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PHILADELPHIA'S COMPULSORY ARBITRATION PROGRAM

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The Philadelphia Arbitration Program is governed not only by local rules but also by the laws of the Commonwealth of Pennsylvania.¹ The forerunner of arbitration in Pennsylvania can be found in the Act of 1705, which provided for "referees" to hear cases by agreement involving accounts of the parties.² As early as 1836, the Pennsylvania General Assembly passed an Act which provided for arbitration.³

The Act of 1836 provided for an elaborate system of reference and arbitration.⁴ We are concerned here, however, only with those

† Supervising Judge, Compulsory Arbitration Program of the Philadelphia County Court of Common Pleas. LL.B., Temple University, 1931.

1. *See* Uniform Arbitration Act, 42 PA. CONS. STAT. ANN. §§ 7301-7362 (Purdon 1982).

2. Act of January 12, 1705, ch. 150, § 3, 1705 Pa. Laws 49, 50, *repealed by* Judiciary Act Repealer Act, 42 PA. CONS. STAT. ANN. § 20002(a)(6) (Purdon 1982) (current version at 42 PA. CONS. STAT. ANN. § 7362 (1982)). The Act of 1705, entitled "An Act for Defalcation," provided in part:

In all cases where the plaintiff and defendant, having accounts to produce one against another, shall, by themselves, or attorneys or agents, consent to a rule of court for referring the adjustment thereof to certain persons, mutually chosen by them in open court, the award or report of such referees being made according to the submission of the parties, and approved of by the court, and entered upon the record or roll, shall have the same effect, and shall be deemed and taken to be as available in law, as a verdict given by twelve men; and the party, to whom any sum or sums of money are thereby awarded to be paid, shall have judgment, on a *scire facias*, for the recovery thereof, as the case may require, and as is herein before directed concerning sums found and settled by jury, any law or usage to the contrary of this act, in any wise notwithstanding.

3. Act of June 16, 1836, No. 186, 1836 Pa. Laws 715, *repealed by* Judiciary Act Repealer Act, 42 PA. CONS. STAT. ANN. § 20002(a)(149) (Purdon 1982) (current version at 42 PA. CONS. STAT. ANN. §§ 7361-7362 (Purdon 1982)).

4. *Id.* §§ 1-7, 1836 Pa. Laws 717-19. The Act provided in pertinent part as follows:

Section 1. [I]t shall be lawful for all person desirous, to end by arbitration any controversy, suit or quarrel, except such as respect the title to real estate, to agree, in writing, that their submission of the same to the award or umpirage of any person or persons

Section 3. It shall be lawful also, for the parties to any suit, to consent as aforesaid, to a rule of court, for referring all matters of fact in controversy in such suit, to referees, as aforesaid, reserving all matters of law arising thereupon for the decision of the court, and the report of such referees, set-

sections of the Act which provided for compulsory arbitration.⁵ By those provisions it was made lawful "for either party in any civil suit or action . . . to enter . . . a rule of reference, wherein he shall declare his determination to have arbitrators chosen . . . for the trial of all matters in variance in the suit between the parties."⁶ Arbitrators were thereupon to be selected in a manner prescribed by the Act, and it was then their duty to proceed to determine the matters in controversy and to make an award which, when entered in the office of the prothonotary, would have the effect of a judgment.⁷

The arbitrators were given the power to subpoena witnesses, books and documents, to issue attachments against witnesses neglecting or refusing to attend, to judge the competency and credibility of witnesses and the propriety of admitting any written evidence that might be offered, to administer oaths or affirmations to witnesses, and to decide both the law and facts involved in the case.⁸

Each of the parties was given the right to appeal from the award to the court in which the cause was pending at the time the rule of

ting forth the facts found by them, shall have the same effect as a special verdict

Section 4. The party against whom an award shall be made, as aforesaid, may except thereto . . . for either of the following causes . . . :

I. That the arbitrators or umpire misbehaved themselves in the case, or

II. That they committed a plain mistake in matter of fact, or matter of law, or

III. That the award was procured by corruption or other undue means.

. . . .
Section 6. In all cases where the parties to any suit shall . . . consent to a rule of court, for referring the matters in controversy in such suit, to certain persons, mutually chosen by them, the award of such referees . . . being approved of by the court, and entered upon the record, shall have the same effect . . . as the verdict of a jury

Id.

5. *Id.* §§ 8-38, 1836 Pa. Laws 719-25. It should be noted that the provisions which related to compulsory arbitration were not applicable to Philadelphia County. *Id.* § 54, 1836 Pa. Laws 728. This exemption was repealed in 1861. Act of May 1, 1861, No. 480, 1861 Pa. Laws 521.

