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## **A RESTORATIVE JUSTICE PERSPECTIVE OF GRIEVANCE PROCEDURES**

**Brian Bemmels, Graham Brown and Michael Read**

Brian Bemmels  
Sauder School of Business  
University of British Columbia  
2053 Main Mall  
Vancouver, British Columbia  
CANADA V7E 4T1  
brian.bemmels@sauder.ubc.ca

GRAHAM BROWN  
Lee Kong Chian School of Business  
Singapore Management University  
50 Stamford Road, #50-01  
Singapore 178899  
gbrown@smu.edu.sg

Michael Read  
Sauder School of Business  
University of British Columbia  
2053 Main Mall  
Vancouver, British Columbia  
CANADA V7E 4T1  
michael.read@sauder.ubc.ca

### **INTRODUCTION**

Grievance procedures are a fundamental part of systems for ensuring justice in the workplace for unionized employees, and increasingly for nonunion employees as well (Blancero, 1992). Most studies of grievance procedures have focused on operational issues, such as grievance filing rates, levels of settlement and arbitration. Only a limited number of studies have focused on justice perceptions of employees relating to the grievance procedures. Also, there is an extensive body of literature on organizational justice (for a review, see Colquitt and Greenberg, 2003), but virtually none of these studies focus specifically on employee perceptions of justice related to the grievance procedure. In other words, there is very little research that evaluates grievance procedures on their critical purpose of ensuring justice for employees in the workplace. This is surprising given the critical role of grievance procedures as a justice system in the workplace.

When an employee believes they have been treated unfairly, there are two related violations experienced by the employee. First, is the tangible *outcome*. The employee has received an outcome that is contrary to what they believe they deserve. This may be a tangible reward they have been denied or a decision outcome that is seen as unfair and/or inconsistent with the collective agreement. The role of the grievance procedure in this regard

is to ensure the employee's contractual rights are protected. Second, the employee's *sense of justice* in the workplace is violated. This violation regards the psychological damage employees experience as a consequence of unfair treatment. This study focuses on the latter psychological aspects of justice by addressing questions about the extent to which the grievance procedure restores employee perceptions of justice in the workplace after experiencing what they perceive as unjust treatment. Our approach draws from the restorative justice models and studies in the criminology literature. The next section will briefly review related research on grievance procedures. This is followed by a brief explanation of restorative justice and an analysis of the restorative justice properties inherent in grievance procedures.

## BACKGROUND

Grievance procedures have common features, but vary widely in details. In Canada, grievance procedures in union workplaces are required by law to have arbitration by a neutral third party as the final step, but arbitration is not required and is rare in non-union grievance procedures. Generally there is some "grievable event," such as a decision or action by management, that leads to a grievance. A grievance is an allegation by employees or the union that management's interpretation and application of the collective agreement is incorrect. This is a "technical" or "legalistic" view of a grievance, however. Some procedures also allow grievances filed over other complaints or issues that are not an alleged violation of the collective agreement, but these issues cannot be appealed to arbitration. Employee perceptions are very important throughout the process. Klaas (1989) notes for example, that an individual's perception of the grievable event may be more important for the employee's justice perceptions and motivation to file a grievance than the actual event. Furthermore, organizational justice perceptions have been shown to be related to a wide variety of employee attitudes and behaviors in the workplace (Colquitt and Greenberg, 2003).

Most studies of grievance procedures have focused on operational issues, such as grievance filing rates, level of settlement and arbitration rates (Bemmels and Foley, 1996). These operational measures of grievance procedures are not well suited for evaluating the effectiveness of grievance procedures, however, as it is not always clear what an optimal or target level would be for these measures. Only a few studies focus on employee perceptions of justice as they relate to grievance procedures. This is somewhat disappointing as Lewin and Peterson (1988) and Bemmels and Foley (1996) have noted that subjective evaluations of grievance procedures are important, or perhaps the preferred, methods for evaluating the effectiveness and success of grievance procedures. As a system designed with the purpose of ensuring justice in the workplace (Fryxell, 1992), employee perceptions of the justice delivered by grievance procedures will be critical to understanding and evaluating their effectiveness.

