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ORGANIZATIONAL CONFLICT MANAGEMENT SYSTEMS FOR EMPLOYMENT DISPUTES

by

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***EDITOR'S NOTE**: Melanie Lewis relates her experiences and "lessons learned" designing and implementing an employment dispute system "from scratch." It is particularly noteworthy how support from senior executives was as important during that process as buy-in from junior supervisors and rank-and-file employees.*

Organizations have long recognized the value of using arbitration and other alternative dispute resolution methods to resolve disputes with employees and others. However, only in the past decade or so have organizations gone further to integrate skills training and alternate dispute resolution methods, in order to create entire systems for managing conflict. This integrated approach is known as "organizational conflict management," and the systems created are referred to as "integrated conflict management systems." This paper provides tips on how to design and implement an employment conflict management system that will be accepted and used by the organization.

Why a Conflict Management System?

Typically, organizations are prompted to address conflict more effectively because of crisis, such as an economic downturn, an industry upheaval, a messy or high-profile class action lawsuit, a union-related dispute, a public relations concern, or increasing costs of conflict that hit

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the bottom line. The costs of conflict can be very significant and may include both direct and indirect components such as legal expenses (e.g., attorneys' fees, settlements, and judgments), lowered productivity, absenteeism, attrition, management time addressing conflicts, negative publicity, and others. These costs, coupled with recent changes in the law that have clarified the enforceability of employment arbitration agreements, have spurred many organizations to proactively control the costs of conflict in the workplace.

Some companies have hastily implemented discrete or stand-alone dispute resolution policies, such as arbitration, primarily to avoid exposure to litigation, and in the belief that such a single policy will effectively address their perceived problems with workplace conflict. Such an organization may view its arbitration policy as a catch-all solution to its conflicts. Indeed, the policy may protect the organization from exposure to negative publicity and litigation. But ultimately, it may not reduce the real costs of conflict or address the underlying causes of that conflict.

An alternative is organizational conflict management by means of an integrated conflict management system. A conflict management system does more than just react to conflict, and is not simply a group of discrete policies, such as communications training or an arbitration policy. Rather, it is a carefully tailored set of resources and resolution methods that is developed through the integration of existing and new resources or policies to establish a robust system for resolving conflict. Commonly, conflict management systems include a variety of processes that combine both interest-based methods (e.g., negotiation, facilitation, and mediation) and rights-based methods (e.g., peer review panel, management review panel, and arbitration). This approach encourages employees and managers to identify, address, and resolve conflict early and

effectively by providing a plethora of tools and assisting them to select the method most appropriate for the conflict at hand. While systems may or may not be stepped (that is, sequentially ordered), ultimately the conflict is channeled to the resource or method most appropriate to resolve it. Through the use of a truly integrated conflict management system, the vast majority of conflicts are resolved using internal, informal options. Only in rare instances will disputants need to resort to more formal (and more costly) options such as external mediation and arbitration.

A Hypothetical Case

Consider the following hypothetical case illustrating how a conflict may escalate because of delay in resolution and failure to address underlying causes. Mary is one of a few women working in a predominantly male sales force. When she first started working at the company, Mary noticed that most of the salesmen would hang out together at a nearby pub after work. Around the office, they often talked about their weekend golf games. Although Mary felt excluded, she wasn't terribly concerned until she realized that all the best sales prospects were given to those men. This upset her; but she became genuinely enraged when the practice affected her pay by virtue of her reduced commissions.

Mary wanted this inequitable state of affairs corrected. Yet she was unsure how to go about it, because her boss was part of the problem and she feared that, if she got her boss in trouble, she would risk retaliation and end up worse off than when she started. After a protracted period of anger, indecision and frustration, Mary was also passed over for promotion, and decided to file a lawsuit.

This was Mary's story while working for a company that did not offer a conflict management system. She was neither encouraged to address and resolve the conflict, nor given the option or opportunity to do so. From her perspective, the conflict had escalated to the point where her most preferred option was to contact a plaintiff's attorney and file suit. From the company's perspective, the first time management understood they had a problem with Mary was when they were served with a complaint in court.

If Mary's company had offered a conflict management system, she would have been provided with a "safe" way to express her concerns and encouraged to explore her options as the company responded to her frustration. For instance, Mary may have had access to an ombuds for confidential guidance, an employee hotline to report a concern, or even an internal mediator to facilitate resolution of the conflict. If she had found herself unable to use these tools effectively, Mary may have received conflict skills training to provide her with the skills to raise and resolve her issues. The company also would have had the opportunity to learn about and deal with her Mary's issues much sooner and ultimately may have prevented the lawsuit. An effective resolution through any of these means would have addressed the root causes of Mary's conflict, preventing future conflicts with other employees arising from the same conditions and improving the productivity, morale and cohesion of the entire work group (and, of course making other legal claims less likely).

