chapter
EIGHT

Designing Disputing Systems for Organizations

Learning Objectives

- Demonstrate an understanding of the methods for conducting a needs assessment.
- Demonstrate an understanding of the role of internal and external stakeholders during DSD processes.
- Demonstrate an understanding of the role of power, rights, and interests in DSD.
- List and describe various process options to consider when creating dispute systems.
- Demonstrate an understanding of the costs and benefits of systematizing processes for dispute management.
- List and describe the best practices for engaging in DSD.
- Demonstrate an understanding of the different trends in DSD for private corporations, public sector agencies, and nonprofit organizations.

ELISE AT MAIN STREET BAKERIES

Elise does everything she can to keep her employees happy and minimize turnover. In spite of her efforts, her company occasionally encounters a disgruntled employee or someone claiming to have suffered from sexual harassment or discrimination. This is nearly unavoidable in a company with thousands of employees. Elise's goal is to constantly improve her

company as a place to work and shop. Therefore, she has hired a consulting firm to conduct a needs assessment and make recommendations to further reduce the costs of unproductive conflict within her organization.

The term *dispute systems design (DSD)* refers to the strategic arrangement of dispute resolution processes within an organization (Costantino & Merchant, 1996). Disputing systems are commonly defined for internal employment disputes or disputes with external stakeholders such as clients, customers, or regulators (e.g., EEOC complaints within a federal agency or environmental enforcement cases with polluters). The goal of DSD processes is to track and reduce the occurrence and costs of disputes that can reasonably be predicted to occur within an organization and between the organization and external audiences such as customers, vendors, and regulators. Instead of treating each dispute as a unique, one-time event, a DSD approach seeks to identify the sources of recurring disputes, take preventative steps to avoid such disputes when possible, and take a problem-solving approach to efficiently resolve those disputes that cannot be avoided. All organizations have dispute systems, either by design or by accident (Nabatchi & Bingham, 2010). By working to prevent and efficiently resolve disputes, organizations can enhance their reputations, improve their products and services, and reduce the costs of conflict.

DSD is key for reducing, predicting, and addressing internal workplace conflicts as well as external disputes with clients, customers, and regulators. This chapter will primarily focus on internal workplace applications but will lay the conceptual framework for the discussion of dispute systems for external stakeholders in Chapter Nine.

PROCEDURAL JUSTICE AND REDUCING COSTS OF CONFLICT

When considering the creation of systems, policies, and procedures for managing conflict it is crucial to focus on procedural justice issues. As these systems are being forged, transparency and stakeholder participation will be key to their later success. If employees or other stakeholders feel these changes are forced on them from above or perceive the disputing system to be biased, unfair, or confusing, it will serve to increase rather than reduce unproductive conflicts.

It is not uncommon for employees to be skeptical of new dispute resolution procedures. They may wonder why the organization would assist them with

the pursuit of a complaint or they may doubt that it will be done impartially. Workplace ADR programs live or die by their reputation. If employees feel coerced into settlements or mistreated at any phase of the process, word will spread like wildfire. Unfortunately, bad news seems to spread faster than good news but a solid dispute resolution program will grow a positive reputation that results in appropriate levels of use over time.

POWER, RIGHTS, AND INTERESTS

Disputes can be resolved in three basic ways: through a resort to power, rights, and interests (Ury, Brett, & Goldberg, 1988). Power is the ability to assert one's preferred outcome onto others. In workplace settings power is used to resolve disputes through mechanisms such as strikes—in which the organization and the union seek to show they are more powerful than the other. Workplace violence or the threat of violence is also a way that individuals in dispute try to assert and display their power over others. Rights are established through law, union contracts, or official policies. Contests over rights are often played out in the courts, the EEOC, or through union grievance arbitration. Interests, as mentioned throughout this book (see Chapter Three), are the needs and desires of individuals and groups. They are addressed through negotiation, mediation, and other processes in which all parties seek to reach agreements that meet each other's needs without resorting to the coercion of power-based approaches or the use of an external decision maker with rights-based approaches. In terms of costs, power-based approaches tend to be the most expensive, then rights-based approaches, and finally, interest-based approaches. Interest-based approaches also hold the possibility of addressing the underlying causes of the dispute more thoroughly than the other two approaches (Costantino & Merchant, 1996; Ury, Brett, & Goldberg, 1988).

Unfortunately, hierarchical organizations tend to use power and rights-based approaches to solve problems. They do so out of the perception that it is more efficient for a boss to enforce his or her decisions on subordinates than it is to learn about the needs and interests of each person and design more tailored solutions. This approach works in many cases but some will generally fall through the cracks and receive a solution or decision that just doesn't fit or is inappropriate given the specific circumstances. Research has shown that interest-based approaches are more cost effective, satisfying, long lasting, and sustainable for recurring

problems in ongoing relationships, such as those in workplace settings (Colquitt, Conlon, Wesson, Porter, & Ng, 2001).

VALUES UNDERLIE THE DESIGN

What motivates you or your organization to consider redesigning its systems for disputing? Well-established organizations tend to invest in DSD in the face of a crisis. They come to realize their current system is inefficient due to expensive litigation, high turnover, loss of business or reputation, and new efforts by the employees to unionize. Sometimes a lawsuit changes the way organizations handle disputes, as was the case with the Coca-Cola Enterprises. If the organization's leaders are sincere about making changes that prevent and efficiently process disputes to fair resolutions, then there is a good chance that long-lasting improvements can be made. However, sometimes organizational leaders bring in DSD experts in order to appear willing to make changes rather than having a sincere desire to change (Greenberg, 1990). This lip service usually comes back to haunt organizations because the existing problems were enough to make leaders believe they needed to calm down the employees or external stakeholders—and usually they are right.

Stakeholders are those who are directly or indirectly affected by a proposed change—they have a stake in the outcome. Within organizations **internal stakeholders** include employees at all levels and the legal and HR departments. **External stakeholders** could include customers, vendors, shareholders, patients or the affected public, and regulators. For public policy facilitation, **primary stakeholders** are those most immediately affected by the policy outcomes. **Secondary stakeholders** are individuals or groups who are indirectly affected by decisions or actions of an organization. For example, when the US Environmental Protection Agency (EPA) creates a new regulation regarding fuel efficiency in cars, the primary stakeholders are the members of the automobile industry and the secondary stakeholders are all people who drive cars and breath air . . . literally everyone is affected at some level by these policies. Some secondary stakeholders will be affected more than others, such as children suffering from asthma versus those who have no special health needs.

For efforts at DSD to be taken seriously, the organization's leaders must be sincere in their desire to bring positive cultural and procedural changes to the organization. They must convey their support for these efforts to management

and employees at all levels. They must walk the talk and avoid meddling in dispute processes that are piloted, such as mediation programs or an ombuds office. They must be open to criticism, feedback, and change in company policies and procedures, as long as those changes are designed to improve the way problems are resolved. Efforts to change conflict management across whole organizations will not succeed without the support of organizational leaders, the implementation of managers at all levels, and the buy-in from rank-and-file employees.

What values are at the heart of efficient versus inefficient disputing systems? Inefficient systems are not equally accessible to all comers. They do not allow all parties to feel heard. They are slow, expensive, and do not fully address all of the issues in dispute. Nabatchi and Bingham (2010) note that

> better dispute systems foster and reinforce norms of reciprocity, which aids in creating shared confidence and trust among disputants, and increases the prospects for cooperation. The extent to which dispute systems achieve reciprocity, confidence, trust, and cooperation determines, in part, the likelihood of reaching satisfying and sustainable solutions to conflicts. Moreover, the better the dispute system is at resolving conflicts in terms of satisfaction and sustainability, the greater the likelihood of employee retention and the possibilities for future cooperation, as opposed to more conflict. (p. 215)

The values that underlie the creation of a disputing system should be tied to the purposeful evolution of the organization's culture. If leaders seek to nurture a spirit of cooperation, self-determination, understanding, and fairness, where people feel valued, then they will craft a dispute system that mirrors and upholds those values. Perhaps they will choose to emphasize mediation and an ombuds office to maximize the opportunities for parties to share their perspectives about problems and craft their own solutions in a confidential atmosphere. If they see employees as somewhat disposable, then the values underlying their DSD model may instead focus on quick resolutions through the use of binding arbitration and an arbitration clause in their employment contracts. Whether the leadership team explicitly imbues their system with values or does this accidentally, the disputing systems within organizations point to the values that are representative of the organizational culture.