6. Act of 1836, § 8, 1836 Pa. Laws 719. The plaintiff was required to have filed a complaint before he could submit his petition "to have arbitrators chosen." *Id.* §§ 8-9. No pending suit was permitted to "be referred" to an arbitrator or referee within thirty days of the trial date, except by consent of both parties. *Id.* § 10.

7. *Id.* §§ 13-25, 1836 Pa. Laws 719-22.

8. *Id.* § 40, 1836 Pa. Laws 725. Section 40 provided as follows:

reference was entered.⁹ Appeal was subject to certain restrictions, one of which was that the party appealing should pay all the costs that had accrued in the action.¹⁰ However, if the appellant was not the party who sought the rule of reference, he could avoid the costs upon a showing of inability to pay "by reason of poverty."¹¹ Another condition of the right of appeal was that the party appealing should enter into a recognizance.¹² Plaintiffs that appealed were forced to recognize that if they did not recover a greater sum than the award of the arbitrators they would be required to pay the costs of the appeal, plus one dollar for every day lost by the defendant in attending the appeal.¹³ Defendants who appealed were required to recognize that, if the plaintiff obtained a judgment in an amount equal to or greater than the award of the arbitrators, they would pay the costs of the appeal, including one dollar for every day lost by the plaintiff in attending the appeal.¹⁴ The costs paid by either party could be recovered against the adverse party if they were awarded to the appellant on appeal.¹⁵

Referees and arbitrators . . . shall have power—

I. To require from either party the production of . . . books, papers, and documents

II. To judge of the competency and creditibility of witnesses, and the propriety of admitting any written evidence that may be offered.

III. To administer oaths or affirmations to witnesses.

. . . .

V. To decide both the law and fact that may be involved in the cause submitted to them.

And each of the arbitrators shall have power to issue subpoenas to witnesses . . . and if any person . . . shall neglect or refuse to attend, a majority of the arbitrators shall have power to issue an attachment against such person

Id.

9. *Id.* § 27, 1836 Pa. Laws 723. Before an appeal could be taken, the appellant or his attorney was required to swear that "it is not for the purpose of delay such appeal is entered, but because he firmly believes injustice has been done." *Id.*

10. *Id.*

11. *Id.* § 28. The required showing included a petition to the judge accompanied by an "affidavit of such facts" as demonstrated the inability to pay. *Id.* After notice to the opposing party, the judge could allow appeal without payment of costs below, if he was satisfied as to inability to pay. *Id.*

12. *Id.* § 27. Neither the costs below nor the recognizance were required of minors or of executors, administrators, or other persons suing in a representative capacity. *Id.* § 31, 1836 Pa. Laws 724.

13. *Id.* § 29, 1836 Pa. Laws 723.

14. *Id.* § 30. Unlike the recognizance required of plaintiff-appellants, the recognizance of defendants was required to be "in nature of a special bail." *Id.* The statute also provided that in the event a defendant-appellant failed to pay the costs of appeal, including the dollar per day lost to the plaintiff, "said defendant shall be surrendered to the jail of the proper county." *Id.*

15. *Id.* § 32, 1836 Pa. Laws 724. The Statute also provided for the compensation of referees and arbitrators at the rate of one dollar per day. *Id.* § 49, 1836 Pa.

This statute was the basis of our present arbitration system, and many of the provisions have been incorporated in later statutes and rules. In 1952, the General Assembly amended the Act of 1836 by adding a new section which provided in relevant part:

The several courts of common pleas may, by rules of court, provide that all cases which are at issue where the amount in controversy shall be one thousand dollars (\$1000) or less, except those involving title to real estate, shall first be submitted to and heard by a number of three (3) members of the bar of the county for consideration and award.¹⁶

Instead of the method provided in the original act for the selection of arbitrators, the 1952 statute provided that the board should be appointed by the prothonotary from the list of attorneys qualified to act, the names of attorneys to be taken from the list in alphabetical order.¹⁷ The first member named was to be chairman of the board.¹⁸ The board was to make its report and render its award within twenty days after hearing.¹⁹ The compensation of the arbitrators was to be determined by the court and paid by the county upon the filing of their report and award.²⁰

Any party appealing an award was first required to pay the county for fees paid to the arbitrators, but such fees were not to be taxed as costs or to be recoverable from the adverse party in any proceeding;²¹ in other words, they were not to follow the award.²² All appeals were to be *de novo*.²³ The arbitrators were not required to make a record of the proceedings before them, but if any party desired a record the arbitrators were required to provide a reporter and cause a record to be made. The party requesting the record was obli-

Laws 727. In addition the statute provided penalties for attempts to corrupt, influence or bias in any way a referee or arbitrator. *Id.* § 50. The penalty for attempts to corrupt was set at "not less than fifty dollars," and arbitrators or referees who took gifts of any sort were required to pay "ten times the value of the thing so taken." *Id.* §§ 50-51, 1836 Pa. Laws 727-28.

