Workplace Justice, Zero Tolerance, and Zero Barriers

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New Goals and Strategies for Conflict Management

The purpose of this chapter is to review the evolution and state-of-the-art of organizational dispute resolution systems in U.S. organizations. This field is evolving rapidly, but research is just beginning to catch up to the reality of organizational dispute resolution systems practice.[1] Many different employers have been reviewing their internal dispute resolution channels and conflict management systems. In unionized and non-union corporations, government agencies, academic institutions, professional and service organizations, school systems and health care institutions, employers and employees are re-thinking the nature of dispute resolution and conflict management.

There are various reasons why employers are thinking about conflict management systems now. One traditional reason—the desire to provide workplace justice—is stronger than ever in some organizations. This is because of civil rights and workplace safety laws, and because employers have found it hard to insist on fair and courteous treatment of customers without attempting to provide a fair and civil culture within their organizations.

Employers are also attempting to prevent illegal behavior and to control various kinds of costs. Many have established "*zero tolerance*" policies, for certain kinds of unacceptable behavior.[2] They are also trying to respond to pressures to comply with laws and regulations in a way that does not expose them to public agencies or courts,

or burden their internal formal grievance procedures. These twin goals have been to some extent in conflict because many employers have interpreted zero tolerance to require mandatory punishment of proscribed behavior. This interpretation has often forced them actually to use formal procedures—inside and outside the organization—which creates the very burden employers want to avoid. In addition, mandatory reporting, investigation and punishment do not seem to deter proscribed behavior effectively.

Some employers have therefore explored mediation, and arbitration in occasional cases (Lipsky and Seeber, 1998). In the public sector there has been similar pressure to use mediation to relieve the burden and backlog at the EEOC and other agencies within the U.S. government (McDermott, 2000; Kochan, Lautsch and Bendersky, 2000). In North America there has been an on-going discussion of alternative, also known as "appropriate," dispute resolution (ADR) mechanisms.

In reviewing their conflict management options, some employers have found that simply providing external ADR mechanisms, such as mediation and arbitration, does not deal with enough internal conflict because relatively few of the day-to-day conflicts wind up outside the organization. Some employers have therefore turned to consideration of internal systems. They like the fact that effective internal systems help maintain employer control. Some also believe that a systems approach to conflict management improves productivity (Colvin, 1999; Cutcher-Gershenfeld, 1991).

Another employer concern is that it can be difficult to get the members of an organization actually to use a system, and to act in a timely way when they find themselves with a problem. We believe that this may be especially true when the employer has punitive zero tolerance policies. This chapter focuses on this issue. We discuss the challenge of getting individuals either to act on their own to resolve a matter, or to come forward to use the conflict management system. We suggest that it is important for an employer to offer *"zero barrier"* conflict resolution options. We begin by presenting the theoretical foundations for taking a systems approach to internal conflict management.

Theoretical Foundations

Some of the changes in conflict management practices over the past thirty years have come from the development of a theoretical understanding of the nature of interpersonal negotiations and conflicts. The language we use in this chapter derives from work in negotiation theory, which illuminates both *employer* conflict

management strategies and the preferences of *individual* complainants with respect to conflict. These particular strategies and preferences are major reasons, we believe, for the appearance of mediation and ombuds offices as conflict resolution options, and also the new emphasis on a systems approach to conflict management.

Three decades ago, Richard Walton and Robert McKersie produced a seminal work on *distributive, integrative, and mixed-motive* negotiations (Walton and McKersie 1965.) Distributive (win-lose) negotiations underlie *competitive, rights and power-based* dispute resolution which is oriented toward formal justice. Win-lose conflict management processes include formal investigation, advocacy, formal decision-making and judgment, arbitration, and formal appeals. Integrative (win-win) negotiations underlie *collaborative, interest-based* dispute resolution, which is oriented toward problem solving between people who are concerned about fairness and want to maintain their relationship with each other. Win-win examples include helping people help themselves to achieve their own solution, through conflict coaching, informal shuttle diplomacy, formal mediation, generic solutions, and systems change (see the Appendix).

Employees and managers may prefer win-lose strategies, win-win or both, depending on the individual and the situation. We do not mean to draw an absolute distinction between *rights* and *interests*. People may see acknowledgment of a particular right as one of their interests, and a particular conflict resolution option might sometimes serve both rights and interests. Our point is that since either strategy may be found appropriate, both sets of options are needed in a system—indeed the existence of different options is part of what characterizes a system.

In their 1965 work, Walton and McKersie also described *mixed-motive negotiations--* those having both win-lose and win-win elements. They made clear that the inherent theoretical conflict between distributive (rights-based) and integrative (interest-based) approaches to conflict could sometimes come to a head during the same dispute. The work of Walton and McKersie helps to explain the sometimes uneasy mix between rights- and interest-based complaint handling that now characterizes the variety of dispute resolution options in a modern conflict management system.

