



USDA Grievance/Arbitration Assessment and Resolution Model (GAARM) (10-4-01)

Background: The idea for developing the GAARM came from a senior Mission Area Labor Relations Specialist who posed the following question: “Does the USDA have an arbitration triage process?” The Specialist was looking for a tool to help him sort through a number of pending arbitrations and assist USDA managers decide which ones should be arbitrated and which one they should attempt to settle. No such process existed for grievance arbitrations, but the concept of a resolution strategy for employment disputes is not new. For the past several years the USDA Civil Rights Office has advocated the use of a resolution model it developed to examine EEO complaints for settlement (DM 4300-1). The use of Alternative Dispute Resolution in lieu of traditional litigation methods is strongly encouraged in USDA policy (DR 4710-1). Thus, it is logical that the Labor Relations community should have a structured method to examine grievance arbitrations to determine whether settlement is warranted. The concept to develop a grievance arbitration model available for optional use was endorsed by the Mission Area Labor Relations Officers at their September 2001 meeting.

The Model and Worksheet: The USDA GAARM follows a logical progression of steps starting with the **issue** management believes would go before an arbitrator. It prompts the LR practitioner and manager to identify the **interests** at stake in the dispute from the agency and union’s perspectives as well as the relative importance of those interests. Knowing the interests places the manager in a position to evaluate how any eventual resolution **options** preserve those interests and which options may be acceptable by the parties.

The centerpiece of the GAARM is the assessment process to determine whether management should pursue settlement. Keys to making that determination are the estimated **costs**, (both tangible and intangible) and the **risk** of not prevailing in arbitration. The worksheet prompts the user to identify the costs and place a value on the risk, then plot out the assessment results on two **cost-to-risk matrices**. The points plotted on the matrices will provide the manager with an indicator whether settlement should be sought as well as the relative amount of resources that should be devoted to pursuing resolution.

By completing the GAARM worksheet, the manager can make an informed decision regarding pre-arbitration resolution and use the worksheet to justify any resources expended to obtain a settlement agreement.

The USDA Grievance Arbitration Assessment and Resolution Model worksheet is found as Attachment 1. A completed worksheet (Attachment 2), based on a hypothetical grievance, is provided as an example. Completed worksheets are

internal agency working documents and protected from disclosure under the FOIA, Exemption 5.

Resolution Process

The GAARM is intended to be a pre-step to the resolution process. Once the decision is made that resolution should be attempted, the process used is left up to management or to both parties. Use of a third party neutral to assist the parties reach agreement typically improves the chances of settlement. Therefore, it is recommended the parties consider using ADR services available through their Mission Areas or from the USDA Conflict Prevention and Resolution Center.

Attachments

- 1- USDA Grievance/Arbitration Assessment and Resolution Model Worksheet
- 2- Sample Worksheet

**USDA Grievance/Arbitration Assessment and Resolution Model
(GAARM) Worksheet
(Final Draft 10-4-01)
(Confidential Internal Management Working Document)**

The USDA GAARM contains factors managers should consider in determining whether to resolve a grievance for which arbitration has been invoked. This worksheet is a guide intended to aid the manager and Labor Relations practitioner progress through a logical set of steps prior to making the decision whether or not to pursue resolution prior to arbitration. Results of this assessment can also be used to establish a framework for developing resolution options. If resolution is attempted, managers are encouraged to seek additional assistance through their Mission Area's ADR program or through the USDA Conflict Prevention and Resolution Center.

I. Issue in Dispute.

Define the issue(s) in dispute.

II. Interests of the Parties to the Issue in Dispute.

What interest(s) does management intend to meet by taking the action or maintaining the conditions that gave rise to the grievance?

What interest(s) does management see the Union intending to meet by arbitrating the case?

In the table below, for each interest identified, indicate how much value does each Party place on meeting that interest.

Key: 5 –very high – interests must be preserved – critical to maintaining a core value of the organization;

1 – limited value – interest is secondary to others.

Interest	Mgmt	Value	Union	Value

III. Costs

A. **Tangible Arbitration Costs.** Complete the table

Cost Item	Estimated Costs
Arbitrator fees	
Agency & Union salaries and per diem (Hearing)	
Union attorney fees	
Agency & Union salaries (Hearing preparation)	
Other misc. costs -	
Total	

B. **Costs to Grant Remedy** as Requested by Grievant or Full Relief (which ever is less).

Remedy	Estimated Costs
Total	

C. **Intangible Costs of Arbitration.** For each of the items listed, circle the value on each scale you believe is appropriate for the impending arbitration.

