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Statutory Expedited Grievance Arbitration:

The Case of Ontario*

by

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A distinctive feature of the North American collective bargaining system is the reliance on grievance and arbitration procedures (rather than economic sanctions) to resolve mid-contract disputes. This practice evolved differently in the United States and Canada. In the United States, arbitration gained wide acceptance during the thirties and forties because: unions and management felt strikes over individual grievances were costly and a drain on resources; as bargaining evolved from the organizational to the contractual stage, there was a need to stabilize relationships and peacefully resolve disputes; and legal and moral persuasion was employed by the National War Labor Board to encourage adoption of grievance arbitration. Prior to 1940, it was estimated that fewer than 10 percent of all collective agreements provided for arbitration; the figure reached 73 percent in 1944 and currently stands at about 95 percent.[1]

Collective bargaining law in Canada has been shaped by the U.S. model (i.e., the Wagner Act). However, policy differences exist with respect to mid-contract disputes. At the federal level, Privy Council Order 1003 (1944) introduced a statutory prohibition against strikes and lockouts during the life of a collective agreement and required that unresolved disputes be submitted to binding arbitration. Compulsory arbitration of rights disputes was subsequently adopted by virtually all provincial governments and remains an integral component of contemporary Canadian labor law.[2] Although the form of arbitration (e.g., the selection of arbitrators and the use of single arbitrators vs. tripartite boards) has been left to the parties, it would not be entirely accurate to characterize grievance arbitration as consensual.[3]

Grievance arbitration has enjoyed widespread acceptance by management and labor and is acknowledged to be less formal, time consuming and expensive than other systems of dispute resolution, e.g., the courts. Nevertheless, arbitration is not without its critics. Increasingly, unions argued arbitration's virtues had become vices, i.e., arbitration is often slow, too expensive and too legalistic. In the United States and Canada, unions and management have sought to enhance grievance procedure effectiveness through the adoption of expedited arbitration procedures.[4] This development has been significant, but isolated.

This article examines a statutory expedited grievance arbitration procedure adopted in Ontario, Canada in 1979.[5] Our primary objective is to consider the effectiveness of the expedited procedure (which includes mediation) as an alternative dispute resolution technique. After reviewing some of the problems of cost and time delays, we will describe the characteristics of the statutory procedure. This will be followed by an examination of the experience with expedited arbitration. The analysis will consider how extensively expedited procedures are used (including whether expedited arbitration is preferred for certain types of disputes, e.g., discharge grievances), the effect of grievance mediation on dispute resolution and the time and cost savings of expedited procedures.

Time Delays and Cost

The problems of delay and cost have been attributed to (1) the internal grievance procedure, (2) the arbitration process (3) the parties' reliance on a small corps of experienced arbitrators and (4) arbitrators' fees.

1. Internal grievance procedures. One source of delay occurs in the pre-arbitration steps of the grievance procedure. Although most

collective agreements provide for the orderly and expeditious processing of grievances, in many cases delays are unavoidable. Not only is grievance handling time consuming, but bottlenecks are created when caseloads exceed the capacity of management and union officials to process them efficiently.[6] Accordingly, the parties often depart from the formal requirements of the collective agreement by waiving or extending the time limits for processing grievances.

2. Delays in the arbitration process. Delays are encountered in selecting an arbitrator and scheduling a mutually acceptable hearing date. Since most arbitrators are chosen on an ad hoc basis, the selection process often is accompanied by negotiations in which each side attempts to increase the likelihood of a favorable outcome. The scheduling of hearings is more difficult when both parties are represented by legal counsel and an arbitration board is hearing the case. Delays also may be encountered because the parties are prepared to wait in order to have a particular arbitrator (usually one of the more experienced and busiest arbitrators) hear their case.

Arbitration boards also take longer to issue awards. One study found the average elapsed time between the last hearing and the award was 23 days for single arbitrations and 46 days for arbitration boards.[7] This appears to reflect the greater time required to obtain concurring and/or dissenting opinions. In addition, arbitration boards are more expensive than single arbitrations.

3. Reliance on a small corps of arbitrators. There is evidence that a small number of arbitrators handle a disproportionate share of arbitral practice. For example, 13 Ontario arbitrators (out of 47 accredited arbitrators) were responsible for 76 percent of all awards (1973-1976).[8] In the U.S., there is also a concentration of arbitrators.[9] It has been suggested that the supply of qualified

arbitrators is insufficient to meet the demand for arbitration services. Zack argues the problem is not so much a shortage of arbitrators with "ability", but their lack of "accept-ability".[10] In either case, as long as the demand for these select arbitrators remains strong, delays will continue and the average cost of arbitration will remain high.

4. Arbitrators' Fees. Arbitrators' fees probably have received more criticism than any other cost of arbitration. It is estimated that arbitrators' fees in Ontario for a one-day hearing (including the written award) increased from $500 to $700 in 1974 to $750 to $1500 in 1985.[11] The fee and expenses of a single arbitrator or arbitration board chairman normally are shared equally by the parties. While arbitrators' fees represent a significant cost, they probably comprise less than half of the total cost of arbitration. A 1980 survey of Ontario unions found arbitrators' fees represented 44.3 percent of total arbitration costs. The figures for single arbitrators and chairmen were 53.6 percent and 38.5 percent, respectively.[12] Other major expenses included arbitrators' expenses, nominees' fees, legal counsel and staff member costs. One would expect arbitrators' fees to comprise a smaller percentage of employers' costs, since they are more often represented by legal counsel.

The failure to resolve grievances in an expeditious and cost-efficient manner can have significant consequences. For example, a backlog of festering unresolved grievances could result in wildcat strikes as "employees try self-help to get their problems settled, without delay and without fees (and of course without thinking about the cost to their employers, their union or even themselves from the immediate work stoppage)."[13] Frustrations over delays and perceptions that grievance procedures were unfair contributed to wildcat strikes in the U.S. bituminous coal industry.[14] In addition,

a large backlog of grievances awaiting arbitration may spill over into formal contract negotiations. Time delays also may create inequities. For the employee who is unjustly discharged and remains out of work for an extended period, an award of backpay may not provide financial rectification.[15] Moreover, there is some evidence that the likelihood of reinstatement declines as the time elapsed between the grievance and the hearing increases. Adams found that 71 percent of the grievors were reinstated when the hearing was held within three months, but only 26 percent were reinstated where it took nine or more months to hear the case.[16]

The available evidence suggests that the parties themselves are largely responsible for the cost and delays in grievance resolution. In an attempt to achieve greater efficiency in dispute resolution, attention has focused on the adoption of alternative procedures.

Alternative Dispute Procedures

To a considerable extent, arbitration "is a victim of its own success."[17] Dependency on arbitration and the professionalization of arbitration have raised doubts about its ability to be "both efficient in terms of time and cost expended and equitable in terms of the results obtained."[18] These concerns stimulated interest in and the adoption of alternative dispute procedures, including expedited arbitration, grievance mediation and labor board mediation-arbitration. Such procedures have provided substantial time and cost savings and promoted the informal resolution of disputes.

