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Internal Dispute Resolution

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Executive Summary

Increasingly, organizations are turning to internal dispute resolution (IDR) programs in an attempt to resolve disputes internally, without the help of third parties. IDR programs were developed primarily to reduce or avoid liability in human rights cases, but employers are adapting them to apply to all kinds of internal disputes. Based on an analysis of five very different programs, this study provides detailed practical advice for designing an IDR program that will reduce the costs of traditional, more formal procedures and improve employee morale.

- A properly designed IDR process can prevent disputes from escalating by providing employees with an effective avenue of communication—a voice—that allows them to vent frustrations while encouraging them to work with management to resolve problems early on and at the lowest possible level. It encourages the parties to maximize control and ownership of their own dispute and to discover and exploit mutual gains.
- Since employees who participate in dispute resolution are usually more satisfied with the outcome and therefore less likely to leave the organization, employers will probably realize savings in recruitment and training and improvements in productivity.
- The IDR process should be preferable to the alternatives: it should cost less than litigation, allow greater control over the process, and enhance the relationship between the parties. The process may well succeed simply because the alternatives, such as arbitration, are more expensive and time-consuming for both sides.
- Problems referred to the process should be promptly investigated and resolved. Employees often file wrongful discharge and discrimination claims, for example, because their employers are too slow in responding to their complaints.
- Employee trust is crucial to the success of an IDR program. Employees use the system when they believe that it will be fair and that there will be no retaliation against employees who enter it.

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- The decision makers must be neutral and believed to be neutral. Neutrality is difficult to achieve when decision makers are chosen from within the organization. However, the personal characteristics of the decision makers are important, as is representation from all ranks of the organization on decision-making bodies. Maximum participation by all key stakeholders is crucial.
- The author warns that any organization establishing an IDR program in the belief that it will give management greater control over outcomes should realise that it cannot succeed, because it will lack integrity in the eyes of employees.

Introduction

A fundamental goal of the human resource (HR) professional is to understand and find solutions to the disputes and conflicts that will inevitably arise in the workplace. A substantial body of literature has developed in the United States and, more recently, in Canada concerning the internal resolution of employment disputes, as a way to reduce the associated costs of lost productivity and litigation. The thrust of these internal dispute resolution (IDR) processes is to encourage parties to approach disputes in a more cooperative, less adversarial way through in-house procedures. An IDR process is designed to prevent a dispute from escalating and to preclude more formal resolution processes involving outside parties. The process allows employees to vent frustrations and air differences: it provides them with a 'voice' and encourages them to work with management to resolve the dispute.

Why IDR Processes Are Emerging

More and more nonunionized firms are adopting IDR processes. Kochan, Katz, and McKersie (1986) identify such nonunion grievance systems as part of the new system of industrial relations and human resource management. These systems offer the benefit of unionism without incorporating its costs, such as union dues and possible loss of income during a strike. Moreover, as the delays and costs associated with arbitration increase, unionized employers are working with their unions to devise systems that will resolve disputes inside the organization. Companies are also attempting to develop programs that will anticipate and avoid future legal problems or, at least, plan for their effective resolution.

Human Rights Disputes

Large Canadian employers are developing IDR processes to deal specifically with harassment and discrimination complaints. An in-house process may save the employer time and money and avoid the difficulties associated with human rights arbitration. An internal process can minimize the harm suffered by the claimant if discrimination has occurred and minimize the anxiety often experienced by complainants who enter the process. The process allows the employer to demonstrate that the complaint is taken seriously and allows for quick corrective action (Sanson and Hart 1996, 11).

Sexual Harassment

There are numerous practical reasons for employers to develop and implement a preventive program against sexual harassment (Aggarwal (1992, 317). Having such a program reduces the chances of harassment occurring because people know the rules. It reduces the time for the employers to learn of the harassment and take prompt and corrective action, and it increases the chances that victims will take self-help measures to prevent recurrences of offensive behaviour, because they know their rights. An internal process increases the chances for successful internal resolution through early and effective intervention. It also helps to establish the employer's record of good faith if the case goes to litigation, and it provides a defense against liability. Finally, by reducing harassment, such programs increase workforce productivity.

The IDR process provides employees with a 'voice' and encourages them to work with management to resolve the dispute.

Wrongful Dismissal

The Honorable Douglas Lisaman of the Ontario Court of Justice (General Division) has said that organizations should do everything they can to avoid litigation in the area of wrongful dismissal 'because the costs are unbelievable' (quoted in Hampton 1996, 6). A 'modest case' could cost \$35,000. A well-designed IDR process can help employers avoid such costs.

The Advantages of Internal Dispute Resolution

Why would employers incur the costs of creating an in-house dispute resolution procedure when they could proceed directly to arbitration, mediation, or med-arb (a combination of mediation and arbitration)? One reason is that an IDR process encourages the parties to maximize control over resolving their own disputes and empowers them to continue to do so. Resolving the issue internally allows the parties to discover and exploit mutual gains and tailor a solution that works for their own unique problem and organization. 'The best decisions aren't imposed by the courts. They are made by the parties involved' (Jay 1997, 13).

