Analysis of Cleveland Police Disciplinary Arbitrations 2014 - 2018

Report for the Cleveland Community Police Commission's Accountability Work Group

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Introduction

On November 13, 2014, Tanisha Anderson died while in custody and care of the Cleveland Police. Her death was ruled a homicide. The two responding officers, Scott Aldridge and Bryan Myers were cleared of any criminal wrong doing by a Cuyahoga County grand jury, though the City settled the wrongful death lawsuit brought by Anderson's family for 2.25 million dollars[1].

In 2018, Scott Aldridge was given a 10 day suspension for his conduct leading up to Tanisha Anderson's death. In 2019, the Cleveland Police Patrolmen's Association (CPPA) appealed the suspension to an arbitrator, Nels Nelson, who ruled in favor of the union and Aldridge. The suspension was reduced from 10 days to 3 days. Nelson argued that the 10 day suspension was not in line with previous suspensions for similar cases and that Aldridge had no prior disciplinary history on his file. This decision caused controversy in Cleveland, as did the grand jury verdict four years earlier[2].

In 2018, Timothy Loehmann and the CPPA went to arbitration to contest his firing the previous year; James Rimmel, the arbitrator, ruled in favor of the City of Cleveland. This March the CPPA appealed his ruling to Cuyahoga County Common Pleas Court. Loehmann was fired for providing false information regarding his previous employment. Both the arbitration and this appeal have caused controversy in Cleveland, as Loehmann is best known for his involvement in the death of Tamir Rice, which did not result in criminal charges, but the City settled a wrongful death lawsuit by Rice's family for 6 million dollars[3].

These two high profile cases, and the amount of commentary they generate, demonstrate a great amount of public interest in the topic of police discipline. They also reveal a deep polarization of personal feelings about punishment of Cleveland Police Officers and organizational justice in the division. These feelings can create perceptions of "systemic" deficiencies, organizational injustice, or spur the growth of urban legends that are counterproductive to building trust between the police and citizens.

The Commission's Accountability Work Group seeks to analyze trends in police discipline and determine facts related to how it is affected by the Consent Decree. This document will look specifically at the arbitration process as it occurred between 2014 and 2018.

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[1] Cleveland Plain Dealer, March 3, 2019
[2] Cleveland Plain Dealer, Feb 22, 2018
[3] Cleveland Plain Dealer, Feb 19, 2019

Background

For this report, quantitative and qualitative analysis was performed on the court-filed rulings made by third party arbitrators for disciplinary cases brought by the Fraternal Order of Police (FOP) and the CPPA against the City of Cleveland for every year between 2014 and 2018. This analysis looks for patterns in the rational for dismissing or sustaining the appeals, either partially or in full. Outcomes and awards will be broken down and analyzed by arbitrator, year, officer demographics, supervisor, performance history, charges against the officer, and original disciplinary action, if applicable.

These arbitrations are brought by either the FOP or CPPA against the City, with the unions disputing particular disciplinary action against one or more of their officers. In 2014, changes were made to the disciplinary matrix of the Cleveland Division of Police. It is important to remember that not all disciplines are brought up to arbitration, and that the unions are careful which cases they send, as these cases can be used as precedent later. The research questions of which cases are chosen and why is outside the scope of this document.

Methods

Data for this project comes from the arbitrators' decisions, which are filed with the court and are publically available. Qualitative analysis for this project was performed in Nvivo. Quantitative analysis was performed using a calculator with tables made in Nvivo. As an aside, the statistical technique used to compare outcomes was a z-test comparing population proportions. For this statistic two numbers are calculated for each comparison, a p-score and a z-score. Briefly, the lower the p-score, the more statistically significant the difference between two populations; for this project, the cutoff point for significance is $p=0.10$. Inversely, the higher the z-score the more substantial the difference between two populations. E.*g.,* a low p-score and high z-score mean that there is a real difference between the two population groups being compared. For this analysis, only two groups can be compared at once.

