



## What is Conflict Costing Your Company? The Value of a Comprehensive Employment Dispute Resolution System

By: Charles Doran and Tad Mayer

(This article first appeared in the *Leadership Section* of the Northeast Human Resources Association [NEHRA] website in June 2006, available at [www.nehra.com/articlesresources/leadership.cfm](http://www.nehra.com/articlesresources/leadership.cfm).)

How are conflicts dealt with in your company? What do employees do when they feel dissatisfied, harassed, discriminated against or just plain frustrated? How much does unresolved conflict cost your company? It's probably more than you think. This article takes a close look at the costs of conflict and explores how a comprehensive employment dispute resolution system can improve employee morale and increase productivity.

### Costs of Conflict to Companies

Companies have reported spending between \$10,000 and \$50,000 just to prepare for a discrimination case.<sup>i</sup> The average award for an EEOC complaint that went to litigation was \$263,945.<sup>ii</sup> (The largest judgment ever involving the EEOC was \$81.5 million against Publix Super Markets.<sup>iii</sup>) A recent judgment against Mitsubishi Motors resulted in a \$34 million penalty<sup>iv</sup> and there is currently a pending suit against Toyota for \$193 million. Defending an average employment claim has been shown to cost approximately \$130,000, which does not include any judgments against the company.<sup>v</sup> The average time for a civil suit to go to trial is 2½ years.<sup>vi</sup>

Unresolved disputes in the workplace produce distraction and frustration. Distraction impedes an organization's capacity to meet its business objectives and frustration erodes morale. The result is increased absenteeism and turnover. It has been shown that poor morale increases absenteeism and the cost of absenteeism to large employers is over \$1 million per year.<sup>vii</sup> Fifty percent of departures are linked to conflict, and turnover costs for an employee range between 75% and 150% of annual salary.<sup>viii</sup> Additional costs of conflict include sabotage, health costs such as stress and depression, sub-optimal decision making, and an inordinate amount of time spent on managing disputes (managers spend an average of 30%-40% of their time on conflicts<sup>ix</sup>).



# MEDIATION WORKS INCORPORATED

## **How to Reduce Costs Associated with Conflict**

After implementing a comprehensive employment dispute resolution program, Motorola reported a 75% reduction in litigation costs over six years.<sup>x</sup> Utilizing arbitration, the costs of disputes against a sample of Fortune 500 companies were less than one-half the average costs of suits defended before their dispute resolution programs were adopted.<sup>xi</sup> Establishing a dispute resolution program before it is too late has been the advice offered by major companies including Anheuser-Busch, Johnson & Johnson, Shell Oil, and the United States Postal Service.<sup>xii</sup>

A comprehensive employment dispute resolution program offers a proactive and structured system to address and resolve conflict quickly and amicably. It provides employees with opportunities to resolve conflict more quickly and less expensively than through litigation. Disputes that went through a typical dispute resolution program were resolved in an average of just 67 days.<sup>xiii</sup>

A systematic program reduces the uncertainty of what to do when in conflict, clearly outlines options for resolving the dispute, minimizes lost productivity and reduces litigation costs. Dealing quickly with the conflict mitigates the decline in morale and the growth of distraction and frustration. Allowing the parties to work together to resolve the problem creates an amicable, collegial atmosphere that reduces workplace tension and builds trust.

## **How an employment dispute resolution program works**

Drawing from programs implemented by leading corporations such as Shell, Halliburton and Coca-Cola Enterprises, the following overview describes an effective dispute resolution system that provides a variety of dispute resolution options to employees. Employees are provided with a choice of options to either resolve disputes themselves; tap into existing employee support programs to help them find a mutually beneficial resolution; utilize a third-party neutral to either facilitate a productive conversation through mediation or render a binding resolution for them in arbitration.

*Option One: Encouraging employees to communicate and resolve conflict directly and proactively*



## MEDIATION WORKS INCORPORATED

Often overlooked, encouraging and preparing employees to talk with one another directly can be the most cost-effective way of managing conflict. In this option, employees receive dispute resolution training to enable them to effectively prepare to communicate directly and work out their issues without the assistance of a neutral third party. Direct communication uses few resources and addresses the conflict at the time that it occurs.

### *Option Two: Utilizing existing support systems*

Organizations often have existing support programs that can be effective at helping parties resolve their disputes. Some examples of programs that are often already available at organizations include Human Resources, Employee Relations Office, Employee hotlines, Employee Assistance Program, and access to multiple levels of management. A dedicated dispute resolution program serves as a platform to promote existing support programs as options to resolve conflict.

### *Option Three: Ombuds Office*

The Office of Ombuds serves as an internal (or external) complaint handler. An ombudsperson is an impartial individual who works independent of ordinary line-and-staff structures to assist an organization and its members in resolving internal problems in a productive manner. An ombuds provides confidential and informal assistance to address concerns and help to identify additional resources. The Ombuds provides a “barrier-free” and neutral perspective for employee concerns and acts as a confidential and informal sounding board to discuss options for handling particular dilemmas.