According to Bishop (1995, 21,26), an IDR procedure is superior to litigation for the following reasons:

- An IDR procedure can resolve the dispute relatively quickly. The employer can usually provide many noncompensatory benefits for the employee at relatively low, or even no, cost. Some of the most valuable potential benefits are emotional or 'intangible' benefits relating to self-esteem and employee morale which can usually be dealt with in nonmonetary ways.
- An IDR procedure can reduce the monetary costs of the dispute by reducing the time, effort, and money that must be expended by the parties in a protracted legal proceeding.
- The parties avoid the adverse publicity of a lawsuit and deal with the dispute in complete privacy.
- The employer can deal with the employee in a way that is fair and seen to be fair, thereby conveying a progressive image.
- The employer is able to identify management practices which may be improved to avoid similar problems in the future.

Perhaps the single most important advantage of an IDR procedure is the improvement in morale.

Perhaps the single most important advantage listed is the improvement in morale that results when employees participate in the dispute resolution process (see Saunders and Leck 1993; Fryxell and Gordon 1989). The empirical evidence suggests that if organizations are to reduce dysfunctional conflict, there must be high levels of employee participation and labour-management cooperation (Kochan, Katz, and McKersie 1986). Furthermore, since employees who participate in resolving disputes in the workplace are more satisfied and thus less likely to leave the organization, the firm may realize savings on recruitment, selection, training, and other employee-related expenses. Organizations may further benefit from the increased productivity that results from improved morale (see Saunders and Leck 1993).

Even if the dispute is not ultimately resolved by the IDR process, it will provide a useful background if the parties are obliged to continue to arbitration or litigation

because as the process proceeds, the parties negotiate binding agreements (on procedural matters, factual issues, admissions, and so on) that can be used, if necessary, in subsequent litigation, as can evidence (as opposed to off-the-record information) exchanged during the process, along with the results of any fact-finding process (if they are binding or adopted by agreement) (Bishop 1995, 27). On the other hand, when formal mediation forms part of the IDR process, anything disclosed during the mediation process is not admissible in arbitration. Adjudication cannot be prejudiced by settlement discussions (Brown 1997, 12).

The Structure of an IDR Program

By adopting an effective IDR process, employers and their employees can deal with problems as they are just beginning to emerge and address workplace disputes before the parties become inflexible in their positions (Simon and Sochynsky 1995, 33). The IDR process may open a dialogue between employee and employer or union and management and generate solutions characterized by higher commitment and follow-through by all parties involved (Furlong 1996, 11). Several features will be common to the IDR processes that are developed in various institutional settings.

Statement of Policy

Obviously, the most important aspect of an IDR program is that employees are aware of it. The program must be clearly described in a document designed for that purpose—in an employee handbook, a memorandum of understanding with the union, or in the collective agreement. In human rights disputes, in particular, the document should identify the remedies available to the complainant and the range of outcomes for the individual against whom the complaint is made (Sanson and Hart 1996, 11); it should give examples of kinds of unacceptable behaviour. Employees should be required to state in writing that they have read and understood the policy or, at the very least, that they have seen it and are aware that it exists. A description of the program should be distributed to all employees as a matter of routine.

Complaint Intake

The program should identify appropriate individuals who will receive complaints; more than one person should be identified so that an employee will not have to file a complaint with the person with whom s/he has the dispute. In cases of sexual harassment, it becomes even more critical to have multiple entry points to ensure that the complaint can be filed with someone the employee feels comfortable with (Aggarwal 1992, 327). Larger employers often designate an HR officer to handle complaints (Simon and Sochynsky 1995, 34).

Neutral Procedures

Since the IDR program must be impartial and seen by employees as fair, the process must be carried out consistently and must not change from case to case. Furthermore, the 'investigation must be carefully and thoughtfully constructed, carried out promptly with no predetermined outcome in mind, and thoroughly annotated' (Simon and Sochynsky 1995, 34). The decision maker is usually an employee or offi-

The IDR process may open a dialogue between employee and employer or union and management and generate solutions.

cer of the firm, and thus it is integral that this individual be seen as a neutral party and above the fray of internal politics. The IDR process should not result in one party winning all the time, but on the other hand, the decision maker must not feel that the results of the process should be 'balanced,' with equal wins for both sides. The concept of a neutral in-house decision maker obviously leads to complex problems and to skepticism about IDR, which will be discussed in more detail later in this study.

Prompt Resolution

Issues referred to the IDR process should be promptly investigated and resolved. 'Numerous studies have shown that one of the primary reasons employees file wrongful discharge and discrimination claims is because they find their employers too slow to respond to informal complaints' (Simon and Sochynsky 1995, 35). Thus, an effective program will have strict timelines and deadlines, although the time allowed for investigation and resolution will of course vary with the nature and complexity of the dispute.

Written Determination

The final stage of the IDR process should include a written statement from the decision maker advising the employee of the ultimate decision, the rationale, and the analysis. Also included should be the specific recommendations to resolve the complaint. 'A carefully considered and well-written statement of the decision will give the employee greater confidence that the process has been fair and thoughtful' (Simon and Sochynsky 1995, 36). Furthermore, if the employee is not satisfied with the result and chooses to seek external counsel, the document will provide evidence that the employer has attempted to resolve the dispute and that the issue has been fairly addressed.

Policy against Retaliation

The IDR policy should clearly state that there will be no retaliation of any kind for an employee filing a complaint or for those involved in the investigation. Without such a statement, employees may be unwilling to use the process (Aggarwal 1992, 328).

Any organization establishing an IDR program believing it will give management greater control over the outcome should realise that it cannot succeed. 'Such a program will lack integrity, generate no support among employees, and result in more (and more contentious) litigation' (Simon and Sochynsky (1995, 36).