Organizational Acceptance

Proposing a conflict management system means proposing organizational change – and, as we know, both people and organizations are resistant to change. Keeping the status quo, even with its problems, is often more appealing than embracing and devoting resources to the

unknown. This is especially true in corporations where many corporate initiatives come and go with little effect. Skepticism may be exacerbated if the trust level among and between various groups is already low. Given these obstacles, organizations that seek to implement a conflict management system should expect that a large portion of their effort will be dedicated to cultivating acceptance of the system.

There are no shortcuts. The only way to get organizational acceptance of a conflict management system is the old-fashioned way -- to identify the business needs and interests of affected constituencies within the organization, develop cost-effective methods to promote those interests, and effectively communicate how the proposed system will meet them.

Four Phases

Creating a conflict management system ("CMS") involves tasks that may be grouped into the following four phases: 1) assessment, 2) design, 3) implementation, and 4) operation and evaluation. The needs and interests of the constituencies should be foremost in the minds of the CMS team while it works through each of the four phases. The eventual system will thus be much more likely to be embraced and used by those constituencies. Further, systems designed with that methodology tend to yield higher returns in terms of use, satisfaction, effectiveness, and cost savings.

1. Assessment Phase

The first phase – assessment -- is the most important in reducing resistance and encouraging buy-in. This phase encourages organizational support, dictates design, informs implementation, and gives a structure for operation and evaluation. Organizations that have been most successful in implementing effective systems have first assessed the needs and goals of the

organization prior to clarifying the scope and design of the system. The CMS team can benefit greatly by conducting external research to determine the experiences and successes of other similar organizations that have already developed and implemented conflict management systems. This external feedback is immensely helpful to gain important insights and experiences of others, and to suggest various design elements and approaches.

In addition to looking externally, the CMS team assesses the internal situation. In internal assessment, the CMS team explores input and reactions of affected constituencies, common causes of conflict, trends and costs of conflict, existing internal resources, constituent satisfaction with these resources, skill-level in dealing with conflict among employees and managers, and potential goals of the system.

To assess the internal situation, the CMS team first identifies affected constituencies. Although each individual may have unique perspectives and concerns regarding conflict, organizations should identify groups with common perspectives in order to determine the organization's current experiences with conflict. In a hierarchical organization, it is often helpful to gather useful data by isolating groups according to the hierarchy – e.g., non-management, front-line supervisory, middle management, and senior management. It may also be useful to isolate groups according to functional responsibility. For instance, employees working on graveyard shifts in a warehouse will almost unavoidably have different experiences or perspectives from information technology professionals working on mainframes at corporate headquarters. Individuals with responsibility for managing conflict for the organization (e.g., human resources personnel and lawyers) often have unique concerns and reactions to conflict management systems generally, and certain policies in particular. The CMS team may find it

useful to meet with these constituencies separately to identify each group's specific needs and concerns, solicit input, and plant seeds for later support and buy-in. To be successful, the conflict management system ultimately must address the concerns and needs of each constituency.

These interviews and surveys gather important data concerning trends and costs. Human resources departments can provide internal data and industry trends. Lawyers can give information on lawsuits, legal expenses, and changes in the law. Non-management employees can express challenges with current processes and indicate their likelihood to trust (and therefore use) proposed methods. Management can voice concerns about current rates of turnover, other indirect costs of conflict, and challenges in managing conflict. Through its meetings with affected constituencies the CMS team gains reactions to proposals and determines preferences on policy questions such as a) whether the program as a whole should be mandatory or voluntary, b) whether arbitration should be offered or mandated, and c) if arbitration is required, whether it should be final and binding on both parties. These meetings also help the organization to identify needs, clarify goals, highlight points of resistance, and ultimately specify the requirements for the system.

The CMS team also assesses the existing internal resources to evaluate whether they are working satisfactorily and to determine whether they are well coordinated. Common internal resources include human resources, employee assistance plans, a hierarchical system of complaint and appeal, and hotlines. A well-designed system incorporates and coordinates internal resources, reduces or eliminates barriers by providing multiple points of entry, and offers freedom to choose among them.

The CMS team uses information gathered in this assessment phase to propose goals for the system. Most businesses aim to reduce the number of legal actions they face, the cost of legal services, and the frequency and size of awards and judgments paid. These goals are usually easily quantifiable and helpful in garnering support from senior managers by giving a baseline for expected financial performance. Other goals are more difficult to measure but just as valuable. For example, many organizations hope their conflict management systems will encourage collaboration among workers, increase efficiency, enhance worker tolerance of diversity, and improve working conditions.

By this point in the assessment phase, many organizations begin to see that the value to be derived from a system is not just in preventing lawsuits and associated costs, but in creating value by embracing conflict, addressing it early, and improving the conditions that gave rise to conflict. It may be very useful to create a vision or mission statement in order to capture the goals of the system, keep the CMS team on track throughout the other phases, and allow those goals to be easily communicated. Also, an organization that has set an independent initiative to "increase diversity" or "improve work environments" may include a sub-goal within the conflict management system to bolster the organization's broader initiative in such respects. Such sub-goals might include a reduction in employee turnover or improvement in satisfaction with the job or with the company's attitude towards conflict identification and resolution.

