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## **Arbitration: The Final Frontier or The New Horizon?** **(v3n7, June 2006)**

**By Julius Rhodes**

In all of our lives it is certain that whether we are dealing with personal or professional matters we will encounter disputes. As a result if we are to rectify these situations amicably both parties must agree upon a process that they see as mutually beneficial. In recent years in both organized and non-organized environments this has meant an increase in the use of arbitration. However, with this increased use comes questions like, "Is arbitration right for my organization? How do you know when to use arbitration and what is arbitration?" I do not represent myself as having all the answers (to assert such widespread knowledge on my own would be vain so I will leave any such conclusions up to you the reader); however, I will provide a window that will allow us to look into the appropriate uses of arbitration, as well as how it differs from litigation, mediation and fact-finding.

It has become somewhat axiomatic that in the United States of America, we live in a litigious society. As a result of our penchant for addressing disputes, either real or perceived, the number of lawyers in our country and the schools that produce them is at an all time high and those numbers continue to rise. Now as it relates to litigation there are a number of issues that really make it a system under siege. First of all, due to the sheer volume of cases that are being contested, the principle of being afforded the opportunity for a speedy trial is not readily available. Second, our system of justice is often bogged down in technicalities, which makes it all but impossible for anyone other than attorneys or other trained legal professionals to understand the proceedings. Third, there is an enormous expense borne by the public in general and employers specifically that, while it can be measured in actual dollars, has a far more expansive cost in non-monetary terms.

When you consider all of the factors I have just mentioned and many others that have been suggested by individuals much more learned than myself, it becomes apparent that we need to utilize an alternative dispute resolution model. This model addresses individual and organizational matters by allowing all concerned parties to feel as though they have been heard, as well as respected for their integrity.

Mediation, fact-finding and arbitration are the three major types of third party intervention aimed at resolving disputes. In virtually all employer/employee situations that I can think of the opportunity to engage in third party intervention has to be voluntarily agreed upon before such intervention can be used. In unionized environments third party dispute resolution is often a major piece of the negotiation process and is codified in the collective bargaining agreement.

In non-unionized environments I have often witnessed where even the process leading to the agreement on the utilization of third party intervention requires a great deal of give and take. In some instances, a third party was called in *to decide* if there would be any ongoing utilization of a third party to help adjudicate disputes.

So let's take a quick look at how mediation, fact-finding and arbitration differ and why an organization might decide to use arbitration to assist with resolving disputes.

Mediation employs the use of mediators who are often called upon, as is the case in the other third party interventions, when the parties cannot agree upon a course of action leading to a resolution and the dialogue has ceased. Mediators, as is the case with fact-finders and arbitrators, are a neutral third party and are typically provided by the **Federal Mediation and Conciliation Service** (FMCS).

It becomes the responsibility of the mediator to get the parties back together by attempting to 'make a deal' that both parties will find appealing. This can be a delicate, lengthy and cumbersome process as typically the mediator's attempt to broker a solution is not legally enforceable. When you think about mediation and the use of mediators it is akin to an art form. In this regard, 'beauty is in the eye of the beholder.' A mediator has no formal authority but, rather, acts as a facilitator and go-between in negotiations. Successful mediators must have a blend of skills that shows versatility, intensity and the ability to orchestrate between parties in a way that will allow them to settle on their own terms where it appeared that there was no common ground.

Fact-finding is the use of a neutral third party, who in many cases may have no connection with the parties in dispute, any knowledge of the particular institution or overall industry. It is their responsibility to analyze the issues in the dispute and render a recommendation as to what a reasonable settlement ought to be. Now there are two concerns with their role as I see it. The first is what constitutes 'reasonable'? Second, what is meant by 'ought'? We have seen with the recent Americans with Disabilities Act that when we talk about 'reasonable accommodations', proponents, opponents and even the courts cannot decide on what is reasonable. Additionally, the word 'ought' allows 'wiggle room' for either party to the dispute such that if they disagree with the recommendation of the fact-finder they are free to return to transacting business and addressing the possible resolution of the issue under dispute as they see fit. Neither fact-finding nor mediation obligates the parties to the offered resolution.