1. Expedited Arbitration. The primary objective of expedited arbitration is to provide a quick, informal and relatively inexpensive procedure for resolving grievances. Typically, expedited arbitration is an alternative route for processing certain types of grievances. Although individual schemes vary, expedited procedures may include

provisions for: (1) skipping steps (or reducing time limits between steps) in the internal grievance procedure; (2) reducing the time required to select arbitrators, schedule hearings and issue awards; (3) making exclusive use of single arbitrators; (4) eliminating procedural requirements, e.g., briefs, transcripts, and written awards, and restricting the use of legal counsel; and (5) establishing a fee schedule for arbitrators and/or compressing hearings in order that several grievances may be heard on a single date.[19]

Most studies indicate that employers and unions are satisfied with expedited procedures, including the conduct of hearings and the quality of awards. There also have been substantial time and cost savings. A survey of expedited arbitration in the U.S. found that expedited arbitration often cost $300 to $500 less per award than conventional arbitration and awards frequently were issued less than one week after the hearing. Similar results have been reported in Canada.[20] The value of expedited arbitration has been summarized as follows:

> There are basically two major advantages involved in adding an expedited track to an existing grievance procedure. First, in major cases of a routine nature, time and money are saved and the individual grievant receives a quick and fair resolution of his or her grievance. Second, by processing minor grievances through the expedited procedure, the parties will be relieving some of the pressure on their traditional arbitration system.[21]

While expedited procedures may enable the parties to devote greater time and resources to significant or contentious issues, e.g., discharge and policy issues, they are not without drawbacks. One problem is the restricted scope of most expedited procedures and the fact that arbitrators' decisions are usually without precedential

effect. As a result of the parties' concern with hasty decisions of a final and binding nature, access to expedited arbitration has normally been limited to grievances of little contractual significance.[22] The exclusion of issues such as discharge may only serve to perpetuate delay and inequities. A second concern is many expedited procedures do not reduce time delays in the pre-arbitration steps of the grievance procedure. The largest reductions in the time between the grievance and the arbitration award have occurred after the dispute was referred to arbitration. Third, in some cases, cost savings may be more important than reducing delays. On the Long Island Railroad, union concerns over the "reasonableness" of arbitrators' fees led to the dismantling on an expedited system in favor of a slower procedure provided free by the government.[23]

2. Grievance Mediation. A second alternative procedure is the use of grievance mediation. Instead of submitting unresolved grievances directly to an arbitrator, they first would be referred to a mediator.

The potential advantages of grievance mediation are its informality, its ability to encourage the parties to resolve more of their own problems and its ability to achieve cost and time savings. A review of grievance mediation procedures in the U.S. and Canada found settlement rates for grievances exceeded 70 percent.[24] In their detailed study of the coal mining industry, Brett and Goldberg reported that 89 percent of the grievances taken to mediation were settled prior to arbitration. They also found that mediation did not depress overall internal grievance settlement rates. Moreover, the use of grievance mediation generated significant cost savings (mediators' fees and expenses averaged about $700 less per case than those of arbitrators) and resolved disputes three months faster than if they had been referred to arbitration. These savings were possible

because mediators could be obtained faster than arbitrators, disputes could be resolved in one day or less, attorneys were not used in mediation, mediators could help resolve relationship problems and it was often possible to consolidate grievances, thereby reducing the number of requests for arbitration panels.[25]

What accounts for the apparent success of mediation? One study of state and federal mediators attributed settlements to the "parties' understanding and acceptance of the process."[26] Indeed, the mediators rated this factor more important than their personal skills and acceptability. Brett and Goldberg believed the parties' willingness to negotiate a grievance settlement was a prerequisite to high settlement rates, but added "that pressures to negotiate in a mediation conference are high relative to the internal procedure."[27] This view is shared by Weiler, who notes "a third party, one who has some authority and good judgment and who serves as a means of communication and guidance was able to achieve this degree of accommodation."[28]

There is considerable uncertainty whether mediation would be effective in resolving all issues. For example, mediators questioned its suitability for cases involving fundamental management rights and union security.[29] In coal mining, grievance mediation was felt to be unsuitable for cases involving discharge, large amounts of money and novel issues of contract interpretation. But, as Brett and Goldberg observe, the issue may not be the nature of the grievance as much as the parties' attitude toward the grievance, e.g., the parties' determination to accept nothing less than total victory.[30] In either case, the inability to resolve certain issues at mediation could lead to additional costs and delays.

3. The Labor Board Alternative. Two Canadian jurisdictions allow the parties to refer grievances to labor boards as an alternative to using their collectively bargained arbitration procedure. In British Columbia, the labor board uses industrial relations officers to mediate disputes. When mediation fails, the board may either resolve the dispute itself through investigation or refer the matter back to the parties for arbitration.[31] Mediated settlements were obtained in 71 percent of the cases handled between 1976 and 1982, thereby promoting the informal settlement of disputes without burdening the already over-burdened arbitration system. Between 1974 and 1984, the labor board resolved more grievances than the private arbitration system.[32]

The Ontario Labour Relations Board (OLRB) has jurisdiction to arbitrate grievances in the construction industry. Following a request for arbitration, the OLRB will schedule a hearing within 14 days and may appoint a labor relations officer to confer with the parties in an attempt to achieve a settlement. The available evidence indicates this procedure provides informal, quick and inexpensive dispute resolution. Between fiscal years 1980-81 and 1983-84, officers settled 87 percent of the grievances (1,953 out of 2,246 cases). Most of the grievances involve routine issues - the collection of wages, health and welfare payments, union dues and so forth. Notwithstanding an increase in arbitration applications (from 517 to 824 applications annually between fiscal years 1980-81 and 1983-84), the OLRB has been able to reduce the time required to dispose of cases.[33] In 1983-84, 72.7 percent of the cases were resolved in less than four weeks (up from 60.5 percent in 1980-81).[34] The labor board procedure also is inexpensive; mediation involves no fee and the arbitration cost is $200 per party for each hearing date.

Statutory Expedited Grievance Arbitration in Ontario

An industrial inquiry commissioner was appointed in 1976 to determine whether legislative changes were needed to improve the system of grievance arbitration. On the basis of the commissioner's report, the Ontario Labour Relations Act was amended in 1979 to provide a statutory expedited grievance arbitration procedure (known as s. 45 of the Act). The amendment applied to all collective agreements coming into effect after September 1979. Essentially s. 45 provides unions and employers with an alternative to their collectively bargained grievance and arbitration procedures. The statutory procedure allows the parties to process grievances quickly by reducing delays commonly experienced prior to and subsequent to a referral to arbitration. Although it did not attempt to regulate the hearing process or arbitrators' fees, s. 45 was aimed at lowering the overall cost of arbitration.

