

The Air Force Alternative Dispute Resolution Program



Report to the Secretary of the Air Force on the Air Force Alternative Dispute Resolution Program

*Prepared by
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Air Force Alternative Dispute Resolution Program*

| | PAGE |
|-------------------------------------------------------------------------------------------------------------------------|-------------|
| Executive Summary | 1 |
| A. National Award for Excellence | 2 |
| B. Acquisition ADR Program: We Continue to Resolve Large and Small Contract Disputes in Months Rather than Years | 2 |
| 1. Directorate of Contract Dispute Resolution | 2 |
| 2. FY 2003 Air Force Contract ADR | 2 |
| 3. ADR Reduces Resolution Time | 3 |
| 4. Commando Solo: the Benefits of Early Involvement in a Large-Dollar Case | 4 |
| 5. Air Force Museum Project: Creative Partnering | 5 |
| 6. Regulatory Changes in Air Force Federal Acquisition Regulation Supplement | 5 |
| 7. Early Warning System | 6 |
| 8. Outreach Program | 6 |
| 9. Training and Equipping our Attorneys as World-Class ADR Practitioners | 6 |
| 10. Corporate-Level ADR Agreements | 6 |
| 11. Value of Disputes Resolved Through ADR | 7 |
| C. Workplace ADR Program: The Air Force Continues to Benefit from the Large-Scale Use of ADR | 7 |
| 1. Labor-Management Relations Program | 7 |
| a. ADR in Collective Bargaining Agreements | 7 |
| b. Dover Decision | 7 |

| | |
|------------------------------------------------------------------------------------------------------------------------|-----------|
| 2. Workplace Disputes ADR | 8 |
| a. Air Force Workplace ADR Results for FY 2003 | 8 |
| b. ADR Activity in Air Force EEO Complaints | 9 |
| c. EEOC Review of the Air Force ADR Program | 10 |
| d. Return on Investment Using ADR in non-EEO Workplace Disputes | 10 |
| e. Supporting Requests by Commanders for ADR Assistance | 11 |
| f. Contractor Support for “Out of Cycle” Training or Special Mediation Mentor Service Requirements | 11 |
| D. Website: Ensuring that Air Force Personnel are “One Click Away” From Air Force ADR Information and Resources | 11 |
| E. ADR Program Funding: The Program’s Funding Profile is Healthy | 12 |
| F. ADR Program Training: Providing Different Levels of Training as our Target Audience or Circumstances Warrant | 13 |
| 1. Acquisition Workforce Negotiation Training and Partnership with DAU | 13 |
| 2. Joint Training | 14 |
| 3. Civilian Workplace Mediation Training | 14 |
| a. Basic Mediation Skills Training | 14 |
| b. Intermediate Mediation Training: The Mediation Mentor Program | 14 |
| c. Mediation Refresher Training | 15 |
| d. Advanced Mediation Skills Training | 15 |

| | |
|-------------------------------------------------------------------|----|
| 4. Negotiations and Alternative Dispute Resolution Course (NADRC) | 15 |
| 5. ADR Awareness Training | 15 |
| G. Air Force Recruiting (Co Op Program) | 15 |
| H. Data Collection and Evaluation | 16 |
| 1. MAJCOM Evaluation Reports | 16 |
| 2. Automated Data Collection Initiatives | 16 |
| I. Environmental Dispute Resolution System Design | 16 |
| J. Challenges: Ensuring Continued Senior Leadership Support | 17 |
| 1. Challenges in the Workplace ADR Program | 17 |
| 2. Challenges in the Acquisition ADR Program | 17 |
| K. Current Initiatives: Institutionalizing the ADR Program | 18 |
| 1. Negotiation Center of Excellence | 18 |
| 2. CORE | 18 |
| 3. Facilitation Training | 18 |
| 4. E-learning and Knowledge Management | 18 |
| 5. Nationwide Solicitation for ADR Services | 19 |
| 6. EEO AFI | 19 |
| 7. Civilian Workplace ADR AFI | 19 |
| L. Conclusion: The ADR Program Had a Great Year | 19 |

| List of Tables | PAGE |
|----------------------------------------------------------------------------------------------------|-------------|
| <u>Table 1:</u> ADR Offer, Acceptance in Principle & Rejection | 3 |
| <u>Table 2:</u> Case Resolution Time Comparison FYs 2000-2003 Docket to Resolution (Months) | 3 |
| <u>Table 3:</u> ADR Agreement in Principle to Conclusion | 4 |
| <u>Table 4:</u> Workplace ADR Results for FY03 | 8 |
| <u>Table 5:</u> ADR Offer and Acceptance Rates in EEO Cases (%) | 10 |
| <u>Table 6:</u> Current Funding Profile for the Air Force ADR Program | 12 |
| <u>Table 7:</u> FY03 ADR Program Total Spending | 13 |
| Attachments | TAB |
| <u>Attachment 1:</u> FY 2003 ADR Summary Report by MAJCOM | 1 |

Report to the Secretary: FY 2003 Air Force Alternative Dispute Resolution Program

Executive Summary

Air Force Policy Directive (AFPD) 51-12 outlines the role and responsibilities of SAF/GCD that include providing the policy, guidance, and funding necessary to implement the Air Force ADR Program. AFPD 51-12 also requires us to submit an ADR Program Report to the Secretary of the Air Force each year.

The Air Force ADR Program has made great strides and is now a mature program. The Dispute Resolution Division in the Office of the General Counsel implements the program and provides ADR policy and funding. Some of our most important successes this year include:

- The Air Force ADR Program won its sixth national award for excellence. In August 2003, the Air Force received the American Bar Association “Lawyer as Problem Solver” award for the outstanding institutional contribution to ADR.
- ADR helped the Air Force avoid \$137 million in liability in contract disputes much more quickly than if we had litigated these matters.
- The Air Force resolved 2,007 civilian workplace disputes using ADR.
- The successful use of ADR in Equal Employment Opportunity (EEO) complaints resolved the complaint in just 28 days on average, compared to 440 days on average using all resolution methods.
- The Air Force completed its development of a negotiation-training course for acquisition professionals in conjunction with the Defense Acquisition University.
- Between FY97 to FY03, informal EEO complaints declined by 70% and formal complaints declined by 50%. We believe that conflict-management training combined with ADR training and usage significantly contributed to this improvement.

Action by the Air Force Senior leadership at CORONA gives heightened significance to a key new SAF/GCD initiative: establishing a Negotiation Center of Excellence. Based on a briefing by Brig Gen Rich Hassan, Director of the Air Force Senior Leader Management Office, Air Force senior leadership designated “Influencing and Negotiating” as a required enduring competency for senior leaders. Negotiation and training are the central part of SAF/GCD’s core competency. Our experiences in the area show that negotiation techniques can be modeled, studied, and applied in virtually all Air Force activities. Creating a center to develop and refine training based on real-world experience is ideally suited to meet this Air Force requirement. We are working with Air Force leadership to make this happen.

A. National Award for Excellence

The Air Force ADR Program continued its tradition of recognition for excellence by earning its sixth national award. In August 2003, the Air Force received the American Bar Association (ABA) “Lawyer as Problem-Solver” award for outstanding institutional contribution to ADR. The institutional award goes to the outstanding legal program that has exhibited extraordinary skill in promoting the concept of the lawyer as problem-solver or resolving individual, institutional, community, state, national, or international problems. Recipients are acknowledged for their use or promotion of collaboration, negotiation, mediation, counseling, decision-making, and problem-solving skills to help parties resolve a problem in a creative and novel way.

