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TIME DELAYS IN GRIEVANCE ARBITRATION IN ALBERTA

by

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies for acceptance, a thesis entitled, "Time Delays in Grievance Arbitration in Alberta" submitted by Corliss Olson in partial fulfillment of the requirements for the degree of Master of Business Administration.

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ABSTRACT

This study was undertaken to document the sources and causes of time delays in grievance arbitration in Alberta.

Data were collected from the files of Alberta Labour for all arbitration awards filed between January 1985 and December 1988. Supplementary information was gathered for the three most recent years from labour relations practitioners. These data provided a profile of grievance arbitration cases in Alberta, and the time intervals between the steps in the process. The steps were then examined to determine which factors contributed to delay at which time intervals in the process.

Data were available over 90% of the time for the major time intervals studied.

Eleven independent variables were examined to determine their effects on delay in the grievance arbitration process: year, sector (public or private), union, statute, forum (sole arbitrator or tripartite board), arbitrator (including arbitrator workload and legal training), number of lawyers, issue (discharge or non-discharge) consensus among members of a tripartite board, length of the award, and the outcome of the case. Significant differences in delay were particularly identified with the arbitrator, issue, sector, outcome of the case, and forum.

Despite concern about the delays, little progress can be documented in addressing the problem, suggestive of institutional entrenchment. Delay is described as either systemic, in which case procedural adjustments are both desired and warranted, or partisan, where delay reflects a

broader, political purpose to grievance arbitration. It is suggested that improvements and alternatives can only address systemic delays effectively. Partisan delays represent political forces and vested interests which are implied when the parties state that change is not a priority.

It is noted that the parties have considerable responsibility, either directly or indirectly, for the time delays that occur in the process, and there seems to be little motivation for change. This suggests that, as an institution, arbitration may not be dysfunctional. However, in protection of the rights of the individual, delay is a denial of justice.

The ultimate decisions about grievance arbitration will be dependent more upon the belief systems and perceptions of the decision-makers than upon fact. If an equilibrium of power is perceived and government intervention believed to be anathema, no interventions will be forthcoming; if grievance arbitration is believed to be a problem-solving mechanism and the parties powerless to negotiate improvements, intervention will be more likely.

The documentation of delay leads to the conclusion that justice is ill served. An appropriate role of government is seen to be enabling the parties to remedy the problems. Just as the parties are the owners of the current process, so must they have ownership of its change. That change is imperative and overdue is reinforced by the data presented in this study.

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For the men and women involved in grievance arbitration, it is hoped that this study may contribute to improvements to the process.

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I. STATEMENT OF THE PROBLEM

Although grievance arbitration, as a stabilizing influence, is recognized as essential to sound contract administration, it has long been recognized, as well, that the institution is fraught with serious problems. As complaints grow, the role and efficiency of arbitration are questioned. When arbitration was initiated, the process promised expeditious resolution of problems. Grievance arbitration is not delivering on that promise.

> The more that the parties abandon informal, cheap and expeditious proceedings, the less likely it is that arbitration will be seen as a therapeutic extension of collective bargaining.[1]

This backdrop of concern emphasizes the desirability that grievance arbitration play a positive role in industrial peace, maintenance of productivity, and enhancement of the quality of working life. This role can only be ensured through the determination and diligence of the parties involved in the process.

Both union and management benefit by the speedy resolution of grievances. The union obtains redress of the perceived problems, inequities, and injustices and gains recognition and credibility as the representative of the employees. Management receives a guarantee against work stoppages by disgruntled employees, gains stability and a higher level of production and morale, and retains the service of the union in disciplining its members.

There are numerous steps and players in grievance arbitration. While delay is known to be considerable and is acknowledged as unacceptable, little has been documented on the specific steps in the process where delay is most likely to occur, or why.

From the point of view of the individual employee, grievance arbitration is about justice in the workplace. The goal of justice is to produce an acceptable result in the shortest possible time, with the least possible expense and a minimum of stress.[2]

This study examines one component of grievance resolution efficiency in Alberta labour arbitration cases, the time taken for a grievance to reach finality through the arbitration process. The steps in grievance arbitration are defined and systematically examined to determine the various causes of delay at each step. Data have been gathered to identify the severity of the problem, bottlenecks in the process, and the causes of those bottlenecks. This information should be useful in designing modifications to the system which could produce settlements closer to the point of origin of the dispute, thus contributing to the effectiveness of the grievance procedure[3].

Little concerted action has been taken by the parties to address the problem of delay and, in Alberta, the Labour Relations Board has been empowered to intervene. It is the intent that this study be made available to the parties to

grievance arbitration -- union, management and government -- to precipitate discussion on whose responsibility it is to take action and to inform their decision-making.

II. BACKGROUND

Between 1930 and 1939, disputes that arose during the life of a collective agreement were typically resolved by strikes if other methods such as direct negotiations, or conciliation/ mediation, failed[4]. Concern with the prevention of work stoppages began to grow during that time, and was accelerated by the onset of war, which demanded stable production. Consequently, the Wartime Labour Relations Regulations, P.C. 1003 was enacted by the Federal Government in 1944 under the powers of the War Measures Act[5] to ensure industrial peace. Grievance arbitration, as one industrial peacekeeping measure, has its roots in this Act.

Grievance arbitration was retained after the war, and was first enacted as provincial legislation in 1947 in B.C. The B.C. Act required a clause in all collective agreements

> ... by which all disputes arising during the lifetime of the agreement must be conclusively settled without work stoppage 'by arbitration or otherwise'.[6]

Because no "otherwise" was found until 1973[7], nearly 30 years of arbitration history has accumulated in which the process has remained virtually unchanged.

In a formalized industrial relations setting, it is the responsibility of management to implement the collective agreement, and the responsibility of the union to enforce it. Management is seen as the proactive party, whereas the union's role is reactive, limiting management[8]. Grievance arbitration

has evolved as the mechanism to settle disputes during the collective agreement, and as a result is often viewed as a system of industrial jurisprudence[9]. As an outgrowth of the collective bargaining process, arbitration is a confrontational process that culminates in the imposition of a third-party decision. Win-lose polarities and the attendant consequences of an adversarial relationship are evident.

Argument has been made that the grievance arbitration procedure indicates a government preoccupation with the prevention of work stoppages. Indeed, most labour relations statutes in Canada mandate an arbitration clause into any agreement that fails to include one. This discretionary power results in compulsory arbitration of rights disputes, and effectively reduces the possibility that alternate methods of dispute resolution will be pursued[10].

Viewed positively, grievance arbitration can be seen to make several contributions to industrial relations. As a problem-solving procedure, grievance arbitration can be seen as beneficial to both sides. For management, arbitration increases stability in production by reducing work stoppages, and enlists the service of unions in disciplining their members. From the union's perspective, arbitration gives employees a voice in determining day-to-day working conditions. Arbitration has been described as a willingness of both union and management to "forgo economic warfare and

cooperate to settle economic controversies"[11]. Whether grievance arbitration is viewed as a problem-solving mechanism or one component of an adversarial process determines the perceived purpose and the level of satisfaction with the process.

While the government has essentially reserved the right to prescribe grievance arbitration, there appears to be a basic assumption that industrial self-government is preferable to legislated control[12]. Consistent with this assumption, legislation only compels the parties to include a process in their agreement; the drafting of the provision is left to negotiated settlement at the bargaining table. Within the provisions of the collective agreement, the parties are free to fashion their own system of adjudication, and the process of working out that system is generally private.

Another prevalent assumption is that prompt resolution of employee grievances contributes to better employer-employee relations. It is from this perspective that governments, who initiated the process to maintain industrial peace, now intervene in several jurisdictions (for example, in B. C. and Ontario) to ensure that tardiness in processing grievances to finality through the arbitral process does not jeopardize that industrial peace.

Originally, unions preferred an arbitration process to a court of law because they believed that the legal system was predisposed to favour the employer. Certain benefits were

also seen to accrue from arbitration rather than from a court of law; namely, the process was less formal, less expensive, and faster. Ironically, all three of these benefits are now frequently violated, and, as a result, the arbitration hearing has been dubbed the "boss's court[13]" by some labour leaders.

There is risk involved for both parties in pursuing a dispute to arbitration; for example, a case can be lost, one side (or both) can lose face and credibility, and the costs are considerable. The awareness of these risks is thought to be an incentive to both parties to achieve a negotiated settlement. A counter-argument has been postulated that the arbitration process provides a disincentive to reach a negotiated settlement, thereby clogging an otherwise workable system. Weiler states,

> In a sense, grievance arbitration can be thought of as a victim of its own success. The initial easy access to the process produced an expectation among union members that their grievances would receive a fair hearing and binding decision.[14]

It is estimated that the number of grievances which actually reach arbitration is less than 2 per cent[15]. Nevertheless, while this percentage may be small, the number of arbitration cases is large in absolute terms and is increasing. By 1988, over 160 labour arbitration awards were filed in Alberta on an annual basis, an increase from 118 in 1985.

Also, the character of the process has changed.

Grievance arbitration has become a more technical, professionalised procedure. These changes (coupled with growth in numbers of arbitration cases) have resulted in several other developments in the process:

1) increased formality;
2) increased cost;
3) increased legalism; and
4) increased time delays occurring throughout the process.

Arguments of efficiency, which favour the "professionalisation" of grievance arbitration, are counter-balanced with the criticism that the parties have yielded control over the process.

There is little disagreement within the labour relations community that grievance arbitration has become too formalized, too costly, and too slow. These problems have been noted and discussed for three decades with little change being made. While grievance arbitration is viewed as an integral part of collective bargaining, a high priority has not been given to improving its effectiveness; for example, the procedure is infrequently considered at the bargaining table and known alternatives are rarely implemented. Whereas grievance arbitration was supposed to be a beneficial process, it has now earned a bad reputation as illustrated by the following quote:

> Dispute resolutions contribute to the quality of labour-management relations. In this regard, arbitration is seen as having a negative effect.[16]

In response to complaints about undue delay and the

principals' inability or unwillingness to remedy the problem themselves, Alberta has drafted a new Labour Code which makes provision for government intervention, via the Labour Relations Board, to speed up the arbitral process[17]. That this action is contemplated is consistent with the belief that promptness leads to better employer-employee relations. However, there are also adherents to the belief that the parties alone are responsible for the delays, and the parties alone must find the remedies[18]. Lack of action is considered an indication that the problem is not considered serious enough for the principals to address, and therefore does not warrant intervention. The labour relations community itself is divided on the necessity of intervention, with unions favouring intervention more strongly than management. Strong arguments have been presented that delay is to management's advantage, inequitably tipping the scales of justice[19].

The difference in perspective and the lack of urgency for change may result from viewing grievance arbitration as an institution, rather than from considering the protection of the rights of the individual, not a surprising perspective given the collective nature of the relationship between union and management. Additionally, perceptions of the centrality of arbitration to the collective bargaining process, the balance of power between union and management, and the ability of the principals to reach solutions influence the probability that changes are seen as desirable. Whether the arbitration

process is viewed as a component of the adversarial relationship between union and management, or as a problem-solving mechanism, affects the proclivities of the parties to seek solutions or to favour intervention by someone who can.

Acknowledgement has been made that no man-made system of justice can be perfect, but when improvements are possible they should be made[20]. It is possible that "fixing the bloody thing may not shake the balance of power[21]." Ultimately, the belief in the appropriateness of government intervention will determine how data on timeliness is interpreted and applied to solve the problem of undue delay.

III. LITERATURE REVIEW

A literature review was conducted to gather information regarding the history of grievance arbitration in Canada, to review the results of grievance arbitration, and to gain insight into current theories regarding the use of the process by labour relations practitioners. In particular, the causes and effects of time delay problems were studied, and proposed solutions to these problems were reviewed.

While there is a copious amount of literature about grievance arbitration, there have been comparatively few empirical studies which relate directly to this study. Of these, only four studies have explored Alberta arbitration awards.

A. ALBERTA STUDIES

Bradford and Fisher[22]

Bradford and Fisher studied 416 cases filed with Alberta Labour between 1982 and 1984. They found that eight arbitrators heard more than 50% of the cases; a board was convened in 71% of the cases, compared with 29% heard by a sole arbitrator; and 78% of the cases were heard in a single sitting (that is, with no delay between hearing dates, although a single sitting could comprise more than one day).

The employer with the largest number of cases was the Government of Alberta with 109. The largest number of cases in the private sector was in the construction industry (56), followed by nursing homes (49). The Alberta Union of Provincial Employees contested 143 cases, the Canadian Union of Public Employees 36 cases, and the United Nurses of Alberta 28 cases.

Discharge and discipline issues were identified in 161 cases, 124 of which were discharge cases (30%), and 37 were discipline cases (9%). Wages and benefits were the subject of 109 cases (26%).

Preliminary objections were raised in 121 cases (29%) and in 37% of the discharge cases (46/124). An Ontario study which was used for comparative data recorded that preliminary objections were raised in 15% of discharge cases. Preliminary objections caused delay where the arbitrators bifurcated the hearings, and the delay ranged from four days to four years. Objections were sustained in only 7% of the cases.

The time elapsed was available for 250 cases: 76% (190 cases) were resolved within one year of the incident; 17% (43 cases) were resolved in one to two years; and 7% (17 cases) took over two years. Eighty-seven percent of arbitration cases within the private sector were settled within one year, compared to 57% in the public sector.

The union won 130 out of 376 cases (35%) and was awarded

a partial win in 74 cases (20%). The employer won 172 out of 376 cases, or 46%. Three cases were settled. It is unclear what happened with the other 37 cases.

If one side retained legal counsel and the other did not, the side with counsel gained an advantage. If neither side retained counsel, the advantage went to the union, especially in the private sector.

Ponak[23]

In a study of discharge arbitration and reinstatement in Alberta, Ponak found that management's decision to terminate was upheld 46% of the time. The study was based on approximately 150 recorded discharge awards between 1982 and 1984.

The overall time elapsed between grievance and award averaged 7.7 months, but was longer for tripartite boards (8.1 months) compared with a single arbitrator (6.8 months).

Discharge awards accounted for approximately 25% of all arbitration decisions, 60% of which were in the public sector. The Alberta Union of Provincial Employees and the Canadian Union of Public Employees between them accounted for half of the cases with 36% and 14%, respectively. A total of 25 unions were involved. The largest number of cases from the private sector came from the United Food and Commercial Workers with 7% of the cases.

The study revealed that rulings on discharge arbitration were virtually identical to those made in Ontario, and very similar to the U. S.

There was no significant difference between board rulings and those of a single arbitrator, although a sole arbitrator upheld the discharge more often.

There was less tendency to reinstate the grievor as the time lapse between grievance and hearing increased, but there was no statistical significance.

Results obtained in the Bradford study were verified with respect to advantage in retaining legal counsel; that is, if counsel was retained by one side and not the other, the side with counsel benefited, and the union benefited if neither side retained counsel.

It was hypothesized that the public sector employers were less likely to obtain settlement at the early stages and would therefore take less "winnable" grievances to arbitration, resulting in a smaller percentage of upheld discharges. Differences between public and private sector awards, however, were not significant.

Geake[24]

Geake compared awards made by sole arbitrators with those made by boards, and studied time elapsed from discharge to hearing, hearing to award, and total time from discharge to

award for dismissal cases. The 114 awards involved 126 individuals, 56 of whom were reinstated. Geake's study focused on the 56 reinstated.

The 114 cases represented 29% of all grievance arbitration cases during the period January 1, 1981 to June 30, 1983. This figure was compared with 37% dismissal cases in Ontario, and 25% in the United States.

In order to limit the study to cases where the arbitrator had jurisdiction and a specific award was made relating to discharge, several cases were eliminated from the study: those involving deemed layoffs, those where settlement was reached prior to the award and cases still in progress. Of the remaining data base of 104 cases, grievances were allowed in 61 cases (59%) and dismissed in 43 cases (41%). Geake's definition of "allowed" included cases where damages were awarded, or full or partial reinstatement (that is, with discipline) was granted, making comparison of dismissal rates, with no variation in definition the simpler parameter to use. Dismissal rates in two Ontario studies are similar: 45% (Adams) and 47% (Goldblatt).

Dismissal was upheld in 54% of the cases heard by a sole arbitrator compared with 38% heard by a board. In cases where the grievance was allowed, full reinstatement was granted more often with a board (32%) than with a sole arbitrator (27%). Partial reinstatement was awarded more often by a board (62%) than by a sole arbitrator (55%), while sole arbitrators

awarded cash settlement more frequently than boards (18% and 6%, respectively). Geake believes these findings suggest that a board may be less severe than a sole arbitrator.

Management in the private sector won more cases, both with a sole arbitrator (55%) and with a board (48%) than did management in the public sector (50% won with a sole arbitrator and 33% won with a board).

Geake noted that the public sector relied on a smaller number of arbitrators than the private sector.

This study raised the possibility that long time intervals between discharge and an award may effect the decision. Fifty-nine percent of cases in which the grievor was reinstated were resolved within 9 months while 23% took a year to a year and a half. This was compared to 58% of discharge cases in Ontario requiring up to a year for resolution.

Data on time elapsed were available for 46 of the 56 reinstated cases. For 57% of cases, the hearing was held within 6 months of the dismissal, and 80% were heard within a year. Figures for the Ontario study showed 76% of reinstatement cases were heard within 6 months and 99% within one year.

Data on time elapsed from the hearing to the award were also collected for 46 reinstatement cases, and broken down by arbitration forum. Sole arbitrators issued awards within one month of the hearing for 71% of the cases; boards issued only 26% of awards within one month of the hearing. The awards

were issued within four months for 100% of cases (n = 7) heard by a sole arbitrator. Only 85% of board awards were issued within four months of the hearing. Geake found no difference in outcome between awards made by sole arbitrators or boards for the private sector; however, significantly fewer reinstatements were made in the public sector if a sole arbitrator were used.

