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**STATEMENT
Of The
ALLIANCE FOR RAIL COMPETITION**

BEFORE THE SURFACE TRANSPORTATION BOARD

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**Arbitration—Various Matters Relating to its Use
as an Effective Means of Resolving Disputes
that are Subject to the Board's Jurisdiction**

November 23, 2001

For the past several years, Alliance for Rail Competition (ARC) has represented the diversity of the rail customer community before Congress and the Board, pressing for significant pro-competitive changes to rail policy for the purpose of allowing for increased use of the free and competitive marketplace as the regulator of choice. Our organization and its mission have been defined by rail customers who have continued and growing concerns about deterioration in service performance, increases in rail transportation costs, monopolistic railroad behavior in both pricing and service, and the inability of captive rail customers to get either competitive choices among major rail carriers or adequate regulatory protection from monopolistic behavior.

ARC is pleased to respond to the Board's September 18, 2001 decision regarding arbitration and various matters relating to its use as an effective means of resolving disputes subject to the Board's jurisdiction.

Updating Information on Available Qualified Arbitrators

According to 49 CFR 1108.6(a), the Railroad Shipper Transportation Advisory Board (RSTAC), in consultation with the Chairman of the STB, was to have established a roster of qualified arbitrators containing no fewer than 21 names back in 1996. Further, that roster was to have been published and made available to the public upon request. As of this date—nearly six years after the STB replaced the ICC and arbitration was to be made available—no roster has ever been compiled, much less published. Despite its failure to do so previously, it is appropriate that the Board make an effort to create such a list now. ARC hopes that this list will be created and maintained at more reasonable intervals in the future.

However, the nature of the Board's existing arbitration process falls short of providing any realistic alternative dispute resolution. Since the Board has been granted the authority to take such actions as are necessary and appropriate to fulfill its jurisdictional mandate, ARC suggests that a significant retooling of the Board's existing arbitration is necessary and appropriate to make it a usable tool. Whether legislation is required or not is a matter of subjective legal opinions, although ARC believes at least some improvements could be accomplished without the intervention of legislation. Nonetheless, ARC believes legislation will be required to more appropriately balance the mandate of the Board as it pertains to all matters of rail policy, including arbitration.

Statement in Individual Rail Complaint Cases

The Board has repeatedly reinforced its commitment to private-sector resolutions of disputes outside of its formal process where possible. Unfortunately, the Board continues to disregard the

reasons why private-sector resolutions are not more prevalent. A view of some of those reasons from the customers' point of view is offered.

First, true balanced negotiation rarely takes place in situations where the rail customer is captive or is at a size and resource disadvantage to the large and powerful railroads that exist today.

If a rail customer is singly served, has no economically realistic modal alternatives, or is so small that the option of a formal rate relief proceeding is not realistic, there is little that customer can do to negotiate a fair rate and service contract if the railroad is not interested in providing one. It is for this reason that so many rail customers have been urging the Board to set policies that would promote competition among railroads—to provide that balanced playing field that allows for private sector negotiated resolutions. The Board has extensive records with regards to the rail customer community's desire for policy changes that would increase the ability of a rail customer to choose among rail carriers. However, in the absence of true freedom of choice, the Board should provide policies that would balance the economic power at the negotiation table.

Second, without increased competitive options for rail customers, the availability of *voluntary* arbitration is not likely to produce a resolution in a situation where a railroad that has a virtual monopoly over a customer and cannot come to a voluntary agreement in the marketplace. If the railroad won't voluntarily negotiate in the marketplace, why would it voluntarily submit itself to arbitration of this dispute?

In truth, the cost and time burdens of the STB's formal rate complaint process play in favor of the railroads. Railroads are known for their deep pockets when it comes to fighting rate complaints, and for their regulatory stalling tactics that drag out such complaint processes. Conversely, an arbitration process, convened by as yet unknown players, might turn out to be a more

balanced review of the reasonable merits of any one case and, at the same time, could be more cost- and time-efficient for the rail customer. Such a cost-effective and balanced review of complaints could in fact encourage customers to bring more complaints to this form of dispute resolution. (And as we know from the General Accounting Office study, released in February 1999, fully 75% of rail customers consider the existing formal rate relief process to be too costly and time consuming to be worth pursuing.) Thus, even with a voluntary arbitration process in working order, there is little or no incentive for the railroad in question to ever submit itself to a time-constrained, less costly dispute resolution alternative where the railroad could not take advantage of their size and greater experience with the current formal processes.