In a nation-wide competition, the ABA selected the Air Force, based on the “breadth and depth” of the Air Force ADR program on contract and workplace disagreements. Jack Hanna, Director of the ABA’s Dispute Resolution Section, summed up the Air Force’s contribution to ADR by saying, “They’ve been doing this for a decade, and they’ve been doing it well.”

The Air Force ADR program is recognized as a leading program in the Federal Government. The continued use of existing dispute-management techniques and exciting new initiatives will keep the Air Force in the forefront of dispute management and resolution.

B. Acquisition ADR Program: We Continue to Resolve Large and Small Contract Disputes in Months Rather Than Years

1. Directorate of Contract Dispute Resolution

The Directorate of Contract Dispute Resolution within the Air Force Materiel Command Law Office (AFMCLO/JAB) handles Air Force contract disputes in ADR proceedings and litigation at the Armed Services Board of Contract Appeals (ASBCA). JAB has expanded its ADR workload to include “early involvements”—ADRs initiated before formal appeal to the ASBCA. Although attorneys throughout JAB use ADR, JAB created a separate ADR Division with ten attorneys whose practice emphasizes ADR. This special ADR Division provides an important ability to focus on ADR and can provide extremely efficient resolution of disputes.

2. FY 2003 Air Force Contract ADR

Continuing a government-wide trend, FY03 saw a decline in contractor claims against the Air Force. From the end of CY00 to the end of FY03, active cases that were not in awaiting-decision status declined by 70%. Because contractors filed fewer claims, ADR resolutions of disputes also declined to about half the number of ADRs (23) that occurred in FY02 (45). Air Force commitment to ADR in contract cases remained high, however (Table One). Of the cases eligible for ADR, the Air Force offers ADR at a high rate – more than 80% of the cases. Contractors agree in principle to use ADR at the highest rate ever, and they seldom reject ADR

outright. Although some cases with agreements in principle to use ADR are resolved before ADR is used, these statistics reflect that ADR is the Air Force default position.

ADR Offer, Acceptance in Principle & Rejection¹

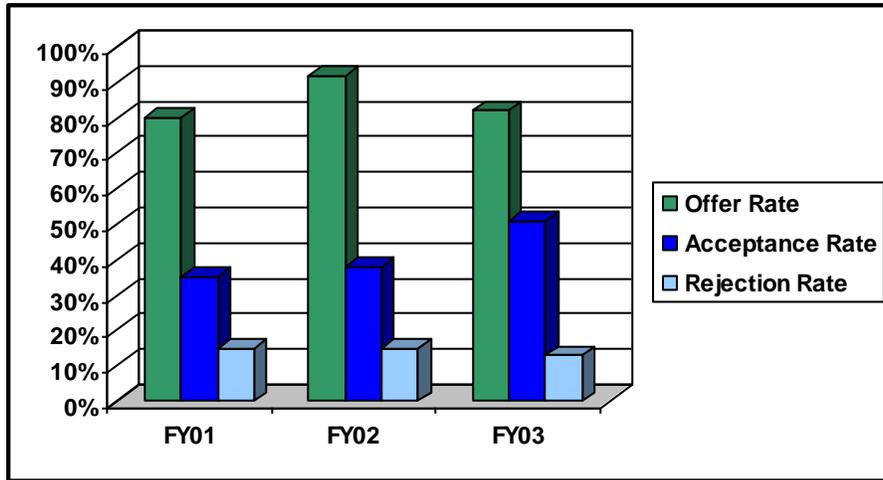


Table One

3. ADR Reduces Resolution Time

ADR takes far less time to resolve disputes than formal trial. The data through FY03 shows that ADR resolves disputes in less than half the time, on average (Table Two).

Case Resolution Time Comparison FYs 2000-2003 Dock to Resolution (Months)

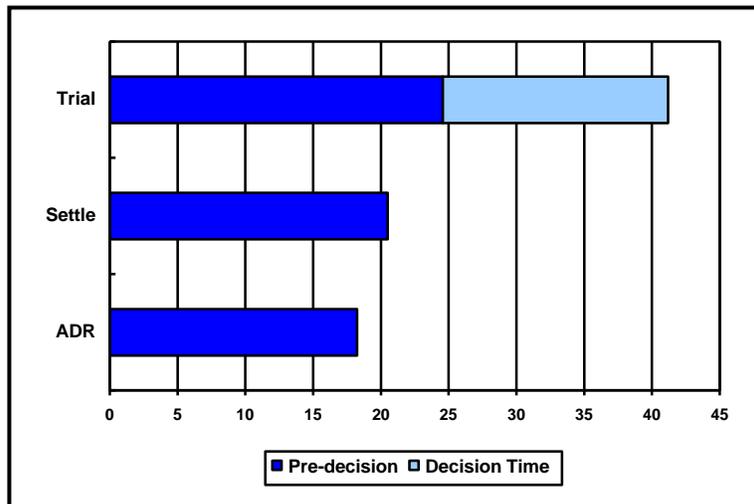


Table Two

¹ Statistics reflect annual average of quarterly snapshots of active cases.

Once parties formally agree to use ADR, the time to resolution is, on average, less than eight months (Table Three). By resolving the controversy early, ADR can avoid much of the cost of full litigation on the merits. Also, resolving disputes early means less government interest liability, which begins to accumulate the day that the Air Force receives a claim.

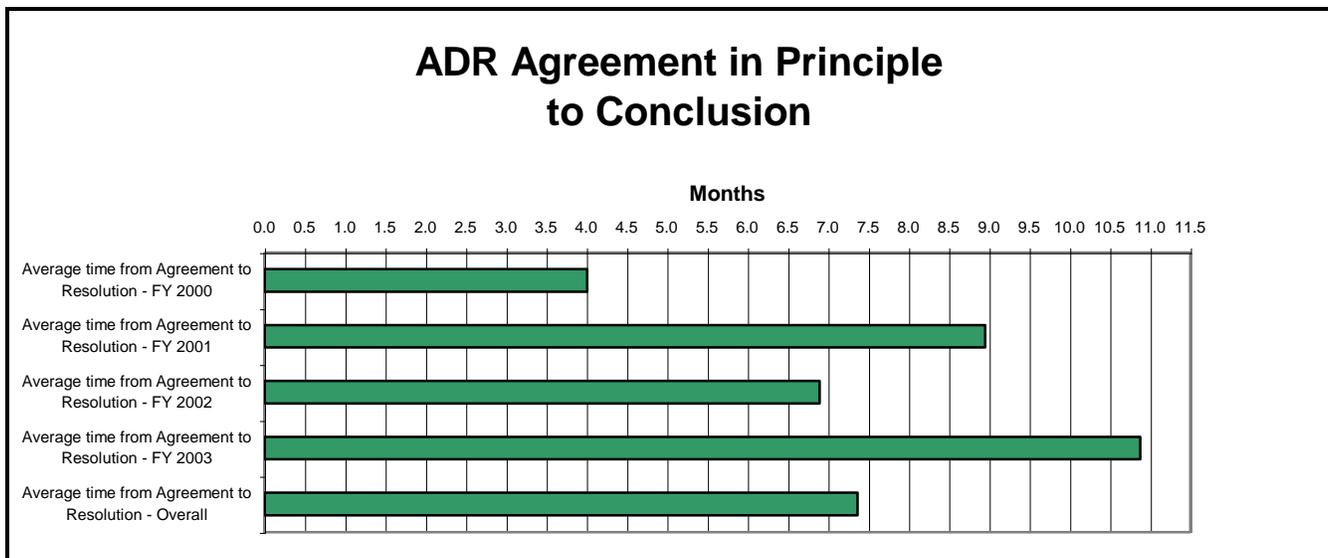


Table Three

4. Commando Solo: the Benefits of Early Involvement in a Large-Dollar Case

The Aeronautical Systems Center (ASC), and the AFMCLO/JAB successfully resolved a very high visibility dispute on ASC’s Commando Solo contract with Lockheed Martin. Lockheed’s request for equitable adjustment arose from a \$114 million fixed-price delivery order to modify five new C-130J aircraft to make three new EC-130J Commando Solo aircraft and two “Super J” aircraft. Among other uses, Commando Solo aircraft broadcast TV and radio messages to civilian or military targets as an integral part of psychological operations and civil affairs missions. Under the delivery order, Lockheed installed and reconfigured a large amount of broadcast equipment taken from older EC-130E aircraft.

