EXHIBIT H

Excerpt, Elkouri & Elkouri, *How Arbitration Works* (8th Ed. 2016)

Elkouri & Elkouri

HOW ARBITRATION WORKS

Eighth Edition

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ABA
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ii. Quantum of Proof[122]

a. Proof in Ordinary Discipline Cases [LA CDI 94.60509]

The quantum of proof required to support a decision to discipline or discharge an employee is unsettled. Arbitrators have primarily imposed one of three standards, listed below from the least to the greatest burden:

1. Preponderance of the evidence;[123]
2. Clear and convincing evidence;[124]
3. Evidence beyond a reasonable doubt.[125]

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[122] *See also* DISCIPLINE AND DISCHARGE IN ARBITRATION 335 (Brand & Biren eds., Bloomberg BNA 3d ed. 2015).

[123] *See* Rittman Nursing & Rehab. Ctr., 113 LA 284 (Kelman, 1999) (employer was required only to prove by a preponderance of the evidence that discharged nurse's aide shop steward engaged in a work stoppage despite the career-damaging consequences of such a discharge); Wholesale Produce Supply Co., 101 LA 1101 (Bognanno, 1993) (company need only prove by a preponderance of evidence that it properly discharged employee for dishonesty, because labor arbitration is not a criminal court of law and reliance on standard of beyond a reasonable doubt is inappropriate); General Elec. Co., 74 LA 25, 29 (Spencer, 1979). In *State University of New York*, 74 LA 299, 300 (Babiskin, 1980), the collective bargaining agreement expressly placed the burden of proof on the employer in all disciplinary proceedings and specified that: "Such burden of proof, even in serious matters which might constitute a crime shall be preponderance of the evidence on the record and shall in no case be proof beyond a reasonable doubt." By statute, a federal agency's action in disciplinary matters may be sustained on review by the Merit Systems Protection Board (MSPB) only if the agency's decision "is supported by a preponderance of the evidence." 5 U.S.C. §7701(c)(1)(B). Where a discharge for illegal sexual activity with a minor child was taken to arbitration rather than to the MSPB, the arbitrator cited the latter statute when he also utilized the "preponderance of evidence test." Social Sec. Admin., 80 LA 725, 728 (Lubic, 1983).

[124] Michigan Milk Producers Ass'n, 114 LA 1024 (McDonald, 2000) (quantum of proof in discharge case of employee accused of threatening a fellow employee is clear and convincing evidence); Professional Med Team, 111 LA 457 (Daniel, 1998) (clear and convincing evidence for discharge cases in general); Conagra Frozen Foods, 113 LA 129 (Baroni, 1999) (the arbitrator only required clear and convincing evidence in a sexual harassment case); Contempo Colours, 112 LA 356 (Daniel, 1998) (clear and convincing evidence for employee discharged for allegedly stealing a plate); American Safety Razor Co., 110 LA 737 (Hockenberry, 1998) (in a case of discharge for sexual harassment, the arbitrator rejected "beyond a reasonable doubt standard" as inappropriate in an arbitral forum); Vista Chem. Co., 104 LA 818 (Nicholas, Jr., 1995) (employer must prove by clear and convincing evidence that employee was justly discharged for sexual harassment, and arbitrator should impose strict scrutiny approach to charges of sexual harassment because of the stigmatizing effect of such charges); Carrier Corp., 103 LA 891 (Lipson, 1994) (employer's burden of proof in defending its discharge of employee for selling drugs is clear and convincing evidence whether or not the grievant is charged with committing a crime); J.R. Simplot Co., 103 LA 865 (Tilbury, 1994) (standard of proof for discharge for acts of industrial sabotage should be clear and convincing evidence, which is something more than mere preponderance and means that the trier of fact must find more than a slight tilt on the scale of justice).