When hiring or promoting individuals into managerial positions, it is important to consider their ability to articulate clear values and lead their teams and the organization in pursuit of positive values. They must be able to embody positive, ethical, effective handling of problems that arise. According to a study by Van den

Steen (2001), "Managers with strong beliefs about the right course of action will attract, through sorting in the labor market, employees with similar beliefs. This alignment of beliefs gives direction to the firm and has important implications for incentives and coordination . . . it may be optimal to hire managers with such strong beliefs. Vision will be most important when uncertainty is high and actions are difficult to contract on." In other words, it is crucial to hire managers with a clear vision and strong values. These characteristics are particularly important during times of change such as mergers and acquisitions or the creation of new systems for managing conflict within an organization. These abilities are generally found to be more important than technical knowledge within the literature and are especially crucial when considering the design and implementation of disputing systems. Managers who do not believe in the importance or utility of the disputing system become obstacles to positive change.

GENERAL DSD CONCEPTS AND PRACTICES

In their seminal work, Costantino and Merchant (1996) discuss six key principles of dispute system design. These principles are helpful as you consider best practices for DSD.

Focus on Interests

As already discussed, resolving disputes through a focus on interests tends to be less costly, faster, and less damaging to continuing relationships. Although it may be possible to get a final, relatively quick decision through arbitration, the use of adversarial processes such as arbitration make it difficult for the parties to continue working productively together. Each side presents their arguments to the decision maker to convince him or her that the other person is wrong and has misbehaved or violated law or policy. It is difficult to attack the other party in an adjudicatory forum and then work next to him or her on the workroom floor in a collaborative manner. Additionally, many disputes deal with interpersonal differences or differences in communication styles. These are not able to be resolved through adjudication, although they may indeed lead individuals to file claims of discrimination or inappropriate treatment. When employees feel mistreated or sense that "the manager just doesn't like me," they may feel subject to unequal treatment. Often, there is no litigation or internal recourse mechanism to deal with true personality conflicts — only illegal

behaviors such as discrimination are grounds for formal action. When employees feel they are being mistreated or can't get along with a supervisor, their only recourse may be to make a formal claim of discrimination, harassment, and so on. Therefore, it is crucial to create informal mechanisms through which these day-to-day problems can be resolved early and efficiently before they become formal complaints.

By way of example, one employee interviewed for this book stated that he and his coworkers repeatedly filed union grievances and EEOC complaints against his supervisor in order to ensure the supervisor would spend more time off the factory floor. Because of these complaints, the supervisor was required to spend a great deal of time meeting with the legal and HR departments as well as union officials. The employees did not honestly believe that any contract violations or discrimination had occurred. They simply wanted to avoid working with an obnoxious boss. In a case like this, interest-based processes and services such as speaking to an ombudsman, executive coach, or mediator would be much less expensive and likely more effective at addressing the root causes of the conflict than the traditional union grievance and EEOC processes. Unfortunately, this organization had no such interest-based mechanisms.

Interest-based processes such as negotiation, mediation, facilitation, and so on may be best able to address the root causes of many workplace conflicts, whether those conflict are occurring up or down the hierarchy or between coworkers as peers.

Provide Low-Cost Processes to Secure Rights

If interest-based processes fail to resolve the dispute and an authoritative decision is needed, such an option should be provided for within the DSD. Whether this process is peer review, arbitration, or some other process, parties in dispute should have a quicker, less costly, and more final route for reaching a decision than going to civil courts or the EEOC. Individuals who believe their rights have been infringed should have a forum where they can feel heard, seek restitution, and bring change to the company. Creating an internal rights-based option will achieve savings and shorten the pain of such a process and preserve the organization's external reputation.

In general, it is best to recommend or require resorting to an interest-based process such as an ombudsman's services or mediation prior to the use of a rights-based process such as arbitration. Processes that are used to determine who is

right and to secure rights for individuals and groups are inherently adversarial processes. These processes such as arbitration, case evaluation, or peer review require parties to argue to the neutral(s) as to why their position is correct and the other parties' position is incorrect. This can create ongoing strife and tension in the work environment before, during, and after the proceedings occur. Although rights-based processes are necessary, it is best to consider less adversarial and less formal means of dispute resolution first.

Provide Loop-Backs to Interest-Based Procedures

If the parties initially try to negotiate a resolution to their problem and this effort fails, then they may choose to move to another process such as a nonbinding peer review. If employees are dissatisfied with the outcome of that process, then they should be able to loop back to an earlier process to try negotiation or mediation again. Sometimes a case takes time to ripen. Employees may not be willing to settle at first, but after trying one or more settlement processes, they may be inclined to reopen the settlement negotiations. Providing loop-backs means that disputes need not always move toward ever-more costly dispute resolution processes.

Learn from Each Dispute

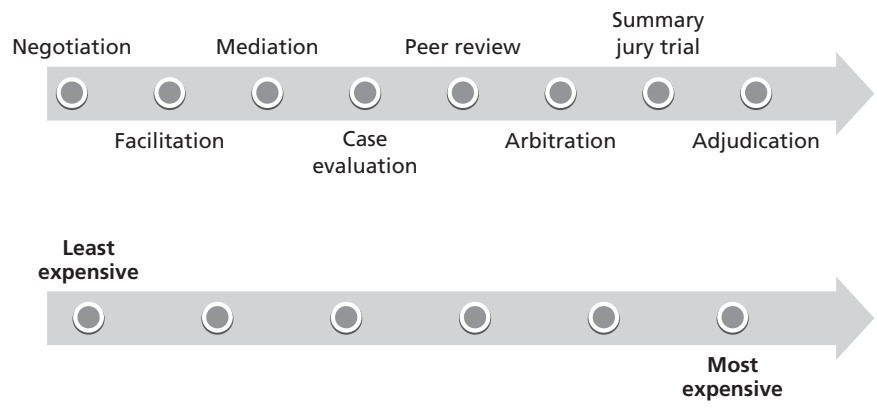
It is important to gather feedback from the parties in dispute so that future similar disputes can be avoided, not only by these parties but by others facing similar circumstances. This can be done through an ombudsman's office, through an ADR administrator, or other mechanisms. The goal is to gain specific feedback about the perceived causes of the conflict as well as satisfaction with the dispute resolution processes available for handling the dispute. Parties who take part in processes such as mediation, arbitration, peer review, coaching, and so on should be asked to provide formative feedback about their satisfaction with the process, the neutral person involved, and the outcome. That feedback should be used to improve the options available to disputants, to refine or change the constitution of rosters of neutrals, and to put into place preventative measures to reduce future conflicts whenever practical. Disputes create learning opportunities for organizations to enhance their services, change training methods for managers or employees, and address needed policy or procedural changes. Companies that

treat each dispute as a unique event lose the opportunity to constantly improve the efficiency with which disputes are prevented and managed.

Try Low-Cost Processes First

The process options should be arranged in a stepwise fashion with the lowest cost options tried first and the highest cost options reserved for a time when other options have failed to settle the dispute. This means interest-based options will come first and then rights-based options (see Figure 8.1). When, if ever, should the lower-cost options be skipped? Most DSD experts agree that there is little to be lost in attempting direct negotiation or mediation before going to peer review, arbitration, or other rights-based processes. Many parties are skeptical and feel that their dispute is too complex or the parties are too entrenched for an interest-based process such as mediation to work. Sometimes parties are conflict avoiders and are uncomfortable discussing their concerns face-to-face. Yet workplace mediation programs in the United States commonly have full settlement rates of between 60 and 85 percent. Therefore, there is little harm done in trying these processes first. It should be noted that the intervention of an ombudsman can occur at any point along this continuum in order to serve as a

Figure 8.1
Continuum of Workplace Dispute Resolution Processes



go-between or other informal dispute resolver. The ombudsman can coach the parties about the ways they may be able to solve the dispute themselves, provide information on process options, conduct shuttle diplomacy between the parties, or even mediate if they ask him or her to do so.

What if a disputant wants to skip a step? Each organization designs their program rules somewhat differently. For example, case evaluation or peer review may not be standard in all systems. Some organizations create a stepwise system and do not allow any step to be bypassed. Others see their system as more of an ADR menu from which the parties choose the process that best suits their needs. These decisions will be determined during the needs evaluation process. It is a good idea to pilot the system for a specific period of time, commonly twelve to twenty-four months, and then assess whether tweaks or changes to it are needed.

Additionally, each organization will need to decide what kinds of cases can or cannot use the internal ADR process. Table 8.1 lists complaints that are often included in or excluded from internal ADR processes.

In addition to ADR processes that may be created during the design phase, other interventions may be recommended for the organization, such as training in communication or conflict management skills, meeting facilitations, changes in the frequency or methods for communications, and so on.

