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Judicial Review of Teacher-School Board Grievance Arbitration: An Extended Empirical Analysis

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JUDICIAL REVIEW OF TEACHER-SCHOOL BOARD GRIEVANCE ARBITRATION: AN EXTENDED EMPIRICAL ANALYSIS

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In recent years, the overall state law framework for teacher-school board collective bargaining has undergone limited revisions. The basic distribution has been that approximately two-thirds of the state laws authorize collective bargaining for public school teachers, with the remaining state laws either silent or prohibitive.[1] During the past fifteen years, a few states have curtailed or eliminated their applicable laws, with the leading respective examples being Wisconsin and Tennessee, and at least one state, Virginia, shifting in favor of collective bargaining.[2]

The courts have added few direct revisions.[3] The Supreme Court's ruling that agency shop provisions in public sector collective bargaining agreements (CBAs) violate the First Amendment poses an indirect effect in terms of teacher union membership.[4]

The majority of these state laws that provide for teacher-board collective bargaining include grievance procedures as mandatory subjects of bargaining.[5] Yet, despite its importance as the culminating, binding, and third-party step in the grievance process under CBAs, teacher-

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1. *E.g.*, Alyssa Rafa et al., *Teacher Employment Contract Policies: Does State Policy Allow Collective Bargaining?*, EDUC. COMM'N OF THE STATES, https://reports.ecs.org/comparisons/teacher-employment-contract-policies-09 (Jul. 29, 2020).

2. *E.g.*, JOHN E. SANCHEZ & ROBERT D. KLAUSNER, STATE & LOC. GOV'T EMP. LIAB. § 16.2 (2022) (reporting Wisconsin's curtailment and Tennessee's elimination of collective bargaining for teachers in 2011 and Virginia initiating this right in 2020).

3. Laborer's Loc. 236, AFL-CIO v. Walker, 749 F.3d 628 (7th Cir. 2014) (ruling that Wisconsin's legislation curtailing teachers' collective bargaining rights did not violate First Amendment petition and association clauses or Fourteenth Amendment equal protection); State *ex rel*. Ozanne v. Fitzgerald, 798 N.W.2d 436 (Wis. 2011) (rejecting challenges to same state legislation that curtailed teachers' collective bargaining rights); Am. Fed'n of Tchrs v. Ledbetter, 387 S.W.3d 360 (Mo. 2012) (ruling that the state constitution requires school boards to collectively bargain in good faith with the teachers' union).

4. Janus v. AFSCME, 138 S. Ct. 2448, 2486 (2018); *see also* Ysursa v. Pocatello Educ. Ass'n, 555 U.S. 353 (2009) (ruling that state law that banned dues deduction does not violate First Amendment). For the effect, *see* Daniel DiSalvo & Michael Hartney, *Teachers Unions in the Post* Janus *World*, 20 EDUC. NEXT 46 (2020), https://www.educationnext.org/teachers-unions-post-janus-world-defying-predictions-still-hold-major-clout/ (predicting the membership losses will be modest and slow based on buffering state law revisions in various affected states).

5. *See* Emily Workman, *State Collective Bargaining Policies for Teachers*, EDUC. COMM'N OF THE STATES, https://www.ecs.org/clearinghouse/99/78/9978.pdf (Dec. 2011). Much of the text in the introduction and in the "Legal Backdrop" section has been republished from the most recent of the two successive predecessor articles. Perry A. Zirkel, *Teacher-School Board Grievance Arbitration in Court: Updated Facts and Figures*, 73 DISP. RESOL. J. 67, 72–73 (2018) [hereinafter Zirkel 2018].

board arbitration has received scant scholarly attention.[6] Although an occasional study has examined grievance arbitration awards for one or more issues within the public school sector,[7] judicial review of teacher-school board grievance arbitration has largely escaped recent and systematic scholarship.

The purpose of this article is to synthesize and update the previous limited line of empirical analyses of court rulings specific to grievance arbitration under a teacher-school board CBA. The first part provides the legal backdrop for this empirical analysis. The second part reviews the pertinent previous research. The final part reports and discusses the updated findings for the seventeen-year period from 2006 through to the end of 2022.

I. LEGAL BACKDROP

The applicable posture and standards for judicial review of teacher-board grievance arbitration awards are the result of three successive legal frameworks. Serving as only indirect templates, the first two frameworks, as explained in more detail elsewhere,[8] are the Federal Arbitration Act (FAA) of 1925 and the *Steelworkers* Trilogy of Supreme Court decisions in 1960.[9] The third and final framework consists of the state laws and court decisions that directly deal with judicial review of teacher-board grievance arbitration.

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6. *E.g.*, Frederick M. Hess & Andrew P. Kelly, *Scapegoat, Albatross or What?: The Status Quo in Teacher Collective Bargaining*, in COLLECTIVE BARGAINING IN EDUCATION 53, 85 (Jane Hannaway & Andrew J. Rotherham ed., 2006) (observing that "[g]rievance arbitration is a quasilegal, poorly understood process [that despite its importance] . . . has largely escaped . . . scholarly . . . attention").

7. *E.g.*, Harvey M. Shrage & Curt Hamakawa, *The Impact of Teacher Collective Bargaining Agreements on High School Coaches*, 27 MARQ. SPORTS L. REV. 373 (2017) (providing non-empirical examination of arbitration awards specific to secondary school coaches from 2009 to 2014); William J. Walsh & Sheila Vicars-Duncan, *Disciplining Public School Employees for Off-Duty (Mis)Conduct: A Review of Arbitration Decisions*, 30 J. COLLECTIVE NEGOT. 337 (2005) (summarizing ten arbitration awards specific to discipline for off-duty conduct); *cf*. Richard A. Bales, *COVID-Related Arbitration Awards in the United States and Canada: A Survey and Comparative Analysis*, 37 OHIO ST. J. DISP. RESOL. 1 (2020) (canvassing labor arbitration awards specific to COVID-19, including two that were specific to public school teachers).

8. *E.g.*, Michael H. LeRoy & Peter Feuille, *Happily Never After: When Final and Binding Arbitration Has No Fairy Tale Ending*, 13 HARV. NEGOT. L. REV. 167, 173–82 (2008) (discussing the standards for judicial review of arbitration awards under the FAA).

9. Commercial arbitration under the FAA and unionized labor arbitration under the *Steelworkers* Trilogy are "fundamentally different." *See* Mitchell H. Rubinstein, *Altering Judicial Review of Labor Arbitration Awards*, 2006 MICH. ST. L. REV. 235, 242 (2006) (observing the contextual differences between these two forms of arbitration). Yet, these two frameworks overlap and interact with each other. *See*, *e.g.*, Mark Berger, *Arbitration and Arbitrability: Toward an Expectation Model*, 56 BAYLOR L. REV. 753, 759 (2004) ("[D]espite the different sources of legal support for labor and commercial arbitration, the fundamental principles of both categories have many similarities and judicial decisions frequently cite cases in each area interchangeably.").

A. Federal Arbitration Act

Originally intended primarily for the commercial and maritime contexts,[10] the FAA established the framework for a broad-based judicial receptivity to grievance arbitration.[11] In addition to establishing the enforceability of written agreements for such arbitration,[12] the FAA authorizes judicial vacatur[13] only for limited reasons that are largely focused on the process, or more specifically the arbitrator's conduct.[14] The only reason for authorizing vacatur that is specific to the product, that is, the "award" or the written arbitration decision, focuses on the alternatives of exceeding or imperfectly executing arbitral authority.[15] Moreover, the accompanying express exclusion for challenging "the merits" of the award,[16] along with the Act's legislative history,[17] reflect an intent for restrictive judicial review.[18]

B. Steelworkers *Trilogy*

Aimed instead at the collective bargaining context generally referred to as labor—in

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10. *E.g.*, Michael H. LeRoy, *Irreconcilable Differences?: The Troubled Marriage of Judicial Review Standards under the Steelworkers Trilogy and the Federal Arbitration Act*, 2010 J. DISP. RESOL. 89, 97–98 (2010) ("The legislative history of the FAA strongly suggests that the law was created to help companies resolve commercial and maritime disputes.").

11. *See* 9 U.S.C. §§ 1–16 (2018).

12. *Id.* § 2. The Supreme Court interpreted this enforceability provision in the FAA as reflecting a policy in favor of arbitrability. *See* Moses H. Cone Mem'l Hosp. v. Mercury Constr. Co., 460 U.S. 1, 24–25 (1983).

13. 9 U.S.C. § 10. Conversely, the Act refers to a court's authority, upon a party's motion, to "confirm" an award. *Id*. § 13. Separately, the Act also authorizes the court, upon either party's motion, to "modify" or "correct" arbitral awards in specified, limited circumstances. *Id*. § 11.

14. *Id*. § 10(a) ("(1) where the award was procured by corruption, fraud, or undue means; (2) where there was evident partiality or corruption by the arbitrators, or either of them; (3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.").

15. *Id*. "(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made."

