

Use Arbitration to Save Time and Money



By Donald C. Collins

There's a dispute between your association and the league in which you're contracted to work. It's unresolvable. Your group is also being sued by one of its own members. That,

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too, is unresolvable. Is it time to hire a lawyer and go to court? Not necessarily. Have you considered arbitration?

Officials associations lack the time and money to engage in litigation. That creates a problem as we clearly live in a litigious society, and associations have not historically placed great emphasis on contractual arbitration. However, recent changes in the law and growing trends in the business world make arbitration worthy of a serious look.

Arbitration's use in the officiating community. Arbitration does not appear to be widely used by officials associations. Special Markets Insurance provides insurance for NASO officials and for more than 250 officials associations. A Special Markets representative noted that officials

associations seldom have arbitration clauses in their contracts and bylaws.

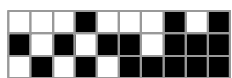
However, officials who work in industries that have had positive experiences with arbitration and insurers, who like the cost savings, will likely lead to a growing use of arbitration clauses by officials associations. Also, officials associations that get sued will likely add arbitration clauses to their bylaws. They have a strong incentive to do so. It's interesting to note that every local association Special Markets has dealt with that has been sued now has an arbitration clause in its bylaws.

Steve Rotsart, vice president of the San Diego Water Polo Officials Association, helped add an arbitration clause to his association's bylaws. Steve says, "Arbitration is cost effective. We

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A Code to Live (and Officiate) By

By Daniel J. O'Keeffe



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It certainly isn't unusual to see codes of conduct and/or ethics. Almost without exception, every multi-layered organization has invested effort and time into that area, committing to paper what they feel is important to them. Think about it for a moment: if the National Library Association has a "Code of Professional Conduct" — and it does — then your sports officials association should as well.

Your membership in an organization presents an image to everyone it comes in contact with. You may not always be

aware of it, but virtually everything the association and its members do in public reflects on the group. If contracts go out to authorities, whether schools or recreation departments, and words are misspelled or the grammar is suspect, it sends a message. When officials arrive at a sporting event in jeans and a T shirt, they send a message. When your crews stop for dinner, talking officiating strategies, interspersed with off-color jokes, you send a message. When hair is neatly trimmed and shoes are shined, it

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don't retain legal counsel and we noted that some other associations use arbitration." Rotsart says the biggest benefit to using arbitration is that it "doesn't create enemies." According to Rotsart, "Arbitration is a much lower key atmosphere instead of a war in the courtroom. You get your hearing. The arbitrators do apply state law but you don't get the infighting and hard feelings that you see in court." Rotsart concluded, "We can't afford to have hard feelings in our community because the water polo community is too small for that."

How it works. Arbitration is a form of alternative dispute resolution arising from a contract or from an association's constitution or bylaws. Thus, officials associations can require arbitration through contracts with their client teams, schools and leagues. They can also require their members to arbitrate disputes against the association through their constitution and bylaws.

Arbitration proceedings are conducted by a single arbitrator or a three-arbitrator panel instead of by a judge or a judicial panel. Arbitration proceedings provide for discovery and witnesses. In short, parties get their day in court. They just get it before an arbitrator.

The parties' contract governs the details of arbitration. The agreement should address the means of selecting the arbitrator and whether to use one arbitrator or a three-arbitrator panel. The agreement should also cover discovery and evidentiary rules since a court no longer governs those ground rules. Finally, officials associations should specify that the arbitrator's decision is binding, meaning the decision can't be appealed in court. Binding arbitration saves everyone time and money.

Arbitration is obviously supposed to make life simpler. Many people and businesses don't want to get bogged down in writing intricate contracts on

the myriad details that could arise in an arbitration proceeding. Thus, a substantial number of people and businesses enter into agreements providing that the entire arbitration proceeding will be administered by one of the major arbitration tribunals and governed by the tribunal's hearing rules. The American Arbitration Association (AAA) and the Judicial Arbitration and Mediation Services (JAMS) are the two largest and best-known tribunals. AAA and JAMS have easy to read pamphlets containing their standard arbitration clauses.

Advantages of arbitration.

Arbitration is quicker and cheaper than going to court. It is also private; the details only become public if the parties want them to. Indeed, Frank Zotto of AAA notes that cases that take more than a year in court can be resolved in six to eight months in arbitration. Zotto notes that a simple case could be resolved within a week under the AAA's expedited proceeding rules if the parties are acting in good faith.

One other major advantage to arbitration is the ability to get an arbitrator who knows and understands your field. Parties who want an industry expert as an arbitrator should specify that in their arbitration clauses. Of course, officials associations should check to make sure their arbitration tribunal actually has industry experts before requiring their use as arbitrators. Right now there are a lot of arbitrators with sports backgrounds (they usually conduct baseball and Olympic arbitration). However, there aren't a lot of arbitrators who are experts on managing sports officials associations. If a sufficient number of officials associations begin drafting arbitration clauses, the AAA will likely train industry leaders to serve as arbitrators (JAMS uses judges as arbitrators so associations using JAMS cannot get industry experts — although they will get a judge).

Finally, arbitration is a legal way of avoiding the gridlock in our court system. Courts are currently backlogged, adding time (and money) to litigation. Also, the formal and costly pretrial procedures often create undue hostility between parties. Yet it should be noted that officials associations simply can't force members to waive their right to sue. Right to sue waivers are valid only in extremely rare circumstances (if they were valid, larger entities would always use them when dealing with smaller entities). Binding arbitration is a legal way of avoiding the problems of going to court. Indeed, courts and legislatures encourage and support arbitration because it gives parties a day in court while reducing the delays and expense caused by our overcrowded courts.

It should be noted that the advantages of arbitration can quickly become disadvantages with a poorly drawn arbitration agreement or clause. For example, if parties fail to provide a method of appointing an arbitrator, they may have to petition a court to appoint one for them; thereby adding unnecessary steps to what should be a streamlined process.

It should also be noted that parties can opt for non-binding arbitration, where dissatisfied parties can go to court and challenge the arbitrator's ruling. Non-binding arbitration is probably not a good idea for officials associations because it may increase — rather than decrease — an officials association's expenses.

Officials associations can save time and money by inserting arbitration clauses into their contracts and bylaws. Of equal importance, arbitration proceedings don't seem to create the hard feelings that lawsuits do. In these days of severe shortages of officials, no association can afford unhappy members.

(Donald C. Collins is a longtime official and lawyer from San Francisco.) ■