Summary of Findings

- The majority of cases are sustained, either partly or fully, with the Unions prevailing approximately 67% of the time.

- It is possible that arbitrators' desire for "balance" might be skewing the cases more in favor of being sustained.

- Evidence suggests that white officers are more likely to have their cases sustained than officers of color, but more data is needed before any firm conclusion can be drawn.

- There is not enough data to determine if there is a difference in outcomes by gender, but it appears that women might be more likely to have their cases sustained then men.

- Rank seems to have little influence on outcome.

- The majority of disciplinary procedures were initiated by the administration rather than the officer's immediate supervisor.

- Despite some arbitrators suggesting that it does not matter, performance history appears to have a strong influence on outcome; those officers whose performance history is mentioned by the arbitrator were more likely to have their cases sustained.

- Level of discipline had a significant effect, with Class I and II offences more likely to be sustained than Class III.

- The arbitrators' explicit rationale for the decisions were very consistent across the board, in that almost every arbitrator appealed to both precedent and adherence to the letter of policies.

Overall Outcomes

Graph 1: Arbitration Outcomes
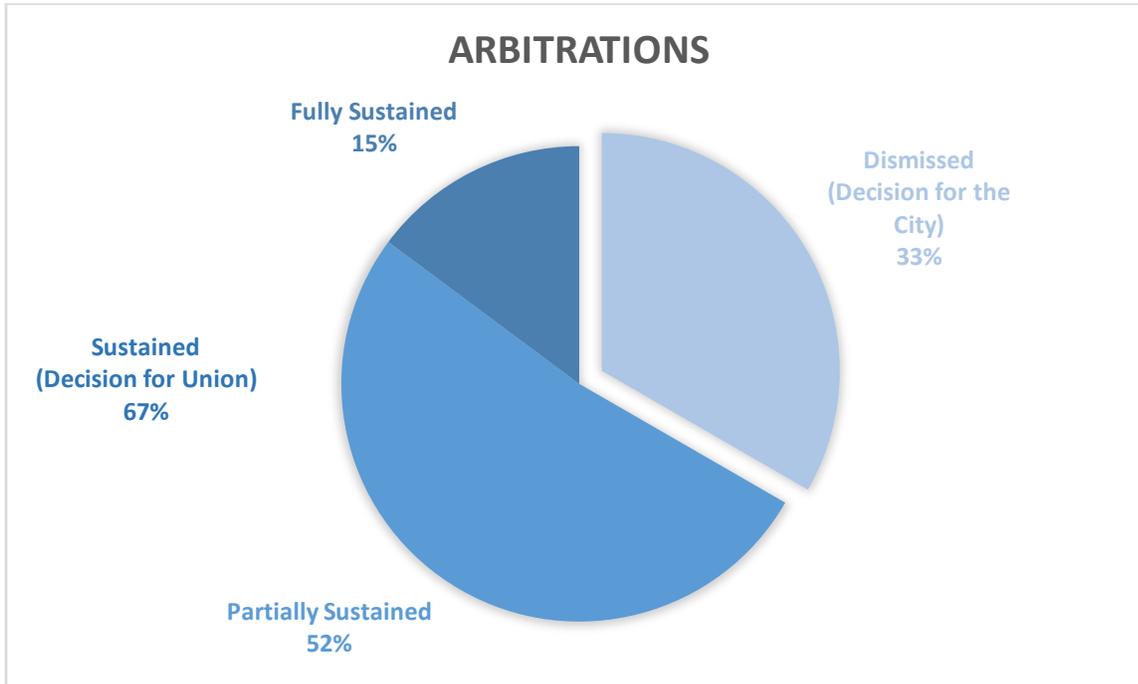
Overall, 67% (36 cases) of arbitrations were sustained, with 52% (28) partially sustained and 15% (8) fully sustained; they were dismissed 33% (18) of the time. Sustained means that the disciplinary action is in some way changed (*i.e.*, the City loses the arbitration), with fully sustained meaning that the charges against the officer were thrown out completely, and partially sustained meaning that while the officer still faced discipline, their punishment was reduced. Some arbitrators use the phrase "sustained in part, dismissed in part," or something to that effect, to describe partially sustained. Two thirds of all arbitration cases were won by the Unions, the CPPA and the FOP.