In practice, the rail customer community appears to believe that the Board's voluntary arbitration process simply is no more than a charade pretending to offer cost-effective, time constrained dispute resolution as evidenced by the complete lack of use of the process. Requiring "potentially arbitrable disputes" to include a statement that the complainant has "decided" against arbitration is harmful to the extent that any rail customer or other decision maker looking to improve the existing processes might actually believe that it offers a realistic dispute resolution alternative. If railroads were also forced, when responding to complaints deemed potentially arbitrable, to indicate whether they would or would not agree to participate in such a voluntary arbitration should the rail customer choose it, and state their reasons, this might establish a more valuable record than just requiring complaining customers to indicate whether arbitration was considered.

Legislatively Prescribed Arbitration for Small Rate Disputes

The Board has indicated that it wishes "to explore whether binding arbitration should be legislatively prescribed for small rail rate disputes and, if so, how such a requirement would work

best.” ARC is very pleased and encouraged that the Board is listening to rail customers when they complain that in the vast majority of cases the STB’s formal procedures are often impractical for obtaining relief from unreasonably high rail rates and do not offer any help on specific service issues. ARC disagrees with the Board’s implicit position that legislation is the only route for improving the regulatory structure that is in place for the purpose of balancing the interests of all rail customers and railroads in situations where the free market does not work in a fair and expeditious manner. ARC believes that the Board can and should establish procedures for binding arbitration and then use its stated policy of encouraging private –sector resolutions of disputes to move more parties toward the use of the procedures. If legislation was later passed that prescribed arbitration for defined type cases, so much the better. The use of private dispute resolution processes has grown significantly in the business community because it works. The rail transportation industry should take advantage of the experience of other industries and use this tool to help improve the hostile environment that exists between railroads and their customers.

It should be clearly stated that ARC strongly supports the enactment of legislation that would mandate arbitration for rate and service dispute resolutions. Arbitration is one of our principle concepts for reestablishing freedom of choice within the rail industry.

Thus, for the benefit of The Surface Transportation Board and any Member of Congress who might review this record, ARC’s position with regards to how arbitration should be applied is as follows:

1. Do not limit arbitration to small shippers. Disputes on rates and service can occur on small movements of big companies and big movements of small companies. The size of the shipper should not be a factor in determining who can require arbitration. The suggested unit of measure is any Origin to Destination pair for which a rate is requested. Rate complaints over the O/D pair should have a minimum dollar value in projected rate charges over a 12-month period. A minimum up to of \$500,000 is

~~proposed. Service complaints over the O/D pair should have a minimum number of cars projected to be moved over a 12-month period. A minimum up to of 500 car moves is proposed.~~

2. Make arbitration available at the request of the complaining party. Arbitration available under the authority of regulators should be considered to be another mechanism available at the sole discretion of the disputing party. While not all rail customers may consider arbitration to be a valuable tool depending on the complexity of their cases, those rail customers moving small volumes or moving goods in multiple lanes are likely to find binding arbitration a more realistic means of dispute resolution than currently exists. In order to truly balance the interests of railroads and customer, selection of what method of dispute resolution is sought must be left to the discretion of the complaining customer.

To be clear, ARC does not believe this arbitration system should replace existing dispute resolution mechanisms, but would be available at the rail customer's option, and would be conducted by neutral arbitrators who are independent of the Surface Transportation Board.

3. Ensure reasonable outcomes through "baseball" style arbitration. In order to ensure that both the railroad and the complaining party are sincerely reasonable in pursuing a fair outcome to the dispute, a final-offer "baseball" style arbitration system should be established to provide a streamlined option for resolving disputes involving rail common carriage transportation, and again, this system should be invoked at the option of the rail customer. Final-offer "baseball" style arbitration—which has been successfully applied in the Canadian rail policy—essentially requires each party to put forward its "best and final offer," and rather than splitting the difference, the arbitrator must pick one or the other.
4. Broaden the scope to include non-rate issues. ARC believes the scope of arbitrable disputes should encompass:
 - Rates and charges, including demurrage;
 - Rail service disputes, including car supply;
 - Performance commitments,
 - Loss and damage, including delay;
 - Competitive access; and
 - Unreasonable practices.
5. Selecting Arbitrators. ARC's comments with regards to the STB's updating of its roster of arbitrators have already been covered. As the Board has never generated a roster of potential arbitrators, ARC believes the responsibility for such a roster might appropriately be relocated to the Department of Transportation. Under that circumstance, for disputes involving an amount less than \$1 million, a single arbitrator will be chosen from the roster of arbitrators kept by the Department of

Transportation. If the parties cannot agree upon an arbitrator, the arbitrator shall be selected by the Secretary of Transportation from the roster of arbitrators.

