

MED-ARB BASEBALL STYLE

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November 27, 2019

As a follow up to my last post on Med-Arb, I want to describe a new type of Med-Arb gaining popularity: Med-Arb Baseball Style. (Okay, I made up that name but it aptly describes this process.)



In Major League Baseball (MLB) if the team and player cannot agree on a contract price, the case goes to a neutral arbitrator and each side presents the Arbitrator with a dollar amount they believe represents a fair, final price and their justification for the price. (Seems strange to speak of a price for a person, even if he is an awesome baseball player!) The Arbitrator chooses one of the numbers presented and has no discretion to choose or do anything else. Both sides have an incentive to be reasonable and give their best number.

Because this is St. Louis and we love our baseball, (and hockey too) this process has spilled over into contract disputes, particularly in the construction arena when disputes arise between general contractors and subs. The contract (previously negotiated between the two) contains a dispute resolution clause that borrows a few tricks from MLB arbitration.

The dispute proceeds to mandatory mediation. Openings are helpful but not required. The Mediator travels back and forth between the parties carrying proposals and settlement terms. In late afternoon, if the case has not resolved, or close to resolution, the mediation ends and the Mediator becomes the Arbitrator. Each side provides the Arbitrator with its best and final number in writing. The Arbitrator shares the number with the other side. The arbitration recesses and for, at least, 72 hours the Arbitrator ponders which number to accept. S/he has no other option other than choosing one of the two. Presumably, the 72 hours allows for final negotiations directly between the parties. Thereafter, the Arbitrator rules and the Award becomes final. Sounds intense? Yes, just like many other ADR processes, but I like it and here's why.

Parties want finality and they want to participate in the process. The mediation allows the parties to make their persuasive arguments, while knowing that whether or not they have been successful does not matter because they will have an enforceable final decision that day.

Clients love the economy of Med-Arb. They are paying only one ADR professional to learn the facts of their dispute. They are spending only one day in settlement negotiations. Moreover, Med-Arb Baseball Style can move from start to finish in less than six (6) months. A faster process lends itself to better planning and budgeting for the client.

The key is that all participants in the dispute know in advance that this mediation will morph into an arbitration. It's a bit like Cinderella dressed up in her ball gown and, no matter what, at midnight that ball gown will turn back into a tattered tunic and she'll be barefoot. The lawyers and clients know the mediation will end and they will have to ultimately abide by the Arbitrator's decision—even if it leaves them dancing barefoot.