Total days elapsed between dismissal and award for reinstated cases averaged six months longer for the public sector than the private sector. Within nine months from the date of dismissal, the private sector had awards in 88% of reinstatement cases, a level not attained by the public sector until 15 months had passed.

Geake postulated that the slower performance for Alberta cases compared with Ontario cases may have been the result of the arbitrators being overloaded, or the grievance procedures involving more steps before arbitration.

Sole arbitrators, not surprisingly, worked more quickly than boards in getting their awards out. Geake attributes this to the time required by a board to reach consensus, or the possibility that a more thorough investigation may have been conducted.

Fricke[25]

Fricke studied 102 labour arbitration awards filed under

the Alberta Labour Act between January 1, 1973 and December 31, 1975. He found that the average time elapsed between the date of the grievance and the first hearing was 157 days; between the last hearing and award, 46 days; and between the grievance and the award, 214 days.

Fricke found differences in the time elapsed with and without counsel, and with a sole arbitrator compared to a board. Counsel was used on behalf of one or both parties in 57% of the cases, and 90% of the cases were heard by a board.

In 44% of the cases, no counsel were retained; in 25% of cases only the employer retained counsel compared with 5% where only the union retained counsel; and 27% of cases documented counsel for both sides. If only the employer retained counsel, or if both sides retained counsel, the employer was twice as likely to win the case.

Discipline and discharge cases took less time overall between the grievance and the hearing, but the hearings generally took longer than for non-dismissal cases.

If a technical objection were raised, cases took longer by an average of 138 days.

Public administration cases took the longest when examined in an industry breakdown.

Thirty-nine arbitrators handled the cases, but only seven arbitrators handled 53 cases (52%). Five of these seven arbitrators were lawyers.

Seven out of eight of the busiest employer nominees were

lawyers, and they were present in one half of the cases heard. This compares with 11 union nominees who sat for half of the cases, most of whom did not have a legal background.

Thirty-five unions and 75 employers were represented in the sample. The most cases for any one union was four.

The union won the case 44% of the time compared with 50% for management. Compromises or uncertain outcomes made up 6% of the total cases.

Technical objections were raised in one third of the cases, 66% of which were overruled and 34% upheld. (These 34% were removed from the population before further analysis was done.)

The employer was twice as likely to win a discharge case, but the win/lose odds were approximately equal for cases involving other issues.

The employer nominees dissented to 21% of board decisions, compared with a 42% rate for the union nominees.

B. ONTARIO STUDIES

Winter[26]

Winter studied a sample of 559 arbitration awards, filed in 1980, involving five large unions in Ontario. Data were obtained from the files of the Ministry of Labour office, by

questionnaire and by field interview for 426 cases, or 76% of the total sample.

Forty-six per cent of the cases were heard by a single arbitrator compared with 54% before an arbitration board.

Forty-five per cent of the cases involved discharge or discipline, which was easily the largest issue category.

Over 90% of the cases required a single hearing, but it is unclear whether a hearing can encompass more than one day, as in the Geake study. Winter divided the time elapsed in the grievance process into two stages: the grievance stage, which is the time from the date of the incident to the date the grievance was referred for arbitration; and the arbitration stage, which is the time from referral to arbitration until the arbitration award. Winter then sought from the unions information on the date of the incident, the date the grievance was referred to arbitration, the date the arbitrator was appointed, the date(s) of the hearing, and the date of the final arbitration award.

For two-thirds of the cases, both the date of the incident and the date of referral to arbitration were available. Of the cases for which data were available, only 19% were referred to arbitration within a month after the incident and less than 60% were referred within three months.

Considerable variation occurred between the time taken by various unions to refer a grievance to arbitration. For the five unions surveyed, the median time varied from 19 to

102 days.

Contrary to expectation, grievances involving discharge and discipline were not referred to arbitration sooner than other types of issues, despite provision in many collective agreements for expedited arbitration for discharge and discipline issues.

Both the date the grievance was referred to arbitration and the date the arbitrator accepted the case were available in 195 cases. Significant differences in the time elapsed between referral to arbitration and the arbitrator's acceptance of the case were observed between cases undertaken by a sole arbitrator versus a tripartite board. Three months were spent getting a grievance to this stage if a board were used compared with one month with a sole arbitrator.

For only half of the cases were both the date the arbitrator accepted the case and the date of the first hearing available. The average time taken between these dates was three months, with differences again apparent between sole arbitrators and boards.

The time elapsed between the date of the last hearing and the date of the final award varied substantially, depending on the forum. Fifty per cent of cases heard by a single arbitrator were concluded in the same time as 6% heard by a board. The time period for which the arbitrator can be held entirely responsible represented the shortest interval in the entire process, exonerating arbitrators as the main

perpetrators of the problem. The parties' preference for a board increases the delay at the arbitration stage, too, placing the responsibility for even some of the delay at this stage on their shoulders.

The contrast between time delays with a single arbitrator and a board was more readily apparent in a review of the total time between incident and award. Data were obtained for 96% of the cases. The average time taken was 10 months, but only 8 months for a single arbitrator compared with 10 months for a board.

As with other jurisdictions, there was a concentration of cases among a few arbitrators: 8 arbitrators heard 54% of the cases.

The study concludes that the parties, and not the arbitrators were primarily responsible for the delays in arbitration, both directly when the process is in their control, and indirectly, through the choice of boards over single arbitrators and the choice of busy arbitrators.

Goldblatt[27]

In a study of the procedural aspects of grievance arbitration, data were collected on all awards filed with the Labour Management Arbitration Commission of the Ontario Department of Labour between September 1, 1971 and

September 1, 1973, a total of 1,661 awards. The date of the incident was substituted for the date of the grievance if the latter was not available. Three main time intervals were studied: the time between the filing of the grievance and the first hearing; the time between the last hearing and the award; and the total time between filing of the grievance and the award.

Sole arbitrators heard 37% of the cases. The average time between filing of the grievance and the first hearing with a sole arbitrator was 211 days. Average time from the last hearing to the award was 23 days (median 15 to 19 days). The total time from the grievance to the award under a sole arbitrator was 238 days (approximately eight months).

Sixty-three per cent of the awards were handed down by tripartite boards. All time intervals were longer with boards than with a sole arbitrator: the average time from the grievance to the first hearing was 213 days; the average time between the last hearing and the award was 45 days; and the average total time was 267 days. While the first time interval (grievance to hearing) appears virtually identical under both forums, the outliers serve to distort the data for sole arbitrator. The median time for a sole arbitrator was approximately six months, compared with almost eight months for a board.

Management used legal counsel almost twice as often as the unions (58% compared with 34%, respectively). Goldblatt

suggested that the "percentage possibility of a union being successful in arbitration increases with the use of legal counsel" more noticeably than does management's possibility of winning, although both fare better with legal representation. Either party is at a disadvantage when not represented by legal counsel if the other party has retained counsel.

Arbitration with a board was found to take longer when both sides retained lawyers. It is not possible to determine whether this is a function of the legal training of counsel, or a function of the parties retaining counsel for more difficult, and thus more protracted, cases.

Technical objections were more likely to be raised by legal counsel than lay representatives. The raising of technical objections delayed the hearing in 24% of the 228 cases where they were raised. Technical objections were more likely to be raised in discharge cases heard by sole arbitrators and in non-discharge cases heard by boards. The unions' win/loss record is better at technical objections than with the substance of the grievance.

Twenty-three per cent of the cases involved discharge.

The union was successful (defined as a win or a partial win) in 41% of the awards, compared with 56% for management. Union wins were most likely in discharge cases heard by a single arbitrator and least likely in non-discharge cases heard by a board.

Discharge cases were handled more rapidly than other cases under both a sole arbitrator and a board, the difference being almost two months.

C. BRITISH COLUMBIA STUDY

Stanton[28]

Stanton reviewed 2,830 labour arbitration cases filed between 1966 and 1981, 85% of which were in British Columbia. Stanton speaks of the unacceptability of arbitration to labour and cites the rate of losses for unions as evidence of an anti-union, pro-employer bias on the part of arbitrators. His study discusses delay, but he attributes the entire time from the grievance to the award to the arbitrator. Many of the problems of grievance arbitration, including time delays, are explained as manifestation of the class system.

The time elapsed was available for 51% of the cases and averaged 7.9 months. The mean time in the private sector was 7.3 months compared with 9.8 months in the public sector. The time elapsed was longer for sole arbitrators in the public sector than for boards; however, the time elapsed is not broken into intervals, so only speculation as to the source of the delay is possible. Extra time may be taken up in the establishment of the board, for example, a process under the

control of the parties.

Over 95% of the grievances were initiated by the unions, which Stanton believed indicated a severe power imbalance.

Much of Stanton's comments focus on the win/loss rate: overall, the unions lost 45%, won 46% and obtained compromise settlements in 9% of the cases. In B. C., the win/loss ratio was 50/50. Private sector unions were reported as more likely to lose. Stanton attributes greater losses in the private sector to the predominance of international unions and the socio-economic status of arbitrators.

The 53% loss rate in the construction industry and the 71% loss rate in the oil and chemical industry are discussed with respect to the power dynamic and analyzed against a political backdrop.

Stanton's work included a list of arbitrators and the record of union losses. He notes that, of the 60 arbitrators who decided 10 or more issues, over half of them rendered the majority of their decisions in favour of management. His suggestion is that the busier arbitrators are not good choices from the union point of view.

The concentration of arbitration cases is seen as a tendency toward monopoly, and Stanton suggests that arbitration is a growth industry.

Stanton addressed the use of the tripartite board, suggesting that labour's distrust of the system leads unions to prefer to have a nominee present for the case. An analysis

of the awards led Stanton to conclude that a tripartite board does not produce more favourable results than a single arbitrator from the unions' viewpoint, and that unions might be better off with a sole arbitrator who has an acceptable record.

Stanton documented the faster resolution time for discharge grievances, but lamented that the five months taken in the private sector and eight months in the public sector represented excessive hardship and anxiety for the workers and their families.

A study by Adams is cited as providing evidence that the longer the case lasts, the less likely was the possibility of the union winning. In B. C., there was no relationship between time elapsed and outcome of the case. Stanton suggests that the correlation between time delay and union losses may be attributed to greater use of precedent in Ontario due to a longer history of written awards.

Stanton advocates the return of the right to strike, a revision of the list of arbitrators and greater progress in obtaining expedited arbitration, either through the joint efforts of the parties, or through legislation.

D. STUDIES IN OTHER JURISDICTIONS

Gilson and Gillis studied grievance arbitration in Nova Scotia based on 730 cases between 1980 and 1986.[29]

A small number of arbitrators heard a majority of cases.

Two thirds of the cases were in the private sector, despite equal numbers of trade union members in each sector. Three arbitrators heard 48% of cases and nine heard 74%, indicating high concentration. Most arbitrators were lawyers.

Two thirds of the cases were heard by a sole arbitrator, but boards were more common in the public sector than in the private sector.

Unions won 56% of all cases, tending to win more discharge cases, especially. Union wins were marginally better in the private sector than in the public sector.

Sixty per cent of the cases were conducted by one law firm with considerable expertise in the process and in selecting winnable cases. Unions may have been dissuaded from pursuing weaker cases, increasing their proportion of wins. An intermediate stage before arbitration also allows another opportunity for settlement.

Thirty-three per cent of cases involved discharge and discipline.

Block and Steiber examined the impact of attorneys on arbitration awards, and drew similar conclusions to those cited in other sources[30]. Each party has an advantage when it has engaged legal counsel and the other side has not. When both sides have legal counsel, the outcome of awards is indistinguishable from the outcome with neither side having legal counsel.

Employers retained legal counsel in 71% of cases compared with 43% for the union. At least one party was represented by a lay person in 67% of cases, although the most common arrangement saw an employer attorney facing a union lay person (36% of cases).

The evidence suggests that, in discharge cases especially, one party will fare better if they retain legal counsel and the other side does not.

The authors suggest that the benefit of legal counsel is primarily in the presentation of the case. Attorneys may also be better at screening cases, encouraging settlement of weaker cases and pursuit of stronger ones. Of course, legal counsel may be retained in stronger cases to improve the chances of winning, skewing the results to indicate that the there is a greater possibility of winning with legal counsel.

The win/loss record of arbitrators reveals that the awards of some consistently favour one side or the other, indicating that the arbitrator may have an impact on the outcome of a case.

Berkeley surveyed 1,000 U.S. advocates who select arbitrators to obtain their views of the faults in arbitration[10]. A 36% response rate was obtained, split almost evenly between employer and union respondents (52% and 48%, respectively). The different perceptions of the two sides are evident in the ranking of problems: labour ranked as number one the delays by the other side; management ranked

as number one the poor quality of arbitrator's decisions. The unions' perception of second-ranked problem was shared between delay by arbitrators' issuing the award and arbitrators' high fees; management cited the lack of acceptable arbitrators. Management's third ranked problem was delay by arbitrators issuing awards. Scheduling delays were ranked as the fourth concern by both parties. Berkeley, in discussing the results, notes that management usually has less interest in going quickly to arbitration than has the union.

In the U. S., Kilberg documented a change over several years in the length of time required for a grievance to be resolved at arbitration[32]. In 1968, the process took 157 days and in 1970, it took 164 days. From the records of the Federal Mediation and Conciliation Service, the time required was documented as 223 days in 1975 and 236 days in 1979.[33]

Seitz cited the 1979 Annual Report of the F. M. C. S. which documented the intervals from grievance to referral to arbitration to be 125 days; from referral to the hearing, 170 days; and from the hearing to the award, 34 days.[34]

E. SUMMARY OF THE LITERATURE

Studies of time delays in grievance arbitration in Canada have yielded information on the characteristics of cases, time elapsed, and factors contributing to delay. As well,

questions have been raised with respect to the purpose and control of the institution and the relationship of grievance arbitration to justice and the collective bargaining system.

From 1974 to 1984, seven Canadian studies addressed the issue of time delay in grievance arbitration. Two of the earlier studies, one in Ontario and one in Alberta, provided a breakdown of the timeframe from grievance to hearing and hearing to award, and five reported total time elapsed from grievance to award.

From 1971-73 to 1980, the Ontario studies showed a change in total time elapsed from 256 days to 415 days, an increase of 62%. Factors investigated as potential causes of delay included the choice of forum, nature of the issue, the involvement of lawyers, and the concentration of cases among arbitrators.

The Alberta study of 1973-75 noted that cases were concentrated among certain nominees and arbitrators, discharge cases were heard more quickly than other issues, and preliminary objections were associated with delay. Public administration cases were the slowest to be resolved.

The studies introduced a variety of variables which, taken together, could form an elaborate profile of grievance arbitration cases. The chief source of data was the awards filed under various labour statutes, but Winter also relied on information contained in the files of five trade unions.

Several studies attempted to identify factors which

contributed to delay. A few studies examined the ramifications of delay, especially from the viewpoint that justice delayed is justice denied. Two studies attempted to demonstrate a correlation between length of time taken to decide a case and the outcome, suggesting that the time elapsed plays a bigger role in deciding disciplinary penalties than does the nature or severity of the offense.

The Goldblatt study, "Justice Delayed...", in 1974 pointedly made the proposition that justice was ill served by protracted delays in grievance arbitration.

Stanton, almost ten years later, began with the premise that grievance arbitration had become an intolerable institution in the eyes of the trade unions. His provocative book challenges practitioners to examine the institution and the assumptions on which it is established. While Stanton's article is decidedly (and deliberately) predisposed to favour the trade union point of view -- and a radical position within that point of view -- he also ventures to ask whose purpose is served by grievance arbitration and to question some basic assumptions built into the process. Stanton is one of few authors who speaks of the individual's stake in the outcome of grievance arbitration and reminds practitioners of the personal anguish that can be experienced by an individual awaiting the outcome of a grievance arbitration case.

The Berkeley study, although conducted in the United States, documents the very different perceptions of

arbitration held by the parties. In particular, he notes that timeliness in grievance arbitration is more desired by the union than by management, which may be a critical factor in the discussion of change.

The empirical research and the general literature on grievance arbitration thus highlight many issues which can be usefully studied. First, a clear profile of the process is required. In a study of timeliness, documentation of the components of delay, as well as the overall timeframe, may yield valuable insights. And, more importantly, the challenge has been issued to examine, not just the institution, but also the assumptions upon which it operates. In particular, the ramifications of the connection between individual justice and collective relationships, and the possibility that the purpose and perceptions of grievance arbitration may require re-examination are concepts worthy of further investigation.

F. HYPOTHESES

The review of the literature and discussions with practitioners helped define the focus for the current study. As a result of these preliminary investigations, a series of hypotheses were generated:

1. The time required for resolution of cases would increase annually.
2. Grievances in the public sector would be resolved more slowly than grievances in the private sector.

3. Due to variations in collective agreements, the time required for grievance resolution would vary by union.

4. Cases under PSERA/Other statutes would be more slowly resolved than cases under the LRA.

5. Cases heard by a board would be more slowly resolved than cases heard by a sole arbitrator.

6. A legally trained arbitrator would be slower to issue awards than an arbitrator without legal training; and

7. an arbitrator with a heavy workload of arbitration cases would issue decisions more slowly than a less busy arbitrator.

8. There would be an inverse relationship between the number of lawyers involved in the case and the speed of resolution of the case.