1) **Work unit morale and productivity.**

-3 -2 -1 0 1 2 3

-3 = taking the case through arbitration would have a widespread negative impact on work unit morale and productivity over an extended period of time

0 = arbitration's impact would be relatively neutral

3 = taking the case through arbitration would have a widespread positive impact on work unit morale and productivity over an extended period of time

2) **Effect on work unit's compliance with agency rules, policies and supervisory direction.**

-3 -2 -1 0 1 2 3

- 3 = taking the case through arbitration would undermine supervisory authority and/or seriously detract from employees desire to follow policies/rules in the future
- 0 = arbitration would have no affect on future compliance
- 3 = taking the case through arbitration would enhance employee regard and willingness to comply with supervisory direction and/or agency policies/rules

3) Relationship between Management and the Union

-3 -2 -1 0 1 2 3

- 3 = taking the case through arbitration would have a significant negative impact on the relationship between the Parties in the long term
- 0 = arbitration impacts would not adversely affect overall relationship
- 3 = taking the case through arbitration would have a positive affect on the Parties' relationship

4) Other Intangible Cost Items not reflected in items 1-3. Specify cost items and determine whether taking the case through arbitration would result in a positive or negative cost to management

Cost Item	Cost impact on management

IV Risk

1. Case Strengths. List the factors management believes would support its action being sustained by an arbitrator.

2. Case Weaknesses. List any factors or uncertainties management believes would diminish the likelihood of being sustained by an arbitrator.

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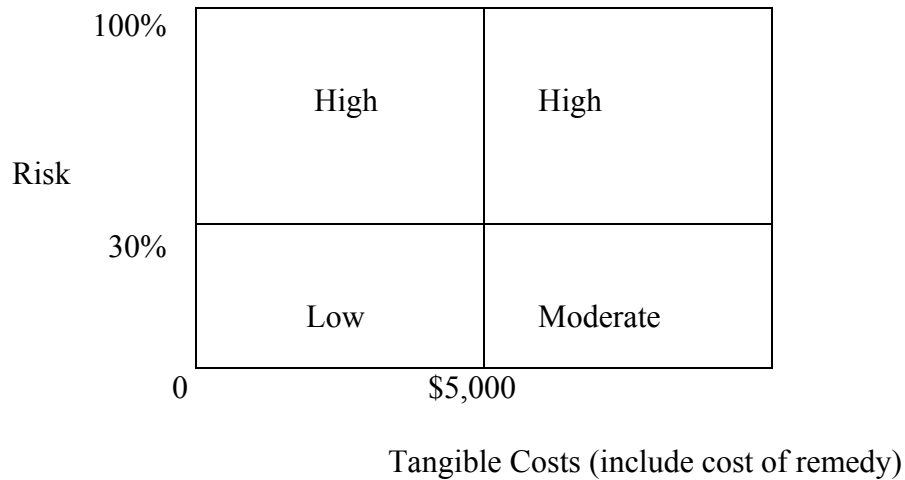
3. Confidence estimate. Based on the strengths and weaknesses, estimate the likelihood of management being **reversed** in arbitration, expressed in a percentage. (The higher the percentage, the lower the confidence level)