IDR in Practice: Five Examples

Queen's University

A harassment and discrimination complaint policy and procedure was approved and adopted at Queen's University in June 1995. It is a good example of a very formal and meticulous IDR policy. It covers complaints dealing with sexual harassment, race and racism, and heterosexism, and it protects members of staff, faculty, and stu-

Any organization establishing an IDR program believing it will give management greater control over the outcome should realise that it cannot succeed.

dents. The process emphasizes informal resolution using mediation or negotiation but provides more formal proceedings where necessary.

Although the process stresses the importance of internal resolution, if the complaint is being investigated by the Ontario Human Rights Commission, action under the Queen's procedure will cease until the complaint before the commission is discontinued or brought to a conclusion. The rationale is that the Human Rights Commission may be the more appropriate body to deal with some cases: for example, alleged systemic discrimination (Queen's University 1995, 8). However, the Queen's IDR process continues if proceedings have commenced in the courts under criminal or civil law.

When a complaint is received by an adviser in the human rights office of the university, the adviser ensures that the complainant receives a copy of the IDR procedure, and with the consent of the complainant, the adviser may contact the alleged harasser, the 'respondent.' Without identifying the complainant, the adviser informs the respondent that a complaint has been made about his/her behaviour and provides details of the IDR procedure. The advisor may, with the permission of the complainant, work with the parties to effect an appropriate informal settlement. Furthermore, the adviser may meet with other members of the department, office, or residence in which the alleged harassment took place, to facilitate the informal settlement and perhaps to review departmental policies and procedures.

The formal procedure begins, when the complainant wishes, with a complaint in writing detailing the alleged harassment and includes dates, times, places, and names of individuals involved, as well as an indication of any specific remedy being sought. The time limit for filing a complaint is normally within six months of the event. The respondent must be notified within ten days of the receipt of the written complaint. The adviser will continue to attempt to facilitate an informal settlement throughout the formal proceedings. The parties, however, may agree to forward the issue to mediation/negotiation by a facilitator acceptable to both parties. The process must be completed within six weeks of the date the parties agree to a facilitator, and the result is reported in writing to the adviser, with a copy provided to the parties.

When mediation/negotiation is not agreed to, the complainant may initiate a formal hearing by request in writing to the secretary of the university. The request must be made within two weeks of the receipt of the written complaint by the respondent (Queen's University 1995, 20). The university has established a complaint board made up of four members from the faculty, four from the staff, and four from the student body; they are all elected by the senate. The hearing takes place before a three member board which is presided over by a chair or vice-chair nominated by the university principal and two individuals chosen from the member groups. The complainant and respondent each designate a group (faculty, staff, or student) from which a board member is to be appointed. A full statement, including a copy of the initial formal written complaint and any supplementary details, must be submitted to the chair of the board within two weeks of filing the written request for a formal hearing. The respondent then has an opportunity to file a written statement of response within two weeks of receipt of the complainant's statement. The board convenes within three weeks to examine both statements and adjudicate the formal hearing.

The board may interview other people for relevant information and/or request any person to submit a written statement. Any such interviews will be recorded and documents will be provided to the parties. The board convenes once all evidence is gathered, and the parties are invited to address the board if they wish. Either party may be cross-examined by the other side or by the members of the board. Either party may be represented by her or his adviser or by a lawyer or other representative of his or her choice.

The board must decide whether there has been harassment and/or discrimination and inform the parties within one week of the hearing. A written statement of findings and reasons for them is supplied within two weeks to the parties. Within two further weeks, the board will reconvene in cases where the respondent has been found responsible for impermissible harassment and/or discrimination in order for the parties to make submissions as to penalty. Within a further week, the board will decide on the appropriate sanction and provide written documentation of the reasons for the sanction. The board may issue the following sanctions:

reprimand, notation on personnel records, a public report of the findings and sanctions imposed (including, in appropriate cases, the name of the respondent), loss of salary, suspension, dismissal, or expulsion from the University as well as mandated submission by units of the university to educational, monitoring, and reporting programmes. (Queen's University 1995, 24)

The board may also make recommendations to the administrative officers of the university of changes that may prevent occurrences or reoccurrences of harassing or discriminating behaviour.

An appeal of the decision of the board may be made to a legally trained independent outside arbitrator to be agreed upon by the complainant and respondent within two weeks of the final disposition of the matter by the board. The arbitrator will hold a full hearing in accordance with the requirements of the Ontario *Statutory Powers Procedure Act* (Queen's University 1995, 27).

Approximately half the cases handled by the human rights office deal with sexual harassment, while the rest are based on various other human rights grounds, including discrimination on the ground of sex, religion, sexual orientation or disability (Queen's University 1996, 7). Sixty-seven cases were handled in the 1995-96 academic year, and all were successfully resolved prior to convening the complaint board. The office is used most often by undergraduate students, then graduate students and faculty. Interestingly, staff use the office least of all, perhaps because many staff members can pursue an issue through the union (Queen's University 1996, 9).