For example, there is occasionally tension between people oriented toward legal rights, such as some lawyers or union representatives—and people primarily oriented toward interests, for example, complainants who "just want the problem to stop". Some employers who are interested only in defending themselves against legal vulnerability want hair-trigger responses to the least suggestion of illegal behavior. Some insist on mandatory reporting, mandatory investigation, and mandatory

punishment of proven offenders. Individuals who are oriented toward interests (and especially their relationships), usually want a variety of informal options as well.

Many people in fact choose a dispute resolution option on the basis of their view of how a given option will affect their workplace and private relationships. (Rowe 1990a) Walton and McKersie provided the theoretical foundation for understanding the importance of interpersonal relationships when someone is considering a concern or a complaint.

Shifting to a Systems Approach

Over the past thirty years there has been a shift from thinking primarily about individual disputes, or specified illegal behavior, or single grievance procedures, to comprehensive consideration of all kinds of conflict management within an organization. Employers are integrating discrete channels into a systems approach. A system may include a pre-existing multi-step grievance channel. It often includes compliance, mediation or arbitration structures, which originally operated relatively independently, on a case-by-case basis.

However, an integrated system goes well beyond traditional channels to include other options (See Appendix). And it also includes training in first party negotiations and conflict resolution. An important contribution of Ury, Brett and Goldberg's work on dispute systems design is to articulate this point. "Changing procedures alone.... is not enough; disputants must have the motivation, skills, and resources to use the new procedures. The challenge is to change the dispute resolution system—the overall set of procedures used and the factors affecting their use—in order to encourage people and organizations to talk instead of fight about their differences." (Ury, Brett, and Goldberg, 1988. p. xiii). This recent shift to systems thinking, which includes all kinds of disputes in addition to employment concerns, is discussed in detail by Lipsky and Seeber (1998).

In effective systems, appropriate data-gathering structures link information from dispute resolution channels into the overall management information system. This is especially important where employers are insistent on zero tolerance for specified unacceptable behavior. "The most important check on waste and illegality is employee action...[and] if the mechanisms are good, the organization can respond promptly to challenges proved valid." (Ewing 1983: 50). Conflict management is, thus, about prevention of unnecessary conflicts, costs, and grievances, continuous improvement, and resolution of specific conflicts.

There is no single, ideal model for conflict management systems, because of the varied needs of different organizations. Organizations are subject to different legal requirements and have different missions and cultures. They are faced with a variety of internal and external reasons for having a conflict management system and need to design the system accordingly.

Internal incentives to consider a system

The traditional incentive for establishing a grievance procedure was to meet the demands of workers for workplace justice in disputes between the worker and the employer. Other internal motivations now exist (Costantino and Merchant 1996; Gwartney-Gibbs and Lach 1992; Lach and Gwartney-Gibbs 1993; Lynch 1996; Rowe 1984; Rowe 1988, Rowe 1997; Edwards and Lewin 1993; CPR Institute 1997; and Slaikeu and Hasson 1998). Managers, themselves, are now asking for justice and for help in dealing with conflicts. Peer disputes (manager versus manager, worker versus coworker, professional versus professional) have been found to be very costly. Organizations are seeking to keep valued professionals in a time of intense global competition. They are working hard to foster, and make the most of, racial and gender diversity. They are dealing with cross-national tensions and misunderstandings. They are hoping to enhance worker productivity and morale and to encourage innovative ideas and "intrapreneurship."

Another recent shift made by many organizations is the move away from hierarchical decision making to an emphasis on peer-to-peer and group-level problem solving. Of course there have always been institutions that emphasized problem solving along with formal justice. Effective union grievance procedures have long included problem solving, as well as determination of right and wrong. But problem-solving techniques are being implemented more and more widely because of the new emphasis on teams. For example, a private, non-unionized manufacturing plant we have studied implemented a dispute resolution system that started with team-level negotiated dispute resolution agreements. They emphasized collaborative problem solving and interest-based negotiations to address any interpersonal or task-based disagreements that arose within the team. Elevating decisions to supervisors was utilized as a last resort when the team members themselves were unable to work out a resolution. Best practice systems approaches extend this idea, explicitly linking the dispute resolution options for people with problems.

In the past, dispute resolution was focused primarily on negative behavior, such as dealing with difficult and unacceptable behavior by managers or by employees. A well-designed conflict management system now explicitly seeks good ideas and

constructive dissent, especially on teams, in addition to surfacing unacceptable behavior. A modern conflict management system fosters organizational learning from suggestions, questions, and concerns.[3] As an example, many savvy companies have been prompted to work hard to set up ergonomic workstations for computer users when faced with employee complaints of sore hands, arms, necks, and shoulders.

