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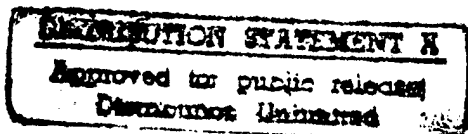


A CROSS-SECTIONAL EXAMINATION OF  
ALTERNATIVE DISPUTE RESOLUTION:  
A SEARCH FOR THE ANTECEDENTS OF SUCCESS

THESIS

Patrick F. Hopper, B.S.  
First Lieutenant, USAF

AFIT/GCM/LAS/96S-2



DEPARTMENT OF THE AIR FORCE  
AIR UNIVERSITY

**AIR FORCE INSTITUTE OF TECHNOLOGY**

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AFIT/GCM/LAS/96S-2

A CROSS-SECTIONAL EXAMINATION OF  
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A SEARCH FOR THE ANTECEDENTS OF SUCCESS

THESIS

Presented to the Faculty of the Graduate School  
of Logistics and Acquisition Management  
of the Air Force Institute of Technology  
Air University  
Air Education and Training Command  
In Partial Fulfillment of the  
Requirements for the Degree of  
Master of Science in Contract Management

Patrick F. Hopper, B.S.

First Lieutenant, USAF

September 1996

Approved for public release; distribution unlimited

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Pat Hopper

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Abstract

This study examined Alternative Dispute Resolution (ADR) in an attempt to identify antecedents common to successful uses of ADR. The goal was to isolate factors which have the greatest impact on the successful implementation of ADR. A cross-sectional examination was designed that included both private industry and government applications of ADR as a resolution method. Documents, audiovisual materials, and personal interviews were utilized to collect the data. An informal interview guide was used to interview individuals with conflict resolution authority within their organizations. Analysis of the data resulted in the identification of five antecedents that increase the probability of a successful ADR implementation. It is believed that the antecedent model resulting from this research will prove useful in the selection of the most appropriate conflict resolution forum.

A CROSS-SECTIONAL EXAMINATION OF  
ALTERNATIVE DISPUTE RESOLUTION:  
A SEARCH FOR THE ANTECEDENTS OF SUCCESS

**I. Introduction**

**General Issue**

A December 1995 *Wall Street Journal* article details what is believed to be the costliest federal contracting dispute ever (Pasztor, 1995). During President Reagan's defense buildup, a \$52 billion contract was awarded to McDonnell Douglas Corp. and General Dynamics Corp. for the development of a carrier-based, radar evading airplane, the A-12 Avenger. The A-12 program was canceled in 1991 for being grossly over budget and behind schedule. The Pentagon claimed that the contractors were at fault for the cancellation because they concealed or withheld information about the troubles afflicting the multibillion dollar project.

In December 1995, four years after the historic decision to cancel the A-12 program, U.S. Claims Court Judge Robert Hodges ruled that the government "cannot prove" that

the contractors were at fault. The A-12 cancellation was the largest weapons program ever canceled by the Pentagon. With the cancellation, came the resolution of claims. The contractor contends that the government owes them more than \$2 billion in settlement costs. The specific determination of settlement will be based on figures which document exactly how much the contractor spent on development, various program termination costs, legal fees, and interest expenses. Judge Hodges ruled for the contractors in April of 1996, making it the largest settlement ever.

As this example illustrates, the traditional means for resolving contract disputes have become a major investment in both time and money. The courts at all levels are overwhelmed by the flood of civil suits (Berman, 1994). The White House noted a disturbing increase in civil litigation throughout America over the last 30 years (The White House, 1991:1).

The Armed Services Board of Contract Appeals (ASBCA) was originally established as a mechanism for resolving claims expeditiously, informally and inexpensively outside of the federal court system (Babin and Cox, 1992:20).

However, in the Air Force, 80% of the cases settled by board and court proceedings require between one and two years to be resolved at the trial level, and an additional two to four years if appealed (SAF/GCQ, 1993:7). As a result of lengthy process times, the costs associated with formal dispute resolution have escalated. These costs include: attorney fees, travel expenses, and administrative costs of government and contractor acquisition teams focusing on dispute resolution for extended periods of time. Further, the adversarial nature of the traditional dispute resolution process damages relationships and tarnishes the reputations of everyone caught up in the "winner take all" mentality of the formal disputes process (Allison, 1990:166).

In order to reduce the cost of settling disputes and to facilitate better contractual relations, Congress passed the Administration Dispute Resolution Act (ADRA) of 1990. ADRA authorizes and encourages federal agencies to use mediation, arbitration, and other alternative dispute resolution (ADR) techniques for the prompt, expert, and inexpensive resolution of disputes (U.S. Congress, 1990).

Research has shown that the successful implementation of ADR results in reduced litigation costs as well as more timely resolutions of disputes. A survey by Deloitte and Touche indicates satisfied ADR users frequently cite these savings as the reasons they use ADR. Other benefits to the users include:

the opportunity to preserve working relationships by avoiding acrimony and managing conflict constructively, the chance to develop solutions that last because parties have helped to design them, and sometimes, the opportunity to craft 'win-win' solutions that meet the parties' real needs and satisfy them more than 'win-lose' alternatives. (Fowler, 1995:1)

On 25 October 1995, an Executive Order concerning agency procurement protests was issued ordering the heads of executive departments and agencies

to the maximum extent practicable, provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests, including, where appropriate and as permitted by law, the use of [ADR] techniques, third party neutrals, and other agency personnel.

Clearly, ADR is the preferred method of dispute resolution within the federal government; and, as a result, it is critical that government employees understand what contributes to the successful implementation of the ADR process. Unfortunately, very little has been done to



accurately isolate these factors. This study hopes to begin that process. Specifically, this study will attempt to identify those factors which contribute most to the successful implementation of ADR.

### **Problem**

The Federal Government's commitment to ADR and the elements of a successful ADR program are clear. However, the conditions which lead to the successful use of ADR techniques have not been identified. The purpose of this research is to identify the factors present in disputes that were subsequently resolved through ADR.

### **Successful ADR**

Research suggests several pre-requisites for the successful utilization of ADR techniques. The most critical element for success is an organizational commitment from senior management insisting that resolution is preferable to litigation (Carver and Vondra, 1994). Once this commitment permeates the organization, a consistent, efficient, and effective process must be established (Carver and Vondra,

1994). After establishing the ADR process, each dispute must be carefully analyzed.

Another critical factor is the focus of the disputing parties. All outside interests, in addition to the issue under dispute, must be understood. Identifying these issues enables the parties to determine the scope of the ADR proceeding and enter into a written ADR agreement. The Air Force ADR Procedures state that this agreement should outline the procedures and terms, specifically: any understanding of cost sharing, a commitment on factual and/or document exchange, and if the parties agree to use the services of a neutral.

A third factor that has been identified as important to success is a positive, cooperative attitude by both parties. The attitudes of the disputing parties are crucial to the success of any ADR proceeding. A "win-win" attitude focusing on satisfying all of the issues outside of court results in creative solutions that both parties endorse (Muthoo, 1995). Three attitudes that are definite obstacles in the ADR process include: winning is the only thing that matters, ADR is only one alternative, not the method of

choice, and ADR isn't really all that different from litigation (Carver and Vondra, 1994).

Fourth, in situations which involve a third party, the correct selection of the third party is critical. A neutral third party is responsible for properly identifying the conflict, understanding the intrinsic and extrinsic motivations of the parties, and ensuring the parties' interaction is productive (Kruse, 1995). Properly identifying the ADR method to be used is the first step in identifying the appropriate third party (Chaykin, 1994). The appropriate third party must be selected considering knowledge, experience, legal background, and, most importantly, integrity, courage, and persistence (Chaykin, 1994; Culiner, 1994).

The final element of a successful ADR involves the process itself. A streamlined ADR process results in a more timely, cost effective resolution (Carver and Vondra, 1994) by limiting, yet enhancing, the quality of the information exchanged and outlining the strengths and weaknesses of both sides (Culiner, 1994; Berman, 1994). The organization must seek feedback from the participants in its ADR process in

order to ensure deficiencies or potential problems are avoided (Costantino, 1994).

### **Research Questions**

1. What factors lead to the successful implementation of ADR techniques?
2. To what extent do these antecedents influence the successful outcome of ADR?

### **Conflict Resolution Theory**

The disputes procedure in effect today was established by the Contract Disputes Act (CDA) of 1978 which defined the responsibilities of the parties at each step of the process, beginning with the initial action of the contractor in filing the claim with the contracting officer (Long, 1995). Traditionally, government agencies have relied heavily on negotiations and litigation to resolve disputes between contracting parties. With the passage of the ADRA, Executive Orders, the Federal Acquisition Streamlining Act (FASA), and agency directives, ADR techniques have become the preferred method, in theory and law, of contract dispute resolution within the Federal Government.

In contrast to the specific procedures for dealing with conflict outlined for government disputes, the private sector does not enjoy any stated guidelines on how to manage interorganizational conflict. Much has been written concerning both the prescriptive and descriptive responses disputants take in attempting to resolve their conflict. For the most part, the literature over the last two decades has focused on a disputant's use of five techniques: forcing, avoiding, compromising, problem-solving, or accommodation (Wall, 1995:538). In addition to the disputant's managing the conflict themselves, a third party is often utilized to resolve disputes. Third party's are primarily used when resolution of the conflict is to their benefit, they are called upon, or they are expected to assist in the conflict resolution (Wall, 1995:539). In all of these situations, third parties are apt to become involved only when the disputants are unable or unwilling to handle the conflict (Wall, 1995:540).