16. Act of January 14, 1952, No. 590, § 1, 1952 Pa. Laws 2087 (current version at 42 PA. CONS. STAT. ANN. § 7361 (Purdon 1982)).

17. *Id.* § 3, 1952 Pa. Laws 2088. No more than one member from any firm or "association of attorneys" could be appointed to the same board.

18. *Id.* The board was to be appointed 10 days after the case was at issue and after notice to opposing counsel. *Id.*

19. *Id.*

20. *Id.* This amendment altered the compensation scheme under the 1836 Act, which provided "one dollar for every day." *See* note 15 *supra*.

21. Act of January 14, 1952, § 4, 1952 Pa. Laws 2088.

22. *Id.* § 7, 1952 Pa. Laws 2089.

23. *Id.* § 4, 1952 Pa. Laws 2088.

gated to pay the cost.²⁴

The modern history of arbitration in Philadelphia began in 1958, with adoption of a program that compelled arbitration in cases involving less than \$2000.²⁵ The program was then administered in Philadelphia by the Municipal Court under the supervision of an arbitration commissioner.²⁶ As originally conceived in 1958, the statute mandated arbitration for matters involving less than \$2000 in controversy.²⁷

The validity of the arbitration procedure was established in the case of *Application of Smith*, in which the Supreme Court of Pennsylvania construed the arbitration act that had been adopted by the legislature in 1952.²⁸ In that case, the court ruled that the provision for an appeal for a trial de novo, accompanied by the payment of costs, properly protects the litigant's right to a jury trial.²⁹

This statutory program has been supplemented by procedural

24. *Id.* § 6, 1952 Pa. Laws 2089.

25. In 1957, the Pennsylvania General Assembly amended the arbitration law to bring the Municipal Court of Philadelphia within the statute, which provided that courts could require arbitration in cases involving less than two thousand dollars. Act of June 20, 1957, No. 181, 1957 Pa. Laws 336 (current version at 42 PA. CONS. STAT. ANN. § 7361 (Purdon 1982)). The amendment contained a provision that it would only take effect upon implementation in Philadelphia. *Id.* § 3, 1957 Pa. Laws 337. On February 6, 1958, compulsory arbitration was initiated when the municipal court adopted a rule requiring arbitration by a panel of three for cases involving two thousand dollars or less. MUNICIPAL CT. OF PHILA., FORTY-FIFTH ANNUAL REPORT vi (1958).

26. MUNICIPAL CT. OF PHILA., *supra* note 25, at vi. The name of the municipal court was changed in 1961 to the County Court of Philadelphia. Act of July 17, 1961, No. 342, 1961 Pa. Laws 781. When the Pennsylvania constitution was amended in 1968, the new judiciary article merged the County Court of Philadelphia into the Court of Common Pleas. PA. CONST. sched. to art. V, § 16(t), *repealed by* Judiciary Act of 1976, No. 142, § 26(a), 1976 Pa. Laws 586. Since then, compulsory arbitration in Philadelphia has been under the aegis of the court of common pleas. *See* R. RUBENS, PENNSYLVANIA ARBITRATION GUIDE §§ 1-3 (1974). Compulsory arbitration in Philadelphia under the court of common pleas should not be confused with the "arbitration as an alternative" voluntary program recently initiated in the Philadelphia Municipal Court. *See id.* at 102 (Supp. 1983).

27. Act of May 17, 1957, No. 66, 1957 Pa. Laws 147. Although the statute was amended to require arbitration in cases involving less than \$2000 in 1957, the law was not applicable to arbitration in Philadelphia until the program was initiated in 1958. *See* note 25 *supra*.

28. 381 Pa. 223, 112 A.2d 625, *app. dismissed sub nom.* *Smith v. Wissler*, 350 U.S. 858 (1955). In *Smith*, a Lancaster county resident who had brought a trespass action in the common pleas court of that county alleged that the arbitration requirement violated his right to a jury trial. *Id.* at 228, 112 A.2d at 628. The specific complaint was that the requirement that the fees of the arbitrators be paid by an appellant before any appeal, coupled with the fact that these fees were not recoverable on appeal, imposed an onerous burden on right to jury trial de novo upon appeal. *Id.* at 231-32, 112 A.2d at 629-30.