The overarching theme of Lockheed’s request for an additional \$17.5 million payment was that the contract amounted to a prohibited fixed-price development contract. Specifically, Lockheed alleged that the Air Force changed the contract work in two ways that required much more effort than the original contract required. First, Lockheed alleged that the Air Force modified the specifications that detail the Commando Solo configuration. And second, the Air Force excessively inspected the work and components of the aircraft during the conversion process. Lockheed sought direct costs for the added work and the additional inspection. In addition, using a modified total-cost pricing formula, it sought costs for delay and disruption based on the cumulative impact of both changes.

SAF/GCD’s new “early warning” system identified this controversy, and AFMCLO/JAB assisted the contracting officer with an ADR process that used an independent technical expert.

The technical expert – funded by GCD – evaluated claim issues and concluded that the Air Force had added work and delayed the contract but chastised Lockheed for its “total cost” approach to pricing. The technical expert offered more-direct pricing approaches that the parties adopted. After this evaluation, the matter settled for \$10.5 million during counsel-facilitated discussions called out in the ADR agreement. The client greatly appreciated the resolution, which was well within the litigation-risk adjusted range. In addition, the working relation between the Air Force and Lockheed on this ongoing program greatly improved. The case exemplifies the results that can be achieved through teamwork between counsel and the contracting community. The case also illustrates the potential to resolve disputes swiftly and economically by addressing the controversy early through ADR procedures.

5. Air Force Museum Project: Creative Partnering

Dispute management efforts can occur throughout a project, and the Air Force Museum project exemplifies the use of collaborative partnering to manage issues between the parties before they become disputes. In connection with the contract to construct a building for the Air Force Museum, the interested parties established a “partnership” to promote an efficient, safe, high-quality and financially well-managed project. As part of this effort, a monthly Project Management Team met to review project safety, design and construction progress, funding status, and other items. This collaborative process achieved many successes, including over 165,000 manhours without a single lost-time accident and resolution of numerous design issues. The partnering effort on this project illustrates creative use of collaborative techniques that are at the heart of dispute avoidance.

6. Regulatory Changes in Air Force Federal Acquisition Regulation Supplement

As part of the increased emphasis on resolving controversies at the earliest possible point, the Air Force recently amended the Air Force FAR Supplement sections on ADR in contract disputes and protests. The Air Force FAR Supplement implements the Air Force core policy on ADR: Use ADR to the maximum extent practicable to resolve controversies at the earliest point and lowest organizational level. Under the Air Force FAR Supplement, when unassisted negotiations reach an impasse, contracting officers shall attempt to use ADR before litigation begins. If a matter goes to litigation, ADR shall be offered unless a statutory or policy applies.

The Air Force FAR Supplement changes reduce the monetary threshold for notifying AFMCLO/JAB and SAF/GCD when negotiations on requests for equitable adjustment reach an impasse. If a request for equitable adjustment exceeds \$500,000, the contracting officer should refer it to AFMCLO/JAB and SAF/GCD for help developing a dispute-resolution strategy. In addition, before making a final decision on a claim or termination for default, the contracting officer shall refer the dispute and any proposed final decision to the cognizant legal office and AFMCLO/JAB for legal advice, determination of ADR suitability, and appropriate dispute-resolution strategies. If the claim or termination concerns a PEO program or exceeds \$500,000, the contracting officer shall also provide copies to SAF/GCD.

7. Early Warning System

In the last year, SAF/GCD has developed another tool – the dispute early warning system – as part of the increased focus on resolving disputes early. This system regularly gleans the latest available information from Air Force, DOD, and GAO reports and the defense press. Together, these sources help identify programs – like the Commando Solo program – facing challenges that might warrant legal review or involvement.

8. Outreach Program

The Air Force ADR Program conducts substantial outreach activities inside and outside the Air Force to heighten awareness of ADR, Air Force ADR resources, and Air Force policy on ADR. We have also identified contracting offices within the various commands and are combining efforts with AFMCLO/JAB to conduct briefings for these offices.

Our external outreach includes participating in conferences and meetings of interested groups, including the American Bar Association (ABA). The Air Force ADR Program office recently spoke on ADR-related settlements at an ABA seminar, and the office regularly attends the ABA Claims and Dispute Resolution Section Committee meeting. Moreover, the program office has been asked to participate in the revision of the ABA manual on contract ADR.

Our outreach efforts are also sometimes less formal. For example, the program office recently met with the Department of Veterans Affairs, and frequently exchanges information with other agencies, including the Department of Transportation, the Defense Logistics Agency, the Defense Contract Management Agency, and the Department of the Navy. The Air Force participates in the DOD ADR working group to discuss policy issues of mutual interest.

9. Training & Equipping our Attorneys as World-Class ADR Practitioners

The ADR Program Office funded training and technology upgrades to assist AFMCLO/JAB resolve disputes. Computer software for document management and ADR timelines greatly enhance discovery and ADR proceedings. Using this computer capability, the Air Force can sort thousands of documents electronically and effectively present the critical facts during ADR presentations.

10. Corporate-Level ADR Agreements

The Air Force continued its program of encouraging ADR in contract controversies through corporate-level agreements with its biggest contractors. The latest addition to our corporate-level agreements is Bechtel National, Inc. The ADR Program Office has also identified the other large contractors who do not yet have corporate-level agreements, and one of our goals for the next year is to obtain agreements with as many of these companies as possible.

SAF/GCD also plans a parallel effort with program-level agreements on the ACAT I & II contracts. In addition, although the Air Force FAR Supplement does not require the contracting officer to consider program-level agreements for contracts other than ACAT I & II, their use is

encouraged on smaller contracts as well. Accordingly, SAF/GCD plans to promote these advance agreements in all appropriate contracts.

11. Value of Disputes Resolved Through ADR

The Acquisition ADR Program is now an established and mature program. Again this year, ADR helped the Air Force avoid paying substantial amounts - \$137 million - in contractor claims. We achieved results similar to those we anticipated if the matter had been fully litigated, but did so in months rather than years.

C. Workplace ADR Program: The Air Force Continues to Benefit from the Large-Scale Use of ADR

1. Labor-Management Relations Program

a. ADR in Collective Bargaining Agreements

FY03 brought significant labor-management agreements at Eglin, Kirtland, Robins, and Brooks AFBs. The agreements formalize ADR processes into Negotiated Grievance Procedures, Unfair Labor Practice charges, and other labor-management issues. The Kirtland agreements were especially significant, capping an 11-year effort by management and the union to resolve workplace disputes and other problems using collaborative rather than adversarial processes. *More significantly, three of these four bases saw their ADR activity in workplace disputes, especially employee grievances, increase dramatically in FY03 from their FY02 levels.* The experiences of these bases, and others, testify to the importance of partnering with employee unions to make ADR a meaningful and useful option for resolving Air Force workplace disputes. Where possible, electronic versions of ADR provisions in collective bargaining agreements are posted to the Air Force ADR web site.

b. Dover Decision

In January 2003, the U.S. Court of Appeals for the District of Columbia Circuit issued a significant opinion upholding a union's right to attend mediation of a formal Equal Employment Opportunity (EEO) complaint brought by a bargaining unit member. *Department of the Air Force v. FLRA*, 316 F.3d 280 (D.C. Cir. 2003). The court held that mediation of a bargaining unit employee's formal EEO complaint is a "formal discussion" between management and the employee, at which the union has a right to attend under the Federal Service Labor-Management Relations Statute. In response to this decision, GCD assisted the Central Labor Law Office in the General Litigation Division of the Air Force Legal Services Agency in issuing new guidance for handling union "formal discussion" rights in ADR of EEO complaints brought by bargaining unit employees. That guidance was issued Air Force-wide on 8 October 2003. The issue of union attendance in EEO mediation will be a potential source of litigation until the Federal Service Labor-Management Relations Statute is modified or the issue is settled by the respective U.S. Circuit Courts of Appeal or the U.S. Supreme Court. A major concern of the ADR community is the effect of union attendance on important ADR interests such as party self-determination and confidentiality of ADR communications.