9. Discharge cases would be resolved more quickly than non-discharge cases.

10. Cases in which the board reached consensus would be resolved more quickly than cases where only one side agreed with the chairperson, and cases in which no one agreed with the chairperson would be resolved more slowly than either unanimous awards or cases where one side was in agreement with the chairperson.

11. The outcome of the case would have an impact on the length of time to issue the award: if the grievance were partially upheld, it would be the most quickly resolved, followed by a dismissal of a grievance, then an upheld grievance. "Other" outcomes would be the slowest.

IV. METHODOLOGY

The investigation of time delays in grievance arbitration in Alberta followed three distinct phases which encompassed the collection and analysis of historical data related to all grievance arbitration awards filed with Alberta Labour from January, 1985 to December, 1988; interviews with relevant practitioners in the grievance arbitration process; and dissemination of data worksheets to several of the principals to obtain further, more detailed information on each case.

A. DATA COLLECTION: FIRST PHASE

Data for 598 grievance arbitration cases filed between January 1, 1985 and December 31, 1988 were gathered from the files of Alberta Labour. Data collected for each case included:

1) industry and employer;
2) file number, which also denotes year;
3) union and local;
4) statute under which the collective agreement is filed;
5) location of hearing;
6) whether sole arbitrator or board;
7) name and legal training of the union nominee;
8) name and legal training of the management nominee;
9) name and legal training of the union counsel;
10) name and legal training of the management counsel;
11) date of the grievance;
12) date(s) of the hearing;
13) date of the award;
14) type of issue;
15) number of issues handled;
16) preliminary objections, if any and by whom;

17) consensus or non-consensus between board members;
18) number of pages in the award;
19) name and legal training of the chairman; and
20) outcome of the case.

The time between the collected dates was calculated, yielding time elapsed from the grievance to the first hearing; from the first to last hearing; from the last hearing to the award; and total time between the grievance and the award. Where the grievance date was not available, but the date of the incident was recorded, date of the incident was used.

B. INTERVIEWS

Interviews were conducted with twenty individuals who have been involved in the grievance arbitration procedure in Alberta in recent years. These practitioners in the process included arbitrators, labour relations lawyers, management and union representatives. Topics discussed included the following:

1) general perceptions regarding grievance arbitration and its timeliness in Alberta;
2) causes of time delays;
3) specific steps of the process where time delays occur;
4) effects of time delays;
4) possible solutions;
5) possible alternatives to the grievance arbitration process;
and
6) the desirability of government intervention to speed up the process.

Additionally, several of the interviews encompassed the second data collection phase where selected cases were

discussed or dates gathered from the files of the interviewees.

C. DATA COLLECTION: SECOND PHASE

The second phase of data collection was handled in three ways: each identified case was reviewed and discussed with the interviewee; the relevant party collected the additional data requested; and/or researchers were given access to working files of the parties. In all instances, the data were recorded on standardized worksheets which presented a case summary, but parties were invited to add comments and make corrections.

Data collected were:

1) the date referred to arbitration;
2) the date the arbitrator was notified;
3) the date on which the hearing was established;
4) the date of the executive session;
5) the date the draft award was circulated to nominees; and
6) whether or not a motion of certiorari was filed, by whom, and the outcome.

The time elapsed between the various dates was then calculated, yielding information on the following intervals:

1) from the grievance to referral to arbitration;
2) from referral to arbitration to notification of the arbitrator;
3) from notification of the arbitrator to the establishment of the hearing;
4) from establishment of the hearing to the first hearing;
5) from the first to the last hearing;
6) from the last hearing to the executive session;
7) from the executive session to circulation of the draft;

and
8) from circulation of the draft to issuance of the award.

Aggregates of the data also yielded information on the intervals from:

9) notification of the arbitrator to the first hearing and
10) notification of the arbitrator to issuance of the award.

Corrections to the initial data were made, adding information on the intervals from:

11) the grievance to the first hearing;
12) the first to last hearing;
13) the last hearing to the award; and
14) total time from the grievance to the award.

D. DATA ANALYSIS

The data were analyzed using descriptive statistical techniques, such as frequency distributions, cross-tabulations and measures of central tendency. Multiple analyses were done in order to examine the data in a variety of ways.

V. FINDINGS

A. SUMMARY

1. Approximately 600 awards between 1985 and 1988
2. Average of 160 awards annually
3. 2/3 public sector
4. 50% involved 3 unions: AUPE, CUPE, UNA
5. 68% LRA; 31% PSERA; less than 2% Other
6. 80% heard by tripartite board
7. 2 union nominees sat for 33% of cases (over 80 each)
8. 6 employer nominees sat for 33% of cases (over 30 each)
9. 6 union counsel handled almost 1/3 of cases
10. 4 employer counsel handled over 1/3 of cases
11. 44% union counsel and 78% employer counsel legally trained
12. 7 arbitrators handled 60% of cases, more than 30 each
13. over 90% of arbitrators legally trained
14. 90% of hearings 1 or 2 days
15. 28% discharge cases
16. no preliminary objections in 80% of cases
17. 17% unanimous, union concurred with an additional 22%, employer with an additional 37%
18. 30% upheld; 50% dismissed; 12% partially upheld
19. average award 15 pages long
20. average time from grievance to award just less than 1 year (344 days)

- 9 months, grievance to hearing (268 days)
  - 63 days, grievance to referral to arbitration
  - 81 days from referral to arbitrator notified
  - 38 days from notification to establishment of hearing
  - 97 days from establishment of hearing to hearing
  - 128 days from notification of arbitrator to hearing
- 70 days hearing to award
  - 204 days from notification of arbitrator to award

1. Disposition of Hypotheses

The hypotheses generated served as the starting point for examination of the data. The specific questions which arose from review of the literature and discussions with labour relations practitioners addressed directly the timeframe of the grievance arbitration procedure. The outcomes are given below for cases under all statutes. Tables 1 through 23a break down the data for the LRA and PSERA/Other cases separately and provide commentary on the results. Note that the hypothesis is declared upheld only if the variable identified had an impact on the <u>total</u> time from grievance to award. Significant findings by component, however, are also listed.

Hypothesis 1. The time required for resolution of cases would increase annually.

Upheld
Significant:
- total time from grievance to award
- grievance to first hearing
- hearing to executive session

Hypothesis 2. Grievances in the public sector would be resolved more slowly than grievances in the private sector.

Upheld
Significant:
- total time from grievance to award
- grievance to hearing
- notification of arbitrator to award

Hypothesis 3: Due to variations in collective agreements, the time required for grievance resolution would vary by union.

Upheld
Significant:
- total time from grievance to award
- hearing to award
- circulation of draft to award

Hypothesis 4. Cases under PSERA/Other statutes would be more slowly resolved than cases heard by a sole arbitrator.

Upheld
Significant:
- total time from grievance to award
- hearing to award
- executive session to circulation of draft

Hypothesis 5. Cases heard by a board would be more slowly resolved than cases heard by a sole arbitrator.

Upheld
Significant:
- total time from grievance to award
- grievance to hearing
- hearing to award
- referral to arbitration to notification of arbitrator

Hypothesis 6. A legally trained arbitrator would be slower to issue awards than an arbitrator without legal training.

Refuted; no significant difference

Hypothesis 7. An arbitrator with a heavy workload of arbitration cases would issue decisions more slowly than a less busy arbitrator.

Significant:
- hearing to award
- notification of arbitrator to establishment of hearing
- executive session to circulation of draft
- notification of arbitrator to award

Hypothesis 8. There would be an inverse relationship between the number of lawyers involved in the case and the speed of resolution of the case.

Significant:
- hearing to award
- establishment of hearing to first hearing

Hypothesis 9. Discharge cases would be resolved more quickly than non-discharge cases.

Upheld
Significant:
- total time from grievance to award
- grievance to award
- hearing to award
- establishment of hearing to hearing
- circulation of draft to award
- notification of arbitrator to hearing
- notification of arbitrator to award

Hypothesis 10. Cases in which the board reached consensus would be resolved more quickly than cases where only one side agreed with the chairperson, and cases in which no one agreed with the chairperson would be resolved more slowly than either unanimous awards or cases where one side was in agreement with the chairperson.

Refuted

Hypothesis 11. The outcome of the case would have an impact on the length of time to issue the award: if the grievance were partially upheld, it would be the most quickly resolved, followed by a dismissal of a grievance,then an upheld grievance. "Other" outcomes would be the slowest.

Significant:
- grievance to hearing
- grievance to referral to arbitration

B. DESCRIPTION OF THE SAMPLE

A total of 598 arbitration awards filed with Alberta Labour between January 1, 1985 and December 31, 1988 made up the sample population. (Cases relating to Yukon, which are also filed with Alberta Labour, were omitted from the sample.) In almost 90% of the cases, data were available from this source to calculate four time intervals, shown with sample sizes and return rates:

1. the time from the grievance to the hearing (n = 530, 89%);
2. the time between first and last hearings (n = 550, 92%);
3. the time from the hearing to the award (n = 549, 92%);
4. the total time from grievance to award (n = 570, 92%); and
5. total days of the hearing (n = 550, 92%).

To examine more closely the occasions of delay, information from the supplementary sources was added to the data base. It was assumed that older information would be more difficult to obtain from the principles' files, so additional data were sought only for the last three years, a subsample of 480 cases. (The rate of return is calculated as a percentage of 480 cases, except for numbers 10, 11, and 12 which pertain only to cases heard by a board and which are therefore calculated as a percentage of the 375 cases heard by a board between 1986 and 1988.) These sources supplemented the original data and provided data for the following, additional time intervals:

6. grievance to referral to arbitration (n = 193, 40%);
7. referral to arbitration to notification of arbitrator (n = 164, 34%);
8. notification of arbitrator to establishment of hearing (n = 171, 36%);
9. establishment of hearing to first hearing (n = 193, 40%);
10. last hearing to executive session (n = 41, 11%)
11. executive session to draft sent (n = 34, 9%);
12. draft sent to award (n = 119, 32%);
13. notification of arbitrator to first hearing (n = 245, 51%);
14. notification of arbitrator to award (n = 246, 51%).

The low rates of return for executive sessions and dates the draft awards were sent to the nominees reflect not only the difficulty in acquiring the data, but also some information about the procedure. Few formal executive sessions were held and frequently the draft was sent simultaneous with the filing of the award. Most frequently, it was reported that executive sessions were held on the last day of the hearing, and subsequent discussions were often telephone conversations. Data suggest that formal drafts often were not circulated for nominee response prior to the issuance of the award. Where dates were available, there were several instances of an executive session following the circulation of the draft rather than preceding it. These cases had to be treated as though there were no executive session because the calculation yielded a negative number of days calculated for the interval between executive session to draft.

C. CHARACTERISTICS OF CASES

The distribution by year and statute shows a substantial increase between 1985 and 1986, but a relatively constant number of awards from 1986 through 1988.

Table 1 CASES BY YEAR

YEAR	LRA	PSERA/OTHER	TOTAL
1985	79	39	118
1986	105	50	155
1987	111	53	164
1988	109	52	161
Total	404	194	598

There are three times as many union members under the LRA as there are under the Public Service Employee Relations Act (PSERA), but the percentage of arbitration cases to union members is 6% under the LRA and 8% under the PSERA.

Table 2 RATIO OF CASES TO MEMBERSHIPS, 1987

$$\text{LRA} \quad \frac{105}{175{,}374} = \frac{6}{10{,}000} \text{ members}$$

$$\text{PSERA} \quad \frac{48}{57{,}654} = \frac{8}{10{,}000} \text{ members}$$

Two hundred and twenty-four cases (38%) were private sector, compared with 374 (63%) public sector.

Table 3 CASES BY SECTOR

SECTOR	LRA		PSERA/OTHER		ALL STATUTES	
	#	%	#	%	#	%
Public*	197	49	177	91	374	62
Private	207	51	17	9	224	38
Totals	404	100	194	100	598	100

*Includes education; health care; local, county and provincial governments

Nineteen unions had five or more cases between 1985 and 1988, but only five unions represented over 60% of all cases.

Table 4 CASES BY UNION

UNION	LRA	PSERA/OTHER	TOTAL
AUPE	25	167	192
CUPE	74	2	76
United Nurses	51	3	54
United Food & Comm Workers	25	-	25
Brewery Workers	22	-	22
Steelworkers	19	-	19
Amalgamated Transit	18	-	18
Teachers	16	-	16
Electrical Workers	11	-	11
McMurray Indep. Oil Workers	11	-	11
Energy & Chemical Workers	10	-	10
Hotel & Restaurant	9	-	9
Civic Service Union	8	-	8
Machinists	7	-	7
Carpenters	6	-	6
Operating Engineers	6	-	6
Firefighters	5	-	5
Glassworkers	5	-	5
U of A Nonacademic Staff	-	5	5
Other	76	17	93
Total	405	194	598

Slightly more than two thirds of the cases fell under the jurisdiction of the Labour Relations Act, and just under one third under the Public Service Employee Relations Act. Eleven cases fell under "Other" statutes and will be reported with PSERA cases.

Table 5 CASES BY STATUTE

LRA	**404**	**68%**
PSERA	**183**	**31%**
Colleges Act	**5**	
Technical Institutes Act	**2**	
Universities Act	**3**	
Other	**1**	
Total	**598**	

Almost four times as many cases were heard by a tripartite board (468) as by a single arbitrator (130). The proclivity to use a board is especially pronounced under the PSERA/Other. Eight of the eleven "Other" cases were heard by a board.

Table 6 CASES BY FORUM

	LRA		**PSERA/OTHER**		**TOTAL**	
	#	%	#	%	#	%
Sole	**120**	**30**	**10**	**5**	**130**	**22**
Board	**284**	**70**	**184**	**95**	**468**	**78**
Total	**404**	**100**	**194**	**100**	**598**	**100**

Two union nominees were appointed to a tripartite board for over 80 cases each, between them accounting for 33% of

union participation on boards. The next largest number of cases for a single union nominee was 11. Twenty-two individuals were appointed to sit for five or more cases. Concentration of union nominee appointments is most evident under the PSERA/Other, where two people were appointed to over 70 cases each. Under the LRA, the three most often appointed people served 11 times each.

The most frequently appointed management nominee sat for 43 cases. Management appointments were less concentrated than union appointments among the busiest individuals; six management nominees accounted for 33% of management participation on boards. Twenty-one individuals were appointed to sit for five or more cases. There was little noticeable difference of concentration of appointment under the various statutes.

Fewer union nominees were legally trained (27%), compared with employer nominees (58%). The unions were more inclined to appoint legally trained nominees under the LRA than under the PSERA/Other, whereas management's preferences were the reverse.

Six union counsel handled just under one-third of the cases and four management counsel handled just over one-third of the cases. The busiest counsel for management was retained for over 70 cases, chiefly under the PSERA/Other. Management counsel were more likely to be lawyers than union counsel (79%

and 44%, respectively). There was a substantial difference in legal training of union counsel between those retained under the LRA (57% legally trained) and those retained under the PSERA/Other (18% legally trained). This compares with only a 10% difference for management counsel: 83% retained under the LRA were legally trained compared with 72% retained under the PSERA/Other cases.

While 48 individuals served as arbitrators, only 21 arbitrators handled five or more cases. Seven arbitrators handled 60% of the cases, averaging at least 30 cases each. Fewer arbitrators handled more cases under the PSERA/Other statutes than under the LRA. Six arbitrators handled 20 or more cases under the LRA and 3 handled 41% of cases. Under the PSERA/Other, two arbitrators handled 20 or more cases and they accounted for 45% of all cases between them.

Most arbitrators (over 90% in all instances) were legally trained.

The number of lawyers involved in the arbitration cases, as counsel, nominees, and/or arbitrator varied from 0 to 5, but was most frequently 3.

Table 7 CASES BY NUMBER OF LAWYERS

LAWYERS	LRA	PSERA/OTHER
0	11	1
1	31	30
2	89	53
3	155	90
4	72	13
5	46	7
Total	404	194

90% of the hearings under all statutes took one or two days. There was a slight tendency to longer hearings under the PSERA/Other statutes: 93% of LRA hearings and 83% of PSERA/Other hearing took 1 or 2 days. Almost 3% of hearings under the PSERA/Other statutes took one week or more compared with only 0.5% under the LRA.

The proportion of discharge cases was similar under the two main statute categories: 29% under the LRA and 25% under the PSERA/Other. Employer use of the grievance arbitration procedure is extremely rare.

Table 8 CASES BY ISSUE

ISSUE	LRA		PSERA/OTHER		TOTAL	
	#	%	#	%	#	%
Discharge	117	29	48	25	165	28
Non-Discharge	285	71	146	75	431	72
Employer Grievance	2	0.5	-	-	2	0.3
Total	404	100	194	100	598	100

There were no preliminary objections in 79% of total cases. The employer was at least three times as likely to raise preliminary objections as was the union. Unions raised objections twice as often under the LRA as under the PSERA/Other while the employer was twice as likely to raise objections under the PSERA/Other legislation as under the LRA.

Table 9 CASES BY PRELIMINARY OBJECTIONS

OBJECTION	LRA		PSERA/OTHER		TOTAL	
	#	%	#	%	#	%
None	331	82	139	72	470	79
Union	17	4	3	2	20	3
Employer	52	13	47	24	99	17
Union & Employer	4	1	5	3	9	2
Total	404	100	194	100	598	100

Unanimity in board decisions was achieved only 22% of the time, overall. The union concurred with an additional 28% of board decisions and management concurred with 47%. Slightly greater concurrence was achieved from both union and management under PSERA/Other cases than under LRA cases.

