

ADR LAW NOTES



Legal Developments, Issues and Other Matters of Interest Concerning Alternative Dispute Resolution

Defense Logistics Agency ADR Practice Group

MAY 2002

OFPP ISSUES AWARDS FOR ACQUISITION ADR PROGRAMS; DLA PROGRAM RECOGNIZED AS AWARDS FINALIST

At a ceremony on April 16, 2002, the Office of Federal Procurement Policy issued awards for Government and contractor acquisition ADR programs. The four awardees were: the Army Corps of Engineers, the Air Force, the Federal Aviation Administration, and Northrop Grumman Corp. Ms. Angela Styles, Administrator of OFPP, hosted the program and presented the awards; keynote addresses were made by The Honorable Jay Stephens, Associate Attorney General, and The Honorable William J. Haynes, DOD General Counsel. DLA's program, one of the award finalists, was praised by Mr. Haynes as he recognized Department-wide efforts to advance the use of ADR in acquisition. DLA personnel instrumental in the success of the DLA Acquisition ADR program deserve credit for this recognition, which is especially noteworthy given the caliber of the competition.

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DDJC SETTLES REMOVAL CASE THROUGH INTEREST BASED NEGOTIATION, AN ALTERNATIVE DISPUTE RESOLUTION PROCESS

The Merit Systems Protection Board (MSPB) supports the use of alternative dispute resolution processes and encourages agencies and employees to pursue ADR in lieu of filing of an MSPB appeal. A recent personnel case represents the commitment to ADR of both DLA and MSPB.

On February 25, 2002, the Defense Distribution Depot San Joaquin (DDJC) removed an employee for AWOL and Failure to Request Leave in Accordance With Established Procedures. The Notice of Decision letter informed the employee of his right to file an appeal

with the MSPB, and also of his right to resolve the matter through an alternative dispute resolution process prior to the timely filing of an appeal to the MSPB.

The employee's union representative contacted the agency representative in mid-March 2002 and expressed the employee's desire to pursue the use of ADR. The Federal Mediation and Conciliation Service (FMCS) agreed to provide an individual to mediate the dispute, but scheduling problems prevented a timely session facilitated by an FMCS mediator.

Thereafter, the union representative, DDJC management, and the agency representative took it upon themselves to hold informal discussions regarding issues, concerns, and settlement options. They benefited from the experience of the former employee's Division Chief who had participated as a management representative at several mediations in the past, and had a good deal of experience in interest-based negotiations.

The parties' discussions resulted in a Last Chance Settlement Agreement, with no back pay or other costs, executed on April 12, 2002. Significant cost savings resulted from this form of ADR with the elimination of the agency response, discovery, prehearing submissions, witness preparation, and a lengthy hearing involving many witnesses. The matter was resolved in less than a month, and the rehabilitated employee has been returned to duty.

During the process, emotions ran high and negotiations were intense, but the agency representative was impressed with the union representative's willingness to explore the frontier of ADR in the MSPB arena.

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DLA SPONSORS ADR CLASS WITH THE DEFENSE ACQUISITION UNIVERSITY

DLA sponsored a 2-day class presented by the Defense Acquisition University (DAU), entitled: "ADR Throughout the Life of a Contract." This program, held for Headquarters, DNSC, and DESC contracting and legal personnel at no charge, was presented at the DAU campus on Ft. Belvoir. Instructors John McElhenny and Karen Byrd led the 20-person class through topics such as joint problem-solving, types of ADR, and various role play scenarios, all in the context of contract disputes. Attendees evaluated the class very positively, stating it had good practical application and that they would recommend it to their colleagues. DAU will offer this class at customer locations for a small charge (about \$200 per student). More information about this class can be obtained from attendees Elizabeth Grant, DLA DG, or DESC lawyers Melissa Miller and Tim Raezer.

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A NEW ADR PROGRAM AT THE HEARING STAGE WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

The Equal Employment Opportunity Commission (EEOC) and the U. S. Postal Service (USPS) have a new partnership in which all requests for hearings before EEOC administrative judges involving bias cases against the USPS first go through mediation. After receiving a request for a hearing, the EEOC judge issues a mediation order. The USPS ADR coordinator then schedules the mediation. If the mediation does not resolve the issue, the case is returned to the EEOC judge who processes the complaint in accordance with applicable regulations.

Cases excluded from the program include class and systemic complaints, those involving Equal Pay Act claims, and cases involving conduct by the complainant of a criminal nature. In rare circumstances, an EEOC judge may also

determine that good cause exists for not requiring the parties to participate in mediation.

The program has been phased into EEOC field office hearing units in Florida, Pennsylvania, Michigan, Indiana, and parts of Texas. Full implementation at all EEOC field offices nationwide is expected by January 2003. EEOC projects that approximately 3,500 complaints per year against USPS will be processed through the mediation program once fully implemented.

(Excerpted from the EEOC Web Site)

More information about the EEOC and federal agencies can be found at the EEOC's Federal Sector ADR Web Page at www.eeoc.mil.

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REVISED DLA ADR HOMEPAGE

The DLA ADR Homepage has recently been revised. In addition to containing relevant DLA ADR information, it contains hundreds of additional ADR links. Check it out at www.dsc.dla.mil/Offices/DOCCR/adr/adr.html.

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