Appraisal

The Queen's harassment/discrimination complaint policy is well-documented and easily accessible on the Queen's home page on the Internet. Complaint intake is handled by one of the many advisers in the human rights office, which is easily accessible to students, faculty, and staff. The separate human rights office is charged with investigation of disputes, which provides the perception of neutrality. The director of the office reports directly to the university senate to ensure there is no

conflict of interest. Neutral decisions are made by the complaint board through the IDR process, and appeals of the board's decisions may be made to an independent outside arbitrator. Although prompt resolution is desired, it is not the *raison d'être* of the policy. The procedure is designed to prevent harassment and discrimination by educating members of the university community as to what constitutes such behaviour and to provide uniformity and fairness in dealing with complaints. The policy against retaliation is spelled out in the Queen's IDR policy, which clearly states that '[a]ny reprisal, or expressed or implied threat of reprisal, for making and pursuing a complaint under this Procedure is itself considered a breach of this policy' (Queen's University 1995, 9).

The strength of the Queen's harassment and discrimination complaint policy and procedure lies in its thoroughness. The policy document provides clear and extensive definitions of sexual harassment, racism, and heterosexism. It gives examples of such behaviour and explains how they can be intentional or unintentional. The program gives clear guidance on how a complaint can be filed and what a complainant may expect. Although it allows for formal investigations and hearings, it also encourages informal resolutions throughout the process—what Ury, Brett, and Goldberg (1988) would term 'loop-backs' to negotiation.

However, the disadvantage of the Queen's IDR process is the flip side of its advantage: the thoroughness and formality of the documentation may discourage a prospective complainant even from starting what may look like a lengthy and arduous process.

Qantas Airways

In contrast with the process at Queen's, the Qantas Airways 'Open Door Procedure' is a good example of a relatively informal IDR process. Employees are encouraged to file complaints with their direct supervisor, who attempts to resolve the problem within three business days. If unsatisfied, the employee can pursue the problem through the organization: to the department head if necessary, and then finally to the senior vice president. If employees feel uncomfortable raising a concern with their direct supervisor, they can begin by submitting their complaint to their department head directly. If the complaint reaches the final stage of the internal process, the decision—usually of the senior vice president—is final. Qantas recognizes that there may be cases in which following the usual procedure will be futile. Accordingly, certain disputes will be mediated at company expense, where appropriate. This option is rarely granted, however, and in most cases the decision is made internally by the vice president carrying out the investigation.

Simon and Sochynsky (1995, 40) state that Qantas has found its in-house program to be successful, reporting only one employment-related lawsuit since the program began in 1983. The program was in fact initiated to avoid lawsuits and liability in charges of discrimination and to allow employees to raise concerns inside the workplace, without resorting to external counsel. Qantas also wanted quicker resolution of internal disputes, and it has had dramatic success in achieving this goal. The company has not been unionized since 1986. Most of the issues raised through the IDR process are resolved by the employees' direct supervisor or department head. But if the issue involves discrimination or human rights, the personnel department gets

involved more quickly, and the process advances immediately to the level of the senior vice president (Simon and Sochynsky 1995, 39).

Appraisal

The Qantas approach has succeeded for several reasons. Consistency is brought to the procedure by having one person conduct the investigations, the vice president of human resources for the Americas region, Mr. Carl R. Feil, who enjoys a high level of trust because of his reputation for fairness. He conducts the investigation by meeting with all involved parties. The aggrieved employee may also request additional parties to be witnesses in the investigation. The process includes a strict policy against retaliation, which is clearly spelled out, and all conversations are held in confidence. A written document is prepared for the complaining party and includes the results of the investigation, the reasons for the conclusions drawn, and the recommendations made. The employee can then accept the recommendations or request mediation. The Qantas policy is very clear and sufficient detail is provided concerning the process and time frames involved. The program is well-documented in the employee handbook, and all employees are required to sign a statement acknowledging that they have received it and that they understand its contents.

Although the investigation at Qantas is largely controlled by the employer, employees report that they trust the neutrality of the vice president of HR, who, as mentioned, handles all the investigations. Qantas also wanted quicker resolution of internal disputes, and it has had dramatic success in achieving this goal. However, Simon and Sochynsky criticize the process at Qantas precisely because it is largely controlled by the employer:

Qantas determines unilaterally who will be the decision maker and how the investigation will be conducted. Its recommendations essentially are not appealable, except through formal mediation that is rarely granted. (1995, 40)

The success of the process depends in part on the confidence employees place in the neutrality of the current vice president of HR. Should he leave the organization, his successor may not have the same degree of trust, and the entire IDR process may suffer.

While the Qantas process works in the Qantas environment, it may not work in another environment, such as a large company where there is less trust in the executive control over the program. Larger employers may require more formal, structured procedures.

Hughes Aircraft Company

Hughes Aircraft has had internal dispute resolution procedures for many years. Originally, the company followed an informal, open-door procedure that allowed an employee to discuss a dispute with individuals at various levels in the organization. Final authority was maintained with the president of the business unit in which the complaint arose (Simon and Sochynsky 1995, 41). But after an unfavourable jury verdict in 1992, the company decided to redesign the program. Before implementing the current system, the company conducted pilot programs in local regions and

gathered employee feedback through opinion surveys and focus groups. The new program was initiated in January 1993.

The first three steps of the process are largely unchanged: a dispute is brought to the attention of the employee's immediate supervisor, then to increasingly higher levels of management. The new process allows an employee who is dissatisfied with the decision of the department or division manager to request assistance from an 'executive advisor,' a senior-level executive in the employee's unit who has no direct supervisory responsibility over the employee's department (Simon and Sochynsky 1995, 44). The executive advisor has three functions: to evaluate the merits of the claim after the investigation, to assist in facilitating resolution of the complaint, and to advise the employee in preparing for the next step in the process—a hearing before the Consensus Review Board (CRB).