16. *Id.* § 11(b)–(c).

17. *See Arbitration of Interstate Commercial Disputes*: *Joint Hearings on S. 1005 and H.R. 646 Before the Subcomm. of the Comms. on the Judiciary*, 68th Cong. 36 (1924) ("There is no authority and no opportunity for the court, in connection with the award, to inject its own ideas of what the award should have been.").

18. Hall Street Assocs., L.L.C. v. Mattel, Inc., 552 U.S. 576, 584 (2008) (ruling that the FAA's specified grounds for vacatur are exclusive). For the arguments for and against restrictive judicial interpretations of the statutory and common law grounds for vacatur under the FAA, see Thomas S. Meriwether, *Limiting Judicial Review of Arbitration Awards under the Federal Arbitration Act: Striking the Right Balance*, 44 HOUS. L. REV. 739, 750–58 (2007).

contrast with commercial—arbitration, and doing so primarily as a matter of common rather than statutory law,[19] the U.S. Supreme Court issued three companion decisions thirty-five years after the passage of the FAA that similarly provided for deferential judicial review.[20] In this Trilogy, the Court specifically addressed the separable, but overlapping, issues of arbitrability and the merits in the context of labor arbitration in the private sector. Providing a broad presumption in favor of substantive arbitrability,[21] the Court prescribed a "positive assurance" standard in *United Steelworkers v. Warrior & Gulf Navigation Company*.[22] Similarly, for confirming versus vacating the merits of the award, the Court established an "essence" test[23] in *United Steelworkers v. Enterprise Wheel & Car Corporation* that is unmistakably deferential to the arbitrator's award.[24] The remaining decision in the Trilogy, while focused on the threshold issue of arbitrability, served as an over-arching reminder of judicial deference to arbitration of the subject matter that the parties' delegated to the arbitrator via collective bargaining.[25]

C. Teacher-Board Context

Inasmuch as teacher-board grievance arbitration is a matter of public employees collectively bargaining under state law, in contrast with private employees under individual or collective contracts under federal legislation, the foregoing two frameworks serve only indirectly

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19. The Labor Management Relations Act of 1947 amended the National Labor Relations Act of 1935. Labor Management Relations (Taft-Hartley) Act, ch. 120, § 301, 61 Stat. 136, 156–57 (1947) (current version at 29 U.S.C. §§ 151–69 (2018)). Setting the stage for the Trilogy, the Supreme Court authorized the development of such common law under § 301 of this statute. *See* Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957). For an overview and analysis of other foundational Supreme Court decisions concerning arbitration under § 301 subsequent to the Trilogy, see George W. Moss III, *The Fate of Arbitration in the Supreme Court: An Examination,* 9 LOY. U. CHI. L. J. 369 (1978)

20. *See* sources cited *infra* notes 22, 23, and 25. These three decisions are commonly referred to as "the *Steelworkers* Trilogy."

21. In contrast, the Trilogy did not specifically address procedural arbitrability. Not long thereafter, however, the Supreme Court largely left this matter, at least initially, for the arbitrator to determine. *See* John Wiley & Sons v. Livingston, 376 U.S. 543, 557 (1964) ("Once it is determined . . . that the parties are obligated to submit the subject matter of a dispute to arbitration, 'procedural' questions which grow out of the dispute and bear on its final disposition should be left to the arbitrator.").

22. United Steelworkers of Am. v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582–83 (1960) ("An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute").

23. United Steelworkers of Am. v. Enterprise Wheel & Car Corp., 363 US. 593, 597 (1960) ("[A labor arbitrator's] award is legitimate only so long as it draws its essence from the collective bargaining agreement"). The term "only" in this quotation cross-refers to the overriding contractual boundary, such that "an arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice." *Id*.

24. *Id.* at 599 ("[T]he courts have no business overruling [the arbitrator] because their interpretation of the contract is different from his.").

25. *See* United Steelworkers of Am. v. Am. Mfg. Co., 363 US. 564, 568 (1960) ("the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for").

for the applicable judicial standards for arbitrability and vacatur/confirmation of the merits. The intervening development was the Uniform Arbitration Act (UAA), generally resulting—with very limited differences—in state statutory standards for vacatur that were substantially the same as under the FAA.[26] However, the courts in an increasing, but still limited, number of states have developed a variety of additional standards for vacatur, including manifest disregard of the law[27] and the public policy exception.[28] Finally, the panoply of statutory and case law applicable more generally to teachers and school boards provides an intersecting overlay affecting arbitrability and vacatur/confirmation.[29]

II. EMPIRICAL BACKDROP

As reviewed extensively in the two successive predecessor analyses,[30] the published research specific to grievance arbitration has largely focused on various issues distinct from judicial review of arbitration awards or, to a lesser extent, for judicial review of CBA arbitration awards in contexts not specific to public school districts. Beyond an early and otherwise limited exception,[31] the only empirically-styled analyses specific to judicial review of teacher-board grievance arbitration awards were the predecessor pair of analyses. The same non-empirical and largely other-context trend has continued in recent years.[32]

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26. *See, e.g.*, Stephen K. Huber, *State Regulation of Arbitration Proceedings: Judicial Review of Arbitration Awards by State Courts*, 10 CARDOZO J. CONFLICT RESOL. 509, 521–22 (2009) (summarizing the largely common grounds for vacatur under the FAA and UAA); Stephen Wills Murphy, *Judicial Review of Arbitration Awards under State Law*, 96 VA. L. REV. 887, 891–92 (2010) (noting the similarity of the grounds for vacatur under the FAA and UAA); *cf*. Bruce E. Meyerson, *The Revised Uniform Arbitration Act: 15 Years Later*, 71 DISP. RESOL. J. 1, 11–14 (2016) (discussing the treatment of arbitrability under the FAA and UAA).

27. *See, e.g.*, Murphy, *supra* note 26, at 912–13*;* For the origin of this standard, see Wilko v. Swan, 346 U.S. 427, 436–37 (1953). For more recent refinement, see Hall Street Assocs. v. Mattel, Inc., 552 U.S. 576, 584 (2008).

28. *See, e.g.*, Murphy, *supra* note 26, at 918–19. For the origin of this standard, see W.R. Grace & Co. v. Loc. Union 759, 461 U.S. 757, 766 (1983).

29. This varying panoply includes statutory and case law applicable to (a) teacher-board collective bargaining (e.g., scope of negotiations); (b) teacher status (e.g., certification, evaluation, nonrenewal, and termination); and, to a lesser extent, (c) federal requirements (e.g., Every Student Succeeds Act and Family and Medical Leave Act).

30. *See* Zirkel 2018, *supra* note 5, at 72–73; Perry A. Zirkel, *Teacher School Board Arbitration Awards in the Courts: Facts and Figures*, 71 DISP. RESOL. J. 87, 91–95 (2016) [hereinafter Zirkel 2016] (reviewing previous empirically-styled research for teacher-board grievance arbitration awards and judicial review of CBA grievance arbitration awards in other or broader contexts). As acknowledged in Zirkel 2016, at 96 n.46, a more detailed version of the literature review, methodology, and results, including a table for the 110 decisions appeared in 45 J.L. & EDUC. 181 (2016).

31. *See* Joseph R. McKinney & W. William Place, *Judicial Review of Arbitration Awards in the Educational Sector*, 82 EDUC. L. REP. 749 (1993) (reporting for a sample of cases for the period 1982–1992 that courts vacated 34% of the awards either entirely or in substantial part and that school districts "won" in 45% of the cases without clearly demarcating the boundaries of the sample, such as the inclusion or exclusion of non-teacher grievants and arbitrability cases, and the meaning of the terms, such as "substantial part" and "won").

32. For examples of the nonempirical and non-school-specific focus of the recent publications, see John M. Becker, *The Role of Public Policy in Judicial Review of Massachusetts Public Sector Labor Arbitration Awards*, 100 MASS.

A. The First Analysis

The first of the two predecessor analyses covered the ten-year period ending in mid-2015.[33] Based on a Boolean search on Westlaw, this predecessor analysis found 110 court decisions that addressed either arbitrability of grievances or vacatur/confirmation of grievance arbitration awards under a teacher-school board CBA.[34] The most frequent jurisdictions for these court decisions were Pennsylvania (n=31), New York (n=18), New Jersey (n=10), and Ohio (n=7).[35] Similarly in descending order, the most common issues were adverse employment actions, especially termination (n=51); benefits, especially retirement (n=31); pay, especially salary schedule placement (n=15); and workload and assignments, especially extracurricular activities (n=12).[36] Next, the proportion of court rulings in favor of arbitrability and to confirm the award were 57% and 75%, respectively, with relatively few of the remaining rulings being in the intermediate outcomes category.[37] Finally, most of the arbitrability rulings concerned substantive arbitrability, and their approach varied widely from the *Warrior & Gulf* positive assurance test to straightforward contractual interpretation without any presumption, whereas the Trilogy-type presumption was the predominant but not uniform approach for the vacatur/confirmation rulings.[38]

L. REV. 29 (2019) (discussing various public-sector court decisions in Massachusetts, including only one school district case, that applied the interaction of the pro-arbitration presumption with the managerial nondelegability and public policy exceptions); Nico Gurian, *Rethinking Judicial Review of Arbitration*, 50 COLUM. J. L. & SOC. PROBS 507 (2017) (proposing increased judicial review of mandatory arbitration awards in the commercial context of the FAA); Raquel Muniz, Comment, *You Are Now Entering the School Zone, Proceed with Caution: Educators, Arbitration, & Children's Rights*, 9 ARB. L. REV. 197 (2017) (canvassing various judicial rulings reviewing arbitration awards specific to discipline of teachers for student-related misconduct and proposing two alternatives for increasing the consideration of children's rights in these cases).