Table 10 CASES BY CONSENSUS

CONSENSUS	LRA		PSERA/OTHER		ALL STATUTES	
	#	%	#	%	#	%
Unanimous	64	23	40	22	104	22
Union Concurs	82	29	47	26	129	28
Employer Concurs	128	45	92	50	220	47
Neither Union nor Employer Concurs	9	3	4	2	13	3
Total	283	100	183	100	466	100

The length of award varied from one page to 105 pages, but the average length was 15 pages, and the median length was 13 pages.

Thirty per cent of the grievances were upheld and 50% dismissed. Twelve per cent were partially upheld. In 6% of total cases, the arbitrator had no jurisdiction, and 3% were either settled between the parties or withdrawn. More grievances were dismissed under the PSERA/Other than under the LRA, both on the merits of the case and through lack of jurisdiction. More compromise decisions were issued under the LRA than under the PSERA/Other. If upheld and partially upheld grievances are counted as union "wins", unions won 45% of cases under the LRA and 37% under PSERA/Other. If grievances which are dismissed or not decided on their merits

are counted as management "wins", management won 53% under the LRA compared with 61% under the PSERA/Other.

Table 11 CASES BY OUTCOME

DECISION	LRA		PSERA/OTHER		TOTAL	
	#	%	#	%	#	%
Upheld	128	32	54	28	182	30
Partially Upheld	52	13	18	9	70	12
Dismissed	194	48	102	53	296	50
No Jurisdiction	18	5	16	8	34	6
Other	12	3	4	2	16	3
Total	404	100	194	100	598	100

The engagement of a tripartite board versus a sole arbitrator did not appear to benefit either party in terms of outcome of the case, and there is no statistical difference in outcome by forum under either statute category.

Table 12 CASES BY OUTCOME AND FORUM

DECISION	LRA				PSERA/OTHER				ALL STATUTES			
	Sole		Board		Sole		Board		Sole		Board	
	#	%	#	%	#	%	#	%	#	%	#	%
Upheld	36	30	92	28	3	30	51	32	39	30	143	31
Partially Upheld	6	10	36	9	1	13	7	13	17	13	53	11
Dismissed	54	60	140	52	6	45	96	49	60	46	236	50
No Jurisdiction	6	1	12	9	0	5	16	4	6	5	28	6
Other	8	0	4	2	0	7	4	1	8	6	8	2
Total	120	100	284	100	10	100	184	100	130	100	468	100

D. COMPONENTS OF TIME DELAY

The time required for the average grievance to reach finality was slightly less than one year. This span of time was further broken down into two main components, each of which also has several sub-components. (Refer to Diagram 1.) The time taken for a grievance to progress through these various steps was charted as closely as possible through the data collected. Diagram 2 shows the average time taken between each step of the procedure. The grievance stage is composed of four time intervals:

1. from the grievance to referral to arbitration;
2. from referral to arbitration to notification of the arbitrator;
3. from notification of the arbitrator to establishment of the hearing; and
4. from establishment of the hearing to the first hearing.

The arbitration stage is composed of three time intervals:

5. from the hearing to the executive session;
6. from the executive session to circulation of the draft to nominees; and
7. from circulation of the draft to the issuance of the award.

The time between hearing dates averaged 10 days, but since the median time was less than one day, the hearing was treated as a single event; however, relevant findings are reported.

Diagrams 3 and 4 show the average time between each step for cases under the LRA and the PSERA/Other, respectively.

Diagrams 5, 6, and 7 summarize the significant findings by statute, showing where each independent variable had an effect on the timeframe.

There are no standards indicating an acceptable timeframe for grievance arbitration. The term "delay" refers to all intervals between the grievance and its resolution and is not necessarily pejorative.

DIAGRAM 1 GRIEVANCE ARBITRATION PROCESS

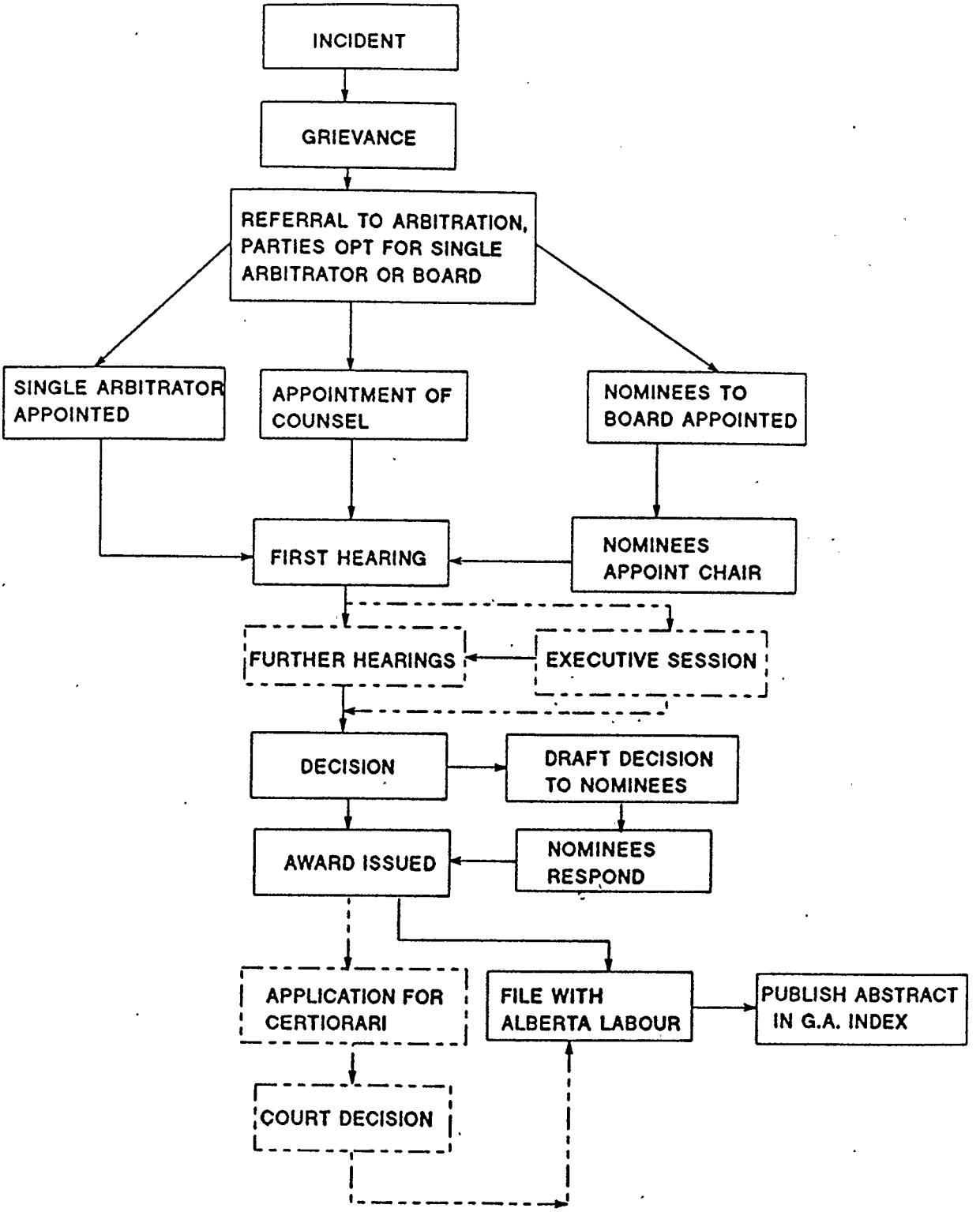
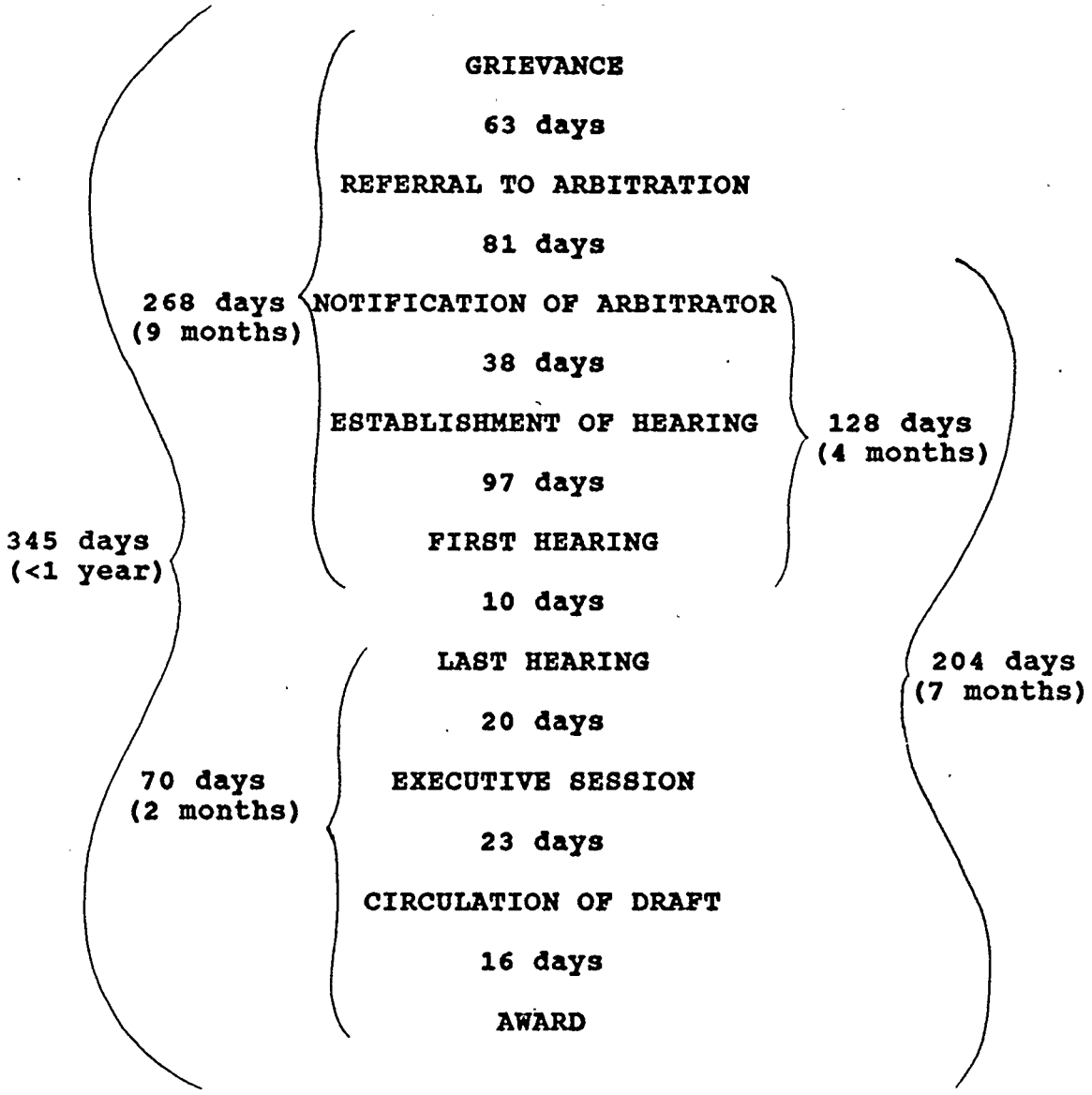


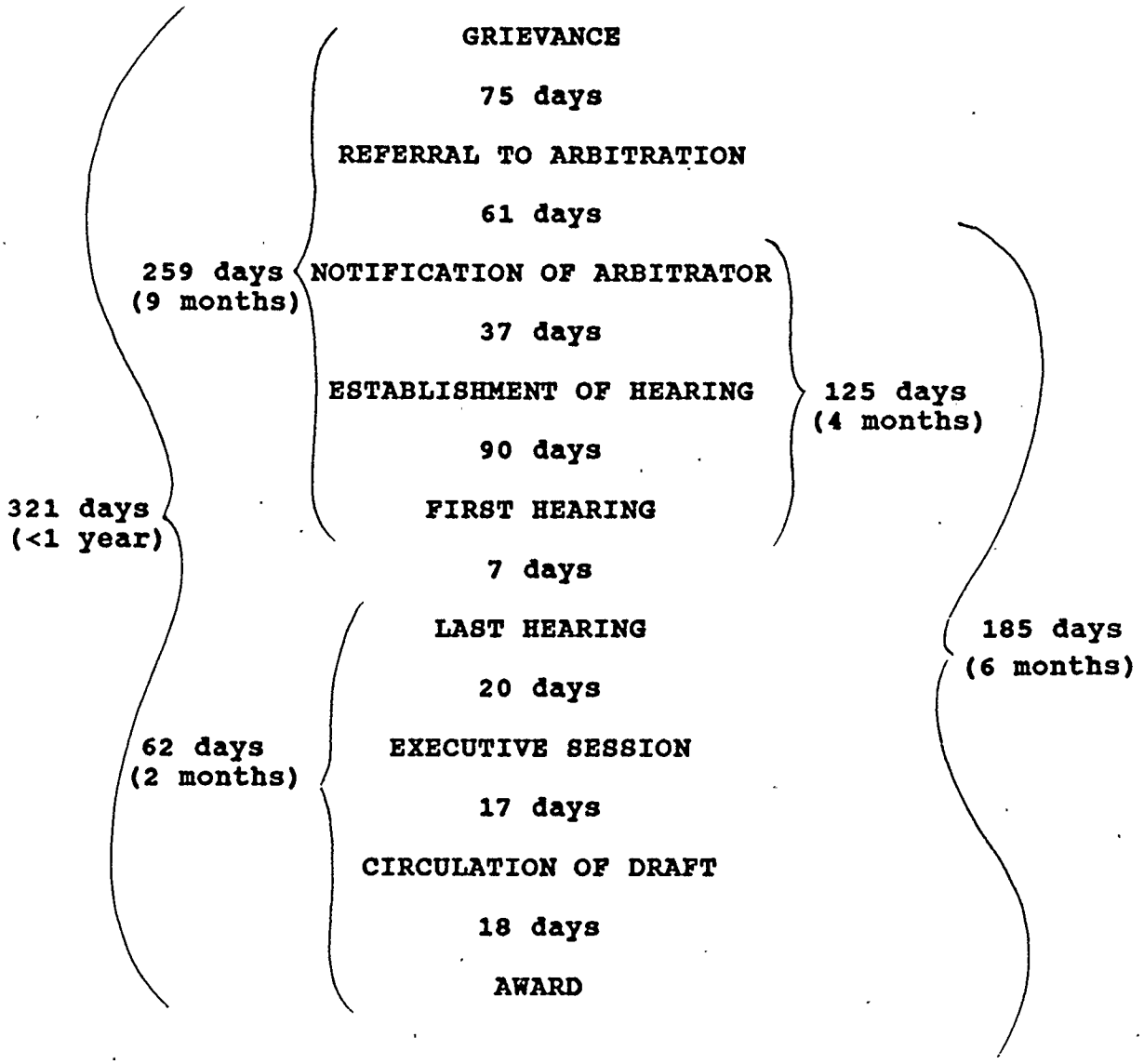
DIAGRAM 2 AVERAGE DAYS ELAPSED
IN THE GRIEVANCE ARBITRATION PROCESS



(Due to different sample sizes, totals do not equal the sum of the parts.)

DIAGRAM 3 AVERAGE DAYS ELAPSED
IN THE GRIEVANCE ARBITRATION PROCESS

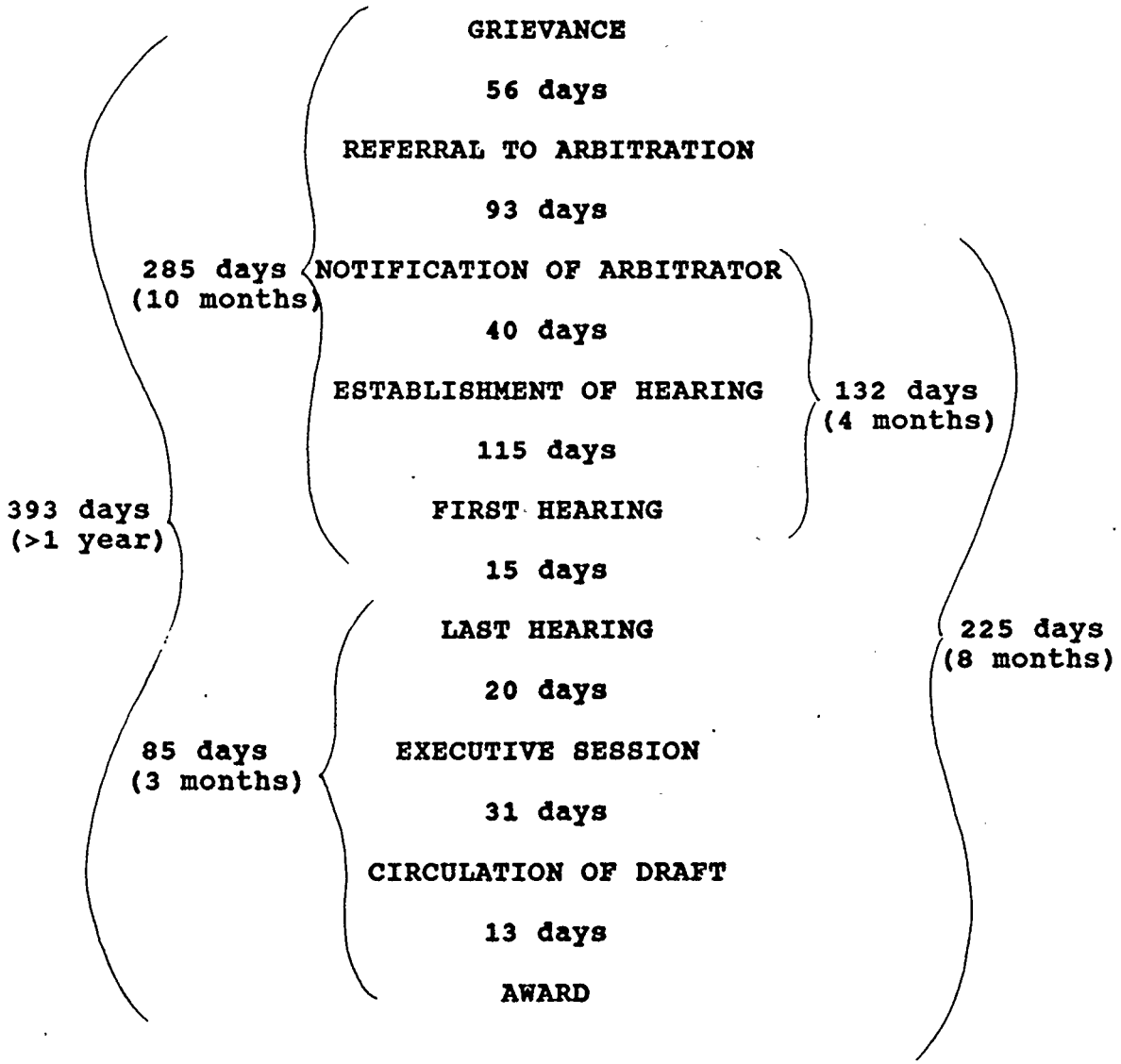
LABOUR RELATIONS ACT



(Due to different sample sizes, totals do not equal the sum of the parts.)

