

**ADJUDICATORS (ARBITRATORS) ACTING AS
MEDIATORS: AN EXPERIMENT IN DISPUTE
RESOLUTION AT THE PUBLIC SERVICE STAFF
RELATIONS BOARD OF CANADA**

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ABSTRACT

This article discusses the changes that took place at Canada's Public Service Staff Relations Board from 1999 to the present. During that time, a pilot project moved the process for handling labor-management disputes from adjudication (called arbitration in the United States) to mediation. The results of the pilot program were encouraging, with 85 percent (347) of the cases dealt with by mediation, and only 15 percent (63) going to adjudication hearings. Participants' responses substantiated the success of the change. Evidence included improved communication between the parties and satisfaction with the mediators and the results of mediation.

This article investigated the effort on the part of a small government agency in Canada to, in a sense, reinvent itself with regard to its principal historic operational activity. For more than 30 years, the Public Service Staff Relations Board (PSSRB) of Canada had been involved primarily in adjudicating (arbitrating is the term used in the United States and in all the provinces of Canada) disputes between federal unions and the government of Canada. The PSSRB, however, in September 1999, launched a pilot project in which the basic process for handling labor-management disputes moved from adjudication to mediation. Since 90 percent of the board's operations in 1999 related, in some fashion or another, to the business of adjudications, this new orientation could legitimately be regarded as a major change in the operations of the board.

My effort in engaging in this research was to examine how the PSSRB had adapted to this new organizational directive. Further, because the movement from adjudication to mediation as the most-favored process of dispute resolution at the board was internally generated, it is also a story about how a governmental entity can adjust to an emerging hegemonic consensus about settlement techniques in labor-management disputes and an evolving operational climate. The research relies on documentary materials, particularly an evaluative report of the pilot project conducted by three academics at Canadian universities, and 20 open-ended interviews held in June 2000 and June 2001 with board mediators, union representatives, and employer representatives who participated in the grievance mediations administered by the board.

THE PUBLIC SERVICE STAFF RELATIONS BOARD OF CANADA

Canada's Public Service Staff Relations Board is assigned the job of regulating employer-employee relations for Canadian federal and parliamentary employees. The board is composed of a chairperson, a vice-chairperson, three deputy chairpersons, and such full-time and part-time members as the governor-in-council considers necessary to discharge the board's responsibilities. At the present time there are six full-time and four part-time members. The board is a public member board, in which each member represents only the public interest. Members are appointed by the governor-in-council to hold office for a period not exceeding 10 years in the case of the chairperson, the vice-chairperson, and the deputy chairpersons, and not exceeding seven years in the case of other members. Part-time members, most of whom act only as grievance adjudicators and live throughout Canada, are appointed typically for two- or three-year terms subject to reappointment. Appointments can and have been, however, made for lesser periods of time.

Proceedings before the board under the Public Service Staff Relations Act include: applications for certification; complaints of unfair labor practice; designation of persons employed in managerial or confidential capacity; and conciliation, mediation, and adjudication of grievances related to the interpretation and applications of provisions of collective agreements or disciplinary actions [1, p. 338]. From its creation in 1967 through 1999, when the pilot project began, about 85 percent to 90 percent of the case load dealt with grievance adjudications [1, p. 342; 2].

GRIEVANCE MEDIATION

Clay and Hoenig stated that mediation resolves disputes through the "assisted exercise of power which most disputants do not even realize they have until they no longer have it: the power to determine their own outcome by reaching a

mutually acceptable resolution of their dispute” [3, p. 8]. Other dispute resolution processes cede all or part of the authority to determine the outcome to a third party, either a factfinder, an arbitrator, or a judge. Mediation, however, is a voluntary process in which the mediator facilitates communication, encourages exchanges of information and ideas, tests the reality of the parties’ perceptions, translates what is said to cool down the emotional climate, and at times recommends—all in the service of assisting parties to reach their own agreement. Clay and Hoenig noted that increasingly business attorneys are advocating that their firms include a contract provision mandating the use of mediation before litigation or arbitration are begun. These mediation “embedded clauses” are becoming standard fare, they observed, and include some of the largest businesses in the United States, such as General Mills, National Cash Register, and the Association of General Contractors [3].