These results are similar to those in other cities, including Pittsburg (70% sustained)[1], Philadelphia (74%)[2], Columbus (74%)[3], and Oakland (75%)[4].

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[1] Pittsburg Post-Gazette
[2] Philadelphia Inquirer
[3] Columbus Dispatch
[4] CBS - KPIX

Arbitrators

Table 1: Outcomes by Arbitrator

Arbitrator	Dismissed	Sustained	Fully	Partly	Total
Heekin	7	5	0	5	12
Nelson	5	4	0	4	9
Cohen	2	3	3	0	5
Minni	0	5	4	1	5
Alutto	1	3	0	3	4
Gerhart	0	3	0	3	3
Heron	0	3	0	3	3
Stein	0	3	0	3	3
Zieser	0	3	1	2	3
Rimmel	3	0	0	0	3
Allport	0	1	0	1	1
Belkin	0	1	0	1	1
Kasper	0	1	0	1	1
Mancini	0	1	0	1	1
TOTAL	18	36	8	28	54

Looking at outcomes by arbitrator, a noticeable pattern emerges. Of the 4 arbitrators who had more than 5 cases, three of them were fairly even in their rulings, with a roughly equivalent number of dismissed and sustained cases. Of the 10 arbitrators who oversaw 4 or fewer cases, all but 2 sustained every case. Only one officer, Rimmel, dismissed all of their cases. Arbitrators who see only a handful of cases are overwhelmingly likely to rule in favor of the Unions. Inversely, the more cases an arbitrator presides over, the more likely they are to rule for the City. One possible explanation for this is that arbitrators naturally try to be "evenhanded" in their rulings. This tendency has been noted before among arbitrators, so their decisions trend towards a middle ground or splitting the difference (Iris, 1998[1]; 2002[2]). Arbitrators who only preside over only a few cases might perceive the "middle" as partially sustained, as it is can be perceived as option in between the other two, even if it counts as a win for the Unions. Arbitrators who rule on many cases might start to interpret the process as having two, more binary outcomes so their rulings start to reflect an evenhandedness between wins for the City and the Unions.