2. Workplace Disputes ADR

The Air Force ADR Program covers all types of workplace disputes. Specifically, the Air Force employs ADR to help resolve EEO complaints, Unfair Labor Practice disputes, Merit Systems Protection Board appeals, grievances brought under a Negotiated Grievance Procedure or Agency Grievance System, and, on occasion, other types of workplace disputes that the foregoing dispute-resolution systems may not address. Several Air Force base-level ADR Programs have achieved national recognition using ADR in workplace disputes. Below we summarize our achievements in workplace disputes in FY03 and the return-on-investment in using ADR in workplace disputes.

a. Air Force Workplace ADR Results for FY 2003

The Workplace Disputes ADR Program tracks ADR activity in EEO complaints, negotiated grievances, Unfair Labor Practice cases, Merit Systems Protection Board appeals, administrative grievances, and “other.” This year, SAF/GCD automated the collection of each base’s total workplace disputes and ADR workload. The new system – which also automatically calculates ADR use and resolution rates – dramatically simplifies data collection and analysis of ADR trends and use of ADR resources. Attachment 1 shows the number of workplace disputes, ADR attempts, ADR resolutions, and ADR attempt and resolution rates for each Major Command and significant Direct Reporting Unit in FY03. In FY03, ADR use in Air Force workplace disputes was particularly strong and effective. The results are summarized in Table Four below:

Workplace ADR Results for FY03

| | FY 2003 | FY 2002 | Change |
|-----------------|---------|---------|--------|
| Total Disputes | 6004 | 5976 | 0% |
| ADR Attempts | 2730 | 2620 | +4% |
| ADR Resolutions | 2007 | 1738 | +16% |
| Attempt Rate | 45% | 44% | +4% |
| Resolution Rate | 74% | 66% | +11% |

Table Four

The FY03 overall ADR resolution rate of 74% is one of the highest on record, and easily exceeds the 70% rate set as the ADR Program goal. Likewise, the number of ADR attempts and the ADR attempt rate improved over the previous year, exceeding the ADR Program’s 40% goal. Particularly significant is ADR use in non-EEO cases (grievances, Unfair Labor Practice cases, Merit Systems Protection Board appeals, and other disputes). In FY03, the Air Force attempted ADR in over half of all non-EEO workplace disputes, and resolved an astounding 80% of those cases. Although the ADR figures for EEO informal and formal complaints were somewhat more modest, ADR use in formal EEO complaints surged upward, with ADR attempted in 38.96% of the cases, almost identical to the 39.34% of informal complaints in which ADR was attempted. More significantly, ADR successfully resolved almost 55% of the formal complaints where it

was used, and 67% of the informal complaints. Although we can still improve, the Air Force ADR use rates in EEO matters markedly exceed the rates of the Federal Government as a whole, based on EEOC statistics (Table Five).

b. ADR Activity in Air Force EEO Complaints

According to the Air Force's annual report to the EEOC for FY03 (EEOC Form 462),² 77% of EEO ADR efforts occurred during the informal stage of EEO complaint processing. Moreover, in FY03, on average, it took 28 days to close an EEO complaint using ADR versus 440 days using all resolution methods. An Air Force Audit Agency study of EEO processing costs underscores the importance of this difference. That study found that the costs of processing an informal EEO complaint to conclusion average approximately \$1,800 per case, while processing a formal EEO complaint to conclusion averages over \$16,000 per case. More recent estimates from other agencies place the total cost of processing a formal EEO complaint through investigation and hearing as high as \$90,000.³ There are also significant intangible costs associated with EEO complaints: e.g., decreased productivity, diversion of resources from mission accomplishment, loss of teamwork and esprit de corps, and poor employee morale. Using ADR to resolve EEO disputes at the earliest possible time (i.e., at the informal stage) and at the lowest organizational level helps keep tangible and intangible costs low.

Moreover, there is some evidence that increased emphasis on ADR in EEO complaints helps reduce the number of complaints. Between FY97 and FY03, informal EEO complaints declined by 70% (on a normalized per-thousand basis) and formal complaints declined by 56%. We believe the Air Force conflict-management training combined with increased emphasis on ADR have materially contributed to that decline.

According to its annual report to the EEOC,⁴ the Air Force processed 1748 informal EEO matters in FY03, offered ADR in 1085 of them, and had ADR accepted by both parties in 509. These figures translate into an ADR offer rate of 62%, and an acceptance rate of 47%. In formal cases, the Air Force processed 1297 complaints, including 753 pending from the previous year and 540 new complaints. Of these, the Air Force offered ADR in 589 cases, for an offer rate of 45%. The parties accepted ADR in 147, for an acceptance rate of 25%. The Air Force ADR offer rates in both informal and formal cases are much higher than the average among all federal agencies.⁵ More importantly, the acceptance rates (i.e., cases that actually go to ADR) greatly exceed the federal agency average of 23% for informal complaints and 4% for formal complaints.⁶ Table Five on the next page graphs these differences.

² Air Force Annual Federal EEO Statistical Report of Discrimination Complaints for FY 2003 (EEOC Form 462), Parts X and XI.

³ Department of the Navy, Guidance/Advice Memorandum #56, *Relationship of Negotiated Grievance Procedure and Discrimination Complaint Procedure* (Rev. April 2003).

⁴ EEOC Form 462 for FY 2003. The figures in the Air Force "462" report to the EEOC do not necessarily correlate to the figures reported to SAF/GCD for EEO ADR activity because of variances in reporting methods and definitions. Since the Air Force "462" report to the EEOC is the official record of Air Force EEO activity, including ADR, its results should be considered authoritative.

