
DISPUTE RESOLUTION IN THE NONUNION ENVIRONMENT: AN EVOLUTION TOWARD INTEGRATED SYSTEMS FOR CONFLICT MANAGEMENT?

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I. Introduction

Dispute resolution within the nonunion workplace in the United States varies greatly from employer to employer. There are many small companies with no designated dispute resolution mechanisms. There are employers with dispute resolution procedures restricted to specialized situations such as harassment and discrimination, and some that will deal only with a formal grievance. Many employers are now experimenting with "appropriate dispute resolution" (ADR) mechanisms, such as mediation and arbitration, often using neutrals outside the workplace.¹ Much of the interest in these ADR mechanisms is oriented externally, toward those rare disputes that are particularly serious and will otherwise go outside the workplace to a government agency or to the courts. There is also an increasing number of employers with extensive internal systems—which include internal ADR options—designed to deal with all the different kinds of conflict in a workplace. These systems constitute a major change from a prior focus on one or another grievance channel.

There is no reliable estimate of the number of nonunion employers that have instituted internal dispute resolution procedures because the subject is poorly defined and observers discuss conflict management in different ways.² Even within a given firm, dispute resolution procedures are sometimes well described and understood and sometimes are not. What is clear is the fact that there has been a great deal of change over the past thirty years. One study³ published in 1989 found that half or more of large employers had instituted some kind of grievance process for at least some nonunion employees, and that

at least one-fifth of those used third-party arbitration as a last step in their formal procedure. The United States General Accounting Office reported in 1995 that "almost all employers with 100 or more employees use one or more ADR approaches" and in 1994, Organizational Resources Counselors reported that 53 percent of a survey of "ninety-six leading companies" used an ADR program to resolve employment-related issues.⁴ My own consulting experience indicates that many organizations are now reviewing their dispute resolution structures and that many are moving toward a systems approach.

Some of these structures and systems appear to be working well, but in many small and large firms the mechanisms that exist are inadequate. For example, they may fail to cover one or another group of employees or fail to include managers and professionals. In some companies, the dispute resolution structures are treated cavalierly by management or are effectively unknown to the workforce they are supposed to serve.

Apparent shortcomings of nonunion dispute resolution have received a good deal of attention in the past fifteen years. Various observers have described a variety of problems as seen from the employee perspective. Perhaps the most common criticisms center on inadequate protection of employee rights,⁵ including statutory, economic, and "enterprise" rights (those rights granted by a specific employer). Many criticisms center on the absence or inadequacy of formal grievance and appeal channels, focusing especially on the perceived absence of sufficient due process protection. In addition, rights-based formal procedures are believed not to work as well for women's complaints as they do for the complaints of men,⁶ and the "gatekeepers" for complaint processes are found to be not as helpful for women and people of color as they are for white men.

Both men and women experience many problems in the process. Many people who use rights-based (formal) complaint procedures fear career damage—as do their supervisors. Fear of reprisal and conflict of interest are serious problems, especially where formal complaint and appeal procedures rise within a single line of supervision. The process of using complaint procedures is often difficult to understand. Nonunion grievants are seen to lack advocacy. Stakeholders are often left out of the process of building nonunion dispute resolution structures. Finally, providing only a single complaint procedure of any kind will shortchange employees and managers who do not like that particular kind of formal or informal procedure.⁷

Other common criticisms come from employers. Thousands of employers are reacting to the fact that the obvious tip of the iceberg of nonunion dispute resolution is handled slowly and expensively by government agencies and the courts. Some employers are also acutely conscious of a litany of other serious costs resulting from the lack of effective internal dispute resolution: damage to relationships in the workplace, loss of productivity, sabotage and theft, harassment and violence, and the like. Some employers are concerned with the particularly high costs that may ensue when managers and professionals feel unjustly treated. In short, many employers believe that the costs of employment disputes are far too high and that there must be a more cost-effective approach.

This chapter will review some innovations in nonunion dispute management and resolution. I first cite various explanations for the introduction of innovations among nonunion employers, and various opinions about dispute resolution procedures. I then turn to the concept of an effective integrated conflict management system. Since the success of a conflict management system depends for the most part on the needs and wishes of complainants, I discuss some characteristics of people who perceive a problem or want to complain in the workplace.⁸ I then turn to the implications of the opinions of various critics, and of the characteristics of complainants, for setting the specifications for a good system and for providing the options needed in an effective complaint system. The experience of Brown & Root in developing an integrated conflict management system is briefly reviewed as an example of a contemporary systems design. I conclude with some suggestions for future research.

II. Why Has the Nonunion Sector Been Innovating?

The reasons for nonunion innovations are varied and complex. To my knowledge there has been no satisfactory broad overview of this field or systematic description of the different innovations that are emerging all over North America. There is no comprehensive understanding about why these innovations are appearing or how well they are doing. Most authors have a particular focus, such as a special concern for employee rights, alternative dispute resolution centered on the interests of disputants, cost-control, or healthy organizational development. None seems to have a comprehensive perspective.⁹ I will cite just a few of the varied studies about conflict management in the United States.

Ewing,¹⁰ writing in 1989, pointed to erosion of reverence for the sacredness of management and management rights, with concomitant growth in concern for employee rights. He identified as causal factors the influence of education, mobility, and diversity in the workforce, rising expectations for fairness and happiness, a wish by management to create a sense of belonging and trust in participative management, a rise in decision making power by personnel departments, the proliferation of "conscientious objectors" or whistle-blowers, and a change in the legal climate toward thinking about jobs as "property." He also noted an increase in interest about procedural justice and substantive justice and indicated that the former cannot necessarily be delivered by line managers when there may be a perception of conflict of interest. Ewing noted, as do many others,¹¹ that employers realized that they needed to fill the void in conflict management left by the decline in unionization and therefore in union grievance procedures. He noted extensive changes in federal and state laws that restrict employment at will. In addition, some of these legal changes encourage and require employers to provide fair processes for complaints within their organizations.¹² Ewing also discussed the influence on thinking in the United States of worker rights and dispute resolution institutions in Europe (see Clarke's discussion in chapter 8).

The rise of individual rights and of corporate responses in the 1970s and 1980s also was chronicled by Westin and Feliu.¹³ They stressed the importance

of whistle-blowing, equal opportunity imperatives, and the rise of litigation. They noted the proliferation of corporate innovations in conflict management over a decade of major change. Bedman¹⁴ has recently chronicled changes in how employment disputes are handled in the U.S. legal system; he took particular note of the expansion of tort law.

Ziegenfuss¹⁵ discusses many of the same issues, emphasizing cost control where costs are broadly defined as including lost productivity. He wrote that conflict can be very expensive in a competitive environment, especially in a workplace that is subject to the dislocations of technological change. Cost control was also a central issue for Blake and Mouton¹⁶ in their remarkable (and prescient) book on intragroup conflict within organizations. They looked at lost productivity in the aftermath of mergers, reductions in overhead, realignment of products, and many other situations where trust had been destroyed or was otherwise absent. They concluded that these costs could be lowered through a thoughtful, systematic approach to conflict management. McCabe¹⁷ also focused on cost control, including the need to constrain the emotional costs of workplace conflict, ethical obligations increasingly felt by senior management, and the need for senior administrators to catch their mistakes so they can correct them.

Cost control, including, for example, the costs of wildcat strikes, also was the focus of Ury, Brett, and Goldberg.¹⁸ This concern for cost-effectiveness contributed to the development of their brilliant theoretical analysis of providing mediation as part of a systems approach to conflict resolution in a unionized setting. They were among the first to popularize the notion of dispute resolution systems design. More recently they have extended their "alternative dispute resolution" orientation to dispute resolution in nonunionized settings and commercial disputes.¹⁹

In his 1993 overview of rights in the workplace, Edwards²⁰ wrote that the granting of nonstatutory rights in employee handbooks and the advent of innovative complaint mechanisms in the nonunion arena were motivated by four factors: the desire of employers to compete successfully for the best workers, a wish to avoid unionization, a wish to avoid costly lawsuits, and a belief that workers deserve rights. Lewin,²¹ who has written extensively about dispute resolution, has suggested, in addition to other points cited above, that nonunion employers seek to improve work performance by providing dispute resolution structures. Edelman, Erlanger, and Lande²² conclude that the chief impetus for employers to build internal dispute resolution structures is to smooth employment relations and get resolution to employee tension, as they put it, by appeasing employees.