Mediation advocates stress its facility for focusing the parties on articulating their interests and thereby opening the way for mutual accommodation. It allows for creative solutions rather than win/lose outcomes. Walter Gershenfeld, a distinguished arbitrator, commented, however, that even though arbitrators were more engaged with mediation in the past decade than ever before, not all arbitrators were effective as mediators [4]. He pointed out that “some arbitrators found it difficult to avoid a decision-making as opposed to a facilitating mode. We have since learned to train arbitrators to serve as mediators and recognize that some individuals cannot function effectively as mediators without some basic alteration in their approach to the contending parties” [4, p. 54]. Moving from arbitration or other forms of litigation, Clay and Hoenig wrote, involves a “paradigm shift” from thinking solely about who is more right and less wrong, to openly and fully discussing all parties’ interests . . .” [3, p. 12].

The PSSRB, prior to starting the pilot project, produced a booklet entitled *Grievance Mediation*, which it provided to the federal labor-management relations network [5]. A textual analysis revealed that the board was well aware of the literature relating to the use of arbitrators engaging in grievance mediation, as well as its potential benefits. A sample of two relevant subheadings indicates this awareness, as well as the board’s take on grievance mediation.

What Is Grievance Mediation?

Grievance mediation is a process, which allows the parties to resolve workplace disputes with the assistance of an impartial third party. The purpose of mediation is not to determine who is right or wrong but rather to reach a mutually satisfactory resolution of the grievance at issue. Through mediation creative solutions acceptable to both parties, which are not always available at adjudication, can be crafted.

Mediation is an informal process. There are no witnesses to be sworn in or formal evidence to be presented. The parties talk about the dispute. With the mediator’s help they seek a settlement that they can accept and live with. There are no minutes taken of the proceedings or reports issued by the

mediator. The mediator does not decide the outcome. The parties do. When a dispute is settled in mediation the parties will normally sign a memorandum containing details of what has been agreed to.

The Mediators

The mediators in the project will be members of the *PSSRB* and its staff mediators. While Board members have until now acted as adjudicators, they have received extensive training in their new role. This training is ongoing and will continue throughout the course of the pilot project.

Should the mediation session not result in a settlement of the dispute, the Board member who acted as mediator will not be the person assigned to hear and determine the matter on the merits.

To protect the confidentiality of the mediation process and the integrity of both mediation and adjudication, mediators will not discuss the contents of any mediation session with their colleagues.

Board members, acting as mediators, can aid the parties in assessing their case by indicating to them what adjudicators have decided in similar cases in the past and how an adjudicator might look at their position. However the mediator is not there to decide who is right or wrong [5, p. 195].

THE SEEDS OF CHANGE

Gershenfeld observed that in the late 1940s and early 1950s there was an ongoing dispute about the nature of grievance arbitration (adjudication in the context of this article), which featured two of the founding figures, George Taylor, former head of the War Labor Board, and Nobel Braden, the leader of the American Arbitration Association. Taylor, Gershenfeld wrote, “pictured grievance arbitration as an extension of collective bargaining and believed the arbitrator’s role was to interpret the contract with an eye to the solution of underlying problems. Braden saw grievance arbitration as a quasi-judicial process and believed the arbitrator’s role was to be faithful to the contract above all” [4, p. 55]. Braden’s view prevailed in the practice of grievance arbitration in the United States and in Canada, but Gershenfeld noted that a significant minority of arbitrators followed Taylor’s orientation and that these arbitrators, when conditions seemed propitious, would offer mediation as a vehicle to settle the dispute [4].

Jacob Finkleman, the first chairperson of the *PSSRB*, was an adjudicator (arbitrator) in the mold of Taylor and intervened into the dispute process by frequently offering the services of mediation to the parties in the formative years of the board’s existence. His tenure was followed by Harold Brown, who was a practitioner of the Braden orientation. This approach seemed to fit with the growing maturity of the parties in the federal labor-management relationship, and the “hands-off” approach was widely favored. In fact, when Ian Deans, the third chairperson of the board, tried to push a more proactive mediating role for board

members in the adjudicating process, he received a negative response from the parties as well as from board members, forcing Deans to moderate his views and advocate sensitivity to the needs of the parties [6]. Some of the board adjudicators were practitioners of the Taylor approach, though, and working within the framework of the adjudication process, some grievance mediation was being used periodically. Moreover, current chairperson Yvon Tarte said he had an informal arrangement beginning in late 1996 with Norman Bernstein, then-director of mediation services, to scan incoming cases and determine whether some of them might be susceptible to resolution through mediation [7]. In short, some of the groundwork for the transition from adjudication to mediation by the board had been prepared prior to 1999.

