

Using ADR to Resolve Collegiate, Professional, and Sports-Business Disputes

Alternative dispute resolution (ADR) is utilized to resolve a variety of sports-related disputes. The American Arbitration Association® (AAA®) has a long history of administering cases involving these disputes at the amateur, collegiate, Olympic, and professional levels.

In addition to the benefits of time- and cost-efficiency, ADR provides parties with fair, independent, and impartial forums to resolve disputes. The most common forms of ADR proceedings are mediation and arbitration. An increasing number of sports organizations are including mediation and arbitration as the primary means for resolving disputes that arise on the field of play as well as commercial business matters. This article provides a brief look at the benefits of ADR and how collegiate and professional sports organizations are incorporating the use of these dispute resolution forums.

Mediation

Mediation is a meeting among disputants, their representatives, and a mediator to discuss settlement. The mediator's role is to help the disputants explore issues, needs, and settlement options. The mediator may offer suggestions and point out issues that the disputants may have overlooked, but resolution of the dispute rests with the disputants themselves. A mediation conference can be scheduled very quickly and requires a relatively small amount of preparation time. The conference usually begins with a joint discussion of the case, followed by the mediator working with the disputants both together and separately, if appropriate, to resolve the case. Many cases are resolved within a few hours. Perhaps most important is, mediation works!

The Benefits of Mediation

- The process is confidential, private, and less formal than both litigation and arbitration.
- Parties participate in the selection of a mediator.
- Parties have direct participation and control over the outcome.
- Mediators may help parties explore alternatives they might not have considered.
- Mediation can be scheduled at an early stage in the dispute.
- A settlement can be reached much more quickly than in litigation.
- Parties generally save money through reduced legal costs and less staff time.
- Parties enhance the likelihood of continuing their business relationship.

Arbitration

Arbitration is a time-tested, cost-effective alternative to litigation. Arbitration is the submission of a dispute to one or more impartial persons for a final and binding decision, known as an "award." Awards are made in writing and are generally final and binding on the parties in the case.

Private and confidential, arbitration is designed for quick, practical, and economical resolutions. Parties can exercise additional control over the arbitration process by adding specific provisions to their contracts' arbitration clauses or, when a dispute arises, through the modification of certain aspects of the arbitration rules to suit a particular dispute. For example, stipulations may be made regarding confidentiality of proprietary information used; evidence, locale, and number of arbitrators; and issues subject to arbitration. The parties may also provide for expedited arbitration procedures, including the time limit for rendering an award, if they anticipate a need for hearings to be scheduled on short notice.

The Benefits of Arbitration

- The process is confidential, private, and less formal than litigation.
- Parties have the opportunity to participate in the selection of an arbitrator or arbitrators.
- Parties have the opportunity to select arbitrators with experience and familiarity with the nature of the dispute.
- Arbitration decisions are generally final and binding upon the parties to the case.

Resolving Collegiate Athletic Conference Disputes

In this time of ever-changing conference affiliation and realignments, ADR can provide quick, private, and fair dispute resolution among athletic conferences and their members.

Most recently, in separate matters, the Western Athletic Conference and the Big 12 Conference utilized mediation to resolve issues pertaining to the departure of member schools--and both obtained a mediated resolution within a month of initiating the mediation. Litigating such matters in court would have required a significant amount of time and collegiate resources. What's more, mediation provided the conferences and member schools the opportunity to resolve matters in an expeditious and confidential setting.

To ensure that ADR is utilized and that future conference disputes are resolved quickly, fairly, and efficiently, mediation and arbitration clauses can be added to athletic conference bylaws--*before* disputes arise.

Resolving Professional Sports Disputes

In professional sports, an arbitration clause is often found in a Collective Bargaining Agreement (CBA) between a players' association and an owners' group. The usual issues involved are injury and non-injury grievances and salary arbitration. Arbitration clauses of this type are found in professional hockey, football, basketball, and baseball.

Under most CBAs, it is common for grievance, salary, and contract disputes to be resolved through binding arbitration. In fact, the term "baseball arbitration" originates from an early methodology that was used to resolve baseball players' salary disputes. In this form of arbitration, each party submits to an arbitrator an amount that represents the party's last, best offer. It is important that the offers represent a highly reasonable number, since the arbitrator

must pick one of the submitted figures. Baseball arbitration and other forms of ADR have been widely utilized in the world of professional sports.

Baseball

In addition to contractual grievance arbitration, the CBA between the Major League Clubs and the Major League Baseball (MLB) Players Association provides for arbitration of salary disputes. The current agreement (effective 2007-2011) provides parties with the ability to seek the AAA's assistance to select an arbitrator to resolve salary disputes in the event both sides cannot agree to an arbitrator (by January 1st of any year during the agreement). While these arbitrations are basically a form of labor arbitration, an arbitrator is not permitted to fashion remedies or write opinions. The CBA requires "last, best offer" arbitration, in which both the team and the player involved submit their last exchanged offers to an arbitrator, who must pick one of the submitted figures. While this can at times produce what appear to be unusual results, the nature of this system induces the participants to bargain in good faith and results in a high percentage of settlements.