In contrast, arbitration is a quasi-judicial process in which the parties agree to submit their dispute to a neutral third party for binding settlement. Arbitration does not rise to the level of complexity of formal legal proceedings in that it does not embrace the typical rules of evidence ascribed to by the courts. However, it does bind the parties to the decision of the arbitrator. In the rare situations where that decision has been contested, the courts have overwhelmingly sided with the arbitrator's award.

Arbitration as a field of dispute resolution has a long history in the United States dating back to the 1860s when the Knights of Labor (one of our country's first labor unions) called for its usage as a method preferable to strikes for the resolution of interest disputes. While there is no legislation that mandates arbitration as a means of dispute resolution, a series of cases involving both the Supreme Court and the National Labor Relations Board since the 1950s have established the role of arbitration. Most arbitrators are either attorneys who practice labor arbitration or academics that teach in the field of labor law, industrial relations or economics.

Procedures for selecting an arbitrator are usually written into the established contract. However, where no contract exists the parties in a dispute may seek to identify an arbitrator by utilization of either of the following agencies the Federal Mediation and Conciliation Service (FMCS), the **American Arbitration Association** (AAA) or the **National Academy of Arbitrators** (NAA).

The FMCS maintains a roster of arbitrators from which it can select and it also screens persons who seek to be listed as arbitrators. The AAA acts as a clearinghouse to administer matters between the parties and the arbitrators. Typically if an existing contract specifies AAA as the assisting agency, once they have been contacted, they will provide a list of arbitrators for review by the parties. The parties alternately reject the submitted names (always an odd number) until one remains. Once a single name has been agreed upon the AAA will notify the selected individual who has the right to either accept or decline the appointment. If needed the AAA will provide hearing facilities and court reporters. They will also follow-up to see if a decision has been rendered.

The NAA does not offer arbitration panels but its organization consists of the most highly qualified and regarded arbitrators in the country and its directory provides a source that the parties can contact directly.

Without going into too much detail there are two types of arbitration: interests and rights. Interest arbitration looks at the acquisition of future rights versus claimed rights vested in the past. Rights arbitration addresses the enforcement or interpretation of existing contract terms.

In either situation it is the responsibility of the arbitrator to decide who 'wins' and who 'loses' based upon a consideration and review of the evidence presented by the parties in dispute. Although arbitration is not as formal as traditional courtroom proceedings, the parties involved may choose to be represented by lawyers. Unlike situations involving fact-finding, the arbitrator generally has either general or specific knowledge of the industry under consideration and the parties will generally work to ensure that they have a list of individuals to select with the requisite knowledge needed to make an informed decision.

The cost savings and efficiency of the arbitration process vis-à-vis traditional court processes is undeniable and provides a powerful motivator for its utilization. However, I would like to suggest another even more powerful reason to seek recourse to the arbitration process. That is or should be because of the opportunity it provides for the parties to put forth whatever pertinent information they deem relevant to their concerns and to be assured it will be considered in the final outcome. Additionally, it provides for a more expedient resolution of the dispute and the resumption of normal business operations. Finally, unlike mediation and fact-finding it is binding upon the parties because the parties agreed to stipulation when they agreed upon the use of third party intervention.

It is bound to occur that one of the parties in the dispute will not be satisfied when a decision is made. However, that event should not take away from the fact that arbitration, if set-up and used appropriately, provides for a greater level of customization, efficiency, simplicity, cost avoidance, finality and increased confidence on the part of the parties who utilize this method of dispute resolution.

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Julius E. Rhodes, SPHR is founder and principal of the mpr group, a broad-based Human Resources (HR), organizational development and leadership consulting practice. He provides assistance in training program development and delivery, project management, motivational and keynote addresses, needs assessments, executive coaching, organizational and leadership development, ethics consultation and other HR areas. He has also completed the arbitrator development program through Cornell University and the New York State Employment Relations Board. You can contact him at 773-548-8037, e-mail at [j-rhodes1@neu.edu](mailto:j-rhodes1@neu.edu) or visit his web site at [www.bossnetworks.com/mprgroup/index.htm](http://www.bossnetworks.com/mprgroup/index.htm).