29. *Id.* at 235, 112 A.2d at 631. In its examination of the arbitration laws, the court found that they were an important innovation:

rules promulgated by the Supreme Court of Pennsylvania³⁰ and local rules adopted by the board of judges of the Court of Common Pleas of Philadelphia County.³¹

Under the Compulsory Arbitration System there are three methods by which a case may be submitted to arbitration: 1) automatically; 2) by stipulation; and 3) by reference from a judge. All cases in which the amount in controversy is less than \$20,000 are automatically referred to arbitration.³² In cases where the amount in controversy exceeds the local dollar limit the parties may stipulate to transfer the matter to arbitration.³³ In addition, if a case is referred to a trial judge either for settlement conference or for some other reason and the judge determines that the amount in controversy is less than twenty thousand dollars, he may, on his own motion, refer such

It has many obvious advantages. It is clearly designed to meet the situation which prevails in some communities of jury lists being clogged to a point where trials can be had only after long periods of delay,—a condition resulting largely from the modern influx of negligence cases arising from automobile accidents in a great number of which no serious personal injuries are involved. Removing the smaller claims from the lists not only paves the way for the speedier trial of actions involving larger amounts, but, what is of equal or perhaps even greater importance, makes it possible for the immediate disposition of the smaller claims themselves, thus satisfying the need for prompt relief in such cases. By the same token, and working to the same end, the use of the Act will free courts for the speedier performance of other judicial functions. Moreover, there will be a saving to claimants of both time and expense by reason of greater flexibility in fixing the exact day and hour for hearings before the arbitrators as compared with the more cumbersome and less adaptable arrangements of court calendars. The operation of the Act has proved eminently successful in all respects

Id. at 229, 112 A.2d at 629. The court concluded that as long as the compensation required as arbitrators' fees could be proportionately diminished for comparatively small claims, the requirement of paying arbitrators' fees as a condition of appeal would not involve so significant a burden as to render the procedure unconstitutional. *Id.* at 232-33, 235, 112 A.2d at 630-31.

30. PA. R. CIV. P. 1301-1314. The rules of civil procedure include forms promulgated by the supreme court for use in compulsory arbitration. *Id.* 1312-1313. The rules for compulsory arbitration were adopted in March of 1981, effective in sixty days, and they preempt the procedure under the prior acts which became part of the common law by virtue of the Judiciary Act Repealer Act. *Id.* 1314. *See also* Judiciary Act Repealer Act, 42 PA. CONS. STAT. ANN. § 20003(b) (Purdon 1982).

31. PHILA. C.P. CT. R. 180, Rule I (as amended December 1, 1983), *reprinted in* R. RUBENS, *supra* note 26, at 89 (Supp. 1984). The local compulsory arbitration rules should not be confused with the rules for voluntary arbitration in municipal court. *See* PHILA. MUN. CT. R.P. 401-412.

32. PHILA. C.P. CT. R. 180, Rule I. While the arbitration statute requires the exclusion of cases involving title to real estate from compulsory arbitration, the local rules also exclude actions in equity. *Id.* *See* 42 PA. CONS. STAT. ANN. § 7361 (Purdon 1982).

33. *See* 42 PA. CONS. STAT. ANN. § 7362 (Purdon 1982). Submission to arbitration by the consent of the parties to a pending judicial matter is voluntary arbitration. *See id.*

a case to arbitration.³⁴

The statute initially restricted cases required to be arbitrated to those involving a maximum amount of \$2000 or less. This limit was raised in 1968 to \$3000,³⁵ and again in 1971 to \$10,000.³⁶ This proved so successful that in April of 1980, the legislature again raised the amount in controversy requirement to the current limit of \$20,000.³⁷ The board of judges of Philadelphia Common Pleas Court decided to implement the statute in steps by increasing the limits to \$15,000 in 1980³⁸ and to \$20,000³⁹ in 1982. After the statutory increases were effectuated by the Philadelphia Common Pleas Court system, they were met with both an enthusiastic response by both the plaintiff and defense trial bars and the support of the insurance carriers, which contributed to the system's success.⁴⁰

Under the arbitration system established in 1958, by the then Municipal Court and later the Court of Common Pleas,⁴¹ arbitrators were selected at random in groups of three with one member acting as

34. PA. R. CIV. P. 1021(d). While not required to make a determination as to the amount in controversy, the court may use a directed pretrial hearing, conference, depositions or other means to make its determination and thereafter transfer the case accordingly. *Id.*

35. Act of July 31, 1968, No. 266, 1968 Pa. Laws 888. For a discussion of the original limit, see note 27 and accompanying text *supra*.

36. Act of July 9, 1971, No. 42, 1971 Pa. Laws 220.

37. Act of April 6, 1980, No. 38, 1980 Pa. Laws 100. There is currently a bill pending in the state senate which would increase the limit to \$40,000. See Pa. S. No. 910 (1984 Sess.). See also *P.J. Bradley Urges Passage of Bill to Raise Arbit. Limits*, 190 LEGAL INTELLIGENCER 445 (1984).