To encourage expeditous grievance handling, s. 45 allows either party to ask the Minister of Labour to appoint an arbitrator notwithstanding the arbitration provision in the collective agreement. (The Office of Arbitration assists the Minsiter in carrying out this and other statutory requirements.[35]) A written request for expedited arbitration may be made after exhausting the internal grievance procedure in the collective agreement or 30 days after the grievance was filed, whichever occurs first. For cases involving discharge or other termination of employment, a request can be made 14 days following the grievance. Essentially, s. 45 allows either party to opt out of the negotiated grievance and arbitration procedure and into the statutory expedited procedure. Thus the party which initiated the grievance may not be the one which refers the dispute to arbitration. There also is no restriction on the scope of

expedited arbitration. Unlike many privately negotiated expedited procedures, s. 45 applies to <u>any difference</u> between the parties to a collective agreement, including whether a matter is arbitrable.

The expedited procedure seeks to reduce other sources of time delays. It gives the Minister of Labour the authority to appoint single arbitrators in all cases. Hearing dates are scheduled within 21 days of the application for expedited arbitration and, in the interim, the Minister may appoint a grievance settlement officer (GSO) to confer with the parties in an attempt to mediate the dispute. (There are currently six GSO's employed by the Ministry of Labour, all of whom have extensive industrial relations experience.) Although there is no statutory time limit for issuing awards, there is a guideline. Arbitrators' letters of appointment stipulate that awards should be issued within three weeks of the date of the hearing. Bench or oral awards are permitted with the agreement of the parties.

By including grievance mediation in the procedure, lawmakers hoped to promote the informal settlement of disputes without adding to the time required to resolve grievances. In practice, mediation sessions are informal and typically are held on the employer's premises. The GSO's task is to review the issues and to seek a resolution of the dispute to the satisfaction of the union, employer and grievor(s). In reviewing the merits of a particular grievance, the GSO may assess the strengths and weaknesses of the case in light of the arbitral jurisprudence, but generally avoids predicting an arbitrator's decision. As well, there is a complete separation of the mediation and arbitration functions.

> Discussions are strictly off-the-record and absolutely no details are passed to the appointed arbitrator...the adjudicator has no knowledge of any possible compromises or terms for settlement which have been discussed with the Grievance Settlement Officer.[36]

S. 45 does not explicitly regulate the cost of arbitration. However, the extensive use of mediation (provided by government at no cost to the parties) and the exclusive use of single arbitrators were expected to result in cost savings.[37] Arbitration costs also might be reduced by increasing the supply of qualified arbitrators. Under s. 45, the Minister of Labour established a labor-management advisory committee to give advice on matters related to arbitration. Since its inception, the advisory committee has been engaged in the training and development of new arbitrators. Given the scheduling stringencies of s.45, newly-trained arbitrators might be more readily available to hear expedited cases than experienced arbitrators. The entry of new arbitrators into the profession (presumably charging lower fees than experienced arbitrators) should lower the cost of arbitration in the short-run.

Table 1 summarizes differences between expedited and conventional grievance arbitration and the potential of s. 45 to provide time and cost savings. In particular, s. 45 can help to: (1) reduce delays in the internal grievance procedure and thereby avoid bottlenecks; (2) promote informal dispute resolution through mediation; and (3) provide quicker hearings and awards. It is worth emphasizing that since there is no generally-accepted meaning given to expedited arbitration, it probably is best viewed as a relative concept. As noted above, there are expedited procedures in North America which undoubtedly provide for speedier and less expensive arbitrations than s.45. Most of these private schemes are aimed at expediting particular grievances (e.g., special cases). In contrast, s. 45 endeavors to speed-up the entire process by allowing either party to opt into a statutory procedure to resolve any grievance. Accordingly, the success of expedited arbitration will depend on the specific aims of the procedure.

TABLE 1

CONVENTIONAL VS. EXPEDITED GRIEVANCE ARBITRATION IN ONTARIO

Arbitration Feature	Conventional Arbitration	Expedited Arbitration	Potential Benefits of expedited procedure
1. Reference to arbitration	Governed by the steps and time limits (which may be extended) in the collective agreement; normally reference to arbitration follows the exhaustion of the internal grievance procedure.	Notwithstanding an arbitration provision in the collective agreement, either party may request the Minister of Labour to appoint an arbitrator.	Permits opting out to avoid delays in the internal grievance procedure.
2. Arbitration tribunal	Collective agreement will specify either a single arbitrator or a three-person arbitration board. Where the parties are unable to agree on a single arbitrator or a chairperson, either party may ask the Minister of Labour to make an appointment.	The Minister of Labour appoints a single arbitrator.	Avoids delays associated with selection of a single arbitrator or arbitration board chairperson.
3. Scheduling the arbitration	Collective agreement specifies time limits which may be extended by the parties. Hearing dates usually are determined by the availability of parties, counsel and the arbitrator (or members of the arbitration board).	A hearing is normally scheduled within 21 days of the date of application.	Avoids scheduling delays by requiring hearing to to commence within 21 days.

4. Mediation	No statutory provision exists, but mediators may be appointed on a consensual basis.	The Minister of Labour may appoint a settlement officer to confer with the parties and endeavour to effect a settlement prior to a hearing.	Settlement officers may resolve grievances prior to the scheduled hearing.
5. Issuance of Award	Collective agreement may establish a time limit; more commonly, the expectation is the arbitrator will issue an award in a reasonable time period (which will depend on his caseload)	There is no statutory provision, but there a guideline providing that awards be completed in three weeks. Oral awards are permitted with the agreement of the parties.	Awards will be issued quicker than under conventional arbitration.
6. Costs	The parties normally share equally the single arbitrator's or chairperson's fee; each looks after the costs of its nominee to a board. The arbitrator sets his fee.	The parties share equally the single arbitrator's fee. The arbitrator sets his fee.	Direct savings will result from relying solely on single arbitrators. Indirect savings may result from increasing the supply of arbitrators generally, lower fees charged by new arbitrators and if mediation settles disputes bound for arbitration.

Sources and Methodology

The analysis is based on three data sources. First, the Ministry of Labour's Office of Arbitration compiles statistics on the number of requests for expedited arbitration and the disposition of those applications. This includes information on the number of grievances which were withdrawn, mediated and arbitrated. The data covers fiscal years 1979-80 to 1984-85. Second, to compare the relative use of expedited and conventional arbitration, we examined the 5,654 arbitration awards filed with the Ontario Ministry of Labour between fiscal years 1980-81 and 1983-84 (the four-year period following adoption of s. 45). The data were coded and tabulated from the Ministry's Monthly Bulletin which contains information on the parties involved in the dispute, the issue, the type of grievance (e.g., individual, group or policy), the outcome, the arbitrators' names, whether the case was heard by a single arbitrator or a board.[38] It is estimated that the Monthly Bulletin includes 98 percent of the arbitration awards made under the Ontario Labour Relations Act.[39]

Unfortunately, neither of these sources provides information on the time and cost aspects of arbitration. Accordingly, estimates of the time and cost savings of expedited arbitration were derived from supplementary sources, including two unpublished reports prepared by the Ministry's Research Branch.