In addition to studies that have concentrated on processes *internal* to the workplace, there has been a great deal of interest in the 1990s in *external* DR. External DR processes such as mediation and arbitration allow employers to deal with problems that would otherwise move from inside the workplace to external agencies such as the Equal Employment Opportunity Commission (EEOC) or to the courts for resolution. The driving forces behind the use of these processes are a concern for finding ways to reduce the workload of the courts, the control of legal and other costs of litigation and of settlements, par-

ticularly in jury trials and for statutory rights cases, as well as perhaps the search by lawyers for new areas of practice.²³

Most of these external "ADR" devices are tightly focused mediation and/or arbitration steps at the end of or in addition to a grievance procedure. Most deal only with rare cases, though some are configured as part of a comprehensive systems approach to conflict management.²⁴ Some employers offer mediation and arbitration on a voluntary basis, some require agreement to noncourt dispute resolution involving employees who will benefit from stock options or who will receive other benefits, and some employers have made imposed arbitration a condition of employment.

Imposed arbitration as a condition of employment is very controversial. The National Labor Relations Board (NLRB) and the Equal Employment Opportunity Commission (EEOC) oppose imposed arbitration, particularly for civil rights cases. Some opposition also exists in the courts, although a few recent court decisions also support imposed arbitration. There is also both support and opposition in Congress. Many arbitrators have recently announced that they will not handle cases arising under an imposed arbitration program.

Criticisms of specific dispute resolution mechanisms have led many professionals besides Ury, Brett, and Goldberg to conclude that the best approach is to focus on a conflict management *system* that provides options. For example, taking an industry-based perspective, both Marcus and Slaikeu²⁵ have each recently discussed the need for conflict management systems in health care. Costantino and Merchant²⁶ have taken an organizational development approach to the subject, writing about the need for "productive and healthy organizations." According to them it is self-evident that disputes, internal competition, sabotage, inefficiency, low productivity, low morale, and withholding knowledge within an organization are symptoms that should lead to conflict management systems design.

In my own work at MIT on conflict management systems design,²⁷ I joined an effort focused on meeting the needs of a diversifying workforce and student body in a high-tech educational and research environment. As various issues emerged, increasing attention was given to meeting the "needs of the customer."²⁸ I found that people who wanted to raise a concern or complaint overwhelmingly wanted options, and preferred their own choice of options wherever this is appropriate.²⁹ Fortunately, the wish for a choice of options matched well with the MIT systems design tradition of providing "redundant" resources and structures for people with problems.³⁰

My own employer has been evolving a systems approach to conflict management for about twenty-five years. Many other employers, including colleges and universities, government agencies, foundations, and corporations, have been designing their innovations in a similar way over recent years as they listen to requests and concerns within their own communities, to leadership from one or another innovative senior manager, to federal and state laws and agency requirements, to court decisions, to public demand (see, for example, the 1994 Dunlop Commission), and to outside consultants. Innovative companies in this area include Citibank, Federal Express,

McDonnell-Douglas, Motorola, Polaroid, United Technologies, Xerox, and more recently American Express and Brown & Root. Government examples include the departments of the Air Force, the Army, the Navy and Marine Corps, the Coast Guard, the U.S. Secret Service, the Federal Deposit Insurance Corporation, and many others. Innovative international institutions include the World Bank and the International Monetary Fund.

III. Designing an Effective Integrated Conflict Management System

There are several basic changes implicit in this evolution toward integrated dispute management systems. The first is the idea of a *system* which provides various options and various resource people for all persons in the workplace and all kinds of problems. This approach contrasts with the more traditional methods of providing a single grievance procedure that is only for workers grieving against management, or one designed for a limited list of disputes arising under a contract. A system provides "problem-solving" options based on the interests of the disputants, and "justice" options based on rights and on rights and power. The second major change is the broad idea of conflict management. This may, for example, include the idea of teaching peers, such as managers and teammates, how to negotiate their differences with each other, teaching a whole workplace to use constructive dissent for continuous improvement, and learning how to prevent some costly conflict. Conflict management is a more comprehensive idea than just a process for ending specific grievances. A third idea is that of integrating conflict management options and structures with each other, in the context of an overall human resource strategy.

A. System Development

My experience dealing with some hundreds of employers over twenty-five years suggests that most nonunion conflict management systems have developed structure by structure, in an ad hoc response to one or another concern, such as containing litigation costs, dealing fairly with diverse populations, or responding to a consent decree. Some employers, however, such as Federal Express, have taken from the beginning a relatively comprehensive "systems approach", and a few relatively complete systems are now emerging (such as that of Brown & Root discussed below). Whatever the history in a given workplace, I do not believe in ideal models. All the excellent systems that I know are evolving steadily and along somewhat different paths. Since different institutions have widely different missions, and operate within different legal environments and value systems, it seems reasonable to me that they have taken and will continue to follow different paths to systems that are custom-tailored.

B. Stakeholder Input

A major question with respect to systems design is how much input there should or will be from all the stakeholders of the given organization. Experts on labor relations and organizational development, observers concerned with the rights of respondents and those of complainants, and persons especially concerned with the rights of minority and women's groups, feel strongly about stakeholder input in the design phase. To build effectiveness and trust in a system, stakeholders should be asked first what they want and then be provided a structured means to give input into both design and continuous improvement. Design consultants offer structured plans for such input.³¹

It should be noted, however, that some important innovations in conflict management have occurred through the determined efforts of a CEO or other senior manager and even by what Walton, Cutcher-Gershenfeld, and McKersie might think of as "forcing" an innovation.³² Paradoxically or not, some relatively thoughtful, integrated systems are being set up by using managerial power with relatively little input from employees and managers.

C. Begin with the Characteristics of Complainants

Whether a systems design comes from extensive stakeholder input, by fiat from above, or both, I believe, at a minimum, that certain characteristics of complainants, i.e., the initial "customers," must be considered in fashioning a system. This idea has not been sufficiently discussed in the literature, and it is not necessarily the same idea as "stakeholder input." Those who speak up about conflict management design are not necessarily those who will find themselves suddenly in need of a complaint system. This is especially true in a multicultural context. Many people who speak up about dispute resolution have thought mainly about the interests of employers, the rights of complainants or respondents, organizational development principles, or conflict resolution theory, all of which are important, and all of which contribute to the design of procedures people think complainants should want. But considering what complainants actually want, which is, if possible, to raise concerns *as they personally wish to raise them*, is critical to ensuring that a system is actually used.³³

Probably the most common characteristic of people who have a concern or grievance is that they just wish their problem would go away—they "do not want any process." Many complainants are simultaneously uncomfortable about doing nothing, uncomfortable about taking any kind of action on their concerns, and angry if they feel they "either must do something or have to quit." In addition, most complainants disapprove of other options that easily come to mind, which employers also consider unconstructive, such as walking out, absenteeism, going slow, sabotage, agency complaints, legal suits, bitter gossip, anonymous attacks, and the like. In short, people with problems often feel that they have no options at all.

