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H. Allan Hunt
**Performance Management in
Workers' Compensation Systems**

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Vol. 12, No. 1

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Performance Management in Workers' Compensation Systems

Interest in performance measurement and performance management has expanded remarkably in the past 25 years. This interest has spawned many initiatives, both private and public. One of the most ubiquitous has been the "balanced scorecard," which developed out of the work of two professors at the Harvard Business School in the early 1990s, Robert Kaplan and David

(see Kaplan and Norton 2001).

While the balanced scorecard was finding application in private business, nonprofits, and local government entities, the federal government was conducting a national performance review under the leadership of Vice President Al Gore (1993). This gave a boost to legislation enacted under the title of the Government Performance and Results Act of 1993, or GPRA. GPRA is the latest in a series of government attempts at "performance management," including the Planning-Programming-Budgeting System (PPBS) of 1965, Management by Objectives of 1973, and Zero-Base Budgeting of 1977 (see U.S. Government Accounting Office [USGAO] 1997).

However, GPRA differs from those earlier federal efforts in that it also imposes a planning and evaluation process designed to measure program effectiveness and influence budgeting decisions. Five-year strategic plans are required from all federal agencies (with revision every three years), together with an annual performance plan that has credible outcome-based goals. In addition, these "good intentions" are being monitored by the Office of Management and Budget (OMB) Program Assessment Rating Tool (PART), which is being applied across all federal government agencies and

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Norton. It was based on the fundamental concept that since there are (or should be) multiple organizational objectives, there should also be multiple dimensions of performance measurement (Kaplan and Norton 1992). Kaplan and Norton urged that the financial perspective be complemented by a customer perspective, an internal process perspective, and an organizational learning and growth perspective. Only then could performance measurement fully serve the strategic objectives of the modern enterprise

programs on a five-year cycle. In fact, the Office of Management and Budget conducted PART evaluations on 234 federal programs during fiscal year 2002–2003 and planned to complete 400 by the end of fiscal year 2004.

PART rates programs as “effective, moderately effective, adequate, results not demonstrated, or ineffective” based on four criteria. Twenty percent of the evaluation is based on management, 20 percent on program purpose and design, 10 percent on planning, and 50 percent on program results (USGAO 2004). While it is too early to judge the ultimate success of PART or GPRA, they certainly demonstrate growing interest in program effectiveness and program evaluation in the federal government and elsewhere (see USGAO 2004 for a critical view). No less an authority than Richard P.

While it is too early to judge the ultimate success of PART or GPRA, they demonstrate growing interest in program effectiveness and program evaluation in the federal government and elsewhere.

Nathan, in his recent presidential address to the Association for Public Policy Analysis and Management, suggested “Let’s not part with PART” as an appropriate slogan for the 2004 election season.¹

“State of the Art” Performance Measurement in Workers’ Compensation Systems

Workers’ compensation systems have not been perceived as among the leaders in developing performance measurement tools. There are, however, a number of impressive performance measurement systems currently in place throughout the workers’ compensation world. These performance measurement systems are specifically designed to support the management of the workers’ compensation function. They include targets or goals, with an accountability

standard that defines acceptable levels of performance. For example, examine the International Association of Industrial Accident Boards and Commission Information Product Award winner for 2003 in the “program improvement category.”

Nova Scotia Workers’ Compensation Board (WCB)

The Nova Scotia WCB Performance Measurement and Management System (PMMS) emphasizes empowering WCB employees by giving them the necessary information to align their personal work goals with organizational objectives. This is illustrated in Figure 1, which shows the conceptual model underlying the PMMS. It indicates that the goals of the organization are defined from the top down, but performance accumulates from the bottom up, as individual performances add up to team performance, which, in turn, sums to unit and then department performance. All departments taken together constitute corporate outcomes.

The PMMS system uses specific

performance bands to define expected performance norms based on past experience. These “dashboard indicators” define adequate (green), marginal (yellow), and unacceptable (red) performance for each performance measure and at each organizational level. In this way, individuals or teams with performance problems can be identified and targeted for additional training or assistance.