The CRB has the authority to rescind layoffs or discharges, grant salary increases, alter performance ratings, and take other actions that will resolve the complaint, but it cannot change company policy or grant compensatory or punitive damages. The board is made up of three members: a senior-level executive, a middle-level manager (both selected by the local HR department), and a representative from the corporate HR department. The middle-level manager is from the employee's unit but not from the same department. The CRB mandate is to resolve the dispute and preclude the requirement of the binding arbitration stage of the process. It does not follow specific procedural and evidentiary rules, nor does it require specific discovery procedures. Lawyers are not allowed to participate (Simon and Sochynsky 1995, 44). If desired, the employee may request assistance of the executive advisor.

The CRB generally meets with each party separately to give them an opportunity to state their position, and it decides on the number of witnesses to be called and the type of documents to be reviewed (Simon and Sochynsky 1995, 44). Deliberations are completely confidential, and only the final decision is communicated to the parties, in writing. The decision is binding on the employer, and there is no further internal recourse for the employee. Binding arbitration by a neutral may be requested by the employee if the preceding steps of the process have been exhausted. However, all employees hired after 1 January 1993, are required to agree to binding arbitration of disputes as a condition of employment.

Appraisal

Hughes Aircraft has had dramatic success in the prompt resolution of internal disputes. The documentation of the program is very clear. There is a separate brochure designed specifically to outline the process. Complaints are handled, in most cases, by the employee's immediate supervisor, but an HR representative may also accept the complaint should the employee choose. The executive advisor aids in ensuring neutrality by assisting and advising the employee through the process, and the CRB is neutral as well. Providing a written document to the complaining parties with the decision and rationale is integral to the IDR process at Hughes. However, policy against retaliation is not contained within the IDR policy itself.

The company reports that not one employee has taken the final step of requesting formal arbitration of a complaint. Complaints are addressed more quickly and more

often to the employees' satisfaction than they were before. In the first year of the program, 70 percent of all claims were resolved before reaching the CRB. Of the complaints that did reach the CRB, 60 percent were resolved to the employees' satisfaction. Since employees now feel they have an opportunity to be heard and are an integral part of the process, employee morale has improved. The company believes the program has reduced costs significantly and improved management understanding of the causes of employment disputes (Simon and Sochynsky 1995, 41).

One drawback of the process at Hughes Aircraft is that it requires a substantial investment of management time. However, as Simon and Sochynsky point out 'if the cost of litigation is measured as the alternative, even this "disadvantage" may be illusory' (1995, 46). Nevertheless, such an expansive program can probably be implemented only in very substantial employers, although some of the elements of the program, such as the executive advisor and the CRB panel, could be incorporated into the IDR processes of small organizations without much trouble or prohibitive cost.

The U.S. Postal Service

The case of the U.S. Postal Service illustrates that the principles of interest-based problem solving, which are employed more and more frequently in collective bargaining negotiations, may also be successfully diffused throughout an organization during the life of a collective agreement in the form of an IDR program. In the 1980s labour relations between the U.S. Postal Service (USPS) and the National Association of Letter Carriers (NALC) were characterized by bitter and acrimonious disputes and long and protracted collective bargaining. Knowing that things had to improve, the postal service decided, in 1987, to experiment with a form of IDR known as union-management pairs (UMP).

The UMP team consists of two members: one appointed by the union and one by management. The representatives are selected for their knowledge of the collective agreement, their credibility, and their ability to cooperate without being coopted by the other side. The UMP team becomes part of the process only after the union steward and the immediate supervisor have tried unsuccessfully to resolve the problem and only after the union steward has tried unsuccessfully to resolve the problem with higher levels of management. The UMP team begins by reviewing the case and ensuring that the steward and appropriate levels of management have made an honest effort to determine the details of the case and have made a reasonable attempt to reach a settlement. Suggestions can be made to the UMP team, which functions simultaneously as a fact-finder and mediator and has the power to impose a settlement if it is deemed appropriate.

The results of the implementation of the UMP process were immediate and dramatic. In 1987, there were 300 cases awaiting arbitration, and the UMP team was able to resolve all but two. In one branch of the company, Westchester, only one of 677 grievances has reached the step in the grievance procedure where the UMP team is called in (Winston 1992, as cited in Carnevale 1993, 457).

The UMP process at the U.S. Postal Service forms part of the collective agreement and thus the legal relationship between the parties. The policy is clearly outlined in

the collective agreement. Involvement by both union and management helps ensure neutrality of the proceedings. Although a policy against retaliation is not clearly spelled out, there may be less fear of retaliation in unionized firms because of 'just cause' language in the collective agreement.

Appraisal

The strongest feature of the UMP process is that it requires the parties to work together to resolve problems at the lowest level of the organization and 'that it requires ongoing, open communication between front-line actors who have to live with the decisions that the system produces' (Carnevale 1993, 460). The participants report that the control they have over process and outcome strengthens their working relationship and leads to greater satisfaction with the results. Because the parties must investigate problems quickly, the conflicts are much less likely to intensify and get out of control.

Workers' Compensation Board of British Columbia

In mid-1996 the Workers' Compensation Board of British Columbia (WCB) began working with the Compensation Employees' Union (CEU) to devise ways of resolving grievances more quickly and ridding the company of the enormous backlog of grievances relating to a new recruitment and selection process negotiated in 1995.

