely discussed without any concern that such discussion will be used against either party at a later date.

IX. INTEREST IN GRIEVANCE MEDIATION

Nineteen of the twenty-nine advocates who had participated in a mediation conference selected “mediation as a step prior to arbitration” as the preferred route for the resolution of grievances. The most frequently given reasons for this selection included: the ability to deal with the underlying problem; the informality of the mediation process; and the fact that mediation is faster and quicker than arbitration.
This selection was affirmed by the advocates at the focus session who cited mediation’s greater ability to deal with the underlying problem as its major advantage over arbitration. Also cited as advantages of mediation at the focus session were its ability to lay the foundation for ongoing discussions between the parties about any subsequent problems and its “win-win” focus which serves to improve overall employee morale. The preference for mediation can be further explained by the factors that were a cause of the advocates’ decision to mediate a grievance as listed in Table 10.

Of the remaining ten advocates who had participated in a mediation conference, three independent management attorneys and one management non-attorney expressed a preference for arbitration without mediation as a preliminary step; three management non-attorneys and one independent management attorney were uncertain as to their preferred route; one management independent attorney refused to answer; and one management non-attorney preferred mediation as the final step of the grievance procedure. The nineteen advocates who preferred mediation as a step prior to arbitration for the resolution of grievances reflects seventy-nine percent of the advocates who gave definitive responses to the question.

Ninety-one percent of the advocates who had participated in an arbitration hearing during the study year stated that they also were interested in the use of mediation as a step prior to arbitration. This group of advocates was particularly interested in the use of mediation whenever compromise was possible or whenever there was a personality conflict between the parties. Only two of the eight management attorneys who had participated in an arbitration hearing stated that they would not use the mediation process, which suggests that the initial resistance from attorneys toward the process may lessen as the process becomes more widely used.

X. RECOMMENDATION

In light of all of the foregoing, it is reasonable to suggest that all grievance issues in public education should be referred to mediation prior to arbitration, provided the parties are either willing to compromise or the parties want to settle. This suggestion should be carefully monitored and reviewed as more public education grievance cases are referred to mediation.

This is not meant to suggest that grievance mediation, as a step prior to arbitration, should be approached without careful forethought. It is obvious that mediation can increase the cost of grievance resolution, as well as the time expended by the advocates if the grievance is subsequently resolved in arbitration. A careful assessment of the parties’ reasons for referring a grievance to mediation must be conducted prior to entering the process.

XI. RECOMMENDATIONS FOR PRACTICE IN THE FIELD

Fifteen grievances were referred to mediation during the study year, representing approximately thirty percent of the total cases that are submitted
for resolution to a neutral third party during a typical year. When one considers the limited introduction to the mediation process that was given to the advocates, this level of participation underscores the previously discussed interest in the use of grievance mediation as a step prior to arbitration. Additionally, six union advocates who submitted six different grievances directly to arbitration stated on the surveys that they would have referred those grievances to mediation if management had not refused to participate in the process.

Presumably, the high resolution rate of the mediation process, coupled with the time savings of the process, will encourage a higher level of participation in subsequent years. In fact, several advocates are incorporating the Experimental Agreement for the Mediation of Grievances (Appendix B) into their collective bargaining agreements, thereby establishing grievance mediation as an optional step of the grievance procedure prior to arbitration. Furthermore, ninety-one percent of the advocates who proceeded directly to arbitration during the study year expressed an interest in the use of mediation as a step prior to arbitration. Six attorney advocates were among that ninety-one percent, which suggests that some of the initial resistance by attorneys toward the mediation process may be dissipating as they become more aware of the process.

Those involved in labor relations within Washington State public education should continue with the use of grievance mediation as a step prior to arbitration with the understanding that further monitoring of the process is necessary in order to more fully assess its usefulness. Once the newness of the process dissipates, or once the economy improves in the State of Washington, there may be a loss of interest in the use of the mediation process to resolve grievance disputes. Other factors may also surface that might affect the resolution rate of grievance mediation. These cautionary notes are not meant to denigrate the process, but are meant to remind the parties that this study was limited in nature and an ongoing study may alter these findings.  