33. Zirkel 2016, *supra* note 30. Based on the selection criteria of judicial rulings specific to arbitrability or the merits of grievance arbitration awards under teacher-school board CBAs, the most common exclusions were: "(1) case dispositions on threshold adjudicative grounds not specific to arbitrability or vacatur, such as lack of jurisdiction or exhaustion; (2) cases concerning nonbinding grievance arbitration; (3) cases arising in the postsecondary education context; (4) cases concerning other school employees; (5) cases limited to separable federal or state claims subsequent to arbitration; and (6) cases limited to costs or attorney's fees for the arbitration." *Id.* at 96.

34. *Id.* at 96.

35. *Id.*

36. *Id.*

37. *Id*. at 97. This intermediate outcome category, which was lacking in the various other empirical analyses, focused on judicial review of grievance arbitration, accounted for those court rulings that were either inconclusive (such as remands to lower courts or arbitrators for further proceedings) or that modified the arbitrator's award. Specifically, in this analysis none of the forty-nine court rulings in the arbitrability category and eight (11%) of the seventy-one court rulings in the vacatur/confirmation category were in the intermediate category.

38. *Id*. at 98.

B. The Second Analysis

The follow-up analysis covered the 3.5-year period from mid-2015 to the end of 2018.[39] Based on the same variety of search terms and the same overall selection criterion, this analysis found thirty-six court decisions that addressed either arbitrability of grievances or vacatur/confirmation of grievance arbitration awards under a teacher-school board CBA.[40] The most frequent jurisdictions for these court decisions were Pennsylvania (n=10), New York (n=7), Ohio (n=5), and, tied for fourth place, Connecticut, Massachusetts, and New Jersey (n=3 each).[41] Similarly in descending order, the most common issues were adverse employment actions, especially termination (n=11); workload and assignments, especially extracurricular activities (n=7); and, tied for third place, benefits, especially retirement, and recall to employment (n=3 each).[42] Next, the proportion of court rulings in favor of arbitrability and to confirm the award were 47% and 57%, respectively, again with few of the remaining decisions in the intermediate outcomes category.[43] Finally, most of the arbitrability rulings concerned substantive arbitrability, and their approach varied widely without a notable positive presumption, whereas the Trilogy-type presumption was the predominant but not uniform approach for the vacatur/confirmation rulings, often in combination with the applicable state statute or the public policy exception.[44]

39. Zirkel 2018, *supra* note 5. In addition to the same exclusions as identified in Zirkel 2016, *supra* note 30, at 96, the 2018 analysis identified the following additional applicable exclusions: (1) cases concerning arbitrations exclusively under state law (e.g., those under the New Jersey and New York teacher tenure laws rather than under the local CBA); (2) cases that did not provide sufficient information that the grievant was a teacher rather than another school employee; (3) cases in the private school context; (4) election of remedies cases primarily focusing on federal civil rights issues rather than the collective bargaining framework; (5) cases concerning unfair labor practices not specific to arbitrability or vacatur; and (6) cases concerning the duty of fair representation. *See* Zirkel 2018, *supra* note 5, at 74.

40. Zirkel 2018, *supra* note 5, at 75.

41. *Id.*

42. *Id.*

43. *Id.* at 76. Specifically, one (6%) of the fifteen judicial rulings in the arbitrability category and one (5%) of the rulings in the vacatur/confirmation category were in the intermediate category. *Id.*

44. *Id.* at 77.

III. PRESENT ANALYSIS

A. Research Questions

This successor study provides a cumulative update, thus covering the period from 2006 through the end of 2022, including the recent segment since the end of 2018. The specific questions are as follows:

(1) What has been the been the longitudinal trend for this seventeen-year-period, in five-year intervals,[45] for:

(a) the frequency of court decisions;

(b) the outcomes distribution for the rulings specific to arbitrability; and

(c) the outcomes distribution for the rulings specific to vacatur/confirmation?

(2) For the cumulative total of cases for the entire period, what has been the overall distribution for the frequency and outcomes of the rulings on arbitrability and vacatur/confirmation?

(3) Overall, what have been the most common (a) states and (b) issues?[46]

(4) Overall, what have been the predominant approaches for determining (a) arbitrability and (b) vacatur/confirmation?

B. Method

Consistent with the pair of predecessor analyses, the data collection was based on a Boolean search of the Westlaw database for the four-year period 2019–2022.[47] The overall criterion for selection was that the case addressed arbitrability and/or vacatur/confirmation of grievance arbitration under a teacher-board CBA. Similarly following the previous pattern for more precise demarcation of the boundaries for selection, the most frequent exclusions were as follows: (1) arbitrations exclusively under state law (i.e., entirely separate from the CBA);[48] (2)

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45. The final interval consists of a straight-line projection due to its limited length of only two of the five years.

46. "States" here is broad, as it also includes the District of Columbia and the Virgin Islands.

47. The search terms, which were used in various combinations, included "arbitrability," "arbitration," "grievance," "collective bargaining," "school," and "teacher."

48. *E.g*., Sanjuan v. Sch. Dist. of W.N.Y., 281 A.3d 270, 277 (N.J. Super. Ct. 2022); Allen v. E. Orange Bd. of Educ., No. A-3995-192022, 2022 WL 332910, at *3-*4 (N.J. Super Ct. App. Div. Feb. 4, 2022); Ragland v. Bd. of Educ. of Newark, No. A-0430-19T1, 2021 WL 401084, at *5-*6 (N.J. Super. Ct. App. Div. Feb. 4, 2021); Somerset Cnty. Vocational & Tech. Sch. Bd. of Educ. of Vingara, No. A-5456-16T4, 2018 WL 6798184, at *1-*2 (N.J. Super Ct. App. Div. Dec. 27, 2018); Anderson v. Bd. of Educ. of Oyster Bay-E. Norwich Cent. Sch. Dist., 129 N.Y.S.3d 443, 444-45 (N.Y. App. Div. 2020); Bd. of Educ. of N.Y.C. v. Crooks, 99 N.Y.S.3d 619, 619-20 (N.Y. App. Div.

case dispositions on threshold adjudicative grounds not specific to arbitrability or vacatur/confirmation, such as lack of jurisdiction;[49] (3) cases concerning post-arbitration claims on other grounds;[50] and (4) cases concerning other school personnel.[51] Other exclusions included, for example, cases for teachers at other governmental agencies;[52] cases in the private school context;[53] cases that do not provide sufficient information that the grievant was a teacher;[54] cases concerning unfair labor practices not specific to arbitrability or vacatur/confirmation;[55] and cases concerning nonbinding arbitration.[56]

This systematic search and selection process revealed forty pertinent final court decisions for the four-year updated period. The Appendix of this article provides a table of these forty decisions in inverse chronological order, with entries for the case citation, the issue and

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2019); Ghastin v. N.Y.C. Dep't of Educ., 94 N.Y.S.3d 40, 41-42 (N.Y. App. Div. 2019); Johnson v. Riverhead Cent. Sch. Dist., 88 N.Y.S.3d 434, 435-36 (N.Y. App. Div. 2018).

49. *E.g*., Kolkowski v. Ashtabula Area Tchrs. Ass'n, No. 2021-A-0033, 2021 WL 4076852 (Ohio Ct. App. Sept. 6, 2021); Dayton Pub. Schs. v. Elmore, No. 2017-CV-3990, 2020 WL 1082431 (Ohio Ct. App. Mar. 6, 2020) (standing and jurisdiction); Matter of New Roots Charter Sch., 121 N.Y.S.3d 442 (N.Y. App. Div. 2020) (regarding a waiver via election of remedies); Northfield Sch. Bd. v. Washington S. Educ. Ass'n, 210 A.3d 460 (Vt. 2019) (regarding a waiver for failure to participate in pre-termination proceedings).

50. *E.g*., Green v. Dep't of Educ. of N.Y.C., 16 F.4th 1070 (2d Cir. 2021); Leff v. Clark Cnty. Schs., No. 2:15-cv-01155-RFB-EJY, 2021 WL 5853582 (D. Nev. Dec. 9, 2021) (Fourteenth Amendment due process); Goodman v. Norristown Area Sch. Dist., No. 20-1682, 2021 WL 6063122 (E.D. Pa. Dec. 22, 2021) (Title VII and ADEA).

