arbitrator presents a draft opinion, the parties comment on the draft.

Tripartitism enhances the opportunity for mediation, but relatively few arbitrators take advantage of these opportunities. Those who do report modest success, which may account for the reluctance of arbitrators to attempt to mediate only in unusual situations.

Most Academy members are not enthusiastic about tripartite grievance arbitration. There may be an element of bias behind this judgment, but the majority were concerned about the additional expense, the prospect of the delay of the award, and the possibility of a disorderly hearing. The minority who expressed positive attitudes regarding tripartite arbitration believed that the process improved the quality of opinions and awards and the acceptability of the award.

There is, however, more general enthusiasm for interest tripartite arbitration. Of course, only a few arbitrators have had any direct and sustained experience with tripartite interest disputes. Judgments regarding the mechanism must therefore be viewed with caution.

II. REPORT ON A SURVEY OF ACADEMY MEMBERS ON EXPEDITED ARBITRATION

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In June 1983, the 600 members of the National Academy of Arbitrators were requested to respond to a questionnaire on the subject of expedited arbitration. The questionnaire had been prepared by the Subcommittee on Research, of which Professor Howard C. Foster of the School of Management, State University of New York at Buffalo was chair. By October, 1983, 206 responses had been received. This report presents a summary and brief analysis of the information developed from the responses, which appears in a tabulated form as an addendum to the report.

An expedited arbitration was defined to include any system of arbitration containing explicit features designed to reduce cost,

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formality, or the time between the invocation of the process and the issuance of an award. Respondents were informed that such features might include one or more of the following provisions:

- use of a special panel of neutrals
- time limit for holding hearing
- administratively designated hearing date
- relaxation of rules of evidence
- prohibition of outside advocates
- prohibition of briefs and/or transcripts
- limitation on use of precedent
- time limit for rendering decision
- provision for bench decisions
- specification of payment to arbitrator

The responses received indicate that the respondents for the most part restricted the meaning of the phrase "expedited arbitration" to a hearing governed by procedures designed to reduce the cost, formality, and time required for completion of the process. A few respondents apparently considered a case to be one of expedited arbitration if the only feature was that of a use of a panel of neutrals which would reduce the time required for selection of an arbitrator, but their responses were exceptions which do not significantly distort the information produced by the survey.

As the responses to question 1 indicate, 84 responding members reported no experience with expedited arbitration, whereas 122 responding members did have such experience. Those members who had experience with expedited arbitration were probably more inclined to complete and return the questionnaire than were those who had no such experience, even though a note following the first question indicated that those who had no experience with the process need only indicate the fact and return the questionnaire. About two thirds of the membership did not respond. Nevertheless, the responses received indicate a greater involvement with expedited arbitration than some persons might expect for the prestigious membership of the Academy. Responses to a request for names of the parties involved in the expedited arbitration proceedings indicated that 27 members had been involved in the expedited proceedings of the Postal Service, that 10 members had been involved in the expedited proceedings in basic steel, that four members had been involved in expedited proceedings of the Social Security

Administration, and that three members had been involved in expedited proceedings of the bituminous coal industry. Of those having experience with expedited arbitration, approximately one half estimated that those proceedings constituted 10 percent or less of their total case load. Only nine members reported having 100 or more cases during the last three years.

The most frequently reported characteristic of an expedited proceeding by number of responses was a time limit for rendition of the decision. Second was a prohibition of briefs. Next, reports of a provision for a special panel of arbitrators were closely followed by reports of a prohibition of transcripts. Almost as frequent was a provision establishing a time limit for holding of the hearing. Provisions allowing bench decisions were common, but time limitations on the length of the hearing itself were relatively infrequent. Some limitation on the use of decisions as precedent were also fairly common.

The responses to question 6(1) indicate that there were more than 1,100 cases heard in which bench decisions were permitted. The responses to the first part of question 7 do not permit precise determination of how many bench decisions were given, but it would appear that bench decisions were given in less than half, perhaps only a third, of the cases in which they were permitted. The responses to the second subsection of question 7 when compared to the responses to the first part of the question indicate that only in very few cases do the arbitrators not give reasons for their decision. Responses to the third subsection of question 7 indicate that with at least a substantial portion of the cases in which reasons are given, comments on credibility will be made. Of those responding to the fourth subsection of question 7, less than half believed that rendition of a bench decision made comments on credibility less frequent than in written decisions. The conclusion is inconsistent with the concern that presence of a party whose testimony is not credited would inhibit such comments, but consistent with the view that such a comment in permanent written form is more damaging than spoken words.