In September 1996 they agreed in a letter of understanding to 'participate in a long-term initiative in an effort to agree upon, develop, articulate and communicate a joint recruitment strategy for the Board' (WCB 1996, 1). This project was subsequently abandoned, however—for various reasons—but a short-term plan was devised to refer disputes concerning the validity of recruitment assessment tools and other matters to a review committee comprised of one member appointed by each party and a chair, Dr. Craig Pinder. Pinder, a university professor with an extensive knowledge of recruitment, selection practices, and assessment tools, had been retained by the organization as an advisor during the development of the new recruitment system and was regarded as a knowledgeable neutral who could be trusted by both parties. The appointed representatives on the committee were to act as advocates for their respective sides and help to maintain the neutrality of the proceedings. The chair was to render binding decisions not subject to the grievance procedure. As with the U.S. Postal Service, the policy against retaliation centres around the protection of union members enshrined in the collective agreement and relevant labour legislation. The contract for union members at the WCB states that

No disciplinary measure in the form of a notice of discipline, suspension or discharge or in any other form will be imposed on any employee without just and reasonable cause and without his/her receiving beforehand or at the same time a written notice outlining the reasons for the disciplinary measure imposed.

(WCB 1995, 43)

The joint recruitment strategy project agreed to in the letter of understanding of September 1996 formed part of the collective agreement and thus part of the legal relationship between the parties while it was in effect. The terms and conditions of the letter of understanding superseded relevant provisions in the collective agreement for six months. When that time period had elapsed, the parties continued with the

short-term initiative by mutual agreement. The letter of understanding was not distributed to each employee, however, and thus the only people who have a full understanding of the process are the HR professionals and union executives who are immersed in the project.

Appraisal

Although it is very different from the other examples of IDR processes detailed here, the WCB has adapted a process and tailored it to its own unique situation. The process allows employment disputes to be resolved outside the 'normal' grievance and arbitration process. While the normal process requires an employee to lodge the dispute with his or her immediate supervisor and proceed through the organizational hierarchy should it not be resolved, the new process allows the employee to dispute the validity of a particular assessment tool in a given job competition. Many of the assessment tools employed by the WCB are purchased standardized employment tests that a manager is ill-equipped to defend in the grievance procedure. The new IDR process is intended to allow the dispute to be quickly channelled to a committee that has more specialized knowledge of the tests and their use. As mentioned, the decisions of the chair of the review committee are binding, as in regular arbitration proceedings. However, because of the chair's knowledge and previous involvement with the company, it was expected that the process would be less formal and time-consuming than arbitration and that unsuccessful employees could challenge the system in a way that resulted in a more timely and fairer resolution.

Unfortunately, the process did not reduce costs or save time, as had been hoped. There were delays in the development and implementation of the IDR process, and therefore the difficulties involved in referring permanent selection decisions to the IDR process were too great; many employees would have been in a position for one or two years before the competition was reviewed. Moreover, because management felt confident in its selection decisions, it referred disputes to expedited arbitration instead of the IDR process. As of June 1997, no dispute had been heard through the expedited arbitration process, since the CEU withdrew all disputes before they were heard. The first grievances were heard by the chair of the IDR process in August 1997, and the results are not yet available. The scope of the IDR process has in fact been narrowed further into dealing only with temporary promotions.

Comparative Analysis of IDR Programs

The five cases outlined in the previous section illustrate the variety of IDR processes that are in place in the 1990s. Important lessons can be learned about the strengths and weaknesses of each.

Protecting against Retaliation

Employee trust is absolutely integral to the IDR process: employees use the system when they feel that it will be neutral and fair and that there will be no retaliation.

While the collective agreements of unionized employees protect against retaliation, nonunion employees have no such guarantees. Drost and O'Brien (1983) found that

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more than half the respondents they surveyed in a nonunion firm felt that management would 'hold it against' employees who grieved. One way of increasing trust in the IDR system of nonunion companies may be to add 'just cause' language to policies surrounding discipline and discharge. Employees may feel more comfortable knowing that the employer would be required to justify disciplinary actions taken.

A more likely concern for an employee contemplating use of an IDR process, however, is not fear of discipline but rather fear of more subtle forms of retaliation. Employees in both union and nonunion companies may fear that their careers will be threatened by raising good-faith concerns about sexual harassment, working conditions, or selection decisions. Even when the issue is duly considered and the grievor is exonerated, s/he is not necessarily immune to subsequent negative treatment by the employer. In a review of several studies, Peterson found that

by the year after filing the grievance, the [grievors] had significantly lower performance ratings, promotion rates, poorer work attendance, and higher turnover than the [non-grievors]. The negative effects were even more noticeable for employees who pursued their grievances to higher steps of the procedure and those who won their grievances. (1992, 141)

Subtle forms of retaliation are complex and often very difficult to prove. They could be addressed with processes that allow an employee to raise their concerns with senior executives of the company who would have to make it clear that even subtle forms of reprisals would not be tolerated.

Neutral Decision Makers

Another complex issue is whether IDR processes can ever be truly neutral and believed to be neutral when the neutral decision maker is an employee of the company. Persons chosen as neutrals may not want to damage their own careers in the firm by antagonizing management (Peterson 1994, 95). If the neutral has only advisory power, s/he may be reluctant to recommend a resolution requiring a management official to reverse his or her own decision. Everyone will lose if the official refuses to do so.