DIAGRAM 4 AVERAGE DAYS ELAPSED
IN THE GRIEVANCE ARBITRATION PROCESS

PUBLIC SERVICE RELATIONS ACT/OTHER STATUTES



(Due to different sample sizes, totals do not equal the sum of the parts.)

DIAGRAM 5 TIMING OF IMPACT OF SIGNIFICANT VARIABLES IN THE GRIEVANCE ARBITRATION PROCESS

ALL STATUTES

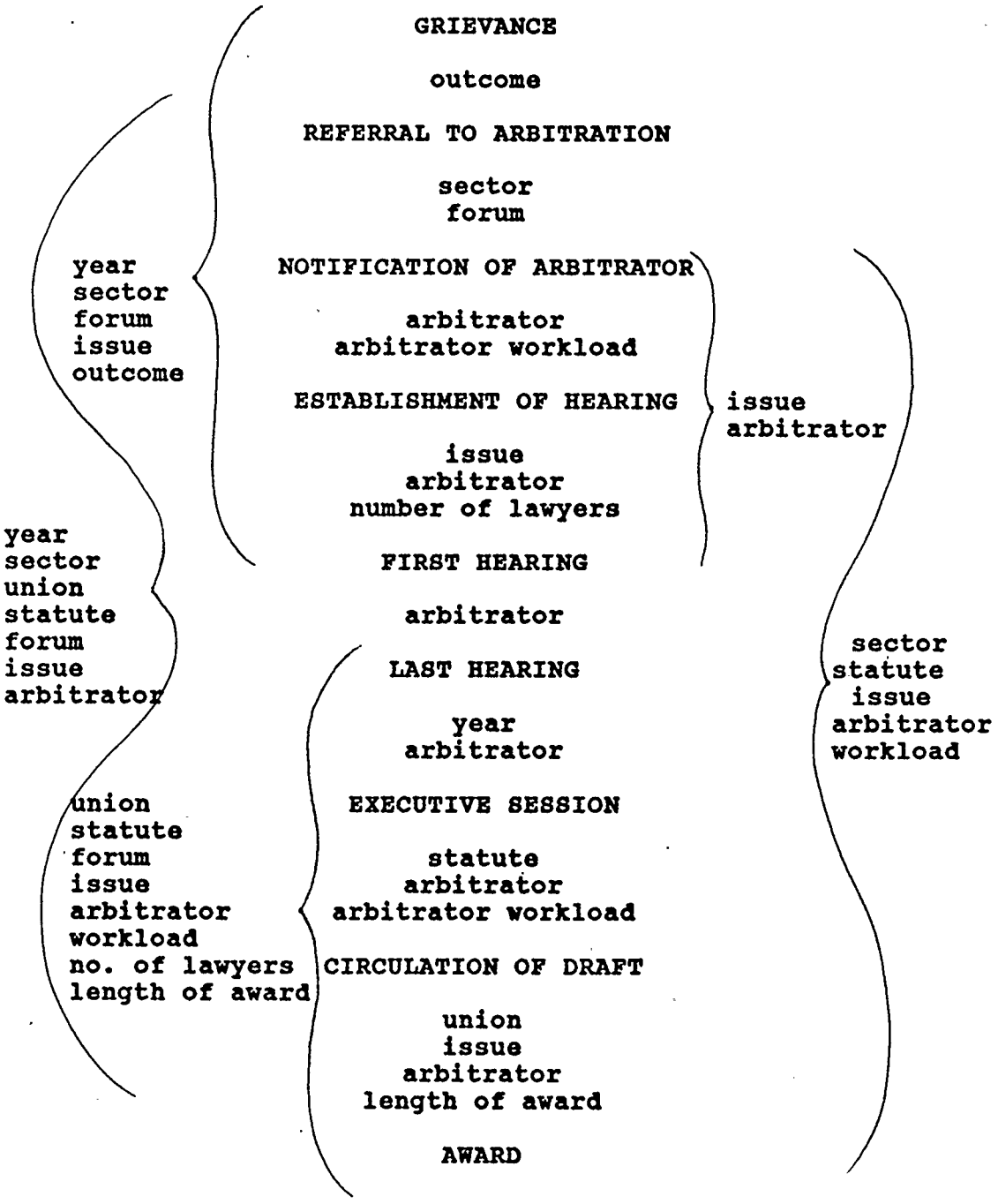


DIAGRAM 6 TIMING OF IMPACT OF SIGNIFICANT VARIABLES IN THE GRIEVANCE ARBITRATION PROCESS

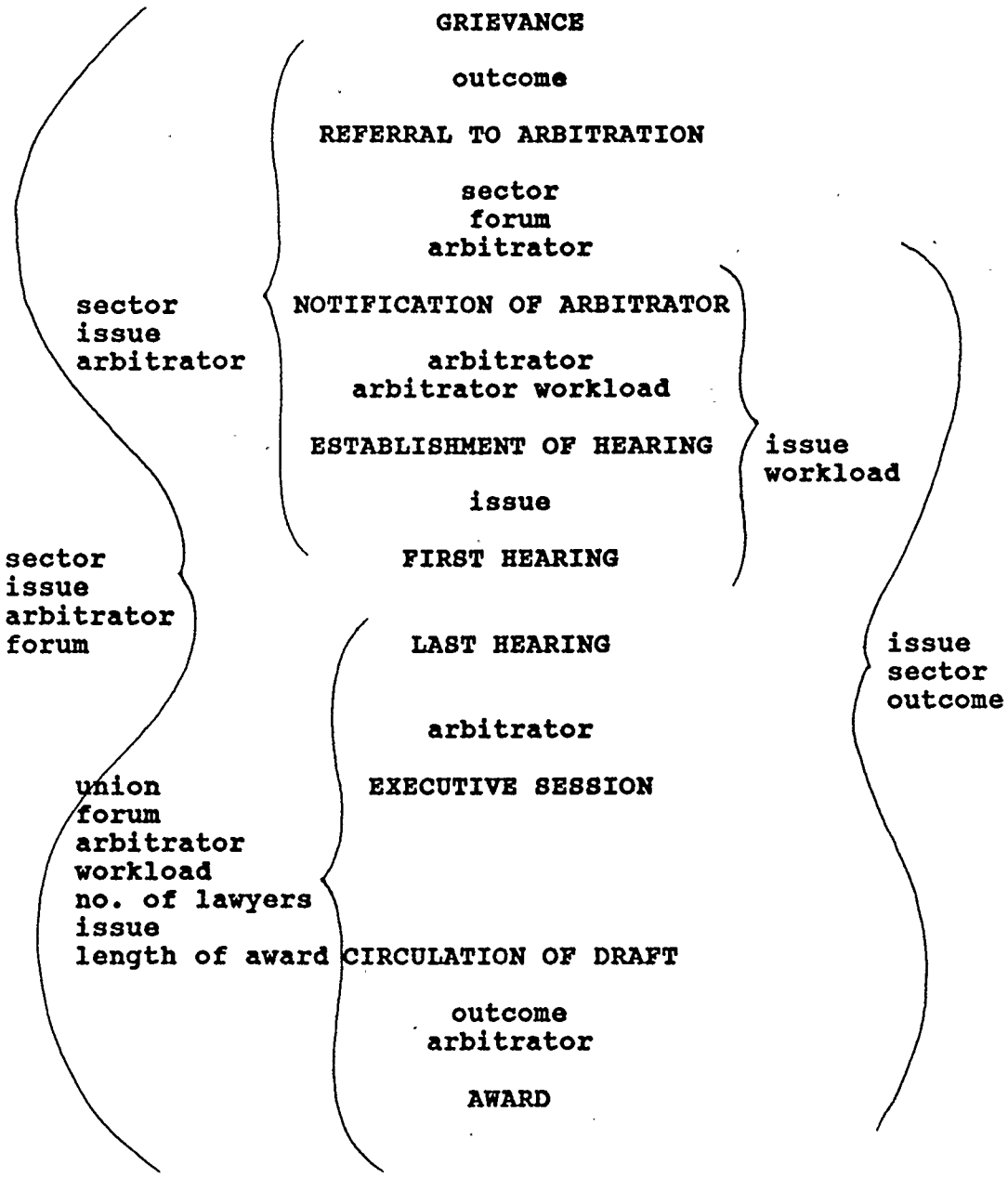
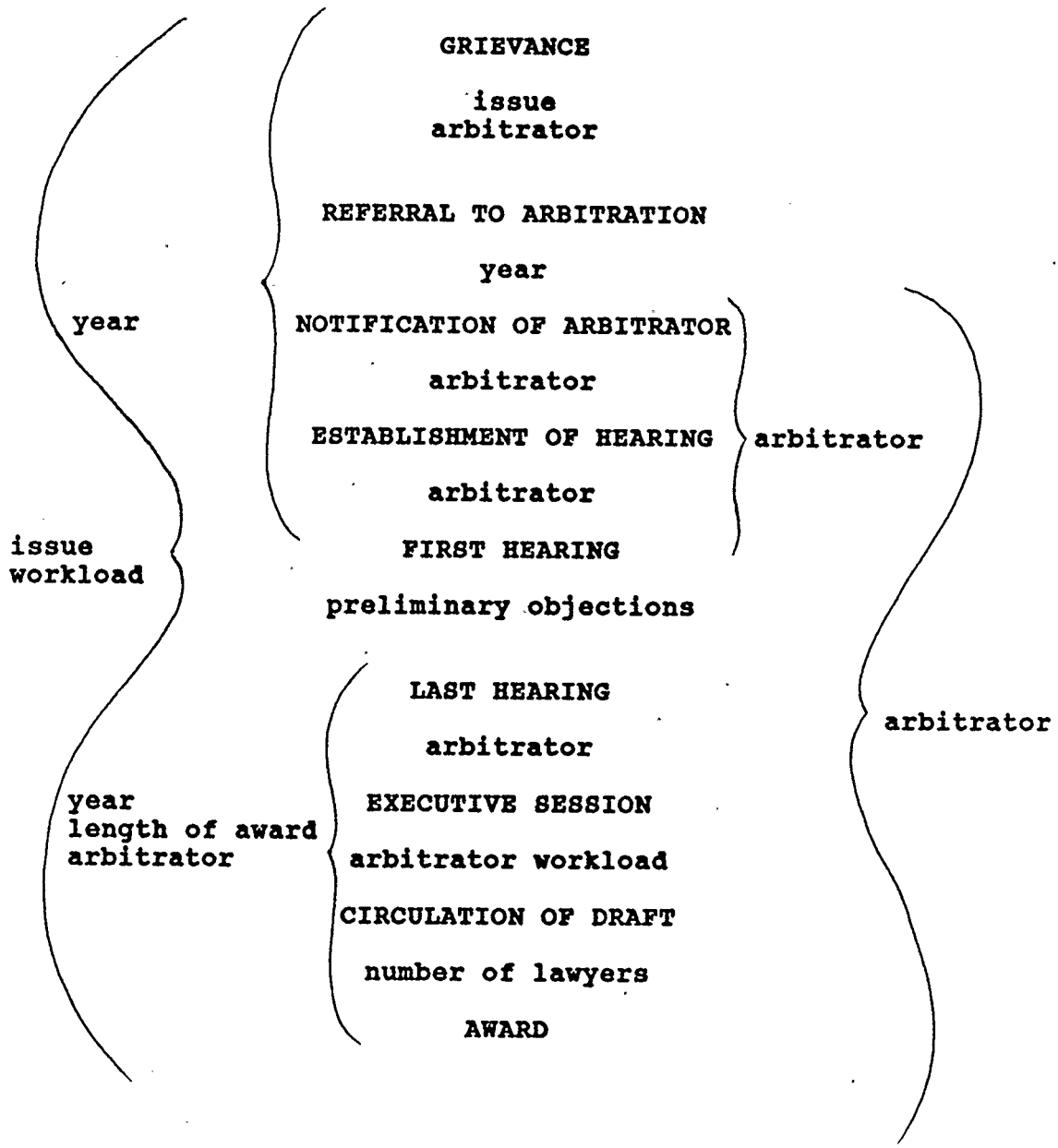


DIAGRAM 7 TIMING OF IMPACT OF SIGNIFICANT VARIABLES IN THE GRIEVANCE ARBITRATION PROCESS



1. Independent Variable: Year (Table 13)

It took an average of 9 months from grievance to the first hearing and an average of 70 days from the last hearing to issuance of the award. (For this and subsequent tables, the time between hearings is omitted because most hearings -- 90% -- took only one or two days.)

Under the PSERA/Other, the year of arbitration accounts for a small portion of the difference in time for both the grievance and arbitration stages: the differences from the grievance to the hearing and from the hearing to the issuance of the award were significant ($p < .05$). Table 13 shows the differences between steps by the two main components (grievance to hearing and hearing to award) and subcomponents. The subcomponent which shows the most delay under the LRA appears in 1987 when it took an average of 120 days from grievance to referral. This compares with an overall average of 75 days; in 1988, a grievance was referred to arbitration within an average of 45 days. In 1987, times for all three of the other subcomponents of the grievance stage were over the average times as well.

Under the PSERA/Other statutes, 1986 was the slowest year for the grievance stage. 1988 also showed some difficulty between referral to arbitration and notification of the arbitrator, as well as delay in issuing the award. The time lapse from referral to notification of the arbitrator showed

a significant difference by year ($p < .005$), suggesting excessive delay in notifying the arbitrator. This could be accounted for by the failure of one party to appoint a nominee on a timely basis, or the failure of nominees to agree on a chairperson. It would be assumed that a government appointment of a chairperson where the parties could not agree would correspond to a significant time delay.

The total time from notification of the arbitrator to the award shows little variation over time.

An examination by year suggests a fairly constant timeframe with the most appreciable overall difference being the slowness of cases under the LRA in 1987.

Table 13 AVERAGE DAYS ELAPSED BY YEAR

LRA

	1	2	3	4	5	6	7	8	9	10
1985					229				56	280
1986	63	43	32	90	274	13	18	20	72	340
notification to hearing			<- - - - - - -		>121					
notification to award			<- -						> 169	
1987	120	79	45	92	281	14	20	17	62	344
notification to hearing			<- - - - - - -		>140					
notification to award			<- -						> 196	
1988	45	56	33	87	242	50	10	19	58	308
notification to hearing			<- - - - - - -		>114					
notification to award			<- -						> 184	
Averages	75	61	37	90	259	20	17	18	62	321
notification to hearing			<- - - - - - -		>125					
notification to award			<- -						> 185	

PSERA/OTHER

	1	2	3	4	5	6	7	8	9	10
1985					263				95	369
1986	52	136	42	134	343	11	16	15	60	419
notification to hearing			<- - - - - - -		>135					
notification to award			<- -						> 215	
1987	63	66	44	96	263	14	45	15	87	403
notification to hearing			<- - - - - - -		>125					
notification to award			<- -						> 225	
1987	55	76	34	114	263	38	33	9	100	372
notification to hearing			<- - - - - - -		>135					
notification to award			<- -						> 233	
Averages	56	93	40	115	285	20	31	13	85	393
notification to hearing			<- - - - - - -		>132					
notification to award			<- -						> 225	

Code:

1 grievance to referral to arbitration
2 referral to notification of arbitrator
3 notification to establishment of hearing
4 establishment of hearing to hearing
5 GRIEVANCE TO HEARING
6 hearing to executive session
7 executive session to draft
8 draft to award
9 HEARING TO AWARD
10 TOTAL DAYS, GRIEVANCE TO AWARD

2. Independent Variable: Sector (Table 14)

Table 14 shows that most time intervals are longer in the public sector than in the private sector. The grievance stage (grievance to hearing) and the entire process were both significantly different by sector under the LRA ($p < .005$).

Under the LRA, the first interval of the grievance process (grievance to referral to arbitration) took almost two and one half times as long for public sector unions than for private sector unions. The second interval (referral to arbitration to notification of the arbitrator) took more than twice as long in the public sector as in the private sector. The difference is significant under the LRA ($p < .05$).