Table 8.1
Disputes Commonly Included in or Excluded from Internal ADR Processes

Included Complaints and Disputes	Excluded Complaints and Disputes
Wrongful termination	Worker's compensation claims
Favoritism	Social Security benefits claims
Discrimination in promotion, raises, or treatment based on race, religion, sex, age, national origin, physical disability, accessibility complaints, and so on	Individual complaints regarding health, dental, vision benefits
Interpersonal disputes, for example, ''My boss and I don't get along''	Unemployment compensation
Sexual harassment	Severance packages that have already been accepted by the employee
Bullying complaints	

Ensure Organizational Members Have the Skills, Knowledge, and Resources Necessary to Make the System Work

If you build it, will they come? Nothing is as frustrating as a brand-new disputing system that no one knows about or wants to use. If you create a complaint hotline and no one calls, does that mean there are no complaints or that employees are too afraid of retaliation to make a call? Once a system is in place, a significant effort to educate employees needs to be made. The system needs to be advertised to employees so they know it exists, why it exists, and under what conditions they may wish to use it. This means employees need to know where to go when they have a complaint. Whether the administration is handled through an ombudsman's office, an ADR office, or someone otherwise entitled, employees need to know where to go. Once there, the staff can educate the employee about the differences among the various process options. Some organizations include a disputing provision within their employment contracts that requires employees to exhaust internal mechanisms for resolution before resorting to the courts. These mandatory ADR clauses have been upheld by the US Supreme Court and lower courts as long as the processes and any chosen neutrals are free from any pro-company bias.

In order to build employee confidence in the fairness of the internal disputing system, some companies make the offer to pay employees' lawyers for a set amount of consultation. This consultation may help employees to choose the best ADR options, help prepare them to successfully participate in one or more of these processes, and give employees an unbiased view about the strength of their case. We know from materials presented in Chapter Four that fewer than 6 percent of EEOC cases are decided in favor of the complainant. More often than not, when employees receive a legal opinion from an employment attorney, they learn their case will be much harder to win in court than they anticipated. We will discuss these provisions of legal services more in depth when we benchmark the DSD landscapes in the private, public, and nonprofit sectors at the end of this chapter.

FOUR STAGES OF DSD

The DSD process occurs in four stages: (1) organizational diagnosis, (2) system design, (3) implementation, and (4) exit, evaluation, and diffusion (Costantino & Merchant, 1996).

Organizational Diagnosis Stage

A **needs assessment** (also known as an *organizational assessment*) is an evaluation of the conflict, issue, or organization to understand the history, identify the stakeholders, and calculate the costs related to the status quo in order to determine the likely success of changes, including the use of a collaborative process(es) to address dispute(s). During the assessment of current disputing systems, the design team examines the history of disputing at the organization. What are the sources of recurring disputes? How much has been and is being spent on the current system of disputing, including lost time and productivity for those employees involved and any damage to the brand or reputation? How many disputes are there? Who handles them and how? What is working well? What isn't? What role does the organization's culture play in the management of disputing within the organization or with external disputants? The analysis needs to examine the "goals, processes, structure, stakeholders, resources, success, and accountability of the dispute system . . . For example, it is important to know whether the disputes involve factual, technical, legal, procedural, or interpersonal issues" (Nabatchi & Bingham, 2010, pp. 216–217). Begin with a macro focus, looking at issues of culture, communication methods, organizational structure, and decision-making methods across the organization. Map the flow of current conflicts through existing processes to get a clear understanding of the baseline. Decide whether to focus on internal or external disputes. These systems should be designed separately because the conflicts are likely to be distinct. Then examine the micro level by analyzing the number, source, and costs of complaints. Be sure to benchmark the company's current DSD compared to its competitors or peer organizations. How do they manage disputing? What costs or benefits have they realized?

The individual or team that conducts the assessment should interview and survey individuals from across the spectrum of the organization to gather all possible perspectives on these questions, perhaps even including former employees and customers. Key stakeholders should not be overlooked, such as the leaders in the legal and HR departments, union leaders, as well as managers and employees from different parts of the company. These interviews provide an opportunity for the designer(s) to build rapport and gain the trust of the organization's stakeholders. You will need their buy-in not only for the needs assessment to be accurate, but also for any eventual changes in the system to work. During the needs assessment you will be asking tough questions about what is

working and what is not. Particularly in the legal and HR departments, there may be some fear that the assessment will cast their work in a negative light or that the proposed changes may encroach on their turf. For these reasons, it is important to communicate the values that underlie this effort and the ways in which this effort is supportive of the organization's overall mission. The needs assessment should share aggregate information only—avoid revealing the names of the participants if possible and do not identify problem employees by name in the report. Tell participants there will be no retaliation for their participation after first securing this promise from upper- and mid-level managers. Will employees have access to read the report? These are issues to be negotiated with the company during the contracting stage. Again, the purpose of this endeavor is constructive rather than destructive. The end result should make the organization a better place to work for all. If the designer communicates these values and takes the time to build rapport and trust with key stakeholders, it is usually possible to gain access to needed information as well as build buy-in for the DSD process as a whole.

Who is the best person to conduct the needs assessment? Although existing employees know the organization, its culture, and key players, they may be viewed with skepticism by colleagues. If one or more existing employees are chosen for this role, they should have positive reputations within the organization, with widespread approval at their selection. Although small organizations may find success with a small internal team of designers, medium to large organizations will usually need to obtain external expertise from a paid consultant. This designer will create a **design team (DT)** composed of employees from different parts and levels of the organization who will assist in the development, implementation, and evaluation of the DSD. The DT will need to be trained in the basic concepts and practices of DSD. This training can last one day or up to a week, depending on the size of the task at hand. The DT is critical in ensuring that the outcome of this process will be workable and will not encounter unanticipated obstacles during the implementation phase. The DT will discuss various design options and help the designer better understand how they might fit within the organization's culture. Most important, the DT will become internal supporters of the eventual design and promote its use and acceptance among the rest of the employee population. For these reasons, it is important to be sure this is a representative group using a transparent process.

If there are union representatives or members of the legal or HR team who seem highly skeptical of the DSD effort, be sure to include them on the DT. As

they see the process unfold and learn more about how and why it will benefit the organization and its employees, their hesitance will nearly always decrease. These individuals will be helpful in pointing out the obstacles to the creation and implementation of a new disputing system. Winning over these individuals can be key to successful implementation and uptake of the new system.

During the needs assessment phase, the organization's leadership should clarify the goals of the potential DSD process. Common goals include reducing litigation costs, reducing employee turnover, improving the company's public image, improving morale, preserving relationships, and so on. During the evaluation phase, it will be necessary to find methods to evaluate progress toward these goals. With that information, organizational leaders can decide whether the new system is worth maintaining or expanding.

At the end of the needs assessment phase, a written report is issued to the organization's leadership. If the organization already has a positive culture and system for disputing, the assessment may indicate that only small changes are needed. In cases like these the leaders may decide to create a stand-alone process such as mediation to add to their existing disputing system. Or the assessment may indicate a need for the implementation of broader changes designed to revamp current practices and create an integrated conflict management system with multiple steps to address many types of disputes. This report will include an analysis of the costs and benefits of the current system, potential gains from a new system, resources needed to implement a new system (including time), and benchmarking information on the best practices in DSD used by similar organizations. Then, the leadership team will discuss whether, when, and how to move on to the next phase.

System Design Phase

An analysis of multiple dispute system design efforts reveals a pattern of about fifteen different decisions that must be made during the design phase (Bingham, 2008, pp. 12–15):

- The sector or setting for the program (public, private, or nonprofit)
- The overall dispute system design (integrated conflict management system, stand-alone program, ombuds program, outside contractor)
- The subject matter of the conflicts, disputes, or cases over which the system has jurisdiction

- The participants eligible or required to use the system
- The timing of the intervention (before the complaint is filed, immediately thereafter, after discovery or information gathering is complete, and on the eve of an administrative hearing or trial)
- Whether the intervention is voluntary, opt out, or mandatory
- The nature of the intervention (training, facilitation, consensus building, negotiated rule making, mediation, early neutral assessment or evaluation, summary jury trial, nonbinding arbitration, binding arbitration) and its possible outcomes
- The sequence of interventions, if more than one
- Within intervention, the model of practice (if mediation, evaluative, facilitative, or transformative; if arbitration, binding or nonbinding, etc.)
- Who pays for the neutrals and the nature of their financial or professional incentive structure
- Who pays for the costs of administration, filing fees, hearing fees, hearing space
- The nature of any due process protections (right to counsel, discovery, location of process, availability of class actions, availability of written opinion or decision)
- Structural support and institutionalization with respect to conflict management programs or efforts to implement
- Level of self-determination or control that disputants have as to process, outcome, and dispute system design; qualifications of neutrals and stakeholder input therein

Source: Reprinted by permission of the *Ohio Journal on Dispute Resolution*.