The primary PMMS performance indicators are

- timeliness,
- return-to-work outcomes,
- claim durations,
- claim costs,
- staff availability, and
- stakeholder satisfaction.

The system is a proprietary, Web-based application designed to assign each user the necessary level of access, as well as the appropriate performance level indicators. Thus, individual caseworkers may access their own monthly performance results, as well as their team, unit, and department performance results, but they cannot access another

Figure 1 Performance Model for Nova Scotia PMMS

SOURCE: Nova Scotia WCB.

individual's results. Similarly, team managers have access to results for their departments, units, and teams, plus the individuals in the team, but not for other teams or individuals. There are seven distinct levels of security access built into this system.

For each performance area, the software permits "drill-thru" to more refined or specific measures. For example, the corporate timeliness of payment measure allows drill-thru to the five different client service units, which are organized geographically. Data (and dashboard indicators) are displayed for the current month and the previous month, as well as the threshold levels for green, yellow, and red indicators. Human contact for more information is also listed. Individual worker-level data are displayed for the last eight measurement periods (typically months). This permits

Lost production days is the ultimate performance measure for a workers' compensation agency, because it represents both the incidence of claims and their severity or duration.

easy identification of performance trends and enables quick intervention for remedial efforts or workload rebalancing.

The PMMS system also produces management information reports that support day-to-day operational management. For instance, there is a "Medium High Caseload Report," which identifies units, teams, or individuals with relatively high caseloads. The report assigns each claim a status and weight based on specific activities happening with the claim. The system is designed to represent the amount of effort that would typically be required for a case of that status. Management can then work with this list to maintain more equitable file distribution and resultant work burden.

The WCB of Nova Scotia reports that employee users indicate that the software tool is "intuitive and relevant to their work." Eighty-five percent of staff surveyed in 2002 indicated that they understood their personal performance

targets. The board of directors has also expressed a high level of satisfaction with the information they receive monthly from PMMS. The bottom line is that timeliness to first payment improved from 60.5 percent in May 2002 to 81.5 percent in May 2003.

Office of Workers' Compensation Programs, U.S. Department of Labor

The Office of Workers' Compensation Programs (OWCP) in the U.S. Department of Labor has developed what may be the best single outcome measure for a workers' compensation agency. Lost production days is the ultimate performance measure for a workers' compensation agency because it simultaneously represents both the incidence of claims and their severity or duration. A reduction in lost production days is clearly a good thing for both workers and their agencies. In response to the pressures generated by GPRA, OWCP decided to measure production days lost due to workers' compensation claims in the federal employing agencies, and to evaluate OWCP performance in terms of reducing average lost production days.²

This system was originally implemented as a way to track

performance under the Quality Case Management program, a nurse-based case management system designed to return long-term Federal Employees Compensation Act (FECA) claimants to employment. Using this measurement to manage performance over time appears to have been very effective as the average duration reduction has been nearly 20 percent over an eight-year period. This is confirmed by the fact that the lost production days measure was extended to the entire FECA program in fiscal year 2001. It has subsequently been adopted under the President's Safety, Health and Return-to-Employment initiative for all federal employees for 2004–2006. OWCP reports results on this and other performance measures by individual agency on their Web site (<http://www.dol-esa.gov/share/>).

Conclusions

Performance measurement has clearly gained a (tenuous) foothold within some workers' compensation systems in North America. One gets the impression that the "state of the art" is better in Canada than in the United States. But perhaps that impression results from the more competitive workers' compensation environment in the United States, which

Figure 2 Average Lost Production Days in Quality Case Management Program by Office of Workers' Compensation Programs, U.S. Department of Labor

SOURCE: U.S. Department of Labor (2004b).

leads insurers to think of performance measurement systems as a part of their competitive advantage.