Arbitrators are selected in one of two ways. The first option is to have a panel of three arbitrators decide the case, with on arbitrator chosen by the respective union, one chosen by the city, and the third chosen by the other two, or the third is selected via the strike off method from a list of seven arbitrators provided by the American Arbitration Association (AAA). The second method is to just empanel one arbitrator, chosen via the strike off method from a list of seven arbitrators provided by the AAA[3]. This second option was used for all disciplinary cases.
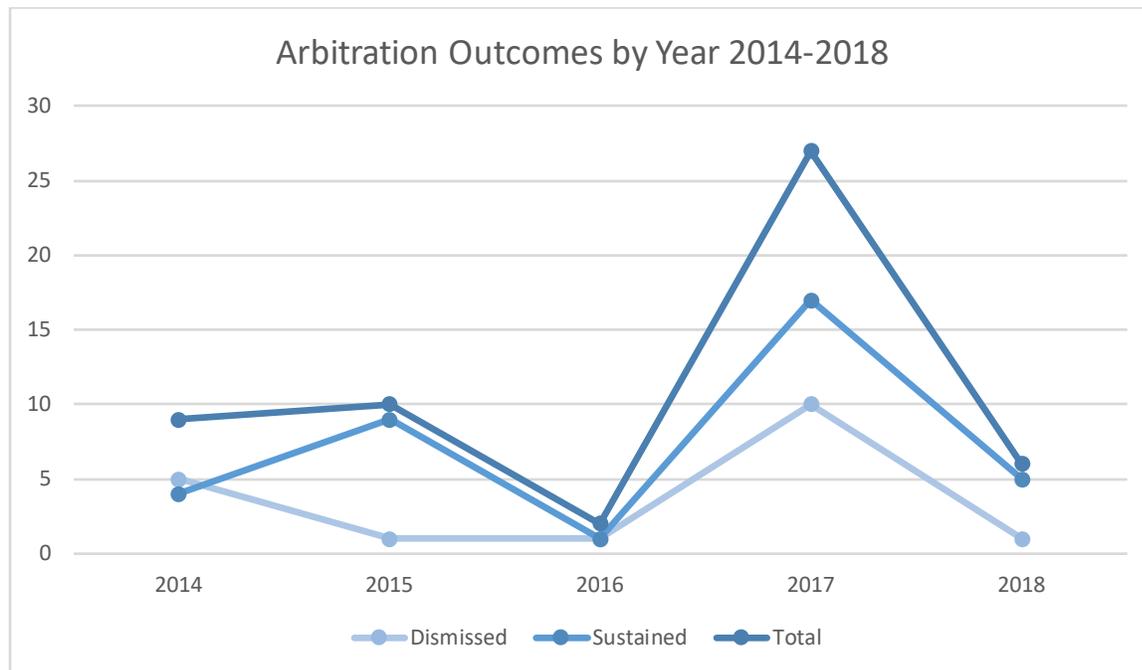
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[1] Police Discipline in Chicago
[2] Police Discipline in Houston
[3] Collective Bargaining Agreement between the City and the CPPA (Article XXIII, page 46)

Changes over Time

Graph 2: Outcomes by Year

Arbitration Outcomes by Year 2014-2018

Given the relatively brief period of time and limited number of cases it is not really possible to discern much of a pattern with this data, other than that there is a fair amount of fluctuation in the number of cases each year. However, there some interesting anecdotal observations in the data. The only year that there were more dismissed cases than sustained was 2014, the last year of the previous disciplinary regime; whereas, the first year after the new matrix was implemented, 2015, saw the largest disparity: 9 of the 10 case that year were sustained. 2016 saw only two case, one sustained and one dismissed. 2017 was not so evenly divided with 10 dismissed and 17 sustained, the year closest to the overall ratio. 2018 saw fewer cases, with only 1 case dismissed and 5 sustained.

Cases are typically resolved between 12 and 14 months after the disciplinary procedure is initiated. The AAA guidelines note an average of 297 days between filing for an arbitration and the decision being issued[1]. The city and union have 60 days to file for arbitration after the disciplinary procedure is initiated[2]. Given this time frame, the police disciplinary arbitration process is close to the AAA's average.

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[1] AAA Arbitration Road Map
[2] Collective Bargaining Agreement between the City and the CPPA (Article XXIII, page 46)