⁵ EEOC Annual Report on the Federal Workforce, Fiscal Year 2002, available online at: http://www.eeoc.gov/federal/fsp2002/part4.html#Section_1.2.3

⁶ *Id.*

ADR Offer and Acceptance Rates in EEO Cases (%)

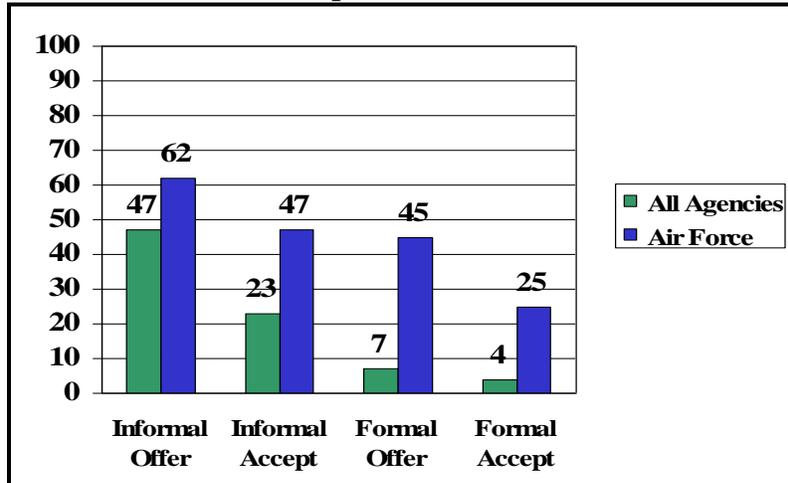


Table Five

Note: Higher bars depict better performance

c. EEOC Review of the Air Force ADR Program

As a result of the Air Force’s consistently high ADR offer and acceptance rates, the EEOC’s Office of Federal Operations tabbed the Air Force to participate in an ADR “best practices” study that is expected to be published sometime in 2004. Based on its reputation within the Office of Federal Operations, the Air Force was the first agency invited to participate in the study.

d. Return on Investment Using ADR in non-EEO Workplace Disputes

Our annual request for ADR data asks bases to quantify the cost savings using ADR to resolve non-EEO workplace disputes over the traditional, more adversarial processes. Almost all tangible costs of resolving workplace disputes stem from the time it takes to process them, by everyone involved: the employee, the union official, the supervisor, the civilian personnel specialist, the lawyer, and senior management officials. By devoting less time and personnel to processing disputes, ADR represents a much smaller investment of labor capital to achieve results that are comparable to, and in many cases better than, the more traditional processes.

If ADR prevents an employee grievance from going to arbitration, it saves management anywhere from \$1,500 to \$2,500 per case (under most collective bargaining agreements, which split arbitration costs equally between management and the union, it also saves the union an equal amount). Bolling AFB reported that in FY03, its use of ADR in negotiated grievances avoided having even a single grievance arbitration. Eglin AFB estimated that its use of ADR saved \$180,000 over the cost of traditional processes. Ellsworth AFB reported that over the past 12 years, ADR resolved the large majority of grievances at the first level of the process, eliminating the need for additional manhours in more formal processes. Hill AFB estimated it

saved \$1,072,282 and over 23,000 manhours using ADR to resolve 179 negotiated grievances. These estimates are based on a comparison of official time spent by all participants processing grievances through ADR versus the negotiated grievance procedure. To arrive at cost savings, the difference in manhours was multiplied by the Center's average hourly labor rate (\$44 per hour). Lackland AFB estimated it saved almost \$36,000 using ADR in FY03. Robins AFB reported that ADR successfully resolved 72% of its workplace disputes that had already been scheduled for arbitration, saving an average \$1,600 per case in arbitrator's fees; given Robins' grievance workload (almost 500 grievances and pre-grievances in FY 03), those per-case savings add up. These are just some of the examples of the tangible cost savings bases experience when they use ADR in place of the more traditional, time-consuming, multi-step grievance process.

e. Supporting Requests by Commanders for ADR Assistance

The ADR Program Office provided mediators and mediation mentor services throughout the Air Force. In addition, we provided training at many Air Force bases, including Robins, Dover, Edwards, Laughlin, Aviano, and Bolling. The training at each base is tailored to meet the specific needs of the base. Some of the different types of training included: consensus building, conflict resolution, ADR use in the EEO process, community mediation, interest-based negotiation, and interest-based bargaining for both management and union teams.

f. Contractor Support for "Out of Cycle" Training or Special Mediation Mentor Service Requirements

In FY03 the Air Force ADR Program Office contracted for 62 mediation and mediation mentoring sessions at locations as diverse as the Air Force Academy and Altus, F.E. Warren, Davis-Monthan, Los Angeles, Hill, Kirtland, Robins, MacDill, and Wright-Patterson AFBs. In addition, the Air Force contracted for professional mediation refresher and interest-based bargaining training for Air Force mediators and Air Force union and management personnel at Randolph, Eglin, Charleston, Maxwell (Air Force JAG School), Hill, and Robins AFBs. All mediation and training services were conducted by professional mediators and trainers, using ADR Program funds, and received high marks from participants.

In addition to contract mediator services, GCD encourages advanced Air Force mediators to provide mediation expertise at other bases with unique problems. During the fiscal year, we arranged and financed a team of mediators from Tinker AFB who are very experienced in resolving group-based conflicts to successfully resolve what had been intractable organization-level disputes at Cannon AFB and Kirtland AFB. From the letters of thanks we received from the respective wing commanders, the efforts of the Tinker mediation teams were very successful in resolving specific disputes and preventing future ones from developing, thus fulfilling one of the key benefits of ADR in the workplace environment.

D. Website: Ensuring that Air Force Personnel are "One Click Away" From Air Force ADR Information and Resources

The Air Force ADR Program website is the centerpiece of our efforts to ensure Air Force personnel, contractors, union officials, and the public have timely access to ADR information.

Located at <http://www.adr.af.mil>, this site provides information about Air Force efforts to use ADR techniques to resolve a wide range of disputes.

The Air Force website is an extremely popular source of information for users both inside and outside the government. During the last 12 months, our site processed 382,627 requests for pages of information and has, on average, 1796 users each month. An internet “Google” search for the term “alternative dispute resolution,” ranks the Air Force ADR Program website in the top 10 ADR sites.

E. ADR Program Funding: The Program’s Funding Profile is Healthy

Air Force Policy Directive 51-12 makes GCD responsible for (1) submitting, managing, and executing the Air Force ADR Program budget; and (2) supporting the development and implementation of the Air Force’s ADR program. As Table Six below demonstrates, GCD has secured sufficient funding in the Air Force POM to pay for ADR-related case support, training, travel, and neutral services.

Current Funding Profile for the Air Force ADR Program
(Figures In Millions of Dollars)

| Functional Area | FY 03 | FY 04 | FY 05 | FY 06 | FY 07 |
|---------------------------|-------|-------|-------|-------|-------|
| Acquisition | 1.49 | 1.37 | 1.74 | 1.79 | 1.83 |
| Workplace & Environmental | .400 | .514 | .470 | .478 | .486 |
| Total | 1.89 | 1.88 | 2.21 | 2.27 | 2.32 |

Table Six

Equally important, we spent the vast majority of or FY03 funding directly on ADR case support, as Table Seven shows on the next page.

FY 03 ADR Program Total Spending

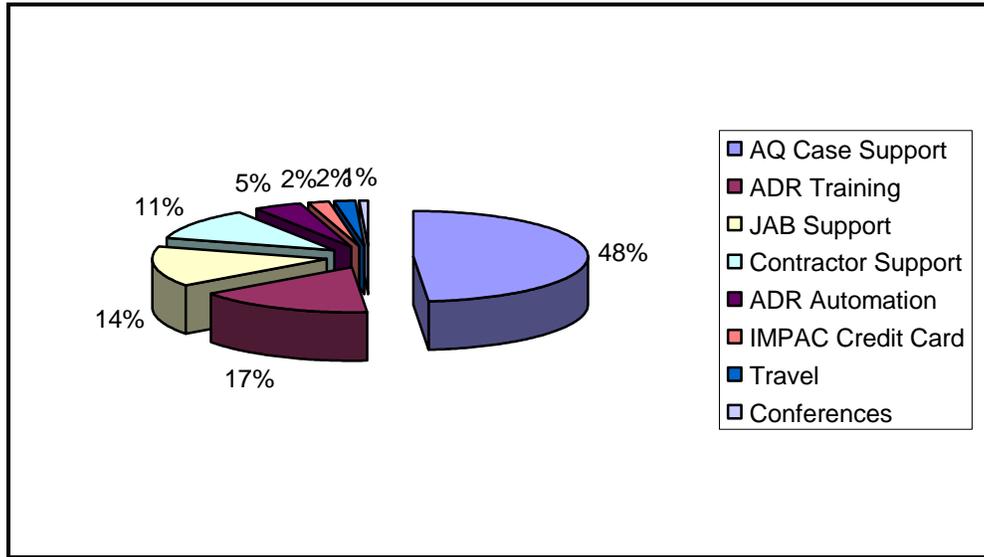


Table Seven

Fully 67%⁷ of our funding was spent directly on acquisition or workplace ADR case support. An additional 29%⁸ of our funding was spent on our other primary role, providing ADR training to Air Force employees. The remaining 4%⁹ of our budget was spent on ADR-related travel, training materials, or supplies necessary for the ADR Program.