### *Option Four: Mediation*

Mediation is a process in which parties agree to work together, with the assistance of a trained neutral, to define their respective interests and generate options for resolving their dispute. Mediation can be used for many types of disputes from simple misunderstandings to complex employment matters. The mediator helps facilitate communication and has no power to impose a resolution. Mediation is a flexible process that allows the parties to discuss in confidence any issues they choose to address and determine the outcome for themselves.

### *Option Five: Arbitration*



## MEDIATION WORKS INCORPORATED

Arbitration is a process in which parties explain their dispute to a trained neutral who, after hearing from both sides, makes a final and binding decision to resolve the dispute, much like a judge would do in court. Arbitration is utilized for disputes needing a binding decision involving an employee's legal rights and responsibilities. While similar to the court process, it is not as formal and takes less time than court. All substantive rights and remedies available in court are also available in arbitration.

### **Key Elements for Success and Conclusion**

A dispute resolution program relies on several key elements to succeed. These elements are essential to assure that people know about the program, feel safe using the program, understand how the program works, know what alternatives exist outside of the prescribed options, understand that costs are appropriately limited and see how the process fits with existing programs and infrastructure. The key elements include:

- Broad promotion of the program;
- Management's full commitment to the program;
- A comprehensive "no retaliation" policy;
- Agreement to utilize the program as a mandatory step in resolving workplace conflict (as opposed to litigating or avoiding the dispute);
- Program elements dovetail with existing HR infrastructure;
- A benefit that allows employees the financial ability to engage council;
- Employees trained in effective communication skills (especially for the collaborative communication option to be effective);
- All employees trained in how the program works.

A clear, well-promoted and well-understood conflict management program will prevent a majority of, if not all, disputes from ever going to litigation. Most importantly, a comprehensive dispute resolution program offers hope and resolution to employees while increasing morale, productivity and savings for the company.

*Charles Doran is a mediator and the Executive Director of Mediation Works Incorporated (MWI) in Boston and can be reached at [cdoran@mwi.org](mailto:cdoran@mwi.org). Tad Mayer is a mediator and the Associate Director of Business Development at MWI and can be reached at [tmayer@mwi.org](mailto:tmayer@mwi.org). For more information about Mediation Works Incorporated, please visit [www.mwi.org](http://www.mwi.org).*



# MEDIATION WORKS INCORPORATED

- 
- <sup>i</sup> Denny, Julie, *The Cost of Conflict*, National Institute for Advanced Conflict Resolution, <http://www.niacr.org/papers/article6.htm>.
- <sup>ii</sup> [www.eeoc.gov/litigation/study/keypoints](http://www.eeoc.gov/litigation/study/keypoints) (Fiscal Years 1997-2001).
- <sup>iii</sup> [www.eeoc.gov/litigation/study/keypoints](http://www.eeoc.gov/litigation/study/keypoints) (Fiscal Years 1997-2001).
- <sup>iv</sup> Denny, Julie, *The Cost of Conflict*, National Institute for Advanced Conflict Resolution, <http://www.niacr.org/papers/article6.htm>.
- <sup>v</sup> "Are Businesses Missing The Dispute Resolution Boat? A Study Underscores Lack of Early Intervention Usage" by Barry Simon, September 2004 (<http://www.mediate.com/articles/simon5.cfm>)
- <sup>vi</sup> Ford, John; "Workplace Conflict: Facts and Figures;" July 2000; [www.mediate.com](http://www.mediate.com).
- <sup>vii</sup> "2005 CCH Unscheduled Absence Survey," October 2005, <http://hr.cch.com/press/releases/absenteeism/default.asp>
- <sup>viii</sup> Denny, Julie, *The Cost of Conflict*, National Institute for Advanced Conflict Resolution, <http://www.niacr.org/papers/article6.htm>.
- <sup>ix</sup> Ford, John; "Workplace Conflict: Facts and Figures;" July 2000; [www.mediate.com](http://www.mediate.com).
- <sup>x</sup> Ford, John; "Workplace Conflict: Facts and Figures;" July 2000; [www.mediate.com](http://www.mediate.com).
- <sup>xi</sup> Francis T. Coleman, "Workplace Alternate Dispute Resolution: An Idea Whose Time Has Come – Or Has It?: The Decision Becomes More Difficult," [http://www.williamsmullen.com/news/articles\\_detail/047.htm](http://www.williamsmullen.com/news/articles_detail/047.htm)
- <sup>xii</sup> How Companies Manage Employment Disputes: A Compendium of Leading Corporate Employment Programs, CPR Institute for Conflict Resolution, 2002.
- <sup>xiii</sup> "An Evaluation of the Equal Employment Opportunity Commission Mediation Program," by Dr. E. Patrick McDermott, Dr. Ruth Obar, Dr. Anita Jose, Dr. Mollie Bowers, September 20, 2000, <[www.eeoc.gov/mediate/report/](http://www.eeoc.gov/mediate/report/)>.

June 2006