Because the private sector does not follow any formal conflict resolution rules or guidelines, they have resolved most conflicts informally. Many of these informal conflict

resolution techniques were borrowed by government policy makers and now represent what we have come to know as "ADR." The government recognized the cost and time savings of resolving disputes outside of court; therefore, the government formalized the private sector's conflict resolution techniques into ADR.

### **Scope and Limitations**

This research focused generally on published ADR and conflict resolution theory literature and specifically on five cases of ADR implementation. The exploratory study methodology utilized in this research is intended to identify conditions that lead to success in ADR proceedings. The five cases include: two involving the resolution of professional sports' labor disputes, one involving the resolution of a private industry labor issue, and two involving the resolution of government contract disputes.

The results of this exploratory effort can be productively applied to refine the ADR process. Further, the model developed can be used as a foundation for future empirical studies. Most importantly, this study represents

the critical first step to understanding alternative methods  
of conflict resolution which will save both time and money.

## **II. Literature Review**

### **Overview**

In this chapter, I review the relevant literature in three areas. First, I conduct a review of the literature concerning the traditional dispute resolution techniques utilized in settling government disputes. Second, I review the literature concerning interorganizational conflicts in the private sector. This review suggests that there is no traditional way of resolving disputes because there are no rules or guidelines for managing conflict in the private sector. Finally, I review the literature on ADR in order to define the process and reveal the flexibility of the different methods.

### **Traditional Dispute Resolution**

Historically, parties in a government contractual dispute have had two methods of resolution: negotiations and, if that fails, secure legal counsel and pursue the matter before a court or board in an expensive, time-consuming process to determine the rights and liabilities of the parties (Mayer, 1994:11). The CDA prescribes the



procedure for resolving a disputed contract claim.

In the past, when an informal contract claim arose, the two parties met in an effort to settle the dispute. If negotiations failed, the contractor was required to submit a formal claim to the contracting officer. FASA amended the CDA and created a new six-year statute of limitations on the submission of CDA claims (Long, 1995).

The formal disputes process begins when a claim is filed, either by the contractor or the government, with the contracting officer. The contracting officer is required to act on all claims within 60 days by either issuing a final decision or (for claims exceeding \$100,000) notifying the contractor of the (reasonable) time within which a decision will be issued (Long, 1995). The final decision issued by the contracting officer either satisfies the contractor, thus ending the dispute, or provides a basis for the contractor to appeal.

If the party filing the claim is not satisfied with the final decision, the CDA requires an appeal to be made within 90 days to the Board of Contract Appeals (BCA) or within one year to the U.S. Court of Federal Claims. The Court of

Federal Claims has held that the choice of forum is irreversible and, consequently, if the forum chosen renders an unfavorable decision, the contractor cannot then pursue the matter in another forum (Long, 1995).

When a final decision is appealed to the ASBCA, both parties are required to submit information that becomes part of the record in which the Board bases their final decision. Within 30 days, the contracting officer is required to submit to the Board and the contractor a Rule 4 File that includes: 1) the decision the contractor is appealing, 2) the contract and pertinent documents, 3) all correspondence between parties regarding the appeal, 4) transcripts of any testimony taken, affidavits or witness statements, and 5) any other additional relevant information. Within 30 days of receipt of the Rule 4 File, the contractor is required to submit any additional relevant information. Appeals to the Court of Federal Claims have no similar requirements.

Under the Federal Courts Improvement Act of 1982, the government or contractor can subsequently appeal the decision of either the BCA or the Court of Federal Claims. The time for appeal is 120 days after receipt of a BCA

decision and 60 days after a Claims Court decision. This Act created one central appellate court whose decisions must be followed by both the Boards and the Claims Court.

### **Private Sector Conflict Management**

Organizations in the private sector do not have a framework for formally resolving interorganizational conflicts. The informal methods employed to resolve interorganization disputes can be broken down into two categories: disputant's conflict-management tactics and third-party conflict-management tactics.

The literature over the last two decades contains numerous disjointed descriptions of the disputants' management options. But for the most part, the literature has focused on a disputant's use of five techniques: forcing, avoiding, compromising, problem-solving, or accommodation (Wall, 1995:538). Two-dimensional grids were developed to measure conflict management, with one being "concern for production" and the other "concern for people" (Blake, 1964). These were later redefined as "assertiveness" and "cooperativeness" (Thomas, 1976) and resulted in the framing of the five styles of personal

conflict management: forcing (assertive, uncooperative), avoiding (unassertive, uncooperative), compromising (moderately assertive, moderately cooperative), problem-solving (assertive, cooperative), and accommodating (unassertive, cooperative) (Wall, 1995:538). These five styles are the most frequently used when the disputants manage the conflict.

Third-party intervention is the second category of tactics employed in the private sector to resolve interorganizational conflicts. This category covers a number of possibilities ranging from manager intervention to adjudication. The literature tends to focus on mediation and arbitration, but also includes conciliation and consultation (Wall, 1995:540).

Every tactic used to manage conflict that does not include adjudication will be classified as ADR. Because the private sector does not have any formal rules for settling disputes, most of their informal conflict management techniques are now being classified as ADR by the government. Much of the prescriptive literature on private sector conflict resolution theory suggests managers follow

procedures similar to those that the government prescribes for the successful implementation of its formally classified ADR process.

Interorganizational conflicts effect individuals, relationships, communications, behaviors, structure, and issues within each organization (Wall, 1995:523). The disputants attempt to manage their conflicts because the net cost of the conflict becomes unacceptably high, resources are depleted, goals change, new alternatives surface, or the disputants are simply fatigued (Blalock, 1989).

Deutsch is one of the primary proponents of the normative school of disputant conflict-management tactics (Wall, 1995: 536). His advice is that the disputants should be aware of the causes and consequences of conflict as well as the alternatives to it (Deutsch, 1990). The disputants should then take steps (e.g., face the conflict, distinguish between interests and positions, listen attentively, speak to be understood) to deal with the causes, the conflict itself, and its effects. Another prescriptive response focuses on the causes of the conflict with less emphasis on the interpersonal dynamics (Hocker and Wilmot, 1991). This

approach advocates each disputant attempting to change the opponent's behavior, the conflict conditions (e.g. scarce resources or perceptions of incompatible goals) or his own behavior. A third approach advocates a type of integrative thinking in which the disputant focuses on what they've achieved, or jointly can achieve, instead of pondering what they've given up (Eiseman, 1978; Gray, 1985). All of these approaches focus on the positive, cooperative attitudes of the disputants because they hold to values of openness, integrity, and justice. In addition, these approaches emphasize the factor of party focus as it pertains to identifying the outside interests of the parties.

#### **ADR Methods**

ADR covers any procedure voluntarily agreed upon by the parties to resolve a dispute and avoid litigation before a court or appeals board (Mayer, 1994:12). The ADRA, 5 U.S.C. 571(3), contains the following definition of ADR:

Alternative means of dispute resolution means any procedure that is used, in lieu of an adjudication as defined in section 551(7) of this title, to resolve issues in controversy, including, but not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, or any combination thereof;

Contrary to the adversarial nature of the traditional dispute resolution process, ADR techniques can focus on each parties' respective interests. "This leads to a different dynamic as each party explores the means of achieving its own goals while accommodating, where feasible, the other party's legitimate needs" (Mayer, 1994:12).

ADR was largely developed by the private sector in an effort to avoid the excessive costs and delays of the traditional process. ADR has been utilized in a variety of disputes including: labor disputes, consumer rights disputes, landlord and tenant controversies, negligence actions, and assorted damage claims (Arnavas, 1988:1). The flexibility of ADR for resolving various disputes is evident in the many forms of ADR available. A brief discussion of the various ADR methods will provide some insights into its flexibility as a process for resolving disputes.

Negotiation is the most common form of ADR and is generally utilized as the first step in resolving disputes. In negotiation, the parties attempt to directly work out their problems themselves through a collaborative or adversarial approach (Mayer, 1994:12). The other forms of

ADR are variations of negotiation and involve the use of a neutral third party.

Facilitation introduces a neutral to provide assistance in working out a solution that is satisfactory to the parties (Mayer, 1994:12). This process works best when the parties have enough trust to collaborate with each other. Facilitation has limited success in adversarial situations since the role of the third party is not to suggest ways to reach an agreement; that would change the process into mediation. The difference between facilitation and mediation is the facilitator does not suggest solutions.

Mediation is an informal process where the parties meet with the neutral who facilitates communications and actively assists the parties in working out a solution. The neutral, however, does not have the authority to make the decision for the parties, who retain control over the outcome.

Mediation is becoming the most widely used ADR process because it has a high success rate, can be used early in a dispute to save time and money, is confidential, allows creative solutions and full participation by the parties, and leaves the decision in the hands of the parties. (Mayer, 1994:12)

In fact finding, the neutral is usually an expert consulted by the parties to investigate the issues involved



and advise the parties of conclusions concerning the underlying facts (Mayer, 1994:12). The neutral's conclusions are sometimes combined with an outline of options and recommendations for solution. This process is normally utilized in technical situations where the report can be the basis for subsequent ADR proceedings.