Officer Demographics

Race

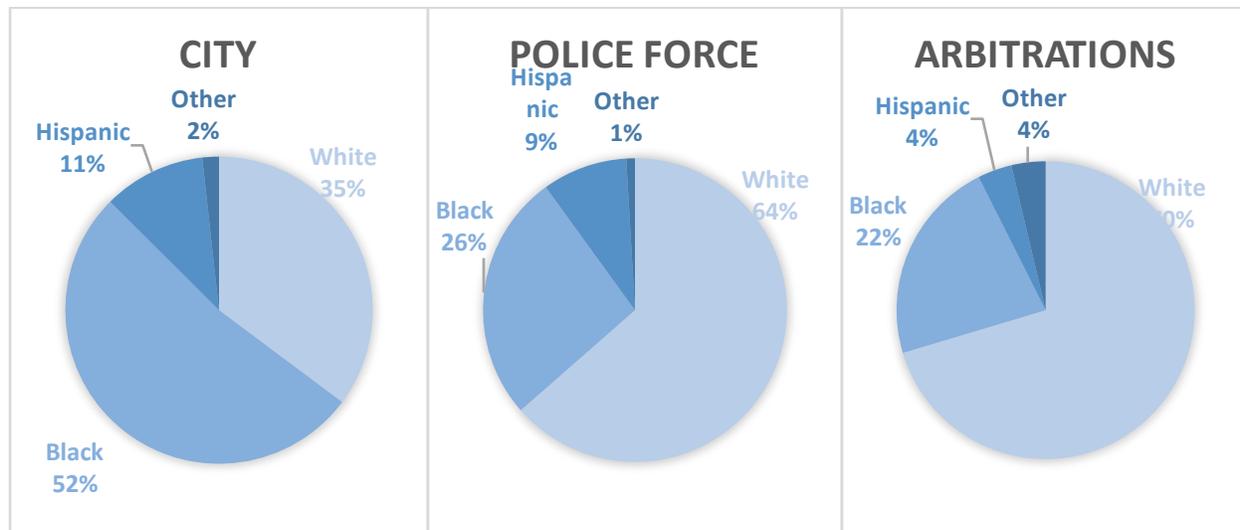Chart 3: City of Cleveland, the Police Force, and the Officers seeking Arbitration by Race[1]

Table 2: Outcomes by Race

Race	Dismissed	Sustained	Fully	Partially	Total
White	11	27	7	20	38
Black	6	6	1	5	12
Hispanic	1	1	0	1	2
Unspecified[2]	0	2	0	2	2
Total	18	36	8	28	54

As seen in Chart 3, while Blacks make up 52% of the population of the City of Cleveland they make up only 26% of the city's police officers and 22% of the officers the unions seek arbitration for disciplinary matters. This is, potentially, an important dynamic to consider when looking at the differences in outcomes for white officers and officers of color. As seen in Table 2, above, white officers had their cases sustained 27 out of 38 (71%) times, whereas officers of color only won 7 out of 14 (50%) of the time. This difference approaches statistical significance ($p=0.17$, $z=1.41$) and would likely be statistically significant if there were a few more cases.

Given the small sample size, this is arguably sufficient to say that race and ethnicity likely influence the outcome of arbitration. The explanation for this is likely straightforward, as bias against people of color is observed in other academic research in criminal justice and law enforcement. Again, though, more observations will be needed to offer a more definitive answer.

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[1] Data from Governing.com
[2] In two cases, race could not be determined.

Gender

Table 3: Outcomes by Gender

Gender	Dismissed	Sustained	Fully	Partially	Total
Male	17	30	7	23	47
Female	1	5	1	4	6
Unspecified [1]	0	1	0	1	1
Total	18	36	8	28	54

Similar to race, there does appear to be a noticeable difference in the outcomes for men and women, with women's cases sustained 5 out of 6 times, compared to men's 30 out of 47 times (83% vs. 64%). However, because there are comparably so few women, there is not a statistically significant difference nor does it approach statistical significance (p=0.36, z=0.82). Gender is, indeed, still likely to be a factor in these decisions, but there is not enough women in this sample to say that definitively.

Rank

Table 4: Outcomes by Rank

Rank	Dismissed	Sustained	Fully	Partially	Total
Captain	0	1	0	1	1
Lieutenant	0	2	0	2	2
Sargent	5	8	4	4	13
Patrol Officer	12	22	1	21	34
Cadet	1	3	3	0	4
Total	18	36	8	28	54

There is no evidence that rank has bearing on the outcomes of arbitrations. Higher ranking officers' (the Captain, Lieutenants, and Sergeants) cases were sustained 11 out of 16 times (69%) and Patrol Officers and Cadets' cases were sustained 23 out of 38 ties (68%) (p=0.58, z=0.56). Though, it is worth noting that, the highest ranking officers, the Captain and two Lieutenants, all had their cases sustained. Still, this is only three cases, so it is hard to draw any definitive conclusions from this.

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[1] In one case, gender could not be determined.