Collective bargaining for the public service of Canada was shut down from 1991 until the fall of 1996. During this time both Conservative and Liberal governments had enacted legislation prohibiting the practice of collective bargaining for the determination of wages. Additionally, beginning in 1993, the Liberal government had put into place a variety of programs that would reduce the size of the public service by 60,000 employees in 1998, a downsizing of slightly more than 25 percent of the federal workforce. These actions by the two regimes raised questions in the minds of all parties about the commitment to collective bargaining for federal government employees in Canada. When collective bargaining resumed, all the involved interests were well aware that the enterprise was in a fragile condition [8]. As far back as 1974, then-Minister of Labour John Munro, having assessed the condition of federal labor-management relations, called for a reassessment of “entrenched attitudes of confrontation and hostility. We must replace these attitudes with a stronger emphasis on our mutuality of interests, on our increasing interdependence. . . . That means the parties themselves must change and adapt” [9, p. 194]. A similar theme was espoused by Fernand Lalonde at the end of his first year as general secretary of the National Joint Council of the Public Service of Canada in 1996. He wrote at that time:

If we are to succeed in creating and maintaining a high performing public service, there is a need to cultivate a cooperative and trustful environment; an environment of renewal where management, union counterparts and employees work in partnership to improve organizational performance and the security and quality of employment conditions; an environment where emphasis is placed on relationships, on joint processes and initiatives . . . [10, p. 343].

Yvon Tarte related that in 1996 and 1997 there was a general recognition and feeling that the time was ripe for rethinking the labor-management relationship in the federal government. The director of mediation services at that time, Norman Bernstein, had begun to explore “interest-based” as distinct from “position-based” bargaining with the parties and had conducted sessions with bargaining units of

committee clerks and security guards of the House of Commons and with the language translators and interpreters who were under the jurisdiction of the Treasury Board. Interest-based bargaining tends to concentrate on workplace issues at the level of the delivery of government services, looks at handling common concerns, and recognizes the equality of the parties as partners in problem solving. Its affinity with grievance mediation is clear. Tarte stated that they basically are two sides of the same coin and thus it was logical to begin probing both prospects with the parties in 1996 and 1997. After all, in each approach, the emphasis was on having the parties at the workplace reach agreements and thereby keep control of the outcomes. Collective bargaining had moved too far away from its initial focus on resolution by the parties, in Tarte's view, to an increasing reliance on litigation and settlement by third parties. Interest-based bargaining and grievance mediation, he believed, would assist the parties in moving closer to the original design of labor-management relations [7; 8, p. 145].

Other reasons for initiating grievance mediation relate to the internal functioning of the board. For example, Tarte stated that about 40 percent of scheduled adjudication hearings are never held, since the parties settle matters, often on the evening before or the day of the hearing—when the adjudicators have already arrived, frequently having flown to the hearing location. Not only is this a costly drain on the resources of the board, but it also creates inefficiencies in scheduling the workload of the members [7]. John McCormick, the general counsel of the board, pointed out another internal factor influencing the board's decision to promote grievance mediation as an alternative to grievance adjudication. McCormick stated that, even with government departments relegated to the status of separate employers, the board still retained authority for the administration of labor-management relations in this new arena. Complicated matters relating to the interpretation of the transition provisions and determinations of appropriate bargaining units, union successor rights, and union certification were coming to the board for decision. Many of the newer members did not have the expertise to handle these matters, resulting in their assignment to a selected minority of members. Implementing grievance mediation would free up more specialized adjudication competence to address the pending adjudication workload as well as probably reducing it in the future. This would provide a better fit between the human capital of the board and its operational agenda [2, 11]. The conversion to grievance mediation did not occur immediately or quickly. Tarte had concluded in 1996 that with the resumption of collective bargaining, the board could do more than it had in the past to improve the climate of federal labor relations. A survey revealed that the parties favored some process that would expedite the resolution of disputes. He floated some ideas with the parties in the spring of 1997, such as compulsory mediation or a mandated preliminary discussion of the issues prior to the scheduling of adjudication. These suggestions were resisted. The parties thought it might prolong rather than reduce the time spent on dispute resolution, and several board members thought it might impinge on the objectivity

