

## **2 . 9      Termination of DRB Members**

The recommended three-party agreement provides that neither the owner nor contractor can unilaterally terminate any appointed Board members or the DRB itself. Individual Board members or the entire DRB can be terminated only by the agreement of both parties.

This provision prevents one party from changing the makeup of the DRB just because they don't like the recommendations. The other party may not want to terminate the DRB or any of the Board members when the DRB has been meeting with the parties for some time and is familiar with the parties and the work of the contract. If the party wanting to terminate the DRB or any Board member cannot convince the other party to agree to the termination, that party may stop participating (refuse to attend meetings and/or hearings), rather than continuing to use the process and simply reject unfavorable future DRB recommendations.

In this event, the parties can still solve their disputes with litigation. The party wanting to continue with the original DRB must decide whether they would rather litigate, or whether they believe it more in their interest to proceed with the DRB process using a new DRB or a new Board member.

Resolution of disputes is much more likely when both parties completely trust the DRB. This is more important than keeping a DRB simply because of its knowledge of the participants and the project.

If an entire DRB is replaced, either due to resignation or to dismissal by the parties, it should be asked to perform no further work other than completing any unfinished DRB reports on previously referred disputes for which hearings had been completed. Previous reports that were accepted by both parties should not be revisited by a new DRB. Having a new DRB revisit previous disputes, whose reports were rejected, may help the parties resolve the disputes rather than proceed to litigation.

The problems involved with removing Board members emphasize the importance of initially selecting impartial and neutral Board members. It is critical to spend enough time researching backgrounds, past experience, etc. of proposed members, rather than just accept whomever the other party proposes during the honeymoon phase of the contract.