Mediation-Arbitration (med-arb) is utilized when mediation fails and the neutral issues a decision on the dispute. Although the decision is normally nonbinding, the understanding that a decision will be forthcoming often prevents the parties from fully disclosing the strengths and weaknesses of their case (Mayer, 1994:12).

Arbitration can be either binding or nonbinding and involves a neutral listening to both parties and rendering a decision (Mayer, 1994:12). Arbitration proceedings require negotiations in establishing the ground rules for the process and can take several forms including: "baseball arbitration" and "high-low" arbitration. In these two forms, the two parties present their respective bottom-line figures for a settlement. After hearing the presentation of both sides, the arbitrator determines the settlement based

on the figures presented at the beginning of the process. Although taking less effort and expense than litigation, arbitration usually substantially exceeds the time and cost involved in mediation (Mayer, 1994:12).

A variation of fact finding and arbitration is early neutral evaluation. The neutral is given the authority to listen to both parties prior to extensive preparation for litigation and assesses the outcome (Mayer, 1994:13). This process involves less neutral participation in helping the parties to reach a settlement than mediation, and the evaluation is less persuasive than an arbitration.

The minitrial is an abbreviated form of a trial that would occur if the issue went to court. Another type of mini-trial is a structured form of a negotiated settlement. The parties have high level representatives with decisional authority listen to the evidence and negotiate to determine if they can reach a settlement (Mayer, 1994:13). Variations include a neutral or "jury" listening to the case and issuing nonbinding decisions. Although less expensive than formal litigation, if no settlement is reached, "trying" the case twice will result in excessive costs.

Partnering is the establishment of a relationship among parties to cooperate in resolving problems as they arise in a contract. This procedure usually involves a series of meetings with a facilitator and is normally used for large construction contracts (Mayer, 1994:13). To be most effective, partnering relationships should be established at the outset of the project.

These are the most frequently used ADR processes; however, this description is by no means all encompassing. There are various hybrids of these and other ADR techniques available for resolving almost every kind of dispute. The different ADR forms allow disputing parties to creatively seek the timely, cost-efficient, and effective resolution to different dispute situations (Berman, 1994).

#### **Antecedent Model**

The goal of this research is to identify the antecedents of a successful ADR proceeding in order to predict when ADR should be utilized in dispute resolution. In reviewing the relevant literature on conflict resolution, I have been able to identify several factors that indicate a successful ADR implementation.

The organizational support and development of ADR procedures has been cited as a contributing factor for success. A strong upper management commitment and a fully developed ADR system are the criteria used in determining satisfaction of this element.

Another factor involves the relationship of the disputing parties. If the parties have an amicable history and intend to preserve this relationship, ADR will have a greater chance for success.

The commitment of the parties to the quick and inexpensive resolution of the dispute will also be a contributing factor in determining the success of the outcome. This factor is linked to the previous two because the ADR support system and the intention of continuing the relationship suggest that the parties will be more willing to exhaust all possible ADR forums. The parties' willingness to pursue ADR leads to another factor.

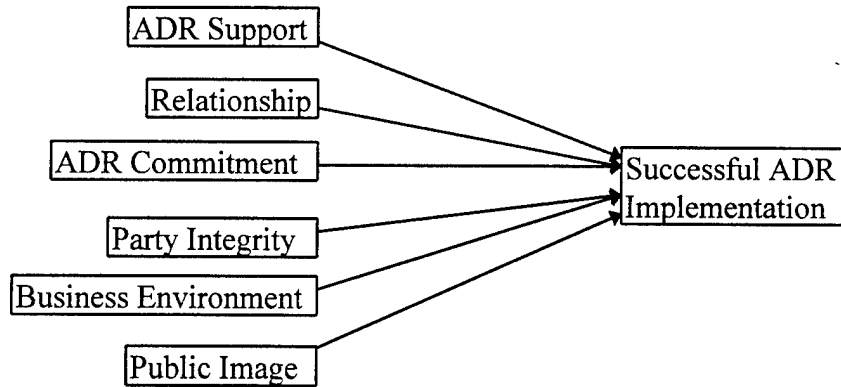
The integrity of the parties in their treatment and faith in the ADR process appears to be critical to the success of ADR. When the parties are willing to pursue ADR because of their organizational support and intention of

preserving their relationship, they will exhibit the confidence in the ADR process required for success.

The environment in which the two conflicting organizations conduct business is also a factor. If the parties in dispute are in an environment of high competition, the literature suggests that the savings realized through ADR become a key factor to the success of the implementation. If the industry involves large revenues where a costly lawsuit can be absorbed, the evidence suggests that the pursuit of ADR methods is not as viable.

The public image of the industry also contributes to the success of ADR. If the industry involves high-profile organizations that depend on the public's perception for their success, ADR has often been the resolution method of choice because of the confidentiality it affords.

Based on the literature, the following factors have been identified as contributing to the successful implementation of ADR:



**Figure 1**  
**Preliminary Model**

Utilizing the theoretical foundation provided by the previous studies, a preliminary model was developed. The research design followed to evaluate this preliminary model is outlined in Chapter III. This methodology was used to determine the ultimate criteria for the development of a causal model.

### **III. Research Methodology**

#### **Research Design**

In order to identify the antecedents of successful ADR implementation, an in-depth examination of five diverse cases was conducted utilizing the case study method. Two of the cases involved the resolution of professional sport labor disputes, one involved the resolution of private industry labor issues, and two involved the resolution of government contract disputes.

#### **Case Study Validity**

The case study research method has produced unique contributions to the knowledge of individual, social, and political phenomena. A case study is an empirical inquiry that: investigates a contemporary phenomenon within its real-life context; when the boundaries between phenomenon and context are not clearly evident; and in which multiple sources or evidence are used (Yin, 1984:23). The case study method allows the researcher to conduct an investigation while retaining the true characteristics of real-life events (Yin, 1984:14). Case studies usually combine data

collection methods such as observations, interviews, documents, and visual images producing evidence that is qualitative, quantitative, or both (Creswell, 1994). The goal of case studies is to provide description, test theory, or generate theory (Eisenhardt, 1989:535).

Case studies can involve single or multiple cases and provide numerous levels of results. The goal of theoretical sampling is to choose cases which are likely to replicate or extend the emergent theory (Eisenhardt, 1989:537). The idea of theoretical sampling is to analyze each case as a unique entity and allow the patterns of each case to emerge before attempting to generalize patterns across cases. The danger in theoretical sampling is reaching premature or false conclusions as a result of information processing bias (Eisenhardt, 1989:540). When applying cross-case evidence to generalize patterns, the case survey or the case comparison approach should be used (Yin, 1984).

The case survey approach requires two conditions. First, isolated factors within particular case studies must be worthy of substantive attention. Second, the number of case studies must be large enough to warrant cross-case tabulations. The successful application of [the case comparison] approach is not unlike more generalized theory-building, when the lessons of each case were compared, a common explanation emerged. (Yin, 1984:62-63)



A clear conceptual framework should be utilized in order to avoid the common pitfalls of typical case study reporting: a lengthy narrative that follows no particular structure, is hard to write, and hard to read (Yin, 1981:64). One key to good cross-case comparison is in developing a good set of questions for the data collection that are tied to an outline of the questions the researcher wants to answer.

#### **Case Selection**

Five cases were selected to explore ADR antecedents: the Major League Baseball (MLB) labor dispute, the National Basketball Association (NBA) labor dispute, the General Motors' (GM) labor dispute, the US Army Corps of Engineers (Corps)-Granite Construction Company (Granite) site condition dispute, and the Corps-General Roofing Company (Genro) dispute over specifications. I chose these five cases for their diversity. The diversity in these cases pertains to the types of conflict, the parties involved, and the ADR method employed. Each case is unique; however, identifying factors common in each will provide the basis

for the antecedent model of successful ADR. Each of these cases was selected for the unique qualities of its conflict.

The first two cases are labor disputes involving high profile industries where the public image of the parties had a significant impact on the success of the process. The MLB labor dispute remains unresolved; however, the definition of ADR success is that the industry continues to thrive.

Although ADR is ongoing, both sides have agreed to put aside their differences during the season for their collective public images. The NBA labor dispute, resolved on 11 July 96, illustrates the importance of the public image as well as the utilization of ADR to settle labor issues. These two cases were selected for the variety they bring to this research and the robustness they add in terms of representing industries that rely on their public images.

The GM labor dispute was selected for the ease of data collection and its representation of private sector conflicts in a Fortune 500 company. The location of the GM division in Dayton afforded me the opportunity to investigate the current brake hose outsourcing conflict. In this dispute, the impact of an impasse would be

catastrophic. Brake hoses for every GM vehicle are currently manufactured and assembled at this plant. The requirement to outsource the assembly of these hoses in order to remain competitive affects GM's international operations as well as the economy as a whole. GM, as a corporation, ranks 20th in the world in a ranking of national Gross National Products and annual corporate sales (Magyar, 1993). This case was selected for its convenience as well as its potential impact on the U.S. economy.

The Granite and Genro cases were selected for their ease of data collection and their representation of successful government implementation of ADR. Both disputes were published by the Corps in their ADR Series in order to encourage managers to develop and utilize new ways of resolving disputes (Endispute, 1992). These cases provide an in-depth look at the government's success with ADR and add to the robustness of the research.