of the adjudication process. Tarte, along with McCormick, went back to the parties in 1998 with another proposal. This one separated mediation and adjudication and made mediation voluntary by including an opt-out provision. The scheduling of adjudications would not be affected because they would continue to be scheduled within three months of receipt for discipline cases and five months for contract cases. Assuring the parties that this new initiative on the part of the board would be offered on an experimental basis at the start led to a willingness by the parties, after a year of bilateral discussions, and the board members to agree to participate in the pilot project.

The rest of 1998 and two-thirds of 1999 were spent on designing the components of the new venture and the initial training of board members and the parties' representatives in Ottawa on the concept and process of grievance mediation. The grievance mediation pilot project was scheduled for a September 1999 launching.

PREPARING FOR THE GRIEVANCE MEDIATION PILOT PROJECT

The board was well aware that members would need training to function as mediators. They were going to be dependent on the member serving in this capacity because the Mediation Services unit employed only two mediators. A decision was made to conduct two three-day training sessions in Ottawa as joint training with representatives of the parties and board members. Richard Weiler, an experienced mediator, was hired as a consultant to conduct the training. The training sessions turned out to be quite successful, and Weiler was widely praised by a cross-section of attendees. The board members then underwent a series of advanced training sessions, one of which included outside assessors to evaluate them over a period of three days and provide feedback.

These sessions were followed by co-mediation experiences with the two mediators at the board, Norman Bernstein and Guy Baron, for all the members. Each member attended mediations conducted by Bernstein and Baron as an observer, then functioned as a mediator under Bernstein's and Baron's supervision, and finally handled a mediation session on his/her own with Bernstein and Baron as observers [7, 12]. Coexisting with this process were once-a-month executive sessions devoted to discussions of the mediation process, sharing of experiences in mediation, and ongoing consultations with Bernstein and Baron. As the starting date for instituting the pilot project approached, the chairperson became increasingly confident that the board would be able to meet its mediation objectives [7].

The period from the summer of 1998 through the first half of 1999 was also used to define the structure of the delivery system that the board would use in offering grievance mediation services. For the duration of the pilot project, all grievances and complaints (complaints refer to allegations of unfair labor

practices or allegations of not meeting the union's duty to fair representation) referred to the board for determination would be automatically scheduled for mediation and for adjudication. The scheduled mediation session would be withdrawn only if one of the parties requested withdrawal in writing at any time up to the scheduled session. Following a withdrawal or an unsuccessful mediation, the grievance or complaint would stay on track for an adjudication hearing. The board would assign members to conduct the mediation session, and those who mediated could not be assigned to, if necessary, an adjudication hearing on the case.

The board guaranteed confidentiality of information developed in the mediation session, assuring the parties that it would not be conveyed to the relevant adjudicator if an adjudication were held on the matter. The agreements resulting from mediation would not be publicized and would not have any precedential value in any other mediation or an adjudication session. Finally, the board entered into a contract with a team of three university professors, experts in the area of mediation, who would independently evaluate the project and report their findings to the board. The board indicated that the evaluation would be an important factor in arriving at a decision to continue or discontinue the practice of grievance mediation after September 2000 [5, p. 4; 7; 13].

GRIEVANCE MEDIATION AT THE PUBLIC SERVICE STAFF RELATIONS BOARD

During the 12-month period of the pilot project (September 1, 1999–August 31, 2000) 1,194 grievances, covering the usual spectrum of issues, had been referred to the board for adjudication. Of these, 575 cases had entered the mediation stream (49 percent) and 172 (14 percent) were in the 30-day waiting period for a determination by the parties as to whether they would enter the mediation stream. One-hundred-and-three cases had been scheduled for mediation and 62 were awaiting a scheduling date. Four hundred and ten cases had been the recipient of actions by the parties following their scheduling. Seventy-seven (19 percent) had been settled or withdrawn prior to the mediation date. Two hundred and seventy (66 percent) were settled or withdrawn at mediation. Sixty-three (15 percent) were not settled at mediation [14]. These data were encouraging to the executives at the board in reviewing the results of the flow of cases during the year the pilot project was being administered. More than half of the caseload (excluding the 172 cases awaiting action by the parties) had entered the mediation stream. This alone was a significant development. Further, once entered and scheduled, 347 cases (85 percent) had been dealt with by the parties themselves to their mutual satisfaction, and only 63 cases (15 percent) were candidates for possible adjudication hearings.