Three measures were employed to evaluate the efficacy of s. 45 as an alternative dispute procedure: (1) how often expedited procedures were utilized; (2) the effect of mediation; and (3) estimated time and cost savings.

The effectiveness of s.45 will depend on how frequently the procedure is used. Some indication of the acceptability of expedited

procedures can be ascertained by examining the preference for expedited and conventional arbitration over time. The persistence of union complaints about arbitration costs and delays suggest that unions would make frequent use of expedited arbitration. A related issue is whether expedited arbitration is used as often as conventional arbitration to resolve important grievances, e.g., discharge and policy grievances. The limited scope of most voluntary expedited procedures suggests that, for some issues, time and cost may be less important than receiving a full hearing before an experienced arbitrator or arbitration board. Since s. 45 does not allow the parties to select the arbitrator, there might be greater reluctance to use the procedure for anything but routine grievances. Alternatively, it can be argued that unions would be more inclined to use the expedited procedure in discharge cases, particularly if the dominant concern is the inequities of delay. Since the procedure encourages informal settlements through mediation, an equitable settlement may be obtained quicker and at less expense.

The ability of s. 45 to promote informal dispute resolution can be determined by examining how frequently mediation is used and the settlement rates achieved by GSOs. Previous studies reported that certain issues, e.g., discharge and management rights, may be less suitable for mediation. Considering the broad scope of arbitrable issues under s. 45, settlement rates may be lower than reported in other studies. To a large extent, time and cost savings will depend on how often expedited procedures are used and the success of mediation. It also remains to be seen whether the time limits contemplated by s. 45 have been achieved.

Results

1. Utilization

Since fiscal year 1979-80, there have been 8,593 applications for expedited arbitration (see Table 2). Of that total, 646 grievances were withdrawn or rejected as untimely and 3,757 were settled by GSOs.[40] A total of 3,459 grievances were referred to arbitration and 1,880 expedited awards were issued. The difference between the number of grievances referred to arbitration and the number of arbitration awards is attributable to settlements negotiated by the parties, the consolidation of grievances and the time lag in reporting awards referred to arbitration in 1984-85.

These data indicate that there has been a large increase in the demand for expedited arbitration. The number of applications was relatively small in the first two years (fewer than 500 applications) because s. 45 only affected contracts concluded after September 1979. In 1981-82, 1,370 applications were received and by 1984-85, requests for expedited arbitration nearly doubled (2,374 applications). There also have been large increases in the number of mediated settlements and expedited arbitrations. Moreover, it appears expedited arbitration has been accepted as an alternative to conventional grievance arbitration.[41] Expedited awards accounted for about 22 percent of the arbitration awards issued in Ontario between 1980-81 and 1983-84. The percentage of expedited awards increased from 5.3 percent (1980-81) to 34.3 percent (1983-84).

There is no clear indication that unions are reluctant to use expedited arbitration to resolve more important grievances (see Table 3). A comparison of expedited and conventional arbitration awards reveals that a smaller proportion of the expedited awards deal with discharge (21.2 percent vs. 23.7 percent). A similar pattern exists

TABLE 2

EXPEDITED GRIEVANCE ARBITRATION UNDER SECTION 45, 1979-80 to 1984-85

Year	Applications	Cases withdrawn or rejected (untimely)	GSO settlements	Number of grievances referred to arbitration	Number of arbitration awards	Expedited awards as a percentage of all awards
1979-80	25	0	16	9	0	0%
1980-81	468	68	260	140	73	5.3
1981-82	1,370	169	707	494	277	18.7
1982-83	2,014	185	827	814	440	27.1
1983-84	2,342	105	955	1,007	573	34.3
1984-85	2,374	119	992	995	517	n.a.
TOTAL	8,593	646	3,757	3,459	1,880	22.3*

*For the period 1980-81 to 1983-84.

(Source: Office of Arbitration, Ontario Ministry of Labour)

TABLE 3

ARBITRATION AWARDS BY ISSUE AND TYPE OF GRIEVANCE, 1980/81 - 1983/84

Issue	Expedited Arbitration Number (Percent)	Conventional Arbitration Number (Percent)
Discharge	232 (21.2)	1,083 (23.7)
Discipline	127 (11.6)	626 (13.7)
Seniority-Related Issues	236 (21.6)	789 (17.3)
Other	497 (45.5)	2,064 (45.2)
Total	1,092 (100.0)	4,562 (100.0)

Type of Grievance	Expedited Arbitration Number (Percent)	Conventional Arbitration Number (Percent)
Individual Grievances	705 (64.8)	3,269 (72.4)
Group Grievances	167 (15.3)	534 (11.8)
Policy Grievances	216 (19.9)	710 (15.7)
Total	1,088 (100.0)	4,513 (100.0)

(Source: Ontario Ministry of Labour, Monthly Bulletin, April 1980 - March 1984.)

for discipline grievances. On the other hand, seniority-related and policy grievance account for a larger percentage of the expedited arbitrations. Admittedly, these are imprecise indicators of the relative importance of grievances. However, the overall results suggest that unions may be more inclined to sacrifice time and cost in discipline and discharge cases than in cases where the larger interests of the bargaining unit are at stake.

It is noteworthy that these findings do not appear to reflect differences in arbitration outcomes (see Table 4). Overall, unions were more successful in expedited arbitrations (46.9 percent of the grievances were allowed or allowed in part) than in conventional arbitrations (43.8 percent were successful or partially successful). Disaggregated data show that under expedited arbitration, unions were slightly more successful in discharge cases and considerably more successful in cases involving discipline, group and policy grievances. The only major category where unions fared worse was seniority-related grievances.

These results suggest that expedited arbitration may continue to grow in the near future. The demand for expedited procedures probably reflects the unions' desire to achieve cost and time savings. These potential benefits appear to outweigh whatever concerns may exist over not having a voice in selecting arbitrators. It also appears that expedited arbitration has not been restricted to resolving routine or relatively less important grievances. Although we do not know how unions choose between dispute procedures, the somewhat more favorable outcomes obtained under expedited arbitration may have increased its acceptability. For example, a larger percentage of expedited awards involved discharge cases in 1982-83 and 1983-84 (22.9 percent) than in the preceding two years (15.7 percent).

TABLE 4

ARBITRATION OUTCOMES BY ISSUE AND TYPE OF GRIEVANCE, 1980/81 - 1983/84

	UNION GRIEVANCE ALLOWED OR PARTIALLY ALLOWED	
Issue	Expedited Arbitration Number (Percent)	Conventional Arbitration Number (Percent)
Discharge	119 (52.4)	547 (52.0)
Discipline	83 (68.6)	307 (50.4)
Seniority-Related Issues	78 (34.7)	273 (36.3)
Other	204 (44.5)	751 (40.1)
Total	484 (46.9)	1,878 (43.8)

Type of Grievance	Expedited Arbitration Number (Percent)	Conventional Arbitration Number (Percent)
Individual Grievances	311 (46.4)	1,369 (44.1)
Group Grievances	76 (49.0)	218 (43.2)
Policy Grievances	95 (47.0)	267 (41.8)
Total	482 (46.9)	1,854 (43.6)

(Source: Ontario Ministry of Labour, Monthly Bulletin, April 1980 - March 1984.)