Based upon the findings of this study, the following recommendations are made:

1. The Experimental Agreement for the Mediation of Grievances (Appendix B) should be incorporated into collective bargaining agreements between WEA's local affiliates and their respective school districts;

5. Because of the limited scope of this study, all of the recommendations must be viewed as being appropriate to the industry of public education in the State of Washington. While other industries may take into consideration the recommendations, they must recognize that labor relations will vary based upon the organizational climate within a particular industry. In Washington State public education, the climate was right for the introduction of grievance mediation, perhaps because of the economic status of Washington State, which may be triggering a shift in the approach to labor relations. Other industries should be encouraged to experiment with grievance mediation, but the industries should tailor the process to fit their particular needs.
2. Mediation of grievances should be an optional step available to either party, with the other party having the right to refuse to participate in the process;

3. At this time, all issues should be considered appropriate for mediation;

4. Prior to referring a grievance to mediation, the circumstances surrounding the grievance should be carefully reviewed by both parties to verify that there is the willingness to settle the grievance. The willingness to settle may or may not incorporate the ability to compromise on the grievance issue;

5. The union should undertake a member education process, emphasizing the purpose and value of dispute resolution processes. The union should further inform its advocates and leaders as to the ability of mediation to resolve grievances prior to arbitration;

6. Management should carefully review the role of attorneys in grievance mediation and take into consideration that mediation may offer a "golden opportunity" to resolve grievances without attorneys, thereby saving the school district money.

Although one might question the advisability of incorporating mediation into the grievance procedure of the collective bargaining agreements prior to the conclusion of any ongoing study, it must be remembered that the process is optional and in the event that future study negates the findings of this study, it would be a simple matter for the parties to stop using the process.

XII. CONCLUSION

This study was conducted in order to provide insight as to how the introduction of grievance mediation as a step in the grievance procedure prior to arbitration would affect the resolution of public school grievance disputes. Seventy-three percent of the fifteen grievances that were referred to mediation during the study year were successfully resolved without proceeding to arbitration. The resolution of these grievances was obtained at one-third the cost of arbitration and approximately two months more quickly than arbitration. The majority of the participants in a mediation conference were satisfied with the process and preferred mediation as a step prior to arbitration for the resolution of any future grievances in which they are involved.

This study was meant to guide practitioners in the public sector industry of education in the State of Washington and the results are, therefore, most appropriately applied to similarly situated industries. Other industries will be able to view this study in conjunction with the Goldberg study in the coal mining industry and make their own determinations as to utilizing grievance mediation prior to arbitration within their specific industry.
1984-85 Study Year

During the study year, a grievance that was submitted to a third party neutral proceeded through one of the following channels:

- **GRIEVANCE (Having completed all steps of the grievance procedure prior to arbitration)**
  - **Mediation Conference**
  - **Arbitration Hearing**
    - **Settled**
      - A. at Mediation Conference
      - B. after Conference but prior to Arbitration

Arbitration Hearing
Notwithstanding the provisions of the collective bargaining agreement, the parties agree to a procedure for the mediation of grievances in accordance with the following:

1. A grievance may be referred to mediation if the Association is not satisfied with the disposition of the grievance at step three of the grievance procedure contained within the collective bargaining agreement, or if no written decision has been received from the District within the time limits prescribed in step three.

2. The Association must notify the District in writing within five (5) working days of the conclusion of step three of the Association's desire to refer the grievance to mediation. The District shall respond to the Association whether or not the District agrees to the mediation of the grievance no later than two (2) working days prior to the Association's contractual deadline for the submission of a grievance to arbitration or within five (5) working days of receipt of the written notification, whichever is sooner.

3. The District and the Association must mutually agree to submit a grievance to mediation. If the parties agree to submit a grievance to mediation, then the timelines and procedures contained within the grievance procedure of the collective bargaining agreement which provide for the submission of a grievance to binding arbitration shall be held in abeyance until such time as written notification of appeal is provided in accordance with Section 11 of this Experimental Agreement. The date on which written notification of appeal is filed by the Association with the District shall serve as the date from which the timelines and procedures contained within the collective bargaining agreement which provide for the submission of a grievance to binding arbitration shall be enforced.