Under the PSERA/Other, there is a noticeable time lag between the establishment of the hearing and the hearing in the private sector.

There is no consistent relationship between the time from notification of the arbitrator and the first hearing by public and private sectors; however, the time difference between sectors is significant under the LRA ($p < .01$). There is no consistency between the private and public sectors under the different statutes with respect to time from notification of the arbitrator to issuance of the award, but the difference is significant under the LRA ($p < .01$).

Table 14 AVERAGE DAYS ELAPSED BY SECTOR

LRA

	1	2	3	4	5	6	7	8	9	10
Private	39	28	32	83	234	10	16	16	62	294
notification to hearing			< - - - - - - -		->115					
notification to award			< - - - - - - -		- -				>161	
Public	91	75	43	96	286	26	18	20	63	351
notification to hearing			< - - - - - - -		->135					
notification to award			< - - - - - - -		- -				>206	
Averages	75	61	37	90	259	20	17	18	62	321
notification to hearing			< - - - - - - -		->125					
notification to award			< - - - - - - -		- -				>185	

PSERA/OTHER

	1	2	3	4	5	6	7	8	9	10
Private	59	44	27	131	265	2	27	8	70	351
notification to hearing			< - - - - - - -		->160					
notification to award			< - - - - - - -		- -				>244	
Public	56	95	42	112	287	23	32	13	86	396
notification to hearing			< - - - - - - -		->129					
notification to award			< - - - - - - -		- -				>223	
Averages	56	93	40	115	285	20	31	13	85	393
notification to hearing			< - - - - - - -		->132					
notification to award			< - - - - - - -		- -				>225	

Code:

1 grievance to referral to arbitration
2 referral to notification of arbitrator
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7 executive session to draft
8 draft to award
9 HEARING TO AWARD
10 TOTAL DAYS, GRIEVANCE TO AWARD

3. Independent Variable: Union (Table 15)

There was considerable variation between unions in the speed with which grievances reached the final stage of arbitration. Some of the variation may be accounted for by contractual provision or by a correlation with collective bargaining. The only significant finding is the interval between the hearing and the award (the arbitration stage) under the LRA ($p < .05$).

The time taken to refer a grievance to arbitration ranged from 8 days (1 case) to 234 days (11 cases). However, the small number of cases for which this information was available deters further analysis. It is notable that AUPE, which had 14 cases under the LRA and 118 cases under the PSERA/Other, took an average of 35 days under the LRA to refer grievances to arbitration, compared with 56 days under the PSERA/Other.

The time elapsed between referral to arbitration and notification of the arbitrator varied from one to 146 days. This may represent difficulty in appointing a chairperson and/or governmental appointment of a chairperson as a result. In most cases, the sample is insufficient to be conclusive ($n = 1$ to 100), but the data are included for observation. The sample size when broken down by statute is more informative.

Extreme variation is evident in the time from notification of the arbitrator until the first hearing. This may suggest

that the parties exercise considerable control over the speed of the process, either through clauses in their collective agreements, or through their choices of and instructions to arbitrators. Conversely, the explanation may be that the parties have little control, as demonstrated by those unions which lack expediting procedures. Research into the speed of resolution by union and the corresponding contract clauses would be required to determine which explanation, if either, is correct.

The variation by union in time from notification of the arbitrator until the issuance of the award suggests the possibility that the parties may have different expectations of the timeframe of the arbitration process and have placed different emphases on timeliness. Considering the data, this proposition (that is, that the parties have different standards of timeliness) leads to speculation that public sector unions tolerate a slower process than the private sector unions. An alternate explanation may be that the public sector has been unable to negotiate more expeditious procedures. The fact that the arbitration procedure is infrequently discussed during bargaining lends credence to the first explanation. Further study is required, however, to allow anything more than conjecture on these points.

Table 15a AVERAGE DAYS ELAPSED BY UNION

	LRA									
	1	2	3	4	5	6	7	8	9	10
AUPE	35	51	12	102	273	20	28	17	51	348
notification to hearing			<- - - - - - -		>92					
notification to award			<- -						->170	
CUPE	179	81	44	84	309	16	12	18	62	365
notification to hearing			<- - - - - - -		>135					
notification to award			<- -						->184	
United Nurses	33	104	59	100	265	46	28	31	83	346
notification to hearing			<- - - - - - -		>164					
notification to award			<- -						->254	
United Food & Comm Workers	132	1	56	77	260	-	-	11	49	315
notification to hearing			<- - - - - - -		>136					
notification to award			<- -						->189	
Brewery Workers	54	38	16	101	234	48	0	29	70	315
notification to hearing			<- - - - - - -		>135					
notification to award			<- -						->181	
Steel Workers	8	34	26	91	247	0	21	18	43	266
notification to hearing			<- - - - - - -		>116					
notification to award			<- -						->161	
Amalgamated Transit	90	44	27	113	235	-	-	1	49	280
notification to hearing			<- - - - - - -		>115					
notification to award			<- -						->215	
Teachers	199	29	70	7	298	-	-	20	66	380
notification to hearing			<- - - - - - -		>128					
notification to award			<- -						->171	
Electrical Workers	-	-	11	61	212	-	-	15	140	313
notification to hearing			<- - - - - - -		> 72					
notification to award			<- -						->137	
McMurray Indep Oil Workers	-	-	32	43	318	0	18	23	39	332
notification to hearing			<- - - - - - -		> 75					
notification to award			<- -						->125	

Continued on next page

Code:

1 grievance to referral to arbitration
2 referral to notification of arbitrator
3 notification to establishment of hearing
4 establishment of hearing to hearing
5 GRIEVANCE TO HEARING
6 hearing to executive session
7 executive session to draft
8 draft to award
9 HEARING TO AWARD
10 TOTAL DAYS, GRIEVANCE TO AWARD

Table 15b AVERAGE DAYS ELAPSED BY UNION

LRA

	1	2	3	4	5	6	7	8	9	10
Energy & Chemical Workers	-	-	66	88	250	-	-	31	38	353
notification to hearing			<- - - - - - -		>154					
notification to award			<- -						>206	
Hotel and Restaurant	-	-	24	4	148	-	-	-	36	184
notification to hearing			<- - - - - - -		> 28					
notification to award			<- -						> 53	
Civic Service	234	28	9	176	360	24	-	7	19	382
notification to hearing			<- - - - - - -		>104					
notification to award			<- -						>218	
Machinists	14	8	3	38	165	-	-	-	24	200
notification to hearing			<- - - - - - -		> 41					
notification to award			<- -						>130	
Carpenters	-	-	-	-	343	-	-	-	87	491
Operating Engineers	55	9	40	97	232	-	-	-	19	255
notification to hearing			<- - - - - - -		>137					
notification to award			<- -						->163	
Fire-fighters	-	-	35	147	259	0	-	43	53	333
notification to hearing			<- - - - - - -		>182					
notification to award			<- -						->316	
Glassworkers	-	-	-	-	135	-	-	-	109	252
Other	23	29	30	88	225	11	17	13	66	286
notification to hearing			<- - - - - - -		>113					
notification to award			<- -						->154	
AVERAGE	75	61	37	90	259	20	17	18	62	321
notification to hearing			<- - - - - - -		>125					
notification to award			<- -						->185	

Code:

1 grievance to referral to arbitration
2 referral to notification of arbitrator
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4 establishment of hearing to hearing
5 GRIEVANCE TO HEARING
6 hearing to executive session
7 executive session to draft
8 draft to award
9 HEARING TO AWARD
10 TOTAL DAYS, GRIEVANCE TO AWARD

Table 15c AVERAGE DAYS ELAPSED BY UNION

PSERA

	1	2	3	4	5	6	7	8	9	10
AUPE	56	95	42	112	286	23	32	13	87	397
notification of hearing			< - - - - - - -		->129					
notification of award			< - - - - - - -		- -				>223	
CUPE	-	-	-	-	380	-	-	-	66	459
United Nurses	36	146	92	104	333	-	-	14	60	451
notification of hearing			< - - - - - - -		->196					
notification of award			< - - - - - - -		- -				>286	
U of A Nonacademic Staff	-	-	0	105	186	-	-	12	71	216
notification of hearing			< - - - - - - -		->105					
notification of award			< - - - - - - -		- -				>130	
OTHER	59	44	27	131	265	2	27	8	70	351
notification of hearing			< - - - - - - -		->160					
notification of award			< - - - - - - -		- -				>244	
AVERAGE	56	93	40	115	285	20	31	13	85	393
notification of hearing			< - - - - - - -		->132					
notification of award			< - - - - - - -		- -				>225	

Code:

1 grievance to referral to arbitration
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10 TOTAL DAYS, GRIEVANCE TO AWARD

4. Independent Variable: Statute (Table 16)

A breakdown of time intervals by statute indicates that, although PSERA cases took longer than the LRA cases, grievance arbitration under other statutes was subject to still worse delay. Caution must be exercised in discussing the delays under "Other" statutes because of the sample sizes: five cases were heard under the Colleges Act, three under the Universities Act, and two under the Technical Institutes Act.

The differences between the LRA and PSERA/Other cases are most apparent in the grievance stage; that is, from the grievance to the first hearing.

Table 16 AVERAGE DAYS ELAPSED BY STATUTE

	1	2	3	4	5	6	7	8	9	10
LRA	75	61	37	90	259	20	-	18	62	321
notification to hearing			< - - - - - - -		->125					
notification to award			< -						>185	
PSERA	56	95	39	114	285	20	31	13	85	392
notification to hearing			< - - - - - - -		->130					
notification to award			< -						>220	
Colleges										
Act	26	0	22	153	240	-	-	13	62	357
notification to hearing			< - - - - - - -		->175					
notification to award			< -						>292	
Technical Institutes										
Act	155	16	32	119	299	-	-	6	116	414
notification to hearing			< - - - - - - -		->151					
notification to award			< -						>267	
Universities										
Act	38	20	128	85	318	-	-	4	88	452
notification to hearing			< - - - - - - -		->184					
notification to award			< -						>410	
OTHER	-	-	-	-	-	-	-	-	98	-
Averages	63	81	38	97	268	20	23	16	70	344
notification to hearing			< - - - - - - -		->128					
notification to award			< -						>204	

Code:

1 grievance to referral to arbitration
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5. Independent Variable: Forum (Table 17)

Breakdown by forum and statute shows that the time required for a board to be convened to decide a case is considerably longer than the time taken for a case to reach the hearing stage under a sole arbitrator. Also, under the LRA, the time from the hearing to the award and the total time from the grievance to the award show the effect of sole arbitrator versus board to be significant ($p < .005$ in both cases).

Under the LRA, it took an average of 129 days to refer a case to arbitration where a sole arbitrator was used, compared to 57 days with a board. However, the median times were 36 days for a sole arbitrator and 34 days with a board, indicating that some unusual cases have contributed to the averages.

It takes more than three times as long to constitute a three-person board as to select a sole arbitrator, as measured by the time between referral and notification of the arbitrator, a significant difference ($p < .05$) under the LRA.

The time from the notification of the arbitrator until the hearing was established averaged 37 days with only slight variations between statutes and size of the board.

The general trends for the PSERA/Other cases to take more time than the LRA cases, and for boards to require more time than sole arbitrators are borne out in the days between

establishment of the hearing and the actual hearing. These trends are also identifiable in the time interval from notification of the arbitrator to the issuance of the award.

Table 17 AVERAGE DAYS ELAPSED BY FORUM

LRA

	1	2	3	4	5	6	7	8	9	10
Sole	129	20	34	86	242	-	-	-	44	282
notification to hearing			< - - - - - - -		->124					
notification to award			< -						>166	
Board	57	72	39	91	266	20	17	18	70	338
notification to hearing			< - - - - - - -		->126					
notification to award			< -						>191	
Averages	75	61	37	90	259	-	-	-	62	321
notification to hearing			< - - - - - - -		->125					
notification to award			< -						>185	

PSERA/OTHER

	1	2	3	4	5	6	7	8	9	10
Sole	39	31	23	94	205	-	-	0	94	313
notification to hearing			< - - - - - - -		->129					
notification to award			< -						>203	
Board	57	96	41	117	289	20	31	13	84	397
notification to hearing			< - - - - - - -		->132					
notification to award			< -						>226	
Averages	56	93	40	115	285	-	-	13	85	393
notification to hearing			< - - - - - - -		->132					
notification to award			< -						>225	

Code:

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10 TOTAL DAYS, GRIEVANCE TO AWARD

6. Independent Variable: Arbitrator (Tables 18 and 19)

The variable "arbitrator" correlated significantly with time delays more frequently than any other variable. Under the LRA, the differences in the following time intervals were significant:

1. referral to arbitration to notification of the arbitrator ($p < .05$);
2. notification of the arbitrator to establishment of the hearing ($p < .001$);
3. last hearing to the executive session ($p < .001$);
4. circulation of the draft to issuance of the award ($p < .05$);
5. last hearing to issuance of the award ($p < .001$); and
6. total days from the grievance to the award ($p < .05$).

Significant differences by arbitrator were identified in the following time intervals under the PSERA/Other:

1. grievance to referral to arbitration ($p < .01$);
2. notification of the arbitrator to establishment of the hearing ($p < .005$);
3. establishment of the hearing to the first hearing ($p < .001$);
4. last hearing to the executive session ($p < .001$);
5. notification of the arbitrator to the first hearing ($p < .001$);
6. notification of the arbitrator to the award ($p < .001$); and
7. last hearing to the award ($p < .01$).

a) Arbitrator Training

Legally trained arbitrators presided over more slowly resolved cases than their lay counterparts under the LRA, while lay arbitrators presided over more quickly resolved cases under the PSERA/Other. This is not to say that the cause of the delay is the arbitrator; there were no

significant findings when comparing lay and legally trained arbitrators. Even the time interval from the hearing to issuance of the award cannot necessarily be imputed to the arbitrator: scheduling of the hearing requires the availability of nominees, counsel, and witnesses. However, legally trained arbitrators required more time to issue a decision than did those without legal training. The time from notification of the arbitrator to the award is longer for legally trained arbitrators than for those without legal training.

The length of time that the process was most directly under the influence of the arbitrator was examined in two ways: the time from notification to the first hearing, and the overall time from notification to issuance of the award. The first data set also disclosed the time from hearing to the award. These three time segments give a picture of the role the arbitrator plays in determining the speed of the process. Under both the LRA and PSERA/Other, the time from notification of the arbitrator to issuance of the award was longer for legally trained arbitrators than for their lay colleagues. Again, however, the arbitrator cannot be held wholly responsible for delays when each step also requires the cooperation and good graces of the parties and their representatives. Nevertheless, these breakdowns were used to screen for bottlenecks in the process.

b) Arbitrator Workload

Busy arbitrators handling cases under the PSERA/Other required more time to issue a decision than busy arbitrators handling LRA cases. This could be accounted for, in part, by the greater concentration of cases among a few arbitrators handling the PSERA/Other cases. Under all statutes, however, busy arbitrators issued their decisions more quickly than less busy arbitrators. The interval between the last hearing and the award is significant under the LRA ($p < .005$). (A busy arbitrator is defined as one who dealt with 20 or more cases throughout the study period.)

The times between notification of the arbitrator and the first hearing, and between notification of the arbitrator and the issuance of the award are longer for arbitrators handling fewer cases than for busy arbitrators under all statutes. Under the LRA, the time elapsed between notification of the arbitrator and the first hearing was significantly different by arbitrator workload ($p < .05$).

Arbitrators who decided less than 20 cases during the period studied (that is, the less busy arbitrators) were able to schedule the first hearing more quickly than the busier arbitrators. This difference was significant under the LRA ($p < .001$).

Legally trained arbitrators and arbitrators handling fewer cases required more time between being notified of a case and the actual hearings.

Table 18 AVERAGE DAYS ELAPSED BY ARBITRATOR TRAINING

LRA

	1	2	3	4	5	6	7	8	9	10
Legally Trained	82	62	37	91	261	20	17	19	64	324
notification to hearing			< - - - - - - -		->126					
notification to award			< - - - - - - -		- -				>188	
Lay	22	52	38	78	238	-	-	13	46	293
notification to hearing			< - - - - - - -		->114					
notification to award			< - - - - - - -		- -				>152	
Averages	75	61	37	90	259	-	-	18	62	321
notification to hearing			< - - - - - - -		->125					
notification to award			< - - - - - - -		- -				>185	

PSERA/OTHER

	1	2	3	4	5	6	7	8	9	10
Legally Trained	57	88	42	118	284	20	31	12	86	395
notification to hearing			< - - - - - - -		->133					
notification to award			< - - - - - - -		- -				>228	
Lay	43	147	17	92	292	-	-	17	62	361
notification to hearing			< - - - - - - -		->110					
notification to award			< - - - - - - -		- -				>174	
Averages	56	93	40	115	285	-	-	13	85	393
notification to hearing			< - - - - - - -		->132					
notification to award			< - - - - - - -		- -				>225	

Code:

1 grievance to referral to arbitration
2 referral to notification of arbitrator
3 notification to establishment of hearing
4 establishment of hearing to hearing
5 GRIEVANCE TO HEARING
6 hearing to executive session
7 executive session to draft
8 draft to award
9 HEARING TO AWARD
10 TOTAL DAYS, GRIEVANCE TO AWARD

Table 19 AVERAGE DAYS ELAPSED BY ARBITRATOR WORKLOAD

LRA

	1	2	3	4	5	6	7	8	9	10
Not Busy	55	86	64	87	262	24	28	10	78	328
notification to hearing			< - - - - - - -		->152					
notification to award			< - - - - - - -		- -				>211	
Busy	83	50	29	90	258	20	17	19	53	317
notification to hearing			< - - - - - - -		->117					
notification to award			< - - - - - - -		- -				>177	
Averages	75	61	37	90	259	20	17	18	62	321
notification to hearing			< - - - - - - -		->125					
notification to award			< - - - - - - -		- -				>185	

PSERA/OTHER

	1	2	3	4	5	6	7	8	9	10
Not Busy	62	105	54	98	305	29	40	13	88	438
notification to hearing			< - - - - - - -		->134					
notification to award			< - - - - - - -		- -				>239	
Busy	53	86	33	124	276	8	17	13	83	372
notification to hearing			< - - - - - - -		->130					
notification to award			< - - - - - - -		- -				>217	
Averages	56	93	40	115	285	20	31	13	85	393
notification to hearing			< - - - - - - -		->132					
notification to award			< - - - - - - -		- -				>225	

Code:

1 grievance to referral to arbitration
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5 GRIEVANCE TO HEARING
6 hearing to executive session
7 executive session to draft
8 draft to award
9 HEARING TO AWARD
10 TOTAL DAYS, GRIEVANCE TO AWARD

7. Independent Variable: Number of Lawyers

Tables 20a and 20b show the relationship between time elapsed and the number of lawyers involved in a case. No specific trend is clearly identifiable, although there is some evidence that more time is required to hold a hearing if more lawyers are involved, but the relationship is not linear.