F. ADR Program Training: Providing Different Levels of Training as our Target Audience or Circumstances Warrant

As a key part of our mission, the ADR Program Office offers a range of training designed to suit the potential Air Force needs.

1. Acquisition-Workforce Negotiation Training & Partnership with DAU

Acquisition workforce training in negotiations skills is the next big step in making dispute avoidance and resolution a corporate capability. Negotiation training has taken its place along with ADR as a foundation for a comprehensive system for effectively managing disputes. The Air Force ADR Program Office is on the forefront of negotiation training and has teamed with the Defense Acquisition University to develop a negotiation course for use throughout the DOD acquisition community. The course introduces interest-based negotiations and the Air Force Negotiation Model, which provide a framework to increase negotiators' effectiveness.

⁷ 48% of our funding was spent on Acquisition Support, 14% on JAB Support and 5% on ADR Automation

⁸ 17% of our funding was spent on ADR Training, 11% on Contractor Support and 1% on Conferences

⁹ Approximately \$250,000 was spent on emerging Air Force Corporate Requirements, while 2% of our funding was spent on travel and support materials.

2. Joint Training

The ADR Program Office completed its design of training to introduce conflict management and negotiation skills into specific, high-dollar programs. Under the joint-training paradigm, as soon as possible after award of a major program, government and contractor personnel train together in risk identification, management and negotiation skills, and ADR techniques. The joint training program is another tool in the Air Force's program for managing disputes and controversies from their earliest beginnings. The training received positive reviews, and while it is not practical for smaller contracts, large, long-term programs can benefit from the training through early identification of risk areas.

3. Civilian Workplace Mediation Training

a. Basic Mediation Skills Training

The Air Force Civilian Personnel School has developed a four-day basic-mediation skills training course, to train Air Force personnel to be collateral-duty mediators. In addition to the in-residence course at Maxwell AFB in Montgomery, AL, the Air Force Civilian Personnel School sends the course on the road periodically to conduct MAJCOM-specific mediation training. GCD provides one of the course's instructors (our Director of Workplace Disputes ADR Programs), fully underwrites at least one "road show" course per year, and finances the instructor-support for others. In December 2002, GCD sponsored a course for new AFMC mediators, including special EEO training, at Eglin AFB in conjunction with HQ AFMC/DP and the Eglin EEO Office. Significantly, over one-third of the students were union personnel. A crucial part of securing union buy-in of workplace ADR programs is to train and use union personnel as mediators. Experiences at bases that use union mediators, and the experiences of other federal agencies that use union personnel to mediate disputes, have been overwhelmingly positive in promoting a cooperative relationship between labor and management.

b. Intermediate Mediation Training: The Mediation Mentor Program

The Air Force Mediation Mentor training initiative matches experienced mediators with trained, but inexperienced, Air Force mediators. The inexperienced Air Force mediator either co-mediate a case with an experienced mediator or simply observes an actual case. At the end of the mediation, the mentor then reviews each stage of the mediation to help the inexperienced mediator understand the techniques and strategies employed. If the mediation resolves the matter, the Air Force receives the twin benefits of a successful resolution and apprenticeship training. In FY03, GCD used mediation mentoring in over 60% of all contracted mediations, implementing our plan to emphasize mediation mentoring to provide practical training opportunities for Air Force collateral-duty mediators.

c. Mediation Refresher Training

The Air Force periodically provides mediation refresher training to trained, but inexperienced, Air Force mediators to keep their mediator qualifications current. In FY03, GCD contracted to provide professional mediation refresher training at Randolph, Eglin, and Hill AFBs.

d. Advanced Mediation Skills Training

In June 2003, SAF/GCD underwrote and provided instructional support for a four-day advanced mediation course conducted by the Air Force Civilian Personnel School at Maxwell AFB. This course teaches advanced mediation skills using intense role-playing exercises, writing exercises, classroom discussion, and a substantial written test. A final class roster of 24 mediators was culled from over 100 nominations. Each student had a minimum of 40 mediations to his or her credit, and the vast majority of attendees had considerably more experience. The groups' talent and professional commitment to mediation is especially remarkable given the fact that most of them serve as mediators to the Air Force as part-time, collateral-duty mediators on top of their full-time assignments.

4. Negotiations and Alternative Dispute Resolution Course (NADRC)

Every year GCD, in conjunction with the Air Force Legal Services Agency and the Air Force JAG School, funds and conducts the Negotiations and Alternative Dispute Resolution Course at the JAG School. The five-day course trains Air Force judge advocates and civilian attorneys in interest-based negotiation and ADR techniques. This year's course trained 60 Air Force and other service's attorneys using extensive skills-building exercises, negotiation exercises, and mock mediations. Highlights of this year's course were presentations by Major General Fiscus, The Judge Advocate General, and Brigadier General Charles J. Dunlap, who reprised his well-received "ADR Goes to War."

5. ADR Awareness Training

The Air Force provides ADR awareness training to approximately 3,000 personnel in the field – commanders, supervisors and managers, union officials, and rank-and-file employees. In FY03, we trained supervisors at Randolph, Edwards, and Robins AFBs on how to use ADR and interest-based negotiation techniques to better manage workplace conflict and disputes.

G. Air Force Recruiting (Co Op Program)

For the last four years, the Air Force ADR Program office has relied extensively on masters degree students – principally MBA and International Affairs students – for special projects in the office. These highly talented and motivated individuals work on matters such as our contract early warning system, the Air Force negotiation project, SAF/GC budget issues, and workplace ADR, among many others. The Co Op program also serves more than the immediate ADR Program interests by providing a source of outstanding candidates for Air Force career civilian service.

H. Data Collection and Evaluation

1. MAJCOM Evaluation Reports

The Air Force ADR Program has been collecting workplace disputes ADR data from the field for several years. In FY03, for the first time, GCD was able to perform extensive analyses of the previous year's data to produce detailed reports for all MAJCOMs and significant Direct Reporting Units, providing them feedback on the health and direction of their ADR programs. We worked extensively with HQ AFMC to produce a detailed analysis of the Command's ADR activity and compliance with progress in implementing its ADR plan. This analysis was used to brief the AFMC-AFGE Partnership Council in January 2003 on the state of AFMC's ADR program. In addition, reports were generated for all other MAJCOMs and distributed to MAJCOM DPs in partnership with AF/DPP. The reports generated such a positive response that GCD will make these reports part of its recurring annual feedback to the field.

2. Automated Data Collection Initiatives

In FY03, GCD undertook two major efforts to automate ADR data collection. First, we converted our annual reporting requirement to a paperless, electronic one, using a database program that GCD developed entirely in-house. The program has been so successful that we intend to make it entirely web-based for next year's data call, enhancing its user-friendliness and reducing the time that bases spend to meet their reporting requirements. GCD is also helping to fund an AFMC initiative to develop a real-time, non-EEO ADR case management and reporting system, which is scheduled to go online before the end of FY04. If successful in AFMC (which accounts for 60% of all workplace disputes and over two-thirds of all ADR activity), we will make it available to other MAJCOMs in the future.

