

FAA Arbitration

Under a 2001 Memorandum of Understanding, the National Air Traffic Controllers Association and the Federal Aviation Administration formulated an innovative dispute resolution process designed to facilitate the accelerated disposition of grievances between the parties. Under this novel agreement, the parties agreed to initially present their case before a neutral evaluator at an informal hearing or conference before the matter may proceed to formal arbitration. During this precursory process, a spokesman for each of the parties presents a brief oral evaluation of their case lasting no longer than fifteen (15) minutes in total, five (5) of which may be reserved for rebuttal. Following the parties' submissions, the neutral evaluator is then expected to deliver an oral evaluation advising the parties how he would expect the matter to be disposed off if it were to proceed to a formal arbitration hearing. During this oral evaluation, the neutral is required to deliver a candid assessment of the strengths and weaknesses of each case and present potential settlement suggestions.

However, rather than acting as an arbitrator or judge, the neutral evaluator does not have the power to render a binding decision upon the parties. His opinions and stated conclusions are merely advisory in nature and serve as a basis for the parties' to reach a consensual settlement agreement. Nevertheless, while the neutral's conclusions are not formally binding, the parties may nonetheless endorse the suggested settlement by reducing it into writing and signing it.

Conversely, where one party or another chooses not to adopt the neutral evaluator's opinion that party may proceed to bring the grievance to formal binding arbitration. While the Memorandum of Understanding expressly authorizes a party dissatisfied with the neutral's evaluation to progress to formal arbitration, the Memo nonetheless has an inbuilt disincentive to prevent either party from continuing the dispute frivolously. That is, in the event that the arbitration decision is exactly the same as the neutral evaluator's opinion rendered earlier, the party which disagreed with the initial evaluation is to be liable for all fees and expenses of the hearing.

By adopting such a mechanism to resolve grievances, the parties have developed a mechanism that encourages only genuine disputes to proceed to a full arbitration hearing, while at the same time ensuring that no grievance is unjustly prevented from being considered by an arbitrator.

Mr. Javits is President of Dispute Resolution Services, which provides neutral arbitration, mediation, and training services. Mr. Javits is a member of the National Academy of Arbitrators and was Chairman and member of the National Mediation Board from 1988 to 1993.