



# **CADRS Dispute Resolution: Learn About the Negotiation Process**



# CADRS



- **Independent**

- CADRS reports to the Chairman to avoid conflict with other agency programs (e.g. licensing, enforcement, etc.)

- **Neutral**

- CADRS staff do not advocate for any particular party in a dispute
- CADRS staff are advocates for a fair process

- **Confidential**

- CADRS staff will not share confidential information provided by parties with others within the Commission or disclose information to the public
- CADRS staff may publish general statistical data that does not identify parties or other identifying information

# Role of CADRS Mediators/Ombuds



- Bring parties to the table
- Ensure that parties are heard
- Educate parties about the negotiation process
- Facilitate communication and the negotiation process



# Ombuds and Mediators Do NOT:

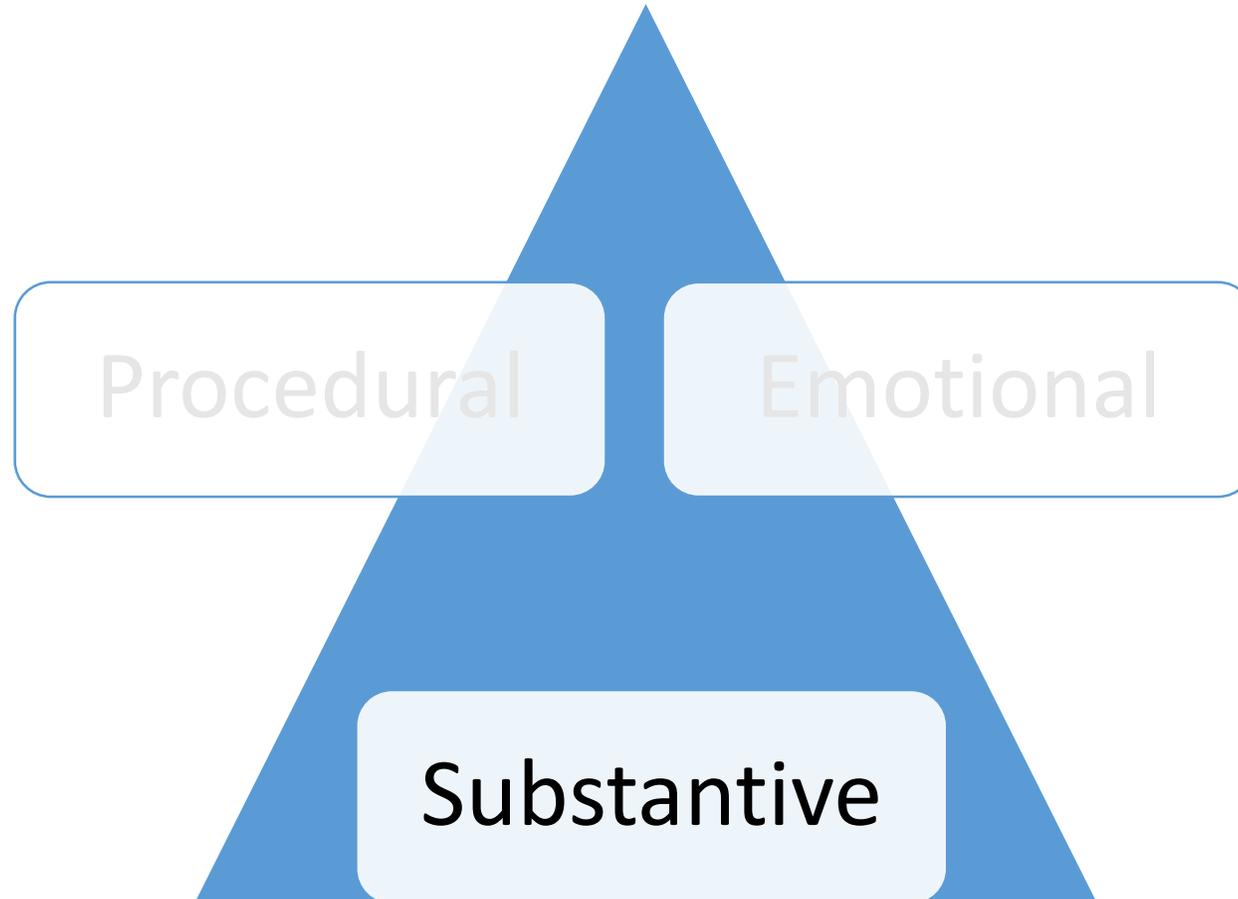
- Compel party participation
- Advocate for either party
- Disclose confidential information without parties' consent
- Adjudicate disputes or order parties to take particular action