38. PHILA. C.P. CT. R. 180, Rule 1, amended by PHILA. C.P. CT. R. 180, Rule I (February 18, 1982).

39. *Id.*

40. See R. RUBENS, *supra* note 26, at 30-31; *Supreme Court Representative Visits New Arbitration Center*, 186 LEGAL INTELLIGENCER 2013, col. 1 (1982). Accord Ledwith, *Federal Court Arbitration: The Philadelphia Story*, FOR. DEF., April 1982, at 12. The most noted success of the Philadelphia compulsory arbitration system has been its reduction of backlogs in the common pleas court trial calendar. See Terrill, *Arbitration Center Cuts Court Backlog*, 186 LEGAL INTELLIGENCER 2091, col. 1 (1982) (Retainer Supp.). One estimate placed the proportion of all civil litigation in Philadelphia that is adjudicated through the arbitration system at 70%. *Id.* In 1979, approximately 7,000 of the 11,000 cases heard in the Philadelphia court system were disposed of through arbitration. *Id.* at 2092. In 1982, the arbitration system expected to process up to 14,000 cases, with the capacity for twice that amount. *Id.* Since arbitration is much less costly than traditional civil trials, the estimated savings to the court system ranged to \$500,000 per year. *Id.* Even United States Supreme Court Chief Justice Warren Burger noted the tremendous impact of the Philadelphia compulsory arbitration system. Annual Report on the State of the Judiciary by Chief Justice Burger to the American Bar Association (January 24, 1982), reprinted in Burger, *Isn't There a Better Way?* 68 A.B.A. J. 274, 277 (1982).

41. For a discussion of the genesis of the arbitration system in the old municipal court as distinguished from the current municipal court, see note 26 and accompanying text *supra*.

chairman.⁴² Until the new Arbitration Center was built it was the duty of the chairman to schedule the hearing and arrange a location where it could be conducted.⁴³ In the early stages of this procedure, with approximately 6,000 to 7,000 cases per year, this system worked well and backlogs were minimal.⁴⁴ As the jurisdictional amount was increased the number of cases submitted for arbitration also increased.⁴⁵ This increase in cases created several problems. The arbitrators attempted to fix hearing dates at the convenience of the opposing attorneys and frequently cases were delayed for long periods of time. Furthermore, some of the arbitrators were lax in filing awards and returning files. The courts heard complaints about the delays which ensued.

The system had other disadvantages. Arbitrators were paid for each case heard. However, if a case was settled within three days of the scheduled hearing the arbitrators were paid their fees, even

42. R. RUBENS, *supra* note 26, at 35. The random selection takes place by a seriatim selection, one each from three alphabetized master lists of volunteer arbitrators. *Id.* The person whose name is selected first becomes the chairperson. *Id.*

43. See Foster, *Sign up Now for an Arbitration Panel*, 184 LEGAL INTELLIGENCER 236, col. 1 (1981) (Retainer Supp.); Terrill, *supra* note 40, at 2091.

44. For the combined years of 1958 and 1959, 36,430 suits were filed in the municipal court, now common pleas court. PHILA. COUNTY CT. ARBITRATION DIV., STATISTICAL REPORT AND EXPLANATORY REMARKS PERTAINING TO COMPULSORY ARBITRATION, Exhibit II (1964). In that same two year period, 17,792 orders for arbitration were filed, of which 7,102 represented an accumulated backlog from 1932 to 1958. *Id.* At the end of 1958, the total number of cases not processed by arbitration was 4,334, but by the end of 1959 that figure was reduced to 1,463. *Id.* at Exhibit IV. In 1964, more than 20,000 cases were filed, of which just under 6,000 were assigned to arbitration. *Id.* at Exhibit II. At the end of that year, the backlog in arbitration was just over 4,000 cases. THE COUNTY CT. OF PHILA., FIFTY-FIRST ANNUAL REPORT 325 (1964). By 1967, just under 7,000 of the nearly 20,000 cases filed were listed for arbitration. THE COUNTY CT. OF PHILA., FIFTY-FOURTH ANNUAL REPORT 331 (1967). By the end of that year, the backlog was back down to 1,453 cases. *Id.*