2. Grievance Mediation

Of the 7,947 meritorious applications for expedited arbitration,[42] 5,757 (approximately 72 percent) were referred to GSOs. Settlements were reached in 3,757 grievances or about two-thirds of the cases referred to mediation. Although the settlement rate is lower than reported in other studies, the results may be roughly comparable. For one thing, the settlement data only include settlements reached at the mediation meeting. Consequently, other settlements may have been influenced by the GSO's earlier efforts. As well, it must be recognized that settlement rates will be influenced by the characteristics of the expedited procedure. Since any grievance can be pursued under s. 45, there may be a larger proportion of "difficult" grievances being referred to mediation under s. 45 than under other grievance mediation systems.[43] There also has been an increase in settlement rates. The lowest settlement rate was achieved in 1981-82 (59 percent), when there was a dramatic increase in s. 45 applications. In subsequent years, the settlement rate climbed to 70 percent(1984-85).

Mediation has had a major impact on grievance dispute resolution. To begin with, more than 3,700 grievances were resolved informally, thereby avoiding the need for arbitration. While many grievances probably would have been resolved in the absence of a mediation procedure, mediation helped to relieve strains on an already over-burdened arbitration system.[44] Moreover, settlements were achieved quickly. All mediated settlements were reached within three weeks of the request for expedited arbitration. In the process, the parties also achieved significant cost savings (discussed below).

Although mediation appears to have been successful, other aspects of mediation need further examination. For example, GSO appointments as a percentage of meritorious applications for expedited

arbitration declined annually, falling to 63 percent in 1984-85. Whether this reflects past dissatisfaction with mediation is uncertain. It may be that employers, acting on the advice of legal counsel, are increasingly reluctant to participate in mediation, believing that s. 45 encourages grievance activity (and more particularly frivolous grievances). By refusing to mediate, unions would be forced to withdraw grievances or to seek a negotiated settlement. A second issue concerns the "net" effect of mediation. Although there are no data available on pre-arbitration settlement rates under conventional arbitration, it is recognized that informal procedures exist for resolving grievances after they are referred to arbitration.[45] If, for the sake of argument, one-third of all grievances were resolved without mediation, then the "net" effect of mediation still would be significant, but considerably lower than suggested by some studies. Moreover, settlement rates may be inflated because s. 45 does not require the parties to exhaust the internal grievance procedure prior to proceeding to mediation. There also is a need to analyze settlement rates under alternative procedures and to determine how settlement rates are affected by mediator skills and experience, grievance issues and the parties' motivation to negotiate a settlement.

3. Time and Cost Savings

S. 45 has provided substantial time and cost savings. The most significant improvements resulted from mediation. As noted above, mediated settlements were achieved in less than three weeks. This is about four to five weeks faster than expedited arbitration and about six months faster than conventional arbitration (discussed below). The time required to achieve mediated sedttlements in Ontario is comparable to the results reported in the U.S. coal industry.

However, the overall time savings associated with mediation were greater in Ontario, where arbitration appears to be slower.[46]

A conservative estimate suggests mediation saved the parties more than $2,000,000 in arbitrators' fees alone (i.e., the fees of single arbitrators and board chairmen).[47] This is based on the following assumptions: (1) the average arbitration fee is $1,000 for a one-day hearing (including research and writing award) and $400 per cancellation; (2) all cases involve a one-day hearing; (3) of the 3,757 grievances settled by GSOs, perhaps one-third (1,250) would have been resolved without mediation prior to conventional arbitration; and (4) 2,300 successful mediations required payment of a cancellation fee. In these circumstances the cost of conventional arbitration would be $3,007,000 (2,507 awards at $1,000 each and 1,250 cancellations at $400 each) or $800 per case. The cost of mediation would be $920,000 (2,300 cancellations at $400 each) or $245 per case. This represents a savings of nearly $555 per case in arbitrators' fees. (Brett and Goldberg's study of the mining industry found average savings of $793 in arbitrators' fees and expenses.)[48] If we assume arbitrators' fees represent 40 percent of the total cost of arbitration, the total savings of mediation would approach $5,850,000 or more than $1,550 per case.[49]

Additional evidence of the efficacy of expedited arbitration is found in a 1983 study of 1,462 Ontario arbitration awards (347 expedited and 1,115 conventional arbitration cases).[50] Unfortunately there are only fragmentary data on various measures of time savings. Accordingly, where gaps existed comparisons were made with data contained in a 1980 study of grievance arbitration.[51]

The available evidence indicates that expedited arbitration is considerably faster than conventional arbitration (see Table 5). Of

TABLE 5

ESTIMATED TIME SAVINGS UNDER EXPEDITED ARBITRATION, 1983

ELAPSED TIME BETWEEN:	EXPEDITED ARBITRATION	CONVENTIONAL ARBITRATION: SINGLE ARBITRATOR	CONVENTIONAL ARBITRATION: ARBITRATION BOARD	CONVENTIONAL ARBITRATION: TOTAL
Date of incident and of award	119 days (N=235)	274 days	415 days	342 days (N=685)
Date of grievance and date of award;				
- percent of awards in 1-90 days	59.7%	9.9%	0.0%	4.9%
- percent of awards in 1-150 days	86.6% (N=134)	32.5%	2.8%	17.6% (N=426)
Date of incident and date grievance filed	24 days (N=90)	--	--	60 days (N=231)
Date of incident and date of referral to arbitration	71 days** (N=127)	--	--	101 days* (N=305)
Date of referral to arbitration and date arbitrator accepted case	11 days (N=325)	36 days*	99 days*	65 days* (N=426)
Date arbitrator accepted case and date of first hearing	8 days (N=340)	86 days*	98 days*	92 days* (N=426)
Date hearing closed and date of award	23 days (N=342)	30 days	67 days	48 days (N=1,082)

*The 1980 study is based on a sample of 6 unions and 559 arbitration awards.

**This is an estimate based on the average length of time it takes to file the grievance after the incident and the average elapsed time between the date of the grievance and the date of referral to arbitration.

(Sources: Catherine Winter, "Grievance Arbitration Cost and Time, 1980" and "Grievance Arbitration Awards in Ontario, 1983".)

particular significance is the fact that the elapsed time between the date of the incident and the date of the award was 119 days for expedited arbitrations. Conventional arbitrations took three times longer or 342 days (274 days for single arbitrators and 415 days for arbitration boards). There also were savings in the elapsed time between the date of the grievance and date of the award. Although average figures are not available, nearly 60 percent of the expedited arbitrations were resolved in less than 90 days and 87 percent in less than 150 days. The figures for conventional arbitrations were about 5 percent and 18 percent, respectively.