For disputes involving an amount of \$1 million or more, unless the parties otherwise agree, the dispute shall be heard by a panel of three arbitrators, one chosen by the rail customer, the other by the railroad and the third by the two arbitrators already appointed. If the two cannot agree, the Secretary of Transportation shall choose the third from the roster of arbitrators.

6. Time Frame of Decisions. For disputes involving an amount less than \$1 million, the decision of the arbitrator, once chosen, shall be rendered in no more than 60 days.

For disputes involving an amount of \$1 million or more, the decision of the panel shall be rendered in not more than 120 days.

7. Decision Criteria. If the arbitration involves a complaint regarding the reasonableness of rates or charges, the arbitration will be final offer arbitration. The arbitrator(s) shall consider the variable cost to the carrier of performing the transportation, as argued by the parties, multiplied by the existing 180% factor. The arbitrator may also consider information provided by the parties on rates charged in other similar moves, market factors, other available transportation options, profit levels, product redistribution options and any other potentially relevant information. It is the responsibility of the arbitrator(s) to determine what is relevant and the credibility of the information provided.

8. Authority. The arbitrator(s) shall have the power to issue any order necessary to resolve the dispute, consistent with applicable law.

Any order by the arbitrator(s) other than for the payment of money shall be effective for not longer than 2 years.

9. Appeal. Any appeal from the decision of the arbitrator(s) shall be to the courts under the standards of the Federal Arbitration Act.

ARC reached the recommendations presented above after spending a significant amount of effort assessing the performance of the similar Final Offer Arbitration process in place in Canada. Many of our conclusions are echoed in Dr. Harvey Levine's analysis of this process, embodied in his ARC-commissioned June 2001 paper

entitled, "Final Offer Arbitration: A Sound Alternative to Railroad Rate Regulation."

A copy of his paper is attached for inclusion in this statement and record.

ARC has been working with various members in both the House and the Senate to develop a legislative package that would allow for a final-offer arbitration process as outlined within this statement. To the extent that the Board is truly committed to balancing the interests of railroads with those of their customers, ARC hopes that the Board will support, and even endorse, the arbitration approach identified herein. Continuing to adhere to the Board's existing arbitration process, or taking a new approach to arbitration that is significantly more limited than the one described above will do little to improve the ongoing impasse between railroads and their customers.

ARC hopes that the Board will be willing to work in conjunction with rail customer interests on this issue.

Respectfully submitted,

S/ 

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FINAL OFFER ARBITRATION:

A SOUND ALTERNATIVE TO RAILROAD RATE REGULATION

**Dr. Harvey A. Levine
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June 2001

Executive Summary

Railroad maximum-rate proceedings in the U.S. have been prohibitively costly and time consuming, with some cases taking over 10 years to resolve. The labyrinthine process involved in determining the reasonableness of a railroad rates relies on a host of regulatory standards, which themselves have been subjects of contentious proceedings; these include: market dominance, revenue-adequacy, and stand-alone costs. The end result is that the regulatory "playing field" has tilted toward railroads that have the knowledge, financial strength, and staying power to inhibit shippers from even filing rate complaints. Such an atmosphere has created a chasm of hostility between railroads and their captive shippers and is at odds with the Staggers Rail Act of 1980.

The solution to the deficiencies of maximum-rate proceedings is readily available just to the north of this country. In Canada, the national transportation provision of Final Offer Arbitration (FOA) enables captive railroad shippers to resolve their rate disputes within 60 days. Arbitration has become an increasing popular form of dispute settlement the world over, as it is far less costly and time consuming than litigious and regulatory proceedings. What is striking about the applicability of Canadian FOA process for the United States is the similarity of the concentration of power among only several railroads in both countries.