External incentives to consider a system

Under pressure from government agencies and public opinion, many employers are trying to eliminate destructive and illegal behavior by instituting zero-tolerance policies. They are seeking to reduce potential litigation, and penalties for criminal behavior like waste, fraud, and abuse, that arise from the U.S. Federal Sentencing Guidelines and similar laws and regulations (Furtado and Howard, 1999). Employers are now also working hard to comply with regulations in other areas, such as safety and equal opportunity. Their purpose is both to limit unacceptable behavior and to prevent the need for whistle blowing. Some issues that used to be seen as matters of workplace *justice* are thus now also seen as matters of *compliance*. Employers wish to maintain some control over how serious concerns will be handled, by attempting to handle them internally in an effective way. (Blake and Mouton 1984; GAO report Aug. 1997; Lipsky and Seeber 1998; McCabe 1988; Slaikeu and Hasson 1998; Ury, Brett, and Goldberg 1988; Ziegenfuss 1988; Blancerco and Dyer 1996; Edwards and Lewin 1993; Simon and Sochynsky 1995; and Westin and Feliu 1988, Colvin, 1999)

In short, there have been many reasons for *employers* to consider having both problem-solving options and justice-oriented options available in the organization. We now turn to needs of *individuals*. Their interests are especially important where there are zero tolerance policies, and their interests affirm the importance of providing several kinds of options.

Zero tolerance and zero barriers.

Individual employees and managers need to have choices about how they will address conflict and report misconduct. A single channel system that emphasizes only one approach to dispute resolution will fail to address many conflicts. This is especially likely to occur when people are unwilling to come forward because they lack confidence that the organization will take action or, conversely, because they find the organization at the other extreme, and they become fearful.

We call these two barriers to individual action "Type 1" and "Type 2" errors. Type 1 errors occur when individuals fail to report misconduct because they do not think the employer is serious about proscribing it. In other words, Type 1 errors result from *not pushing hard enough* to stop unacceptable behavior. Type 2 errors are when an employer appears too draconian and people will therefore not come forward in a timely way, or perhaps at all, because of the perceived possible consequences of such action. Type 2 errors result from *pushing too hard* to stop unacceptable behavior.

Imagine an example: The employer is committed to zero tolerance. It therefore sets up mandatory reporting, investigation, and discipline for certain types of misconduct[1], and it trains everyone to report the least infringement. The workplace learns that various kinds of misconduct will be seriously punished if proven. (We assume the best case here, that there is appropriate due process.) Type 1 errors have been addressed—that is, the potential failure to report misconduct that might occur because people think the employer is not serious about proscribing bad behavior. All seems to be going well—but then the employer learns that some people do not report the offenses and problems that they actually observe, suspect, or endure. In our experience more than half of the observers of bad behavior do not act, or come forward, in a timely way if an employer pushes too hard (Rowe 1990a).

Many factors explain why most people do not initially seek or even cooperate with formal justice options. They may fear bad consequences, especially the loss of relationships, not only at work with the offender and with peers, but also with family and friends, if they are seen as a complainer. People also fear loss of privacy and dignity. This is especially true if some employees in the organization have been seen to be complaining inappropriately, for example, to get back at a manager, to get other people into trouble, or to win nuisance settlements for EEO complaints. An excellent employee in these circumstances may fear being seen as a frivolous, mischievous, supersensitive, or deceitful complainer. In some cases, employees may fear explicit retaliation[4] for having blown the whistle on peers or, especially, supervisors (Lewin, 1990; Lewin and Peterson, 1999). In other words, the organizational culture, if it is hierarchical and oriented toward punishment, may, ironically, inhibit willingness to act or to come forward.

Many individuals feel they lack the skills to raise an issue, do not want to lose control over their concerns, or think it is pointless to complain. For many reasons they dislike the processes of formal investigation that are required in formal

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[1] We do not recommend this path. The point of the article is that there are more effective ways to deal with unacceptable behavior.

procedures.[5] People very often feel they do not have enough evidence and will not be believed. They are very sensitive about the nature of "convincing evidence" and do not like to come forward with just suspicions. They especially dislike coming forward if their word is the only evidence, especially if formal due process with its emphasis on a standard of proof is really followed, because they understand the bind inherent in "he said, she said" situations. This is particularly likely if the employer's de facto standard of proof is high, that is, "clear and convincing," or "reasonable doubt." Under these circumstances many people believe their word is not enough. So they do not act or come forward, at least not in a timely way. These are some of the reasons for the Type 2 errors—when an employer is perceived as pushing too hard.

Harvard professor Howard Raiffa (1998) commented on Type 1 and Type 2 errors in the context of zero-tolerance policies.[6] Raiffa noted wryly that there are also quite a number of other possible errors. For example, he noted that overly strong zero tolerance vigilance may result in solving the wrong problem. We can continue his analysis. Excessive pursuit of zero tolerance may solve the right problem too late or too early, or may solve the problem in a manner that is incomprehensible or repugnant to onlookers. Harsh vigilance may provoke a cascade of new problems, or the price may be too high, and so on. The machinery of mandatory investigation can easily be used to retaliate against management, avoid a lay-off, or shoehorn a mass of issues into an inappropriate venue, as sometimes happens with EEO complaints.

We believe that no employer can catch all—or even most—problematic behavior if all it does is to address the Type 1 error with a simple, punitive policy of zero tolerance. The more the employer tries to insist on reporting, investigation, and punishment, the fewer Type 1 errors it will have, but the higher the risk of Type 2 and other errors. If an employer wants to hear, on a timely basis, from people who are afraid of the consequences of coming forward, it must provide safe, confidential, accessible, credible, informal options for individuals who have concerns.