Each of these cases increase the value of this research by providing variety. These five cases represent a cross-section of fields where conflict may arise affording the opportunity to study ADR across industries. Their selection

was purposeful in that they will provide the data necessary to best answer the research questions (Creswell, 1994). In studying these different fields and identifying the conditions that forecast success, the cross-sectional antecedent model can be formulated.

### **Data Collection**

The data from all five cases for this exploratory qualitative study were collected through documents, audiovisual materials, and interviews. The bulk of the data for each case was collected through the use of a semi-structured interview guide (Appendix A).

In the MLB and NBA cases, published reports, audiovisual materials, and telephone interviews were used to collect the data. Published reports of the proceedings were analyzed to identify the conditions present in the ADR proceeding. Audiovisual reports on both disputes were also analyzed in order to determine the conditions for the antecedent model. Finally, telephone interviews with members of the negotiating teams were conducted in order to assess the attitudes of the parties involved and answer the research questions listed in chapter I.

In the GM case, data was collected through published reports, audiovisual materials, and telephone interviews. This data was then utilized to identify the factors that predict the successful implementation of ADR.

In both Corps cases, the data was collected primarily through document review. The published case studies were utilized as a form of archival review in order to identify the factors that lead to the successful employment of ADR.

In all five cases the data collection methods of documents, audiovisual materials, and interviews were effective in answering the research questions. Factors were identified in each case that may suggest the success of the ADR procedure.

## IV. Research Findings

### Overview

This chapter will present the results of the data in an attempt to identify the presence of factors that contribute to a successful ADR process. Using the methodology established in chapter III, the data was compiled in an effort to answer the research questions identified in chapter I. Using the semi-structured interview guide in the Appendix, the responses were categorized into five antecedents of a successful ADR. The findings of the interview structure along with the audiovisual and published reports pertaining to each case are discussed in the first section of this chapter.

The second section of this chapter analyzes the findings from each case. In this analysis, I identify the five antecedents, establish which antecedents were evident in each case, and develop a model for the successful implementation of ADR based on the antecedents.

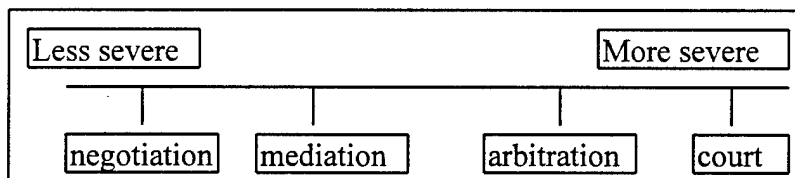
## Case Summaries

In this section, I will summarize each case in relation to each antecedent present in the conflict. The conditions affecting the success of each ADR implementation concern the ADR support system of the organization, the experience and confidence that the parties have in the ADR process, and the attitudes of the parties. Other factors identified that predict the success of an ADR proceeding include: the size of the organization, the bargaining positions of each party, the ramifications of this conflict, the economic impact the dispute is having on each party, and the economic environment of the organization.

Major League Baseball. The dispute in MLB is over establishing a new collective bargaining agreement. Both sides' failure to reach an agreement at the end of the last deal resulted in the player strike that canceled 52 days of the 1994 season and 23 days when the 1995 season started late. Both sides agreed to resume playing baseball under the old agreement to avoid further damages until a new collective bargaining agreement can be reached. The major issues include: a tax on players' salaries, revenue sharing

among the franchises, a player salary cap, service time lost during the strike, payroll luxury taxes on big market teams, and the length of the new contract.

The support system for the utilization of ADR procedures to settle disputes in MLB is very well defined. Because the MLB players are members of the Major League Baseball Players' Association (MLBPA) union, the mechanism utilized in resolving grievances is the arbitration grievance procedures. These procedures dictate the use of arbitration when a settlement cannot be negotiated. The procedures for conflict resolution in MLB direct the parties to follow certain procedures for resolution. These procedures follow the severity of the ADR continuum: negotiation, mediation, arbitration, and court.



**Figure 2**  
**ADR Continuum**

However, under federal labor laws, neither Congress nor a Federal Court can set the substantive terms of a labor



agreement. Therefore, even if the parties go to court, they must return to one of the less severe ADR forums in order to reach an agreement.

Due to these grievance procedures, both sides have an enormous amount of experience with ADR procedures. Both sides are engaged in several arbitrations as well as other forms of ADR each year. Both parties have had mixed results with ADR; however, they both feel that it is the best system available to resolve their differences. Evidence of the parties' confidence in ADR is their agreement to these procedures in their collective bargaining agreement.

Although the disputing parties are in a long-term recurring relationship, there is not a lot of trust between the parties and there is a history of adversarial relations. However, neither side feels they have a more favorable negotiating climate than the other party and both parties are very determined to reach an agreement. The driving force for the current attitude of reaching an agreement is both parties' desire to avoid another work stoppage.

The labor dispute in MLB constituted a large organizational conflict both in terms of personnel and

revenues. This dispute involved the MLBPA which consists of anywhere between 700 and 1000 major league players during the course of the season. MLB is a billion dollar industry whose players' average salary is 1.2 million dollars a year. An indication of MLB's size is the recently landed five-year 1.7 billion dollar television contract.

In considering the bargaining positions of each side, neither side felt like the other had the upper hand in the negotiations. Both sides feel that the negotiating climate is equally favorable. Although this is not the first dispute of its kind, the MLBPA strike was the longest and most costly strike in the history of professional sports.

Although the strike returned the collective bargaining agreement to the status quo and nullified the owner's initiatives, it did nothing to settle the dispute. During the strike, the players lost 28% of their pay in 1994 and 11% of their pay in 1995. On the other side, MLB lost hundreds of millions of dollars in television, ticket, concession, and merchandise sales. These enormous losses convinced the MLBPA to end the strike and return to the negotiating table and discouraged MLB from locking out its

players. Both sides agreed that returning to the playing field while settling the dispute through negotiations was the best alternative.

The economic environment of MLB prior to this dispute was characterized by a booming upward trend. Attendance had reached record levels and MLB had signed the largest television contract in the history of televised sports. This economic environment is dependent upon the public perception of MLB and the public's willingness to buy tickets and watch games. The strike destroyed baseball's public image and, consequently, MLB fell behind both basketball and hockey as the most popular television sports. Both sides realized the damage being caused by their inability to reach a settlement; therefore, they decided to return the players to the field and continue with negotiating a new collective bargaining agreement.

National Basketball Association. Similar to the MLB labor dispute, the dispute in the NBA concerned establishing a new collective bargaining agreement. The conflict began in April of 1994 when the National Basketball Association Players Association (NBAPA) threatened to sue the NBA if

their demands for the new collective bargaining agreement were not met. The first formal negotiations were held in June of 1994 when the old agreement expired; however, the NBAPA was not satisfied with the progress of these talks and filed an antitrust suit against the NBA in Federal Court. The NBA won this suit in August of 1994 and one month later the NBAPA filed an appeal in district court. In order to avoid the appeals process, both sides agreed to try to negotiate an agreement. When these negotiations stalled, the NBA instituted a player lockout in June 1995. After a summer long player lockout by the NBA, a tentative six-year agreement was reached with formal ratification to come at the conclusion of the 1995-1996 season. When negotiations resumed after the season, two moratoriums on player transactions and one two-hour lockout were needed before both sides ratified a six-year collective bargaining agreement on July 11, 1996.

The support system for ADR use in the NBA for labor disputes is outlined in the collective bargaining agreement with the NBAPA. This agreement states that because the players are in a union, the NBA must adhere to the federal

labor laws. These laws explicitly state that management has a "duty to bargain" with the union. The only exception to this duty is when the parties reach an impasse in negotiations. If an impasse is reached and the dispute goes to court, similar to MLB, both sides still must return to negotiations and reach an agreement. Federal law mandates that labor agreements must be agreed upon by both management and labor; they can not be dictated by the courts.

The NBA's collective bargaining agreement also establishes ADR support systems for other issues outlined in their grievance and arbitration procedures. The first forum utilizes a grievance arbitrator to hear any player dispute and the arbitrator's decision is not subject to appeal. The second forum utilizes a system arbitrator that addresses broader issues such as salary cap challenges and free agency issues. The system arbitrator's decision is subject to appeal by bringing in a different system arbitrator. A third forum consists of a mutually agreed upon basketball expert that is utilized to calculate performance bonus disputes. These issues involve how many rebounds a game a player averaged or whether the performance bonus will be

counted against the salary cap. All of these forums are non-judicial and utilize mutually agreed upon neutral third parties.

Although the NBA commonly utilizes the ADR procedures outlined in the collective bargaining agreement, they do not advocate the use of ADR for non-personnel issues. Each year the NBA encounters claims of infringement rights on a commercial basis concerning the marketing of the NBA. In these cases, the NBA relishes the federal court system because they want their opponents to have to grind it out in court and spend a lot of money. The NBA feels very confident in these suits and enjoys the win-lose results that the courts provide. The NBA wants its opponent to spend their time and money in a losing case, which hopefully will deter future infringement right claims.