On the other hand, there are also limits to the role of performance measurement in workers' compensation systems. First must come the dictum that "what gets measured gets done." However, the obverse question is, What is not measured? It seems clear that concentration on achieving one goal in complex social systems like these will likely come at the expense of alternative goals. It may not be evident immediately, but the time and energy that go into achieving the stated goal will be diverted from some other activity with an unstated or unmeasured goal. This may or may not be a problem, but the issue should be carefully examined to make sure that the net result is not a surprise (see Meyer 2002).

The other question is, What happens when things go bad? The savvy executive knows that is the time to change the performance measurement system! On the other hand, corporate and public governance systems must develop the capability to deal with this issue. Performance goals should be potentially achievable, or they will not motivate better performance. But this means goals must reflect the underlying reality, and that reality may change rapidly. So performance goals must also be flexible.

Finally, observers ask if performance measurement is just "the flavor of the month." This seems unlikely, since it is part of a much broader trend in government, education, and private enterprise. But ultimately performance measurement must be adopted by stakeholders as an important part of system management if it is to truly reach its ultimate potential. It is still very early in the history of performance measurement in workers' compensation; it remains to be seen how much effective performance management it will lead to. Researchers and policy analysts look forward to watching this process unfold over the next several years.

H. Allan Hunt is assistant executive director at the Upjohn Institute.

Notes

1. See Nathan's remarks at http://www.appam.org/conferences/fall/atlanta2004/APPAM_Presidential_Speech_04.pdf.

2. It should be noted that OWCP maintains a number of other performance measures that are not covered here. See U.S. Department of Labor (2004a) for details.

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Hoyt N. Wheeler, Brian S. Klaas, and Douglas M. Mahony

Workplace Justice Without Unions

*NOTE: This article draws upon research from the authors' book, *Workplace Justice Without Unions*, which was published last year by the W.E. Upjohn Institute for Employment Research. See <http://www.upjohninstitute.org> for information on how to order the book.*

“Where there is no rule of law but only the command of persons, where secrecy and arbitrariness reign, where one never knows when or why the axe will fall, there justice weeps” (Wolterstorff 2001).

Human dignity at the workplace requires the right to just treatment by those holding authority. At the crux of this is protection from arbitrary action—action that is based upon personality rather than merit, and is not predictable on any reasoned basis. When a human being is treated as merely a means to an end, a thing to be employed by others, rather than as a person deserving justice, justice does indeed weep. This is especially true where a person's job is at stake. In our society, an individual's job is not only the source of economic goods, but also an important part of how we define ourselves—and others define us—and our role in society. Where workers can be terminated from their employment for any reason, or none at all, arbitrariness reigns. Yet, this is historically the basic principle of the law of employment termination in the United States.

Corporations are social organizations arranged in a hierarchy in which those at the top exercise authority over those at the bottom. This inevitably means that control must be exerted over those who are employed by others. In such circumstances, both human nature and differing interests between the employed and the employer give rise to a situation in which an abuse of power is not only possible, but highly likely. In the workplace there are order givers

and order takers. One instrument of control by order givers is the threat of termination of the relationship. Ultimately, employees who do not behave as they are ordered will be separated from the organization—fired.

Fortunately, since the days when the employment-at-will principle was adopted by American courts in the late nineteenth century, there has been a considerable erosion of it. What has occurred over a period of about 90 years is the construction of a patchwork of limitations on employment-at-will. Yet, the employer's power is still quite substantial. Arguably, it has grown significantly by virtue of some recent U.S. Supreme Court decisions approving employer-mandated arbitration (employment arbitration).

The Practice of Workplace Justice

A major development in the area of workplace justice has been the adoption of organizational justice procedures by nonunion employers. The more advanced forms of these procedures have come along relatively recently. Based on data gathered in the late 1970s, Fred Foulkes (1980) found that by far the most common employer device for handling employee grievances at that time was the open-door policy, which is a very rudimentary workplace justice procedure. More advanced forms of nonbinding policies have included 1) installing an ombudsman, a corporate employee who independently deals with worker problems; and 2) mediation, where a neutral third party works to facilitate a resolution of the dispute.