Several studies have investigated perceptions and attitudes regarding grievance procedures. Perceptions of distributive and procedural justice afforded by the grievance procedure were found to be related to a stronger belief in a just workplace (Fryxell, 1992), higher levels of satisfaction with both union and management (Fryxell and Gordon, 1989), union commitment (Bemmels, 1995; Clark, Gallagher and Pavlak, 1990), union citizenship behavior and lower turnover intentions (Aryee and Chay, 2001; Rees, 1991). Clark and Gallagher (1988a, 1988b) measured union members' attitudes toward the grievance procedure, and found that grievance filers perceived the grievance procedure to be less effective in the workplace than non-filers, suggesting that filers' experiences with the procedure did not meet their expectations. See Bemmels and Foley (1996) and Fullagar, Gallagher, Clark and Carroll (2004) for reviews of other related studies. While these studies focused on justice perceptions or attitudes specific to the grievance procedure, they did not

investigate specific aspects of procedures that may enhance or diminish their perceptions of justice.

Wenzel, et al (2006) and Goodstein and Aquino (2008) suggest that future research should focus on what aspects of organizations and the workplace may serve to restore justice in the workplace. Grievance systems are designed and established specifically for the purpose of providing and securing workplace justice, and consequently would be an important focus of this research. We propose to investigate the extent to which grievance procedures provide a sense of justice in the workplace by focusing on the restorative justice framework from criminology. This framework is outlined below, followed by an evaluation of grievance procedures within this framework.

## **WHAT IS RESTORATIVE JUSTICE?**

Restorative justice has developed and gained acceptance in Western criminology and law as an alternative to the traditional court-based criminal justice system, although some argue it is a compliment to the court-based systems (Strickland, 2004). The concept of restorative justice is not new (Goodstein and Aquino, 2008). It draws on ancient views of justice that were abandoned during the middle ages when more formal justice systems emerged that focused primarily on offenders as having committed violations against, and owing a debt to, the king (and later to the state). These formal court-based, or *retributive justice* systems focus on the provision of justice primarily through the punishment of offenders. Once an offender has been punished, it is assumed that justice has been achieved. *Restorative justice* models; however, also focus on healing and repairing the psychological harm done by criminal offences (Zehr and Mika, 2003; Latimer, Dowden and Muise, 2005). Whereas retributive justice views offences as a violation against the state and punishment is imposed as a means of deterring future offences, restorative justice views offences as conflicts between the offender and victim. These conflicts are viewed as rightfully belonging to the offender, the victim and the broader community. Consequently, in restorative justice systems all of these parties may participate in the resolution of these conflicts. Restorative justice attempts to bring together the affected parties before the issue becomes more serious. There are many heterogeneous programs that are included under the rubric of restorative justice, but include for example, victim-offender mediation, family group conferences for juvenile offenders, or sentencing circles (Presser and Van Voorhis, 2002).

In addition to modifying offenders' behavior and preventing future offences, restorative justice programs attempt to rebuild a sense of justice among the concerned parties. That is, restorative justice systems attempt to repair or undo the victim's material loss or physical harm, and also restore their sense of well-being, security and self-worth. It also attempts to restore the offender's dignity and morality, and to repair damaged social relationships and the diminished sense of justice in the broader community (Wenzel, et al, 2006). This is accomplished by renewing (or establishing) a shared value consensus and shared morality among the parties. In retributive justice systems, the behavior of the offender is modified through imposed censure (such as imprisonment), whereas in restorative justice, behavioral change is facilitated by a shared value consensus and self-censure by the offender who acknowledges the harm done, takes responsibility for it, and expresses remorse (Presser and Van Voorhis, 2002).

## **THE RESTORATIVE JUSTICE ASPECTS OF GRIEVANCE PROCEDURES**

We argue that grievance procedures involve a blend of both retributive and restorative justice elements. The restorative justice aspects of grievance procedures can be

demonstrated by looking first at the core processes of restorative justice and also by the shared value consensus that is a critical aspect of restorative justice systems. Presser and Von Voorhis (2002) explain three core processes of restorative justice systems: dialogue, relationship building, and communication of values. Although there are a variety of restorative justice models that are distinct and diverse, these core processes are employed in each.

## **Face-to-Face Dialogue**

All restorative justice systems involve face-to-face dialogue between the victim and offender and may also include other parties or a broader community. Restorative justice demands that all parties involved with a perceived offence have the opportunity to participate in reaching a mutually amicable solution. This community dialogue includes exchanges about what happened, the material and psychological harm suffered by the victim, the expression and explanation of values, and potential courses of action to rectify the offence. In the grievance procedure there is no direct corollary to “victim” and “offender” but generally the griever does feel victimized (or at least treated unfairly) and offended by the decisions or actions of the supervisor, management or organizational policies. The broader community includes those who have a vested interest in the particular issue or concern. In the workplace, this community could include the grievance filer, coworkers, shop stewards and other union officials, front-line supervisors, and upper management (Bemmel and Foley, 1996).