The ADR methods utilized by the NBA pertain to player, referee, and television production personnel disputes. The NBA has enjoyed the positive results of saving time and money through ADR and strongly advocates its use on these issues. A critical benefit that the NBA cited for its frequent use of ADR is the confidentiality it affords the

disputing parties. The success of the less formal ADR procedures, like negotiation, is evidenced by the few disputes that make it to the more formal forums established by the NBA. The NBA has roughly six grievance arbitrations, two system arbitrations, and two basketball expert decisions each year.

The long-term recurring relationship between these two parties has resulted in an amicable negotiating climate. Although the NBA did lockout the players twice during this dispute, this was used as a bargaining technique and the integrity of the proceedings was never questioned. The NBAPA's only leverage is going to court or striking; however, they realized that they ultimately must make a deal. This realization was evident when the NBAPA returned to the bargaining table after filing their antitrust appeal. Neither party had the upper hand in the negotiations because both sides sought to avoid a work stoppage. This desire was evidenced in the fact that both lockouts were during the summer and there was no player strike. Both sides had confidence in the ADR process that they were using and have ratified the same process in the new collective bargaining

agreement. In addition to verifying each party's confidence in this ADR process with the new agreement, the antitrust suit was settled by agreeing that the NBAPA could no longer sue the NBA under the antitrust laws.

The labor dispute in the NBA also constituted a large organizational conflict both in terms of personnel and revenues. This dispute involved the NBAPA which consists of roughly 350 members whose average annual salary exceeds two million dollars. The NBA generates in excess of 1.2 billion dollars of revenues each year.

Similar to the MLB labor dispute, the negotiating climate in this dispute was relatively equal. Due to the unique nature of the union, neither side would benefit from either a strike or a lockout. Replacement players simply would not work in the NBA. The recent MLB strike also demonstrated the enormous negative effect a work stoppage has in the professional sports industry. Both sides realized that a strike or a lockout would be a means to an end and not an end. Ultimately, the two sides would have to negotiate a deal anyway.



The ramifications of the resolution to this conflict are felt in four areas. First, due to the unique nature of the product (the best basketball players in the world), the entire business of the NBA is affected by a settlement. Without these players, there is no business. Second, the principles that were agreed to in this collective bargaining agreement become the baseline, or the status quo, for the next collective bargaining negotiations after the 2000-2001 season. Third, the resolution of this dispute included the resolution of the antitrust lawsuit and stipulated that the NBAPA can not sue the NBA under the antitrust laws ever again. Finally, the resolution of this dispute without a work stoppage maintains the public image of the game and limits the negative effects of the labor dispute.

The realized economic impact of this dispute was minimal; however, the potential damages were enormous. The NBA spent around ten million dollars in two and a half years to settle the antitrust suit and negotiate the new collective bargaining agreement. Although the damage from a player lockout was not realized (as evidenced by record attendance and television ratings in the 1995-1996 season),

the potential for damages was very clear thanks to the MLB losses. This incentivized both parties to resolve their dispute without a work stoppage and with minimal publicity (as evidenced by the negotiations being conducted during the off-season).

The economic environment prior to the dispute was characterized by a booming upward economic trend as evidenced in record attendance, television ratings, and revenues. This environment, however, is subject to the public perception of the game of basketball. This perception dictates the customer's willingness to watch NBA games and buy NBA apparel and tickets. Both sides understood this fragile economic condition (underscored by the MLB work stoppage) and made every effort to minimize the effect of their labor dispute.

General Motors Corporation. After a seventeen day strike at two of three GM Delphi Chassis Systems plants in Dayton, Ohio, outsourcing by the Big Three auto makers of Ford, Chrysler, and GM became a nationally known labor dispute with ramifications throughout the auto industry. In addition, these strikes impacted the relationship of the Big

Three with the United Auto Workers (UAW) and set the tone for the negotiation of the new labor agreement. (The current agreement expires September 14, 1996).

The Dayton GM plant that did not strike is currently involved in several ADR techniques aimed at settling a dispute over outsourcing the assembly of brake hoses. Currently, the Homewood GM plant manufactures and assembles the brake hoses for all GM vehicles. While able to manufacture the cheapest brake hoses in the world, GM is suffering annual losses of ten million dollars with the assembly process of these brake hoses. This problem was diagnosed in October of 1995 and immediately addressed by the Personnel Director at the local plant. Instead of immediately activating the clock associated with changes in the labor agreement with its UAW workers, GM decided to pursue ADR methods. By verbally communicating with the head of the local UAW, GM delayed the start of the clock and opened the negotiations for this outsourcing opportunity by informing the UAW of the economic losses associated with the assembly of the brake hoses. The plant manager of each shift informed the employees of the problem and conveyed

management's ideas of new insource opportunities that would enable GM to maintain its current work force. Management's goal was to inform the UAW and get them to the same level of understanding on this issue. The UAW decided the clock should be started and the deadline for an agreement is August 3, 1996. The strike examples at the two other GM plants in March 1996 added immediate credibility to management's concern about the ten million dollar losses. The negotiations and other ADR techniques that have been utilized resulted in both sides' optimism concerning a settlement without a strike.

The corporate, division, and plant headquarters for GM adamantly support the use of ADR to settle all disputes. The dispute categories are divided into salary and hourly employee disputes. The plant employs a salary personnel representative whose sole responsibility is to resolve discrimination, performance, merit, and all other Equal Employment Opportunity (EEO) complaints filed by salaried employees. The GM legal department's involvement in these disputes begins with the initial notification of a problem. The legal department provides the representative with the

history of these cases as well as the costs for any of these complaints that have ended in court. The corporate policy is to use every ADR avenue possible to settle the dispute outside of court in an effort to realize both cost and time savings. Only a few cases each year are not resolved by the personnel representative and make it to court.

The ADR process established for the hourly employees follows the procedures outlined in the UAW grievance procedures. These procedures outline the avenues for individual grievances. These avenues include: an informal quality network that allows employees to air their problems without fear of reprisal, and an informal quality council comprised of both union and management employees that discusses current or potential problems. For union-wide problems, the grievance procedures state that all avenues will be exhausted prior to entering into negotiations. The main forum for union problems is a monthly meeting between the UAW executive board and management's labor relations board that discusses any problems or potential problems with the current labor agreement.

Both sides have experience with the ADR procedures because they are utilized on a daily basis. Due to the federal labor laws, the UAW realizes that ultimately an agreement must be reached and understands that a strike will ultimately hurt both sides. Both sides are optimistic about the resolution which will grow from the early communication between the parties. Each side is confident that ADR is the way to an agreement that both sides will be satisfied with.

The relationship between the two sides at this plant is amicable. UAW and GM have a long-term recurring relationship and both want job security, good pay, and benefits for the workers. GM and UAW foster a strong team concept and both are concerned with the overall health of the GM organization. The strikes at the other two plants highlighted the need for a painless resolution and, at the time of this writing, all indications are that one will be achieved.

The GM labor dispute constitutes a large organizational conflict in terms of labor and revenues on both a local and corporate level. On a local level, GM employs 200 salary and 1800 hourly personnel. The local profits in fiscal year

1995 were ten million dollars, while on the corporate level, GM ranks as twentieth in the world in a ranking of national GNPs and annual corporate sales (Magyar, 1993).

The negotiating climate in the dispute over outsourcing favors neither party. Both sides are after a win-win scenario where GM can maintain its current employment levels and increase the plant portfolio. Increasing the plant portfolio is in the best interest of both parties because it will increase the job security of the employees as well as provide competitive salaries.

Although the outsourcing issue is not new to the auto industry, this dispute has ramifications in three major areas. First, previous GM decisions concerning outsourcing had been made at the corporate level. This was the first time the decision was being made at the local level. Second, this outsourcing decision only involves a piece of the product line (the assembly of brake hoses) rather than an entire line. And third, if the local GM plant can successfully settle this outsourcing issue, it will send a strong positive message to GM operations internationally.

Prior to this dispute, the local GM plant had turned around their operations. After operating with marginal profits for several years, GM realized a profit of ten million dollars in the most recent year. However, GM estimates indicated that the assembly of the brake hoses was costing them ten million dollars annually. This loss can not be maintained in the current international marketplace.

The current economic environment of the auto industry is extremely competitive with better parts being manufactured cheaper and faster around the world. In order to stay competitive, GM must make outsourcing decisions or risk losing other product lines. GM realizes the importance of outsourcing and understands the need to convey this message to the UAW or risk losing more jobs. Both sides understand the current economic environment and realize this issue must be settled without the loss of any jobs.

Corps vs. Granite. On October 26, 1976 Granite was awarded a contract to construct the Aberdeen Lock and Dam of the Tennessee Tombigbee Waterway. On January 1, 1979, the government condemned some property that included the Granite's sand source. Granite filed a differing site



conditions claim on April 23, 1979 for the loss of the sand source and its associated delays and reduced production. The claim was rejected in full by the CO on July 12, 1979 and Granite filed an appeal with the Engineer Board of Contract Appeals (Board).

Although the appeal was filed, Granite continued to negotiate with the Corps and requested a Corps Division Review of their claim. The Division Engineer issued a directive to the Mobile District Corps to negotiate an equitable settlement. Granite submitted three different proposals for quantum settlement that were rejected. Granite then requested a mini-trial and received no response from the Corps.

Shortly before the appeal went to trial, the Mobile District received a new commander who proposed a form of ADR to settle the claim. On December 22, 1986, an ADR agreement was signed by both parties. After a hybrid form of non-binding arbitration, a settlement was reached on April 9, 1987.

