

BOARD RULE NO. 18

Adopted: December 3, 1998

Subject: ARRC/Municipal Administrative Dispute Resolution Policy

Purpose: This rule sets forth both guidelines and principles for administratively resolving disputes between the ARRC and railbelt communities without resorting to litigation. Mediation principles are heavily relied on to accomplish this result. It is ARRC's goal to use these to creatively, economically, and efficiently resolve or prevent disputes with railbelt communities from arising.

**ALASKA RAILROAD CORPORATION/MUNICIPAL
ADMINISTRATIVE DISPUTE RESOLUTION POLICY**

1. PURPOSE.

The Alaska Railroad Corporation ("ARRC") occupies a unique position in its host Railbelt communities as a significant landowner and employer of the local populace, while at the same time benefitting from the privileges and immunities available to the State, such as exemption from local property taxation. ARRC recognizes that the use of consensus building techniques and nonadversarial planning and dispute resolution processes can increase the wisdom, efficiency, equity and long-term stability of its decisions concerning matters that are important to the municipalities in which ARRC operates. ARRC therefore encourages these municipalities to use the procedures outlined in this policy to resolve disputes with ARRC in an amicable manner that is compatible with applicable law and ARRC's mission and resources. It is ARRC's goal to use these procedures to creatively, economically, and efficiently resolve or even prevent disputes with municipalities from arising. It is therefore the policy of ARRC to use administrative dispute resolution (ADR) proceedings to resolve disputes between ARRC and a municipality whenever appropriate. To further this policy, the following ARRC/Municipal ADR Program is hereby established.

2. APPLICABILITY.

This policy may be applied to any dispute arising between a municipality and the ARRC, subject to the following limitations:

A. If the dispute arises from a specific contract and the contract provides an alternate dispute resolution procedure (that is, a procedure other than litigation), the terms of the contract will apply unless the parties agree otherwise.

B. If the dispute is subject to the procedures established by an applicable statute or regulation or by another ARRC Board rule, such as Board Rule 13, "Railroad/Highway Crossing Policy", this policy will not apply.

3. INITIAL NEGOTIATION BETWEEN EXECUTIVES.

ARRC will attempt in good faith to resolve any dispute with a municipality promptly by negotiation between representatives of the respective parties who have authority to settle the controversy and who have direct responsibility for the subject matter of the dispute.

A representative of the affected municipality may give ARRC written notice, directed to ARRC's President & CEO, of any dispute not resolved in the normal course of business, stating that the municipality is invoking this ADR Policy. Within five (5) business days after delivery of the notice, ARRC must submit a written response to the municipality. Both the notice and the response must include (a) a statement of that party's position and a summary of the facts and arguments supporting its position, and (b) the name and title of

the executive who will represent that party and of any other person who will accompany the executive. Within ten (10) days after the delivery of the municipality's notice, the designated executives of both the municipality and ARRC will meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one party to the other will be honored. If the matter has not been resolved by these persons within thirty (30) days after the municipality's notice, the dispute will be referred to the chief executive of both parties who will likewise meet to attempt to resolve the dispute.

Any of the time limits set in this paragraph 3 or elsewhere in this Policy may be altered by mutual agreement of the parties.

4. MEDIATION.

If the dispute has not been resolved by negotiation within forty-five (45) days of the municipality's notice, ARRC will try to settle the dispute through mediation. The purpose of the mediation will be to attempt to arrive at a mutually acceptable resolution of the dispute in a cooperative and informal, rather than a legal and formal, manner.

A. Selecting the Mediator. Once the parties have agreed in principle to a mediation process, or at least to seriously consider mediation, they will meet to discuss the selection of a mediator. The mediator must be a neutral and impartial third party who has the requisite training, knowledge, experience, and/or background necessary to facilitate settlement of the dispute. The mediator selected must be acceptable to both parties. If they cannot agree, each party shall propose one name and the choice will be made by coin toss. The mediator so selected must disclose any circumstances known to him or her that would cause reasonable doubt concerning the candidate's impartiality. If a clear conflict is disclosed, the parties will resume the selection process.

B. Ground Rules of Mediation Proceeding. The following ground rules will apply, subject to any changes on which the parties and the mediator agree.

1. The process will be completed within sixty (60) days after selection of the mediator.
2. The process is voluntary and non-binding.
3. The mediator will control the procedural aspects of the mediation. The parties will cooperate fully with the mediator. The mediator is free to meet and communicate separately with each party. The mediator will decide when to hold joint meetings with the parties and when to hold separate meetings.

The mediator will fix the time and place of each session and its agenda in consultation with the parties. There will be no stenographic record of any meeting. The formal rules of evidence or procedure will not apply.

4. Each party will be represented at each mediation conference by an executive authorized to negotiate a resolution of the dispute, unless excused by the mediator as to a particular conference. Each party may be represented by more than one person, e.g., a business executive and an attorney. The mediator may limit the number of persons representing each party.
5. The process will be conducted expeditiously. Each representative will make every effort to be available for the meetings.
6. The mediator will not transmit information received in confidence from any party to any other party or any third party unless authorized to do so by the party transmitting the information.
7. The mediator may obtain assistance and independent expert advice, with the prior agreement of and at the expense of the parties. Any person proposed as an independent expert also will be required to disclose any circumstances known to him or her that would cause reasonable doubt regarding the candidate's impartiality.
8. The parties will share the cost of the mediation equally.

C. Exchange of Information. If any party has a substantial need for documents or other material in the possession of another party, the parties will attempt to agree on an exchange of documents or other material. If they fail to agree, either party may request a joint consultation with the mediator who will assist the parties in reaching an agreement.

D. Presentation to the Mediator. At least five (5) business days before the first substantive mediation conference, unless otherwise agreed, each party will submit to the mediator a written statement summarizing the background and present status of the dispute and such other material and information as it deems helpful to familiarize the mediator with the dispute. The parties may agree to submit jointly certain records and other materials. The mediator may request any party to provide clarification and additional information.

E. Settlement. The mediator may promote settlement in any manner he

or she believes is appropriate. The mediator will help the parties focus on their underlying interest and concerns, explore resolution alternatives and develop settlement options. The parties are expected to initiate and convey to the mediator proposals for settlement. Each party must provide a rationale for any settlement terms proposed. If a settlement is reached, the mediator, or a designated representative of one of the parties, will draft a written settlement document incorporating all settlement terms. This draft will be circulated among the participants, amended as necessary, and formally executed. Initially, a preliminary memorandum of understanding may be prepared at the mediation and executed by the parties.

F. Failure to Agree. If the ARRC and municipality fail to develop mutually acceptable settlement terms, the mediator will submit to the parties a final settlement proposal which the mediator considers fair and equitable to all parties. The mediator's recommendation will be presented to ARRC's Board of Directors at the Board's next regularly scheduled meeting for consideration.

5. FINAL APPROVAL OF GOVERNING BODIES.

For some disputes, ARRC or the affected municipality (or both) may be required by their statutory or regulatory processes to reserve final approval authority for a particular decision or action to their respective governing bodies. For ARRC, this body is generally the Board of Directors; however, some actions require approval of state or legislative bodies. Municipalities may vary as to such requirements. In any case, the obligation imposed in this ADR Policy for the parties to appoint representatives with sufficient authority to resolve a dispute must be understood to be tempered by, and subject to, any such laws or rules. In ARRC's case, the appointed representative will be of sufficient authority to make recommendations directly to the Board of Directors and, once a proposed settlement is reached, the ARRC will make good faith efforts to obtain any required Board or other approvals.