[125] Jefferson County Sheriff's Office, Steubenville, Ohio, 114 LA 1508 (Klein, 2000) (employer required to prove beyond a reasonable doubt that corrections officer was guilty of sexual misconduct with female inmates because case involves potential crime and moral turpitude); Yellow Freight Sys., 103 LA 731 (Stix, 1994) (employer that discharges employee for theft must provide evidence to sustain charge beyond a reasonable doubt); Jim Walters Res. No. 7 Mine, 95 LA 1037 (Roberts, 1990)

Concerning the quantum of required proof, many, if not most arbitrators apply the "preponderance of the evidence" standard to ordinary discipline and discharge cases. However, in cases involving criminal conduct or stigmatizing behavior, many arbitrators apply a higher burden of proof, typically a "clear and convincing evidence" standard, with some arbitrators imposing the "beyond a reasonable doubt" standard. But, even in cases of criminal behavior or socially stigmatizing conduct, some arbitrators require only a "preponderance of the evidence." In addition, some arbitrators are beginning to use the "clear and convincing evidence" standard for discipline that does not involve criminal behavior or stigmatizing conduct.[126]

An authoritative text states that:

> When the employee's alleged offense would constitute a serious breach of law or would be viewed as moral turpitude sufficient to damage an employee's reputation, most arbitrators require a higher quantum of proof, typically expressed as "clear and convincing evidence." Some require proof "beyond a reasonable doubt" but, absent an express contractual provision to the contrary, most hold that the criminal-law standard of "beyond a reasonable doubt" has no place in an informal dispute resolution mechanism like arbitration.[127]

One arbitrator observed, "[i]n general, arbitrators probably have used the 'preponderance of the evidence' rule or some similar standard in deciding fact issues before them, including issues presented by ordinary discipline and discharge cases."[128] But the arbitrator also noted that a higher degree of proof frequently is required where the alleged misconduct is "of a kind recognized and punished by the criminal law," and he concluded:

> [I]t seems reasonable and proper to hold that alleged misconduct of a kind which carries the stigma of general social disapproval as well as disapproval under accepted canons of plant discipline should be clearly and convincingly established by the evidence. Reasonable doubts raised by the proofs should be resolved in favor of the accused. This may mean that the employer will at times be required, for want of sufficient proof,

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(employer must prove beyond a reasonable doubt that specimen strictly controlled at all times); S.D. Warren Co., 89 LA 688 (Gwiazda, 1985), *rev'd for other reasons sub nom*. S.D. Warren Co. v. Paperworkers Local 1069, 845 F.2d 3, 128 LRRM 2175 (1st Cir.) (beyond a reasonable doubt standard), *cert. denied*, 488 U.S. 992 (1988). *See also* Greyhound Food Mgmt., 89 LA 1138, 1141 (Grinstead, 1987) ("Attempting to steal orange juice valued at 58 cents involves moral turpitude and requires standard of proof beyond a reasonable doubt.").

[126] *See, e.g.*, City of Bartlesville, 131 LA 1502 (Williams, 2013) ("clear and convincing evidence" standard adopted because "discharge is the most severe penalty that can be imposed on an employee"); Wegman's Food Markets, 134 LA 1552 (Whelan, 2015) ("It is well established in labor arbitration that, when . . . an employer's right to discharge an employee is limited by the requirement that any such action be for just cause, the employer has the burden of proving by clear and convincing evidence that the discharge was for just cause.").

[127] Gershenfeld, "Discipline and Discharge," THE COMMON LAW OF THE WORKPLACE: THE VIEWS OF ARBITRATORS 192 (St. Antoine, ed., BNA Books 2d ed. 2005).

[128] Kroger Co., 25 LA 906, 908 (Smith, 1955).

> to withhold or rescind disciplinary action which in fact is fully deserved, but this kind of result is inherent in any civilized system of justice.[129]

Concerning the quantum of proof to be imposed in a case involving theft, an arbitrator stated:

> I agree with the Union that a discharge for theft has such catastrophic economic and social consequences to the accused that it should not be sustained unless supported by the overwhelming weight of evidence. Proof beyond any reasonable doubt, even in cases of this type, may sometimes be too strict a standard to impose on an employer; but the accused must always be given the benefit of substantial doubts.[130]

Another arbitrator in such a case stated the requirement to be that "the arbitrator must be completely convinced that the employee was guilty."[131] One arbitrator suggested that, regardless of which "verbal formulas for the requisite degree of proof" arbitrators may profess to require, the fact is that "most of us 'consciously or unconsciously' require the highest degree of proof in discharge cases where the involved employee action ... also constitutes a crime."[132] Generally, three factors are considered in determining the standard of proof necessary, though none alone seems to be determinative. Specifically, arbitrators consider whether the employee's conduct constituted criminal behavior, whether it involved moral turpitude or social stigma, and whether the sanction imposed was discharge or some lesser discipline. In cases of potentially unlawful conduct, the greater weight of authority favors "clear and convincing evidence"[133] or "preponderance of the evidence,"[134] as opposed to "beyond a reasonable doubt."