Other than both parties' desire to stay out of court, there was no formal ADR support system in place. Although

both parties did enjoy very supportive legal staffs who prepared the ADR agreement and were available when needed, the legal counsels were not present at the proceedings.

The support system for ADR use in the Corps was not very well defined in the mid 1980s. Although there was strong support for its use by the Chief Counsel, the new commander of the Mobile District had only been exposed to the concepts of ADR. The commander's exposure was limited to a course he had attended that advocated ADR use to alleviate the backlog of the Boards.

Granite's support system for ADR was not established. Their commitment to utilize ADR came from a strong desire to avoid the Boards. The legal counsel for Granite had attended three training courses concerning ADR and had briefed Granite's CEO on the processes.

Neither side had any relevant experiences with ADR or its potential benefits. The Corps' first mini-trial involved the Mobile District; however, none of the players in this dispute were involved in those proceedings. Other than negotiations with a CO, Granite had never utilized an ADR forum to settle a claim.

Although neither side had any experience with the process, both sides were confident in the proceedings. The ADR agreement stated a deadline for a resolution that would signal the end of the proceedings if no agreement was reached. However, if the parties had failed to reach an agreement, they planned to try the same forum only with a three member panel of neutrals instead of just one. This agreement illustrated both sides' desire to stay out of the Board process.

Although this claim was unresolved for seven years, both parties wanted to maintain an amicable relationship. Granite had several construction projects with the Corps and did not want this dispute to harm any present or future contracts. On the other hand, the Corps wanted to enhance its image of willing to settle claims expeditiously and inexpensively outside of the courts.

The relative size of this contract dispute is not in itself considered large; however, the number of associated projects is. Granite's claim was for \$1,925,865 and they had several other construction contracts with the Corps. The Corps is an enormous organization with thousands of

employees, billions of dollars in appropriations, and hundreds of construction contracts. Both parties intended to settle this dispute rather than become another of the hundreds of cases tied up in the court process.

The negotiating climate in this dispute did not favor either party. The Corps was uncertain of its legal exposure on this issue and felt that the case could go either way in a Board. Granite was equally skeptical of its chances in the courts and wanted to do whatever possible to avoid the Boards.

This dispute did not have any major ramifications in other areas except for demonstrating the Corps' willingness to settle claims through an ADR process. Differing site condition claims are frequently made and a legal precedent is very difficult to establish due to the unique nature of each case. The only ramifications would be the positive effect that a settlement would have on future Corps-contractor relationships by demonstrating the Corps' desire to pursue win-win solutions to contract disputes.

The economic impact of this dispute was not well documented. Both sides were spending time and money on the

claims process and Granite was not being paid for work performed; however, each party's desire to settle this dispute outside of court and their intention for a timely resolution suggest the negative impact the dispute was causing economically.

The economic environment of both parties was very prosperous at the time of this dispute. The defense industry was in a booming upward economic trend and numerous construction contracts were being awarded. The primary reason both parties pursued a resolution through ADR was to avoid the boards and realize the cost and time savings of a settlement.

Corps vs. Genro. In December 1987, a contract was awarded to Genro to provide a new roof for one of the largest buildings in the world at the Warren, Michigan Army Tank Plant. At the outset of the contract, Genro encountered problems with the stringent test requirements and impossible specifications. Genro filed several uncertified claims in order to open the negotiations concerning the defective specifications.

After failing to reach a settlement, Genro filed four defective specification claims in February 1989. Through a series of meetings and telephone conversations, two of the claims were settled in the summer of 1989. In June of 1990, the CO issued a final decision rejecting the third claim in full. Genro then appealed this claim to the ASBCA. Genro amended its fourth claim and resubmitted it along with another claim in September 1990.

During September of 1990, the CO did not feel the Corps position was unassailable and suggested a formal ADR process to resolve the three outstanding claims. In October of 1990, both sides utilized a tailored mini-trial to settle these claims. The two parties utilized a hybrid mini-trial and med-arb in which the attorneys for both sides made the presentations, a neutral advisor made recommendations and facilitated negotiations, and the District Engineer and President of Genro were the decision makers. A permanent signed agreement was entered into on October 27, 1990.

The ADR support system for the Corps in 1990 directed the Corps counsel to establish the ADR process for each ADR case. The Chief Counsel for the Corps was a strong advocate

of ADR as was the Corps' desire to settle claims outside of court. The Corps had extensively used various forms of ADR and felt strongly about the benefits it received in terms of time and cost savings. A major criteria in deciding to use ADR for the Corps was when they did not feel they would definitely win in court.

Genro had never been involved in any ADR proceedings other than negotiations with a CO in order to settle a claim; therefore, no ADR support system was in place. The counsel for Genro had been involved in a non-binding med-arb before and experienced success with the process. The legal counsel briefed the President of Genro on the ADR process. The ADR support Genro received included the presentation by their legal counsel as well as legal advice when needed during the negotiations. Again, neither sides' legal counsel were in the room during the actual negotiations.

Neither side was extremely confident in the ADR process, but both agreed to try it in order to realize the potential benefits. After a month of discussions, both sides agreed to utilize the tailored mini-trial for a specific period of time with the intention of returning to

the Claims procedures should ADR fail. The President of Genro was interested in several potential benefits ADR provided: the legal and other expense savings, ensuring a better relationship with the Corps, and completing the contract. The Corps wanted to avoid the cost of litigation and the possibility of losing everything in a Board decision. Both sides cited the controllability of the process as further reason to pursue ADR.

The relationship of the parties was another major factor in their decision to pursue ADR. Genro was in the middle of contract performance and intended to finish the job. The Corps wanted to further its image as a willing participant in the ADR process and establish a more positive relationship with its contractors. Both sides were satisfied with the agreement and cited the cost savings as the major reason.

The three contract claims in dispute were relatively small; but, again the overall rationale for pursuing ADR was to avoid the Board process. Genro's three claims totaled less than 1.5 million dollars. Genro had not completed the work on the project and wanted to complete this work



intending on bidding for future Corps contracts. The Corps, as stated in the previous case, is considered a large organization whose rationale for utilizing ADR is to achieve the cost and time savings it affords.

The Corps was in a slightly more advantageous negotiating position because the third party neutral had sided with the Corps over the major defective specifications.

The ramifications of this resolution include lessening the case load of the Boards and furthering the Corps' image of pursuing win-win scenarios. Although this is considered a small dispute, the Corps recognizes that through the continued use of ADR, Corps-contractor relationships will be enhanced.

The economic impact of this dispute was tied up in the legal fees and time required to address the previous claims as well as the time required to conduct the ADR proceeding. In addition, Genro was not being paid and the work was not being completed on the roof.

During the time of this dispute, the economic environment facing the defense industry as a whole, and

defense contractors in particular, was rapidly declining. With the crumbling of the Berlin Wall and the end of the Cold War, defense budgets were shrinking and the amount of defense construction contracts was on the decline. Again, the major factor for these parties to pursue ADR was their desire to settle this dispute outside of the claims process and realize some cost and time savings.

### **Analysis**

In order to analyze the data from each case, first, I will identify what appears to be the conditions necessary for a successful ADR implementation. Then, I will establish the relationship of each antecedent to each case. Finally, I will develop a model for the successful implementation of ADR based on the previous analysis of the data.

Antecedents. From studying each case, I was able to establish five antecedents for the successful use of ADR. In this section, I will define each antecedent and identify the frequency that each antecedent was evident in this case study.

Antecedent 1. The first antecedent concerns the relationship of the conflicting parties. If the parties are

in a long-term recurring relationship, then the probability of a successful ADR resolution increases. A long-term recurring relationship is defined as having a relation in the past with the intent of having relations in the future.

In each of these five cases, the parties in dispute were in a long-term recurring relationship. The three private industry labor disputes exemplify long-term relationships through the nature of their respective union-management conflicts. In the two Corps cases, both the Corps and the two contractors were in this type of relationship because of the nature of the Corps construction business. The Corps is in a long-term relationship with all defense contractors, while both Granite and Genro had a lot of experience with Corps' contracts.

Antecedent 2. The second antecedent pertains to the existence of a formalized ADR process and the degree to which its existence is known by the disputing parties. When an ADR process is established and recognized by the parties, then the chances for success increase. A formalized ADR process is defined either through the collective bargaining agreement of management and the union or through the ADR

procedures in place outside of the traditional claims process.

In each of these five cases, a specific ADR process was established and known to the disputing parties. In the three private industry examples, the collective bargaining agreement between the two parties established that ADR mechanisms would be utilized. In the two Corps examples, the parties were aware of the possibility of settling their dispute outside of the traditional claims process through the use of an ADR forum.

Antecedent 3. The third antecedent concerns the support system available to the parties in dispute for the resolution of their conflict through ADR. The support system includes upper management organizational support as well as all procedures to be followed while utilizing ADR. When the senior management of an organization strongly supports the use of ADR by establishing a support system, ADR has a much higher probability of success.

In all five of these cases, ADR was strongly supported by upper management and a formalized support system was in place. In the three industry examples, both the union and

management leaders endorsed the use of ADR by including it in their collective bargaining agreements. These agreements not only demonstrated upper management's support, but also detailed the different ADR processes to be utilized. The Corps had the support of senior management through the directives of the Chief Counsel to utilize ADR. The Corps' support system extended to the contractors because of the Corps policy to allow the opposing attorneys of each dispute to establish the specific ADR procedures to be followed.