Why is constructive conflict difficult? One major reason is that most people in the United States still think first or only about formal grievance proce-

dures although virtually every survey shows this option to be unwelcome to most people for most problems. There are, of course, some problems, such as criminal behavior, which require formal procedures. But there is a long list of reasons why most people do not wish to use formal grievance procedures for most kinds of complaints. People with concerns and complaints often fear loss of privacy and dignity with respect to family and relatives, supervisors, and coworkers. They may value the relationship they have with the person they see as the source of the problem, and other relationships they have inside and outside the workplace, and fear these relationships will be placed at risk if they file a grievance.³⁴ They often fear covert as well as overt reprisal from the employer, and dread criticism from family and from colleagues who may hear gossip about them. They fear being thought of as disloyal, lacking in humor, or a poor sport. "Token" professionals, including women, people of color, and anyone who is nontraditional in a traditional environment, may especially fear being seen as troublemakers rather than self-confident professionals. Many people also hate the idea of losing control over their concerns. (This issue appears especially true for professionals and managers.) Complainants may—rightly or wrongly—fear that they do not have enough evidence to prevail in an investigatory procedure. This fear is especially common regarding discrimination and other interpersonal problems. In addition, some people fear they will be criticized on free speech grounds if they complain in a formal grievance procedure about offensive communications.

Because most complainants "just want the problem to stop," they are often concerned that an adversarial option will result in punishment of the offender, rather than just fixing whatever is wrong. Complainants commonly fear that they do not have the skills to complain effectively. But many people dislike asking any third party for help, except maybe a friend, and many have very strong feelings about which third party they would or would not consider going to, if going to a third party is required by the employer. If the third party in a formal grievance process is not trusted, many complainants will not come forward at all. For all these reasons, a majority in the workplace will not choose and cannot be persuaded to file a formal grievance—even for such problems as civil rights violations which many people feel belong in a rights-based process.³⁵ If people with problems are to act in any constructive fashion, most of them must be provided with interest-based options designed with the wishes of complainants in mind.

On the other hand, a small number are satisfied only by a formal, rights-based, win-lose process. They typically wish to be able to move directly to file a grievance, and have it investigated, without prior, interest-based steps. They may not understand any option other than a formal grievance procedure, or they simply regard a rights-based option as the only just process. They may also have strong feelings about desirable elements in a rights-based procedure. Lewin has studied the wishes of complainants with respect to formal procedures. He identified their interest in an independent fact-finding procedure, in an impartial process, in obtaining feedback about grievance settlements, in protection from reprisal and from the disapproval of coworkers, in having several levels of appeal, and in having at least some outcomes favorable to

those who file grievances.³⁶ If people oriented toward right and wrong are to be satisfied, they should be allowed in appropriate cases to move directly to a rights-based option designed with wishes of complainants in mind.

There are also a few people who present especially serious challenges for a fair dispute resolution system. They may deeply distrust other people, and may reject the idea of due process for people who are seen to be the source of problems. A few complainants want revenge. A few enjoy fights in and of themselves, and resist settling any dispute. Occasionally also a complainant brings a complaint for an ulterior reason, such as preventing a layoff or termination. In addition, a few people wish simply to disrupt the workplace. Rights- and power-based options are usually the most reasonable processes for these rare situations.

Many men and women who have a concern or grievance who say that they are unable to concentrate or think clearly, express fear that their work is deteriorating, and state that they do not know how to pursue a complaint. Systems should provide support for these complainants to find and use constructive options.

IV. Specifications for an Effective System

Building on many ideas raised in the literature, on my own experience, and the characteristics of complainants as I know them, I believe that an effective integrated conflict management system would include the following basic characteristics.

Values of the system: There is a general orientation toward conflict management that derives from the core values and human resource strategy of the organization. The orientation includes a commitment to fairness for everyone involved in a dispute and freedom from reprisal. The employer proscribes reprisal against any disputant, including supervisors who act in good faith, and including witnesses who speak up for any disputant. The strategies of fairness and freedom from reprisal are backed by top managers who hold themselves accountable, and are held accountable, for the success of the system. There is at least one powerful senior manager who embodies this commitment and understands the nature of conflict management. The employer presumes that the backbone of conflict management is not based primarily in staff offices such as human resources and the legal department, but is, rather, embedded in line management and team management. Preventing unnecessary problems through active listening and effective, respectful communications is seen as a major responsibility of line management and of members of teams. The importance of constructive questions and dissent is seen as a major part of "continuous improvement" of the organization and of teamwork.

Many options: A variety of interest-based and rights-based dispute resolution techniques are offered to employees and managers and employed for the clients of the organization (e.g., visitors, students, patients, nursing home residents, vendors, policyholders, franchisees) as appropriate.³⁷ The interest-based options are usually available in parallel, rather than as sequential and required steps of a single procedure. With respect to the choice of options, the parties

may in many cases agree to loop forward from an interest-based option to a rights-based option (or to a rights- and power-based option),³⁸ or loop back from a rights-based option to an interest-based option.³⁹ For most problems that are not of a criminal nature, these options are initially available to the complainant. This contrasts with previous approaches in which the complaint-handler chose how a problem would be handled in the nonunion environment, and with the single grievance procedure that was the usual option in a unionized environment. In the rights-based, formal grievance and appeal option there is an appeal mechanism that takes investigation or decision making, or both, out of the line of supervision. There are reasonable standards of conduct for formal investigations and decision making. Disputants have a right to be accompanied, though they may under ordinary circumstances be expected to represent themselves.

Multiple access points: People with concerns and problems can find access points of different ethnicity and gender, and varied technical backgrounds, to help them. These access points are people who have been trained to act as fair "gatekeepers" for the conflict management system. In a small company these might just be specially designated employees and managers. In a large firm, these would include professionals such as human resource managers, employee assistance providers, equal opportunity specialists, and occasionally religious counselors. They provide a degree of privacy and support for various options in the conflict management system. Access points also include specialized personnel in safety, security, environmental hazard, ethics, and audit departments. Some employers can provide 800 lines for people to talk, and seek advice, and provide information anonymously. All disputants may be accompanied, when using the system, by a colleague or coworker.

An organizational ombudsperson: There is, in addition, at least one ombudsperson, designated as a neutral, who is available to help informally with any workplace concern, and to provide formal mediation as appropriate.⁴⁰ In a small company one or several people may carry these responsibilities on a part-time basis. Ombudspeople report outside ordinary line and staff structures to the chief executive officer (CEO) or the chief operating officer (COO), or local plant manager. The ombudsperson maintains strict confidentiality, asserts a privilege to protect the confidentiality of his or her practice, and follows the Code of Ethics and Standards of Practice⁴¹ of an ombudsman association.

Wide scope: The system is used by professionals and managers with concerns as well as by employees. The system takes virtually every kind of concern that is of interest to people in the organization. This includes, for example, disputes between coworkers and between fellow managers, teammates, and groups, as well as classic concerns about conditions of employment and termination. The system may also listen to recently fired employees, outsiders who feel badly treated by someone who works for the employer, anonymous complainants, and others as appropriate. The system can deal with multi-issue complaints.

Continuous improvement: An oversight committee is built into the system and meets regularly to improve the effectiveness of the system.

V. Options and Functions Needed in an Effective System

A. Interest-based Options

Interest-based options for "problem solving" attempt to address the real needs of the complainant, as distinguished from defining problems and their solutions solely in terms of legal rights. Options of this sort can provide several advantages to the complainant. For example, an effective, direct approach from a complainant to a respondent may lower the likelihood of reprisal, offer freedom for the complainant from the demands of evidence, and offer more control over, and greater comfort with, the process of problem resolution. Interest-based options can be prompt and swift. For example, some options can be pursued by the complainant or offered by line managers on the spot. Interest-based options also are particularly appropriate for dealing with offensive communication.

Listening: An important option that a person may choose is just to talk, and for the line manager, ombudsperson, or other resource person to listen, in an active and supportive fashion. The manager or resource person may affirm the feelings of the individual but should be impartial with respect to the facts of a situation unless or until the facts are known. In many cases, "being listened to" is what a person with a problem wants and needs. Listening and being gently questioned may help put a problem into perspective. It may help a person to deal with rage or grief or uncertainty or fear. It may help people deal with stress so they can take the time that they need to figure out what is happening to them or what the problem actually is. This option is probably the most cost-effective element of a conflict management system, both for people with concerns and for employers, although ironically it is the option most often overlooked. Still some employers such as the Internal Revenue Service, the Royal Canadian Mounted Police, and Brown & Root are attempting to teach listening skills to hundreds or thousands of supervisors.