FOA is a process employing either a single arbitrator, or a panel of three arbitrators, to resolve freight-rate and/or service complaints brought by shippers against freight railroads. Once accepted by the regulatory agency as a legitimate arbitration matter, and following offers and rebuttals by both parties, the arbitrator selects between the railroad and shipper offers in a manner known as "baseball-style arbitration." Unless otherwise agreed to by the parties, decisions are binding and remain for a stated period of time. Benefits of FOA include: (1) a huge savings in time and money as the process is condensed, (2) the lack of frivolous railroad and/or shipper positions because of the requirement to choose between two offers, (3) the creation of an incentive for dispute settlement as offers under the "baseball-style" approach tend to be more moderate than would otherwise be the case, (4) the removal of the rate decision from the regulatory/political arena to an environment where the involved parties agree on a professional arbitrator(s), (5) the development of a more user-friendly method of settling disputes in that the railroad and shipper share the costs of arbitration, the time frame of settlement is relatively short, and overly-complicated and detailed regulatory criteria do not have to be implemented, and (6) a reduction in the tensions, if not hostilities, between railroads and their captive shippers (dependent customers). Furthermore, the experience in Canada is useful in that it provides guidance for the resolution of FOA administrative issues.

If FOA were to be adopted in the United States, the Surface Transportation Board could have an administrative role in the process, or it could be absorbed by either another entity, thereby giving reason to terminate the Board. FOA is consistent with the Staggers Rail Act and should be legislated as an alternative to railroad rate regulation in the United States.

FINAL OFFER ARBITRATION

What is it?

FOA is a nationally legislated process employing either a single arbitrator or a panel of three arbitrators, to resolve freight rate and service disputes mainly between freight railroads and their dependent customers, including transit operators. To a far more limited degree, FOA also applies to water carriers and freight-carrying airlines. An FOA is not a proceeding before the railroad regulatory authority -- in the case of Canada, the Canadian Transportation Agency (Agency); equivalent to the Surface Transportation Board (STB) in the United States. This is because the FOA provision is not considered to be a regulatory control. Rather, it is thought of as part of Canada's national transportation policy to balance the needs of railroads and their captive shippers.

What is its enabling authority?

The FOA process has been legislated by the enactment of the National Transportation Act of 1987 and maintained in the Canada Transportation Act of 1996. In the United States, FOA adoption would require an amendment to the Staggers Rail Act of 1980.

Can it be initiated by railroads and shippers?

No. Only by shippers. Section 161. (1) of the Canada Transportation Act of 1996 states: "A shipper who is dissatisfied with the rate or rates charged on properties to be charged by a carrier for the movement of goods, or with any of the conditions associated with the movement of goods, may, if the matter cannot be resolved between the shipper and the carrier, submit the matter in writing to the Agency for a final offer arbitration to be conducted by one arbitrator or, if the shipper and the carrier agree, by a panel of three arbitrators." Section 6 of the Canada Transportation Act defines "shipper" as "a person who sends or receives goods by means of a carrier or intends to do so . . ."

Has it been used?

While in Canada only two FOA decisions were made by arbitrators between 1988 and 1996, during the following four years, 16 formal requests for FOA determinations were received by the Agency. Additional FOAs have occurred in the year 2001. According to a Canadian transportation consultant, "FOA has become the preferred new avenue for freight rate and service relief . . ." "Previously, alternative forms of competitive access would thought to be the primary solution to excessive railroad freight rates. (Report of Maville, Mozersky & Associates Inc., April 3, 2001.)

How long does the process take?

Unless the parties agree to a different time frame, FOAs must be completed within 60 days, or 30 days for disputes involving freight charges of less than \$750,000 (about \$500,000 in U.S. dollars). The latter cases are referred to as "summary" processes. In essence, if adopted in this country, even relatively small captive shippers would be able to access the FOA process without the fear of experiencing exorbitant expenses.

What are the mechanics of the process?

The following steps describe how the FOA process generally works in Canada, recognizing that in

that country, "railroads" are referred to as "railways."

A railway customer (shipper) provides a written notice to the railway of its intention to submit an FOA matter to the Agency.

1. At least 5 days later, the railway customer submits its initial FOA submission to the Agency, with a copy to the railway, containing the following information:
 - An offer to the railway, excluding dollar amounts.
 - An agreement to abide by the arbitrator's decision.
 - A commitment to share in the cost of the arbitration, and
 - A designation of a preferred arbitrator, or arbitrators, either agreed to by the parties, or preferred by each party. (Quite often, an arbitrator is agreed upon by the railway and shipper.)
2. The Agency qualifies the shipper's submission by: (1) determining that the issue involves only rates either charged or proposed to be charged by the identified railway, or conditions associated with that railway's movement of goods for the shipper, and (2) concluding that all filing requirements have been met. The arbitrator, or arbitrators, is (are) then identified or selected.
3. Within 10 days after qualification by the Agency, the customer and railway exchange their final offers, including proposed rates.
4. If one party fails to submit a final offer in a timely fashion, the final offer from the other party is deemed to be the arbitrator's decision.
5. If the arbitrator and the parties cannot agree on procedures, the FOA is governed by the rules of procedures made by the Agency
6. Within 7 days after receipt of the other party's information, each party may direct interrogatories to the other party, which shall be answered within 15 days after their receipt.
7. If the arbitrator deems that a party inappropriately withheld information, that factor shall be taken into account in the decision-making process.
8. The arbitrator can request additional information from the parties, unless the parties agree to limit such information.
9. Unless otherwise agreed to by the parties, the arbitrator shall take into account alternative, effective, adequate and competitive means of transporting the goods at issue.