51. *See, e.g.*, Cook Cnty. Sch. Dist. 130 v. Illinois Educ. Lab. Rels. Bd., 200 N.E.3d 852 (Ill. Ct. App. 2021) (custodian); Watchung Hills Reg'l Educ. Ass'n v. Bd. of Educ. of Watchung Hills Reg'l High Sch., No. A-3574-18T2, 2020 WL 1845539 (N.J. Super. Ct. App. Div. Apr. 13, 2020) (bus driver); Matter of Arb. Between Bd. of Educ. of Port Byron Cent. Sch. Dist. & Civ. Serv. Emps. Ass'n, Inc., Loc. 1000, 201 A.D.3d 1359 (N.Y. App. Div. 2022) (classified employees); Riverside Sch. Dist., v. Riverside Educ. Support Pers. Ass'n ESP-PSEA-NEA, 241 A.3d 113 (Pa. Commw. Ct. 2020) (paraprofessional).

52. *E.g*., Buffkin v. Dep't of Def., 957 F.3d 1327 (Fed. Cir. 2020); Fed. Educ. Agency v. Fed. Lab. Rels. Auth., No. 19-284 (RJL), 2020 WL 1509329 (D.D.C. Mar. 30, 2020).

53. *E.g.*, Nw. Cath. High Sch. Corp. v. Greater Hartford Cath. Educ. Ass'n, No. HHD-CV-22-6151171-S, 2022 WL 1566624 (Conn. Super. Ct. May 18, 2022).

54. *E.g*., Mora Fed'n of Sch. Emps. v. Bd. of Educ. for Mora Indep. Schs., No. A-1-CA-36973, 2020 WL 2096166 (N.M. Ct. App. Apr. 8, 2020).

55. *See, e.g.*, State ex rel. Thelen v. State Empl. Rels Bd., NO. C-210576, 2022 WL3569371, at *2 (Ohio Ct. App. Aug. 19, 2022).

56. *E.g.*, Monadnock Reg'l Sch. Dist. v. Monadnock Dist. Educ. Ass'n, 242 A.3d 789 (N.H. 2020) (advisory arbitration).

initiator,[57] the test or approach, the outcome,[58] and clarifying comments.[59]

C. Findings and Conclusions

For research question 1a, Figure 1 portrays the longitudinal frequency trend, in five-year intervals, for the entire seventeen-year period. The 186 cases yielded a total of 204 rulings, because some of the court decisions addressed both arbitrability and vacatur/confirmation.

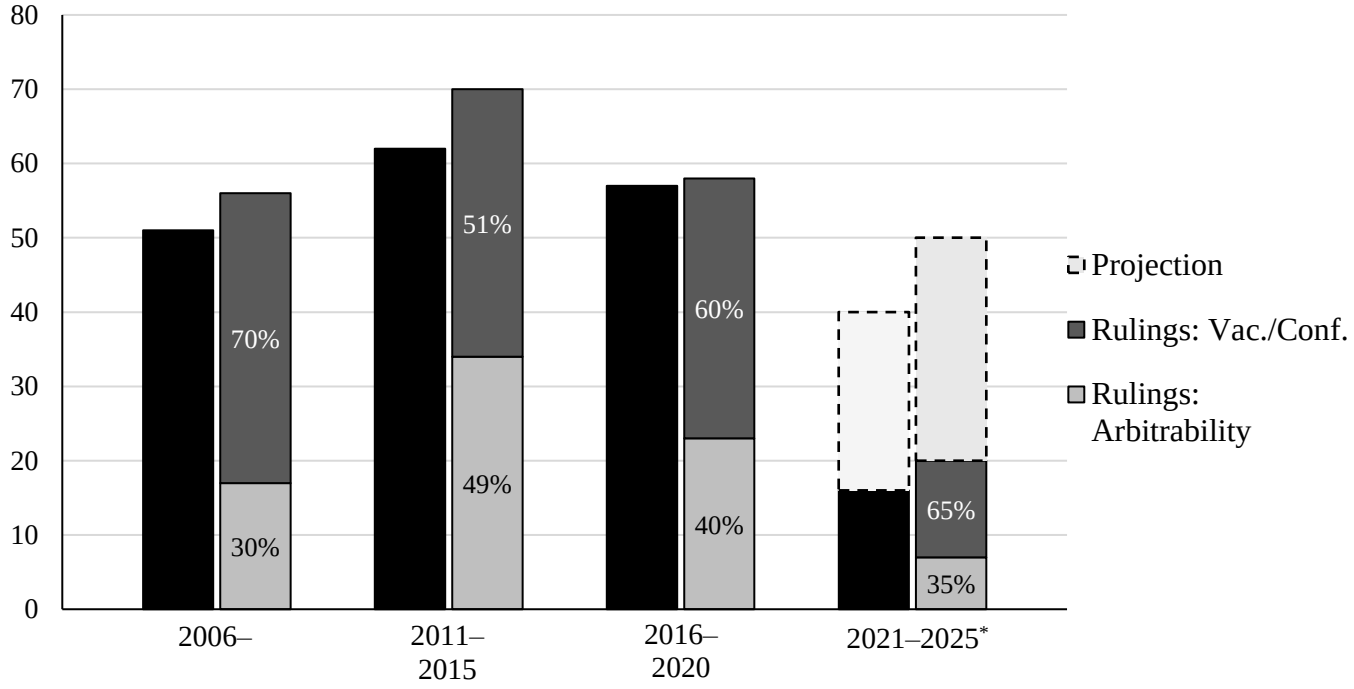

Figure 1. *Longitudinal Trend in Frequency of Court Cases and Rulings on Teacher-Board Grievance Arbitration.*

57. "Issue" refers to arbitrability or vacatur/confirmation. "Initiator(s)" refers to the party or parties challenging arbitrability or seeking vacatur/confirmation: "Bd." = school board and "U" = union. For this abbreviated purpose in the selected scope of the analysis, the union equated to the grievant(s) without any differentiation.

58. The three categories for the outcome were: U win, intermediate (inconclusive or modified), and U loss (i.e., Bd. win). The corresponding outcomes for the arbitrability and vacatur/confirmation categories are based on the combination of this column with the Issue/Initiator column. The outcomes for the party and the outcomes of arbitrability or vacatur/confirmation are not identical because in an occasional arbitrability case, the initiating party was the Union, and, much more frequently in vacatur/confirmation cases, the initiating party was the Union and/or the School District, depending on which party partially or completely lost at the arbitration stage, whether the suit was for vacatur or confirmation, and whether the parties both initiated judicial review by opposing motions. Moreover, for arbitrability cases, the outcome amounted to a definitive loss to the Union when the judicial ruling was that the issue was nonarbitrable. Yet, the outcome ultimately was not conclusive when the suit arose, via a Union motion to compel or a District motion to stay, in the prearbitration context and the court's ruling was that the issue was arbitrable.

59. The Comments column includes bracketed entries for cases that were marginally within the overall selection criterion, as compared with the various excluded cases.

Examination of Figure 1 reveals that the overall frequency of litigation has fluctuated within a relatively restricted range of approximately 50–60 cases per five-year interval, with slightly higher variance for rulings and with a possible pronounced decline for the current, partially projected interval.[60] Figure 1 also shows that the proportion of the rulings for arbitrability, as compared with vacatur/confirmation, for each interval also fluctuated without a particular up or down trajectory, with the overall ratio averaging 40%:60%.[61]

This relatively steady trend, including not only the overall volume but also the proportion of arbitrability rulings, is not surprising in light of the results of the subsumed first two analyses and the overall relatively stable continuation of teacher-board collective bargaining[62] as compared with the decline of unionization in the private sector.[63] It is too early to determine whether the Supreme Court's recent rulings[64] and the limited results for the latest interval[65] signal a downturn in this overall longitudinal trend.

60. The projected numbers of cases and rulings for the current 2021–2025 interval are quite tentative because they represent only two of the five years. For the specific numbers, see the bracketed entries *infra* note 61 for the Total Rulings (Cases) column of the 2021–2025 row.

61. The specific numbers and percentages per interval were as follows:

	Arbitrability	Confirmation/Vacatur	Total Rulings (Cases)
2006–2010	17 (30%)	39 (70%)	56 (51 cases)
2011–2015	34 (49%)	36 (51%)	56 (51 cases)
2016–2020	23 (40%)	35 (60%)	58 (57 cases)
2021–2025 [2021–2022 x 2.5]	7 [17.5] (35%)	13 [32.5] (65%)	20 [50] (16 [40] cases)
Entire Period (17 Years)	81 (40%)	123 (60%)	204 (186 cases)

62. *See* Workman, *supra* note 5; *see also* Sanchez & Klausner, *supra* note 2.