I. Environmental Dispute Resolution System Design

The Air Force Real Property Agency worked with dispute-resolution consultants and state and federal environmental regulators in California to design a system to resolve environmental disputes over the clean-up of closing bases. The system resolves disputes at the earliest possible stages, and at the lowest appropriate levels, while still providing for the more intractable disputes to be elevated through a formal process to be resolved by higher-level officials.

The system consists of a series of levels — from the Remedial Project Managers up to the EPA Administrator. Each level works toward resolution by consensus, and elevates only those issues on which it cannot agree. The dispute-resolution system has two broad components: (1) it provides greater structure and guidance for an informal dispute-resolution process, maximizing the chances of ending disputes at lower levels; (2) it fleshes out the formal dispute-resolution procedure in the Federal Facility Agreements and makes it more useable and useful, so disputes can be elevated and satisfactory solutions found in cases where lower levels cannot resolve them without overstepping their authority.

The Air Force conducted training workshops in Washington and in California to explain the new system and help build basic skills in collaborative negotiation for effective use of the system. The system was then used to resolve disputes over cleanup levels at McClellan and Mather AFBs, as well as other land-use control issues.

J. Challenges: Ensuring Continued Senior Leadership Support

1. Challenges in the Workplace ADR Program

While we have achieved significant results for the Air Force, we have also learned that the program's continued success requires constant oversight, leadership, and support. In a time of diminishing manpower, some Commanders want to shed their responsibility to provide information we need to compile this report. In other cases, supervisors hesitate to agree to spend the time to mediate workplace disputes. In still other cases, we find that key figures leave their positions, causing us to essentially start our ADR efforts at that location all over again. Of course, many other Air Force programs face similar problems. With the anticipated publication of a new Air Force Instruction on ADR in workplace disputes, and the current data highlighting ADR's success in workplace disputes and its positive effect on the workplace environment, we are confident that these challenges can be overcome.

2. Challenges in the Acquisition ADR Program

The major challenge for contract-dispute resolution remains shifting from reactive use of ADR to early involvement in contract disputes. Although reactive use of ADR – which does not attempt to resolve the dispute through ADR until a claim has been denied and appealed to the ASBCA – is substantially better than formal litigation, it will not achieve the full potential of ADR to save time and money.

The reactive approach limits the benefits of ADR by failing to cut-off CDA-interest liability and time-consuming litigation procedures. The key to the successful ADR process is implementing the ADR agreement. Once that happens, resolution time is very low. Future efforts must focus on identifying the disputes early, quickly involving the ADR specialists at AFMCLO/JAB, and implementing the ADR agreement early, before the dispute gets bogged down in the formal litigation process. Moreover, addressing disputes even earlier – at the initial negotiation stages through skilled negotiation techniques – will allow the Air Force to better manage disputes at all stages.

Through these efforts, with continued support from the SAF leadership, ADR has the potential to fundamentally change the way the Air Force manages contract controversies and disputes.

K. Current Initiatives: Institutionalizing the ADR Program

1. Negotiation Center of Excellence

The latest – and potentially the most far-reaching – initiative combines the core elements of the acquisition-negotiation training class with expanded potential uses throughout a range of disciplines. Establishing a Negotiation Center of Excellence starts with the recognition that negotiation techniques can be modeled, studied, and applied in virtually all Air Force activities. While negotiation training is not new, creating a center to develop and refine training based on real-world experience would be on the forefront of the negotiations and dispute management field. In addition to applying negotiations training tailored to different circumstances, the training can also be incremental – more advanced needs warrant more advanced training. The Center of Excellence is an exciting new initiative with the potential to keep the Air Force as a leader in the field of dispute management.

2. CORE

The Air Force pilot proposal for streamlining the processing of EEO complaints is part of a larger DOD initiative under Section 1111 of the FY 2001 National Defense Authorization Act. When approved by SECDEF, CORE (an acronym for Compressed, Orderly, Rapid and Equitable) will enable EEO complainants to opt for a much faster complaint-resolution process that combines mediation and fact-finding over the proposal's initial three-year test run. The current Air Force proposal is a product of an extensive re-writing effort led by SAF/GCD and the Central Labor Law Office in the spring and summer of 2003, and is pending SECDEF approval.

3. Facilitation Training

This initiative involves Air Force ADR and EEO experts, working with our contract trainers, to develop a training protocol for all EEO counselors. The training teaches EEO counselors to use interest-based problem solving techniques to resolve informal EEO complaints that do not use a formal ADR process. Many informal complaints could be resolved at that level if EEO counselors are trained in recognizing, generating, and proposing options for resolution to the parties to the dispute. This training will provide those skills and knowledge.

4. E-learning and Knowledge Management

GCD uploaded to our website the EEOC training CD-ROM for processing federal EEO complaints. The Air Force ADR website is one of the only federal-sector websites to have the program – even the EEOC does not have it on its site. We are also exploring an initiative with the Air Force Civilian Personnel School to develop web-based ADR and interest-based negotiation training and make it available on both our website and the Air University Center for Professional Development website.

5. Nationwide solicitation for ADR services

A major part of the Air Force Program office work is providing skilled mediators for workplace disputes. In addition to training Air Force personnel as mediators, the Air Force also procures mediation services and manages the contract. We are currently conducting a procurement for mediation and other services for use in the Air Force ADR program.

6. EEO AFI

SAF/GCD has partnered with the Central Labor Law Office to offer AF/DPP personnel support and expertise to help facilitate the coordination and approval of the newest revision to AFI 36-1201, Equal Employment Opportunity Complaints.

7. Civilian Workplace ADR AFI

The proposed new AFI 51-1201, ADR in Workplace Disputes, is completing HAF 2-letter coordination and is out for union national consultation. We hope to have the AFI published and out to the field in early 2004. Many ADR practitioners in the field are eagerly awaiting its arrival.

L. Conclusion: The ADR Program Had a Good Year

FY03 was a good year. The rate of use of ADR in acquisition disputes remained high, and we laid the foundation to institutionalize workplace ADR and to implement a number of new and significant initiatives.

Attachment 1

Total MAJCOM Disputes (By Type of Disputes)

Non-EEO Disputes

| Type of Dispute | MAJCOM | Number of Disputes | Total Attempts | Total Resolutions | Attempt Rate | Resolution Rate |
|-----------------|---------------|--------------------|----------------|-------------------|---------------|-----------------|
| AGS | | | | | | |
| | 11th Wing | 2 | 0 | 0 | 0.00% | 0.00% |
| | ACC | 2 | 2 | 2 | 100.00% | 100.00% |
| | AETC | 10 | 2 | 2 | 20.00% | 100.00% |
| | AFMC | 92 | 33 | 22 | 35.87% | 66.67% |
| | AFRC | 8 | 3 | 2 | 37.50% | 66.67% |
| | AFSPC | 29 | 5 | 5 | 17.24% | 100.00% |
| | AIA | 0 | 0 | 0 | 0.00% | 0.00% |
| | AMC | 26 | 4 | 3 | 15.38% | 75.00% |
| | PACAF | 4 | 2 | 1 | 50.00% | 50.00% |
| | USAFA | 0 | 0 | 0 | 0.00% | 0.00% |
| | USAFE | 11 | 9 | 3 | 81.82% | 33.33% |
| | Totals | 184 | 60 | 40 | 32.61% | 66.67% |
| MSPB | | | | | | |
| | 11th Wing | 6 | 2 | 2 | 33.33% | 100.00% |
| | ACC | 10 | 10 | 5 | 100.00% | 50.00% |
| | AETC | 17 | 7 | 3 | 41.18% | 42.86% |
| | AFMC | 81 | 52 | 28 | 64.20% | 53.85% |
| | AFRC | 6 | 0 | 0 | 0.00% | 0.00% |
| | AFSPC | 5 | 5 | 2 | 100.00% | 40.00% |
| | AIA | 0 | 0 | 0 | 0.00% | 0.00% |
| | AMC | 18 | 12 | 6 | 66.67% | 50.00% |
| | PACAF | 3 | 1 | 1 | 33.33% | 100.00% |
| | USAFA | 1 | 1 | 1 | 100.00% | 100.00% |
| | USAFE | 1 | 0 | 0 | 0.00% | 0.00% |
| | Totals | 148 | 90 | 48 | 60.81% | 53.33% |
| NGP | | | | | | |
| | 11th Wing | 6 | 1 | 1 | 16.67% | 100.00% |
| | ACC | 68 | 50 | 46 | 73.53% | 92.00% |
| | AETC | 53 | 68 | 59 | 128.30% | 86.76% |
| | AFMC | 1192 | 627 | 483 | 52.60% | 77.03% |