EVALUATION OF PROGRAM

From the perspective of encouraging the parties to settle workplace disputes themselves rather than relying on directives from adjudicators, the analysis seemed to indicate a step in the right direction had been taken. The evaluative report by the academic consultants further substantiated this impression. The report was based primarily on the analysis of the responses of participants in the pilot project to a survey questionnaire, which contained directed and open-ended questions. Two hundred and seventy-two valid questionnaire responses formed the foundation for the subsequent evaluation.

A number of responses to questions dealing with outcomes from the mediation process comprise the data for the following discussion. To begin, 57 percent of the respondents related that the mediation settlement included one or more elements that, in their experience, would not have been available through adjudication [15, p. 21]. This perception was substantiated also by many of my interviews in June 2000 [2, 11, 12, 16-20]. Regarding a question about whether “your/your’s party’s understanding of the other side’s perspective on the dispute was clarified” by the mediation session, 84 percent responded definitely yes or somewhat yes. The highest number of affirmatives were found among grievor representatives (87 percent) and employer representatives (82 percent), but grievors were not far behind, with 79 percent answering in the affirmative. Mediators led the list with 97 percent thinking that mediation had contributed to a greater understanding of where the other party was coming from, i.e., “walking in the other person’s shoes.”

Improved communication between the parties was one of the objectives of the board in moving toward grievance mediation and the above responses appear to suggest that it might be occurring in mediation. Additional evidence along these lines would be the fact that only 6 percent of the respondents thought the relationship between the employee and the employer had gotten worse as a result of mediation; 48 percent said it had improved; while 46 percent stated it was unchanged. Mediation is obviously not a panacea, but it does show promise as a vehicle for overcoming a “we”-“they” orientation to labor management relations [15, pp. 22-23]. An intriguing additive is that several board members thought that their relationship to the parties had also been improved through the mediation process [17, 21, 22].

When settlement was not reached, the respondents identified three principal reasons, “unrealistic expectations” (45 percent), “other party lacked good faith” (36 percent), and “inadequate preparation for settlement discussion” (23 percent). Mediators and employer representatives cited “unrealistic expectations” most often, mediators and grievors were most apt to list “other party lacked good faith,” while no particular party emphasized “inadequate preparation for settlement discussion.” The mediators balanced their assessments on the reasons for non-settlement, whereas the employer perspective and the employee perspective seem to be reflected in the citations of “unrealistic expectations” and “other party lacked

good faith” [15, pp. 18-19]. Even when settlement was not reached, a majority of respondents (56 percent) thought that the issues in dispute had been narrowed, especially the grievor representatives (73 percent) and the employer representatives (64 percent) [15, p. 17]. One interesting thread in the responses is the similarity in the citations of the grievor and the employer representatives. These individuals have much more experience in representing their organizations in dispute resolution proceedings of all types, and over time become more open to the perspectives of others and more realistic about the viability of the various dispute resolution processes. They occupy what Walton and McKersie have termed boundary positions within their respective employer organizations and regular interactions with their opposite counterparts often leads to mutual respect and, to some degree, commonality of insight [23].

A series of questions elicited responses concerning the matters of the performance of the board members acting as mediators and the fairness of the process in facilitating the airing of the views of the parties. These questions tap into one of the most hotly debated issues concerning mediation approaches and whether adjudicators, because of their past experience, as Gershenfeld noted, find it difficult to avoid a decision-making mode when engaged as mediators. Zweibel and others observed that there can be a key difference in mediation approaches:

... whether a mediator should adopt a purely facilitative role—promoting and managing discussion, surfacing issues, setting agenda, promoting communication—or an evaluative role in which the mediator provides a non-binding opinion on fact, law or the issues in general. There is a continuum of approaches with many mediators expressing a preference or leaning towards one end of the spectrum or the other, but also varying their approach depending on the context of the dispute or the specific objectives of the mediation program. For example, mediators who are inclined to use a communication oriented facilitative approach, may nonetheless ask the parties a series of “reality checking” questions in a private caucus, thereby adopting some evaluative techniques. A mediator who is willing to provide the parties with an assessment or prediction on the likely outcome of a court decision may also, at the same time, encourage the parties to focus on the underlying business and personal issues in arriving at the actual settlement terms [15, p. 36].