Although only seven members reported that they had subsequently concluded that a bench decision had been erroneous, 16 members believed that it was more likely that a subsequent conclusion of error would be reached with regard to a bench decision than it would with a written decision. Twenty-two mem-

bers did not believe a subsequent conclusion of error was more likely with bench decisions. Written comments indicate that members prize the control and restraint imposed upon their thought processes by the requirement of a written decision.

The responses to question 8 indicate that two or more expedited cases are heard by an arbitrator on a single day with a frequency somewhat greater than that with which only one case is heard per day. One member reported hearing seven cases in one day, but commented that he would never do so again.

The responses to questions 9 and 10 produced some duplication or overlap. They indicate, however, that those members with experience with expedited arbitration believe that it produces substantial savings for the parties. The saving most frequently noted was the elimination or drastic reduction of study time and time for preparation of written decisions. Apparently the process does not always result in reduction in the time actually spent in the hearing, a matter noted by a few respondents. Others noted that there was an expectable savings with respect to travel expenses when more than one case was heard on a day. Secretarial expenses are also reduced because of shortened or bench decisions. And, of course, if a single per diem is charged for two or three cases heard on the same day, the expense of each one is reduced.

The responses to questions 11 and 12 are probably of greatest interest and significance. They indicate that an overwhelming proportion of the members who engaged in expedited arbitration believe that their decisions and awards are as sound and just as their decisions and awards in nonexpedited arbitration. An almost equally large proportion believe that the interests of the grievant are served as well through expedited arbitration as through nonexpedited arbitration. An understandable desire to maintain an image of personal integrity may have affected the responses, since most arbitrators would be reluctant to admit that they had participated in a process which produced an inferior system of justice. Indeed, some of the comments were to the effect that the respondent would be no less conscientious simply because he was not being paid as much as would be received in regular arbitration proceedings. Some of those who indicated that they did not believe their expedited decisions and awards were as sound and just as nonexpedited decisions and awards mentioned a concern about inadequate presentations

made by the parties in expedited arbitration. The lack of briefs was noted by some respondents. Others questioned whether the parties correctly decided what cases were suitable for expedited arbitration. The closest to reservations about the arbitrator's level of performance were comments reflecting an objection to the necessity of promptly issuing a decision to meet an imposed time limit.

Several respondents expressed concern for the grievant's perception of the process. Use of bench decisions or short written decisions deprive the grievant of a detailed explanation of why he did not prevail, and make it essential that he gain his understanding of the reasons for the result from what may be a few oral comments at the close of the hearing. Others noted that the absence of carefully written decisions deprives the parties not only of a precedent, but also of the opportunity to learn what the arbitrator thought unsatisfactory about their performance, which, at least on management's side, might lead to repetition of the error. On the other hand, some respondents believed that for particular types of cases there was an advantage in expedited arbitration. Several noted that in discharge cases a decision is reached much sooner, relieving the grievant of the emotional turmoil and perhaps economic uncertainties sooner than would be the case if the proceeding had not been expedited. One respondent suggested that because of reduced expense, unions would be more willing to take cases to arbitration, thereby improving the situation of grievants. Another expressed the view that the general absence of attorneys in expedited arbitration made the proceedings more understandable to a grievant and permitted him to speak his piece concerning his grievance.

An overall appraisal of the responses received to the questionnaire is that they support the conclusion that expedited arbitration has become a valuable addition to the procedures available for resolution of industrial disputes. Fees and expenses of arbitration in those cases selected for expedited arbitration have been substantially reduced without a similar reduction in the quality of justice dispensed. Of course, it rests upon the parties to make an intelligent selection of those cases suitable for expedited proceedings, giving proper weight to the issues presented, the advantages of speedy resolution, the need for precedent to govern the relationship, and the educational contribution of a detailed and carefully considered explanation of a result.

Addendum

1. Approximately what percentage of the cases you have decided in the past three years may be termed expedited?

0%	— 84	11–15%	— 12
1–3%	— 25	16–20%	— 12
4–5%	— 20	21% and over	— 18
6–10%	— 34	unuseable response	— 1

(The following questions were answered only by those who decided expedited cases.)