45. In 1968, the amount in controversy limit for compulsory arbitration was raised from \$2,000 to \$3,000 and that limit was raised again in 1971 to \$10,000. See notes 35-36 and accompanying text *supra*. In 1970, the number of cases filed for arbitration increased to over 7,000 and consequently the backlog increased by about 800 to a total of over 3,500 at the year's end. COMMONWEALTH OF PA. CTS. OF COMMON PLEAS, FIRST ANNUAL REPORT ON JUDICIAL CASE VOLUME Table I (1970). In 1971, the number of cases filed for arbitration jumped to over 19,000 cases, leaving a backlog at year's end of about 10,000, an increase of just under 7,000 cases. PHILA. COMMON PLEAS AND MUNICIPAL CTS., 1971 ANNUAL REPORT 1. By the close of 1972, the arbitration system reduced its backlog to about 7,000, a decrease of more than 3,000 cases. PHILA. COMMON PLEAS AND MUNICIPAL CTS., 1972 ANNUAL REPORT 1. In each of the succeeding six years the arbitration system continued to reduce its backlog, so that by the end of 1978 only 2,491 cases were pending, representing approximately a 3.6 month workload for an arbitration system that disposed of cases at a rate of 687 per month. CT. OF COMMON PLEAS OF PHILA., 1978 ANNUAL REPORT 26.

though the case was settled, on the theory that the arbitrators had taken the time to attend the hearing which had been scheduled.

In May of 1981, President Judge Edward J. Bradley, of the Court of Common Pleas of Philadelphia County, initiated a radical revision of the Philadelphia Arbitration Program.⁴⁶ Space was acquired in a modern office building in the center of Philadelphia for an arbitration center where all cases were heard.⁴⁷ Cases filed before May 1981, but not yet assigned to a panel, were listed for arbitration, and cases filed thereafter were listed for hearing on a date about eight months after the filing date.⁴⁸ Continuances were to be kept to a minimum and limited to emergency applications.⁴⁹

In the new arbitration center, panels of arbitrators are assigned to a hearing room and cases are scheduled at three times each day.⁵⁰ As a panel finishes a case, the arbitrators are required to make the awards and then the panel is assigned the next open case. If there is a large number of cases listed for the day, emergency panels are established from a list of arbitrators who are available on short notice and additional hearing rooms are provided.

At the conclusion of their daily service they are paid immediately. The compensation rate is \$200 per day, and \$100 for a half day, regardless of the number of cases assigned to the panel.⁵¹

46. On May 21, 1981, the Board of Judges of the Philadelphia Court of Common Pleas revised the local rules of procedure regarding compulsory arbitration. *Phila. Rule C.P.—Compulsory Arbitration*, 184 LEGAL INTELLIGENCER 1980, col. 1 (1981). The revised rules provided for the operation of an arbitration center as well as the incorporation of recent revisions of the Pennsylvania Rules of Civil Procedure. *Id.* Those revisions required all hearings to be heard in facilities provided by the court system, and altered the requirements for reporting and awards to help insure a quick disposition once a case had been heard. *See id.* at 1999, col. 2.

47. *See Stern, Arbitration Center to Become a Reality*, 185 LEGAL INTELLIGENCER 1322, col. 4 (1981) (Retainer Supp.). The Arbitration Center, which was opened in November of 1981, was expected to contribute substantially to the system's effort to reduce a backlog of several thousand cases. *Id.* *See also* Terrill, *supra* note 40, at 2091.

48. *Stern, supra* note 47, at 1322. The several thousand cases which had not been assigned as of May 1981 were given 30 days' notice and scheduled at the rate of 100 per day. *Id.* The court expected 10 panels of arbitrators to hear five cases each for a total of 50 cases per day, and anticipated settlements in the rest of the cases. *Id.*

49. *Id.* In an attempt to insure the steady flow of cases in the arbitration system, continuances were only to be granted for good and compelling reasons, such as emergency illness or attachment for trial. *Id.* Continuances for outstanding discovery motions or sanctions were specifically excluded on the theory that eight months' notice of the trial date afforded adequate time. *Id.*

50. Terrill, *supra* note 40, at 2091. The new system centralized and computerized such clerical functions as scheduling hearings and filing awards. *Id.* Previously these functions had been performed for each case by the attorney appointed to chair the arbitration panel. *Id.*

51. PHILA. C.P. CT. R. 180, Rule VII. Compensation is the same for chairmen and panel members. *Id.*

Arbitrators are selected in alphabetical rotation from a list of court-approved arbitrators. To be included on the list an individual must be a member of the bar for at least one year, have his principal office in Philadelphia, have tried at least one civil case in any forum in Pennsylvania and have attended the court-sponsored arbitration seminar.⁵² To be eligible to sit as chairperson, the individual must have been a member of the bar for at least three years.⁵³

While a panel of arbitrators has the general powers of a court, the proceedings are somewhat less formal than trial before a judge or jury. For example, the board of arbitrators is charged with the responsibility of conducting the hearings with due regard to law and to the established rules of evidence, but the arbitration rules allow the rules of evidence to be liberally construed to promote justice.⁵⁴ In addition, medical, property damage and other evidence may be submitted in the form of bills or written reports as long as twenty days' written notice was given to the adverse party, along with a copy of the document to be offered in evidence.⁵⁵ Police, weather and salary-loss reports are admissible without proof of authenticity.⁵⁶ Subpoena practice is substantially the same as in nonarbitration cases.