Additionally, or perhaps more explicitly, it is important to think about how this DSD will fit in with other services offered to employees through the EAP, HR, unions, or other resources within the organization. Consider creating some sample decision trees that walk employees through the various choice points of a problem-solving or dispute process so they can better understand which venue or process is best for different kinds of problems.

Decisions made at the design stage are influenced by the information gathered during the needs assessment. "For example, an organization with a flat structure, a cooperative culture, and disputes that center on factual or technical matters may likely want or need a system different than that of an organization with a

hierarchical structure, a competitive culture, and disputes about interpersonal or relational issues" (Nabatchi & Bingham, 2010, p. 218).

Ideally, these decisions should be made by a DT composed of representatives from across the organization, with the facilitation of an outside consultant expert. In order to get as much buy-in as possible from the potential users of the system, it is important to maximize self-determination at the systems level and at the case level. This means that employees have input into the decisions made during the system design process. Consider using focus group discussions, suggestion boxes, online boards, or other mechanisms through which all employees are invited to share their concerns, ideas, and questions during the design phase. Make this a completely transparent and participatory process to maximize its perceived legitimacy among future users.

During this phase it is necessary to deal with the administrative questions that arise during implementation: who will administer these programs or processes? Will it be an ombudsman or some other type of administrator? How big should this staff be and to whom will they answer within the organizational structure? What kind of budget will be required? There are no right or wrong answers to these questions because all will depend on the context of the organization.

Implementation Phase

In some ways, the first two phases are the most difficult and they are the most determinative of success. If the planning is done thoughtfully, then it makes the implementation much easier and provides a blueprint for those tasks with implementation. The challenge during this phase is to stay true to the values agreed on during the earlier phases and to maintain enough flexibility to deal with unexpected obstacles as they arise. Those tasked with implementation need to be excellent communicators, even diplomats. They will be called on to explain repeatedly why the system was created, how it works, and why parties should use it.

The new dispute system will need staff to administer it. In small organizations, this can be existing staff who have other duties but who receive some reduction in duties in order to assist with the administration of the dispute resolution system. In small organizations, these individuals will usually be called on only intermittently to assist with the processing of disputes through the system as well as any annual evaluation reports, and so on. In larger organizations, where a higher volume of complaints are to be expected, it is better to hire either internally or externally for one or more full-time positions. The DT may be included in

some of these hiring decisions, when appropriate. The DT should also be called on to help educate and acculturate these employees into their new role. Who better to explain the system than those who had a hand in creating it?

Once the decisions identified in the design phase have been made and the system is ready to launch, it will be crucial to undertake an employee awareness campaign. Large organizations often do this through intranet postings, e-mails, and inclusions in organizational newsletters, looping videos on break-room televisions, regular staff meeting updates, brochures, flyers, and so on. In some organizations, participation in the internal system will be mandatory for disputes as part of an employment contract. In these cases, there needs to be a mechanism created that will steer employees to the process administrator, who will then assist them with using the process steps.

Do not be surprised if it initially appears that the number of disputes is on the increase since the creation of the ADR system. If there was pent-up demand for a dispute resolution mechanism, and if these processes are deemed relatively low cost to try, then we would expect an initial surge in the number of complaints. This is actually positive—it means that previously unaddressed problems are now surfacing and being managed proactively.

Before we leave the design phase, it is useful to draw your attention to the work of Craig McEwen on the use of ADR in corporations. In this work, McEwen persuasively argues that the creation of mediation, arbitration, and other ADR processes can certainly be useful and result in cost savings in organizations. However, the biggest cost savings and improvements are to be found when organizations imbue their corporate cultures and organizations with positive problem-solving methods rather than merely creating some new programs. He argues that the costs of disputing need to be measured and tracked over time. Employees at all levels within the organization need to have incentives for proactively managing problems with customers as well as with fellow employees. Conflict management skills need to be taught and performance reviews need to include measures of these behaviors and rewards for improvement and for high performance.

McEwen gives the example of managers within an anonymous company that we will call company A. When managers at company A have complaints or disputes, they simply hand them over to the legal department. That way any cost of resolution comes out of the legal department's budget and the manager's time is freed up for other tasks. As a result of the handoff, the legal department must fulfill its due-diligence requirements, investigating each claim fully before

determining how to proceed or respond. This process often involves costly discovery of evidence, including depositions and thumbing through records, and so on. Eventually, the case may end up in mediation, arbitration, or court. This method of resolution does *not* encourage early resolution at the lowest possible levels within the organization. Compare this to company B, which gives managers some authority to settle complaints directly, within specified limits. Company B tracks the number of complaints as well as the time to settlement, time spent by in-house attorneys on each case, and the cost of eventual settlements. In company B, all of the costs of disputing are billed to the department from which the dispute originated, and managers are rewarded for their efficient handling of disputes. In the end, organizations that weave ADR principles throughout the incentive structures and work flows will see the greatest benefits.

Exit, Evaluation, and Diffusion Phases

Evaluation is often the last thing on the minds of organizational leaders as they implement new programs and policies—it gets too little attention and resources and is often forgotten until its absence begins to cause problems. Even when training is given to employees, for example, the most evaluation typically done is an exit survey that indicates whether they liked the trainer rather than an evaluation of the impact of that training on employee performance or customer satisfaction. Without thoughtful evaluation, how will you know if a new system is superior to what came before it? How will you know if the lofty goals of the ADR system were achieved partially, fully, or not at all? How will you argue to the organizational leaders that money spent on these preventative measures will result in less money spent on litigation, less employee turnover, a better reputation, and so on? A thorough evaluation is truly useful yet it is often neglected and underappreciated.

It is sometimes a struggle to implement a disputing system in a manner that remains true to the initial values and goals of its creators. During the implementation phase, shortages of time, money, or administrative staff may result in some drift away from the initial concept proposed in the design phase. Basically, the ideal and the real collide. One way to minimize this drift is to think about evaluation early, during the design phase. For each value established and goal that is set, ask yourselves, "How will we measure attainment of this value or this goal?" If you create your evaluation framework early in the design phase, well before implementation begins, you will be able to use that framework as

objective criteria to determine whether changes to the initial design are justifiable and not overly injurious to the likely outcome of the evaluation. Another benefit of planning ahead for evaluation is that it allows for the gathering of baseline data (pre- and post-implementation comparisons). This leads us to the number one rule of evaluation: start early, not late.

As the examples at the end of the chapter will demonstrate, organizations go into DSD with many goals in mind. The most obvious goals are also the easiest to measure: reduced employee turnover, higher morale, reduced litigation costs, fewer EEOC case filings, and so on. Satisfaction with the process, the neutral, and the outcome need to be measured and evaluated. Additionally, designers may seek to see culture change within the organization. They may seek to improve labor-management relations and see improvements in the workplace climate.

Some DSD evaluation experts argue that greater focus should be placed on measuring changes in perceptions of organizational justice, which in turn affects behavior within organizations. **Organizational justice**, according to Moorman (1991) is composed of four components: distributive justice (whether outcomes and payouts are fairly distributed); procedural justice (fairness in processes); **informational justice** (the quality of explanations about issues, outcomes, and procedures for decision making); and **interpersonal justice** (whether one is treated with dignity, respect, kindness, honesty, and so on). Perceptions of organizational justice are important because they are related to a host of behaviors within organizations that are crucial to mission achievement, including employee turnover, sabotage or embezzlement by employees, shirking, absenteeism, presenteeism (see Chapter Five), and the commitment to caring for customers and clients. Measures of organizational justice may be closely tied to the values chosen early on in the needs assessment and design phase. For example, self-determination is closely related to procedural justice and therefore positively relates to perceptions of organizational justice. It turns out that caring for employees is good business.

Make sure your evaluation process does not overlook the deeper change in culture and organizational justice that may have long-term effects on organizational health but be slightly harder to measure. Culture change and perceptions of organizational justice can be measured via the use of surveys or interviews, as long as participants come from a randomly selected group of employees from all parts of the organization and enough surveys are taken to make generalizations about changes throughout the organization.

Diffusion occurs when the pilot program is expanded to the rest of the organization or grows to handle a broader array of disputes. Growth and diffusion of the program requires training employees who will take part in its administration, maintain quality control as the program grows, and engage in periodic evaluation to check for continual improvement, high levels of user satisfaction, and broader effects throughout the company.

Different organizations will create disputing systems that match their own needs, cultures, and missions. By examining disputing systems in corporate, government, and nonprofit environments we can learn from the work of pioneers in the design of disputing systems.

SAMPLE PRIVATE SECTOR DSD

Private sector businesses, whether large or small, may find their dispute resolution needs to be somewhat different than organizations in the public and nonprofit sector. Private sector companies may pursue DSD out of a desire to reduce turnover, prevent and settle lawsuits early, or improve the bottom line through the maintenance of a collegial and productive workplace. Some companies seek to address employee concerns proactively rather than face unionization efforts. Whatever the reason, many corporations have experienced the benefits of a well-designed and executed conflict management system.