63. *E.g.*, RYAN NUNN, JIMMY O'DONNELL, & JAY SHAMBAUGH, THE SHIFT IN PRIVATE SECTOR UNION PARTICIPATION 3 (Brookings, 2019), https://www.brookings.edu/research/the-shift-in-private-sector-union-participation-explanations-and-effects/ (showing rather dramatic longitudinal decline in union percentage in private sector while the corresponding union percentage in the public sector remained relatively steady).

64. *See supra* note 4 and accompanying text.

65. *See supra* notes 60–61 and accompanying text.

For research question 1b, Figure 2 depicts the outcomes trend for the arbitrability rulings for the successive five-year intervals, with the last one limited to the two currently available years.

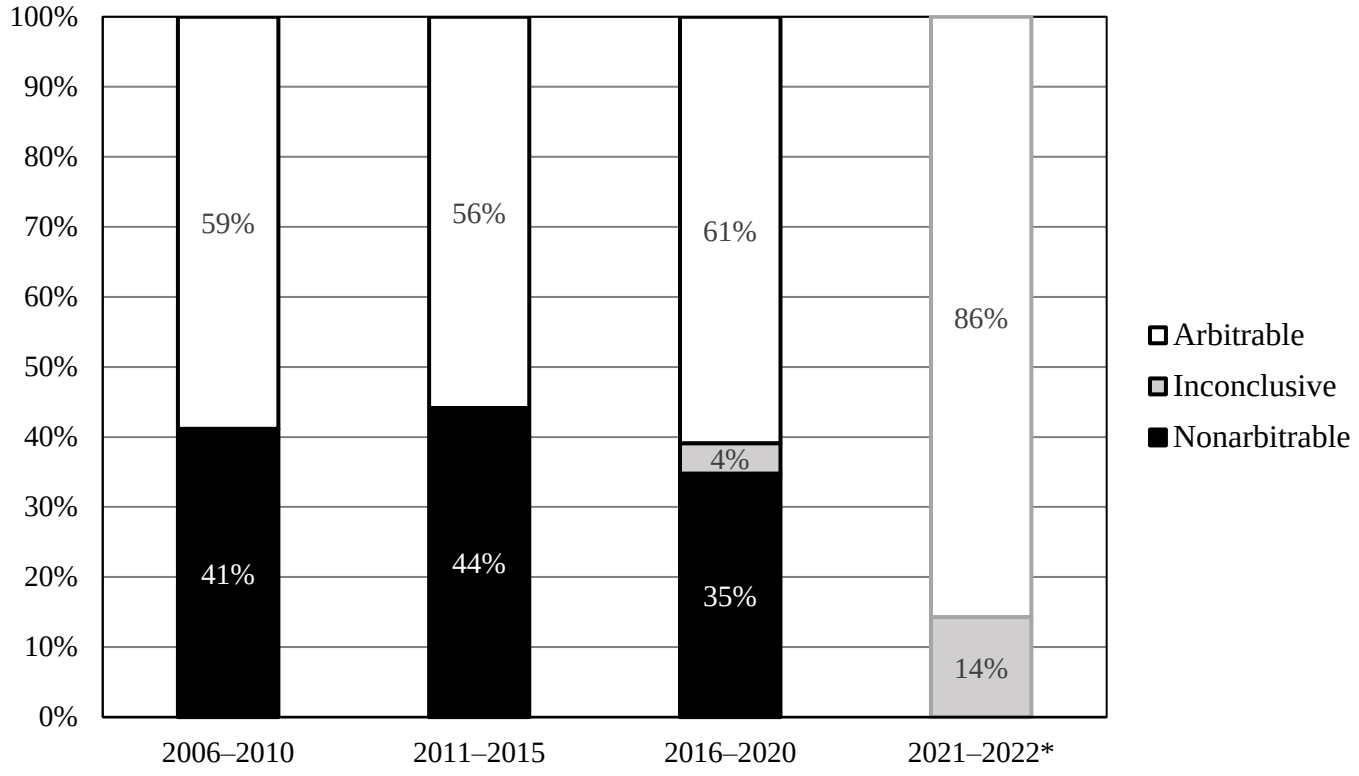

Figure 2. *Longitudinal Trend in Outcomes Distribution of Court Rulings on Arbitrability of Teacher CBA Grievances.*

Figure 2 shows that the outcomes distribution for the courts' arbitrability rulings has been relatively steady at an average approximating 60% in favor of arbitrability, with a possible but uncertain upward surge for the current, only partial five-year interval.[66]

Again, this overall relatively stable trend is in line with the subsumed previous two analyses, although the possible shift toward an increased pro-arbitrability level is supported by more pronounced results for the most recent two years and the moderate movement in this

66. The limited number of cases, including the inconclusive ruling, for the two available years renders this distribution upon projection to five years as notably provisional. The specific numbers and percentages were as follows:

	Arbitrable	Inconclusive	Not Arbitrable
2006–2010	10 (59%)	0	7 (41%)
2011–2015	19 (56%)	0	15 (44%)
2016–2020	14 (61%)	1 (4%)	8 (35%)
2021–2022	6 (86%)	1 (14%)	0
Entire Period (17 Years)	49 (0%)	2 (2%)	30 (37%)

direction for the previous five-year interval. The original Supreme Court framework would have seemed to signal a higher overall pro-arbitrability outcome ratio, [67] but the intersecting state statutory overlay may have buffered this pronounced presumption.[68] A less frequent intersecting factor, which may have had an effect on the outcome in either direction, was whether the arbitrator or the court was deemed at least initially responsible for the determination of arbitrability.[69]

For research question 1c, Figure 3 provides a picture of the outcomes trend for the vacatur/confirmation rulings for the five-year intervals, with the most recent one being limited to the currently available two years.

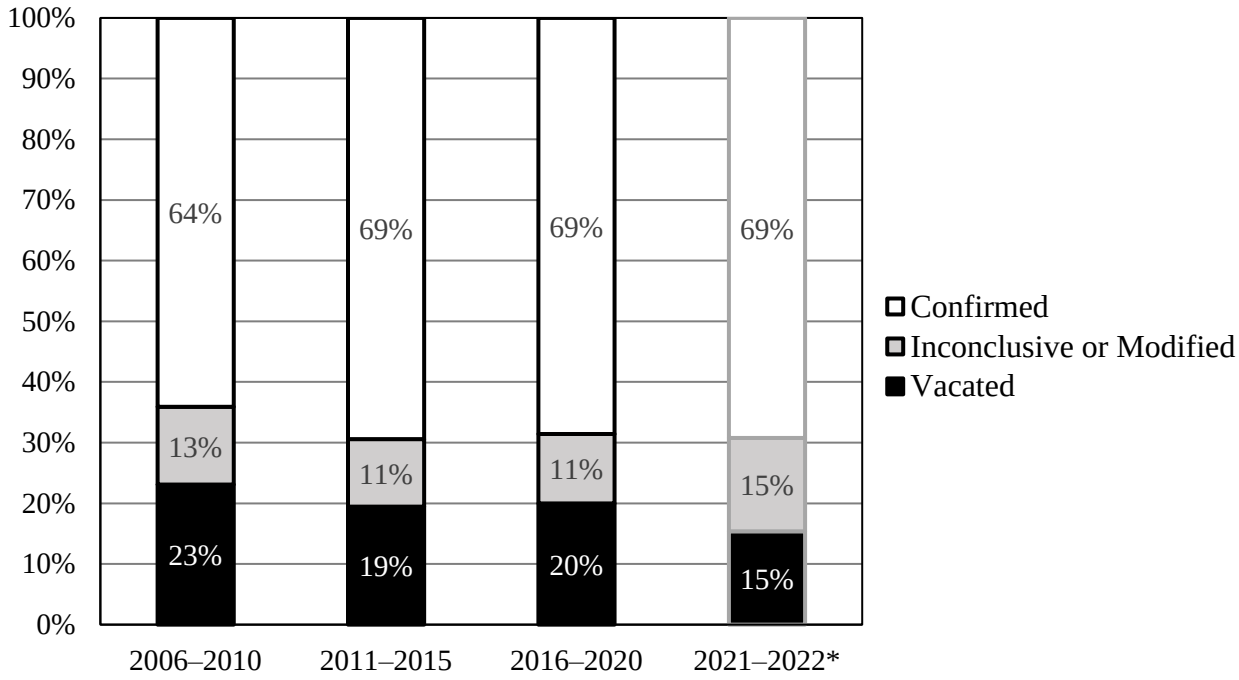

Figure 3. *Longitudinal Trend in Outcomes Distribution for Vacating/Confirming Teacher-Board Arbitration Awards.*

67. *See supra* notes 22, 23, and 25 and accompanying text.

68. *Infra* notes 75, 77 and accompanying text.

69. Another, albeit even more infrequent and indirect variation, was requiring a labor board determination of negotiability. *E.g*., Gloucester City Bd. of Educ. v. Gloucester City Educ. Ass'n, No. A-4464-18T4, 2020 WL 598306, at *7 (N.J. Super. Ct. App. Div. Feb. 7, 2020).