# Role of Parties

- Consent to good faith use of Ombuds/Mediation
- Advance personal and mutual interests through negotiation process
- Leave, modify, or postpone negotiation process as desired
- Make and enter into binding settlement agreements

# Requirements for Successful Settlement





# Negotiation Process for Parties

1. Identify Initial Positions for All Parties
2. Determine Parties Needs/Interests for All Parties
3. Identify Potential Resources for Settlement
4. Explore Negotiated Options for Settlement
5. Identify Objective Standards to Evaluate Settlement Options



# Step 1: Identify Positions

- Position is what party is demanding to resolve the negotiation
- Example: Positions for Parties A & B:
  - Party A demands \$100 to resolve a dispute
  - Party B refuses to pay \$100
- Positions are the result of underlying needs or interests



## Step 2: Identify Interests

- Party Positions are derived from underlying needs or interests
- Party interests are derived from procedural, emotional, substantive needs
- All three components necessary for successful resolution
  - **Procedural:** Fair process (e.g. equal air-time)
  - **Emotional:** Need for respect (e.g. listening, use of apology, etc.)
  - **Substantive:** Commercial, economic, or other concerns



# Steps 2: Identify Underlying Interest

## Shipper Position

- Customer refuses to pay a revised invoice that has additional charges

## Shipper Interest

- Procedural:
  - Need for Fair Objective Process/Business Dealings
- Emotional:
  - Need to be Heard
  - Saving Face
  - Relationships with others (e.g. nosiness partners, personal/familial)
  - Negative Past Dealings? (\*Perceptions are key)
- Substantive:
  - Economic Interest (Low Price)
  - Interest in Shipping and Receiving Goods
  - Completing business transaction involving other third parties



# Steps 2: Identify Underlying Interest

## Carrier Position

- Cargo will not be released until invoice paid in full

## Carrier Interest

- Procedural:
  - Need for Fair/Objective Process/Dealings
  - Multiple Customers= Desire for Consistency
- Emotional:
  - Need to be Heard
  - Recognition of Work Done
  - Reputation
- Substantive:
  - Prevent other shipments from being impacted (if LCL)
  - Ensuring cargo moves within free time
  - Economic/Commercial Interests: Receive and make payment to others in chain



# Step 3: Explore Available Resources

- Parties identify personal, mutual, and third party resources to help satisfy underlying interests and needs
- Examples of resources include:
  - Rate
  - Time
  - Volume
  - Independent Opinion (e.g. shipment volume audit)
  - Confidentiality/Publicity
  - Opportunity/Future Business
  - Sharing
  - Legal Release (i.e. agree not to sue/terminate suit)
  - Apology



# Step 4: Explore Settlement Options

- Compare Interests/Needs and Resources
- Prioritize Interests/Needs
- Identify Creative Options to Satisfy Interests/Needs
- Prioritize Interests/Needs
- Trade Lesser Priority Interests/Needs for Higher Interests/Needs



# Step 5: Apply Objective Criteria

- Parties measure or evaluate settlement proposals using objective criteria to ensure fair proposals and options
- Some examples of objective criteria include:
  - Industry Custom
  - Trade Association Guidelines or Best Practices
  - FMC or other government Regulations or Best Practices
  - Tariff, Service Contract, NRA, NSA Terms (if interpretation not in dispute)
  - Fair Market Value
  - Equal Treatment
  - Third Party Audit (e.g. Volume Disputes)

# Step 5: Evaluating Settlement Options



- Does the proposed option satisfy each parties' interests?
- Is the proposed option measurable by an objective standard?
- Does the option require outside parties or resources needed to perform?
- Is additional authority required to exercise the proposed option?
- Are the parties clear re: roles and responsibility?



# Obtaining Assistance

Office of Consumer Affairs & Dispute Resolution Services

Email: [complaints@fmc.gov](mailto:complaints@fmc.gov)

Phone: (866) 448-9586 (toll free)

(202) 523-5807

Fax: (202) 275-0059