The relationship between the number of lawyers and the time taken to establish a hearing after the notification of the arbitrator is not linear; that is, the length of time does not increase consistently as the number of lawyers increases. However, there is the possibility that, when dealing with more lawyers, a more distant time for the hearing is required to coordinate schedules and, while the hearing may be scheduled more quickly, it may not be held as soon.

The number of lawyers does have an impact on the length of time required to convene the first hearing, but the nature of the relationship is not perfectly clear from the figures.

Generally, the more lawyers involved in the case, the longer the time between notification of the arbitrator and issuance of the award.

Table 20a AVERAGE DAYS ELAPSED BY NUMBER OF LAWYERS

LRA

	1	2	3	4	5	6	7	8	9	10
0	-	-	14	80	285	-	-	-	59	356
notification to hearing			< - - - - - - -		->45					
notification to award			< -						>107	
1	26	59	46	43	203	-	-	15	58	257
notification to hearing			< - - - - - - -		->86					
notification to award			< -						>122	
2	41	83	39	89	277	19	17	17	73	336
notification to hearing			< - - - - - - -		->130					
notification to award			< -						>179	
3	89	50	41	80	248	26	24	19	52	307
notification to hearing			< - - - - - - -		->123					
notification to award			< -						>189	
4	83	45	34	106	263	15	9	19	56	324
notification to hearing			< - - - - - - -		->132					
notification to award			< -						>187	
5	136	50	21	126	281	24	9	17	90	369
notification to hearing			< - - - - - - -		->135					
notification to award			< -						>217	
Averages	75	61	37	90	259	20	17	18	62	321
notification to hearing			< - - - - - - -		->125					
notification to award			< -						>185	

Code:

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8 draft to award
9 HEARING TO AWARD
10 TOTAL DAYS, GRIEVANCE TO AWARD

Table 20b AVERAGE DAYS ELAPSED BY NUMBER OF LAWYERS

			PSERA/OTHER							
Number	1	2	3	4	5	6	7	8	9	10
0	45	327	-	-	591	-	-	42	84	746
notification to hearing			< - - - - - - -		->219					
notification to award			< - - - - - - -		- -				>374	
1	67	89	19	58	256	5	44	17	75	338
notification to hearing			< - - - - - - -		->83					
notification to award			< - - - - - - -		- -				>157	
2	51	91	39	106	266	11	43	14	98	391
notification to hearing			< - - - - - - -		->112					
notification to award			< - - - - - - -		- -				>230	
3	51	95	47	131	296	28	23	11	79	407
notification to hearing			< - - - - - - -		->150					
notification to award			< - - - - - - -		- -				>232	
4	88	67	47	125	331	15	32	8	84	407
notification to hearing			< - - - - - - -		->153					
notification to award			< - - - - - - -		- -				>227	
5	155	16	30	168	284	-	-	10	101	396
notification to hearing			< - - - - - - -		->198					
notification to award			< - - - - - - -		- -				>365	
Averages	56	93	40	115	285	20	31	13	85	393
notification to hearing			< - - - - - - -		->132					
notification to award			< - - - - - - -		- -				>225	

Code:

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8. Independent Variable: Issue (Table 21)

Consistent with statements made by all parties, the data confirm that discharge grievances receive more prompt attention than non-discharge grievances. Under both the LRA and the PSERA/Other, the differences were significant for overall time ($p < .01$ and .05, respectively). Both the grievance stage and the arbitration stage reflect significant differences by issue under the LRA ($p < .01$).

Referrals to arbitration were made somewhat faster for discharge cases under both statutes, and significantly faster ($p < .05$) under the PSERA/Other. The attempted acceleration of discharge cases is more apparent for cases under the LRA than for cases under other statutes with respect to the time between referral to arbitration and notification of the arbitrator.

Under both the LRA and the PSERA/Other statutes, there is evidence of greater haste for discharge hearings when examining time between notification of the arbitrator and establishment of the hearing. Also, under the LRA the difference in timeframe between discharge and non-discharge cases is significant from notification of the arbitrator to the award ($p < .05$).

Hearings were not only established more quickly, but were also held more quickly for discharge cases than for non-discharge cases. The time difference was significant under

the LRA for the time elapsed between the establishment of the hearing and the hearing ($p < .05$), and for the time elapsed between notification of the arbitrator and the hearing ($p < .01$).

Under all statutes, the nature of the issue had an impact on the length of the hearings: non-discharge cases took fewer hearing days, and the difference was significant.

Table 21 AVERAGE DAYS ELAPSED BY ISSUE

LRA

	1	2	3	4	5	6	7	8	9	10
Non-discharge	78	67	40	96	277	21	18	20	70	344
notification to hearing			< - - - - - - -		->137					
notification to award			< - - - - - - -		- -				>199	
Discharge	66	43	31	74	219	18	15	14	44	268
notification to hearing			< - - - - - - -		->100					
notification to award			< - - - - - - -		- -				>154	
Employer Grievance	-	-	-	-	288	-	-	-	112	399
Averages	75	61	37	90	259	20	17	18	62	321
notification to hearing			< - - - - - - -		->125					
notification to award			< - - - - - - -		- -				>185	

PSERA/OTHER

	1	2	3	4	5	6	7	8	9	10
Non-discharge	62	96	42	122	296	25	34	14	87	410
notification to hearing			< - - - - - - -		->135					
notification to award			< - - - - - - -		- -				>228	
Discharge	40	85	34	96	251	9	26	9	76	343
notification to hearing			< - - - - - - -		->122					
notification to award			< - - - - - - -		- -				>215	
Averages	56	93	40	115	285	20	31	13	85	393
notification to hearing			< - - - - - - -		->132					
notification to award			< - - - - - - -		- -				>225	

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10 TOTAL DAYS, GRIEVANCE TO AWARD

9. Independent Variable: Consensus

A unanimous decision was not more quickly reached than any other decision. Under all statutes, the fastest time from hearing to award involved the consent of neither side. None of the comparisons was significant.

Table 22 AVERAGE DAYS ELAPSED BY CONSENSUS

LRA

	1	2	3	4	5	6	7	8	9	10
Unanimous	48	51	34	95	251	23	27	19	72	321
notification to hearing			< - - - - - - -		->129					
notification to award			< - - - - - - -		- -				>191	
Union concurs	52	43	21	90	241	5	21	20	74	317
notification to hearing			< - - - - - - -		->106					
notification to award			< - - - - - - -		- -				>176	
Employer concurs	55	90	49	89	286	29	12	18	66	355
notification to hearing			< - - - - - - -		->135					
notification to award			< - - - - - - -		- -				>197	
Neither concurs	145	59	16	117	327	10	18	15	53	370
notification to hearing			< - - - - - - -		->95					
notification to award			< - - - - - - -		- -				>130	
Averages	57	72	39	91	266	20	17	18	69	337
notification to hearing			< - - - - - - -		->126					
notification to award			< - - - - - - -		- -				>189	

PSERA/OTHER

	1	2	3	4	5	6	7	8	9	10
Unanimous	73	118	40	94	296	8	11	9	66	416
notification to hearing			< - - - - - - -		->136					
notification to award			< - - - - - - -		- -				>216	
Union concurs	35	123	24	98	257	7	53	19	89	365
notification to hearing			< - - - - - - -		->108					
notification to award			< - - - - - - -		- -				>228	
Employer concurs	61	82	48	134	305	27	26	11	91	409
notification to hearing			< - - - - - - -		->141					
notification to award			< - - - - - - -		- -				>235	
Neither concurs	47	62	21	117	247	-	-	10	51	299
notification to hearing			< - - - - - - -		->108					
notification to award			< - - - - - - -		- -				>148	
Averages	57	96	41	117	289	20	31	13	84	396
notification to hearing			< - - - - - - -		->132					
notification to award			< - - - - - - -		- -				>226	

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10. Independent Variable: Length of Award

The number of pages in the award did have a significant relationship to the time between the hearing and the issuance of the award; simply, a longer award took longer to write.

11. Independent Variable: Outcome (Tables 23a and 23b)

There was no uniformity between statutes in the time required and the outcome of the case. For instance, if a grievance that is partially upheld is thought of as a compromise, it could be expected that this outcome would be reached in the least amount of time. There is no evidence to support this hypothesis.

Under the LRA, two significant findings require comment. The time between the grievance and the referral to arbitration and the time between the grievance and the hearing both vary significantly by outcome ($p < .05$ and $p < .001$, respectively). Extreme delay in moving certain grievances to arbitration may be a function of the lack of goodwill of the parties, the strength of the case, its complexity or its anticipated impact. For example, the union may hesitate with a weaker case (or move quickly on a stronger one), both sides may take extra time negotiating then preparing a complex case in the pre-arbitration stage, or management may move as slowly as

possible if loss of the case represents a substantial cost factor.

Also significant under the LRA are the times between circulation of the draft and issuance of the award, and between notification of the arbitrator to issuance of the award.

There were no significant findings by outcome under the PSERA/Other.

Table 23a AVERAGE DAYS ELAPSED BY OUTCOME, LRA

	LRA									
	1	2	3	4	5	6	7	8	9	10
Upheld	53	41	31	92	240	5	27	16	72	315
notification to hearing			<- - - - - - -		>116					
notification to award			< -						>178	
Partially upheld	80	25	26	81	255	15	14	21	55	308
notification to hearing			<- - - - - - -		> 97					
notification to award			< -						>139	
Dismissed	52	72	43	96	264	30	16	19	57	326
notification to hearing			<- - - - - - -		>141					
notification to award			< -						>204	
No jurisdiction	37	55	37	69	266	4	12	11	57	295
notification to hearing			<- - - - - - -		> 88					
notification to award			< -						>128	
Other	817	25	42	52	418	-	-	67	88	411
notification to hearing			<- - - - - - -		>106					
notification to award			< -						>167	
Averages	75	61	37	90	259	20	17	18	62	321
notification to hearing			<- - - - - - -		>125					
notification to award			< -						>185	

Code:
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10 TOTAL DAYS, GRIEVANCE TO AWARD

Table 23b PSERA/OTHER

PSERA/OTHER

	1	2	3	4	5	6	7	8	9	10
Upheld	39	114	30	99	255	8	43	14	83	379
notification to hearing			< - - - - - - -		->104					
notification to award			< -						>202	
Partially upheld	75	111	29	104	293	10	42	24	87	392
notification to hearing			< - - - - - - -		->165					
notification to award			< -						>263	
Dis-missed	58	81	48	128	297	24	26	10	83	402
notification to hearing			< - - - - - - -		->139					
notification to award			< -						>233	
No juris-diction	70	99	33	70	301	-	-	13	103	408
notification to hearing			< - - - - - - -		->121					
notification to award			< -						>210	
Other	81	71	12	98	275	-	-	8	61	288
notification to hearing			< - - - - - - -		->101					
notification to award			< -						>113	
Averages	56	93	40	115	285	20	31	13	85	393
notification to hearing			< - - - - - - -		->132					
notification to award			< -						>225	

Code:
1 grievance to referral to arbitration
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10 TOTAL DAYS, GRIEVANCE TO AWARD

VI. DISCUSSION OF RESULTS

A. Significant Findings

Seven factors were significantly correlated with overall time delay: year, sector, union, statute, forum, issue, and arbitrator.

From 1976 to the present study, the total time taken for the grievance arbitration process in Alberta has increased 60% from 214 days to 345 days. The four years of data in the current study reflect that trend.

Sector, union, and statute reflect the context of the grievance arbitration process: the articles of law and specific clauses in the collective agreement which govern the process. It is therefore not surprising that these factors which help define the parameters of the process should correlate significantly with delay.

The ability to expedite the process is demonstrated by the significant difference in time elapsed between discharge and non-discharge cases.

According to labour relations practitioners and current literature, there are a number of causes for the time delays and bottlenecks that occur in the grievance arbitration process. Forum and arbitrator are included in the list of most frequently cited reasons for delay, as follows:

1. waivers of time limits during the initial steps of the grievance process;

2. choosing a board versus a sole arbitrator;
3. negotiations over appointment of a chairperson by the nominees;
4. the scheduling of the hearing (including cancellations);
5. the hearing;
6. writing of the award by the chairperson or arbitrator;
7. the response of the nominees to the draft award; and
8. the involvement of lawyers.

While this study was not designed to address these potentialities directly, it does provide indications of the validity of some of the factors.

1. Waiver of Time Limits

The waiver of time limits would suggest that delay would be found at the initial step of the process, time between the grievance and referral to arbitration. An average interval of 63 days would suggest that waiver of time limits must play a role. However, the median time elapsed at this interval is 35 days under the LRA and 42 days under the PSERA/Other, which suggests that the waiver of time limits is not a serious problem in most cases.

2. Choosing a Board versus a Sole Arbitrator

A review of 269 collective agreements in Alberta, each

covering 100 or more employees, revealed that in 46% of the contracts, a tripartite board is specified, whereas only 17% call for a sole arbitrator. The parties are explicitly free to choose the size of the forum in 33% of the agreements, and in the remaining 4% of contracts, forum size is not addressed, leaving the parties free to use either a tripartite board or sole arbitrator.[35]

Despite contractual provisions which allow many cases to be heard by a sole arbitrator, the vast majority of cases in Alberta (nearly 80%) were heard by tripartite boards. It is possible that negotiations took place between the parties with respect to choosing a board or a sole arbitrator, causing significant delay between referral to arbitration and notification of the arbitrator.

The variable "forum" shows a significant correlation to delay in the total time from grievance to arbitration, indicating that the parties' choice of a tripartite board is a source of substantial delay in grievance arbitration. The evidence provided by this study indicating that there was very little advantage to either forum for either party may be persuasive in reducing the number of cases heard by tripartite boards in the future.

3. Appointment of the Chairperson by the Nominees

The time interval between referral to arbitration and

notification of the arbitrator shows a significant correlation with the variable "chairperson", suggesting that appointment of an arbitrator is a problematic area in delay.

Problems in choosing an arbitrator or chairperson result from the perceptions of unions and employers, as well as their nominees, that certain arbitrators are biased either towards management or unions. Such perceptions are based on past experience with a particular arbitrator, the perusal of decisions rendered by a given arbitrator over a period of time, and/or hearsay.

The negative perceptions have led many participants on both sides in the arbitration process to lament that there are too few "qualified" arbitrators in Alberta. However, this can be interpreted to mean that the parties to the process simply are not satisfied by the decisions of many arbitrators. In other words, there is no shortage of qualified arbitrators; there is only a dearth of acceptable ones. During the course of this study, 48 arbitrators heard cases, only 21 of whom heard more than five cases. Seven arbitrators heard 60% of the cases. This concentration of cases among a few arbitrators supports the contention that acceptability is not wide spread. Arbitrators also reported a cyclical pattern to their appointments, suggestive of changes over time in client perception of arbitrator acceptability. If few arbitrators are perceived as acceptable to both sides, negotiations over the selection of the chairperson could, indeed, be protracted.

4. Scheduling

There are several individuals whose attendance at a hearing may be mandatory:

1. the arbitrator or chairperson;
2. the union nominee;
3. the union representative;
4. counsel for the union;
5. the management nominee;
6. the management representative;
7. counsel for management;
8. the grievor; and
9. witnesses.

Many of these individuals have extremely busy schedules and, consequently, it can be difficult to coordinate their availability for a hearing. This is particularly true for the most sought-after arbitrators and legal counsel. Concentration of appointments among personnel would exacerbate the scheduling problems.

Seasonality also affects the scheduling of hearings, insofar as it is almost impossible to find an available hearing date during peak vacation times.

Compounding this scheduling problem are last-minute cancellations of hearings. Arbitrators may suddenly find themselves with time available when cases could have been heard. This has created a tendency of many arbitrators to overbook to allow for cancellations, but this creates a severe overload if the anticipated cancellations do not materialize.

Delay between notification of the arbitrator and

establishment of the hearing confirmed scheduling problems. The chairperson was identified as a factor contributing to delay under all statutes, and the chairperson's workload was indicated under the LRA as corresponding significantly with delay. Scheduling problems are a function of the individuals involved: the data confirm that concentration of cases among a few arbitrators is a problem associated with delay.

5. The Hearing

Since 90% of arbitration hearings were conducted on one or two days, the hearing was not implicated as a substantial cause of delay. Preliminary objections did figure prominently in the time between first and last hearings under the PSERA/Other.