Antecedent 4. The fourth antecedent concerns the disputing parties' cultural acceptance of ADR as a valid resolution process. The cultural acceptance is defined as each party's experience and confidence in the ADR process. When both parties accept ADR as a sound conflict resolution technique, the chances for a successful ADR increase.

In all five cases, the parties accepted ADR as the resolution method of choice. In the private sector examples, all of the parties had witnessed ADR's successes and understood that this was the only proper way to resolve their conflict. In the two Corps cases, the parties lacked the personal experience of ADR; however, they were confident

that their respective disputes could be settled outside of the claims process.

Antecedent 5. The final antecedent for success concerns the economic motivation of the parties. Economic motivation is defined as the impact or potential impact this dispute could have on the parties in dispute. As the economic ramifications increase, the chances for success increase to a point, and then the chance for success drops off. Once both sides realize the economic damage of their impasse, they return to ADR, out of necessity, in order to avoid total destruction.

The parties involved in the three industry were economically motivated to settle their disputes, while the two Corps disputes were not. In the three industry examples, the ramifications of a work stoppage were tremendous for both sides, as demonstrated to both the NBA and GM by the MLB and other GM strikes. The Corps disputes did not have major economic ramifications for either party; these resolutions were motivated by the court avoidance costs as well as the desire to end their current disputes as quickly as possible.

Antecedent-Case Relationship. The presence of the five antecedents in each of the cases can also be represented with a table:

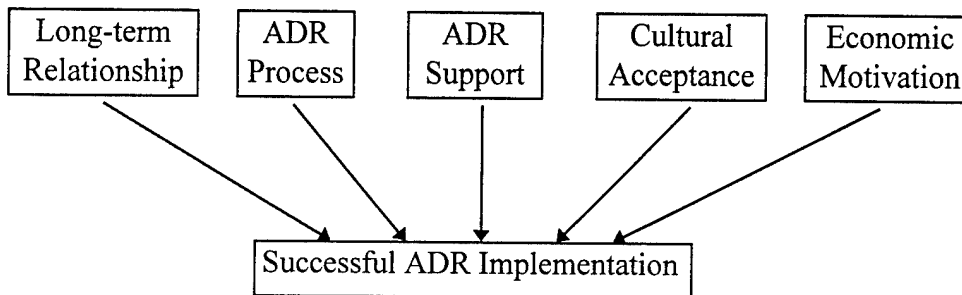
**Table 1**  
**Antecedent-Case Relationship**

	MLB	NBA	GM	Granite	Genro
Relation	X	X	X	X	X
Process	X	X	X	X	X
Support	X	X	X	X	X
Accept	X	X	X	X	X
Economic	X	X	X	/	/

X-presence            /-antecedent presence not as clear

As evidenced by the table, the economic motivation of the disputants is the only antecedent not strongly present in all of the cases studied. In both Corps cases, the ramifications of future Corps-contractor goodwill, as well as relieving some of the logjam in the claims courts, were the primary motivations for these disputants to turn to ADR. Although they weren't entirely motivated by the economics of their dispute, the parties did have other economical considerations like future contracts.

Antecedent Model. The antecedent model which flows from this research reflects five factors that appear to signal a successful ADR implementation. These factors do not follow a particular order; however, all five appear to be present in successful implementations of ADR.



**Figure 3**  
**Antecedent Model**

In this chapter, the data collected on the five cases was reviewed in order to establish a causal antecedent model. The causal antecedent model identifies factors that appear to contribute to the successful implementation of ADR. In the next chapter, the relevance of this data will be explored.



## V. Results

### Overview

In this chapter, I will discuss the results of Chapter IV in relation to the theories presented in Chapter II. First, I will explain why the antecedents discovered in Chapter IV answer the research questions posed in Chapter I and I will explain the relationship between these antecedents and the success of ADR implementation. Second, I will discuss any exceptional data that I collected, including any pattern breaks in the cases or the model. Third, I will discuss the limitations of both this study and the data that I collected. Finally, I will conclude this chapter with my lessons learned and recommendations for future research in this area.

### Antecedents

In this section, I will explain why each of the antecedents discovered in Chapter IV answer the research questions of Chapter I and I will establish the relationship

of each antecedent with the successful implementation of ADR.

Antecedent 1. The long-term recurring relationship of the parties is important to the success of any ADR proceeding because it immediately establishes trust. When both parties understand that they will be dealing with each other over an extended period of time, they attempt to make that relationship as profitable as possible. Even when one party attempted to use their bargaining leverage, (i.e., strike or lockout the other party), the influence of their co-dependent relationship seemed to win out. Eventually, the parties resumed their cooperative search for the ADR forum that would best facilitate a settlement.

The recognition of a long-term recurring relationship among the parties appears to facilitate the ADR process. Neither side wants to be responsible for creating an adversarial environment. In part, because both sides realize that an adversarial relationship would only hurt the future profitability of the relationship. The relationship between this antecedent and the probability of a successful ADR is positive. The sooner the parties recognized this

relationship and understood its importance to a successful future, the quicker they moved to find a way to resolve their dispute in an amicable fashion.

Antecedent 2. The availability of ADR forums for the resolution of disputes, and the knowledge of both parties concerning these forums, contributes to the successful implementation of ADR. When the parties understand their options for settlement through ADR, they are more likely to use these methods for conflict resolution.

The relationship between a formalized ADR process and the knowledge of its existence and the probability of a successful implementation of ADR is also positive. When a formalized ADR process is established and both parties are aware of its existence, they are more likely to pursue a resolution through ADR. The probability for success is greatly increased when both parties fully understand the implications of these alternatives.

Antecedent 3. Strong upper management support for ADR, coupled with the support system in place for the use of ADR, appears to be important to ADR success. When upper management supports ADR, disputants are more likely to chose

ADR as their method for resolution. In addition, this study suggests the more advanced the organizational support system for utilizing ADR is, the better the probability is for a quick and effective resolution.

The correlation between the ADR support system and the probability of success is positive. The more support the upper management demonstrates for ADR use, the more likely the personnel with conflict resolution authority are to chose ADR for resolution. Likewise, the more extensive the support system, the less likely the parties are to be bogged down by the peripheral issues of establishing an appropriate forum, and the more likely the parties are to receive the benefits of a cheaper, more timely, satisfactory solution to their problem.

Antecedent 4. Cultural acceptance, defined as experience and confidence, of ADR as a process by the disputing parties is a contributing factor to the successful resolution of disputes. The more experience the parties have with the successes of ADR and its benefits, the more likely these parties are to turn towards ADR in future conflicts. When the parties had utilized ADR frequently,

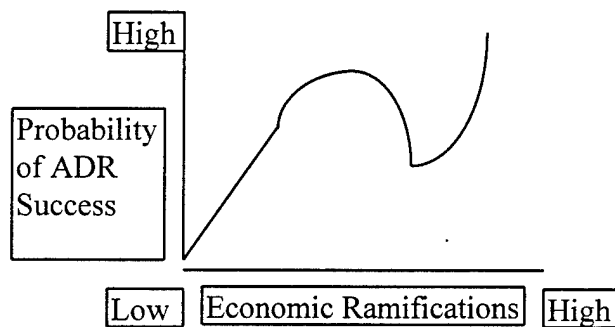
they were more willing to try several ADR forums in order to resolve their disputes and their confidence in ADR as a resolution technique was extremely high.

The relationship between the parties' cultural acceptance of ADR as a process and the success that they achieved is also positive. Not only does the parties' acceptance contribute to the overall achievement of a satisfactory resolution through ADR, but also this acceptance enables the parties to stick with ADR longer until a settlement is reached. This cultural acceptance is very evident in the prolonged private industry disputes that I examined in my case studies.

Antecedent 5. The economic motivation of the parties in dispute appears to drive their attempts at a settlement through ADR. When the economic ramifications of the dispute are very damaging to the parties, both parties avidly pursue ADR for a satisfactory resolution. The timeliness of an ADR resolution becomes a major factor for the parties as they try to eliminate the economic strain the dispute is causing.

This relationship between economic motivation and a successful resolution is curvi-linear. As the economic

ramifications of the dispute increase, the potential for an ADR settlement increase to a point, and then the potential drops. It is not clear at what point this occurs; however, it appears that when both sides reach a point where the economic ramifications of the resolution are high, both sides tend to become entrenched and the usefulness of ADR tends to decrease. This relationship can be seen graphically:



**Graph 1**  
**ADR Success-Economic Relationship**

This relationship was demonstrated in the MLB dispute when the players' went on strike and again at the two GM plants that went on strike. Again, it is not clear at what point this occurs; but it should be understood that, when the economic stakes of the outcome become high, it is less likely the ADR will succeed. However, the probability for ADR success may increase again if both parties realize that

failure to reach a mutually acceptable agreement will have very serious consequences for both parties (i.e., "lose-lose"). This can be seen in both the case of MLB and the NBA.

### **Exceptional Data**

In this section, I will discuss data which either did not follow a developing pattern, or which represented a unique finding. In my analysis, I have identified three pattern breaks and two unique findings.