Questions dealing with elements of the fairness of the process related to whether participants had sufficient opportunities to “have their say” and whether it was understood by the mediator. The respondents overwhelmingly affirmed (93 percent) that they had their day in court by having had sufficient opportunities to voice their concerns during the mediation process [15, p. 33]. Moreover, my interviews with board members clearly revealed that they were aware that airing of differences was a key component of the mediation process. Board member Marguerite-Marie Galipeau articulated the new sensitivity that is needed in mediation. She stated that her mindset in mediation is one of being intensely aware that “now she is being paid to listen” and that mediation by its nature has

more of an “emotional component” than adjudication. She stated that it is crucial for the mediator to allow sufficient “space for the ventilation of feelings” by the parties [21]. The respondents also indicated that the mediators understood the participant’s point of view “Very Well” (79 percent) or “Somewhat Well” (18 percent) in the mediation session. The cumulative response to these questions no doubt influenced the attitudes of the respondents, which led to a rating of the mediation process as “Very Fair” (64 percent) and “Somewhat Fair” (30 percent) [15, pp. 26, 31].

Another series of questions dealt specifically and in greater detail with the performance of the mediators. In response to a question asking how effective mediators were in helping the parties communicate with one another and reach some common understandings, 56 percent indicated that the mediators were “very effective” and 37 percent listed them as effective [15, p. 32]. This assessment fits with one board member’s notion of a mediator as a tool or device for conciliation of differences rather than being the decision-maker as in adjudication [17]. In a follow-up question asking whether the mediator provided advice on views of legal issues, 42 percent said “yes”; recommended a particular settlement, 23 percent “yes”; suggested settlement options, 70 percent “yes”; kept silent about their views on the case, 37 percent “yes”; controlled the process, 80 percent said “yes”; and avoided bias, 76 percent “yes.” These assessments are generally in line with those of the mediators, 41 percent of whom said they provided advice on views of legal issues; 25 percent of whom said they recommended a particular settlement; 75 percent said they suggested settlement options; 25 percent said they kept silent about their views on the case; 93 percent said they controlled the process; and 90 percent said they avoided bias. Mediators, not surprisingly, were more certain that they controlled the process and avoided bias than were the parties, but the divergence in views was not extensive.

The parties were more certain surprisingly, however, than the mediators that the mediators had kept silent on their views of the case. All are in agreement, though, that the board members were actively involved in the mediation process, controlling the flow of interactions, avoiding bias, and often suggesting settlement options. To a lesser degree, they, a minority of all respondents, related that mediators had provided advice on views of legal issues and recommended a particular settlement. The board mediators, still working as adjudicators during the period of the pilot project, seem to have been leaning closer to an evaluative role than a purely facilitative role, but not to an extreme degree.

A number of interviewees said they were well aware of the danger of becoming too evaluative in their approach and thereby taking away from the ownership of the parties with regard to the settlement [17, 21, 22, 24]. Joe Potter, for instance, was well aware of the role reversal from adjudication to mediation. He concentrated on knowing which hat he is wearing and where and is very reluctant to engage in any evaluative determination. He will only do so when requested and when he thinks it might break up a logjam between the parties on a specific matter. He

stated that he was very conscious that such engagement might produce an end to bargaining or negotiation among the parties. This result was also mentioned by Jeffrey Laviolette, a staff relations specialist with the Department of Citizenship and Immigration, who observed the above phenomena in a couple of cases [24, 25]. One board member, though, who has mediated many adjudicative matters prior to the grievance mediation initiative, established a more directive posture in mediation. He indicated he “pushes the envelope” in mediation in search of a settlement. In his judgment, some of the parties need to be told about possible remedies, as they may be unaware of the available options for handling disputed issues and practices and may need to be encouraged to move from the settled positions established in the grievance process. Mediation calls for creative responses from management and the unions, and mediators should probe and develop appropriate sets of options for the parties’ consideration [18].