## **Mind Your Manners: Courtesy Important For Employers As Well As Employees (v3n11, November 2006)**

**By Christine Martin**

Even though unemployment is low (4.4 percent in October, according to U.S. Department of Labor) and the American Library Association has predicted a shortage of librarians, library job applicants still complain that employers fail to extend even the most common courtesies. In the words of one academic librarian:

Is it really so difficult to type up a form letter that says "We received your application; thanks for your interest"? If someone doesn't make the first cut, let them know rather

than making them wait another five months. Actually let interviewees know your decision in the timeframe you said you would. If your decision is delayed, let them know. This isn't the fine print in an ancient edition of Emily Post; it is basic courtesy that everyone has a right to expect in any profession. - Sarah Roy

And while it may seem that employers get away with more bad behavior than applicants, at least some recruiters say that employers would do well to remember their manners-if only to avoid developing a bad reputation among prospective employees.

"Whether on the street or via Internet chat rooms and bulletin boards, word can spread quickly that certain companies don't treat applicants-and, by implication, employees-with respect," says Gene Koprowski, writing in *HR Magazine*, a publication of the Washington, D.C.-based Society for Human Resource Management. "Actively and effectively managing the interview process is vital because applicants will use the experience to form opinions-either positive or negative-of the business."<sup>1</sup>

## How to "Actively and Effectively" Manage Your Hiring Process?

Koprowski and others offer the following tips for running a hiring process that is efficient yet treats candidates and search committee members with respect:

- **Application stage: Acknowledge resumes that you have received.**

Yes, they can constitute a deluge. But even a postcard thanking the candidate for his or her interest and reciting the organization's policy as to how long it keeps resumes on file may do the job. In fact, such a postcard may forestall phone calls from applicants who "just want to make sure you received my resume."

- **Interview stage: Be a good host**

Howard Adamsky, author of "Make a Good Impression by Being a Polite Host," also writing in *HR Magazine*,<sup>2</sup> suggests the following for treating candidates with professional (if not common) courtesy:

1. If you're bringing a candidate in from a distant location, fly him or her in the night before. Don't expect them to interview after several hours of travel.
2. Make sure the candidate receives-at least four days before the interview-any information necessary for its successful completion (e.g., driving directions, telephone number, time and place of interview)
3. Greet the candidate in a positive manner and offer him or her a beverage, use of the restroom, etc.
4. Begin the interview on time. If there is a last-minute change or you or others are running late, apologize.
5. Make sure interviewers (or the search committee) have the candidate's resume, cover letter, and the position profile well before the interview.
6. At the end of the interview, ask the candidate if he or she has any questions. Use this opportunity to gain insight into his or her thoughts and priorities.
7. Schedule enough time for lunch if it's part of the interview (90 minutes for a restaurant, 60 minutes for food served in-house). Ask the candidate if he or she has any dietary restrictions.
8. Don't use lunch for "hard-core" interviewing. Use it to form a relationship, talk about the industry in general, and "do some gentle probing on important issues." But, Koprowski warns, don't use it as an opportunity to ask questions not allowed in the interview (e.g., "How old are you?" or "Are you Spanish?")
9. End the interview on schedule if possible. If you run late and want to continue the discussion, ask the candidate's permission. Realize that the candidate may have other appointments or may have to catch a plane.
10. Keep your promises. If you say you will get back to the candidate, say when it will be, and do it. If you have to postpone, let the candidate know.

- **Decision stage: Don't keep candidates in the dark.**

Koprowski says keeping candidates informed is paramount. Applicants who are left hanging interpret such treatment as "hostile, brusque, and unfair," he says.<sup>3</sup> So if it's apparent that the candidate isn't right for the job, send a letter thanking him or her for his or her time and for participating in your hiring process.

If you decide not to fill the job, let applicants know.

If you're still interviewing ... let applicants know.

"In the nanosecond culture of the Internet age, there is no excuse for failing to communicate with applicants—at the very least by email," says Jim Huling, CEO of Matrix Resources, a staffing firm in Atlanta, as quoted in Koprowski's article.<sup>4</sup>

But before you contact a candidate, make sure members of your organization agree on who will speak on its behalf. This is especially important in academic libraries, where search committees are the norm. For the ALA's guidelines on using a search committee to hire academic librarians, see

[www.ala.org/ala/acrl/acrlstandards/screenapguide.htm](http://www.ala.org/ala/acrl/acrlstandards/screenapguide.htm).