The ''Solutions Program'' at Coca-Cola

In 2000, the Coca-Cola Company, which is headquartered in Atlanta, Georgia, settled a class action lawsuit alleging widespread racial discrimination for $156 million with an additional $36 million to fund organizational changes (Winter, 2000). The terms of the settlement included substantial changes to personnel policies and procedures, eventually including the creation of an ombuds office to deal more effectively with complaints of discrimination and other workplace challenges. The market for Coca-Cola products is global, and company officials acknowledged the need to build and maintain a positive corporate image through greater attention to issues of respect and diversity in the workplace.

A few years later, in March 2005, the "Solutions Program" started. This program provides mediation, arbitration, training, and ombuds services to nonunionized employees throughout the North American offices of the organization. Mediators and arbitrators can be internal employees of the organization

or external neutrals may be hired. The process options are not arranged in a stepwise fashion but can be used in any order.

An interesting aspect of Coke's ADR system is that it includes one-way binding arbitration (Malveaux, 2009). This is a process in which the employee and company submit their dispute to arbitration but the arbitrator's decision is binding only on the company. The employee can accept or reject the arbitrator's decision. This is a sign of the company's desire to resolve disputes and build employee trust in the disputing system. Employees will be more willing to use arbitration with the knowledge that it is nonbinding should they believe the outcome to be unfair or less than they may be able to receive in an alternative forum.

As another way to build trust in the disputing systems at Coca-Cola, employees are provided with a legal services plan. This means that any employee who wishes to seek the consultation or representation of an outside attorney in regards to a workplace complaint will be provided with reimbursement of up to $1,000 per year, minus a $50.00 deductible and a 10 percent co-pay. As discussed in Chapter Four, employment attorneys are quite careful about the cases they take on because they are generally paid on a contingency basis and relatively few employment law cases are decided in favor of the plaintiff. Therefore, employees who feel they have been mistreated at Coca-Cola can receive legal advice from the attorney of their choice, with the cost of that advice subsidized by the company itself. This is not only a way of demonstrating good faith in their dealings with employees but it also reduces the number of cases filed in court because employees learn more about the likely difficulties associated with pursuing a claim all the way to trial.

There were many goals for the Solutions Program: improve company culture (building trust, respect, job satisfaction, and so on); effectively address conflict; contribute to profitability and shareholder value (reducing litigation costs, reducing employee time spent in conflict, reducing absenteeism); and limit negative publicity (Lewis, 2007).

The conflict resolution and prevention programs at Coke are administered through the office of the ombudsman. The Coca-Cola ombuds handle a wide variety of complaints, including those surrounding the following issues: termination, unfair treatment, discrimination, compensation, interpersonal conflicts, team conflicts, performance appraisals, safety concerns, discipline, fear of retaliation, violation of the law, ethical concerns, working conditions, and harassment (Coca-Cola Enterprises, 2011). As with all true ombudsmen, visits to the office

are confidential and the neutrals working in this office are pledged to remain neutral when assisting employees as they try to solve problems.

Since its creation, the Solutions Program has won acclaim from many observers, including the Harvard Program on Negotiation in 2008. Satisfaction rates are high and disputes are being resolved earlier and with less expense for all parties. Currently, the company is undergoing a merger between the bottling side of the company and the syrup manufacturing side, which split into two companies almost a century ago. During this transition, the fate of the Solutions Program is unclear because it may be expanded, contracted, or changed to accommodate the needs of the newly formed organization.

Johnson & Johnson Inc.

With more than one hundred thousand employees in fifty-one countries, Johnson & Johnson Inc. supplies products such as Tylenol, Band-Aids, and biotech products to homes and hospitals worldwide. Interestingly, it remains largely family owned. Employees at all levels of the company are bound by its "credo," which is a document spelling out the company's values, the bond between employees, and the philosophy that its employees are the company's most valuable asset. In part, the credo states that

> we are responsible to our employees, the men and women who work with us around the world. Everyone must be considered as an individual. We must respect their dignity and recognize their merit. They must have a sense of security in their jobs. Employees must feel free to make suggestions and complaints . . . there must be equal opportunity for employment, development and advancement for those qualified . . . (Malin, 2004, p. 237)

Similar to all US organizations, the 1980s and 1990s saw an increase in litigation, with resulting costs and disruption to the workplace. Johnson & Johnson began implementing employment ADR programs in 1998. They trained their HR professionals in the skills and techniques of mediation. They also used videos to train HR employees companywide as they began to roll out their program called "COMMON GROUND." They advertised their workplace mediation program through company newsletters, e-mails, letters from the president of the company, and so on. The local HR leaders at each office took charge of rolling out the program in their areas. The overall message was that this is a "great way to get issues out on the table, and to address them early, quickly, quietly, and effectively.

We did not want to create the impression that this was a 'take away' program" designed to limit their options (Malin, 2004, p. 237).

Step One: Open Door This step already existed and was incorporated into the new COMMON GROUND program, with increased trainings and a bigger role for HR. Many problems are resolved at this level but no inventory of disputes is taken here due to the highly informal nature of this step.

Step Two: Facilitation This step is somewhat loosely defined in order to allow for an approach that can be unique to every problem. In general, the facilitator ensures the open-door step has been used and any manager that needs to be in the loop for problem solving gets into the communication cycle. Facilitation is a confidential process, if the employee wishes it to be so. Facilitators can be reached via e-mail, phone, or in writing. The facilitator could serve as a go-between or share information that may help to resolve the problem. The facilitator does not act as a judge or tell parties what to do. In the pilot project, about half of the disputes were resolved at this stage. In the first two-and-a-half years of this program, eighty-three disputes reached this step with about a 60 percent resolution rate (Malin, 2004).

Step Three: Mediation Mediation is seen as an opportunity to seek resolution by all parties without resorting to costly and hostile litigation. Expert neutral mediators are used to engage the parties in a negotiation with the goal of finding a resolution that is agreeable to all parties. In the first two-and-a-half years of the program, approximately fifty cases went to mediation, some of which had been in litigation prior to the program's creation and the parties agreed to put litigation on hold to give mediation a try. Nearly all resolved at the mediation step.

During this two-and-a-half year period, only one employee filed suit after going through the COMMON GROUND program. The resulting savings to the company were significant, with a reduction of more than $200,000 in outside legal fees during the first year of the pilot alone (Malin, 2004). Equally or more important, employees have voiced acceptance and appreciation of the program as a way to solve problems without resorting to the courts.

Darden Restaurants Inc.

Darden Restaurants Inc. is a $6.7 billion dollar company that includes well-known restaurants such as Red Lobster, Olive Garden, Longhorn Steakhouse, Smokey

Bones, Bahama Breeze, Seasons 52, The Capitol Grille, and more. Their motto is "to nourish and delight everyone we serve." The company's founder, William H. Darden, writes that "I am convinced that the only edge we have on our competitors is the quality of our employees as reflected each day in the job they do" (Darden Restaurants, 2011).

Their dispute resolution program is widely held up as a model for the restaurant industry and is composed of four main steps.

Step One: Open-Door Policy This open-door policy includes a toll free number to their employee relations department in Florida. If employees feel they cannot speak to any of their supervisors or managers then they can contact employee relations directly to seek assistance.

Step Two: Peer Review Panel If employees disagree with a decision taken by management and the problem was not successfully resolved at step one, then they can request access to the peer review process. The peer review panel is composed of coworkers and managers who investigate the complaint and then make a decision. A facilitator helps set up the process, trains the panel members, and assists the employee to prepare for the process. The process is confidential and the decision is advisory. Employees are informed of their rights to take their complaint to the EEOC or the National Labor Relations Board as well at this time. If employees feel the peer review panel was not adequate to solve the problem, then they can take the dispute to either mediation or arbitration.

Step Three: Mediation Mediation has been covered at length but it should be mentioned that Darden Restaurants uses only outside neutrals jointly chosen by both sides. The company pays the mediation fees so the process is available at no cost to the employee.

Step 4: Binding Arbitration Darden Restaurants and the employee may jointly choose an arbitrator from a list supplied by the American Arbitration Association. Employees are welcome to bring an attorney, but if they refrain from doing so, the company will not bring one either. The outcome is binding on employees and the company. The company's promotional material claims that the entire arbitration process generally takes less than six months, and similar cases going through the litigation process typically drag on for years.

The materials available to employees via Darden Restaurants' websites and YouTube videos indicate the company values its employees, offers opportunities for professional development and advancement, and seeks to remind employees they are the bedrock of the organization's success. The company's positive culture helps to reduce the incidence of destructive employment conflicts by fostering a collegial, transparent atmosphere in which supervisors and managers are empowered to solve problems as early as possible.