Of course, the reactions of people who observe bad behavior may vary, depending on the type of issue, the culture of the workplace, and the background of the complainant. We believe, however, that substantially more than half of the employees and managers who are concerned about a problem—whether it is conflict within a team, potentially criminal behavior, poor performance, or race or gender disputes—initially prefer private informal options to surface the issue. In theoretical terms, we believe that most individuals prefer integrative options based on interests, at least at the outset. On the other hand, perhaps a tenth or more want distributive options based on rights and power. Different people follow different negotiation

strategies and have different values about conflict. They therefore require a *choice* of options if they are to be willing to act at all.

Observers sometimes think there *is* only one way to deal with serious problems, but this usually is not true. For example, in a U.S. company, where the law requires that harassment and discrimination must be stopped, several routes can be offered to those with concerns. Harassment laws and regulations require employers to take "effective corrective action" against this form of illegal behavior. The basic elements of such action are seen as stopping the harassment, preventing retaliation, and providing an equitable work environment for the complainant. Contrary to popular belief, laws and regulations do not require punishment of an offender, though of course the employer may decide that punishment is appropriate in any given case and disciplinary measures may also be prudent. What the laws actually require is effective corrective action. Thus the actions of a first party, of an informal third party, or of an ombudsman—if the actions are effective—can fulfill the requirements of law.

In sum, we believe it is difficult to be successful with a single option zero tolerance policy because many people simply do not wish to behave in a purely win-lose way in the workplace. They greatly value their relationships and may believe it is not in their interests to turn people in or to lodge a complaint. There must be interest-based conflict resolution options, as well as rights-based options, if most people are to react responsibly when they perceive a problem.

Current best practice, therefore, includes a focus on reducing an individual's reluctance to act in a responsible way about legitimate concerns. Effective discouragement of unacceptable behavior and effective conflict management require "zero barrier options." The concept of zero barriers for responsible action thus joins the concepts of workplace justice and zero tolerance as metaphors for internal systems. As goals for a system, none of the three metaphors is totally achievable or even completely desirable and zero tolerance is especially problematic.[7] However, these metaphors can help inform those who are thinking about system design (Costantino and Merchant, 1996; Lach and Gwartney-Gibbs, 1993; Lynch, 1996; Rowe, 1997; Edwards and Lewin, 1993; CPR Institute, 1997; and Slaikeu and Hasson, 1998).

Options in parallel rather than rigid step procedures.

The linkages among dispute resolution options within a system also appear to be changing. Some writers think of a system as a series of *steps* from interest-based

problem solving to rights-based arbitration. Ury, Brett and Goldberg (1988: 169), for example, prescribe using interest-based resolution processes, like mediation, first and whenever possible. When interest-based processes are inappropriate or ineffective, they recommend low-cost methods of determining rights and power. Slaikeu and Hasson (1998: 47) go a step further. They prescribe a "preferred path of conflict resolution" that starts with "individual initiative, followed by negotiation, and then an assisted process such as mediation offered through a variety of informal and formal options, with higher authority next in line and power plays or force and avoidance or acceptance as last resorts".

Our own view is similar to theirs, but with one considerable difference. We believe that the best systems provide a choice of options *at the same time,* rather than in steps, for most problems (Rowe 1984, 1988, 1990a, and 1997). Traditional step procedures usually require a direct approach between the parties, then informal intervention, then a formal determination of right and wrong, and then appeals or arbitration, if necessary.
But many complainants prefer to have parallel (simultaneous) choices from the beginning.

Parallel choices are often possible, even when there are time limits by which a formal complaint must be initiated. Parallel options within a system can allow a formal claim to be filed, then put in abeyance while an interest-based process is attempted. This obviates risk to the claimant of losing access to rights-based options, or having to start over again from the beginning.

Parallel choices may also help those who are oriented toward rights and power. Our experience suggests that a significant, if small, proportion of the people in any workplace will not be satisfied by informal options. These individuals may prefer to *skip* informal problem solving and go straight to a formal grievance. In addition, some issues may be seen to demand formal justice as the first approach.

In theoretical terms, this means that in appropriate cases the parties may be permitted either to loop forward—or, in Ury, Brett, and Goldberg's terms, to loop back—to more or less formal options in an integrated complaint system. We believe that in many disputes the disputants should be able to have choices, instead of having their options prescribed by a step procedure or by a third-party complaint handler. As Costantino and Merchant (1996: 121) note, the best systems "allow disputants to retain maximum control over choice of ADR method and selection of neutral wherever possible."

Elements of an Effective System

If, as we believe, it is essential to offer a choice of options, which options should be provided and how should they be chosen? Asking employees and managers which options they want is usually a good idea, for real and symbolic reasons, and much can be learned about how people feel about the organization from this process. However, the employer will not necessarily discover which options people will really *use* in their conflict management system just by asking questions in union discussions or focus groups.