An arbitrator may require a high degree of proof in one discharge case and at the same time recognize that a lesser degree may

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[129] *Id.*

[130] Armour-Dial, 76 LA 96, 99 (Aaron, 1980).

[131] Columbia Presbyterian Hosp., 79 LA 24, 27 (Spencer, 1982).

[132] American Air Filter Co., 64 LA 404, 406–07 (Hilpert, 1975). *See also* Todd Pac. Shipyards Corp., 72 LA 1022, 1024 (Brisco, 1979); Getman, *What Price Employment? Arbitration, the Constitution, and Personal Freedom*, in ARBITRATION—1976, PROCEEDINGS OF THE 29TH ANNUAL MEETING OF NAA 61, 96 (Dennis & Somers eds., BNA Books 1976).

[133] Duke Univ., 100 LA 316 (Hooper, 1993) (employer must meet clear and convincing evidence standard, but not beyond a reasonable doubt standard, to show just cause for discharge of supervisor accused of sexual harassment); Central Mich. Univ., 99 LA 134 (McDonald, 1992) (same); Indiana Convention Ctr. & Hoosier Dome, 98 LA 713 (Wolff, 1992) (employer must meet clear and convincing evidence standard to show just cause for discharge of employee who assaulted and threatened to kill supervisor); City of Kankakee, Ill., 97 LA 564 (Wolff, 1991) (employer must meet clear and convincing evidence standard to show just cause for discharge of employee for driving snowplow while under the influence of alcohol); Maurey Mfg. Co., 95 LA 148 (Goldstein, 1990) (employer must meet clear and convincing evidence standard to show just cause for discharge of employee for running an illegal, in-house game of chance).

[134] Coca-Cola Bottling Midwest, 97 LA 166 (Daly, 1991) (discharge improper for theft where employer could not even show intent to steal by a preponderance of the evidence).

be required in others.[135] Similarly, where the proof was not strong enough to support discharge, some arbitrators have nonetheless found it strong enough to justify a lesser penalty.[136]

An arbitrator/law professor wrote:

> There is continuing controversy about burden of proof because it remains a legal fixture shoehorned into a private adjudicatory system. More to the point, arbitrators tend to use burden of proof as a make-weight to justify their conclusions. In any arbitration case, the neutral makes a decision based on the competing arguments and evidence. He or she will explain why one reading of the contract is preferable while pointing out the faults in the opposite reading. That is called decision making. The same goes on in discharge and discipline cases, although couched in burden of proof terms. Many arbitration decisions discuss the issue of quantum of proof, but that issue is camouflage. It is easier for an arbitrator to set aside a discipline or discharge on the asserted grounds that management failed to meet its burden of proof rather than by stating that management witnesses were lying. It is true, however, that the employer must convince the arbitrator what occurred. If it does, its discipline will likely be upheld.[137]

The evolution of the change in the use of the "clear and convincing" standard can be illustrated by a review of several recent awards. In *Century Link*,[138] the arbitrator adopted that standard for an employee discharged for dishonest conduct, including falsifying time records and job tickets. The arbitrator said that the standard is appropriate because it is one "adopted in civil cases involving fraud, undue influence and when a special danger of deception exists."[139]

In *Clean Harbors Deer Park L.P.*,[140] the arbitrator applied the standard for a case in which the employee was discharged for physically assaulting his supervisor. The arbitrator said that the "[u]nion correctly emphasizes the seriousness of the termination penalty, calling it 'Economic Capital Punishment.'"[141] The arbitrator continued that the "beyond a reasonable doubt" standard might be appropriate in cases involving moral turpitude, but not involving assault, for which a lesser standard should apply.

To complete the evolution, the arbitrator in *City of Bartlesville*[142] adopted the "clear and convincing evidence" standard because "discharge is the most severe penalty that can be imposed on an employee."[143]

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[135] *See* Proto Tool Co., 46 LA 486, 489 (Roberts, 1966); Catler-Magner Co., 38 LA 1157, 1159 (Graff, 1961); United States Steel Corp., 29 LA 272, 277 (Babb, 1957).

[136] *See* National Bedding & Furniture Indus., 48 LA 891, 893 (Hon, 1967); American Airlines, 47 LA 890, 896 (Sembower, 1966); Deere & Co., 45 LA 844, 845–47 (Davis, 1965); Braniff Airways, 44 LA 417, 421 (Rohman, 1965).