To ensure that the neutral is trusted and well respected by management and employees alike, s/he could report directly to the president or some other body such as a board of governors or a university senate, as in the Queen's example. Individuals could be employed on a contract basis specifically for this role to ensure they are without bias. However, even a contract employee may be in a difficult position, since employers may not renew a contract if they are unhappy with the decisions. A better strategy, perhaps, would be to choose neutral parties from all ranks of the organization, from both management and employees, and to provide extensive training on neutrality and the need for objectivity. Neutrality may be achieved when a neutral employee and a neutral manager jointly investigate the issue and make recommendations or decisions, as in the unionized UMP process at the U.S. Postal Service.

The cases outlined here also show that the personal characteristics of the individual who spearheads an IDR process are a critical component of a successful program.

A good strategy may be to choose neutral parties from all ranks of the organization and to provide extensive training on neutrality and the need for objectivity.

Small organizations do lack the resources to employ teams to research and implement IDR processes and the ability to train employees to act as in-house neutrals.

The reputation for fairness and integrity of Carl Feil at Qantas and Craig Pinder at the WCB, for example, were crucial to the success of their initiatives. When choosing the decision makers for an IDR process, organizations should be aware that the reputation of the program 'champion' will be highly correlated with its success.

Many of the above considerations may lead to the conclusion that IDR processes can be successful only in large organizations that have sufficient resources to overcome these obstacles. Indeed, research from the 1980s demonstrates that large and more bureaucratic organizations are more likely to have formal appeal procedures (see Berenbeim 1980; McCollum and Norris 1984). Who would be a true neutral in a small organization of few employees? Small organizations do lack the resources to employ teams to research and implement IDR processes and the ability to train employees to act as in-house neutrals. The process at Hughes Aircraft would be much too time-consuming for managers in smaller organizations. However, one way of dealing with the problem of neutral decision makers would be to have both employees and managers nominate trusted individuals to decide upon cases.

Fairness

The fairness of an IDR process—both to the complainant and to the accused is most pertinent in cases where human rights are at issue. As noted, the Queen's process requires the appointment of respondent advisers who inform respondents about their rights and responsibilities under the procedure and assist respondents in understanding the complaint before them. The adviser is empowered to act on behalf of a respondent and may also seek legal advice where permissible (Queen's University 1995, 12). IDR programs aimed at handling human rights disputes as well as other workplace matters should have procedures, such as the Queen's policy, for providing assistance to parties responding to allegations of wrongdoing.

Binding Arbitration

As noted earlier, Hughes Aircraft requires all employees hired after 1 January 1993 to agree to binding arbitration of disputes as a condition of employment; an individual unwilling to do so faces the possibility of termination. The question arises whether the employer is thereby depriving employees of their legal rights to pursue an employment dispute through other means, such as litigation. Many organizations, including the U.S. Equal Employment Opportunity Commission and the National Labor Relations Board, have made clear statements opposing mandatory arbitration as a condition of employment. The debate about this issue is contentious and ongoing (see Zinsser 1996, 158,159).

Constructing an IDR Process

Drawing on the experience of the five organizations studied here, the following sections outline the steps that are required to develop a successful IDR program.

Entry and Contracting

Whether the individual charged with the responsibility of designing an IDR program comes from within the organization or from outside, s/he will have an immediate

impact (Costantino 1996, 208). The system designer must consider which key stakeholders should be involved in the process, how committed organizational leaders are to allowing them to participate, whether the parties are educated with respect to change issues, and whether they are willing to cooperate and collaborate.

The ‘Cultural Audit’

Before trying to develop and implement an IDR process, employers must assess the organizational culture to determine whether employees feel a sufficient degree of trust in management for the IDR process to succeed. In unionized companies, the union executive will help to determine how successful the IDR process can be. The more support for the process by the union executive, the more it will be used by members. This cultural audit can be done using employee surveys, interviews, and focus groups.

Practical Realities

Once the cultural audit is complete, the organization can consider the type of IDR process that will suit the company and its employees (Simon and Sochynsky 1995, 48). Very complex, detailed plans may be appropriate for large firms, while smaller firms may require less formal systems.

If there is an existing dispute resolution system, the designer must examine the current and recent issues in disputes, how the disputes are currently being handled, and why particular procedures are being used and others are not (Ury, Brett, and Goldberg 1988, 21). The designer must determine what is working with the present system and what is not. In unionized firms, there must be thorough discussions with the union executive on how the process will link to the formal grievance process and how it will affect the time limits in the grievance process itself.

Employee Participation

Maximum participation of key stakeholders is critical. At all stages of the process, employees and union members should be given an opportunity to participate. Employees will be more likely to use a process that they have had a hand in designing and implementing.

Legal Consultations

In order to reduce the risk of any legal pitfalls, employers should ensure that they secure legal advice before the final draft stages of the process (Simon and Sochynsky 1995, 49).

Program Testing

Before the program is implemented throughout the company, it should be thoroughly tested in a local area for a limited time with a small, clearly defined pilot project (Costantino 1996, 213). Employees with relatively minor disputes could be approached to see if they would allow their dispute to act as a test case. The pilot project will allow the designers to test the suitability of the system to see whether it

Maximum participation of key stakeholders is critical.

fits the organization; it may also reveal unexpected costs, expectations, and attitudes that could hinder adoption of the new system. Costantino (1996, 213) recommends a '4-T' approach to the pilot project when it is being expanded to apply to the entire organization:

- Tout the pilot—publicize the program and results to give momentum to the change process,
- Test the pilot—do not assume that because it worked in one part of the organization it will necessarily work in another setting,
- Tailor the pilot—reassess and make sure that the disputes in the expanded arena are appropriate for the IDR process,
- Team the effort—use an IDR team, task force, or steering committee.