An especially interesting organizational justice procedure originated in the 1980s—peer review panels. Here, a panel of employees (and sometimes managers) makes a final decision or recommendation regarding an

employee's grievance.

The management-initiated organizational justice system to most recently rise to prominence is employment arbitration. In employment arbitration, a nonunion employer requires employees to agree to submit any complaints (or sometimes any allegations of violation of law on the part of the employer) to a neutral arbitrator who will render a final and binding decision on the matter. This is by far the most controversial of these systems. The fairness of employment arbitration has been vigorously attacked on the grounds that it deprives employees of their legal right to go to court, and to a jury trial, and substitutes an employer-mandated system that is set up and controlled by the employer.

Design of the Study

There is a substantial literature on workplace justice; much of it relates to employment arbitration. However, a systematic analysis of this literature, while useful, fails to produce any solid conclusions with respect to the main questions of interest. To remedy this, we have gathered an extensive body of new data in an attempt to move toward clearer answers to the issues inherent in these systems. The empirical portion of our study has several aspects. First, in order to judge the substantive results obtained under these various procedures, we analyze overall win/loss rates by employees in a sample of termination cases in labor arbitration and employment arbitration and in a sample of cases from federal courts.

Our second and most intensive research strategy is our attempt to determine the degree to which the same result would be reached in the same cases across different types of decision makers. This is tested by posing hypothetical scenarios to labor arbitrators, employment arbitrators, managers, members of peer review panels, jurors in employment discrimination cases, and labor court judges from other countries. By analyzing the responses to these scenarios, we can compare the harshness or leniency of the systems toward

employees for different disciplinary offenses, and the criteria used to reach decisions.

Results

Existing studies that evaluate workplace justice systems by looking at the win/loss rates by employees and employers show that the results are mixed. Probably the most striking result is the low percentage of employee wins in discrimination cases in federal courts. When we analyzed data on win/loss rates from our own sample of arbitration awards and recent reports of federal court decisions, we obtained the results set out in Table 1.

Although comparing the overall win rate of employees in employment arbitration with those in the other two procedural alternatives is of some interest, the most meaningful comparisons are between results in particular categories of employment arbitration cases and other systems. Our most pertinent comparison is of court cases involving claims of discrimination in violation of a federal statute and employment arbitration cases involving that same claim.

In employment arbitration cases where a federal discrimination statute was involved, employees won 22 percent of the cases. This compares to only 12 percent in federal district courts in the most recent five-year period. Thus, the chances of an employee winning would appear to be much greater in employment arbitration than in court when the case goes to a final adjudication. However, this does not take settlements into account.

In labor arbitration cases under a collective bargaining contract, unlike court cases enforcing a federal statute, the employer has the burden of proving misconduct and the propriety of the penalty. Usually the standard is proof by a preponderance of the evidence. However, more serious cases may require proof by clear and convincing evidence, or even proof beyond a reasonable doubt.

The principal limitation on the kind of analysis described so far is that it does not hold constant the nature of the cases decided upon in the various justice

Table 1 Employee/Employer Win Rates

Procedure	Percent employee wins	Percent employer wins
Employment arbitration ^a		
Overall <i>n</i> = 216	33	67
Federal discrimination statute involved <i>n</i> = 59	22	78
Employment contract <i>n</i> = 52	56	44
Burden of proof on employer <i>n</i> = 57	60	40
Labor arbitration ^b <i>n</i> = 580	52	48
Federal district court ^c		
1996–2000 <i>n</i> = 26,841	12	88
1987–2000 <i>n</i> = 53,248	16	84

^a SOURCE: Bureau of National Affairs, *Labor Arbitration Reports*, 1994–2002; American Arbitration Association, *Employment Dispute Arbitration Reports*, 1999–2000.

^b SOURCE: Bureau of National Affairs, *Labor Arbitration Reports*, 1994–2002.