It is necessary to track real-life behavior—what people actually choose to do when they are under stress—to understand which options people will use to raise a concern. In our experience most people in focus groups will talk about rights and compliance options—and nearly everyone does really want these options to be provided. However, when in need, the majority will actually *seek* interest-based options for most issues, even where an employer tries to require mandatory reporting for illegal behavior. It is essential to distinguish what people actually do from what they say they will do in conflict, and to recognize that this distinction may be different in different organizations (Bendersky 1998).

Many functions and providers.

We think of options for complainants in terms of the multiple complaint-handling functions that are needed—see the Appendix—and multiple providers of those functions. The functions can be provided in different ways. Important providers of solutions based on rights and power include line managers, human resource managers, union officials and industrial relations managers, peer review panels, security personnel, and compliance officers of all kinds (safety, audit, animal care, ethics, EEO/AA, waste hazard, quality assurance, risk management, the legal department, inspectors general, and so forth). Important facilitators of solutions based on interests include line managers and human resource managers, union officials and industrial relations managers, team coaches, employee assistance and health care professionals, religious counselors, informal diversity advisors, in-house mediators, and ombudspersons.

People need a variety of options for gaining *access* to a conflict management system, as well as for actually *dealing* with conflict. Written complaints are appropriate for formal grievance procedures, but many employees and managers want interest-based access options, as well. Confidential hot lines and ombuds offices can collect information in ways that may seem safer. Offering information anonymously

sometimes leads to rights-based investigations, but, from the caller's point of view, it is an interest-based option for the process of coming forward. In addition, it helps to have people of appropriate language groups, both men and women, people of color and whites, and technical and non-technical people scattered through the various offices of the system, available for those who need help. This is another important reason for having a system, rather than just one grievance process. A woman who would rather talk with a woman may be able to find one who seems to be approachable, attached to one complaint option or another. This factor alone may dictate her choice of option – and may influence whether she chooses to act at all.

In much of traditional grievance management, a designated manager decides how to handle any concern that comes forward or the mode is specified in a bargaining or other contract. In our opinion, where the issue at hand is not covered under a contract, various options for raising concerns should be offered to complainants in all but the most serious cases. (In addition, where a contract specifies a grievance procedure, there may be problems like co-worker altercations that are not covered under the contract, where options can be provided).

Appropriate Delegation to First Parties.

Employers reviewing their internal systems are increasingly emphasizing first-party dispute resolution whenever possible. This means providing people with the skills to deal with their problems directly, where appropriate, without involving others. Of course, first-party solutions are not always appropriate, because of the nature of the issues or because the parties feel their skills are inadequate to handle the problem. First-party solutions are often the best, however, for a number of reasons (Rowe 1993).

Those on the scene may know best what the facts are, may best understand the local culture, may understand the value of maintaining and building relationships as part of problem resolution, and may simply prefer their own methods of conflict management and their own solutions. First parties sometimes value having been heard, and apologies between first parties are often powerful and cost-effective. First parties may value having kept some measure of control and may thus more strongly "own the resolution." First-party solutions may appropriately protect people's privacy and dignity. They may take less time. They may teach people how to deal better in the future to prevent unnecessary problems.

A first party who is a "responsible bystander" may nip illegal or inappropriate behavior in the bud. And first parties who believe that they can and should make a

difference, and who are used to taking responsibility for direct action, may also be more likely to speak up in a timely way when management action is needed. Appropriate first-party action and first-party resolutions are therefore increasingly fostered as better solutions. Modern systems are providing ever more training in first-party negotiations—as well as conflict resolution—to all supervisors and to many or all employees.

The concept of third-party assistance is also broadening. In the past, the definition of third-party assistance was narrow and routinely included the presumption of intervention and of taking charge. It was often assumed that there must be an intervenor and that this person would choose what kind of intervention would take place. Modern systems do provide formal third-party intervenors of this kind, of course. They are also providing confidential support for first-party conflict management[8], however, and when appropriate and voluntary, confidential mediation if requested by the parties.

Providing an independent, confidential, internal neutral.[9]

We believe that for an organization that wants people to act responsibly (and who might otherwise not do so), a trained and experienced organizational ombudsperson will usually be seen as the most accessible conflict resolution provider. A backup to the ordinary line and staff channels, an organizational ombudsperson is an independent, confidential, designated neutral who works in an impartial way. The ombudsperson should report to the CEO, or COO, with access to the Board of Directors. One basic purpose of the ombuds office is to provide various options for fairness and justice. In effect, an organizational ombudsperson has all the common functions of any dispute resolver—see the Appendix—except those of advocate, formal fact-finder, appeals officer, arbitrator, judge, or peace officer. Ombuds typically work informally, with great flexibility. They make no decisions for the employer or for their visitors except in very rare emergencies.