[137] ABRAMS, INSIDE ARBITRATION: HOW AN ARBITRATOR DECIDES LABOR AND EMPLOYMENT CASES (Bloomberg BNA 2013), at 208.

[138] 131 LA 1030 (Oberdank, 2013).

[139] *Id.* at 1038.

[140] 131 LA 1523 (Shieber, 2013).

[141] *Id.* at 1524.

[142] 131 LA 1502 (Williams, 2013).

[143] *Id.* at 1506.

Along the same lines, in *FCi Federal*,[144] which involved the discharge of a "secure forms" custodian for failing to check another employee's work, the arbitrator applied the "clear and convincing evidence" standard and reduced the discipline to a 3-day suspension.

Other arbitrators have continued to adhere to the "preponderance of the evidence" standard. The arbitrator in *Sysco Indianapolis*[145] held that the standard is sufficient even for "cases of criminal conduct, dishonesty and other conduct involving moral turpitude."[146]

Another arbitrator held that the "preponderance of the evidence" standard was appropriate for sexual harassment allegations.[147] In upholding the discharge, the arbitrator stated, in a footnote,

> In civil rights law, the quantum of proof to determine sexual harassment claims is the preponderance of the evidence. It appears to me that rather than to transfer evidentiary concepts from criminal law to the arbitration setting, it is more important to recognize that the evidentiary obligations of an employer in discharge cases under just cause standards is always high.[148]

Finally, some arbitrators have used a similar standard, but labeled it differently. In *Wyandotte County*,[149] the arbitrator explained that legalistic terms obscure the real objective of contractual interpretation and dispute resolution, so "rather than import such legalistic concepts as 'clear and convincing evidence' and 'reasonable doubt' into labor arbitration, I believe 'an arbitrator must always require the highest degree of proof so that he is certain in his own mind that the alleged conduct occurred and the penalty was warranted.'"[150]

In *City of Pasadena*,[151] the arbitrator used the substantial evidence standard in declining to uphold the 1-day suspension of a Texas police officer. The arbitrator said that the "preponderance of the evidence" rule had been used in many of the arbitrations he had heard involving police officers and firefighters, but he accepted the city's argument that the state supreme court held that cities need produce only substantial evidence to support a suspension. The arbitrator defined "substantial evidence" as "such relevant evidence as a reasonable mind might expect."[152]

b. Proof in Group Discipline Cases [LA CDI 94.60509; 118.01]

In a "slowdown" case, the evidence was not specific as to the work performance of each individual, but the employer was upheld in disciplining all crew members who were on the crew for the full period

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[144] 133 LA 1017 (Kravit, 2014).
[145] 133 LA 705 (Kininmonth, 2014).
[146] *Id.* at 714.
[147] Autoneum N. Am., 132 LA 1728 (Knott, 2014).
[148] *Id.* at 1742 n.19.
[149] 131 LA 1209 (Bonney, 2013).
[150] *Id.* at 1216.
[151] 131 LA 132 (Jennings, 2012).
[152] *Id.* at 139.

> The present Board, comprised solely of neutrals, is not empowered to make a final and binding award. Its Report, including recommendations, is designed to facilitate the subsequent and further collective bargaining of the parties. This Report is not intended to write the precise language of the collective bargaining agreement nor to determine the exact terms of settlement of the disputes between the parties. Rather, it is designed to suggest a relatively narrow area of settlement which the parties should explore constructively. The purpose of the Board is to present the facts, appropriate standards, and suggestions, in the hope that these will persuade the parties voluntarily to reach an agreement.[89]

4. SPECIAL CONSIDERATIONS IN PUBLIC-SECTOR INTEREST ARBITRATION

While dispute resolution in the private sector is bilateral—between employee and employer—in the public sector, it is trilateral, with three distinctly different interests to be accommodated—the employee, the particular governmental unit or agency as employer, and the public as voter, taxpayer, and consumer of services. Justice Stewart summarized this point in *Abood v. Detroit Board of Education*:

