

ADR LAW NOTES



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

DLA ADR Homepage at:

<http://www.dsccl.dla.mil/offices/legal/adr/adr.html> or
www.dla.mil/dg/Links.asp

Defense Logistics Agency ADR Practice Group OCTOBER 2004

NOMINATIONS ARE BEING ACCEPTED FOR DLA ADR AWARDS

DLA has established, for Fiscal Year 2005, ADR awards to recognize DLA associates who have furthered the use of alternative dispute resolution within DLA. Up to three awards will be issued, with monetary recognition ranging from \$500 to \$1,000 each.

All DLA government employees are eligible for the award. Each nominee will have furthered the use of ADR within DLA in at least one of the following ways: encouraging the use of ADR to resolve a dispute effecting DLA; participating in a positive manner in an ADR process involving a dispute within DLA; promoting awareness within DLA of ADR; providing cost savings for DLA through effective use of ADR; or reflecting the DLA policy to consider the use of ADR in order to prevent or to address a dispute.

Anyone may nominate one or more individuals for the awards. Each nomination must contain: the nominee's name and organization; the nominator's name, organization, and telephone number; and a written justification, not to exceed one page, of why the nominee should be selected.

Nominations should be sent to Beth Lagana, DLA ADR Counsel, by email (Beth.Lagana@dlamail.mil), or by regular mail (Beth Lagana, DSCC-G, P. O. Box 3990, Columbus, Ohio 43218-3990) no later than November 30, 2004. A committee will review the nominations and recommend the top five candidates. The recommendations will be forwarded to the DLA General Counsel who will select up to three winners.

BASIC MEDIATION TRAINING

DLA will be offering a one-time four-day basic

mediation training course, February 15–18, 2005. The course will be held in New Cumberland, Pennsylvania and will focus primarily on training associates to be mediators for Equal Employment Opportunity disputes. For more information about the course, contact Beth Lagana, DSN 850-1859, Comm. (614) 692-1859, Beth.Lagana@dlamail.mil.

IT'S NEVER TOO LATE TO MEDIATE

Recently, I participated as the Agency's representative, in the mediation of an Equal Employment Opportunity (EEO) complaint. First let me say like many lawyers I have always been somewhat skeptical of the value of the alternative dispute resolution (ADR) process and in most instances, I saw little value in it. My position, like that of many lawyers I know, was if the Agency had a strong case why should we agree to ADR? However, I came away from the recent mediation with a new perspective on the value of ADR and how it may be of value to management even in those cases where it is almost certain the Agency will prevail in litigation.

The case in this instance was very old and it had started with an EEO complaint in 1999. The Agency had prevailed at every level of the EEO administrative process and the case was now in the Federal District Court. I had little doubt that the Agency would again prevail. The Complainant in the case expressed interest in entering mediation and I reluctantly agreed. Because of the long and somewhat bitter history of the case, I felt certain that it was highly unlikely that mediation could resolve the case to the satisfaction of the employee and management.

To my surprise, the fact that the case was old actually was a plus in both Management and the Complainant agreeing to mediation and the eventual resolution of the case. Because of the passage of time the Management Official, whom the Complainant had alleged discriminated against her, was no longer in her

management chain. Also the new management official was not emotionally involved in the case and merely was looking for a process that would allow both the employee and management to put the matter behind them and move on.

The mediation went far better than I expected. Both sides acted professionally and treated each other with respect, which I believe led to a successful and fruitful mediation. After a relatively short mediation and negotiation, the parties were able to come to an agreement, which satisfied the needs of both sides. The employee came away from the mediation feeling her concerns had been listened to by management, and I believe that she felt that management had treated her fairly. Management now had an employee who was a part of the team and the working environment for all employees was improved.

The lessons to be learned are first and foremost, it is never too late to try ADR. In fact, the age of a case may actually enhance the ADR process. Second, going to ADR even when the Agency has what it believes is a winnable case may be a win-win proposition. In the instant case, even if management had prevailed in litigation, the underlying bad feelings between the employee and management would have continued. With ADR, both sides were able to come away from the process feeling they had gained something in return for their efforts.

POC: Michael Walters, DSCC-G, DSN 850-1856, Comm. (614) 692-1856, Michael.Walters@dla.mil

RECOMMENDED READING

The following book was recommended as a good ADR resource:

The Dynamics of Conflict Resolution, A Practitioners's Guide; Author - Bernard Mayer; Publisher - Jossey-Bass.

Readers are encouraged to recommend ADR reading selections. Recommendations should be sent to Beth.Lagana@dla.mil.

DLA will be offering a one-time three-day advanced mediation training course, January 25-27, 2005. The course will be held in Atlanta, Georgia. Anyone wanting to attend must have already attended a basic mediation training course. For more information about the course, contact Beth Lagana, DSN 850-1859, Comm. (614) 692-1859, Beth.Lagana@dla.mil.

ADVANCED MEDIATION TRAINING