The ombuds office will be seen to be accessible and trustworthy—a zero barrier office—to the extent that it really keeps confidentiality. For this reason it should not accept notice for the employer—that is, it should not be an office of record for reports of illegal behavior.[10] In consonance with current Ombudsman Association Standards of Practice, the organizational ombudsperson should not break confidentiality, except for emergency cases that pose imminent risk of serious harm for which there appears to be no other responsible option. What an ombudsperson can and should do, however, is to work with every visitor to devise acceptable options that both protect the confidentiality of the visitor and either get information

where it needs to go or help to see that appropriate action is taken. Through helping to develop options and informal intervention, if requested, an ombudsperson should be able to foster resolution of most issues or get them appropriately referred (Rowe, 1995; Rowe and Simon, 2001).

An employer that has an organizational ombudsperson will catch, and can therefore deal with, more problems, suggestions, concerns, and misconduct. Costs (EEO, agency complaints, legal settlements, Freedom of Information Act, and so forth) are likely to drop, sometimes sharply. Although an ombuds office will not catch all problematic behavior, it is one of the useful counterweights to Type 2 errors. Furthermore, organizational ombudspeople report that about a third of the individuals who come to see them will choose to try to learn how to handle their concerns themselves. This may help spread conflict resolution skills throughout an organization.

Integration into the organization.

An effective conflict management system should be fully integrated into the organization. It should take every kind of problem; deal with problems in and between groups and teams, as well as among individuals; and offer options to all professionals and managers, as well as all workers. The system should be grounded in the core values of the organization, values such as fairness and respect, teamwork, excellent service, and compliance with law and regulation. The strategy underlying the conflict management system should be part of the overall human resource strategy of the organization, and the system should be mentioned in all relevant personnel policies.

Continuous oversight by a balanced group.
Effective systems need regular oversight. We believe that this may best be provided by a group of senior managers, not just one. The group may meet informally, but it should meet regularly and frequently—at least monthly—and more often in large organizations. Subsets of this group may meet as needed as crisis teams, but the oversight group should not be a crisis team.
The group should regularly seek input from all stakeholder groups and be explicitly attentive to the interests of all in organization.

The oversight group should include some senior managers responsible for rights and compliance and some—including the organizational ombudsperson—responsible for fairness and problem solving. An ombudsperson would have no formal role in decision-making in such a group, of course. Many such groups in any case have no

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decision-making function. If decisions about processes are to be made, the ombudsperson might offer commentary on the fairness of the proposed process, but would not vote or participate in decisions. Typically, the ombudsperson would not discuss the merits of a specific case in such a group.

Some of those who oversee the system should be managers who report to the CEO, COO, or the Board of Directors. This group should not be dominated by those representing compliance or, conversely, problem-solving interests, but should be a team including both perspectives. Because an effective, integrated conflict management system is itself a "mixed-motive" structure—in which people feel free to act informally to resolve problems on the basis of interests or to seek formal justice solutions based on rights and power—the structure of the oversight group should be developed and should function as a balance between rights and interests. The oversight group should exemplify, lead, and model this balance.

Summary.

As Westin and Feliu stated in 1988 (p. 22): "Any...firm that: (1) seeks to draw the greatest creativity and commitment from its workforce, (2) seeks to resolve employee complaints before they generate appeals to outside agencies and the courts, and (3) wants to meet both employee expectations of fairness and organizational interests in sound administration is—or ought to be—actively considering the creation of a multifaceted fair procedure system."

Employers are reviewing their dispute resolution systems for employment relations and other types of conflict. Their goals and strategies for conflict management are changing for both internal and external reasons. In many cases these goals now include workplace justice, zero tolerance for illegal behavior, and zero barriers for people either to act responsibly on their own or to come forward to use the conflict management system.

Multiple dispute resolution options, integrated together in a coherent system, provide the best chance for managers to deal with unacceptable behavior. The system should include zero barrier options for people to come forward. In nearly every organization, effective conflict management now requires considerable reliance on first parties in disputes and continuous training for first parties. An organization using a systems approach will probably want to provide an organizational ombudsman—to support first parties, to provide informal intervention and formal mediation, to offer all responsible options to those with problems, and to support fair processes. The ombudsperson should support the pursuit of justice, help prevent

destructive and illegal behavior, help employees and managers to learn and use effective negotiations and conflict skills, and provide a zero-barrier office. An effective system must also train and support the third parties that deal formally with conflicts. Effective systems permit individuals to choose fairness and problem solving, or formal justice, depending on the issues at hand, the nature of the situation, the wishes of the parties, and the culture of the organization.

Looking Ahead: Future Issues

As the workplace continues to change, so will the issues that give rise to conflicts. If this brief overview is any indication, there will be more change in the options and systems used to resolve these conflicts. Constant widespread training in negotiations and conflict management, and collaboration on global teams, may well bring more change to the culture of U.S. organizations. Thirty years ago, no student or practitioner in our field would have predicted the tremendous growth in the use of dispute resolution options within organizations. And we suspect that Walton and McKersie, and others who contributed basic concepts about conflict management, did not foresee the powerful reach of their ideas into this arena of organizational practice, either. Thus, we need constantly to be looking for new theoretical insights, and new ideas about new structures, in hope of discovering or developing yet better ways of handling the issues and the injustices of the future.