Review of this final Figure reveals that the courts' rulings in favor of confirmation as opposed to vacatur were also quite steady, with the rate gravitating to a higher proportion (as compared to those favoring arbitrability) of 69% and with notable proportion of inconclusive or modified rulings that leaves the outcome odds of complete vacatur at a relatively low level approximating 20%.[70] The corresponding lower level for vacatur during the past two years is more likely attributable to the accompanying higher percentage for inconclusive rulings for that limited period rather than an overall shift in the direction of an increasing confirmation trend.

Thus, regardless of whether the trend is different in the private sector, the particularly high odds of judicial confirmation of the arbitration award in this specific public sector context is a practically significant message for both teacher unions and school boards in the wake of the arbitration award that they perceive as unwarranted. Although internal factors, such as the perceptions of the constituency that each party represents, may affect the decision whether to seek vacatur or confirmation, the considerable transactions costs and extended time period for obtaining judicial review are added to these outcome odds to temper inclinations to go to court.

For research question 2, Figure 4 provides an overall picture for the entire period.

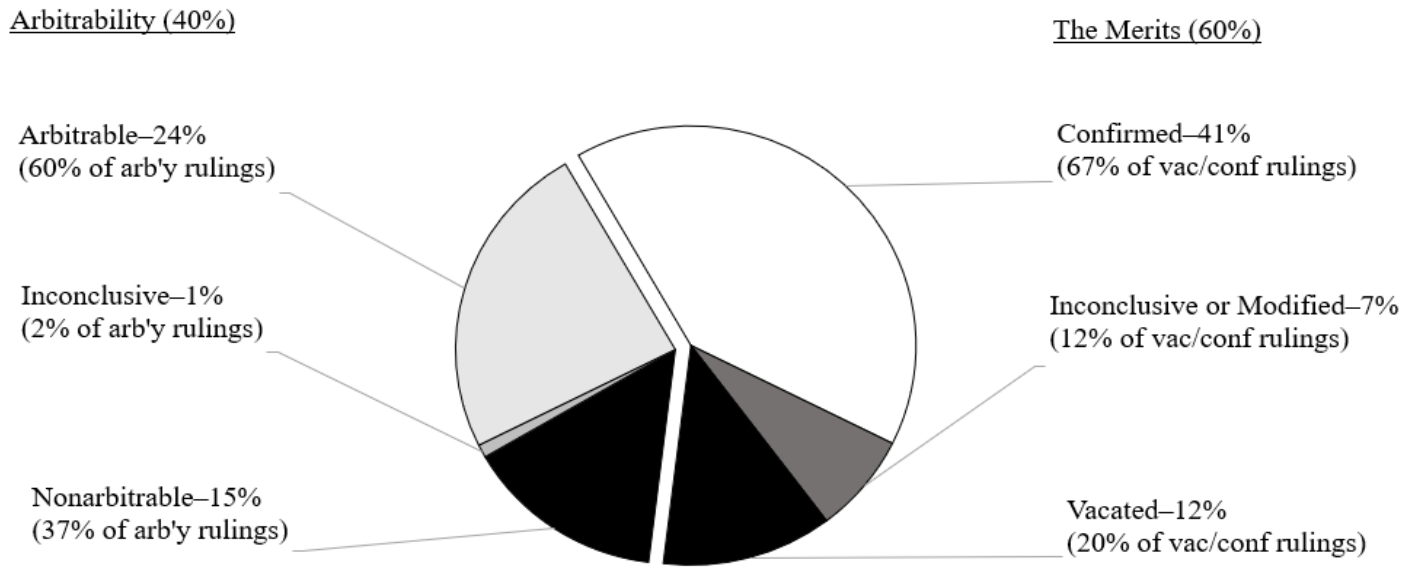

Figure 4. *Overall Frequency and Outcomes Distribution Court Rulings on Teacher-Board Grievance Arbitration for 2006–2022*.

70. *See* Figure 3, specific numbers and percentages were as follows:

	Confirmed	Inconclusive or Modified	Vacated
2006–2010	25 (64%)	5 (13%)	9 (23%)
2011–2015	25 (69%)	4 (11%)	7 (19%)
2016–2020	24 (69%)	4 (11%)	7 (20%)
2021–2022	9 (69%)	2 (15%)	2 (15%)
Entire Period (17 Years)	83 (67%)	15 (12%)	25 (20%)

First, Figure 4 shows a 40%:60% ratio of arbitrability and vacatur/confirmation rulings. Second, for the arbitrability rulings, the overall ratio was approximately 2:1 in favor of arbitrability, with the inconclusive rulings being at a relatively negligible level. Third, the overall ratio for the rulings on the merits was approximately 3:1 in favor on confirmation of the award, with a less limited segment for intermediate rulings.

This overall pro-arbitration disposition of courts in this particular public sector generally fits with the framework of the Trilogy in the private sector, although the intersecting factors partly presaged in the FAA and UAA in the statutory overlay in each jurisdiction inevitably introduced jurisdictional variations. The specific extent of the differences in frequency and outcomes (a) among the jurisdictions and (b) on an overall basis between this particular public sector and the broad NLRB-covered sector awaits further research.

For research question 3a, the jurisdictions with the highest frequency among the 186 cases were as follows in descending order:

1. Pennsylvania – 48 cases
2. New York – 31 cases
3. New Jersey – 21 cases
4. Ohio – 17 cases
5. Connecticut – 12 cases
6. Massachusetts – 8 cases
7. Michigan – 7 cases

The remaining cases were scattered among eighteen jurisdictions.[71]

This jurisdictional distribution appears to be largely attributable to the combination of state collective bargaining laws for teachers, overall litigiousness, and pertinent precedents. The prominent positions of New York and New Jersey would be even higher if the judicial rulings for teacher-board arbitration under their separable state laws, for which the CBA was not the governing frame of reference, had been included.[72]

For research question 3b, the most common issue categories, in rank order, were as follows:

1. adverse action (e.g., termination) – 71 cases
2. benefits (e.g., retirement) – 45 cases
3. workload and assignments – 25 cases
4. pay (e.g., salary schedule placement) – 19 cases

The remaining cases dealt with a wide variety of issues.[73]

This distribution of issues aligns with the component previous analyses and the overall level of stakeholder stakes. The particular prominence of termination as an issue is attributable in part to the tenure laws for teachers, which increases their stakes for continued employment,

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71. The principal examples were Illinois (n=5), Rhode Island (n=5), Tennessee (n=4), and Wisconsin (n=4).

72. *See supra* note 48 and accompanying text.

73. The principal examples were performance evaluation and reduction in force, each accounting for a handful of cases.

whereas the lesser prominent "for pay" issue may be due to the limited latitude for salary differentials in teachers' roles as public service professionals.

For research question 4a, the most common approaches to arbitrability, which mostly arose as substantive arbitrability in these cases, were (a) a combination of the scope of the CBA's arbitration clause and a distinctly pro-arbitrability presumption, which was with or without attribution to the *Warrior & Gulf* positive assurance test,[74] or (b) the varying overlay of the applicable statutory context, such as the threshold factor of negotiability, the intervening factor of a labor board unfair labor practice determination, or an overriding prohibition for the scope of arbitrability.[75] Moreover, an intersecting consideration in some arbitrability rulings was whether the statutory context or CBA provisions clearly accorded the determination to the arbitrator or the court.

These factors, along with whether the challenge to arbitrability arose prior to or after the arbitrator's activity, contributed to an outcomes pattern that largely was not figuratively black or white. Moreover, the rulings that were in the inconclusive or arbitrable categories were, in effect, only shades of gray because they merely moved the case to arbitration, which could have ended in an award in favor of either party and possible judicial vacatur or confirmation if sought by one or both parties.

Conversely, for research question 4b, the most common approaches to vacatur/ confirmation were the pronounced deference to the arbitrator's determination, akin to the *Enterprise Wheel & Car* essence test,[76] or the overlay of the statutory context, such as the public policy factor. [77] This moderate diversity from the private sector template is expected in light of the variations on the overall theme that the state laws represent. Yet, whether explicit or only indirect, the framework of the Trilogy and the less pronounced filtering effects of the FAA and UAA, is clearly reflected in the legal conclusions in these cases.

IV. IMPLICATIONS

In this longitudinal analysis of judicial review of grievance arbitration awards in the context of teacher-board CBAs in the public school context, two overall caveats are warranted. First, these judicial rulings are limited to the court decisions available in Westlaw. Like the corresponding Lexis database, Westlaw does not include trial court decisions in most states and

74. *See supra* note 22 and accompanying text.

75. *See, e.g.*, Bd. of Educ. Yonkers City Sch. Dist. v. Yonkers Fed'n of Tchrs., 135 N.Y.S.3d 422, 423–24 (N.Y. App. Div. 2020) (applying two-part test of (1) "whether there is any statutory, constitutional, or public policy prohibition against arbitrating the grievance," and, if not, (2) "whether there is a reasonable relationship between the subject matter of the dispute and the general subject matter of the CBA").