_____ % Risk that management will loose the case before an arbitrator

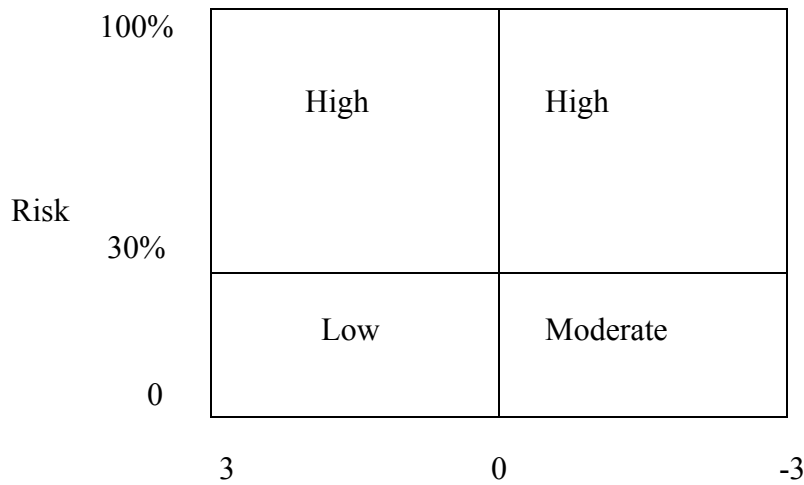
V Summary of Costs and Risks

In each of the matrices, plot the results of the cost and risk assessments.

1. Risk to Tangible Cost Matrix



2. Risk to Intangible Cost Matrix



Intangible Costs (plot each of the cost items, then determine the midpoint)

Moderate to high results in either of the matrices indicates management should consider expending agency resources to pursue resolution of the grievance prior to arbitration.

VI Resolution Options

In crafting resolution options, management should attempt to preserve its interests, as well as meeting those it believes are important to the grievant and/or union. Terms of resolution options will vary, but should be generally proportional to the level of risk, and costs – with no offer granting more than full relief.

The process used to resolve a grievance is often just as important as the Agreement’s terms. Using ADR processes such as mediation afford management the opportunity to fine tune its assessment and develop options more responsive to the needs of the Parties and merits of the case.

Draft Resolution Options

**USDA Grievance/Arbitration Assessment and Resolution
Model (GAARM) Worksheet
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Hypothetical Case – Sample Worksheet

The USDA GAARM contains factors managers should consider in determining whether to resolve a grievance for which arbitration has been invoked. This worksheet is a guide intended to aid the manager and Labor Relations practitioner progress through a logical set of steps prior to making the decision whether or not to pursue resolution prior to arbitration. Results of this assessment can also be used to establish a framework for developing resolution options. If resolution is attempted, managers are encouraged to seek additional assistance through their Mission Area’s ADR program or through the USDA Conflict Prevention and Resolution Center.

I. Issue in Dispute.

Define the issue(s) in dispute.

Did management have just cause to suspend the grievant (Joe Smith) for three days for being AWOL 4 hours on July 1, 2001? If there is just cause to support the charge, is the penalty appropriate?

II. Interests of the Parties to the Issue in Dispute.

What interest(s) does management intend to meet by taking the action or maintaining the conditions that gave rise to the grievance?

Enforce its attendance and leave policies.
Consistent treatment of employees – like penalties for like offenses
Support first line supervisor maintain employee morale in work unit
Prevent recurrence of employee misconduct

What interest(s) does management see the Union intending to meet by arbitrating the case?

Demonstrate support for bargaining unit employees
Ensure employees are treated fairly – like penalties for like offenses

In the table below, for each interest identified, indicate how much value does each Party place on meeting that interest?

Key: 5 –very high – interests must be preserved – critical to maintaining a core value of the organization;

1 – limited value – interest is secondary to others.

Interest	Mgmt	Value	Union	Value
Enforce its attendance and leave policies.	x	5		
Consistent treatment of employees – like penalties for like offenses	x	4	x	4
Support first line supervisor maintain employee morale in work unit	x	3		
Prevent recurrence of employee misconduct	x	4		
Demonstrate support for bargaining unit employees			x	5

III. Costs

D. **Tangible Arbitration Costs.** Complete the table

Cost Item	Estimated Costs
Arbitrator fees	\$1,800 (2 days fee)
Agency & Union salaries and per diem (Hearing)	\$2,500 (reps, witnesses, grievant)
Union attorney fees	NA
Agency & Union salaries (Hearing preparation)	\$1,500
Other misc. costs -	\$500 (room rental)
Total	\$6,300

E. **Costs to Grant Remedy** as Requested by Grievant or Full Relief (which ever is less).

Remedy	Estimated Costs
Pay for 3 days suspension	\$500
Processing costs	\$150
Total	\$650

F. **Intangible Costs of Arbitration.** For each of the items listed, circle the value on each scale you believe is appropriate for the impending arbitration.