^c SOURCE: Federal District-Court Civil Cases, 2001. See <http://teddy.law.cornell.edu:8090>.

systems. It is to this limitation that the most intensive portion of our research addresses itself. This stage of our study consists of developing hypothetical cases on termination of employment and asking different types of decision makers to indicate whether they would find in favor of the employer or the employee if they were deciding the case. We attempted not only to discover tendencies to decide in favor of either employees or employers, but also to determine what were the important factors that influence different decision makers. The decision makers to whom these hypothetical cases were posed included employment arbitrators, labor arbitrators, peer review panelists, human resources officers, persons who had served as jurors in discrimination cases, and labor court judges from several countries.

The results of our work on hypothetical cases are complex. One relatively simple set of findings that provides something of an overall view of the results indicates that, in response to our hypothetical cases, the percentage of cases decided in favor of employees was greatest by labor arbitrators (55 percent) and labor court judges (51 percent); lowest for employment arbitrators, both when they were deciding statutory claims (25 percent) and when they were

applying a “for cause” requirement in a contract of employment (33 percent); and in between these extremes for HR managers (46 percent), peer review panelists (45 percent), and jurors (38 percent). So, holding constant the particular cases decided produces results that are quite different from the results of looking at overall win/loss rates as we do in Table 1. These bare results, although useful, should be viewed with some caution, and should be understood in the context of the complete body of results and analysis.

Professors Hoyt Wheeler, Brian Klaas, and Douglas Mahony are faculty members at the Moore School of Business, University of South Carolina.

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The facts presented in this study and the observations and viewpoints expressed are the sole responsibility of the authors. They do not necessarily represent positions of the W.E. Upjohn Institute for Employment Research.

New and Recent Books

Communities and Workforce Development

Edwin Meléndez, Editor

~ NEW ~

This volume reveals how, as a result of policy reforms at the national, state, and local levels, programming by different institutions and innovative

professional practices converged to transform the employment services industry. The contributors show how these reforms spurred employment service providers

to substantially revamp their operations by promoting the principles of universal access, integration of federal funding streams, devolution of policy to local authorities, and work-first as a starting point for employment services. As a result, many new programs were started by nontraditional institutions, traditional programs underwent rapid transformations, and some providers exited the industry.

The studies presented here constitute a first step toward a comprehensive assessment of the role that community organizations played in revamping the employment services industry. Most importantly, they show how a new style of labor market intermediary has evolved from focusing almost exclusively on the provision of employment services to job seekers to simultaneously addressing the needs of both job seekers and employers.

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David E. Balducchi,
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policy resulting from the Workforce Investment Act of 1998; 2) trends affecting the delivery of labor exchange services by state agencies, particularly how they interact with other public programs; 3) the performance and accountability mechanisms under which employment service offices operate and the effectiveness of employment services in helping job seekers find jobs; 4) the growing number and assortment of Internet-based tools and information sources that help people find jobs; 5) the international perspective on job brokerage functions; and 6) the current and future role of labor exchange services.

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Christopher J. O'Leary,
Robert A. Straits, and
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The U.S. Department of Labor began funding job training programs some 40 years ago. The first of these programs was the Manpower Development and Training Act (MDTA) in 1962, which was

followed by the Comprehensive Employment and Training Act (CETA) in 1973, the Job Training Partnership Act (JTPA) in 1982, and the Workforce

Investment Act (WIA) in 1998. As one program supplanted another, job training evolved from having strong federal control to substantial local authority, from narrowly targeted services to broadly available services, and from proscribed training options to significant customer choices.

This volume provides a broad overview of federally funded job training programs as they exist today. The notable contributors review what training consists of and how training programs are implemented under WIA. In particular, they examine training service providers and methods of delivering training services, including the use of individual training accounts and eligible training provider lists. Performance management under WIA is examined, as well as the effectiveness of training programs. In addition, public training programs are compared to private training provided in the United States and to public training programs offered in other industrial nations.

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