

DIRECT CONSULTATION (“OPEN DOOR”)

by

Donna M. Malin⁹

EDITOR’S NOTE: *Dispute resolution scholars and practitioners are paying increasing attention to methods of instilling trust and confidence in employees, to provide direct yet “safe” opportunities for them to voice concerns. This attention has been prompted not only by managerial objectives to identify problems in the workplace before they become disputes, but also by developing case law that may impose vicarious liability on employers who fail to do so. Donna Malin relates how Johnson & Johnson has tried to address these concerns.*

The cornerstone of any employment dispute management program is the Open Door phase. “Open Door” typically refers to the process by which an employee attempts to resolve a problem through discussions with a supervisor, someone more senior in management, or the Human Resources Department. Quite often, employee concerns are effectively addressed at this stage, largely through good and direct communication. For example, a simple clarification of a work requirement, job assignment or supervisory discussion can often eliminate many problems.

The Human Resources Department is an essential partner in the Open Door process. The department helps to resolve issues directly, or else can act as an intermediary with the employee’s supervisor. Employee trust in the Human Resources group is vital to the success of an Open Door policy. When the Human Resources group is viewed as professional and neutral, Open Door is a very effective tool. This is particularly true where the Human Resources group is well trained and has a high level of perceived competence in resolving employee relations issues – *and*, where management has been provided with basic skills training in “dispute resolution.” However, Human Resources runs the risk of being viewed as a “tool of management” rather than

⁹ Donna M. Malin is Assistant General Counsel for Johnson & Johnson.

a neutral group. Where trust in the Human Resources group is lacking, Open Door may not succeed.

Like many other companies, Johnson & Johnson developed an Employee Dispute Resolution Program. The Johnson & Johnson program is called COMMON GROUND. In designing this program, we sought to expand on existing processes and expertise within the Company. COMMON GROUND has three steps: (1) Open Door, (2) facilitation and (3) mandatory non-binding mediation. The process is sequential; an employee must utilize one step before proceeding to the next.

Prior to the institution of COMMON GROUND, Open Door was the only internal process available to an employee who had a dispute. Although Open Door was often successful, when it failed the employee was often left with no choice but to pursue a claim with the EEOC or a lawsuit. COMMON GROUND incorporated Open Door into the ADR process and expanded upon it.

The incorporation of Open Door into the broader COMMON GROUND process was intended to ensure that the Human Resources community continued to play a key role in the dispute management and resolution process. Indeed, during early planning for COMMON GROUND, some Human Resources professionals expressed concern that the new program would erode their role in dispute resolution, and were therefore hesitant to endorse the process. Once these professionals more fully understood their important role in the new process, however, they fully embraced COMMON GROUND.

The success of COMMON GROUND has been well documented. Thousands of employee disputes are raised every year within the company, reflecting the trust enjoyed by the Human Resources community. The overwhelming majority of those disputes are resolved at the Open Door phase, which continues to be the cornerstone of the ADR process. Of course, not every issue is resolved at that stage. Since the inception of COMMON GROUND in 1999, several hundred matters have reached the facilitation stage, 80% of which were resolved at that

stage. Fewer than 100 matters have proceeded to mediation, and again about 80% of the matters subject to mediation were resolved through that process. Very few disputes at Johnson & Johnson result in EEOC charges, arbitration or litigation.

The COMMON GROUND program was cited in a CPR Institute for Dispute Resolution publication as an example of a well-crafted and well-run ADR program.¹⁰ In addition, the Equal Employment Opportunity Commission invited Johnson & Johnson to participate as one of four companies in its own pilot ADR program. Under the EEOC pilot, all charges filed with the EEOC by Johnson & Johnson employees in New Jersey and Pennsylvania will be referred back to COMMON GROUND for a 60-day period for internal resolution.

¹⁰ HOW COMPANIES MANAGE EMPLOYMENT DISPUTES (CPR Institute, 2002).