The efficiency of expedited procedures is found in the periods preceding and following referral to arbitration. Expedited procedures appear to encourage the quicker processing of disputes in the internal grievance procedure. We infer this from the finding that the total elapsed time from the incident to a referral to arbitration was about 71 days in expedited arbitrations (1983) and 101 days in conventional arbitrations (1980). Under expedited arbitration it took an average of 11 days to appoint arbitrators and an additional 8 days to convene the first hearing. Although no comparable data were reported for 1983 conventional arbitrations, it took an average of 65 days to appoint arbitrators and 92 days to convene the first hearing in 1980. Expedited arbitrations also produced quicker awards. From the last date of hearing to the date of the award took 23 days for expedited arbitrations. This is half the time required for all conventional arbitrations and one-third the time for cases involving arbitration boards.

In conclusion, expedited arbitration encourages quicker processing of disputes in the internal grievance procedure and a speedier arbitration process. In addition, our results indicate that

the time limits established by law or guideline were satisfied. On average, hearings were held within three weeks of the application for arbitration and awards were issued in a little more than three weeks after the last hearing.[52] Nevertheless, on average, it took longer to issue awards under s. 45 than under many private expedited arbitration schemes.[53]

Expedited arbitration also is less expensive than conventional arbitration. This is primarily due to the exclusive use of single arbitrators. Winter found the cost of arbitration to unions was about $600 higher in cases involving arbitration boards.[54] Arbitrators' fees accounted for most of the difference. The average fee paid by unions to single arbitrators was $460; the fees of an arbitration board chairman and union nominee averaged $828 ($569 for the chairman and $259 for the union nominee). Because employers often choose lawyers and consultants to serve as board nominees, we estimate the total cost differential of using arbitration boards was probably close to $1,400 (this assumes the parties share equally the fees and expenses of a single arbitrator or chairman and that employer nominees receive about $200 more than their union counterparts).

To calculate the savings from relying exclusively on single arbitrators, we have made the following assumptions. First in the absence of expedited arbitration, 1,096 of the 1,880 expedited awards (58.3 percent) would have been decided by arbitration boards. This corresponds to the percentage of conventional arbitrations heard by boards between 1980-81 and 1983-84. The remaining 784 cases would have been referred to single arbitrators. Second, single arbitrations are less expensive under expedited arbitration. Since 1980, twenty arbitrators have completed a formal arbitration training program. In the period 1980-81 to 1983-84, these new arbitrators issued 34 percent

of the expedited awards. If we assume new arbitrators' fees are about $200 per case below the average, this would produce a net saving of about $53,312 or about $68 per case. (We assume there is no cost differential in other single arbitrations.) Third, the cost differential between single arbitrations and arbitration boards was about $1,468 per case or $1,623,000.[55] Thus by relying on single arbitrators, expedited arbitration achieved total savings of about $1,675,000 or $890 per case. These savings are greater than those reported under expedited arbitration in the U.S., but then again, arbitrators' fees appear to be higher in Ontario.[56]

Summary and Conclusions

In 1979, Ontario adopted a statutory expedited grievance arbitration procedure in response to complaints that arbitration was too slow, too expensive and excessively formal. Our findings suggest that expedited arbitration has been accepted as an alternative to conventional arbitration.

There have been more than 8,500 applications for expedited arbitration since 1979-80 and demand increased annually. In addition, expedited arbitration accounted for 22 percent of the arbitration awards issued between 1980-81 and 1983-84. Reliance on expedited arbitration increased annually, climbing to 34 percent of total arbitration activity in 1983-84.

The increased demand for expedited arbitration has been the result of two factors. First, it promotes the informal settlement of disputes and second, it is more time and cost efficient. Nearly two-thirds of the grievances referred to GSOs were resolved by mediation. Mediation accounted for the largest time and cost savings over conventional arbitration. For example, mediated settlements were achieved within three weeks of the request for arbitration. This

represents a savings of about six months over disputes resolved by conventional arbitration. Mediated settlements were achieved at an average cost to the parties of $245 per case, or about $1,550 per case less than the cost of conventional arbitration (including cancellations). The estimated total savings of mediation over arbitration was approximately $5,850,000.

In addition, expedited arbitration was faster and less expensive than conventional arbitration. The elapsed time between the incident and an expedited arbitration award was 4 months; it took $11^1/_2$ months in conventional arbitrations. Under expedited arbitration, the appointment of arbitrators, scheduling of hearings and issuance of awards was substantially faster. Moreover, the average cost of an expedited arbitration was about $890 less than a conventional arbitration. This is largely the result of using single arbitrators in expedited cases. The total savings of expedited arbitration over conventional arbitration were estimated at $1,675,000.

Our findings are generally consistent with previous research on the impact of grievance mediation and expedited arbitration. What is different about our study is that it involved a statutory mediation-arbitration procedure, covering a broad cross-section of employers and industries and with no restrictions on the scope of arbitrable issues. Clearly, s. 45 has improved the time and cost efficiency of grievance resolution. Further improvements might be achieved by adopting features found in private expedited procedures, e.g., making hearings more informal, scheduling several grievances per hearing date, specifying that awards be issued 72 hours after the close of the hearing and so forth. Of course,it might be difficult to introduce these changes to a statutory procedure.

It is quite evident that more research is needed to develop a broader understanding of expedited procedures. For example, we need to determine what factors influence the choice between dispute procedures, whether the parties are satisfied with mediation and whether there are qualitative differences between expedited and conventional arbitration. In addition, it would be useful to learn how often the non-grieving party referred grievances to expedited arbitration and whether this behavior affected settlement rates or the labor-management relationship. Another area for research would be to determine whether experience with expedited arbitration has led to changes in collectively bargained grievance and arbitration procedures. e.g. more streamlined procedures, less reliance on arbitration boards and so forth. An examination of these and other issues might enable us to design more effective grievance resolution procedures.

FOOTNOTES

1. Sumner H. Slichter, James J. Healy, and E. Robert Livernash, The Impact of Collective Bargaining on Management (Washington, D.C.: The Brookings Institution, 1960) and Harold W. Davey, Mario F. Bognanno and David L. Estenson, Contemporary Collective Bargaining (4th ed.) (Englewood Cliffs: Prentice-Hall, Inc., 1982).

2. H.D. Woods, "The Presidential Address: Shadows Over Arbitration", Proceedings of the Thirtieth Annual Meeting, National Academy of Arbitrators (Washington, D.C.: The Bureau of National Affairs, 1977), pp. 1-14.

3. For example, most Canadian labor laws contain a model arbitration clause which is deemed to form part of any collective agreement which fails to provide for the final and binding resolution of grievances without a work stoppage.