Finally, the CMS team must recognize that the assessment phase presents the first opportunity to communicate to constituencies the critical message that their needs are being sought and heard and, that the system will be designed so that those needs will be addressed. In order to ensure that the system is of the best design and inspires the most trust and (therefore)

highest usage, the CMS team should continue to ask for support and input throughout the following phases.

2. Design Phase

In the design phase, the CMS team determines the elements of the system needed to effectively address the previously identified needs and interests of the affected constituencies. To do this, data from the assessment phase is gathered, analyzed, and tested to craft an integrated system that is uniquely adapted for the organization. Using information gathered in the assessment phase, the CMS team combines existing resources (e.g., human resources, management, employee assistance programs, and employee hotlines) and new options (e.g., an ombuds office, internal and/or external mediation, arbitration, peer review panels, or hierarchical appeals processes). The CMS team may also include additional support tools (e.g., conflict skills training for employees, management, and mediators, and policies which support or enforce the system). Some organizations draft policies to prohibit retaliation for using or participating in the conflict management system. Others establish policies to reimburse employees for legal expenses incurred while attempting to resolve conflicts within it. In this phase, the CMS team also considers how the system will address employees who are members of collective bargaining units; drafts formal rules and procedures; secures external providers of dispute resolution services; and identifies providers of training and related services.

During the design phase, the CMS team will continue to seek input from all major constituencies. The purpose of this continuing effort is to learn from those who will be affected by the system, and to secure commitment (or learn of likely resistance) from those who are intended to use it. Companies diligent in this process will discover that not only will many

factors contributing to employee buy-in be incorporated in the eventual system, but also the systems itself will be less susceptible to claims of unconscionability. For instance, the company's paying all mediation or arbitration expenses will help employees buy-in to the concept of mediating or arbitrating disputes while at the same time providing a strong defense to legal challenge to the legitimacy of the system.

3. Implementation Phase

Up until this point, creating a conflict management system has involved a limited number of people: the CMS team and representatives of the constituencies contacted in the assessment and design phases. A primary activity of the CMS team during the implementation phase is to communicate the proposed system to a wider audience and explain how it has been designed to address constituent needs and interests.

The methods of this internal communication will vary widely from one organization to another. The CMS team may choose among face-to-face presentations, "FAQ" summary documents, videotapes, intranet website communications, e-mail messages, letters from management, newsletter articles, brochures, posters, flow-charts, slogans, personal ambassadors, and implementation/instruction/training teams.

Additionally, in this phase the CMS team determines how and at what pace the system will be implemented across the organization. It may be appropriate to implement portions of the system, such as the ombuds office, immediately. Other elements may be designated for incremental roll-out by business unit or geographic region, in consideration of available resources, a desire to "test" effectiveness and receptivity, or other business or legal concerns.

4. Operation and Evaluation Phase

The CMS team then operates the system using the rules, procedures and forms developed in the first three phases. Specifically, the team may receive and process requests for initial consultation, mediation or arbitration; act as a clearing house for information about the system; provide support and guidance to field personnel; oversee ongoing training; and manage budgets.

The CMS team evaluates the system by continuing to undertake similar activities as those performed in the first three phases – gathering case data to evaluate the trends and costs of conflict, determining how the system is either negatively or positively affecting those trends, assessing how the system is received by affected constituencies, generating use reports, discovering barriers to access or use, finding methods to overcome barriers, ascertaining needs for additional communication or marketing, evaluating results against goals and objectives, proposing changes in design according to feedback, and securing support for those changes.

Evaluation must also place results in the context of broader changes in the environment of the system, such as shifts in the economy, industry, technology, or the law. Each can be identified directly or by benchmarking against the experiences of other companies. Quantitative analysis allows the effects of these shifts to be separated from the effects of the conflict management system itself, thus producing a clearer picture of the system's effectiveness.

Conclusion

If managed poorly or avoided altogether, conflict can be extremely costly to an organization. If managed well, conflict presents an opportunity to uncover value and promote a healthy workplace. Many organizations are finding that their conflict management systems have been good financial investments, producing a healthy return. In addition, they are recognizing the value of many less tangible benefits (e.g., improved morale, lower turnover, increased

efficiencies, and improved public relations). A rigorous four-phased process of 1) assessment, 2) design, 3) implementation, and 4) operation and evaluation helps organizations design effective conflict management systems to reap the maximum benefits of conflict management. Moreover, this four phased approach strongly encourages the CMS team genuinely to seek to understand and incorporate the needs and interests of all affected constituencies, and creates an environment in which benefits of the CMS system can be effectively communicated, implemented and administered.