4. Within five (5) working days following the agreement of the District and the Association to mediate the grievance, the Association shall notify Mediation Research & Education Project, Inc. (MREP). MREP shall schedule a mediation conference at the earliest possible date. Mediation conferences will take place at a mutually convenient location.

5. The grievant shall have the right to be present at the mediation conference.

6. There shall be one (1) person from each party designated as spokesperson for that party at the mediation conference.

7. The mediator will have the authority to meet separately with either party, but will not have the authority to compel the resolution of a grievance.
8. The presentation of facts and considerations shall not be limited to those presented at step two or three of the grievance procedure. Proceedings before the mediator shall be informal in nature. There shall be no formal evidence rules. No transcript or record of the mediation conference shall be made. The mediator shall attempt to assure that all necessary facts and considerations are revealed to him/her.

9. Written material presented to the mediator shall be returned to the party presenting that material at the termination of the mediation conference, except that the mediator may retain one copy of the written grievance to be used solely for the purposes of statistical analysis.

10. In the event a grievance that has been mediated is appealed to arbitration, the mediator may not serve as arbitrator, nor may the mediator be placed on any panel from which an arbitrator is to be selected by the parties. In the arbitration proceedings, there shall be no reference to the fact that a mediation conference was or was not held. Nothing said or done by the mediator may be referenced or introduced into evidence at the arbitration hearing and nothing said or done by either party for the first time in the mediation conference may be used against it in arbitration.

11. If no settlement is reached in mediation, the grievance may be appealed to arbitration in accordance with the collective bargaining agreement between the parties. If the Association desires to appeal the grievance to arbitration, written notice of such appeal must be made within ten (10) working days following the termination of the mediation conference.

12. The mediator shall conduct no more than three (3) mediations per day.

13. Starting time for the mediation shall be agreed to by the District and the Association.

14. The parties have agreed upon the attached Rules for Mediation.

15. The fees and expenses of the mediator and the Administrative Office shall be shared equally by the parties.

16. This agreement shall be for the experimental period beginning September 1, 1984 and ending midnight, August 31, 1985.

RULES FOR GRIEVANCE MEDIATION

1. Notification of the intent to mediate a grievance should be made to the Mediation Research & Education Project, Inc. [hereinafter MREP].

2. The MREP will schedule a mediation conference as soon as possible upon receipt of notification of a grievance or grievances to be mediated.

3. The MREP will appoint a mediator from a panel consisting of neutrals formally trained in the process of grievance mediation.

4. The MREP will notify the mediator of his/her appointment and determine his/her willingness and ability to serve.
APPENDIX C
OVERVIEW OF THE STUDY

In May of 1983, Stephen Goldberg of Northwestern University made a presentation at the Pacific Coast Labor Law Conference which described an experiment that he had conducted in the coal mining industry in the use of grievance mediation as a step prior to grievance arbitration. Several management and union advocates who present arbitration cases in public school disputes in the State of Washington attended the session. Goldberg triggered an interest on the part of these advocates in the use of grievance mediation.

Meetings were held with representatives of the Washington Education Association and the Washington State School Directors' Association in order that the organizations might become more familiar with the process of grievance mediation. Goldberg was retained to serve as a consultant for the study, and in September of 1984, he conducted a training session with the advocates. The advocates were provided with prototype language (see Appendix B) but were advised that there was no requirement as to the specifics of any agreement which they might reach regarding the use of grievance mediation. It was then up to the individual advocates as to whether or not they would participate in the study.

A preliminary survey was administered to all of the advocates in the State of Washington who had presented a public school arbitration case within the previous five years. This preliminary survey addressed their overall experience with grievance arbitration.

During the study year, telephone interviews were conducted with all of the participants in a mediation conference or arbitration hearing. The interviews addressed the participants' experience with either process and asked both open-ended and close-ended questions which focused upon the time involved, the cost incurred and their satisfaction level with the process.

At the conclusion of the study year, a focus group session was conducted by Goldberg at which all advocates who had participated in a mediation conference were invited to express their views about the process of mediation. Additional insight as to the effect of grievance mediation upon the resolution of public school disputes was obtained through the use of a mail questionnaire that was distributed to all of the mediators who had conducted mediation conferences during the study year.

This report compiles the opinions and remarks that were obtained through the interviews, the questionnaires and the focus group session.