Basketball

The CBA between the National Basketball Association (NBA) and the players' association provides for arbitration of disputes relating to player grievance and selected articles within the CBA. Grievance issues are determined by an arbitrator, and selected articles within the CBA are decided by a system arbitrator. Issues involving income, salary cap, and minimum team salary are subject to arbitration under the CBA. The NBA utilizes system arbitrators to resolve issues pertaining to the CBA. Some disciplinary determinations issued by the NBA commissioner are binding upon the player. If the disciplinary determination meets certain criteria, it may be appealed to a grievance arbitrator for a final determination.

Football

The agreement between the National Football League (NFL) Players Association and the National Football League provides for arbitration of what are essentially labor disputes between the team and a player. Issues can include salaries and whether an injury that precluded a player from performing was sustained as a result of play.

Golf

The Ladies Professional Golf Association (LPGA) relies upon AAA arbitration to resolve disputes involving doping violations with its golf members. The arbitration procedures are very similar to the United States Anti-Doping Agency's (USADA's) arbitration program that resolves Olympic Movement sports disputes.

Hockey

The National Hockey League's (NHL) CBA provides for arbitration of grievances, salary, and issues pertaining to findings of prohibited substances. The NHL utilizes both grievance and system arbitrators to resolve disputes. Grievance arbitrators are limited to hearing grievance cases and system arbitrators are used to resolve all other matters pertaining to the NHL's CBA. As compared with other sports, the NHL agreement provides for a comprehensive set of arbitration hearing procedures.

Expanding ADR to Include Commercial and Business Disputes

Sports organizations may adopt a comprehensive approach to ADR to cover sports, commercial, and business-related matters. Below are a few examples of the types of commercial and business matters for which the use of ADR has been provided:

- Doping arbitration
- Sports agent, team, coach, and athlete disputes
- College athletic conference membership disputes
- Product and merchandising agreements
- Sports franchise and partnerships
- Licensing, intellectual property (IP), broadcasting, marketing, and advertising agreements
- Event sponsorships and endorsements
- Stadium, arena naming rights, club seats, and concessionaire agreements
- Construction of sports facilities and real estate leasing
- Sports executive contracts and employment matters
- Labor-grievance and collective-bargaining agreements
- Independent fact-finding investigations

Key Features of AAA's ADR Services

Panel Integrity

From disputes arising from the field of play to commercial or business matters within the sports industry, AAA mediators and arbitrators possess a diverse range of subject-matter expertise. To help ensure fair and impartial ADR proceedings, arbitrators must adhere to a *Code of Conduct for Commercial Arbitrators* and mediators must adhere to the *Model Standards of Ethics for Mediators*. All AAA panelists are required to complete mandatory training and continued ADR

skills development courses. This value-added benefit helps to ensure that ADR proceedings are conducted fairly and efficiently and in synchronization with the AAA rules and procedures.

Panel Experience

In addition to having arbitrators that are familiar with resolving US Olympic and sport-doping disputes, parties can select arbitrators from seasoned panelists with sports-related expertise, for example:

- Attorneys (with sports law experience resolving corporate commercial, merchandising, licensing, intellectual property, broadcasting, and labor & employment law issues)
- Retired Judges
- General Counsels
- Sports Law Professors

ADR Rules and Procedures

AAA is widely recognized for its development of arbitration rules and mediation procedures that ensure that parties and neutrals operate within the framework of ADR proceedings in order to provide for fundamental fairness, impartiality, and expeditious resolution.

Case Management Services

Upon the filing of a case, an AAA Manager of ADR Services is assigned to help oversee and manage the administration of the case. From the selection of a mediator or an arbitrator to the transmittal of a settlement agreement or issuance of an award, the Manager of ADR Services acts as a guide to help ensure a swift and seamless resolution of the case.

Summary

From collegiate and professional level sports to sports-business disputes, the AAA provides athletes, individuals, and sports organizations with a wide range of dispute resolution services. The AAA and its Panel of Neutrals understand the dispute resolution needs of the sports industry and provide parties with the ability to select mediators and arbitrators with subject-matter expertise. This invaluable benefit increases the speed and efficiency of the ADR process, offering a robust alternative to litigation. More importantly, parties can look to the AAA as a fair, impartial, and independent organization to administer the ADR proceedings.

For assistance with the use of ADR to resolve sports-industry matters, please contact Lance K. Tanaka, Vice President, by email at tanakal@adr.org or by phone at 720.932.8135.