| | | | | | |
|---------------|-------------|------------|------------|---------------|---------------|
| AFRC | 33 | 5 | 3 | 15.15% | 60.00% |
| AFSPC | 29 | 1 | 1 | 3.45% | 100.00% |
| AIA | 1 | 5 | 1 | 500.00% | 20.00% |
| AMC | 379 | 53 | 34 | 13.98% | 64.15% |
| PACAF | 69 | 59 | 57 | 85.51% | 96.61% |
| USAFA | 34 | 9 | 6 | 26.47% | 66.67% |
| USAFE | 1 | 5 | 1 | 500.00% | 20.00% |
| Totals | 1865 | 883 | 692 | 47.35% | 78.37% |

Other

| | | | | | |
|---------------|------------|------------|------------|---------------|---------------|
| 11 th Wing | 6 | 6 | 6 | 100.00% | 100.00% |
| ACC | 25 | 25 | 24 | 100.00% | 96.00% |
| AETC | 161 | 43 | 36 | 26.71% | 83.72% |
| AFMC | 274 | 237 | 190 | 86.50% | 80.17% |
| AFRC | 4 | 5 | 4 | 125.00% | 80.00% |
| AFSPC | 2 | 1 | 0 | 50.00% | 0.00% |
| AIA | 1 | 1 | 0 | 100.00% | 0.00% |
| AMC | 0 | 0 | 0 | 0.00% | 0.00% |
| PACAF | 2 | 2 | 1 | 100.00% | 50.00% |
| USAFA | 32 | 31 | 31 | 96.88% | 100.00% |
| USAFE | 13 | 13 | 12 | 100.00% | 92.31% |
| Totals | 520 | 364 | 304 | 70.00% | 83.52% |

ULP

| | | | | | |
|--------------------|-------------|-------------|-------------|---------------|---------------|
| 11 th Wing | 1 | 0 | 0 | 0.00% | 0.00% |
| ACC | 11 | 4 | 3 | 36.36% | 75.00% |
| AETC | 67 | 28 | 27 | 41.79% | 96.43% |
| AFMC | 407 | 181 | 165 | 44.47% | 91.16% |
| AFRC | 7 | 1 | 0 | 14.29% | 0.00% |
| AFSPC | 0 | 0 | 0 | 0.00% | 0.00% |
| AIA | 0 | 0 | 0 | 0.00% | 0.00% |
| AMC | 28 | 22 | 16 | 78.57% | 72.73% |
| PACAF | 21 | 19 | 19 | 90.48% | 100.00% |
| USAFA | 16 | 7 | 6 | 43.75% | 85.71% |
| USAFE | 0 | 0 | 0 | 0.00% | 0.00% |
| Totals | 558 | 262 | 236 | 46.95% | 90.08% |
| Grand Total | 3275 | 1659 | 1320 | 50.66% | 79.57% |

Informal EEO

| MAJCOM | Informal Complaints | Informal Attempts | Informal Resolutions | Informal Attempt Rate | Informal Resolution Rate |
|--------------------|---------------------|-------------------|----------------------|-----------------------|--------------------------|
| 11th Wing | 28 | 3 | 3 | 10.71% | 100.00% |
| ACC | 155 | 52 | 40 | 33.55% | 76.92% |
| AETC | 260 | 69 | 38 | 26.54% | 55.07% |
| AFMC | 1170 | 499 | 329 | 42.65% | 65.93% |
| AFRC | 69 | 17 | 5 | 24.64% | 29.41% |
| AFSPC | 111 | 28 | 13 | 25.23% | 46.43% |
| AIA | 20 | 7 | 7 | 35.00% | 100.00% |
| AMC | 109 | 55 | 39 | 50.46% | 70.91% |
| PACAF | 22 | 18 | 16 | 81.82% | 88.89% |
| USAFA | 29 | 6 | 3 | 20.69% | 50.00% |
| USAFE | 86 | 56 | 51 | 65.12% | 91.07% |
| Grand Total | 2059 | 810 | 544 | 39.34% | 67.16% |

Formal EEO

| MAJCOM | Formal Complaints | Formal Attempts | Formal Resolutions | Formal Attempt Rate | Formal Resolution Rate |
|--------------------|-------------------|-----------------|--------------------|---------------------|------------------------|
| 11th Wing | 25 | 5 | 5 | 20.00% | 100.00% |
| ACC | 38 | 13 | 11 | 34.21% | 84.62% |
| AETC | 130 | 14 | 10 | 10.77% | 71.43% |
| AFMC | 315 | 168 | 82 | 53.33% | 48.81% |
| AFRC | 36 | 14 | 8 | 38.89% | 57.14% |
| AFSPC | 48 | 10 | 7 | 20.83% | 70.00% |
| AIA | 20 | 7 | 7 | 35.00% | 100.00% |
| AMC | 31 | 17 | 6 | 54.84% | 35.29% |
| PACAF | 12 | 5 | 3 | 41.67% | 60.00% |
| USAFA | 5 | 0 | 0 | 0.00% | 0.00% |
| USAFE | 10 | 8 | 4 | 80.00% | 50.00% |
| Grand Total | 670 | 261 | 143 | 38.96% | 54.79% |

Total EEO

| MAJCOM | EEO Complaints | EEO Attempts | EEO Resolutions | EEO Attempt Rate | EEO Resolution Rate |
|--------------------|----------------|--------------|-----------------|------------------|---------------------|
| 11th Wing | 53 | 8 | 8 | 15.09% | 100.00% |
| ACC | 193 | 65 | 51 | 33.68% | 78.46% |
| AETC | 390 | 83 | 48 | 21.28% | 57.83% |
| AFMC | 1485 | 667 | 411 | 44.92% | 61.62% |
| AFRC | 105 | 31 | 13 | 29.52% | 41.94% |
| AFSPC | 159 | 38 | 20 | 23.90% | 52.63% |
| AIA | 40 | 14 | 14 | 35.00% | 100.00% |
| AMC | 140 | 72 | 45 | 51.43% | 62.50% |
| PACAF | 34 | 23 | 19 | 67.65% | 82.61% |
| USAFA | 34 | 6 | 3 | 17.65% | 50.00% |
| USAFE | 96 | 64 | 55 | 66.67% | 85.94% |
| Grand Total | 2729 | 1071 | 687 | 39.25% | 64.15% |

Grand Totals

| | | | |
|-------------------|------|-----------------|--------|
| Total Disputes | 6004 | | |
| Total Attempts | 2730 | Attempt Rate | 45.47% |
| Total Resolutions | 2007 | Resolution Rate | 73.52% |