> The government officials making decisions as the public "employer" are less likely to act as a cohesive unit than are managers in private industry, in part because different levels of public authority—department managers, budgetary officials, and legislative bodies—are involved, and in part because each official may respond to a distinctive political constituency. And the ease of negotiating a final agreement with the union may be severely limited by statutory restrictions, by the need for the approval of a higher executive authority or a legislative body, or by the commitment of budgetary decisions of critical importance to others.
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> Finally, decisionmaking by a public employer is above all a political process. The officials who represent the public employer are ultimately responsible to the electorate, which ... can be viewed as comprising three overlapping classes of voters—taxpayers, users of particular government services, and government employees. ...
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> ...
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> Public employees are not basically different from private employees; on the whole, they have the same sort of skills, the same needs, and seek the same advantages. "The uniqueness of public employment is

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[89]Railroads, 34 LA 517, 522 (Dunlop, Aaron & Sempliner, 1960). The arbitration board also emphasized its responsibility to clarify the public interest in the dispute, to explain the dispute to the public, and thus "to bring to the bargaining table a further measure of public interest." *Id.* Another board explained that some emergency boards make recommendations only on the major subjects in dispute, while other boards deal with each submitted item. "Whatever technique is used, however, the underlying assumption is the same. The parties, following receipt of the Board's report, will be in a position to enter into a new collective bargaining contract which finally disposes of all requests of both employer and union." Pan Am. World Airways, 36 LA 1047, 1051 (Dash, Lynch & Stark, 1961).

not in the employees nor in the work performed; the uniqueness is in the special character of the employer." Summers, Public Sector Bargaining: Problems of Governmental Decisionmaking, 44 U. Cin. L. Rev. 669, 670 (1975) (emphasis added).[90]

Adding the governmental body to the alternative dispute resolution mix means mechanisms such as bargaining, mediation, fact-finding, and arbitration will inevitably take twists and turns that private-sector bargaining, mediation, and arbitration will not encounter. The case of *Florida v. Florida Police Benevolent Ass'n*[91] is instructive. In this case, the police union collectively bargained with its members' public employer for 17 1/3 hours per month of annual leave and 4 hours and 20 minutes of sick leave, which was permitted pursuant to the *Florida Administrative Code*.[92] The agreement further permitted employees to receive cash payments for leave accumulated above 240 hours, if the employee exchanged hours above 240 hours for cash.[93] After the agreement commenced, the legislature changed the terms. The annual leave was decreased from 17 1/3 hours to 13 hours per month, sick leave was increased from 4 hours and 20 minutes to 8 hours, and all hours above 240 were cancelled, thus eliminating the opportunity for cash payments in exchange for excess accumulated hours.[94] The union challenged the legislature's actions as infringing the rights its members obtained after collective bargaining.

The union succeeded at the trial and appellate level, but the Florida Supreme Court reversed. The court noted "public employee bargaining is not the same as private bargaining."[95] Although Florida precedent had held that "public employees have the same rights of collective bargaining as are granted private employees,"[96] the court noted "it would be impractical to require that collective bargaining procedures ... be identical in the public and the private sectors."[97] The court explained that while the private-sector experience could serve as a reference, the private sector "'will not necessarily provide an infallible basis for a monolithic model for public employment."[98] For example, public-sector bargaining requires political activity, but private-sector bargaining does not.[99] Furthermore, private-sector employees can be bound by bargained agreements, but public-sector

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[90]431 U.S. 209, 228–30 (1977).
[91]613 So. 2d 415, 142 LRRM 2224 (Fla. 1993).
[92]*Id.* at 416.
[93]*Id.*
[94]*Id.*
[95]*Id.* at 417.
[96]Dade County Classroom Teachers' Ass'n v. Ryan, 225 So. 2d 903, 905 (Fla. 1969).
[97]Florida v. Florida Police Benevolent Ass'n, 613 So. 2d 415, 417, 142 LRRM 2224 (Fla. 1993) (quoting Pennsylvania Labor Relations Bd. v. State College Area Sch. Dist., 461 Pa. 494, 500, 337 A.2d 262, 264–65 (Pa. 1975)).
[98]*Id.* (citing Pennsylvania Labor Relations Bd. v. State Coll. Area Sch. Dist., 337 A.2d 262, 264–65 (Pa. 1975)).
[99]*Id.* (citing Antry v. Illinois Educ. Labor Relations Bd., 552 N.E.2d 313 (Ill. App. Ct. 1990)).

employees require legislative approval and discretion that cannot be bargained away.[100]