SAMPLE PUBLIC SECTOR DSD

Public sector employers generally have some common characteristics that will influence the type of disputing system they select. Government agencies tend to have lower employee turnover than the private sector so a DSD must take into account the need to nurture and sustain relationships over long periods of time. In some public sector organizations it is difficult to terminate employees who are underperforming or who create strife within their work teams. Therefore, a system that includes skills coaching and relationship building may be more useful than one in which a neutral renders decisions about particular disputes. Due to the public nature of these organizations, there may be some limits on confidentiality that are less likely to be present within the private sector. For example, public sector ombudsmen or mediators may be required to report fraud or waste, whereas their counterparts in the private sector have more leeway. The heads of many government agencies change with each election. As a result, employees have grown weary of fads in leadership or new initiatives that last only as long as the organization's director remains in favor with his or her party leader. As a result, agency employees tend to find ways to resist change, with the knowledge that the impetus for the change itself may be gone if they can hold out long enough. For these reasons, DSD in public sector organizations needs not only buy-in from the highest leaders, but also from individuals and groups agencywide. In all, the characteristics of public sector employers lead to a unique culture and political environment in which DSD is necessary and challenging.

The United States Postal Service REDRESS Mediation Program

Few government organizations have reputations for being as dysfunctional as the United States Postal Service (USPS). During the early 1990s an outbreak of workplace violence involving postal workers led to the coining of the phrase

going postal to indicate that one is so frustrated, the resort to violence may be imminent. In 1997, the postmaster general was called to testify before the US Congress to share any plans he had for addressing the problem. Coincidentally, some members of the USPS legal staff had recently returned from mediation training and urged him to adopt a workplace mediation program. The timing was perfect: postmaster Runyon assured Congress that he was taking steps to resolve employee disputes and disgruntlement more proactively, and their employment mediation program called REDRESS was born.

REDRESS stands for "redress employment disputes, reach equitable solutions swiftly." It is an example of a stand-alone ADR process rather than an integrated conflict management system. It is used exclusively for the resolution of claims of discrimination that have been filed as EEOC complaints or in which an employee is threatening to file such a claim. As such, this program addresses claims of discrimination but does not address other disputes, including those in which employees feel they have been treated unfairly but cannot trace that treatment to a protected status such as race, national origin, sex, religion, age, and so on. Although this sounds like a relatively small category of disputes, the USPS generates a disproportionate number of EEOC claims each year, with the average claim taking nearly two years to be investigated at a cost of over $50,000 per claim. By1996, there were nearly ninety thousand union grievances filed by USPS employees at a cost of over $200 million dollars per year. Nearly thirty thousand EEOC claims were filed annually in the mid-1990s, making up nearly 40 percent of all such claims from federal workers (US General Accounting Office, 1997). With over eight hundred thousand employees, REDRESS quickly became the world's largest mediation program.

The disproportionate number of complaints and disputes occurring in the USPS can be traced back to its organizational culture. The USPS was modeled along military lines, with a clear hierarchy, strict discipline, and a leader who is given the title of *postmaster general*. Job applicants must take the US Civil Service exam, which gives extra points to those who have served in the military. Managers are nearly always promoted from within, and although they know the technical side of the job, they have little in the way of management skills training. Supervisors and managers often use techniques that can be commonly found in the military: with superiors barking orders at the rank-and-file employees, even occasionally using name-calling or other intimidation tactics to clarify the pecking order and urgency of the tasks at hand. This may work in the military but

the USPS is also populated by civilians, who are unaccustomed to being treated so roughly. The workplace culture showed little concern for face-saving and interpersonal rapport. In 1997, the US General Accounting Office castigated the USPS, citing "autocratic management styles . . . adversarial relationships between postal management and union leadership . . . and an inappropriate and inadequate performance management system" as evidence of "the persistent labor-management problems in the Postal Service" (pp. 1–4).

The work itself is similar to a factory setting, with increased mechanization and reduced mail volume resulting in frequent downsizing efforts. In this highly unionized setting, there are clear us-them divisions among rank-and-file employees, supervisors, and managers. Everything from the distribution of overtime to the number of bathroom breaks is governed by highly detailed labor-management contracts. The union grievance process is used to address alleged violations of the contract but that doesn't address the overall hostility, heated verbal exchanges, and bullying that can be seen in some postal facilities on a daily basis.

With great insight, the developers of the REDRESS program sought not only to solve EEOC cases quickly but also to address the underlying causes of complaints among workers, supervisors, and managers. Supervisors and managers had almost no incentive to use the mediation process: EEOC complaints could take as long as ten years to work their way through to a hearing before an administrative law judge, and nearly 95 percent of complaints are either dropped by the complainant or they lose at the hearing stage (Bingham & Novac, 2001). In order to get supervisors and managers to the mediation table, the USPS leadership decided to make mediation optional for employees but mandatory for supervisors and managers. But why should the organization mediate when it will win 95 percent of the time? Because these claims cost tens of thousands of dollars to investigate and the parties involved often remain hostile and ripe for further conflict as they work together for years during the investigation and litigation of these claims.

The underlying goals of the REDRESS program are not only to settle cases but also to improve working relationships between managers and employees. The program seeks to empower both sides by improving their communication and dispute resolution skills so they can resolve the current disputes as well as future problems more productively. For this reason, the USPS chose the transformative model of mediation (see Chapter Three), which focuses on relationship building rather than merely settlement. USPS mediators are trained to empower the parties to find their own settlement to the dispute and to maximize recognition between

the parties. Recognition occurs when parties "voluntarily choose to become more open, attentive, sympathetic, and responsive to the situation of the other party, thereby expanding their perspective to include an appreciation for another's situation" (Bush & Folger, 1994, p. 89).

Additionally, the program guaranteed that mediation would be offered to the complainant within four weeks of its request, and outside mediators were employed. Employees and supervisors could jointly select a mediator from a roster of outside expert mediators at no cost to the employee. Research indicates that early mediation results in higher satisfaction levels with the dispute resolution process and fewer costs for all parties (Charkoudian & Wilson, 2006). Mediations are scheduled during work hours and the parties can bring any support person they desire: an attorney, a union representative, or a friend and spouse, and so on. Interestingly, parties are happiest when they come without any support person, probably because they can tell their story themselves (Bingham, Kim, & Raines, 2002).

The REDRESS program was piloted in three Florida cities in 1994. It was so popular that it was expanded to the rest of the country within five years. The evaluation effort was highly detailed and included mediation exit surveys to gauge satisfaction with the mediator, the outcome, and the administration of the process. Interviews were conducted with about two hundred randomly selected employees at all levels in order to better understand the workplace climate before and after the rollout of the REDRESS program.

How well has it worked? There are many criteria on which to judge success. One way to judge success is the percentage of complainants opting to use the mediation process. By 2004, 88.1 percent of those offered mediation agreed to use it (Bingham, Nabatchi, Senger, & Jackman, 2009). This indicates that employees are aware of the mediation option and trust it enough to give it a try. Nearly all (92 percent) of the parties to these mediations agreed or strongly agree that the process is fair: 96.5 percent are satisfied or strongly satisfied with the mediators and 64 percent of complainants and 70 percent of respondents (i.e., supervisors) said they were satisfied with the outcome of mediation (Bingham, 2002). Although settlement is not the key indicator of success, 54.4 percent of complaints are resolved at the mediation table. Another 15 to 25 percent of complaints are dropped by the complainant within thirty days of the mediation (Hallberlin, 2001). This means a total case closure rate of 70 to 80 percent saving millions of dollars per year and shortening the life cycle of disputes.

There is also evidence of a broader positive impact on the workplace climate and a reduction of the overall number of disputes being filed. An interview study of USPS employees before and after the rollout of REDRESS indicates the presence of more open doors from managers and less use of yelling, arguing, disciplining, and intimidating by supervisors and managers (Bingham, Hedeen, Napoli, & Raines, 2003). In fact, one supervisor stated that "since I'm going to have to listen to their problems in mediation anyway, I just go ahead and listen to it when they come to me so we can get it resolved without any need for a complaint." Discrimination complaints have lowered by 30 percent since their height before the USPS implemented REDRESS, and complaints are now coming from 40 percent fewer people (Bingham, Nabatchi, Senger, & Jackman, 2009).

The REDRESS program is widely viewed as a success by internal and external observers: it saves money, reduces the life cycle of most disputes, and is viewed as fair and efficient by the vast majority of its users. In addition, there is evidence of some positive spillover effects on the broader workplace climate and labor-management relations. Workplace climate studies at USPS indicate incremental improvements in the relationships between supervisors and employees, including increased positive communication and reduced use of authoritarian management practices. In addition to the creation of the REDRESS program, concurrent efforts to provide managerial training and to reward managers for positive conflict management have been instituted, although there remains work to be done in these areas.