1) **Work unit morale and productivity.**

$$\begin{array}{ccccccc} & & & & X & & \\ \hline -3 & -2 & -1 & 0 & 1 & 2 & 3 \end{array}$$

-3 = taking the case through arbitration would have a widespread negative impact on work unit morale and productivity over an extended period of time

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5) Effect on work unit's compliance with agency rules, policies and supervisory direction.

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7) Other Intangible Cost Items not reflected in items 1-3. Specify cost items and determine whether taking the case through arbitration would result in a positive or negative cost to management

Cost Item	Cost impact on management

IV Risk

1. Case Strengths. List the factors management believes would support its action being sustained by an arbitrator.

Good documentation to support AWOL incident
Employee had been warned previously about attendance problems

4. Case Weaknesses. List any factors or uncertainties management believes would diminish the likelihood of being sustained by an arbitrator.

Instances where management in same unit received lesser penalties for first offense situations comparable to this one.
Union likely to offer testimony that refutes supervisory account of the length of time employee was absent from his work station.

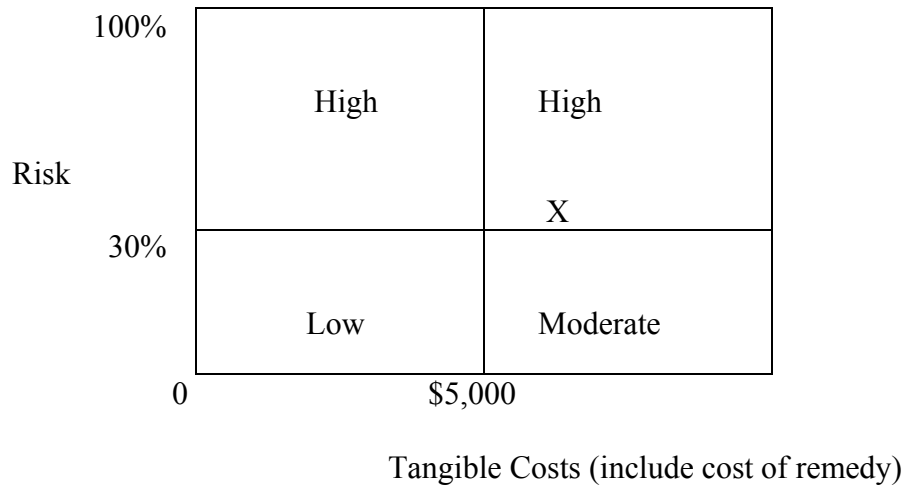
5. Confidence estimate. Based on the strengths and weaknesses, estimate the likelihood of management being **reversed** in arbitration, expressed in a percentage. (The higher the percentage, the lower the confidence level)

35 % Risk that management will loose the case before an arbitrator

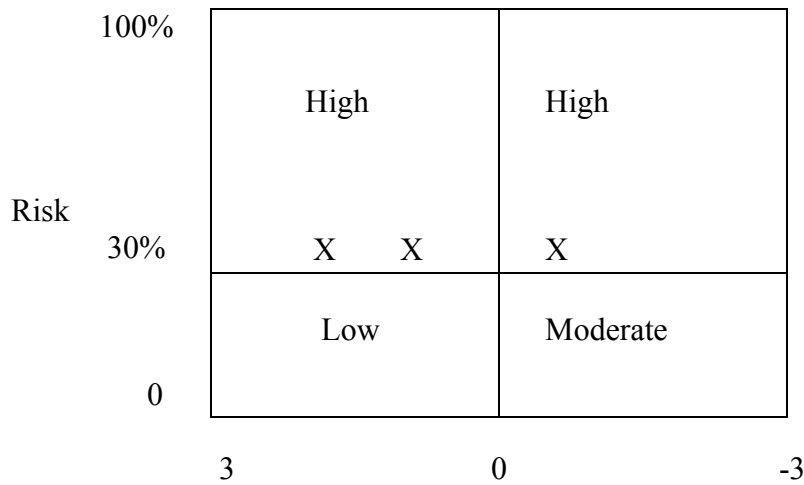
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Draft Resolution Options

1. Reduce penalty to letter of reprimand, adjust record and reimburse employee for lost pay.
2. Offer alternative discipline if employee accepts responsibility and agrees to waive grievance/ complaint rights if there is another incident of AWOL in next 2 years.
3. Reduce penalty to 1 day suspension and reimburse employee for 2 days pay.