76. *Supra* notes 23–24 and accompanying text.

77. *E.g.*, Bd. of Educ. of New Milford v. New Milford Educ. Ass'n, 205 A.3d 552 (Conn. 2019) (confirming the award by applying the statutory standard of "exceeded [his or her] powers" under the deferential "manifest disregard" test); Robbinsville Educ. Ass'n v. Robbinsville Bd. of Educ., No. A-3459-19, 2021 WL 3610889, (N.J. Super Ct. App. Div. Aug. 16, 2021) (confirming the arbitration award in favor of the school board based deferential "reasonably debatable" test as applied to the state statutory standard of vacatur for "undue means").

state appellate court decisions without written opinions.[78] Thus, its representation of judicial review of grievance arbitration in the context of CBAs between teachers and school districts is less than complete. Moreover, those arbitration cases in the specified context that (a) proceeded to an award without judicial appeal as to arbitrability, whether pre- or post-award, or the merits or (b) were settled prior to a court decision were not included, thus presenting a possible skew in the cases analyzed here.

The second overall caveat, which is primarily applicable to the ultimate vacatur/confirmation results, is that this analysis was for the judicial posture to grievance arbitration in this particular public sector context, not whether the teacher union or the school board was the prevailing party for arbitrability or vacatur/confirmation. Although the arbitrability rulings equated to the party, with those in favor of arbitrability being uniformly in favor of the union and vice versa for the board, the winner or loser for vacatur/confirmation varied widely from such an automatic equivalence depending on each party's perception of the award, which may have been completely or only partially in favor of the union or the board. Thus, the results for research question 1c, which concerned the outcomes trend of the vacatur/confirmation rulings, do not equate to their outcomes trend for either the union or the board.

With due attention to these caveats, this longitudinal analysis suggests that arbitration is relatively alive and well in judicial rulings specific to teacher grievances under CBAs with school districts. Although subject to the larger issues of federal and state legislative policies and judicial policies specific to teacher-board collective bargaining, the courts have generally reflected their long-standing pro-arbitration disposition that originated in the Trilogy.

For academicians, this empirically styled analysis invites more intensive and extensive research with both quantitative and qualitative approaches. Illustrative topics include a more in-depth legal analysis of the 186 cases as well as a comparison of the findings here with those of parallel samples of court decisions in other public sectors and in the private sector.

For practitioners, the overall lesson may well be to retain the advantages of grievance arbitration, such as expertise, economy, and expedition, by being parsimonious in resorting to judicial intervention or review. In short, as one of the courts in this sample reiterated, "arbitration is 'meant to be a substitute for and not a springboard for litigation.'"[79]

78. Moreover, the analysis did not extend to the ultimate outcomes of cases in the sample beyond the reported decision. As an example, the Appendix includes the court's 2021 decision in *State v. Axon*. However, the ultimate outcome of this case, after remand to the arbitrator and a subsequent summary order of judicial confirmation, was in favor of the grievant teacher, as recounted in a more recent decision that was limited to a mixed ruling with regard to her motion for annual interest on the award and attorneys' fees. State v. Axon, No. HHD-CV-6124373-S, 2023 WL 370989 (Conn. Super. Ct. Jan. 23, 2023).

79. Robbinsville Educ. Ass'n v. Robbinsville Bd. of Educ., No. A-3459-19, 2021 WL 3610889, at *4 (N.J. Super Ct. App. Div. Aug. 16, 2021) (quoting N.J. Tpk. Auth. v. Local 196, 920 A.2d 88, 92 (N.J. 2007) and Local 153, Off. & Pro. Emps Int'l Union v. Tr. Co. of N.J., A.2d 992, 995 (N.J. 1987)).

Appendix*: Chart for the Court Decisions (n=40) for Arbitrability and Vacatur/Confirmation for the Period 2019–2022 (in Inverse Order)*

Parties' Names	**Rest of Citation**	**Issue/Initiator(s)**	**Test or Approach**	**Outcome (U win or loss)**	**Comments**
Clarion Career Ctr. v. Clarion Cnty. Career Ctr. Educ. Ass'n	2022 WL 17574178 (Pa. Commw. Ct. Dec. 12, 2022)	termination/Bd. seeks to vacate	essence test – public pol'y as narrow exc.	confirmed award (U win)	3-part *Millcreek* test for this exception, incl. remedy
Cent. Valley Sch. Dist. v. Cent. Valley Educ. Ass'n	2022 WL 16729608 (Pa. Commw. Ct. Nov. 7, 2022)	termination/Bd. seeks to vacate	deferential std. - essence test	confirmed award (U win)	aff'd by cross referring to trial court's "well written" decision
Linden Bd. of Educ. v. Linden Educ. Ass'n	2022 WL 7205505 (N.J. Super. Ct. App. Div. Oct. 13, 2022)	reduction in pay/Bd. seeks stay	deference to labor bd.	upheld arby. (U win)	[marginal: via ULP, which labor bd. ruled in favor of arby.] nonnegotiable assignments
Ball-Chatham Cmty. Unit Sch. Dist. #5 v. Ill. Educ. Labor Relations Bd.	2022 IL App(4th) 210428-U (Ill. Ct. App. Oct. 6, 2022)	starting salary/Bd. seeks stay	presumption in favor of subst. arby.+ deference to labor bd.	upheld arby. (U win)	[marginal: via ULP, which labor bd. ruled in favor of arby.]
Pro. Pers. of Van Dyke v. Van Dyke Pub. Schs.	2022 WL 4281815 (Mich. Ct. App. Sept. 15, 2022)	extra-duty pay/Bd. seeks stay	limited review of labor bd. decisions	upheld denial of ULP (U win)	[marginal: via ULP, which Bd. filed – indirectly arby.]
Washoe Cnty. Sch. Dist. v. Edlund	514 P.3d 1085 (Nev. 2022)	termination/U seeks to partially vacate	statutory stds. + precedent	revised award but not relief (modified)	award effectively reduced dismissal to suspension via reinstatement w/o backpay
Riverside Sch. Dist. v. Riverside Educ. Ass'n	285 A.3d 339 (Pa. Commw. Ct. 2022)	benefits/Bd. seeks to vacate	deference (subst. arby.) + essence test	confirmed award (U win)	primarily subst. arby.
Hempstead Classroom Tchrs. Ass'n v. Hempstead Union Free Sch. Dist.	162 N.Y.S. 3d 754 (App. Div. 2022)	assignments/U seeks to confirm (& Bd. seeks to vacate)	extremely limited judicial review	confirmed award (U win)	not irrational
Keene Sch. Dist. v. Keene Educ. Ass'n	274 A.3d 1199 (N.H. 2022)	benefits/Bd. seeks to vacate, incl. subst. arby.	1-deference (arby.) 2-statutory stds.	upheld arby + confirmed award (U win)	1-same deference to arbitrator's determination as the merits 2-past practice requires mutuality, citing Elkouri & Elkouri
Akron Educ. Ass'n v. Akron City Sch. Dist. Bd. of Educ.	184 N.E.3d 891 (Ohio Ct. App. 2022)	supplemental contract/ Bd. seeks to vacate	statutory stds. + essence test	vacated award (U loss)	exceeded authority – beyond CBA (incl. zipper clause)
Belmond-Klemme Cmty. Sch. Dist. v. Belmond-Klemme Educ. Ass'n	974 N.W.2d 813 (Iowa Ct. App. 2022)	performance review/ Bd. seeks to vacate based on subst. arby.	CBA language in related to state law for tchr. evaluation	partially vacated award (modified)	arby.– lack of formal eval., but not intensive assistance and letter in personnel file
State v. Axon	2021 WL 4924759 (Conn. Super. Ct. Oct. 5, 2021)	termination/Bd. (state) seeks to vacate	precedent - compare award to submission	vacated award (U loss)	[marginal: unusual initiator] arbitrator changed issue