Supervisor

Table 5: Outcomes by Supervisor Status

Recommending	Dismissed	Sustained	Fully	Partially	Total
Supervisor	3	7	3	4	10
Administration	15	29	5	24	44
Total	18	36	8	28	54

The majority of disciplinary procedures were initiated by the administration, usually one of the disciplinary review boards, rather than the officer's immediate supervisor. For the ten cases that were initiated by the superior officer, only Sgt. Shawn Smith, of the Cleveland Police Academy, who wrote up the three cadets, and Lt. Patrick Petranek initiated the discipline for more than one officer. Most often when the immediate supervisor was mentioned during the arbitration, they often seemed to support the officer, but these sentiments were not usually clear enough to accurately or confidently categorize.

Officer Performance

Table 6: Outcomes by Officer Performance, as noted by Arbitrator

Performance	Dismissed	Sustained	Fully	Partially	Total
Positive	0	14	1	13	14
Negative	2[1]	2	0	2	2
Irrelevant	0	6	4	2[1]	6
Not Mentioned	16	14	3	11	30
Total	18	36	8	28	54

Only four arbitrators mentioned an officer's poor performance in the explanations for their rulings. Two of the arbitrators, Minni and Heron, explicitly said that an officer's previous record should not weigh on the outcome (if not the punishment), both ruled to sustain in all of the cases before them. One arbitrator, Heekin, said the opposite: that it is relevant, though he ruled in favor of the unions and city in about equal measure, 7 cases sustained and 5 dismissed. Rimmel mentioned it only in the case of the officer involved in the Tamir Rice incident, though he was the only arbitrator to dismiss every case. Every other time performance history was mentioned, it was described as a potential mitigating factor regarding punishment. Interestingly, the city only mentioned negative performance history in 4 cases.

In Table 6, the outcomes by officer performance are broken down by whether the arbitrator mentioned: (1) something positive about the officer's previous performance, (2) something negative about it, (3) said it was irrelevant, or (4) did not mention officer performance. An arbitrator mentioning performance at all when explaining the rational for their decision, even if they said something negative about it, had a strong and statistically significant influence on the outcome, with 22 out of 24 cases (92%) sustained with past performance is mentioned, but only 16 out of 30 cases (53%) sustained when it is not ($p=0.005$, $z=3.12$).

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[1] Four officers had their disciplinary records mentioned in a negative way by the city.

Additionally, the two times that past performance was mentioned and the case was dismissed were cases where past performance was mentioned in a negative context. This means that every time past performance was mentioned in the arbitrator's rational in a positive or neutral way, the officer won the arbitration. Many arbitrators mentioned that they do not consider an officer's past when examine the merits of the case, but it seems that even mentioning an officer's performance history is a good indication of how they intend to rule. This is important to consider, because past disciplinary history is supposed to have no bearing on present discipline.

Class of Offence

Table 7: Outcomes by Class of Offence

Charges	Dismissed	Sustained	Fully	Partially	Total
Class I	1	9	3	6	10
Class II	3	9	0	9	12
Class III	14	18	5	13	32
Total	18	36	8	28	54

As seen in Table 7, class of offence has a significant relationship with outcome. Class I and II offences are sustained 18 out of 22 times (81%), whereas Class III offences are only sustained 18 out of 32 times (58%) (p=0.09, z=1.76). Possible explanations for this is that more serious cases are face a higher threshold of scrutiny from the arbitrator or are supported by more unambiguous evidence than less serious ones.