10. At any time during the FOA process, if the parties advise the Agency that they agree on the matter being arbitrated, the FOA process shall be immediately terminated.
11. The arbitrator chooses from one of the two offers and renders his or her decision in writing.
12. Unless otherwise agreed to by the parties, the arbitrator's decision is final, binding on the parties, and retroactive to the date of the customers initial filing to the Agency.
13. The arbitration does not have to provide reasons for the decision unless requested by both of the parties. In such a case, a written explanation must be provided within 30 days of the decision (7 days for a Summary FOA).
14. The arbitrator's decision regarding freight rates is incorporated into a tariff of the railways, unless the railway is entitled to keep the rate confidential, or the parties agree that the rate should be in a confidential contract.
15. The parties promptly pay monies owed as a result of the arbitration, including interest at a reasonable rate.

How are arbitrators selected?

Arbitrators are approved by the Agency that maintains a list of available arbitrators. A number of arbitrators are professional personnel who also arbitrate non-railroad issues.

1. After receiving a FOA request, the Agency sends its list of arbitrators to the parties.
2. Each party identifies 25 acceptable arbitrators in order of preference, and those it objects to on grounds such as potential conflict of interest or perceived bias.
3. The Agency selects the highest-rated common arbitrator. If there is none, the Agency may ask the parties for additional names and repeat the process.
4. If the parties cannot agree of an arbitrator, the Agency selects the arbitrator, considering input from the parties.
5. Once the Agency selects the arbitrator, the candidate provides information regarding potential conflicts of interest, which are shared with the parties.
6. The Agency makes its final decision, considering the reactions, if any, from the parties.
7. The parties have 3 days to challenge the appointment of an arbitrator and must notify the Agency in writing, explaining the reasons for the objection.

8. The Agency can retain the arbitrator, or remove and replace him or her.
9. If the arbitrator is removed because of challenges from the parties, the challenger is responsible for the costs of the arbitration process to that point.

What are the costs of arbitration and who pays?

The costs of arbitration vary depending on the scope of analysis and the length of the arbitration. Naturally, a shipper's initial arbitration is somewhat of a learning experience and the cost is usually higher than in ensuing involvements. It would not be unusual to spend several hundreds of thousands of dollars in an initial FOA. While this is not a frivolous amount, it is far less than the cost of a maximum-rate proceeding in the United States.

1. The costs of arbitration are shared by the two parties, including the cost of assistance, if any, by the Agency.
2. Arbitrators may establish their own fees, although the Agency may in some circumstances fix arbitration costs.
- 5.3. Each party must pay their own cost of preparing offers.

What are the kinds of FOA administrative issues addressed by the Agency?

During, and even after, the FOA process in Canada, a number of issues have been raised that have either been settled by the Agency or the Federal court system. Some examples are identified below.

1. Is the arbitrator(s)' decision binding if there is evidence of procedural unfairness? No. In an FOA, the Federal Court remitted the matter to the arbitrator to give the railroad the opportunity to respond to supplementary data provided by the shipper.
2. Is a previous confidential, contract rate subject to arbitration? Yes, if the contractual period of the contract has terminated. In an FOA, the Agency determined that the rate was to be determined on an annual basis and referred the matter to arbitration. The Federal Court confirmed and the Supreme Court denied an appeal.
3. Can a chosen arbitrator be terminated because of the confidential nature of the evidence to be submitted? This is a matter to be decided by the parties and the arbitrator, since it is the arbitrator who decides the relevant information to be supplied. In an FOA case, this issue caused the arbitrator to resign and because the railroad did not submit an alternative, a substitute arbitrator was selected by the Agency.
4. Are international rates subject to the FOA process? Partially. In an FOA case, the Agency determined that FOA only applies to movements within the territory governed

by it. In another proceeding, the Agency noted that the final offers were reflective of standard railway practice for quoting international rates; the shipper had structured the international portion of its final offer so that any adjustments would apply against the Canadian portion of the movements, and the rates offered on the Canadian portion of the movements could also be specifically calculated.