2. In your experience, is the incidence of expedited arbitration during the past three years greater or less than during the previous three-year period?

greater	— 59
less	— 17
same	— 40
no answer	— 6

3. How many expedited cases have you decided in the past three years?

1–3	— 18	16–20	— 11
4–5	— 10	21–40	— 25
6–10	— 21	41–99	— 16
11–15	— 10	100 and over	— 9

inappropriate answers — 2

4. In how many of these cases did you become involved through:

membership on a panel?	— 88 responses	2,492 cases
permanent sole arbitrator?	— 28 responses	1,915 cases
ad hoc selection by the parties?	— 59 responses	1,247 cases

inappropriate answers — 5

5. In how many of these cases were the expedited procedures:

mandated by the CBA?	97 responses	3,033 cases
established by the parties on an ad hoc basis?	46 responses	1,520 cases

inappropriate answers — 4

6. In how many of these cases were the following provisions *explicitly* in effect?

a. special panel of neutrals?	54 responses	2,153 cases
b. time limit for holding hearings?	51 "	2,179 "
c. time limit for the hearing itself?	23 "	1,411 "
d. administratively designated hearing date?	20 "	1,621 "
e. relaxation of rules of evidence?	31 "	1,349 "
f. rule against swearing witnesses?	6 "	218 "
g. prohibition of outside advocates?	21 "	695 "
h. prohibition of briefs?	59 "	1,673 "
i. prohibition of transcripts?	53 "	1,372 "
j. limitation on use of precedent (for instant case)?	25 "	698 "
k. limitation on use of instant case as future precedent?	44 "	1,068 "
l. time limit for tendering decision?	74 "	2,897 "
m. allowance for bench decisions?	44 "	1,109 "
n. special provisions for payment of arbitrator?	33 "	1,178 "

no answer — 5
"none" — 1
answered by "check" mark only:

a.	25	h.	26
b.	23	i.	27
c.	8	j.	11
d.	9	k.	20
e.	13	l.	34
f.	2	m.	26
g.	6	n.	17

indecisive answer — 1

7. The various parts of question 7 refer to bench decisions in expedited cases.

A. In how many of these cases did you actually render bench decisions?

0 — 65	11–15 — 4
1–3 — 29	16–20 — 1
4–5 — 7	21 and over — 11
6–10 — 5	indecisive answer — 1

B. If you have rendered any bench decisions in expedited cases, in how many cases did you give reasons for your decision?

1–5 — 35
6–10 — 5
11–15 — 3
16 and over — 11
no answer — 3

C. If you have rendered any bench decisions, on how many occasions have you commented on matters of credibility?

0 — 19
1–5 — 17
6–10 — 3
11–15 — 3
16 and over — 3
Not applicable — 5
Indefinite answer — 6

D. Are you more or less likely to comment on credibility in a bench decision than in a written decision?

Not applicable — 7
more — 6
less — 21
same — 21

E. After rendering a bench decision, have you ever subsequently concluded that the decision was erroneous?

yes — 7
no — 48
Not applicable — 1

F. In your experience, is such a conclusion more frequent with a bench decision?

yes — 16
no — 22
Not applicable — 14
No answer — 4

8. In your experience with expedited cases over the past three years, on how many *occasions* did you hear:

one case a day	— 832 occasions	(62 responses)
two cases a day	— 461 occasions	(45 responses)
three or more cases in a day	— 375 occasions	(36 responses)

no answer — 7

inappropriate answers — 36 (One response indicated that person had heard "most" of 750 cases 3 or more per day.)
(The total number of responses exceeds the number who heard expedited cases because some arbitrators had both occasions of hearing only one case and occasions of hearing more than one case.)

9. In your experience, approximately what percentage of the time that *you* ordinarily devote to an arbitration case is saved by expedited procedures?

0% — 17	41–50% — 24
1–10% — 1	51–60% — 3
11–20% — 3	61–70% — 4
21–30% — 12	71–80% — 9
31–40% — 6	81% and over — 3

answered but not in terms of % — 35
of these: 24 reported substantial savings of time
10 reported "not much" savings of time
2 gave qualified answers

10. In your experience, approximately what percentage of the arbitrator's fees and expenses is saved by expedited procedures?

0% — 10	41–50% — 30
1–10% — 2	51–60% — 3
11–20% — 5	61–70% — 8
21–30% — 12	71–80% — 6
31–40% — 10	81% and over — 2

answered but not in terms of % — 22
(most of these indicated some saving in fees)
indefinite answers — 2

11. Are you satisfied that your decisions and awards in expedited arbitration are as sound and just as your decisions and awards in non-expedited cases? Please explain.

Yes	— 83
Yes, with qualifications	— 17
No	— 11
No, with qualifications	— 2
No response	— 9

12. Do you believe that the interests of the grievant (fair representation, equity, etc.) are served as well through expedited arbitration as through non-expedited arbitration? Please explain.

Yes	— 59
Yes, with qualifications	— 32
No	— 10
No, with qualifications	— 6
No response	— 15