Giving and receiving information: A person often needs information on a one-to-one basis. A manager, ombudsperson, or 800 line might provide a copy of a policy or obtain clarification of the meaning of a policy, so a person under stress does not need to search or read dozens of pages of a manual. The resource person usually can provide or find information that resolves a problem in one or two contacts. A manager, ombudsperson, or 800 line may also be given information about a problem in the workplace such as a safety issue, evidence about a theft, harassment or potential violence, or about equipment that needs repair. A team may be offered suggestions for improvement from a teammate who perceives a problem. These data may be offered anonymously, or surfaced in a quiet way, for fair handling by appropriate persons. Again, despite what I believe is the cost-effectiveness of this option, too many systems do not make explicit provision for giving and receiving information on a one-to-one basis.

Reframing issues and developing options: A manager, ombudsperson, or other resource person can often help a caller or complainant develop their own ideas about options they find acceptable for settling a conflict. As we have

seen, many people believe they have no options or only bad ones. The supervisor or resource person may help frame or reframe the issues, identify or develop new and different perspectives, and describe additional, responsible and effective paths from which the caller or complainant may choose. This function is often especially useful to managers who have a problem and are seeking help. This option also is quite useful where complainants will ultimately choose to file a formal grievance but need time, information, and support to decide to do so. This option must be relatively private, so managers must be taught not to act precipitously when they hear of a problem that is not an emergency. Furthermore, for some people to be willing to use this option, it must be totally off the record, which means providing an ombudsperson.

Referral: Many disputants and complainants need more than one helping resource—in effect, a helping network. Some need the help of a person such as an employee assistance professional or a colleague who can accompany them in raising a concern. Every manager and resource person should know the other workplace resources available for people with problems, both to refer disputants and complainants to others, and to work effectively together with others on behalf of a person with a problem, when given permission to do so. The need for this function makes it imperative to integrate all the elements and resource persons in a conflict management system.

Helping people help themselves in a direct approach: An ombudsperson or other resource person, manager, or teammate may help someone with a problem to deal directly with the perceived source of a problem. Through discussion, support, and role-playing, a person with a concern may develop the skills and self-confidence to work on an issue without third-party intervention. When experts speak of “delegating disputes to the lowest possible level,” this is the option on which they primarily should focus rather than on forms of third-party intervention. This is also an option to foster in the workplace for development of “individual accountability.” In some cultures, however, the direct approach, or particular versions of the direct approach, may not be considered appropriate. Consequently, a sensitivity to cultural differences is important when discussing options.

This option includes A (the complainant) choosing to deal directly with B (the apparent offender or the perceived source of a problem) in any of several ways. A could choose to write a private note or letter to B, laying out the facts as A sees them, A's feelings about these facts, and the remedies proposed by A. Alternatively, A could choose to go talk directly with B, with or without presentation of a note or letter. A may decide to go back to B alone, or accompanied by a friend or colleague. It is possible that A will need to be taught or at least given some guidance on how to write a letter to or talk with B in the most effective way. If a manager or resource person knows that a direct approach is being chosen, he or she should typically follow up with A to find out if the situation is resolved and to check on any evidence of reprisal.

Shuttle diplomacy: A person with a concern may choose to ask a third party to be a shuttle diplomat, who will go back and forth between A and B or bring A and B together informally to resolve the problem. The third party could be a line supervisor, a human resource officer, an ombudsperson, or

other staff member. Alternatively, a complainant might choose to ask a teammate, uninvolved colleague, or other appropriate person to intervene. It is important in this approach that there should be no formal disciplinary action taken by a third party without a process that is fair to the alleged offender. For example, moving someone or reassigning duties⁴² is not usually defined as disciplinary action where these are customary management responsibilities, but a formal letter of reprimand would be so defined. If possible, the person who was the go-between should follow up afterward, to see if the problem is resolved and to check about possible reprisal.

"Looking into" the problem informally: Most problems, especially if they are caught early, do not require a formal investigation. There are at least two kinds of informal data gathering that may be done by third parties, one by ombudspeople and another by line managers, administrative officers, human resource managers, and other appropriate staff. Assistance from an ombudsperson (except classic mediation as described below) is informal. Line managers, and staff people such as administrative officers and human resource managers, may look into a problem informally, but also may make management decisions as a result.

The role of an ombudsperson is different from that of a formal fact-finder (whose investigation becomes part of a case record and part of the decision making process for the employer), and from that of an arbitrator (whose decisions typically are binding on the parties to a grievance—see right-based options below). Most U.S. organizational ombudspeople look into problems informally and typically keep no case records for the employer. They usually will report findings directly to the person that came to see them or, with permission, to a relevant manager, or the findings become part of the work of shuttle diplomacy by the ombudsperson. In many such cases the ombudsperson serves the purpose of providing informal neutral fact-finding and informal "early neutral evaluation" so the disputants can get an idea of what a peer review board or an outside arbitrator or judge might think if the problem went to formal grievance or to court. If the informal findings of an ombudsperson indicate the need for formal investigation, for example by line management, the audit department, ethics office, safety office, or security department, typically the ombudsperson will try hard to get permission to turn the matter over to the appropriate formal fact-finder.

A few organizational ombudspeople, especially in Canada, may agree to look into a problem on a fairly exhaustive basis and write a report including the ombudsperson's opinion of right and wrong. This action is typically at the request of someone in the organization other than the employer, and is typically not for disciplinary purposes.⁴³ The findings of an ombudsperson may be accepted in whole or in part, or ignored or rejected by the employer since the findings are not binding.

Classic formal mediation: Classic mediation is the only formal, interest-based option. This option is offered by employers in many organizations. In classic mediation, A and B are helped by an organizational ombudsperson, or another professional (neutral) mediator, to find their own settlement, in a process that is rather formal and has a well-defined structure. A and B may

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meet with each other and the mediator, or may deal with each other indirectly, with the mediator going back and forth between them. Classic mediation is purely voluntary for A and B and for the mediator. This option must therefore be chosen by both disputants, and agreed to by the mediator, if it is to occur. Settlements often are put into writing, and may be on or off the record as the parties may decide. Classic mediation, as offered by an inside neutral such as an ombudsperson, frequently results in off the record settlements and is therefore a private way to settle delicate issues when that is the wish of the parties. Classic mediation offered to the employer by outside neutrals may result in settlements kept by the employer if the employer is one of the parties, or as a condition of the settlement.

Formal mediation is still chosen infrequently, but is becoming somewhat more common. Some employers offer mediation only for certain issues such as termination, and a few only after termination has occurred. Some employers have ombudspeople or other specialists with training and expertise in intergroup and intragroup mediation and conflict management.⁴⁴ These specialists work with small or large groups, or may be called to advise managers who are interested in mediation techniques for managing dissent and disputes within and between groups. Some such specialists are called upon to train or support the work of self-managed teams.

Some employers are now offering a service called "mediation" by selected managers or in-house counsel who are not designated as neutrals or trained in the code of ethics and standards of practice of ombudspeople and mediators. This kind of dispute resolution can at best, be likened to good shuttle diplomacy (see above). It should not be called mediation, or thought of as classic mediation by a neutral, and could not easily be shielded by a mediator's privilege if the dispute should go to court.

Generic approaches: A complainant may choose a generic approach aimed at changing a process in the workplace or alerting possible offenders to stop inappropriate behavior so the alleged specific problem disappears without the direct involvement of the complainant. For example, an ombudsperson might be given permission to approach a department head about a given problem without using any names. The department head might then choose to distribute and discuss copies of the appropriate employer policy, for instance to stop supervisors from requiring uncompensated overtime from nonexempt staff. Likewise, a department head might encourage safety training or harassment training, to stop and prevent the alleged inappropriate behavior. Generic approaches may be effective in stopping a specific offender and may prevent similar problems. The ombudsperson or other go-between should follow up to be sure that the complainant believes the specific problem has ended and that there have been no repercussions. Generic approaches offer the advantage that they typically do not affect the privacy or other rights of anyone in the organization.

