

3 . 8 **Resignation**

The Three-Party Agreement provides that the entire DRB, or any individual Board member, may be terminated with agreement of both contracting parties. A more difficult situation can occur when one or more of the Board members are asked to resign by only one of the parties. Determining how this request should be handled is difficult, the issues are complex, and the resulting actions can be controversial. The underlying reasons behind the resignation request must be considered.

It may be that one of the parties simply doesn't like the reports made by the DRB and is obstructing the process in order to gain an advantage with either future hearings or at subsequent dispute resolution venues. If the Board members have been nominated by individual parties instead of collectively by both, the nominating party may feel that they are entitled to request the resignation of the member that they nominated. However, neither the typical specification, nor the recommended Three-Party Agreement provides for this option. Acceding to a resignation request made for this reason is not recommended, because that would allow the parties to think that they could control the reports by changing Board members. This encourages wrong behavior on the part of the obstructing party.

Occasionally one of the contracting parties is reluctant to refer disputes to a DRB hearing. This may be because they have lost faith in the DRB's impartiality. Board members must take proactive measures to avoid this situation. If the Chair senses that this is a possibility, he or she should investigate the situation and do everything possible to address it, including discussions and correspondence with both parties to understand their concerns and points of view. After thorough investigation and discussion among the Board members:

- If the DRB concludes that one of the members is an obstacle to the dispute resolution process, the member in question should resign for the benefit of the project.
- If the DRB concludes that despite the fact that none of the Board members have violated any principles of impartiality, one or both of the contracting parties no longer trust the DRB to be impartial, then the DRB has lost much of its value and replacement of the entire DRB with new Board members should be considered. In such a case, the entire DRB should offer its resignation, in order to benefit the project's dispute resolution process. The decision to accept this resignation resides with the contracting parties, which should agree to any such action. In the event that the parties disagree as to whether the DRB should be replaced, then the resignation is deemed not to be accepted. This is so that neither party is deprived of the benefit of the contractual dispute resolution process. The effective date of such an action must be contingent on the parties having selected new Board members and successfully establishing the replacement DRB.

When considering resignation, Board members are sometimes concerned with issues such as the loss of members' project knowledge, the value of the members' experience, and how strongly the other party and/or the other Board members feel about resignation. Although these are significant reasons for the success of the DRB process, they should not be overriding factors in the decision to resign.

Members must carefully consider if their resignation will contribute to the success of the project and the process. They must resign if there's a chance it could help the parties resolve their disputes without litigation, but resist any request that is based upon one party's attempt to gain an advantage over the other party.