Face-to-face dialogue is predominant throughout the grievance procedure, but the dialogue corresponding most closely to restorative justice occurs in the initial steps of the grievance procedure. The initial steps taken when an employee perceives unfair treatment vary widely and there are many paths by which a grievance may be initiated. The employee may approach the supervisor directly to discuss the unfair treatment and try to have the issue resolved. Following this, or as an alternative course of action, the employee may approach the union steward, and the steward and employee may then approach the supervisor to seek a resolution. The steward will represent the employee's interests and may try to mediate a resolution. In many situations the unfair treatment is public in the sense that coworkers will witness, or at least be aware of the unfair treatment and they may be involved in the discussions as well (that is, a “broader community” is involved in the dialogue). All of these may take place prior to, or after a formal written grievance is filed, or the matter may be resolved without a written grievance ever being filed. What is clear, however, from all these typical scenarios of how grievance procedures operate at the initial steps is that face-to-face dialogue is paramount.

As an unresolved grievance proceeds through the grievance procedure, face-to-face dialogue will continue, but the participants will change. Often the grievance filer will not be directly involved in discussions beyond the initial steps. The issue will move on to more senior ranks of management and union officials. If the grievance proceeds to arbitration, lawyers may become involved in the dialogue. As a grievance moves through the grievance procedure, and moves away from the affected employee(s), the supervisor and coworkers, the similarities of the grievance procedure to restorative justice procedures diminish. Grievance arbitration is more similar to court-based, retributive justice systems than restorative justice systems. The process and dialogue becomes controlled by lawyers (or senior managers and union officials) within a legalistic system with little direct involvement and much less control by the employee and immediate supervisor. Thus, in terms of dialogue among the affected individuals as a core process of restorative justice, the early stages of the grievance procedure closely resemble restorative justice procedures. Conversely, the latter stages of the grievance procedure, especially arbitration do not mirror

restorative justice procedures. In fact, grievance arbitration more closely resembles the court oriented retributive justice system.

## **Relationship Building**

The second core process of restorative justice systems is relationship building. Dialogue, of course, facilitates the building of relationships among victims, offender and the broader community, but building relationships is considered a core process in itself. The interactions and dialogue involved in the initial steps of the grievance procedure may also facilitate the establishment, maintenance or repairing of relationships. The supervisor may gain a better understanding of the employee, their values and concerns, and how and why they feel the supervisor's actions were unfair. Likewise, the employee may gain a better understanding of the supervisor's values and rationalization for their actions. Union stewards may build on their relationship with the employee and the supervisor. If coworkers are offering assistance or support, this may enhance the relationships in the broader community of coworkers. The dialogue in the grievance procedure certainly has the potential to generate positive relationships between the employee, supervisor, steward and affected coworkers. Presser and Van Voorhis (2002) note that restorative justice processes may establish new relationships or enhance relationships beyond what existed previously. Grievance procedures may also enhance relations between the employee and supervisor, with the employee having a better understanding and greater sense of justice than prior to the grievable event.

The initiation of a grievance may, however, have a negative impact on relationships as well, particularly between the employee and supervisor, or the steward and supervisor. By raising the issue and filing a grievance, the employee is challenging the decisions and authority of the supervisor. Supervisors may feel threatened, fear the grievance will reflect poorly on them selves and react defensively. In fact, several studies have found evidence of subsequent retaliation by supervisors against employees who filed grievances, by giving them lower performance evaluations or other negative actions (Klaas and DeNisi, 1989; Olson-Buchanan, 1996; Peterson and Lewin, 2000). The latter steps, especially arbitration, may also cause deterioration of the relationship between the union and management. Both expend a great deal of effort and expense on cases going to arbitration. The adversarial nature of the process, and the frequent outcome of one party winning and one losing are contrary to the development of a shared understanding and mutual consent that would enhance their relationship.

From a restorative justice perspective, this would be considered a failure of the system. Restorative justice procedures are intended to facilitate relationship building and healing among all the parties concerned. Retaliation or other evidence of a souring of the relationship between the supervisor and employee, or more broadly management and the union, would indicate that from a restorative justice perspective the system has not only failed, but is actually harmful. Thus, there are mixed views about the role of the grievance process on relationships. There is the potential for enhanced relationships, but also the potential (supported by some empirical evidence) that relationships deteriorate.