A more balanced approach to the evaluative/facilitative dichotomy was suggested by former vice-chairperson Chodos, but he stressed that board members should not shy away from using their adjudicative expertise upon request. It is his opinion that this is the value-added component that adjudicators bring to the grievance mediation process, and if it is not rendered, albeit judiciously, there is no point to having adjudicators functioning as mediators [11]. This perspective was also shared by Francine Cabana, an experienced advocate with the Public Service Alliance of Canada. She began advocating in mediations with Norman Bernstein, and she wants full-time board members to mediate the grievance mediation sessions with which she is involved. She related that she often requests the board mediator to render an opinion of how an issue might fare in adjudication when in caucus with the grievor. Reality checks are needed for grievors, she often finds, and once exercised can expedite the mediation process [16]. John McCleod, an employer representation officer with the Treasury Board Secretariat of Canada, also thought the potential of this authoritative exercise by board adjudicators doing mediation was a particularly unusual and valuable component of the pilot project. He expressed some reservations, however, that the board members might be pushing too hard for settlements as a measure of the effectiveness and efficiency of the PSSRB in the arena of alternative dispute resolution [20].

This view, perhaps an understandable employer-oriented one, was also expressed by employer representatives Renee Haule and Jeffrey Laviolette and Justice Department attorney Katherine Hucal [25-27]. They all were of the opinion that mediation inherently results in management giving up more than it would in adjudication and that, if management believes it has a solid case, it should pursue the adjudication route rather than the mediation route for dispute resolution. All of them articulated the fact, as well, that some disputes, by their nature, necessitate an adjudication resolution. None of them thought the adjudicators of the board brought any unique factors to or made any unique contributions to the mediation process and by pushing for resolutions may have ended up biasing the process in favor of the grievor [25-27].

It should also be pointed out that they represented employers (corrections, revenue, immigration, and customs), where considerable doubts about the merits of mediation were held by managers. These are all departments where work is somewhat routinized, where hierarchy is prevalent, and where management and labor have extensive histories as adversaries.

The board members have been quite receptive to the grievance mediation initiative. Gilles Brisson, the assistant secretary for operations of the board, stated that while some members were hesitant about the experiment in the beginning, as the pilot project was in its final phase they were coming to him requesting more mediation assignments and making sure they were getting their fair share [13]. This behavior is not surprising. Mediation provided a good change of pace to the adjudication process, as board members could keep their hands in writing decisions that might affect the future path of federal labor-management relations while at the same time being focused on more practical, less legal, outcomes in mediation [24]. Moreover, Evelyn Henry observed that doing mediation broke through the isolation barrier and personal distance of the adjudication process. Writing decisions and chairing adjudication hearings is a somewhat lonely and distancing activity. She viewed the mediation process as an extension of the grievance process, where mediators are much more interactive with the parties and settlements can be much more holistic and get to the roots of the issue. A side benefit was that the board adjudicator got to know the parties and appreciate their viewpoints better. Also, Henry pointed out that the combination of adjudication coupled with mediation separated the grievance wheat from the chaff [22].

Experienced adjudicators all know that matters reach adjudication, which should have been resolved previously in the grievance process. Mediation, as an extension of that process, serves as a very effective filter [2, 7, 21]. Finally, all were aware that the pilot project was providing them with job training for their occupational life after their board appointments had expired. The demand for mediation is exploding in the public and private sectors and is well beyond that for adjudication. This experience would enhance their credentials as Alternative Dispute Resolution specialists in the dispute-resolution marketplace.

BEYOND THE PILOT PROJECT

From all vantage points, the pilot project was viewed as a success. The parties by a three-to-one margin stated that as a result of their mediation session they were optimistic about mediating with the same party in a future PSSRB mediation session [15, p. 24]. At the end of the pilot phase, more cases were entering the mediation stream [7, 13]. What was needed, Tarte explained, as the board moved beyond the pilot project and instituted grievance mediation as a regular part of its dispute resolution arsenal, was more extensive field training coupled with the development of portable, distance-learning, educational materials on mediation.