Appendix[11]
Functions Needed in a Conflict Management System

A. Interest-based options: Interest-based options for fairness and problem solving attempt to address the real needs of the complainant (and usually others), as distinguished from defining problems and their solutions solely in terms of legal rights or managerial power. Some interest-based options may deal mainly with how information gets where it needs to go, rather than how the information will be handled. For example, there should be several informal ways for surfacing credible information about criminal behavior, even though many allegations about criminal behavior will actually require formal procedures. Other interest-based options provide confidential third-party assistance to first parties to settle problems on their own. And some interest-based options provide third-party assistance to intervene, usually informally, to help solve problems.

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Listening: An important option that a person may choose is just to talk, and for the manager, ombudsperson, union steward, or other resource person just to listen, in an active and supportive fashion that helps the speaker sort out the problem and reduce tension.

Giving and receiving information: Often a person needs information on a one-to-one basis. For example, an employee may not know what information or which records are by law available to him or her. A manager, ombudsperson, or 800 line may also be given information about a problem in the workplace, such as a safety issue, evidence about a theft, harassment or potential violence, or equipment that needs repair.

Re-framing issues and developing options: A manager, ombudsperson, union steward, or other resource person may be able to help a caller or complainant develop new responsible options they might find acceptable as a means of dealing with a problem.

Referral: Many disputants and complainants need more than one helping resource; they need a helping network. The importance of this function is one of the major reasons for explicit integration of all the elements and resource persons in a conflict management system.

Helping people help themselves in a direct approach: An ombudsperson or other resource person, manager, or teammate may help someone with a problem deal directly with the perceived source of the problem (Rowe 1990b). The direct approach can be pursued by the person alone or with a colleague, in person or on paper, or both.

Shuttle diplomacy: A person with a concern may choose to ask a third party to be a shuttle diplomat to go back and forth between A and B or bring A and B together informally to resolve the problem. The third party could be a supervisor, union steward, human resource officer, ombudsperson, or other staff member. Alternatively, a complainant might choose to ask a teammate, uninvolved colleague, senior mentor, or other appropriate person to intervene. This option is essential, and very frequently chosen, in many cultures outside the United States.

Looking into the problem informally: Most problems, especially if they are caught early, do not require a formal investigation. At least two kinds of informal data gathering may be performed by third parties, one by organizational ombudspeople and another by line managers, administrative officers, human resource managers, or other appropriate staff. Assistance from an organizational ombudsperson (except for classic mediation as described below) is informal and typically does not result in a case record for the employer. Line managers and staff people, such as administrative officers and human resource managers, may look into a problem informally, but they may also choose or be required to make management decisions as a result.

Classic formal mediation: Classic mediation is the only formal, interest-based option. This option is offered internally by some employers and externally by others. In classic mediation, the parties are helped by an organizational ombudsperson, or another person who is a professional, neutral mediator, to find their own settlement, in a process that has a well-defined structure.

Generic approaches: A complainant may choose a generic approach aimed at changing a process in the workplace, or alerting possible offenders to stop inappropriate behavior, in such a way that the apparent problem disappears without direct involvement of the parties. For example, an ombudsperson might be given permission to approach a department head about a given problem without using any names. The department head might then choose to distribute and discuss copies of the appropriate employer policy or encourage safety or harassment training, or legally correct billing behavior, in such a way as to stop and prevent the alleged inappropriate behavior. Generic approaches offer the advantage that they typically do not affect the privacy or other rights of anyone in the organization.

Systems change: People with concerns often simply wish to suggest a change of policy, procedure, or structure in an organization, to recommend re-orientation of a team project, or to start an orderly process of dealing with a policy, group, or department that is seen to be a problem. This function is especially important for problems that are new to the organization.

Training and prevention: The employer should, if possible, maintain ongoing training programs to teach the skills of teamwork, conflict management, and dispute resolution. This training should be about first-party negotiations, as well as third-party intervention, and should cover specific topics, such as diversity, ethics, and safety, as well as issues of dissent and reprisal. The employer should provide training that fosters individual responsibility and accountability at all levels. Four different groups need training about raising questions, about disagreeing, and about complaining: potential complainants and dissenters, potential respondents, potential bystanders, and supervisors.

Following through: Often a resource person or supervisor will undertake some action, as requested by a person with a concern. In other cases a complainant will decide after consultation to act directly. Complaint-handlers can and should appropriately follow through on the problems brought to them.

A custom approach: Where none of the options above seem exactly right, a person with a concern or complaint may ask for or need unusual help. If all options seem inappropriate, an organizational ombudsperson or other resource person or manager may simply continue to look for a responsible approach that is tailor-made for a particular situation.

B. Rights-based options: Disciplinary action and adverse administrative action against a respondent require a fair investigation and decision-making process. Definitions of appropriate process differ. Our list of elements of fair process contains many of the customary elements, including notice to the alleged offender, a reasonable opportunity for that person to respond to complaints and evidence against him or her, a chance to offer his or her own evidence, reasonable timeliness, impartiality of investigation and decision making, freedom from arbitrariness and capriciousness, the possibility of appeal, and the right to be accompanied by a colleague or co-worker. The employer should have explicit rules about maintaining privacy and should, if possible, provide for follow-up monitoring on each case that is settled formally, to see if the problem has been fairly resolved and that there is no reprisal against any disputant or witness.