Pattern Breaks. The first pattern break occurred in the two Corps' cases and was briefly identified earlier. Unlike the three non-government case studies, the two Corps' cases did not have as dramatic an impact on the overall economy. Nevertheless, the impacts of the disputes were damaging in other areas. The ramifications of not utilizing ADR for the resolution of the Corps-contractor disputes include: prolonged settlement procedures in the traditional claims process, increased legal fees, poor relationships, and the contracted work not being completed. The importance of this antecedent is still evident when it is understood in a broader economic context.

The final two pattern breaks can be seen in the strike examples. Neither the NBA nor the GM dispute ended in a union strike; however, similar disputes in MLB and the other two GM plants did result in union strikes.

In both MLB and the NBA, the dispute concerned a new collective bargaining agreement between the league and the players' union. The MLBPA decided to strike for leverage in their negotiations. Both parties had reached that part of the curvi-linear economic motivation relationship where the ADR proceedings were not useful. The effect of the strike was devastating to both sides. The NBA witnessed this devastation and decided to keep their dispute out of the public eye in order to keep the ADR process going. Neither side used their leverage of an in-season strike or lockout because the MLB example demonstrated how the process could collapse when that point in the economic motivation relationship was reached.

The GM dispute over outsourcing is almost identical to the other two Dayton GM plant disputes that resulted in the labor union's strike. These two strikes devastated both sides causing over nine hundred million dollars in corporate



GM losses and lost pay for the workers. Again, the ADR process collapsed when the union went on strike because the ramifications for both sides were so high. The current outsourcing issue has not resulted in a union strike because this plant witnessed the damage caused by the other strikes. The disputants of this GM conflict learned from the other two strikes that the ADR process will collapse if the union tries to apply some leverage to the current negotiations.

Unique Findings. Two unique findings concerning the ADR process and the traditional court resolution process were discovered during this research.

In private industry, when an organization employs union labor, the federal labor laws mandate that a labor agreement be reached through discussions among both parties. This means, although negotiations may reach an impasse and end up in court, neither Congress nor a federal court can dictate the substantive terms of a union labor agreement. Although negotiation and arbitration are classified as "alternative dispute resolution" techniques, in private industry, they more closely resemble traditional dispute

resolution techniques because party resolution is mandated by law.

The second unique finding was a party's desire to go to court in order to settle certain disputes. In some cases, when one party has an impenetrable legal position, they desire a court determined win-lose resolution to their conflict. The party has a desire to reap the one-sided "benefits" of all of the negative aspects of a court mandated resolution. Something the ADR process attempts to remedy. The party appears to enjoy grinding it out in the court system, making the other party spend an inordinate amount of money, and ultimately receiving a beneficial decision. These parties utilize the courts as a type of deterrent for future lawsuits and protection from would be money seekers. This "win-lose" attitude is the opposite of the one required for a successful ADR proceeding, which prefers "win-win" resolutions that are less costly, less time consuming, and more likely to promote future cooperation.

These findings demonstrate that ADR, as it is defined, means different things for different organizations. Also,

the benefits of ADR that the experts point to may not always be seen as benefits. Each case is unique and must be evaluated in light of those conditions (antecedents) which are most likely to support the successful use of an ADR technique.

### **Limitations**

This study has its limitations both in terms of applicability and data. The antecedents identified in this case study are not an all-inclusive list of the antecedents for a successful ADR implementation. These five antecedents were consistently found in the five cases studied. The mere presence of these five antecedents does not necessarily mean that ADR is the proper method for conflict resolution. Other aspects of the dispute, such as legal precedent and resolution impact on other parties, must be considered. Each dispute is unique and the process for resolution should be carefully chosen. When these five antecedents are present, the probability for a successful resolution through ADR increases.

Another limitation of this research is the size of the study. With only five case studies, definitive conclusions

regarding the antecedents for success cannot be made. However, by analyzing cases from different arenas, the presence of all five antecedents suggests that these are indicators of ADR success. The antecedent model should be only one of several decision making tools utilized in selecting the conflict resolution method for your dispute.

### **Recommendations**

As stated earlier in this chapter, I have discovered some exceptional data as well as some limitations to my research during this analysis. In this section, I will discuss some lessons learned and suggest possible areas of future research.

Lessons Learned. After identifying the parties' relationship, the ADR process, the ADR support system, the cultural acceptance, and the economic motivation as the five antecedents for success, I realized that this model is not all-inclusive and can not be applied to every case. The research suggests that the evidence of these five antecedents contribute to the success of ADR. The order of the five antecedents is not important; however, the presence of each is.

My unique findings demonstrated that not all organizations perceive ADR's "benefits" as such. For others, ADR more closely resembles the traditional, rather than the alternative, dispute resolution method used in federal acquisitions.

Future Research. Any future research concerning ADR use should make the distinction that non-government ADR techniques are unique. The private industry examples contributed a great deal to my understanding of ADR, while demonstrating that there is a real difference between private industry and government applications of ADR. For private industry, ADR is really their traditional means of conflict resolution. For the government, ADR is the alternative to the traditional dispute resolution method found in the claims process. Because the non-governmental case studies are unique, they are more difficult to classify as "ADR." The information from the non-government ADR cases is significant when it is understood that their ADR utilization is a formal, traditional method of dispute resolution.

I suggest future research concerning government ADR to include more case study examples. Not only would additional cases improve the veracity of the antecedents identified in this study, but also additional cases may provide insight into other equally valid pre-conditions to ADR success.

Another area for future research would be to quantify the amount that each antecedent contributes to the success of ADR. Quantification of these antecedents would provide better information for the disputants utilizing the antecedent model in their decision to pursue ADR.

### **Conclusion**

The antecedent model resulting from this research effort can be utilized as one of the tools for deciding which resolution method to pursue. However, more research is needed to validate this model and possibly identify additional antecedents.

## Appendix: Interview Guide

### 1. Introduction

a. Personal: My name is 1Lt. Pat Hopper, USAF. I am currently a graduate student at the Air Force Institute of Technology at Wright-Patterson AFB, in Dayton, Ohio.

b. Research: Thesis attempting to find the antecedents for a successful ADR implementation. I would like to ask a few questions regarding (specific case).

c. Definition: ADR is any process utilized to settle a dispute between two parties outside of court (i.e., negotiation, mediation, arbitration)

d. Confidentiality: All responses will be kept confidential. No mention of your name will be in my study and no particular responses will be attributed to your organization. Your organization will only be identified as a participant.

### 2. Demographics

a. What organization do you represent?

b. What is your position and what duties are you primarily concerned with (want someone with a good understanding of the organization's conflict resolution procedures)?

b. Is your organization private or public?

c. What is the relative size of your organization in terms of personnel and annual revenues?

d. Does your organization deal primarily with services or goods?

e. What are your potential sources of organizational conflict (suppliers, laborers, customers, etc.)?

### 3. *ADR Support System*

a. Does your organizational environment facilitate the use of ADR and if so, in what ways (i.e. strong upper management support)?

b. What type of support does your organization provide for the use of ADR (i.e. formalized process in place)?

### 4. *Elements of success (Parties confidence in ADR)*

a. What type of formal resolution techniques has your organization utilized in the past (i.e. lawsuits)?

b. What is your experience with ADR (i.e. positive, negative, mixed)?

c. What types of ADR has your organization utilized in the past (i.e. mediation, arbitration)?

d. Have you ever utilized a process for resolution that you made up as you went along? (i.e. locked in a lodge for a weekend, etc.)

e. How often do you utilize ADR?

f. If you decide to use ADR, how long would you stay with it before turning to more formal methods of dispute resolution?



g. If the ADR method you are using fails, do you move along the ADR continuum or do you abandon ADR altogether?

5. *Specific Case Study Conflict*

a. When did your conflict arise (time or circumstance)?

b. What methods were initially pursued to resolve this conflict?

c. In this conflict (particular case), what form of ADR did you utilize?

Informal Negotiation	Mediation	Non-binding Arbitration	Binding Arbitration	Court Ordered
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Judge-facilitated settlement	Other (specify)
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d. Who initiated the ADR process?

e. What was your motivation for utilizing ADR in this conflict (i.e. timely resolution, cost savings)?

f. What role did your legal department or attorney/legal advisor play in using ADR (i.e. supportive)?

g. Did this dispute involve parties who were in a long term recurring or single transaction relationship?

h. When was this dispute resolved (time or circumstance)?

i. How lasting is the agreement? (i.e., temporary, permanent, for a stated time period)

6. *Relative Bargaining Position*

a. In this conflict, do you feel the negotiating climate favored your organization or your opponent (i.e. favorable to management or labor)?

b. What were your alternatives if this process failed?

c. If you didn't pursue ADR in this conflict, what avenue would you have pursued?

7. *The Business Environment*

a. To your knowledge, is this the first dispute of this kind in this industry?

b. Is this case monumental in any way?

c. Will the resolution of this case establish a precedent in any area, if so what area?

d. Does the resolution of this case have ramifications in other areas, and if so what are the areas?

e. What was the economic impact to both parties during this dispute?

f. What was your party's economic state prior to the dispute?

g. Is there any data to back up the economic state of your organization prior to this conflict?

h. As a whole, would you say your industry was in a strained/downward or booming/upward economic trend when this conflict arose?

8. *Satisfaction*

a. Overall, were you satisfied with the results achieved through the use of ADR?

b. Do you feel both sides achieved a satisfactory settlement to this conflict?

c. Will ADR be your initial choice for resolution in the future?

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