Systems change: People with concerns often simply wish to suggest a change of policy, procedure, or structure in an organization, to recommend reorientation of a team project, or to start an orderly process of dealing with a policy, group, or a department seen to be a problem.⁴⁵ Such people may take a

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direct approach (as above) to try to change matters, may bring issues to relevant supervisors or complaint-handlers such as human resource officers or ombudspople,⁴⁶ or they may make suggestions on anonymous employee surveys or on an 800 line. This is especially important for problems that are new to the organization. Those who supervise the complaint system should be on the lookout for new problems and for any pattern of problems that would suggest the need for a new policy, procedure, structure, or training program in the organization.

Training and prevention: The employer should, if possible, maintain ongoing training programs to teach the skills of teamwork, conflict management, and dispute resolution and to teach about specific topics such as diversity, ethics, safety, etc. The employer should ensure that supervisors know the principles of interest-based and rights-based dispute resolution. The employer should provide training that fosters individual responsibility and accountability at all levels. For most problems people should be encouraged to deal with problems directly and to help others to help themselves in a responsible and effective fashion.⁴⁷ A company with many teams might focus management of conflict within self-managed teams. Many workplace disputes arise because of imperfect communication about rules and expectations, disagreements about performance, and interpersonal and diversity tensions. All supervisors should learn active listening, should know the policies and rules of the organization, and should know how to get authoritative advice when needed. Wherever possible, supervisors should be trained in setting performance standards and in performance evaluation, with explicit responsibility to recognize good performance and poor performance.

This training must also include issues of dissent and reprisal.⁴⁸ Preventing reprisal is, I think, the most important and most difficult issue for training. Retaliation stifles good communication and in many employment situations, including civil rights cases, retaliation is illegal. Differentiating constructive from unconstructive dissent is not easy. Those whose ideas are not accepted may feel in any workplace that they are meeting retaliation. Four different groups need training about raising questions, about disagreeing and about complaining: potential complainants, potential respondents, potential bystanders, and supervisors. The employer should specifically teach people how to raise a question or a complaint, what to do if one is the subject or recipient of a concern or complaint, and what to do if one is a bystander. The employer should train its supervisors and employees that it is not acceptable to punish someone who has raised or responded to a concern in good faith in an orderly manner. Complaint-handlers should be required to plan and take reasonable action to prevent reprisal and then follow up to see that they have been successful. The basic tasks for those who handle specific complaints are twofold: to deal fairly with the disputants, and to prevent reprisal for raising a complaint or concern in good faith.

Following through: Often a resource person or supervisor will undertake some action as requested by a person with a concern. In other cases a complainant will decide after consultation to act directly. Complaint-handlers can "follow through" on the problems brought to them in many different ways. For

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example, a manager might simply ask the complainant to call back, or follow up on administrative action to see that it was effective. A manager might listen for evidence of reprisal or might follow up months later with a complainant to see that all is well.

A custom approach: Where none of the options above seem exactly right, a person with a concern or complaint may ask for or need unusual help. A typical example would be action with a long or short time lag that is appropriate to the situation. If all options temporarily seem inappropriate, an ombudsperson or other resource person or manager can sometimes simply continue to look for a responsible approach that is tailor-made for a particular situation.

B. Rights-based Options

Disciplinary action and adverse administrative action against a respondent require a fair investigatory and decision making process. Definitions of appropriate process differ.⁴⁹ I think a fair internal process should include notice to the alleged offender, a reasonable opportunity for that person to respond to complaints and evidence against him or her, a chance to offer his or her own evidence, reasonable timeliness, impartiality of investigation and decision making and freedom from arbitrariness and capriciousness, the possibility of appeal, and the right of accompaniment by a colleague or coworker. The employer should have explicit rules about maintaining privacy in complaint handling. The employer should, if possible, provide for follow-up monitoring on each case settled formally, to check if the problem has been resolved and that there is no reprisal against any disputant or witness.

Investigation and adjudication and formal appeals: A supervisor, department head, personnel officer, formal fact-finder, or other appropriate staff person may investigate and/or adjudicate a concern in a formal fashion, or deal with an appeal in a formal grievance channel. Final appeal may be to a senior manager or to the CEO. Best practice in my opinion requires separation of fact finding from decision making in serious cases, and the possibility of appeal to a person or structure that is outside the relevant line of supervision. This avoids real and perceived conflicts of interest.

The best-known internal structures⁵⁰ include peer review, an off-line board of appeals that includes peers, or an off-line senior manager who makes a final decision. Peer or board review structures may act with power or, alternatively, result in a recommendation to a senior decision-maker, who typically honors the peer or board findings. I believe that complainants and respondents should be able to strike names, and/or choose the peers who will judge them from rosters maintained by the employer.

Other possibilities for formal action include inside and outside fact-finders. They may report to an internal decision maker or may offer an advisory opinion to the parties about how an arbitrator might decide the matter if it were to go to arbitration. Combinations of options also occur. For example, a peer review system may be coordinated by an ombudsperson who is empowered to offer mediation as a final step before the peer review panel meets. An

outside neutral fact-finder might offer the results of investigation to the disputants, and then function, if asked, as a formal mediator between the parties.

Some employers are offering a rights-based option provided by outside neutrals as the last step in the employer's complaint procedure. Some employers require arbitration as the last step, as a condition of employment, for all complaints including statutory rights complaints. As noted earlier, many observers find this requirement to be wrong.⁵¹ There is also much discussion about appropriate elements of due process for formal investigation and adjudication outside the workplace. Some observers⁵² believe that the due process expectations for arbitration should include the right of counsel for the complainant, part or all of the costs of counsel,⁵³ and a chance to help choose the neutral.

Some organizations have their own security or sworn police force. This department may offer an option for emergencies based on both rights and power. A complainant who fears for her or his safety, for example, may approach a police or security officer at the workplace to ask that someone be called in—for discussion, for a warning, for investigation, or for other appropriate action. Some workplace police and security departments will support complainants in a request for a restraining order or for enforcement of a trespassing order. Except for emergency action, workplace security and police departments ordinarily coordinate with the employer's customary dispute resolution options.

C. Monitoring, Evaluation, and Oversight

The employer should provide for data collection and evaluation of the system. The statistical information provided should be used in a way that supports continuous improvement of the system and appropriately protects the privacy of individuals. Each organization needs to decide how to evaluate effectiveness; I will state a few of my own ideas. I believe that the most important element of evaluation is to ensure that the system is actually used by a wide cross section of men and women in all pay classifications and of roughly the demographic profile of the organization, since this is the best indicator that a program is trusted. The system should be used for all the problems that people in the organization think are important. It should be perceived as credible and fair by the various stakeholders. The system should produce demonstrable change and improvement in the organization, and it should save money.

In my opinion, the system should be overseen by a group rather than by one manager, except in very small organizations. In large firms there should be a specialized group in each major operating unit, including, for example, appropriate persons from senior line management, human resources, security, medical department, employee assistance, equal opportunity, religious counselors, ombudspeople, legal counselors, and those responsible for functions that generate much conflict, such as personnel transfers or housing. The oversight group should meet on a regular basis, at least monthly. It should talk regularly about difficult and dangerous cases and link the complaint system to other systems inside and outside the operating unit and to the local community

as appropriate. In many organizations this will be the group that will receive comments from users, monitor, report on, and work to improve the system on a continuous basis.