## And If You Are the Applicant?

Prospective employees should not ignore rudeness or inconsideration during the hiring process, says Redia Anderson, national principal for talent acquisition and diversity at the Houston office of Deloitte and Touche and quoted in Koprowski's 2004 article. Instead, she says, job seekers should carefully consider whether they want to work in what may be a rude or thoughtless environment. "In today's market, the interview process is, once again, a two-way process," she says. "It's a buying transaction. Both parties have choices."

So heeding your instincts may keep you out of an angry or hostile workplace. And if you're an employer, treating job seekers with courtesy and respect may yield more or better applicants. "Small kindnesses may go a long way to convincing applicants that they-or their friends, family, or colleagues-should want to work for your company," Koprowski says. Besides, Huling says, "We are all just people, and each of us is just one decision away from being on the other side of the hiring process."<sup>5</sup>

## References

1. Gene J. Koprowski, "Rude Awakening: Treating Job Applicants Courteously Will Have to Become Standard Operating Procedure for Employers As the Labor Market Tightens," *HR Magazine* 49, no. 9 (2004): 50.
2. Howard Adamsky, "Make a Good Impression by Being a Polite Host," *HR Magazine* 49, no. 9 (2004): 50.
3. Koprowski, "Rude Awakening"; Adamsky, "Make a Good Impression by Being a Polite Host."
4. Ibid.
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## It's Not Too Late: Last-Minute Tax Tips, Plus Two Changes for 2007 (v4n3, March 2007)

By Christine Martin

Tax returns on due on April 16 this year, a day later than usual because April 15 falls on a Sunday.

As most librarians know, the IRS Web site (<http://www.irs.gov>) provides forms and publications, and IRS Publication 17 (“Your Federal Income Tax”) is a good place to start. So if you haven’t filed your return yet, you may find the following tips helpful.

**You can e-file for free if you make \$52,000 or less per year.** Go to <http://www.irs.gov> and look for “free file.” According to the IRS, 70 percent of individual taxpayers are eligible for this service, which is provided by a consortium of tax preparation software companies. Be sure to access this service through the IRS Web site and not the companies’ Web sites. Otherwise, you will be charged a fee. Also beware that preparation of state returns may not be free. Some companies also have lower income eligibility limits and age limits. You may be charged a processing fee (also called a convenience fee) if you use a credit card to pay your taxes via “free file.”

**It’s not too late to open an IRA.** You can open an individual retirement account (IRA) for calendar year 2006 as late as April 16, 2007. As in past years, you may deduct contributions of up to \$4,000 (\$5,000 for individuals age 50 or older). But if you are covered by a retirement plan at work you may not be able to deduct the entire amount. Contributions to a traditional IRA are excluded from your taxable income, but are taxed when you reach age 70 1/2. A Roth IRA, however, is funded with after-tax dollars, but is exempt from taxation when you take distributions years later. But beware: the amount you can contribute to a Roth IRA is offset by the amount you contribute to any traditional IRA—or any amount that anyone else contributes on your behalf.

**You may qualify for the Earned Income Credit.** If your adjusted gross income for 2006 is under \$38,348, you may qualify for the Earned Income Credit (EIC), a federal program that refunds taxes, including payroll taxes (i.e., Social Security and Medicare), to low- to moderate-income families who are working. Use the chart below to see if you qualify. Your annual investment income cannot exceed \$2,800 per year. According to IRS Publication 596 (“Earned Income Credit”) <http://www.irs.gov/publications/p596/index.html>, EIC tax refunds can be as high as \$4,536. And because the EIC refunds payroll taxes as well as income taxes, you may be eligible even if you owe no or little income tax.

<b>You can claim the Earned Income Credit if your adjusted gross income* is less than:</b>	<b>Without children</b>	<b>One child</b>	<b>Two or more children</b>
Single (at least age 25 but younger than age 65)	\$12,120	\$32,001	\$36,348
Married filing jointly (not eligible if married filing separately)	\$14,120	\$34,001	\$38,348

\*Adjusted gross income is found on:

- Line 4 of Form 1040EZ;
- Line 22 of Form 1040A; and
- Line 38 of Form 1040.