States permit public-sector employee unions and public employers to engage in alternative dispute resolution as a remedy for solving bargaining impasses. As in the private sector, the most contentious issues generally involve financial interests, e.g., wages and benefits. While private-sector unions utilize alternative dispute resolution, they have the right to strike—a compelling inducement for private employers to resolve disputes before even considering whether binding alternative dispute resolution is appropriate and worthwhile. The right to strike generally does not belong to public-sector employees, because such employees provide services, often essential, to the public.[101] As a result, public-sector employers and unions may use alternative dispute resolution more than their counterparts in the private sector. Indeed, states have passed laws creating procedures for alternative dispute resolution as a remedy to reduce the incentive for employees, such as schoolteachers, to strike, or as a remedy for the inability of employees, such as police officers, to strike in the first place.[102]

Neutrals engaging in public-sector interest arbitration consider concerns that are not normally relevant in private-sector cases. One of those concerns—the need to attract and retain qualified public-sector employees in competition with the private sector—was the focus of a decision in a case involving police officers:

> [I]f the exacting requirements of police work are to be met in the near and more distant future, at least two conditions must be recognized: the level of pay must be high enough to attract able and promising young people who will be able to withstand the lure of higher wages at less dangerous work in plants in the surrounding communities in the general labor market and the compensation system should be one that will maintain the highest possible morale and esprit de corps in the present force.[103]

Another arbitrator "adopted the principle that Police Department personnel should receive compensation which is sufficient to

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[100]*Id.* at 418 (citing City of Springfield v. Clouse, 206 S.W.2d 539 (Mo. 1947), and Communications Workers v. Union County Welfare Bd., 315 A.2d 709, 715 (N.J. Super. Ct. App. Div. 1974)).

[101]*See* Kirschner, Labor Management Relations in the Public Sector: Introductory Overview of Organizing Activities, Bargaining Units, Scope of Bargaining, and Dispute Resolution Techniques (American Law Inst. 1998) (noting that 38 states have no-strike laws for public employees, 22 of which specify penalties) (cited on Westlaw as SD09 ALI-ABA 271).

[102]Mukamal, *Unilateral Employer Action Under Public-Sector Binding Interest Arbitration*, 6 J. L. & COM. 107, 109–10 (1986).

[103]City of Providence, R.I., 47 LA 1036, 1039 (Seitz, 1966). *See also* City of Garfield, N.J., 70 LA 850, 855 (Silver, 1978). In *City of Birmingham, Mich.*, 55 LA 716, 723 (Roumell, Jr., 1970), the arbitrator stated that police officer compensation "should receive relative improvement as compared to other types of employees because of the changing duties and responsibilities of their jobs."

maintain reasonable standards of health and decency without the necessity to hold alternate employment."[104]

With particular reference to firefighters, one arbitrator pointed out that "[t]he City has a fiscal interest in maintaining the quality and morale of its firefighting forces since the fire insurance rates to business and the attractiveness of doing business in Providence are influenced in part by the costs of fire protection."[105] The same considerations underlay a factfinder's recommendations for increases in teacher salaries. The factfinder observed that if the school district were to remain in a competitive position to attract competent, experienced teachers, retain valuable staff, and encourage the pursuit of advanced degrees and training, adequate raises had to be given.[106]

The state of Minnesota enacted a law introducing a new criterion for arbitrators to apply comparable worth. The statute requires every political subdivision to "establish equitable compensation relationships between female-dominated, male-dominated, and balanced classes of employees. . . ."[107] In all interest arbitrations, arbitrators are required to consider various "equitable compensation relationship standards," as well as "other standards appropriate to interest arbitration."[108]

This statute has been the subject of interpretation in several reported arbitral decisions. In one case, the arbitrator adopted the public employer's position on wages because it took the statute into account, while the union's position did not.[109] In another decision, the arbitrator rejected the employer's position of no wage increase partly because of a comparable worth study.[110] The arbitrator said that pay equity was only one factor to be considered and that arbitrators could not "totally ignore historical comparisons, both external and internal."[111] Yet another arbitrator ruled that the statute can be used "to decelerate the rates of increases for overcompensated employees

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[104]City of Uniontown, Pa., 51 LA 1072, 1073 (Duff, 1968). However, this arbitrator could find no compelling reason to classify police department employees as a special group entitled to more holidays or vacation time than other city employees. *Id.* at 1075. *See* City of Providence, R.I., 47 LA 1036, 1039 (Seitz, 1966) (agreeing that "moonlighting" by police officers should be discouraged by an adequate police wage).