VI. Overview of the Brown & Root Dispute Resolution Program

I know of no employer that has an integrated conflict management system with all the features that I have described in this chapter. There are, however, hundreds of employers adopting a subset of the innovations described here, and many that are evolving toward a comprehensive system. A well-known case in point is the dispute resolution program (DRP) of Brown & Root, a large, international, nonunion construction firm. The DRP began in June 1993 and covers only its domestic operations. The program began with focus group input from employees and managers of the company. It is, however, largely the brainchild of a creative associate general counsel, William Bedman,⁵⁴ and of an experienced consulting group, Chorda Conflict Management, of Austin, Texas.

The Brown & Root DRP is founded on principles of fairness and freedom from retaliation. It is overseen by committed and knowledgeable senior managers. It provides options both inside and outside the company. Internal options include listening, referral, discussion of options, informal fact-finding, shuttle diplomacy and mediation inside the company for any type of workplace problem. Four levels of options are presented in a clearly written booklet given to all employees. At level one there are parallel interest-based options. One is an open door policy within the line of supervision. Front-line supervisors are being trained in listening skills and conflict management, and the company plans to continue indefinitely to train supervisors in conflict management skills. Retaliation is forbidden (and at least one manager who was found to retaliate has been fired). A complainant may talk any time with the Personnel Office of the given business unit, or with Corporate Employee Relations or other specialized offices as appropriate. A complainant may also call off the record, either anonymously or with all the identifying details of a case, to an employee hotline staffed by advisers.

At level two, any unresolved problem may be brought to the DRP administrator who can arrange dispute resolution conferences. In the usual case, various options will be explored, including informal mediation by one of a number of trained, internal neutrals. In appropriate cases the DRP specifically allows for loops forward (for example, to arbitration) or loops back (for example, to in-house mediation), as complainants review their options. The lead professional in the DRP office is an experienced mediator who reports to a human resources manager but is designated as a neutral. She serves the program as an ombudsperson and practices as far as possible to the Standards of Practice of the Ombudsman Association.

At levels three and four, complaints about legally protected rights may be taken outside the company to mediation or arbitration at the request of the complainant. For legally protected rights, the administrator can arrange, if needed, for some reimbursement of legal consultation for the complainant. In

the usual case the company pays most of the costs of legal consultation, up to \$2,500. Imposed arbitration is a condition of employment for disputes that might otherwise go to court, although anyone at Brown & Root is free to consult with or appeal to any relevant government regulatory body. Arbitrators are empowered to provide any award that might be sought through the court system. They are assigned through private justice providers.

Statistics are not kept about use of the system at level one. The program advisers and administrators deal with about 500 cases a year, and 1 or 2 percent go to arbitration. (Brown & Root has lost and won cases—an outcome that I feel speaks well for the DRP.) A few employees have appealed to one or another government agency. Concerns that go to an adviser or administrator are monitored internally by the program office to be sure that they are addressed promptly; about 70 percent are resolved within one month. The program office also serves the company by keeping statistical data about problems brought to the advisers and program administrators. Program administrators may recommend systems change in the company and there have been a number of changes because of information brought forward to the DRP. The company reports that its legal expenses are sharply reduced. The company has commissioned several evaluations of the system.

I have some concerns about the design. I believe that an organizational ombudsperson should be designated as such and should report to the CEO or COO rather than to human resources; the position should stand apart from ordinary lines of supervision. I would have recommended much stronger emphasis at the program office level on helping people with problems help themselves. There should perhaps be more training for supervisors and employees on this option, and also further development within the program of the use of generic options. I might have recommended building in more capacity to deal with group conflict, and a stronger emphasis on serving managers with problems as well as employees. I prefer to see the possibility for disputants to have some input into the choice of an outside neutral. The usage rate is somewhat low, compared with other programs I have surveyed. I would like to see the program collect data on use of the system at level one, so the overall usage rate can be better assessed. I strongly recommend against requiring imposed arbitration as a condition of employment and hope that the DRP will change in this respect.

On the other hand, the DRP has great strengths. It reflects the interests of at least some stakeholders since management feels the DRP "fits" its environment. The DRP can be seen as a simple, easily understood, cost-effective program. It is a multiaccess, multioption system with an unusual degree of integration. In most respects it meets the specifications for a system discussed above. It is important that within the mandatory arbitration structure there is affirmation for the rights of employees and managers to appeal to government regulatory bodies, for example on civil rights cases. It is also important that when people have in fact appealed outside the company, Brown & Root has cooperated with the agency involved and has sought to settle cases rather than push the issue of imposed arbitration. The program provides a high degree of flexibility both for people with problems and for management. The excellent

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emphasis on training of all supervisors provides a powerful scaffolding for the success of the program. Brown & Root has been open about its program, and has provided a great deal of information to many outsiders. The DRP is under constant scrutiny from inside and outside, which provides a strong basis for continuous improvement.

VII. Suggestions for Future Research

Workplace dispute resolution in the nonunion sector of North America is changing swiftly. There are many reasons for nonunion employers to be innovating in this area, and their innovations are varied. Some employers are experimenting with a systems approach to conflict management that goes far beyond a single grievance procedure. A systems focus represents an important, user-oriented improvement in conflict management that gives complainants greater flexibility and more options, particularly at the early stages of a conflict.

Research as to the effectiveness of specific innovations, and of a systems approach, is very much needed. For example, we need to know more about options people would choose under conditions of choice, and then how they would evaluate the choices they have made. We also need to know how respondents and supervisors and top management assess each option. This information would be most helpful if we had data for men and women, people of various ethnic backgrounds, managers as well as employees, people in teams and those working in hierarchies, those in small establishments and large, local establishments and multinational companies, organizations with a very strong culture and those that appear impersonal, stable establishments and those with high turnover, and for organizations with different workforce characteristics.⁵⁵ We know almost nothing about small informal systems in small companies and how people perceive them. We know little about the integration of internal systems with the external environment—for example, about the impact of different state laws.

It is not easy to address these questions. It would make sense to continue building a widely understood glossary of terms, and then continue to build a taxonomy of conflict management characteristics and functions, as I have tried to do here—of “specifications” for effective conflict management systems. Using such a taxonomy one may then see which structures appear in which kinds of organizations, describe them, and then evaluate them. Simultaneously we need to work on developing appropriate evaluation protocols. Case studies with respect to any of these questions will contribute greatly.

Notes

1. Alternative—or appropriate—dispute resolution (ADR) means different things to different people. In the widest, technical sense I prefer to use the term to describe any kind of mechanism inside or outside a workplace that seeks to settle problems primarily on the basis of the *interests* of the disputants rather than on the basis of rights and power. In the United States in the 1990s, however, the word has largely been taken over by lawyers to describe narrowly

based efforts to deal with commercial and employment disputes that are not being settled among the disputants and are otherwise on their way to the courts. I view this development as unfortunate since many people have come to understand ADR only in terms of specialized mechanisms at the edge of the workplace rather than as "appropriate dispute resolution"—the foundation of systems design that includes many kinds of options within a workplace.

2. See for example an article by H. A. Simon and Y. Sochynsky, "In-House Mediation of Employment Disputes: ADR for the 1990's." *Employee Relations Law Journal* 21, no.1 (summer 1995): 29-51, which used the title term "mediation" to refer to an extraordinary spectrum of informal and formal, interest-based and rights-based dispute resolution techniques inside and outside the workplace.

3. J. Delaney, D. Lewin and C. Ichniowski, "Human Resource Policies and Practices in American Firms." *Bureau of Labor-Management Relations*, no. 137, 1989.

4. U.S. General Accounting Office, *Employment Discrimination*, Report HEHS-95-150 (July 1995), 3; and Organizational Resources Counselors, Inc., "Preliminary Results of an ORC Survey on the use of ADR in Employment Related Disputes," Unpublished paper, November 1994.

5. A good contemporary overview of these concerns may be found in R. Edwards, *Rights at Work* (New York: The Twentieth Century Fund, 1993). See also L. B. Edelman, H. S. Erlanger and J. Lande, "Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace," *Law and Society Review* 27, no. 3 (1993): 497-534.