DISPUTING SYSTEMS IN THE NONPROFIT SECTOR

Nonprofits generally attract employees who deeply share a belief in the organization's mission and are committed to its work. Yet they may disagree about how best to accomplish that mission. DSD within nonprofits should include a focus on the disputes common to other organizations but they may also wish to consider conflict management techniques for creating or changing its mission, goals, and objectives. These can be highly stressful environments in which to work, with resources stretched thinly and difficult choices about the allocation of resources. Additionally, some nonprofits have missions that require employees to be in high-stress environments (e.g., humanitarian or disaster relief, homelessness assistance) with limited time frames for action or service provision. Many of these organizations operate in a near constant state of crisis, which takes a physical and

emotional toll on employees, leading to increased conflicts. The often precarious state of revenues in nonprofits can mean that employment seems constantly tenuous. In these environments, one often hears "there is no time to focus on fire prevention because we're too busy putting out fires." The nature of nonprofits creates a unique employment environment as well as a unique need for DSD experts with an understanding of the challenges facing managers and employees in nonprofits.

The World Bank

The World Bank (WB) was established in 1944 to aid in the reconstruction of Europe after WWII. Its current mission is to fight poverty through the funding of development projects worldwide but particularly in poorer countries. The WB is headquartered in Washington, DC, but has offices worldwide with a total of more than ten thousand employees. The bank brings employees together from 160 countries, with the predictable culture clashes and interpersonal conflicts.

The WB offers a host of conflict resolution services, starting with the ombuds office. Communication with the ombuds is confidential, with the exception of "imminent harm" to the employee or others. The role of the World Bank ombudsman is to help staff and managers resolve problems in the workplace, inform management about trends and potential problems that require changes to enhance the working environment, and to administer the "Respectful Workplace Advisors (RWA) Program" (World Bank, 2011). The following box describes the functions of the ombuds at the World Bank.

Services of the World Bank Ombuds

- Hold confidential discussions to listen to concerns or inquiries
- Analyze the facts of a given situation
- Complete an impartial review of the matter
- Help identify and evaluate options
- Help decide which option makes the most sense

- Coach on how to deal with the problem directly
- Facilitate resolutions to disputes
- Assist in achieving outcomes consistent with fairness and respectful treatment
- If requested by staff, may become actively involved in trying to resolve problems and may speak with anyone in the organization in order to do so
- Provide information on policies and procedures
- Help raise issues people are reluctant to raise within regular channels
- Explain other available resources and refer people to other units in the bank that may help provide information and advice about the bank group's formal grievance system
- Alert management to systemic trends and issues
- Make recommendations for a change in policy or practice

In addition to the ombuds office, the World Bank's dispute system offers a plethora of options tailored to various types of concerns. These services include respectful workplace advisors (RWA), mediation services, peer review, administrative tribunals, and a vice president for integrity.

The RWA program is overseen by the ombuds office and consists of trained volunteer peer advisors stationed throughout the World Bank offices globally. These volunteers are nominated by their peers and serve four-year terms. The RWAs listen and provide guidance to employees facing harassment or inappropriate treatment at work. The RWAs do not get directly involved in the conflict. Instead, they serve as a sounding board for employee concerns, advise their peers as to the services available through the WB system, and report trends to their managers or the ombuds office. Like the ombuds office, RWAs provide informal and informational services rather than a formal dispute resolution process.

Mediation services are available to WB staff and managers faced with a workplace conflict. Internal and external mediators are available at no cost to

the employee. Mediation satisfaction rates are about 95 percent, with settlement rates of 80 percent (World Bank, 2011). Mediation at the WB is seen as a method for improving communication and enhancing relationships as well as settling particular disputes.

The peer review service (PRS) is available to employees who believe a WB decision, action, or inaction was inconsistent with their terms or conditions of employment (World Bank, 2011). This is important because many employees are hired under temporary or fixed-term contracts or as consultants. Contracts spell out expected work duties and the rubrics by which performance reviews will be evaluated. An employee can request a peer review at any time, even after termination. The panel can refer the case to the vice president for HR if they feel the bank's decision was inappropriate. Alternatively, the panel can dismiss the case or suspend it for a specific period of time. The results of this process as well as the evidence presented are confidential. No one outside of the peer reviewers, PRS chief (administrator), and the HR department will be aware of the proceedings. Before the PRS is used, informal methods such as mediation should be attempted. WB employees may request a PRS process within 120 days of the event giving rise to the complaint. The PRS process is considered a formal process.

The administrative tribunal process hears similar complaints to the PRS process but is heard by a seven-member judicial panel and its outcome is binding. Each of the judges comes from a different nation and must be of "high moral character." Judges are chosen by the bank's executive directors from a list drawn up by the bank's president. Complaints come from employees "alleging non-observance of their contracts of employment or terms of appointment. Depending on the nature of the case, recourse to the appeals committee, the pension benefits administration committee or the workers' compensation administrative review panel is a requirement before you submit your application to the Tribunal. As an exception, the parties may agree that the application be submitted directly to the Tribunal" (World Bank, 2012). Judgments and orders are available on the WB tribunal website and can serve as guidance for future similar cases. The tribunal is the most formal of all employment dispute resolution processes at the World Bank.

The vice president for integrity is tasked with preventing and punishing fraud and corruption within World Bank–financed projects. This office trains employees about how to spot fraud, operates a fraud-reporting hotline, and investigates fraud. Companies found guilty of fraud or corruption can be banned

from all future work with the WB, but the WB also encourages national governments to disbar these companies from any other government contracts. This office is included within the scope of an employee conflict resolution system because it works at the preventative level and it has the power to sanction and terminate employees accused of misconduct.

Finally, the office of ethics and business conduct trains employees on ethics rules and appropriate business conduct in the hope of minimizing problems with fraud, corruption, coercive practices, and so on. This group has many duties beyond those related to employee issues but it is involved in investigations of certain types of staff misconduct, specifically those that violate the WB's ethics rules. This office also reports trends and concerns related to ethics practices in the workplace to the senior management.

A large, multicultural organization such as the WB demonstrates that a robust ADR system will have multiple points of entry, including formal and informal dispute resolution processes. This menu of ADR services makes sense for a large organization, but what about smaller organizations that can ill afford so many options? Are dispute systems only made for large organizations?

DSD IN SMALL ORGANIZATIONS

The examples given so far come from organizations with tens or even hundreds of thousands of employees. What about designing disputing systems for small and mid-sized organizations? There is a clear economy of scale with any kind of system design. That means the costs associated with creating a disputing system are relatively less when there is a high number of disputes to process each year. In organizations with fewer than fifteen to thirty employees, a formal dispute design endeavor may be overkill.

If your organization is so small that disputes are relatively rare events, then it may make more sense to focus on creating and sustaining a positive organizational culture with warm interpersonal relationships and problem-solving attitudes. This will go a long way to preventing unnecessary disputes and resolving those disputes that cannot be avoided. Additionally, it is helpful to create a dispute resolution menu in preparation for any serious disputes that arise. This menu should include a description of all of the processes the company would like to encourage, the cost to the employee (if any) for using these services, and whether or not there is a binding ADR clause in the employment agreement that requires employees to use

these processes before they can turn to the courts. It doesn't cost much to train supervisors and managers in the skills necessary to make an open-door policy meaningful, and organizations of all sizes could benefit from this type of training. Finally, some entrepreneurial ombudsmen are available to assist small businesses to access their services on an hourly basis rather than asking small companies to hire a permanent ombuds who may not be fully used in small organizations.

As companies grow in size, they might find it useful to send a trusted employee for ombuds training. This employee could be the go-to person for coaching and problem-solving assistance in addition to holding other duties within the organization. This is not uncommon in mid-sized organizations and even in universities and colleges. If your organization generates some reasonably predictable, recurring disputes that are costing time, money, energy, and damage to the organization's reputation, then it is worthwhile to engage in a needs assessment. The needs assessment will indicate whether a full-blown DSD effort is in order or if smaller tweaks to existing systems will do the job.

DSD GONE WRONG: HOOTERS OF AMERICA, INC.

The previous examples have examined dispute system designs that have reaped substantial benefits for employees, managers, and for mission accomplishment. However, it is also instructive to examine the ways in which disputing systems can be used against employees to limit their options and craft unfair outcomes to disputes. These systems arise when leadership looks for shortcuts to settlement, when concern for employees and a just workplace are low.