Even during the pilot phase, the board had administered some field training sessions, and this was stepped up to 20 sessions in the fall and spring of 2000-2001. Lasting two-and-a-half days and involving 24 persons each, eight union advocates, eight employer advocates, and eight staff relations specialists, the format was repeated in fall of 2001 and again in spring of 2002, with an additional focus on the smaller unions and some attention being paid to separate employers. The training staff consisted of Baron and Grenier, who planned to bring with them to the 2001-2002 sessions a video in both official languages that the board would produce on grievance mediation. Additionally, the board expects to produce in the next several years, bilingual videos on adjudication and expedited adjudication [7, 12, 19].

Tarte also indicated he would like to develop increased uniformity in the mediators' performance and approach. To that end, more emphasis was being placed on the significance of the pre-mediation contacts between the mediators and the parties and the facilitative role of the mediator. This would occur in training in the field, in the training of new board members, and in the ongoing training of experienced board members [7, 12, 19].

Further, the board was also using its staff mediators to engage more frequently in preventive mediation. The process was broached informally by Norman Bernstein and has now evolved into 12 or 15 sessions a year. The parties are encouraged to contact the board mediators when they sense trouble brewing to see whether the problem cannot be headed off at the pass. As Baron and Grenier explained, why wait for an official grievance on paper? Once that occurs, positions harden, defensive postures set in, and listening and explaining go out. This orientation to preventive mediation, they said, is a natural outgrowth of the expansion of mediation services at the board [12, 19].

There was one concern, however, relating to the ongoing practice of grievance mediation by the board. John McCleod reported that in two of the 19 cases he had handled, two agreements had fallen apart in the implementation process [20]. Ellen Zweibel also related in an interview that a number of respondents had also raised concerns about the administration of settlements and wondered whether there could not be an enforcement vehicle [28]. Zweibel, herself, thought perhaps there should be two stages to the mediation process, one dealing with settlement and the second with putting it into effect. It should be noted that the mediator in mediation does not own the agreement. Thus, in contrast to adjudication, where the adjudicator can maintain jurisdiction through the administrative process because it is his/her decision whose enforcement is mandated, nothing similar exists in mediation [20, 28]. The board attempted to indirectly address this matter by developing a contract between the parties that they had to sign prior to the start of mediation. It included, among other items, that the parties enter the mediation process in good faith (presumably that extends to implementation of the settlement) and that if a settlement were reached, it would be expressed in a written memorandum that would be signed by the parties [11]. Nearly all the interviewees

indicated that it would take a number of years before the board and the parties knew whether the institution of grievance mediation really made a difference in relationships at the workplace. Zweibel indicated that four years down the road, the time might be ripe for another external evaluation of the impact of grievance mediation in the federal sector [28].

The Public Service Staff Relations Board of Canada has successfully transformed itself from a federal government administrative entity that primarily adjudicated labor-management disputes into one that primarily mediates labor-management disputes. In doing so, the board has successfully changed the role orientation of its members. This was accomplished within its legislative mandate and was achieved through the leadership of its chairperson, Yvon Tarte, and the former director of mediation services, Norman Bernstein. Both were committed to moving disputes away from the arena of litigation and toward an alternative resolution process that was more akin to the interactions at the workplace. A significant investment of resources was devoted to the educational/training process, which included all the prominent stakeholders. These parties were also aligned with the objective by implementing it and the subsequent changes gradually and then moving forward more extensively on the basis that it would be tried out first as an experimental pilot project subject to an objective external review.

The administrative plan was carried out in an exemplary fashion. The new focus of the board, by design or otherwise, fits nicely with changes that had taken place internally relative to its human resources and coincided with changes that had occurred which affected the operations of its external clientele [29]. Moreover, by becoming more like board of mediation services, the PSSRB was moving with the flow of dispute resolution practice, and, along the way, enhancing its relevance and reputation within the government. The board seems to have positioned itself rather well as it approaches its 35th birthday, particularly in light of the fact that the federal Task Force on Modernizing Human Resource Management in the Public Service is scheduled to report and table legislation in that same year (2002). Its mandate is to recommend a modern policy, legislative, and institutional framework for the management of human resources in the public service of Canada, and clarify the roles of agencies involved in human resource management. Labor-management relations will be encompassed in the proposed legislation, and the board's transformation to a primarily mediation dispute resolution entity appears to have been a fortuitous decision.

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