6. D. H. Lach and P. A. Gwartney-Gibbs, "Sociological Perspectives on Sexual Harassment and Workplace Dispute Resolution," *Journal of Vocational Behavior* 42 (1993): 102-15; P. A. Gwartney-Gibbs and D. H. Lach, "Workplace Dispute Resolution and Gender Inequality," *Negotiation Journal* 7, no. 2 (April 1991): 187-200; and P. A. Gwartney-Gibbs and D. H. Lach, "Sociological Explanations for Failure to Seek Sexual Harassment Remedies," *Mediation Quarterly* 9, no. 4 (summer 1992): 365-73, for detailed discussion of the differential needs of women complainants. See also M. P. Rowe, "The Case of the Valuable Vendors, Subtle Discrimination as a Management Problem," *Harvard Business Review* 56, no. 5 (September-October 1978): 40-47, and M. P. Rowe, "Dealing With Sexual Harassment," *Harvard Business Review* 59, no. 3 (May-June 1981): 42-47.

7. M. P. Rowe, "People Who Feel Harassed Need a Complaint System with Both Formal and Informal Options," *Negotiation Journal* 6, no. 2 (April 1990): 161-72; and M. P. Rowe, "Options and Choice for Conflict Resolution in the Workplace," in *Negotiation: Strategies for Mutual Gain*, ed. L. Hall (Thousand Oaks, Calif.: Sage Publications, Inc., 1993), 105-19.

8. I use the term complainant throughout this chapter to mean someone who perceives a problem, or who wishes to complain.
9. I have been an organizational ombudsperson for twenty-five years and also teach negotiation and conflict management at the MIT Sloan School of Management. My own perspective is therefore that of a practitioner who has dealt with many thousands of persons involved in disputes, and from being a professor of negotiation.
10. D. Ewing, *Justice on the Job* (Boston: Harvard Business School Press, 1989).
11. See for example, D. M. McCabe and D. Lewin, "Employee Voice: A Human Resource Management Perspective," *California Management Review* (spring 1992): 112-23, who cite union avoidance as a major reason for the rise of nonunion grievance procedures.
12. Many authors cite the statutory establishment of individual rights, such as laws which prohibit discrimination and harassment, regulate safety, pension plans, plant closings, and family and medical leaves, as major incentives toward the establishment of complaint systems. Courts have also expanded restrictions on wrongful dismissal, for example, discharge contrary to public policy, discharge which violates the concept of good faith and fair dealing or which is contrary to an implied contract such as an employee handbook. Some regulations, such as the Federal Sentencing Guidelines, also strongly encourage the establishment of complaint mechanisms. Some regulations which prohibit discrimination require complaint mechanisms.
13. A. F. Westin and A. G. Feliu, "Resolving Employment Disputes Without Litigation" (Washington, D.C.: Bureau of National Affairs, 1988).
14. W. L. Bedman, "From Litigation to ADR: Brown & Root's Experience," *Dispute Resolution Journal* 50, no. 4 (October-December 1995): 8-15. The other articles in this issue on employment ADR are also instructive.
15. J. T. Ziegenfuss, *Organizational Troubleshooters* (San Francisco: Jossey-Bass, 1989).
16. R. R. Blake and J. Srygley Mouton, *Solving Costly Organizational Conflicts* (San Francisco: Jossey-Bass, 1985).
17. D. M. McCabe, *Corporate Non-union Complaint Procedures and Systems* (New York: Praeger Publishers, 1988).
18. W. L. Ury, J. M. Brett, and S. B. Goldberg, *Getting Disputes Resolved* (San Francisco: Jossey-Bass, 1988). J. M. Brett, S. B. Goldberg, and W. L. Ury,

"Resolving Disputes: The Strategy of Dispute Resolution Systems Design," *Business Week*, Executive Briefing Service 6 (New York: McGraw Hill, 1994).

19. Brett, Goldberg, and Ury, "Resolving Disputes."

20. Edwards, *Rights at Work*.

21. See for example, D. Lewin, "Grievance Procedures in Nonunion Workplaces: An Empirical Analysis of Usage, Dynamics and Outcomes," *Chicago-Kent Law Review* 66, no. 817 (1990): 823-44, and D. M. McCabe, and D. Lewin, "Employee Voice: A Human Resource Management Perspective," *California Management Review* (spring 1992): 112-23.

22. Edelman, Ehrlanger and Lande, "Internal Dispute Resolution: The Transformation of Civil Rights in the Workplace." Also see McCabe and Lewin, "Employee Voice." This article expresses extensive concern that in the process of meeting management interests such as peace in the workplace, appearing to conform to civil rights law and regulation, and avoiding lawsuits, the civil rights of employees are actually subsumed and are likely to be undermined.

23. Significant differences in perspectives on ADR exist between some externally-oriented lawyers and some conflict managers internal to organizations. The concept of ADR, that is, *alternative* dispute resolution, prevalent among lawyers and arbitrators usually refers to processes that lie at the edge or outside the workplace, such as external mediation and arbitration. Some of these processes require the assistance of lawyers. The perspective of those who are generally unfamiliar with internal dispute resolution methods is in marked contrast with that of internal conflict management specialists. DR specialists *internal* to the workplace typically think of ADR as *appropriate* dispute resolution: a broad and varied set of options for dispute resolution that can be used both inside and outside the workplace.

24. Note the Center for Public Resources Institute for Dispute Resolution, *Model ADR Procedures and Practices*, 1995. The final draft (July), recommends in section one that mediation and arbitration procedures might be added onto an internal system that provides a variety of internal mechanisms.

25. See L. J. Marcus, *Renegotiating Health Care: Resolving Conflict to Build Collaboration* (San Francisco: Jossey-Bass, 1995), and K. A. Slaikeu, "Designing Dispute Resolution Systems in the Health Care Industry," *Negotiation Journal* 5, no. 4 (October 1989): 395-400.

26. C. A. Costantino and C. Sickles Merchant, *Designing Conflict Management Systems* (San Francisco: Jossey Bass, 1996).

27. M. P. Rowe and M. Baker, "Are You Hearing Enough Employee Concerns?" *Harvard Business Review* 62, no. 3 (May-June 1984): 127-36; M. P.

Rowe, "The Non-Union Complaint System at MIT: An Upward-Feedback Mediation Model," in *Resolving Employment Disputes Without Litigation*, eds. A. Westin and A. Feliu (Washington, D.C.: Bureau of National Affairs, 1988); M. P. Rowe, "Organizational Response to Assessed Risk: A Systems Approach to Complaints," in *Program Record of the 1988 Institute of Electrical and Electronics Engineers, Inc. Electro 1988 Conference, Risk Assessment and Response* (Boston, IEEE, Inc., 1988); M. P. Rowe, "The Post-Tailhook Navy Designs an Integrated Dispute Resolution System," *Negotiation Journal* 9, no. 3 (July 1993): 203-13.

28. In my first year at MIT, working together with others, I compiled a list of hundreds of concerns expressed by women, by people of color, and by white males. Many concerns affected white males, who in addition brought forward concerns of their own, but some problems appeared especially to affect the nontraditional members of the community. See also P. A. Gwartney-Gibbs and D. H. Lach, "Workplace Dispute Resolution and Gender Inequality," *Negotiation Journal* 7, no. 2 (April 1991): 187-200, and Lewin, "Grievance Procedures in Nonunion Workplaces." I found that some concerns of women and minorities, such as subtle discrimination, did not lend themselves to traditional formal grievance procedures. Furthermore, some people simply did not like formal grievance procedures. These findings led to consideration of new options for complainants. See M. P. Rowe, "Barriers to Equality: the Power of Subtle Discrimination to Maintain Unequal Opportunity," *Employee Responsibilities and Rights Journal* 3, no. 2 (1990): 153-63, and M. P. Rowe, "Helping People Help Themselves: an Option for Complaint Handlers" *Negotiation Journal* 6, no. 3 (July 1990): 239-48.