The courts at nearly all levels have been supportive of mandatory arbitration clauses or other ADR provisions in employee and customer contracts (see Legal Information Institute, 2012). As long as the arbitration process is unbiased, the courts have asserted that arbitration does not revoke an individual's right to adjudication; it merely changes the venue for that process. In 2000, the Fourth Circuit Court of Appeals ruled that the mandatory arbitration process created by Hooters was so patently biased and unfair that, in essence, it denied employees the right to a fair hearing in their case, thereby making the promise of arbitration "illusory," "unconscionable," and "egregiously unfair" (*Garland's Digest*, 2012).

Here are the basic outlines of Hooters's arbitration program: plaintiffs are required to supply the company with notice of their claim as well as the specific

nature and legal basis for the claim; the company is not required to respond or provide notice of its defenses. Hooters creates a list of arbitrators from which it chooses one, the employee chooses one, and these two jointly choose a third. Again, all arbitrators on the list were initially chosen by Hooters and can be removed from the list at Hooters's discretion. This means that if the neutrals want repeat business from Hooters, they had better not issue any large judgments against the company. These arbitrators can include company shareholders or anyone selected by Hooters, irrespective of an apparent conflict of interest. Hooters has the right to expand the scope of the arbitration to any issue involving the employee, whether it is directly related to the claim under review or not, but the employee cannot do the same. Hooters can move for summary dismissal of the claim in advance of the hearing if it believes the claim to be unfounded but the employee cannot move for summary judgment. Summary judgments are granted when a claim is so clearly true that one need not hold a hearing. Hooters is allowed to audio- or videotape the proceedings and produce transcripts but the employee cannot. Hooters has the right to bring suit in court to vacate (overturn) the ruling but the employee cannot. Hooters has the right to cancel the agreement to arbitrate with thirty days' notice but the employee has no similar right. And the grand finale: Hooters reserves the right to change or modify the arbitration rules either in whole or in part. Not only were the rules clearly unfair, but Hooters also did not do a very good job of camouflaging the unfairness behind a cloak of respectability. As a result, the American Arbitration Association, the largest supplier of arbitrators in the United States, refused to supply arbitrators for Hooters cases. It is likely that some employees were dissuaded from pursuing a claim at the outset due to the incredibly biased arbitration process rules.

In the end in *Hooters of America* v. *Phillips*, the plaintiff was allowed to proceed with her case in court and was not required to submit it to arbitration. Hooters has become the widespread example of a company that tried to cheat its employees out of a fair dispute resolution process—a reputation that may take years to overcome. Clearly, the underlying motives behind the drive to create or re-create disputing systems needs to be legitimate, the process transparent, and the outcome fully evaluated to ensure it is working in a way that helps the organization by helping the employees. Organizations that are committed to treating employees fairly have nothing to fear from this endeavor.

CONCLUSION

All organizations have dispute management systems but they may not know it. Problems that arise related to employment or customer complaints get addressed one way or another: perhaps through informal discussions with managers, perhaps with litigation, or perhaps with complaints to the Better Business Bureau. Organizations of every size stand to benefit from taking stock of the types of recurring complaints or problems encountered, the existing methods for dealing with those complaints, the direct and indirect costs of the current methods, and an analysis of the costs and benefits stemming from designing new dispute management systems. Existing employees may be trained to engage in this endeavor or an outside consultant may be brought in to help. Either way, it is important to engage all stakeholder groups in a collaborative effort to understand and improve disputing within the organization. Whether this is a first effort or a periodic tune-up, it is helpful to take stock of the costs and benefits of the current methods for dispute resolution.

For dispute system designers this work brings with it a host of ethical considerations to be addressed explicitly: why is DSD being considered now? Who benefits from the status quo and will they object to changes to the disputing system? Will all voices be heard in this process? If written recommendations are issued as a result of a needs assessment, who will have access to that document? What, if any, risks of retaliation are there to employees who share their disputing experiences or problems during this process? Will the outcome of this process increase or decrease the efficiency and fairness of dispute resolution for all involved?

Throughout the phases of dispute system design, it is critical to ensure transparency and procedural justice if the system is to be trusted and used by those facing conflicts in the workplace. Well-designed disputing systems will save resources, improve the organization's image internally and externally, and assist in creating a positive culture in which the company and its stakeholders work together for mutual success.

By thinking critically and speaking explicitly about the disputing methods within your organization, you can reduce the incidence and expenses of negative conflicts at work and create a culture of respect and collaborative problem solving.

ELISE AT MAIN STREET BAKERIES

Collaboration Consultants Inc. (CCI) conducted a thorough needs assessment. They analyzed data from the legal department to determine the average number and type of employee complaints as well as the costs associated with those complaints. To calculate costs they included not only settlements but also money spent on legal and court fees, managerial time away from work, and damage to the brand. CCI spoke with former employees as well as current employees at all levels to learn more about the potential sources of complaints. Once the needs assessment was complete, CCI made the following recommendations:

- *Open-door policy and related trainings*: Managers at all levels will be trained in open-door skills, meaning they will learn listening, framing, and problem-solving skills. Elise will attend this training too and communicate her expectation that any employee can come to any manager for help in solving problems. If any manager feels unsure about the appropriate methods for dispute resolution with an employee, then he or she can contact Ben in HR for assistance.
- *ADR programs*: Main Street Bakeries will create in internal ADR program that includes mediation using outside neutrals for all claims of harassment or discrimination, a peer-review process for disputes arising from disciplinary actions, and binding arbitration for any complaints that did not get resolved through either of these processes or as the preferred process for those employees who seek a quicker and binding resolution.
- *Data gathering*: HR will implement a quarterly employee satisfaction survey that will query randomly sampled employees on a host of questions regarding morale, perceptions of organizational justice, satisfaction levels in regards to supervisors' conflict management skills, and their ideas for improving the company.
- *Ombuds*: At this time, the relatively low volume of complaints may not warrant the creation of an ombuds office. CCI and Elise have decided to pilot the recommended changes and revisit the issue in six months.

KEY TERMS

Design team (DT)
External stakeholders
Informational justice
Internal stakeholders
Interpersonal justice
Needs assessment
Organizational justice
Primary stakeholders
Secondary stakeholders
Stakeholders

SUGGESTED SUPPLEMENTAL READING

Alter, K. J. (2003). Resolving or exacerbating disputes? The WTO's new dispute resolution system. *International Affairs*, *79*, 783–800.

McEwen, C. A. (1998). Managing corporate disputing: Overcoming barriers to the effective use of mediation for reducing the cost and time of litigation. *The Ohio State Journal on Dispute Resolution*, *14*, 1–27.

Nabatchi, T., Bingham, L. B., & Moon, Y. (2010). Evaluating transformative practice in the U.S. postal service REDRESS program. *Conflict Resolution Quarterly*, *27*(3), 257–289.

DISCUSSION QUESTIONS

1. Discuss the current system of disputing in your organization. Every organization has methods of resolving disputes, either directly or indirectly. In that system, what is working well and what isn't? What are the costs, benefits, and consequences of the current disputing system? Who are the stakeholders in that system?
2. What are the values that your organization's current dispute system embodies? What does the current system say about your organization's culture or your leaders' vision for the organization? Pair up with a colleague or classmate and discuss the role of organizational culture and values in your organization's disputing system in the past, present, and future. Share your key insights with the class or your colleagues.
3. Have you used the formal or informal dispute resolution mechanisms in your organization or in a previous workplace setting? Was the dispute resolved to your satisfaction? Did the process leave you feeling better, worse, respected, ignored, and so on?

EXERCISES

1. Benchmark the disputing systems of organizations like yours. How are your competitors or peers addressing employment disputes? Which organizations are the leaders or innovators and how can your organization learn from them?
2. Make a list of interview questions that you would include as part of a needs assessment for an organization with which you are familiar. Whom would you interview or survey for your needs assessment? Would there be any obstacles to conducting a needs assessment in your organization? How might those be overcome?

GOAL SETTING

This week, learn more about the formal mechanisms to resolve disputes in your organization. What is your role in that structure? Your position in the hierarchy will determine which goals you can realistically set in regards to the design of disputing systems:

- If you are near the top of your organization's structures, consider asking for a review of the current system of disputing so you can decide if it is serving the organization's needs and resolving disputes efficiently and constructively.
- If you are in the middle of your organizational hierarchy, consider how you might communicate to your employees that your door is open so if a problem arises they feel comfortable bringing it to you early in its evolution rather than waiting until a formal complaint arises. If you believe the current method of disputing is dysfunctional, consider sharing your concerns with a key organizational player at a higher rank. Focus on the gains to be made by DSD changes.
- If you are near the bottom of your organizational hierarchy, be sure you are familiar with your disputing system and your options for dispute resolution. If you believe changes should be made to that system, consider speaking to your union representative or supervisor. Focus on the gains to be made by DSD changes. Use the CSI from Chapter One to analyze the costs and benefits of raising this issue to your superiors.