**Do you deduct sales taxes, tuition and fees, or up to \$250 in classroom supplies? If so, laws passed in December may change how you file.** Apparently, taxpayers aren’t the only ones who wait until the last minute. Congress passed three tax provisions in December that hit the books too late to be included in the printed tax forms that the IRS mailed for 2007. The last-minute changes allow taxpayers to continue to deduct state and local sales taxes instead of state and local income taxes (popular in states that have no income tax) and certain higher education tuition and fees. The

December law also continues the deduction for up to \$250 in educator expenses (typically money teachers spend to equip their classrooms). The IRS says these “extender” changes have been included in tax preparation software (see IRS fact sheet [IRS Begins Processing Returns Claiming Extender Deductions: Urges Taxpayers to File Electronically, Check on Phone Tax Refund at http://www.irs.gov/newsroom/article/0,,id=167605,00.html](http://www.irs.gov/newsroom/article/0,,id=167605,00.html)). But paper filers will have to mark up their tax returns to continue to claim these deductions. Teachers who want to continue to deduct up to \$250 in classroom supplies will have to write in “E” (for educator, no doubt) near line 23 of Form 1040 and ignore the fact that it’s nominally devoted to the Archer MSA (Medical Savings Account). Similarly, those wishing to deduct their state and local sales taxes or tuition and fees will have to write in “ST” on Line 5 of Schedule A or “T” on Line 35 of Form 1040.

**Tax credits still available for hybrid vehicles, limited for only Toyota models.**

You may have heard that the tax credit for purchasing a Toyota hybrid vehicle expired because sales were so strong. But taxpayers will be able to claim a partial tax credit for Toyota (including Lexus) hybrids purchased through October 1, 2007, according to the IRS fact sheet [Credit Available for Taxpayers Who Purchased or Leased Hybrid Vehicles in 2006 at http://www.irs.gov/newsroom/article/0,,id=165649,00.html](http://www.irs.gov/newsroom/article/0,,id=165649,00.html). The federal Energy Policy Act of 2005 grants tax credits to those who buy the energy-efficient vehicles, which rely on rechargeable batteries as well as internal combustion engines. According to the IRS, only Toyota (including Lexus) has sold enough hybrids—60,000 – to trigger a phase-out of the tax credit. Vehicles purchased from other makers, such as Honda, Ford, and General Motors, are still eligible for the tax credit, which can be as much as \$2,600 depending on make and model.

**If you can’t file by April 16, you can get an extension until October 15.** If you can’t get your tax return in the mail by April 16, you can get a six-month extension (until October 15 for most individuals) by filing Form 4868. But you still must pay any estimated tax liability when you request an extension. Otherwise, you risk incurring penalties and interest.

**New for 2007: Get written proof of money donations; taxpayers over age 70 1/2 may be able to contribute IRA funds to charity tax-free**

- **Get written proof of money donations—you’ll need it next year.** If you’re accustomed to tossing cash into the collection plate and then claiming it as a charitable contribution when you file your tax return, change your ways now to make life easier next year. According to the IRS Web site, [Recent Tax Law Changes May Affect People Giving to Charity: IRS Offers Tips for Year-End Donations \(http://www.irs.gov/newsroom/article/0,,id=164997,00.html\)](http://www.irs.gov/newsroom/article/0,,id=164997,00.html), “to deduct any charitable donation of money, a taxpayer must have a bank record or a written communication from the charity showing the name of the charity and the date and amount of the contribution.” This change took effect August 17, 2006, when President Bush signed the Pension Protection Act of 2006, but for most individuals—who pay their taxes on a calendar year basis—it didn’t kick in until January 1, 2007. According to the IRS, cancelled checks are sufficient to prove money contributions, as are pay stubs or W-2 forms for donations made via payroll deduction.
- **Consider giving IRA distribution to charity; it’s tax-free for 2007.** According to the same IRS press release cited above, if you are age 70½ or older, you can transfer up to \$100,000 from an Individual Retirement Account (IRA) to a qualified charity without having to pay taxes on the amount transferred. This provision may be important to retirees who do not relish having to pay taxes on what would otherwise be an involuntary distribution from an IRA. According to the IRS (see same Web site as above), this provision, also part of the federal Pension Protection Act of 2006, applies to only tax years 2006 and 2007. Donations made pursuant to this provision must flow directly from the IRA trustee to the charity and may not be deducted as charitable contributions. A taxpayer does not have to itemize deductions to take advantage of this temporary tax provision.

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