The program is administered by the supervising judge of arbitration.⁵⁷ Under his direction, the staff is supervised by an arbitration administrator and legal questions are submitted to the arbitration attorney. The judge's courtroom is supervised by a court crier who is under the direction of the chief crier of the common pleas courts.

Suits in arbitration are commenced in the same manner as in other cases, by filing with the prothonotary of the Court of Common Pleas of Philadelphia. Cases assigned to the arbitration program include all trespass and assumpsit cases except those involving title to real estate. Procedures in equity are also not included.⁵⁸ All motions and petitions pertaining to arbitration are decided in substantially the same manner as motions and rules filed in the Philadelphia Com-

52. *Id.* Rule II.

53. *Id.*

54. *Id.* Rule III(B).

55. *Id.* Property damage reports are required to be accompanied by a certification of reasonableness signed by the maker. *Id.* Estimates are required to include a statement as to whether repairs were effectuated, and if so, receipts must be attached. *Id.* See also PA. R. CIV. P. 1305.

56. PHILA. C.P. CT. R. 180, Rule III(B)(2)(e). See also PA. R. CIV. P. 1305(d). In order for these reports to be admitted, twenty days' notice and a copy of the report must have been given to the adverse party. PHILA. C.P. CT. R. 180, Rule III(B)(3).

57. The author of this article is currently supervising judge.

58. See note 32 and accompanying text *supra*.

mon Pleas Motion Court.⁵⁹ Pretrial motions including discovery, preliminary objections and summary judgment motions are filed with motion court and then assigned to the supervising judge in arbitration. Applications for continuance are filed in the arbitration center on forms specially supplied. The forms for award are prepared in the arbitration center and the supervising staff forwards these forms to the prothonotary, where they are docketed in a manner similar to the docketing of verdicts and court orders from the major cast list.⁶⁰

The physical features of the Arbitration Center have been acclaimed by the Philadelphia Bar generally and by litigants as well.⁶¹ The arbitration center is located in one of the most modern office buildings in center city Philadelphia and consists of 8300 square feet. There are nine hearing rooms with an average of 185 square feet, one large hearing room containing 400 square feet, and a courtroom for the supervising judge. The center also has two computers connected to the prothonotary's office for up to date reading of docket entries.

In addition, there is a large assembly room with approximately 1100 square feet and additional space for staff. The Philadelphia Bar Association, the Philadelphia Trial Lawyers Association and Philadelphia Defense Association provided and furnished a lawyers' lounge which is generally used for attorney consultations. At the present time the arbitration staff of ten is supervised by the arbitration administrator, and subject to all rules for court personnel as established by the president judge.

The volume of cases assigned to arbitration has steadily increased from 1959, when 7500 cases were processed,⁶² until 1983, when 35,000 cases were assigned to arbitration.⁶³ However, the number of arbitrators has not increased proportionately. In 1958 there were approximately 2500 arbitrators, and in 1983 there were

59. Both the local rules and the Pennsylvania Rules of Civil Procedure applicable to arbitration provide that in the absence of a specific rule, arbitration is to be conducted as an action would be tried before a judge. PA. R. CIV. P. 1304; PHILA. C.P. CT. R. 180, Rule IV (G). *See also* PA. R. CIV. P. 1038(a) (regarding procedure for action in *assumpsit* before a judge).

60. Forms for oath, award, notice of entry of award, and notice of appeal are provided in the Pennsylvania Rules of Civil Procedure. PA. R. CIV. P. 1312-1313.

61. *See generally* Terrill, *supra* note 40.

62. MUNICIPAL CT. OF PHILA., FORTY-SIXTH ANNUAL REPORT 334 (1959).

63. *See* PHILADELPHIA COURT OF COMMON PLEAS, 1983 ANNUAL REPORT. The system disposed of more than 26,000 cases in the following manner:

approximately 3500.⁶⁴ The reasons for the increase in the number of cases in arbitration are numerous. Civil litigation has expanded enormously in the past few years. In addition to this, the jurisdictional limits of arbitration have increased.⁶⁵

The present system has many advantages. First, attorneys and litigants know the date and time the case is scheduled for arbitration when suit is started.⁶⁶ Cases are heard in a modern facility with a minimum of delay.⁶⁷ Most attorneys feel that the arbitration system provides for a fair analysis of the worth of a case. Furthermore, the cost savings analysis indicates a substantial savings to the City of Philadelphia.⁶⁸