4. Marcus Sandver, Harry Blaine and Mark Woyar, "Time and Cost Savings Through Expedited Arbitration Procedures, " Arbitration Journal, Vol. 36 (December 1981), pp. 11-21 and Roy LaBerge, "McGill University Conference: The Advantages of Expedited Arbitration," Labour Gazette, vol. 78, No. 1 (January, 1978), pp. 21-25.

5. Whereas Ontario refers to its statutory procedure as "arbitration", several other Canadian jurisdictions use the term "adjudication" in analogous situations. For example, the Parliament of Canada uses "adjudication" to describe settlement procedures involving public sector rights disputes and unjust dismissal complaints of unorganized workers.

6. Report of the Industrial Inquiry Commissioner Concerning Grievance Arbitration Under the Labour Relations Act and the Hospital Labour Disputes Arbitration Act, Arthur Kelly, Commissioner (Toronto: Government of Ontario, 1978), p. 16.

7. Howard Goldblatt, Justice Delayed ... The Arbitration Process (Toronto: Labour Council of Metropolitan Toronto, 1974), pp. 4-13.

8. Jeffrey Gandz and Peter J. Warrien, "Does It Matter Who Arbitrates? - A Statistical Analysis of Arbitration Awards in Ontario," Labour Gazette, vol. 77, No. 2 (February, 1977), p. 65.

9. W.J. Primeaux and D.E. Branner, "Why Few Arbitrators are Deemed Acceptable", Monthly Labor Review, vol. 98 (September 1975), pp. 27-29.

10. Arnold Zack, "Arbitration Training: A Matter of Institutional Survival," Proceedings of the 1983 Spring Meeting of the Industrial Relations Research Association (Madison: IRRA, 1983), p. 489.

11. Goldblatt, op. cit., introduction and Mike Morgan and Sue Eastham, "Who Arbitrates Grievances in Ontario?," unpublished paper for graduate Collective Bargaining class (1985).

12. Catherine Winter, "Grievance Arbitration Cost and Time, 1980," Research Branch, Ontario Ministry of Labour, October 1983, p. 11 (mimeographed).

13. Paul Weiler, Reconcilable Differences (Toronto: The Carswell Company Limited, 1980), p. 110.

14. Jeanne Brett and Stephen B. Goldberg, "Wildcat Strikes in Bituminous Coal Mining", Industrial and Labor Relations Review, Vol. 32 (July 1979), pp. 465-483.

15. See Elliot I. Beitner, "Justice and Dignity: A New Approach to Discipline," Proceedings of the 1984 Spring Meeting of the Industrial Relations Research Association (Madison: IRRA, 1984), pp. 500-505.

16. George A. Adams, Grievance Arbitration of Discharge Cases (Kingston, Ontario: Industrial Relations Centre, Queen's University, 1978), pp. 50-51.

17. Weiler, op. cit., p. 109.

18. Mollie H. Bowers, Ronald L. Seeber, and Lamont E. Stallworth, "Grievance Mediation: A Route to Resolution For The Cost-Conscious 1980s" Proceedings of the 1982 Spring Meeting of the Industrial Relations Research Association (Madison: IRRA, 1984), p. 459.

19. David Lewin, "Empirical Measures of Grievance Procedure Effectiveness", Proceedings of the 1984 Spring Meeting of the Industrial Relations Research Association (Madison: IRRA, 1984), p. 495.

20. Sandver, et. al., loc. cit. and LaBerge, loc. cit.

21. Sandver, et. al., op. cit., p. 20.

22. Stephen B. Goldberg, "The Mediation of Grievances Under a Collective Bargaining Contract: An Alternative to Arbitration", Northwestern University Law Review, Vol.77, No.3 (1982), pp. 294-296.

23. Sandver, et. al., op. cit., p. 14.

24. Jeanne M. Brett and Stephen B. Goldberg, "Grievance Mediation in the Coal Industry: A Field Experiment", Industrial and Labor Relations Review, Vol. 37 (October 1983), p. 51.

25. Ibid., pp. 61-63.

26. Bowers, et. al., op. cit. p. 462.

27. Brett and Goldberg, op. cit., p. 59.

28. Weiler, op. cit., p. 111.

29. Bowers, et. al., op. cit., p. 461.

30. Brett and Goldberg, op. cit., p. 65.

31. This is determined by an examination of the issue(s) involved. Where the case "requires a hearing, testimony under cross examination, legal argument and reasons for decision," the matter is referred back to the parties. Alternatively, routine grievances are decided by the labor board on the basis of an industrial relations officer's investigative report supplemented by written submissions and exchanges between the parties. Weiler, op. cit., p. 112.

32. The labor board resolved 5,041 grievances (56 percent of the total) by mediation or investigation and private arbitrators disposed of 4,009 cases. Since the private arbitration data includes a small percentage (less than 5 percent) of interest arbitrations, the labor board probably resolved 60 percent of the grievances in the province. Letter from Jacqueline Johnson, Research Officer, Labour Relations Board of British Columbia (January 10, 1986).

33. Ontario Ministry of Labour, Annual Reports, 1980/81 - 1983/84.

34. It appears that mediated settlements often require more than 14 days. This is due to the fact "that the officers' settlement efforts continue after the hearings are commenced and that a large number of these proceedings are adjourned upon agreement of the parties pending a settlement which is forthcoming at a later date." George W. Adams, "Grievance Mediation by the O.L.R.B.: One Way To Fight Arbitration Costs in the Eighties", Proceedings of the Ninth Annual Meeting of Society of Professionals in Dispute Resolution (Washington, D.C.: SPIDR, 1982), p. 181.

35. The Office of Arbitration oversees the processing of s. 45 applications, schedules hearings, assigns grievance settlement officers and appoints arbitrators. It also handles: (1) requests from unions and employers for the appointment of arbitrators or nominees for boards of arbitration; (2) maintains a roster of qualified arbitrators; (3) is engaged in the training of prospective arbitrators; and (4) catalogs arbitration awards and publishes a monthly bulletin summarizing current arbitration awards. Outside the arbitration field, it appoints referees to hear appeals of employment standards cases and assists in constituting boards of inquiry under the Human Rights Code.

36. Jean M. Read, "Grievance Settlement Initiatives in Toronto", in Proceedings of the Ninth Annual Meeting of Society of Professionals in Dispute Resolution, op. cit., p. 186.

37. Although there is no mediation fee, the parties may be required to pay arbitrators' cancellation fees if the arbitrator is appointed prior to mediation and mediation succeeds. Cancellation fees probably range from 20 to 50 percent of the fee for a one-day hearing. The average cost per party might average $200. In recent years, arbitrators have not been appointed until after the meeting with settlement officers. Accordingly, where mediation is successful, there would be no cancellation fee.

38. There normally is a three to four month lag between the date of the award and its inclusion in the Monhtly Bulletin. Our calculations were based on the actual number of arbitration awards. If the Monthly Bulletin listed a case more than once because multiple issues were involved, we treated this as a single award. Since these cases were cross-referenced, it was possible to code then as a single award.