Punishment

Table 8: Changes in Discipline by Outcome

Discipline	#	Dismissed (unchanged)	Demotion	Suspension (10+ days)	Suspension	Reprimand	Sustained (none)
Termination	10	3	1	5	0	1	1
Demotion	2	0	2[1]	0	0	0	0
Susp. 10+	19	11	-	2[2]	1	1	4
Suspension	19	4	-	-	7[2]	8	0
Reprimand	3	0	-	-	-	0	3
Total	54	18	3	7	8	10	8

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[1] length of demotion was shortened
[2] duration of suspension was reduced

Table 8.1: Totals, Before and After Arbitration

Discipline	Before	After
Termination	10	3
Demotion	2	3
Susp. 10+	19	18
Suspension	19	12
Reprimand	3	10
None	0	8

Table 8.2: Termination outcomes by Arbitrator and Officer Performance

Case	Outcome	Arbitrator	Officer performance
Brelo	Dismissed	Heekin	Not Mentioned
Buford	Fully Sustained	Zieser	Positive
Diaz	Partly Sustained	Heekin	Positive
Ereg	Partly Sustained	Heekin	Positive
Hannah	Partly Sustained	Gerhart	Positive
Loehmann	Dismissed	Rimmel	Negative
O'Donnell	Partly Sustained	Heekin	Positive
Sabolik	Partly Sustained	Heekin	Positive
Smith	Dismissed	Alutto	Not Mentioned
Wilson	Partly Sustained	Nelson	Positive

One interesting observation from this data is that of the 10 terminations, 7 were reversed. Though this is close to the percent of arbitrations the Union won, this goes somewhat against the previous results that showed that more serious Class III disciplines are more likely to be dismissed. However, there might be a link between this and officer performance.

Table 8.2 looks at the 10 terminations by outcome, arbitrator, and that arbitrator's mention of officer performance. Every case where the arbitrator mentions positive performance, the firing is reversed. If they do not mention past performance or mention something negative, then the termination is upheld. It could well be the case that the arbitrator is, inadvertently or not, mentioning the officer's history to, in effect, humanize them. A termination has a major impact on an officer's livelihood and career, so cases involving a termination may weigh more heavily on an arbitrator, possibly necessitating a fuller examination of the offer's past.

Quantitatively, terminations account for 10 out of 54 cases, but account for 7 of the 14 positive mentions; this means there is a statistically significant difference between the termination and non-termination cases as it relates to positive mentions (70% positive mention for terminations, 16% positive mentions for non-termination cases; $p=0.01$; $z=3.51$). Among the arbitrators Heeken saw the most termination cases, at 5, he was also the only arbitrator to explicitly mention past performance as a rational for a case's outcome.

Rational

So far this analysis has examined what factors might influence an arbitrator's ruling in a case; interestingly, what the Arbitrators themselves have to say about their rational is often rather brief and vague—these rulings alone are not enough to get into their heads, per se.

Almost every arbitrator ruled based on one of two things: they said that they were ruling in accordance with the letter of the policy based on the available evidence or they appealed to precedent. The appeal to the evidence and law is frustratingly vague and offers little depth to their rational, but is not a policy concern.

The second type of rational, however, is a policy concern. Precedent is not supposed to be used as a basis for decision making since the new matrix was put into place. It is important to know that, the term "precedent" itself is rarely used by arbitrators, and, if it is, it is for technical issues not explicitly related to their decision. The precedent being applied to refers to previous disciplinary actions (*e.g.,* to bring this case in line with previous cases). The majority of cases that reference precedent are from 2014, before the new matrix was adopted. Two arbitrators, however, Heron and Alutto ruled in arbitrations that cited some type of precedent after 2015. This was the way they condensed the rational for their ruling. Only Heeken ever suggested that an individual officer's past performance was relevant, and his decisions were more evenly split.

Possible Future Research

This analysis raises many important research questions to delve into in the future. Some of these possible research questions are:

- What are other possible explanations for the disparity in success rates between the Unions and the City?
- What are the differences between those cases that are sent arbitration and
- Looking at disciplinary notifications (DNs) to see if there are racial, gender, and rank disparities.
- Do racial, gender, or rank disparities exist in other aspects of the disciplinary process?
- How have the changes made to the disciplinary matrix affected other aspects of the disciplinary process?
- How do supervisors and administrators influence the disciplinary process?
- Do externalities influence the disciplinary process?
- What could be done to make the City and Unions feel better about the arbitration process in particular and the disciplinary process in general?

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