Implementation

When the program is ready to be implemented, communication and training will be very important. Employees must be informed of the purpose and scope of the program and given an opportunity to ask questions. Simon and Sochynsky (1995, 50) recommend holding a question and answer session led by the individuals involved in drafting the program, both labour and management. They will help to allay employee fears that the process is controlled by management. At this time, employees should acknowledge in writing that the program has been described to them and that they understand how it operates. More extensive training will be required for those who will actually be investigating and resolving complaints: training on how to select a neutral, how to prepare for an IDR session, how the process works, how to identify interests, and how to develop strategies and options (Costantino 1996, 213). Comprehensive training will also be required for the internal neutrals who will be the decision makers.

Periodic Reviews

To ensure lasting success, once the program is in place the 'employer should constantly be measuring the program against its expectations; if it is not working, it may need further modification' (Simon and Sochynsky 1995, 50). The system needs to be flexible and dynamic, and employees and managers who use the program should be able to raise concerns about the process and how complaints are handled.

Attributes of an Effective Process

As we have seen, IDR processes must be adapted to the characteristics of the organization. The system will involve trade-offs between thoroughness and cost, creativity and enforceability, and speed and thoroughness. Ertel (1991) sets out the following guidelines to help business and HR professionals analyze the trade-offs between competing priorities when developing an IDR process.

Clarify Interests, Improve Communication

An effective IDR process encourages the parties to maintain good communication and explore the interests that underlie the problem. In most employment disputes,

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the parties quickly determine their positions, which often seem to conflict directly with the position of the other party. On the surface, it may often be a distributive issue: one party seeks more, while the other wishes to give less. But the stated positions may be in conflict when underlying interests are not. The IDR process should help the parties understand their own and the other's interests and facilitate the exploration of where those interests do not conflict. The disputants may think that if a solution is good for their adversary it cannot be good for them, but discovering and exploiting areas of common interest may allow the parties to reach a solution in which both parties gain or, at least, 'expand the pie' so they are 'distributing a great deal more value than they initially thought was at stake' (Ertel 1991, 31).

Build a Good Working Relationship

Once a dispute is resolved, the parties will have to continue working together. An effective IDR process should leave the parties at least slightly better able to deal with each other the next time. First, it should allow the parties to put personalities aside and resolve the problem on its merits. Second, it should allow the parties to strive for the type of working relationship they would like to have (Ertel 1991, 31). Because the process gives the parties the opportunity to work together to untangle the immediate problem, it provides a valuable opportunity to improve the relationship in general.

Generate a Wide Range of Options

Because they have complete control of the dispute, the parties have the opportunity to brainstorm possible solutions and choose the best course of action. 'The more options there are on the table (within limits, of course), the greater the likelihood of discovering a productive path' (Ertel 1991, 33). The parties should be encouraged to brainstorm as many solutions as possible before evaluating or selecting one.

Foster Perceptions of Legitimacy

As noted earlier, if the process is seen by employees to be under the control of management, it will not be used. The parties must believe that it will not require them to give up substantial rights they would have had in litigation (for nonunionized employees) or in arbitration (for unionized employees) and that 'the solution is fair and equitable and was arrived at in a principled fashion' (Ertel 1991, 33).

Understand the Procedural Alternatives

The IDR process should produce solutions that are ultimately more efficient than the alternatives. The process should cost less than litigation, allow greater control over the process, or enhance the relationship between the parties. The IDR program may very well succeed because the alternative, such as an arbitration that is costly for both sides, is extremely adversarial and results in an imposed external resolution. The parties may work diligently and in good faith to maximize joint gains in a wrongful dismissal case, for example, because litigation would be costly and time-consuming (Carnevale 1993, 460).

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Conclusion

Companies entering the twenty-first century increasingly realize that their human resources are their greatest asset and a valuable source of enhanced global competitiveness. Thus, increasingly, they are looking for ways to reduce tensions in the workplace and resolve disputes in order to reduce employee dissatisfaction and turnover and improve productivity. IDR processes that are well-designed and fairly administered allow the disputing parties to quickly resolve a conflict in-house while retaining maximum control over the process and precluding further legal action. Because employees have a better avenue of communication and a sense of participation, they are more likely to be satisfied with the outcome. Overall job satisfaction and productivity improve, as does the organization's day-to-day problem-solving ability (Ury, Brett, and Goldberg 1988).

This study has revealed a diversity of IDR policies and processes. Obviously, any IDR process must be tailored to the particular organizational culture in which it operates. Although the majority of the reported examples of IDR processes currently operating appear to be highly successful, there are often difficulties in quantifying the benefits and costs. Nevertheless, employers with experience in implementing IDR programs indicate the benefits far outweigh the potential costs (Simon and Sochynsky 1995, 50). Because an internal dispute resolution process is an integral component of an employee-sensitive environment that encourages employees to reach their full potential and therefore achieve great gains for the employer, it seems likely that such programs are not only here to stay but may soon become a much more common feature of union and nonunion workplaces alike.

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