A recent survey conducted by two professors at Villanova University School of Business indicates that a little over one-fourth of the arbitrators are plaintiff oriented and slightly less are defense oriented,

<u>CASES LISTED</u>	<u>DISPOSITIONS</u>	
35,348	Settled more than 3 days prior to hearing	5,544
	Judgments—Defaults, etc.	4,958
	Dismissed by Judicial Order	2,317
	Miscellaneous—Transferred out of Philadelphia	<u>2,017</u>
	TOTAL	14,836
<u>CASES LISTED FOR ASSIGNMENT TO PANELS</u>	<u>DISPOSITIONS</u>	
20,512	Settled within 3 days of hearing	3,910
	Reports and Awards	<u>7,713</u>
	TOTAL	11,623
<u>TOTAL DISPOSITIONS</u>	<u>CONTINUANCES GRANTED</u>	<u>CASES RESCHEDULED</u>
26,459	7,535	1,354

Id. at 41.

64. See MUNICIPAL CT. OF PHILA., *supra* note 25, at vi. See also *50% Jump in Numbers of Arbitrators*, 184 LEGAL INTELLIGENCER 983, col. 1 (March 18, 1981) (Retainer Supp.); Foster, *supra* note 43, at 236. In 1981, the number of arbitrators had dropped to 2,000 from a 1978 high of 4,500. Foster, *supra* note 43, at 236. However, due to a sign-up drive, spearheaded by the president judge of the common pleas court and the chancellor of the Philadelphia bar, 1,000 new arbitrators were added in the first three months of 1981. See *50% Jump in Numbers of Arbitrators, supra*, at 983.

65. See notes 35-39 and accompanying text *supra*.

66. See Terrill, *supra* note 40, at 2091. Since the new arbitration center has been in operation, the prothonotary assigns all cases a hearing date and time when the complaint is filed. *Id.* Previously, the chairman of the panel would determine a hearing date once the case had been assigned to a panel. *Id.* See also Stern, *supra* note 47, at 1322.

67. See note 61 and accompanying text *supra*.

68. The statistics for total dispositions in the table below are taken from note 63 *supra*. From those numbers, I have prepared the following cost savings analysis:

but the great majority of arbitrators can be considered as neutral.⁶⁹ The study also indicates that the awards of the arbitrators are generally moderate. The appeal rate on total dispositions is 9%, which indicates acceptance on the part of the great majority of litigants. Further, of the cases appealed, only about 10% require trial.

Most lawyers are enthusiastic about the program.⁷⁰ The survey mentioned above indicated favorable comments by the lawyers involved in the arbitration program, and it is a great judicial timesaver. The organized bar has voiced its approval on many occasions. Both the Trial Lawyers Association and the Defense Association have expressed their satisfaction with the present program, and the Philadelphia Bar Association has established an arbitration committee. This committee holds monthly meetings and is constantly considering suggestions for improvement of the program.

The judges who have been in contact with the program have expressed their approval. The consensus appears to be that this is a viable program which is working efficiently. It has been a very substantial adjunct in relieving the backlog of cases in the common pleas court.

<u>TOTAL DISPOSITIONS</u>		<u>COST FORMULA SYSTEM</u>	
Settled within 3 days of hearing	3,910	11,623 × \$150=\$1,743,450	
Reports and Awards	<u>7,713</u>		
TOTAL	11,623		
<u>COST NEW SYSTEM</u>			
Full Day Panels	1,574 = \$944,400	Old System Costs	\$1,743,450
Half Day Panels	688 200,400	New System Costs	1,148,880
Special Panels	4,080	Gross Savings	594,570
TOTAL	<u>\$1,148,880</u>	Rent	144,000
		Net Savings	<u>\$ 450,570</u>
<u>NET SAVINGS,</u>	1983 = \$ 450,570		

The figures relating to old system costs represent the costs prior to 1981. At that time arbitrators were compensated on a per case basis: \$70.00 for the chairperson and \$40.00 for each of the two panel members for a total cost of \$150.00 per case. Hearings were held in the offices of one of the arbitrators under this system.

Under the current system, arbitrators are compensated on a per diem basis. All panel members, including chairpersons, are paid \$200.00 per day and \$100.00 per half day.

69. For the complete results of this study, see Cerino & Rainone, *The New Wave: Speedy Arbitration Hearings—But Are They Fair?*, 29 VILL. L. REV. 1495 (1984).

70. For example, approximately 2,000 lawyers responded to a call for more arbitrators in 1981, and bar association seminars on arbitration were packed. See *50% Jump in Numbers of Arbitrators*, *supra* note 64, at 983.