## **Communication of Values**

A third core process in restorative justice systems is the communication of values. Criminologists argue that offenders hold immoral values, or at least nullify moral values to avoid blame and guilt for their actions. In restorative justice systems, however, the face-to-face dialogue should undermine any avoidance of moral values and blame by offenders, and uphold or instill moral values if they did not previously hold these values. It is this process that will ensure the victim and broader community that the offender will share their values

and behavioral norms, accept blame, and not repeat the offence. In the grievance procedure, there are few issues that center around moral values, although grievances related to sexual harassment or other inappropriate behavior may focus on moral values more than contractual rights. However, many grievances may be centered around arguments for values that should govern the workplace, such as the consistency of treatment across employees, or competing values such as the use of seniority versus merit for making human resource management decisions, or efficiency and productivity versus safety and work-life balance. Other values of fairness may be the basis for an employee perception of unfair treatment and these values will be central to a subsequent grievance, at least from the employee's perspective.

As with the face-to-face dialogue discussed above, communication of values between the employee, supervisor, steward and affected employees will take place primarily in the first steps of the grievance procedure. The initial discussions often focus on why the employee feels the action was unfair, and the values behind this perception of unfairness will become evident. The supervisor's defense of the action will reveal the values that support the action taken. Resolution of a grievance at this early stage suggests the parties have reached an understanding or sharing of values that are appropriate for the situation. If the grievance is not settled in the first steps, this communication of values may continue into later stages of the grievance procedure and arbitration. However, the nature of the discussions will generally shift more toward legalistic issues about the interpretation of the collective agreement and if and/or how the action may have violated the collective agreement. Consequently, the communication of values seems most prevalent in the initial steps of the grievance procedure, and grievance resolved at this stage of the process are most likely to reflect a consensus of shared values among the employee, supervisor and any affected coworkers. In contrast, binding decisions from arbitration are more likely to be accepted as legal decisions that must be followed, but these decisions may continue to conflict with the values of any or all of the employee, supervisor, steward and affected coworkers.

## **DISCUSSION AND FUTURE DIRECTIONS**

This discussion of the core processes in restorative justice systems has shown that two of the core processes, face-to-face dialogue and communication of values, are also evident in the early stages of the grievance procedure, but much less so in the later stages, especially arbitration. These two core processes suggest that the early stages of the grievance procedure are closely aligned with restorative justice systems, but that the later stages are not, and arbitration is more closely aligned with retributive justice systems. This is encouraging as most grievances are settled in the first steps of the process (Bemmel and Foley, 1996). The similarity of grievance procedures to restorative justice systems in terms of the core process of relationship building is less clear. The dialogue and communication of values between the employee and supervisor clearly provides the potential to build a positive relationship, but the filing of a grievance may also have negative effects on their relationship. The challenge to the supervisor presented by a grievance may negatively affect the relationship, but the more the employee and supervisor engage in face-to-face dialogue and communication of values, the more the processes should have a positive effect on building a relationship. These competing effects make it unclear if grievance filing and the grievance procedure will lead to building or the deterioration of the relationship between the employee and supervisor.

The role of grievance procedures in restoring a grievance filer's sense of justice in the workplace has not been addressed in prior grievance procedure research or the organizational justice research. Indeed, we do not even know the extent to which an employee's sense of justice is altered by a grievable event, but depending on the nature and

seriousness of the event it could have a very negative effect on their sense of justice. Whether grievance procedures restore their sense of justice is an empirical question that would be best addressed with longitudinal studies tracking individuals' perceptions as their grievance moves through the procedure to final resolution and after the settlement of the grievance. There are many important questions to be addressed by future research. Our comparison of grievance procedures with restorative justice procedures indicates the early stages of the grievance procedure most closely match restorative justice. Do the first stages of the grievance procedure restore employee's sense of justice? Do grievances settled at the first step leave the filers with a higher perception of justice than those settled at later steps? Gordon and Bowlby (1988) suggests this is not the case, but Bemmels and Lau (2001) found stewards are more satisfied if grievances are settled in the first steps. Do some grievance filers end up with higher perceptions of justice than they held prior to the grievable event? Is so, under what circumstances does this happen? How can procedures be modified to extend this outcome to more (or all) grievance filers? Longitudinal studies of grievance filers' perceptions of justice could address these and related questions and lead to practical implications for how to improve grievance procedures to improve their effectiveness in maintaining or enhancing a sense of justice in the workplace.

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