Practitioners reported that hearings are becoming more protracted. While this trend was not identifiable between 1985 and 1988, it was reported as a recent trend which may become apparent after 1988.

6. Writing of the Award

The time from the last hearing to the award gave evidence of delay, some of which may be attributed to the writing of the award. Seven variables correlated significantly with delay in this interval under the LRA and three under the

PSERA/Other. It is difficult to apportion the delay among the variables; however, since the length of the award is significant under both the LRA and the PSERA/Other, it can be safely assumed that the writing of the award deserves some attention as a source of delay. Clearly, a long award takes longer to write; some arbitrators issue awards more quickly than others, and the process tends to go more slowly with the involvement of more people, whether lawyers or nominees.

7. Response of the Nominees to the Draft

It would be difficult from the data in this study to attribute substantial delay to the nominees' responses to the draft. Few dates were available with respect to circulation of the draft, and the order of the arbitration process varied; for example, an executive session was often preceded by the circulation of the draft and the nominees' responses would have been solicited during that session. Arbitrators often reported that they were concerned about the delay caused by slow responses, but most indicated that the award was released in a timely manner despite tardiness from the nominees. This study does not suggest that nominees' responses were a significant cause of delay.

8. Other Causes of Delay

The data reviewed in this study indicate other causes of delay not generally discussed by practitioners or reviewed in the literature.

The variable most often identified significantly with delay was the arbitrator. The results were more specific than the general discussion associated with the choice of an arbitrator: significant associations were revealed at six time intervals under the LRA and at seven time intervals under the PSERA/Other.

This does not mean that the arbitrator was responsible for delay: correlation does not confirm causality. The parties chose the arbitrator. If they consistently chose busy arbitrators, they sacrificed speed in the process for greater confidence in equity. Difficulty in selection of the arbitrator was also reflected in the delays associated with the arbitrator. If the parties could not agree on the selection of the arbitrator, and, especially if, after negotiations, the parties requested the government to appoint the arbitrator, time was lost.

The correlation of issue with delay showed that the parties have the ability to expedite arbitration for discharge cases. It is arguable, however, that the nine months required to finalize a discharge grievance, while an improvement on the 11 month timeframe for non-discharge grievances, is still

unacceptable. The fact that a difference is measurable indicates that the parties have some ability to speed up the process; perhaps the lack of a more dramatic improvement indicates the limitation of that ability.

The significant delays by sector occurred at the beginning of the grievance arbitration process under the LRA and were sufficient to have an impact on the overall timeframe. Further research into differences in contract language between the sectors, and the correlation of delays with negotiations of the collective agreements may yield explanations of the differences by sector.

The number of lawyers probably is correlated with delay due to scheduling problems, whether related directly to coordinating schedules for the hearing or, indirectly, to time taken to prepare a case.

Delay significantly related to outcome of the case is indicative of the politics of collective bargaining. For example, continuing negotiations, posturing related to the timing of bargaining for a collective agreement, hastening a strong case and foot-dragging for a weaker one (practised by both sides) could be evidenced in delay associated especially with outcome. The role of politics in an essentially political process deserves further exploration.

B. THE NATURE OF TIME DELAY

There is consensus that promptness in grievance arbitration leads to better labour-management relationships. The fact that delays are so frequently cited as problematic leads to a question concerning the nature of the delays: what or whose purposes are served by delays in the process? This question can be answered by viewing delays as either systemic or partisan.

Systemic delays may be unavoidable and serve a purpose. Weatherill observes:

> To a large extent, delay is inherent in any serious process of decision-making. The 'instant arbitration' is a myth, or at best a desperation move. Toss a coin if you're that hardup![36]

Partisan delays also serve a purpose, but of a very different nature; that is, they reflect the political nature of the collective bargaining relationship, the relative power of each party, and attempts to exercise that power.

Change is possible and is desired by the parties where systemic delays occur. Partisan delays are discussed to acknowledge their existence and to explain why solutions are not always sought or implemented. Delay used for partisan or strategic purposes can be characterized by an unwillingness of one or both of the parties to settle a dispute; the dispute itself serves the political purpose. Changes to improve the procedure will result in little progress as long as the delay

is deliberate.

1. Systemic Delay

Most systemic delay represents procedural problems and indicates a dysfunctional system. However, several purposes may also be served by a slow process. In this regard, delay may be benign, or even productive. In considering procedural changes, these purposes must not be forgotten.

First, opportunities exist at each step of the grievance arbitration procedure for the parties to reach settlement. The likelihood of resolution may increase as the situation is diffused and tempers cool with the passage of time, allowing the parties to gain objectivity. However, whether this is, in fact, true is largely a function of the complexity of the issue and its importance to the basic interests of the parties.[37]

Second, time delays may allow flexibility in problem solving which is lost as the hearing date approaches. According to McPherson,

> ...the earlier stages of a grievance provide a creative vehicle through which, if they have the will, the parties may choose to negotiate a resolution to their dispute that protects their fundamental interests without introducing the uncertainty of arbitration.[38]

Third, the time prior to a hearing can provide the parties with an opportunity to communicate their respective positions on the issue, and exchange information. Understanding fully

the implications of the case and the determination of the opposition may induce the parties to settle.

Fourth, at a minimum, delays may provide opportunity for reflection and preparation of arguments in readiness for the hearing, ensuring a thorough discussion of the issues.

Fifth, the arbitrator may reach a better decision if he takes time to reflect. As Weatherill notes:

> Until the arbitrator has ... written out his reasons for a decision, thus satisfying himself that the decision is sound - or thus arriving at the decision, because it is this analytical process that leads him to it, and not just his hunch at the end of the hearing - until the arbitrator has done that, I do not think he has done his job.[39]

Finally, delay can be mutually agreed to by the parties to allow time for the situation to change. The most benevolent example given was time allowed for an employee dismissed for substance abuse to complete a rehabilitation programme (source withheld).

Investigation is required to determine what proportion of systemic delay is purposeful rather than dysfunctional, but it is probably a safe assumption that most systemic delay is dysfunctional and undesirable and that this perception is shared by both parties.

2. Partisan Delay

Viewed as part of the negotiating process, grievance arbitration provides opportunity for both sides to communicate

their respective positions and to signal their negotiation intentions. As such, it is a prelude to bargaining. In this respect, it is highly political and involves posturing and face-saving, neither of which is calculated to provide quick and equitable problem-solving and both of which tend to thwart dispute resolution.

While the process was originally conceptualized to give the parties some joint control over their relationship in the absence of work stoppages, it can also be used to evade responsibility: the arbitrator can be blamed for the decision. Either labour or management (or both) can benefit by not having to shoulder the full responsibility for the outcome of an arbitration hearing.

Management has often been accused of failing to resolve a grievance at lower levels because of its desire to uphold authority and support its supervisors; unions are accused of taking unmeritorious grievances to arbitration in order to avoid charges of failing to provide fair representation. (The cost of fighting a charge related to the duty of fair representation must be borne by the union alone, while arbitration costs are shared by both parties.) In either case, blame is directed onto the institution of grievance arbitration, away from real issues which one or both of the parties may be powerless -- or reluctant -- to resolve.

One side or the other may gain a tactical advantage through delay. (Although most frequently mentioned as a

management strategy, this manoeuvring is not restricted to management.) The grievance procedure provides more immediate protection to management (work now, grieve later), ensuring that work will continue. It has been argued that it may very well be in the employer's interest to stonewall, and that avoiding delays is more important to the union[40]. Most technical objections come from the employer's side and are sometimes viewed as ways to avoid the arbitration process.[41]

The strategic purpose served by time delays is directly related to the power relationship between the parties. If perceptions are strongly adversarial, positions taken at arbitration will reflect that; if the parties are involved in mutual problem-solving, this, too will be reflected. More likely, however, problems often will be resolved before arbitration if there is a determination on the part of both parties to work out their differences. The proportion of grievances that reach arbitration bears witness to the willingness of the parties to reach settlement. The question to be resolved is whether assistance in the form of government intervention can and should be provided to further assist and encourage resolution of differences that reach arbitration.

VII. CONCLUSIONS

The data collected and analyzed clearly verify what is common knowledge among labour practitioners: grievance arbitration is too slow. What is also presented is information which profiles the process in Alberta and the specific steps where delay occurs. With these facts, procedural change can be contemplated and informed decisions made. Whether change will occur, however, depends on perceptions and events which may have little to do with factual analysis.

The problem has been acknowledged, but the need for change seems less readily accepted. In failing to provide prompt settlement of conflict, the results of grievance arbitration fail to comport with the demands of justice.[42] It is clear that a problem exists; it is less clear that remedies will be found.

Arbitration must be judged both as an institution and as a problem-solving mechanism. As an institution, it can be argued that the parties are in control and arbitration serves their purposes, especially with respect to relative power and bargaining strength. Appraisal of grievance arbitration as an institution yields explanations for the tolerance of inordinate delay. Contract clauses are designed to protect the institution, not individuals. Changing the process requires some uncertainty and risk which organizations tend

to avoid. This means that, while the parties may well have the power to affect change, they do not do so, as has been amply demonstrated over three decades.

Viewed as part of the larger institution of collective bargaining, grievance arbitration expresses the obtained balance of power between the parties. From a non-interventionist viewpoint, the balance of power is exactly as it should be and the outcomes of bargaining at all levels, including grievance arbitration, are also as they should be.

The institutional perspective is demonstrated in partisan delays. Grievance arbitration serves the collective purpose, often to the detriment of the individual whose grievance is used as a weapon in the arsenal in the fight to change the balance of power. More precisely, individual grievances are stockpiled in the arsenal, an image which graphically explains delay in the grievance arbitration process.

If the purpose of grievance arbitration is seen as problem resolution, however, it is clear that the status quo is unacceptable. The parties, having demonstrated their reluctance or inability to improve the process, have forfeited their control: intervention is justified. As Munroe observed in 1978, "...decisions about the development of grievance arbitration are simply too important to be left solely to the parties".[43]

Systemic delay is associated with the problem-solving orientation to grievance arbitration. Dysfunctional delay,

which is related to the structural components of the process, hinders problem resolution and should be rectified. Purposeful delay, by contrast, serves the purpose of problem resolution and must be preserved. Intervention to improve the problem-solving nature of grievance arbitration must be sufficiently flexible to accommodate purposeful delay while remedying dysfunctional delay.

The dilemma confronting proposed intervention in the timeframe is complex. The easier problem to overcome is the intervention in response to systemic delay. Changes are required which speed up the process, but which allow flexibility for those cases in which delay serves, rather than hinders, problem resolution. More difficult is the task of intervening to remedy systemic delay without disrupting the carefully choreographed partisan relationships between the parties. One alternative is to intervene in a manner which shifts the role of grievance arbitration more firmly into a problem resolution mould and away from the role of an adversarial tool. Arguably, such an intervention could be justified as encouragement to the parties to move towards more sophisticated, cooperative relationships in the workplace and away from adversarialism. The counter-argument, of course, is that workplace relationships are sacrosanct and must be left to the parties to determine.

What becomes clear is that a philosophical impasse has been created by different perceptions of the role of

the responsibilities of parties to improve the arbitration process.

An institutional perspective avows the sanctity of the relationship between the parties. The evolution of an adversarial relationship or a more cooperative one is in the purview of the parties. Delay in grievance arbitration represents the attained balance of power and is to be not merely tolerated, but also respected. Delay serves the partisan purposes of both parties as the natural order of their relationship unfolds.

A problem-solving orientation decries delay in grievance arbitration and attributes delay to the structure of the process. Remedies, including those obtained through intervention, are both necessary and mutually desirable.

The standard of acceptability which will be used to decide the future of rights arbitration will depend upon the perception of its purpose. Ultimately, that perception of purpose will be determined by the belief system of the decision-makers, which may have little relation to documentation of elapsed time. If the decision-makers perceive a power inequity and take a problem-solving orientation to arbitration, intervention may be considered. If government intervention is seen as anathema and the two sides in conflict are perceived to be equals in a power relationship, changes in arbitration will be left for the parties to negotiate. The results can be expected to be as

spectacular as the improvements made in the last thirty years.

Appraisal of grievance arbitration as a problem-solving mechanism requires no objective standards and no great wisdom to determine that the system is seriously flawed. The data presented in this report document a problem: conflict which requires a year for resolution has been entertained too long. An institution which is entrenched in debilitative past practices is an obsolete institution requiring renewal. Evidence has been presented which suggests that the parties are unable to make substantial improvements in the process. Improvement requires mutuality. A process which sees one party as the initiator of 99.7% of the complaints and a winner (at least in part) of 42% of those complaints suggests a lack of mutuality. Under these circumstances, it is difficult to imagine mutually agreed improvements to the process being negotiated.

The parties to grievance arbitration determine its effectiveness; the success of proposed changes will remain just as firmly in their control. The first step is to overcome the prevailing inertia. If the parties alone are unable to implement change, they may be enabled to do so with government assistance. Dialogue is required and extensive participation of the parties is imperative. The risk of change must be reduced, and incentives for change must be demonstrated, in accordance with the classic social change model.

Not all delay is dysfunctional. Where a long timeframe is justified and required, it can be carefully structured by exceptional agreement of the parties within a more expeditious framework. Flexibility is essential to the process, both as an institution and as a problem-solving mechanism. Participation of the parties can ensure the development of a more progressive system which ensures flexibility. The parties own the current process; they must also assume ownership of change.

VIII. IMPLICATIONS FOR FURTHER RESEARCH

During the course of this research, numerous issues which were beyond the scope of the study arose. Several questions emerged from the literature review, and others arose from analysis of the data.

The information garnered from interviews, especially with respect to improvements to the process and alternatives, deserves separate attention beyond this paper. Many suggestions and insights exist among labour relations practitioners, and it is clear that their collective wisdom could go far in designing improvements to the process of grievance arbitration.

The overall concept of grievance arbitration with respect to its effectiveness requires review. Data on work stoppages during the course of the collective agreement are not available, neither are data related to workplace efficiency and grievance filing/resolution. Ichniowski studied the effects of grievance arbitration on productivity in nine unionized pulp mills and correlated grievance filing activity with low productivity. He also compared these mills with a nonunion mill with no grievance procedure and demonstrated a significantly lower production rate in the nonunion mill.[44] If grievance arbitration functions as a problem-solving mechanism, does its effectiveness in that role

contribute to increased productivity? Or does the political participation of workers in grievance filing activity give them a sense of control over their work and thus contribute to worker satisfaction and increased productivity?

In studying gender effects in discharge arbitration, Bemmels found that,

> In 390 (68 percent) of the cases the length of suspension equalled the length of the delay from the date of discharge to the date of the arbitrator's decision.[2]

Using the database from the study in time delays, it would be possible to document the correlation between delay and length of suspension for the Alberta cases.

To explore the arbitrators' alleged orientation to upper and upper middle class values, arbitrators' win/loss record could be charted over time. Also, Ng and Dastmalchian found the grievances of higher paid employees are more likely to be granted than are those of lower paid employees in the Canadian federal sector. Additional data could identify whether or not a similar trend exists in Alberta, suggesting credence to a theory of class bias in arbitrators. Perhaps the trend exists in the public sector, differentiating public and private sector grievance outcomes, rather than reflecting arbitrator values.

More extensive investigation of the issues reaching

arbitration in Alberta, and the outcomes by issue bear investigation.

Correlations between bargaining for collective agreements and grievance arbitration activity would be useful in studying the political aspects of arbitration. Similarly, it can be hypothesized that longer delays in arbitration correlate with contract negotiations. Further research could reveal if the delays are attributable to the lack of time available for personnel to work on grievance resolutions during negotiations, or if grievance arbitration is used as a tool in the negotiations. A diminution of arbitration activity following contract settlements could suggest the use of arbitration activity in the political process, either as a pressure tactic or a bargaining chip.

The climate in which arbitration takes place should be studied and correlated to grievance outcomes. Economic indicators, dominant political forces, industry-specific developments, and general labour-management relationships could be expected to have impacts on arbitration activity and outcomes, but have not been documented.

A comparative study by Canadian jurisdiction to determine the effects of greater and lesser government intervention in grievance arbitration would be informative.

Specifically, documentation of the effects of intervention on delay and on the problem-solving capacity of grievance arbitration would be worthwhile.

Arbitration reviewed as an industry might provide some insights into the functioning (and non-functioning) parts of the system. For example, as an industry subject to rapid growth, availability of personnel has a direct impact on the length of time to resolve an issue, and, possibly, as indicated by some of the research, on the resolution itself.

McPherson states,

> The best barometer to measure the sophistication of the parties is not how many grievances are filed, but is instead the parties' ability to find workable resolutions to their conflicts.[46]

A cross-industry analysis of the success of the grievance arbitration process in problem-resolution correlated with the conflict management styles employed in the industries studied could yield a measure of sophistication. It could be hypothesized that the more integrative the style of conflict management, the less the grievance arbitration process would be employed, and, when employed, the degree of satisfaction with the outcome among all parties would be greater than in a workplace with a more adversarial climate.

Other than reinstatement awards, little follow-up work has been done after the issuance of arbitration awards. Such

a study would provide another measure of the effectiveness of grievance arbitration. Information could also be obtained on styles of conflict management and their relative strengths and weaknesses.

A study similar to Berkeley's work[47] on the perceptions of practitioners of labour relations would follow well from this study. If participation of the parties is desired in effecting change, a survey of their perceptions of the process and of their suggestions for change would be a good beginning.

Rights arbitration clearly warrants further research. It is hoped that this study demonstrates the practicality and the potential contribution of such research in improving the process.

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