Parties' Names	Rest of Citation	Issue/Initiator(s)	Test or Approach	Outcome (U win or loss)	Comments
Robbinsville Educ. Ass'n v. Robbinsville Bd. of Educ.	2021 WL 3610889 (N.J. Super Ct. App. Div. Aug. 16, 2021)	benefits/U seeks to vacate	statutory stds. + "reasonably debatable" test	confirmed award (U loss)	precedents: "considerable deference" – "substitute…not …springboard for litigation"
Riverview Sch. Dist. v. Riverview Educ. Ass'n	260 A.3d 1092 (Pa. Commw. Ct.), *appeal denied sub nom.* Riverview Sch. Dist. v. Riverview Educ. Ass'n, PSEA/NEA, 269 A.3d 1225 (Pa. 2021)	termination/Bd. seeks to vacate	1-public policy exc. 2-statutory prerog.	confirmed award (U win)	1-narrow 2-broad authority to modify discipline [compare *Axon*]
Riverview Intermediate Unit #6 v. Riverview Intermediate Unit #6 Educ. Ass'n	258 A.3d 1160 (Pa. Commw. Ct. 2021)	benefits/Bd. seeks to vacate	essence test – 2 parts	confirmed award (U win)	1-subst. arby. – deference 2-rational relationship - same
Special Sch. Dist. No. 1 v. Minneapolis Fed'n of Tchrs.	No. A20-0906, 2021 WL 955462 (Minn. Ct. App. Mar. 15, 2021)	benefits/Bd. seeks to vacate, incl. procedural arby.	deference (both forms of arby.+merits)	confirmed award (U win)	beyond-authority claim is ultimately subst. arby., which is entitled to high deference
Niles Educ. Ass'n v. Niles Sch. Dist. Bd. of Educ.	2020 WL 7493135 (Ohio Ct. App. Dec. 21, 2020)	termination/U seeks to arbitrate	4 principles for subst. arby. (Trilogy)→ 2-part test	ruled for arby. (U win)	1-within arb. provision 2-presumption not overcome
V.I. Dep't of Educ. v. Am. Fed'n of Tchrs.	2020 WL 8022779 (V.I. Super. Nov. 24, 2020)	working hrs./U seeks to confirm (& Bd. seeks to vacate)	"local" precedent: two stds.	confirmed award (U win)	[marginal: no state statute] did not (1) exceed authority or (2) manifestly disregard the law
Bd. of Educ. Yonkers City Sch. Dist. v. Yonkers Fed'n of Tchrs.	188 A.D.3d 879 (N.Y. App. Div. 2020)	confidential info (code of ethics)/Bd. Seeks stay	two-part test for subst. arby.	Upheld arby. (U win)	1-no prohibition 2-broad arb. Clause + reasonable rel'p. test
N. Allegheny Sch. Dist. v. N. Allegheny Fed'n of Tchrs.	2020 WL 6555152 (Pa. Commw. Ct. Nov. 9, 2020)	termination/Bd. seeks to vacate	1-essence test 2-public policy exc.	confirmed award (U win)	broad authority to modify discipline [compare *Axon*]
Copley-Fairlawn City Sch. Dist. Bd. of Educ. v. Copley Tchrs. Ass'n	2020 WL 5946454 (Ohio Ct. App. Oct. 7, 2020)	tchr. eval./Bd. seeks stay (& U seeks to compel arbitration)	arb. provision gives arbitrator authority to determine arby.	upheld arby. (U win)	premature for judicial intervention re subst. arby.
Caroline Cnty. Educ. Ass'n v. Bd. of Educ. of Caroline Cnty.	2020 WL 5543050 (Md. Ct. Spec. App. Sept. 16, 2020)	reprimand/Bd. seeks stay	precedent: arby. to be decided initially by the arbitrator	ordered arb. to determine arby. (inconclusive)	Based on long line of Maryland case law.

Parties' Names	Rest of Citation	Issue/Initiator(s)	Test or Approach	Outcome (U win or loss)	Comments
Atlantic City Bd. of Educ. v. Atlantic City Educ. Ass'n	No. A-0370-19T3, 2020 WL 5507246 (N.J. Super. Ct. App. Div. Sept. 14, 2020)	benefits/Bd. seeks to vacate	statutory stds. + law/public policy exception	confirmed award (U win)	reasonably debatable – "extremely deferential" + in accordance w. legislation
Buffalo Fed'n of Tchrs. v. Bd. of Educ. of Buffalo	127 N.Y.S.3d 396 (2020)	transfers/U seeks to vacate	rational rel'p test	confirmed award (U win)	precedent: "colorable justification"
Matawan-Aberdeen Reg'l Bd. of Educ. v. Matawan-Aberdeen Reg'l Educ. Ass'n	2020 WL 4280069 (N.J. Super. Ct. App. Div. July 27, 2020)	benefits/Bd. seeks stay	statutory interpretation	upheld arby. (U win)	[marginal: ULP – labor relations bd. ruled for arby.]
Bd. of Educ. Yonkers City Sch. Dist. v. Yonkers Fed'n of Tchrs.	125 N.Y.S.3d 585 (N.Y. App. Div. 2020)	class size/Bd. seeks to vacate	statutory stds. – heavy burden: clear & convincing	confirmed award (U win)	precedent: "Judicial review of arbitration awards is extremely limited."
Providence Tchrs.' Union Local 958 v. Hemond	227 A.3d 486 (R.I. 2020)	unilaterally retire/U. seeks to vacate (& Bd. seeks to confirm)	statutory interpretation	vacated the award (U win)	[marginal: underlying action of state retirement board]
Cal. Area Sch. Dist. v. Cal. Area Educ. Ass'n	231 A.3d 771 (Pa. 2020)	position elimination/ Bd. seeks to vacate	essence test	confirmed award (U win)	cryptic reversal
Bd. of Educ. of Waterbury v. Waterbury Tchrs. Ass'n	230 A.3d 746, 749, 754–55, 758 (Conn. App. Ct. 2020).	prep. periods/U. seeks to confirm (& Bd. seeks to vacate)	statutory stds. + public policy exc.	confirmed award (U win)	both grounds are narrowly interpreted
Bd. of Educ. Yonkers City Sch. Dist. v. Yonkers Fed'n of Tchrs.	119 N.Y.S. 3d 209, 210–211 (App. Div. 2020).	benefits (parking)/Bd. seeks stay	two-part test for subst. arby.	upheld arby. (U win)	1-no prohibition 2-broad arb. clause + reasonable rel'p. test
Gloucester City Bd. of Educ. v. Gloucester City Educ. Ass'n	2020 WL 598306, at *1, 6–7 (N.J. Super. Ct. App. Div. Feb. 7, 2020).	attendance policy/Bd. seeks stay	precedent: labor bd. first if threshold negotiability issue	dismiss arby. w/o prejudice (inconclusive)	referred to labor bd. for scope of negotiability determination (here based on impact)
Buffalo Fed'n of Tchrs. v. Bd. of Educ. of Buffalo Pub. Schs.	118 N.Y.S.3d 343, 344–46 (App. Div. 2020).	position elimination/U seeks to confirm (& Bd. seeks to vacate)	exceeded authority + nonfinal/indefinite	largely reduced award (modified)	reliance on external document not part of CBA contrary to limiting arb. provision
Bridgeport Educ. Ass'n v. Bridgeport Bd. of Educ.	2019 WL 6880480 (Conn. Super. Ct. Nov. 22, 2019)	benefits/U seeks to vacate	essence test + public policy exc.	confirmed award (U loss)	both narrowly interpreted, not extending to correctness
Toledo Fed'n of Tchrs. v. Bd. of Educ. of Toledo City Sch. Dist.	2019 WL 3381803 (Ohio Ct. App. July 26, 2019)	benefits/U seeks to arbitrate	broad arbitration clause → presumption of subst. arby.	ruled for arby. (U win)	CBA provision re similar previous awards not clear exclusion

Parties' Names	Rest of Citation	Issue/Initiator(s)	Test or Approach	Outcome (U win or loss)	Comments
Middlesex Educ. Ass'n v. Middlesex Bd. of Educ.	2019 WL 2591794 (N.J. Super. Ct. App. Div. June 25, 2019)	assignments/U seeks to vacate	essence (reasonably debatable) test	confirmed award (U loss)	precedent: "extremely deferential"
Streetsboro Educ. Ass'n v. Streetsboro City Sch. Dist. Bd. of Educ.	131 N.E.3d 1007 (Ohio Ct. App. 2019)	termination/U seeks to arbitrate (the merits)	1-proced. arby. - untimely 2-subst. arby. – statutory procedure	denied arby. (U loss)	1-cursory deference 2-CBA unambiguously triggers separate statutory procedure
Bound Brook Educ. Ass'n v. Bound Brook Bd. of Educ.	2019 WL 2233594 (N.J. Super. Ct. App. Div. May 23, 2019)	planning meetings/U seeks to vacate	essence (reasonably debatable) test	confirmed award (U loss)	precedent: "extremely deferential" + labor bd. decisions were distinguishable
Wash. Tchrs. Union v. D.C. Pub. Schs.	207 A.3d 1143 (D.C. Ct. App. 2019)	tchr. eval./Bd. seeks stay	subst. arby. – court > arbitrator determination	denied arby. (U loss)	w/o prejudice – U may file re-formulated group grievance (per "common injury" interp.)
Bd. of Educ. of New Milford v. New Milford Educ. Ass'n	205 A.3d 552 (Conn. 2019)	school calendar/Bd. seeks to vacate (& U seeks to confirm)	manifest disregard of the law test + subst. arbitrability	confirmed award (U win)	Bd. did not meet burden of proving specified stds. + arbitration provision
Trenton Bd. of Educ. v. Trenton Educ. Ass'n	2019 WL 333051 (N.J. Super. Ct. App. Div. Jan. 28, 2019)	withheld increment/U seeks to vacate (& Bd. seeks to confirm)	essence test per submission	confirmed award (U win)	implicit authority to reduce discipline (*Linden*), here from permanent to one-year