29. For most problems in the present day MIT, where having a choice of dispute resolution options is the norm for everyone (for problems that are not illegal in nature), most men and women want to discuss their options at length. Many complainants demonstrate in conversation that their choice of option depends on an assessment of the characteristics of the immediate problem and situation, the setting, the supervisor and the respondent, and their own personal preferences in dispute resolution.

30. The word redundancy has an unfortunate connotation in general speech but among engineers it is an important concept. If an engineering system is important, it needs backup, checks and balances, and devices for fail-safe operation. By extension, if a person has a serious problem or complaint, there may be a need not just for one option but for several.

31. See for example, C. Moore, "Dispute Resolution Systems Design" (*Resource Manual*) (Boulder, Colo.: CDR Associates, 1995); the work of K. Slaikou and R. Hasson of Chorda Associates in Austin, Texas; and Costantino and Merchant, *Designing Conflict Management Systems*.

32. See R. E. Walton, J. E. Cutcher-Gershenfeld, and R. B. McKersie, *Strategic Negotiations* (Boston: Harvard Business School Press, 1994).
33. Except as noted, this list comes from analysis of many hundreds of concerns a year over the past twenty-five years in my office as an ombudsperson. See Rowe, "People Who Feel Harassed."
34. The fear of loss of relationships might be, at an extreme, defined as a fear of reprisal. But this concern goes far beyond what is ordinarily meant by reprisal. It includes an interest in harmony, in team spirit, in humor, and fellow feeling in the workplace. It also includes a very common fear of disapproval from family and friends and colleagues outside the workplace. It is commonly thought that fear of loss of relationships is felt most strongly by men and women of certain ethnic backgrounds, and by white women. See for example, the remarkable article by S. Riger, "Gender Dilemmas in Sexual Harassment Policies and Procedures," *American Psychologist* 46 (1991): 497-505. However I frequently hear the same concern from white males, though sometimes cast in different terms.
35. See S. E. Gleason, "The Decision to File a Sex Discrimination Complaint in the Federal Government," *Proceedings of the 36th Annual Meeting of the Industrial Relations Research Association* (San Francisco, Industrial Relations Research Association 1983), 189-97, for a sensitive evaluation of the intangible as well as tangible costs to women for using a formal procedure.
36. Lewin, "Grievance Procedures in Nonunion Workplaces," 831.
37. Customers, vendors, and employers entering into partnering relationships are outside the scope of this paper, but it is of interest that the same kinds of innovations in conflict management have entered these relationships. See for example Brett, Goldberg, and Ury, "Resolving Disputes."
38. An example would be where someone has repeatedly asked a coworker to end offensive behavior, then despairs of classic mediation, and decides to make a formal complaint.
39. See Ury, Brett, and Goldberg, "Resolving Disputes," who originally proposed the term *loopback*, to refer to a shift from a rights-based to an interest-based option. An example would be to shift from a formal, win-lose grievance procedure to formal mediation.
40. M. P. Rowe, "The Corporate Ombudsman: An Overview and Analysis," *Negotiation Journal* 3, no. 2 (April 1987): 127-40; M. P. Rowe, "The Ombudsman's Role in a Dispute Resolution System," *Negotiation Journal* 7, no. 4 (October 1991): 353-61; M. P. Rowe and J. T. Ziegenfuss, "Corporate Ombudsmen: Functions, Caseloads, Successes and Problems," *Journal of Health and Human Resources Administration* 15, no.3 (winter 1993): 261-80; M. P.

Rowe and J. T. Ziegenfuss, G. Hall, A. Perneski, and M. Lux, "Perspectives on Costs and Cost Effectiveness of Ombudsman Programs in Four Fields," *Journal of Health and Human Resources Administration* 15, no.3 (winter 1993): 281-312; M. P. Rowe, "An Overview of Client and Internal Ombudsmen," *Journal of Health and Human Resources Administration* 15, no. 3 (winter 1993): 259-60; M. P. Rowe, "Options, Functions and Skills: What an Organizational Ombudsperson Might Want to Know," *Negotiation Journal* 11, no. 2 (April 1995):103-14.

41. In many organizations, human resource managers and equal opportunity specialists work hard to maintain privacy. However, Human Resources and Equal Employment Opportunity managers are also compliance officers and therefore cannot offer a high degree of confidentiality to complainants. See, for example, the important concern expressed on this point by Edelman, Erlanger, and Lande, "Internal Dispute Resolution." In some organizations Employee Assistance Program and other health care practitioners may be also required to keep records and/or may be subpoenaed in cases that go outside the workplace. Ombudspeople, by contrast, typically keep no records for the employer. Contrary to the widespread misunderstanding of many writers, organizational ombudspeople are not adjudicators or formal investigators. They typically refuse to testify in any formal proceeding in or out of the workplace, for the employer or for anyone else. The several thousand organizational ombudspeople in North America are conflict management professionals, designated as neutrals, who have all the functions of any complaint handler except that of formal investigation and adjudication. They offer confidentiality under all but potentially catastrophic circumstances. See also C. L. Howard and M. A. Gulluni, *The Ombuds Confidentiality Privilege* (Dallas: The Ombudsman Association, 1996).

The survey by Organizational Resources Counselors, Inc., of New York City, *op. cit.*, found the most popular nonunion dispute resolution devices in a group of forty-five companies were an ombudsman office and a peer review system. Unpublished testimony submitted to the Commission of the Future of Worker-Management Relations, (Dunlop Commission), 1994.

42. Although job assignments are typically not considered disciplinary action, an employer should carefully consider the fairness of moving a complainant or respondent who does not want to be moved.

43. A few organizational ombudspeople do occasionally act outside their ordinary role and agree to do formal investigations for the employer for the purpose of adjudication. Some ombudspeople have served as formal observers of the fairness of an adversarial hearing process. On the basis of consultations with several hundred practitioners, I believe that in such circumstances they should write a memo to the file noting the exception from ordinary practice. With respect to such exceptions they should not expect to be shielded from a summons to testify in formal hearings inside or outside the organization, al-

though they should attempt to preserve the privacy of anyone who has given information.

44. See Blake and Mouton, *Solving Costly Organizational Conflicts*, for an example of an excellent model for intergroup facilitation and conflict management.

45. See *ibid.* for an example of an excellent model for such action between groups.

46. My research indicates that about a third of the working time of organizational ombudspeople is spent on systems change.

47. Rowe, "Helping People Help Themselves."

48. See R. L. Hutchins, *Reprisal, Retaliation and Redress*, (Dallas: The Ombudsman Association, 1996).

49. Some lawyers wish that employers would adopt all the safeguards of due process in law for internal workplace dispute resolution. Few employers agree. My list of elements of fair process does however include many of the customary elements of due process.

50. See Ewing, *Justice on the Job*, for a description of such structures.

51. See J. W. Zinsser, "The Perceived Value of Considered Approaches to Internal Conflict Within Organizations," (Masters Thesis, Antioch University, 1995) for evidence that imposed arbitration was seen within one firm as not adding value to the dispute resolution process.

52. See for example, Bureau of National Affairs, "A Due Process Protocol for Mediation and Arbitration of Statutory Disputes Arising out of the Employment Relationship," *Employment Discrimination Report* (May) (Washington, D.C.: Bureau of National Affairs, 1995).

53. The construction company Brown & Root offers to pay a substantial amount of an employee's legal fees, for consultation about legally protected rights and for accompaniment to arbitration, but most nonunion employers do not pay such costs.

54. See Bedman, "From Litigation to ADR," and J. Zinsser, "Employment Dispute Resolution Systems: Experience Grows but Some Questions Persist," *Negotiation Journal* 12, no. 2 (April 1996): 145-58, for longer presentations about the Brown & Root DRP.

55. Some of these questions may be answered by a 1997 survey conducted by David B. Lipsky and Ronald L. Seeber of the Cornell PERC Institute on Conflict

Resolution. The survey is focused on dispute resolution techniques being used in the 1000 largest corporations in the United States.