5. Can the terms of a prior confidential contract be referenced in an FOA? Yes. In an FOA case, the Agency found that a shipper was not precluded from mentioning matters contained in an expired contract, as long as that shipper protected against public disclosure of any commercially sensitive information contained in the contract.
6. Can a shipper participate use the FOA process even if it doesn't own the goods involved in the arbitration? Yes. In an FOA case, the Agency relied on the legislative definition of "shipper," which does not require goods' ownership.

In a dispute involving rates, what economic issues are usually addressed?

The issue of maximum-allowable railroad freight rates has been at issue for more than a century in both the U.S. and Canada and quite naturally, the economic issues of an FOA are similar to those addressed in the regulatory arena. For example, a railroad may base its proposed rate increase on: (1) a financial need, (2) an increase in operating expenses, (3) the theory of differential pricing, (4) the claim that the profit margin of the traffic at issue is reasonable based on comparative analysis, and (5) a showing that proposed rate compares favorably with rates in other markets with similar characteristics. The parties can provide as much information as they see fit in an FOA, and it is the responsibility of the arbitrator to determine what is relevant. In some ways, a 60-day FOA can be viewed as a condensed version of a railroad maximum-rate proceeding, excluding the long delays associated with controversies over the adequacy and interpretation of data.

What is the practical experience of FOAs?

Most FOA procedures are confidential so that a record of the parties and their disputes are not available. Furthermore, the majority of FOA disputes are settled prior to a decision by the arbitrator. Of the FOAs that reach a final arbitration decision, experience in Canada suggests that the shipper has at least a 50% chance of having its final offer accepted. Notwithstanding the FOA process, the two dominant Canadian railroads have increased their productivity, operating efficiency, and earnings over the past 5 years.

If FOA a substitute or supplement to railroad rate regulation?

It is both. It is a substitute for much regulation, but does not preclude other federally mandated provisions affecting railroad rates and service. For example, in Canada, there is no determination of market dominance, no calculation of stand-alone costs, and no annual determination of railroad revenue adequacy. At the same time, Canadian transportation policy allows for some pro-competitive provisions such as reciprocal switching (inter-switching), running rights (operating rights), and open access (competitive line rates). In the United States, FOA could replace legislation addressing maximum-rate regulation, without affecting other provisions of the Staggers Act.

Is arbitration legally binding?

If FOA were legislated for railroads and shippers, it would naturally be legally binding, but such would also be the case if it were voluntarily used by the parties. This is because many agreements to arbitrate are specifically enforceable under the Federal Arbitration Act and under modern arbitration laws similar in content to the Uniform Arbitration Act (adopted by the National Conference of Commissioners on Uniform State Laws in 1955 and approved by the American Bar Association). The effect of modern arbitration statutes is to endow agreements to arbitrate with the same legal protections as other private agreements, thus enabling arbitration to be an effective tool for the legal profession.

Where is arbitration used?

Arbitration is being increasingly used in the United States as a means of dispute settlement. Obviously, "baseball style" arbitration derives its name from its use in that sport. But the use of arbitration cuts across industries, professions, and types of disputes. The American Arbitration Association, founded in 1926, provides arbitration guides, rules, procedures, and forms for, among others, the wireless industry, accident claims, real estate, insurance claims, accounting and related services, patents, health care, textiles and apparel, and consumer-related disputes. The Association administered more than 140,000 cases in 1999 and has a roster of about 12,000 experts to hear and resolve cases.

One of the major areas employing arbitration procedures is labor-management, collective bargaining. In fact, railroad management and labor participation in a mediation process under the Railroad Labor Act. Furthermore, federal courts are increasingly applying the Federal Arbitration Act in labor disputes. And finally, 35 states have adopted the Uniform Arbitration Act as state law. Thus, the arbitration agreement and decision of the arbitrator may be enforceable under state and federal law.

The point is, FOA as a replacement for railroad rate regulation would simply mirror a procedure for settling disputes and is already being used by railroads in other areas, and by companies and industries throughout the United States.

Where can information about the Canadian FOA process be obtained?

Rail and Marine Complaints and Audit Service, Rail and Marine Branch, Canadian Transportation Agency, 15 Eddy Street, Hull, Quebec K1A 0N9, 819-953-2236, "foa.arbitrage@cta-otc.x400.gc.ca" The Agency's list of arbitrators and guidelines for selecting an arbitrator are available from the Agency.