   Investigation, adjudication, and formal appeals: Union contracts have their own formal grievance processes. For non-union employees and managers, a supervisor, department head, personnel officer, inside or outside fact-finder, or other appropriate staff person or compliance officer may investigate, adjudicate a concern in a formal fashion, or deal with an appeal in a formal grievance channel. Final appeal might be to a peer review panel, senior manager, the CEO, or an outside arbitrator. Best practice in our opinion requires separation of fact-finding from decision making in serious cases, and the possibility of appeal to a person or structure that is outside the relevant line of supervision.

Emergency action: Some organizations have their own security or sworn police force. This department may offer an option for emergencies based on both rights and power.

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[1] Readers may also be interested in the <u>Guidelines for the</u> <u>Design of Integrated Conflict Management System</u>s, produced by the Track One Committee of the Society of Professionals in Dispute Resolution, and found at http://www.spidr.org, which drew in part from ideas presented in this article.

[2] Many dispute resolution experts do not like zero tolerance policies and point to apparently unreasonable applications, such as the child suspended from school for saying "bang! bang!". We are not advocates of zero tolerance policies. We discuss them here as a proxy for all circumstances where employers try in a punitive way to outlaw specified behaviors.

[3] This is one of the most consistent themes in the dispute systems design literature. See, for some illustrative examples: Slaikeu and Hasson, 1998: 51; Costantino and Merchant 1996: 129; and Westin and Feliu 1988: 218.

[4] Most honorable employers will do their best to prevent and deal with reprisal. Realistically speaking, however, it is almost impossible to prevent or deal with all forms of covert reprisal. This is especially true with respect to reprisal from people outside the organization. So the fact that retaliation is in many cases illegal does not necessarily reassure someone who is afraid to act responsibly or come forward openly.

[5] Many employers have discovered that there is no way to design a formal investigation that the whole workplace will like. Relatively "cooperative" people (those whose typical strategy in interpersonal relations is "win-win") tend to dislike the dry, formal, tough methods of criminal investigation that have crept into the U.S. workplace for issues like sexual harassment. However, "win-lose" people, who *are* oriented toward rights and power, paradoxically also sometimes dislike formal investigations. For example, the win-lose witness may feel "he who is not with me is against me," unless the investigator appears to side with that witness. Since a good investigator will strive to be and to appear impartial, the distrust that is sparked by impartiality happens quite often. In addition, the employer that protects privacy will discover that many employees think that "nothing is ever done" against those who behave illegally. (An employer that does not protect privacy in an appropriate way, and that speaks openly about individual offenders, may be attacked by all sides for several other reasons.) We believe, in sum, that there will always be some tension about investigation procedures. And this tension has implications for the design of complaint systems, since any tension about investigation procedures also increases the majority's general dislike of formal, win-lose, grievance options. This is yet another reason to offer problem-solving options in a complaint system, so that only the bare minimum number of concerns, those that must be investigated, actually go to formal processes.

[6] Howard Raiffa made these comments in the context of an earlier presentation of these ideas, at the 1998 McKersie Festschrift.

[7] Justice of course could be defined in unduly harsh ways as well as desirable ways; zero tolerance can be harsh and forbidding, can infringe on the rights of perceived offenders, and can unnecessarily destroy relationships; zero barriers could lead to many unfounded accusations, and to chaos.

[8] See the Appendix for several examples of functions in a complaint system that are designed primarily to support first parties.

[9] Ombuds services can also be provided by trained, external ombuds practitioners. Though experience suggests that internal ombudspeople are more effective in most circumstances, external organizational ombudspeople may be quite suitable for franchisees and other decentralized operations, and for small organizations.

[10] The Ombudsman Association Standards of Practice assert that an organizational ombudsman does not accept notice for the employer. This idea is not yet embodied in federal law and has been denied in one or two court cases. However, a considerable number of plaintiff's lawyers, judges, and others with subpoena power *have* accepted this idea, in a variety of cases of record and cases settled informally. The idea has also been accepted for several different reasons: Wigmore principles, the right to privacy, implicit contract, the similarity between ombudspeople and mediators, etc. It seems likely that the confidentiality issue will be settled sooner or later by the Congress and as of 2000 a committee of the ABA was working on appropriate language for future legislation. At stake are a number of issues such as the Type 2 error. Since society has an interest in getting people to come forward, it may be hoped that there will emerge at least this one option through which most people can be granted well-protected confidentiality if they come forward about problems. In addition to several court cases that affirm a privilege, two encouraging signs are the emphasis in the Federal Sentencing Guidelines on what we call in this paper "lowering barriers," and the limited shield for neutrals granted by the Administrative Dispute Resolution Act as amended and re-enacted in 1996.

[11] Adapted from Rowe 1997c.