[105]City of Providence, R.I., 42 LA 1114, 1119 (Dunlop, Pierce & Hoban, 1963). *See also* City of Burlington, Iowa, 68 LA 454, 456 (Witney, 1977) (fire insurance rates); City of Boston, Mass., 70 LA 154, 157 (O'Brien, 1978) (speaking of the public's "interest in a well-trained, efficient and motivated fire suppression force" and recognizing the great hazards "inherent in this profession"); City of Berwyn, Ill., 66 LA 992, 998 (Sembower, 1976).

[106]Whitesboro Teachers Ass'n, 51 LA 58, 61 (Bickal, 1968). *See also* Pittsfield, Mass., Sch. Comm., 51 LA 1134, 1135–38 (Young, 1968) (teachers); Emmet County, Mich., Rd. Comm., 62 LA 1310, 1312 (Shaw, 1974) (mechanical employees).

[107]MINN. STAT. §471.992 subd. 1 (2002).

[108]*Id.* subd. 2. Under MINN. STAT. §471.995 (2002), a public employer must submit a report to the exclusive representatives of their employees that identifies "the female-dominated classes in the political subdivision for which compensation inequity exists, based on the comparable work value . . . ."

[109]County of Carver, Minn., 91 LA 1222 (Kanatz, 1988).

[110]City of Blaine, Minn., 90 LA 549 (Perretti, 1988).

[111]*Id.* at 551.

while attempting to bring undercompensated employees to a more equitable relative position."[112]

Not all interest-arbitration awards issued in public-sector impasse proceedings are binding on the governmental employer and enforceable in court. When a police union sued the city of Fairbanks during the course of negotiations for failure to comply with the terms of an earlier award, the court decided that legislative approval of collective bargaining contracts was a customary requirement, and a provision of state law to the effect that terms in labor contracts involving monetary commitments were subject to legislative approval was applicable to interest-arbitration awards.[113]

In *Village of Sherwood,*[114] a union proposal that it be allowed to use arbitration, as well as access to the village board, to challenge suspensions and discharges was adopted. The arbitrator pointed to a state law that mandated use of arbitration unless the parties agreed to other procedures, and said that because the issue was at impasse, the parties had not agreed to other procedures. Further, the arbitrator observed that: (1) the U.S. Supreme Court has emphasized the value of grievance arbitration; (2) the union had no input in the selection of the village board members; (3) more comparable communities had adopted arbitration than had declined to do so; and (4) arbitration is speedier, being final and binding, while the village board decisions are subject to court review.

5. PUBLIC-SECTOR INTEREST-ARBITRATION LEGISLATION

A. Scope of Public-Sector Arbitration Legislation

Most states have enacted legislation governing labor relations in part or all of the public sector.[115] In some states, there are also local

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[112]County of Kanabec, Minn., 93 LA 479, 482 (Ver Ploeg, 1989).

[113]Fairbanks Police Dep't Chapter v. City of Fairbanks, 920 P.2d 273, 154 LRRM 2791, 2793 (Alaska 1996).

[114]125 LA 1427 (Wolff, 2008).

[115]*See Validity and Construction of Statutes or Ordinances Providing for Arbitration of Labor Disputes Involving Public Employees*, 68 A.L.R.3D 885. The Maine statute provides for final and binding arbitration for judicial employees on matters other than salary, pension, and insurance. On these topics, the arbitrator can make only advisory recommendations. ME. REV. STAT. ANN. tit. 26 §1285.4(B) (West 2002). By contrast, the Hawaii statute provides that the parties "may mutually agree" to submit their differences to final and binding arbitration if their impasse has lasted at least 30 days. HAW. REV. STAT. ANN. §89–11(b)(3) (Michie 2002). In Illinois, "[t]he parties may, by mutual agreement, provide for arbitration of impasses resulting from their inability to agree upon wages, hours and terms and conditions of employment to be included in a collective bargaining agreement." 5 ILL. COMP. STAT. ANN. 315/7 (West 2002). *See also* MINN. STAT. §179A.16 (2002); WASH. REV. CODE ANN. §41.56.111 (West 2002). A statute specifically addressing security employees, peace officers, and firefighter disputes provides: "If any dispute has not been resolved within 15 days after the first meeting of the parties and the mediator, or within such other time limit as may be mutually agreed upon by the parties, either the exclusive representative or employer may request of the other, in writing, arbitration, and shall