39. This is the most comprehensive source of information available about arbitration activity. The awards cover the private sector (except construction), health care, education and most municipal workers. A small percentage of the awards (6 percent) involve employees covered by federal labor relations law. In general, awards affecting employees covered by separate labor legislation, e.g. provincial government employees, are not reported in the Monthly Bulletin, Letter from Jean Read, Director of the Office of Arbitration, Ontario Ministry of Labour, October 3, 1985.

40. A breakdown is not available for the grievances which were not referred to arbitration (i.e., cases which were not withdrawn, rejected or settled by a GSO). In the vast majority of cases, the parties settled the grievances; a small number of 1984-85 applications were awaiting mediation results at the end of the fiscal year.

41. At the same time, there has been little change in the growth in demand for grievance arbitration in Ontario. From 1973-74 to 1979-80, the number of arbitration awards increased at an average annual rate of 8.6 percent; the average annual growth rate was 8.7 percent following introduction of s. 45. Ontario Ministry of Labour, Annual Reports, 1973-74 - 1983/84.

42. This figure excludes applications that were withdrawn or rejected as untimely.

43. Unfortunately, published data are not available on the issues referred to mediation, or on the reasons why GSOs were not appointed in more than 2,000 cases. Another factor may be the parties' preference to proceed directly to arbitration in certain cases, e.g., those involving important questions of contract interpretation.

44. The number of arbitration awards doubled between 1973-74 and 1983-84 (819 and 1.670 awards, respectively). Mediation resolved 2,489 grievances between 1981-81 and 1983-84. This represents more than half the total number of arbitration awards (4,521) issued in the same period.

45. Jeffrey Gandz, "Grievances and Their Resolution", in John Anderson and Morley Gunderson, eds., Union-Management Relations in Canada (Don Mills: Addison-Wesley Publishers, 1982), p. 299.

46. Brett and Goldberg, op. cit., p. 61.

47. Two caveats are in order. First, we do not know what effect mediation has on internal settlement rates or grievance activity. Accordingly, this factor is not reflected in cost estimates. Second, although the parties do not pay for mediation services, there is a social cost of providing GSOs. Based on cost estimates provided by the Office of Arbitration, we calculated the cost of providing GSOs (between 1980-81 and 1984-85) to be about $950,000 or an average of $165 per assignment.

48. Brett and Goldberg, loc. cit.

49. Arbitrators' fees represent about 45 percent of the total cost of arbitration to unions. Winter, loc. cit. Assuming employers more frequently use legal counsel as advocates and nominees on arbitration boards, a very conservative estimate is that arbitrators' fees represent 40 percent of total arbitration costs. Accordingly, the total cost of conventional arbitration would be about $6,767.500 (2,507 awards at $2,500 each and 1,250 cancellations at $400 each) or $1,800 per case. The cost of mediation would be unchanged.

50. In a strict sense this study does not provide an ideal comparison of expedited and conventional arbitration. In 98 cases, the parties and the arbitrators agreed to adjourn the first expedited arbitration hearing date. These cases were treated as non-expedited or conventional arbitrations because "the Ministry no longer has any control over a case and the case can no longer be considered expedited according to Section 45 of the Act." Cathy Winter, "Grievance Arbitration Awards in Ontario, 1983," Research Branch, Ontario Ministry of Labour, June 1985, p. 1 (mimeographed). Although this is correct, the relevant issue is how long it takes to process cases pursuant to s. 45 of the Act. If expedited arbitration is subject to delays and adjournments commonly found in conventional arbitration, these "imperfections" should be recorded as such rather than reclassified as non-expedited. In this manner, more reliable comparisons can be made between expedited and conventional arbitration.

51. Winter, "Grievance Arbitration Costs and Time 1980", loc. cit.

52. Even if we treated the 98 cases described in fn. 49 as expedited arbitrations and assumed they took as long to process as conventional single arbitrations, the results would still be favorable. The average elapsed time between arbitrators' appointments and the first hearing would be 24.5 days and the issuance of awards would take 24.6 days. These remain well below the average for conventional arbitrations.

53. Sandver, et. al., pp. 11-21.

54. Winter, op. cit., pp. 4-11.

55. This is based on the $1,400 cost differential described earlier and additional savings of $68 per case involving new arbitrators.

56. Sandver, et. al., loc. cit.

APPENDIX A: SECTION 45 OF THE ONTARIO LABOUR RELATIONS ACT

45.—(1) Notwithstanding the arbitration provision in a collective agreement or deemed to be included in a collective agreement under section 44, a party to a collective agreement may request the Minister to refer to a single arbitrator, to be appointed by the Minister, any difference between the parties to the collective agreement arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

(2) Subject to subsection (3), a request under subsection (1) may be made by a party to the collective agreement in writing after the grievance procedure under the agreement has been exhausted or after thirty days have elapsed from the time at which the grievance was first brought to the attention of the other party, whichever first occurs, but no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration.

(3) Notwithstanding subsection (2), where a difference between the parties to a collective agreement is a difference respecting discharge from or other termination of employment, a request under subsection (1) may be made by a party to the collective agreement in writing after the grievance procedure under the agreement has been exhausted or after fourteen days have elapsed from the time at which the grievance was first brought to the attention of the other party, whichever first occurs, but no such request shall be made beyond the time, if any, stipulated in or permitted under the agreement for referring the grievance to arbitration.

(4) Where a request is received under subsection (1), the Minister shall appoint a single arbitrator who shall have exclusive jurisdiction to hear and determine the matter referred to him, including any question as to whether a matter is arbitrable and any question as to whether the request was timely.

(5) Where a request or more than one request concerns several differences arising under the collective agreement, the Minister may in his discretion appoint an arbitrator under subsection (4) to deal with all the differences raised in the request or requests.

(6) The Minister may appoint a settlement officer to confer with the parties and endeavour to effect a settlement prior to the hearing by an arbitrator appointed under subsection (4).

(7) An arbitrator appointed under subsection (4) shall commence to hear the matter referred to him within twenty-one days after the receipt of the request by the Minister and the provisions of subsections 44 (6), (7), (8), (9), (10), (11) and (12) apply, with all necessary modifications, to the arbitrator, the parties and the decision of the arbitrator.

(8) Upon the agreement of the parties, the arbitrator shall deliver an oral decision forthwith or as soon as practicable without giving his reasons in writing therefor.

(9) Where the Minister has appointed an arbitrator under subsection (4), each of the parties shall pay one-half of the remuneration and expenses of the person appointed.

(10) The Minister may establish a list of approved arbitrators and, for the purpose of advising him with respect to persons qualified to act as arbitrators and matters relating to arbitration, the Minister may constitute a labour-management advisory committee composed of a chairman to be designated by the Minister and six members, three of whom shall represent employers and three of whom shall represent trade unions, and their remuneration and expenses shall be as the Lieutenant Governor in Council determines.

(11) This section does not apply to a collective agreement in operation on the day this section comes into force but applies to every collective agreement that is renewed or made after that date. 1979, c. 32, s. 1.

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