

Chapter One

Introduction

The Emergence of Conflict Management

In 1999, Coca-Cola Enterprises found itself in a difficult situation. The costs of employment conflict were already escalating when it lost a large class-action lawsuit brought by its African American employees. In response, Coca-Cola began a series of pilot programs designed to resolve employment disputes within the company rather than wait to settle them through the courts or administrative agencies. These programs were the beginning of a strategic move toward a different approach to the management of conflict.

Through a gradual but sustained effort, the company created the Diversity Council, which then endorsed the development of a conflict management system for Coca-Cola. A team created to design that system, under the leadership of Melanie Lewis, corporate manager of conflict management, ultimately chose to develop and implement what they described as an integrated, comprehensive, and strategic approach to conflict management. This system used an ombudsperson office, mediation, and arbitration; training in the use of the system; and a strong set of internal support structures. By 2002, Coca-Cola had put into place a system designed to revolutionize the way it handled employee conflict and employee disputes.¹

PECO Energy came to the conflict management fold in a more graduated fashion. Long the most visible nonunion electric utility in the United States, it faced an International Brotherhood of Electrical Workers organizing campaign in the mid-1990s. Although the employees did not choose representation in the subsequent election, that experience revealed the employees' conflicts

4 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

and their unmet needs. Thus, PECO tried to improve conflict resolution within the organization.²

That the expression of unmet employee needs came through a union organizing campaign was not acceptable to the company's leadership. PECO had put a peer review program for employment disputes in place in 1993, and it had worked well, but senior managers believed not well enough. They felt that opportunities for early resolution of conflicts and disputes were being lost. In 1996, they began to evaluate alternatives and additions to their peer review process. Ultimately, through benchmarking, internal focus groups, and other data gathering, PECO chose to institute a full-blown alternative dispute resolution (ADR) system, including the use of mediation and arbitration.

Schering-Plough had a completely different experience. A significant loss from damages in a sexual harassment case in the mid-1990s caused the pharmaceutical company's executives to wonder if that case might have been prevented, or the damage minimized, through a more effective conflict resolution system. They assembled a team to consider whether the company should move toward an ADR system of some kind.

Following an extensive benchmarking effort and a data-based simulation of potential costs and benefits that might accrue from such a program change, company leaders rejected the adoption of any part of an ADR system. Two significant factors in that decision were the speculative nature of the system's supposed benefits and resistance from line management. Thus, Schering-Plough chose to continue the procedures already in place for the resolution of employee conflicts and disputes with the corporation.³

These three cases—Coca-Cola Enterprises, PECO, and Schering-Plough—are similar not for the outcome they produced when they examined dispute resolution in their companies but for what they considered. Each of the companies was dissatisfied with the current means by which employee disputes were resolved, each engaged in a comprehensive analysis of the situation, and each reached a conclusion—all three different. But each of them was

considering a question newly significant to U.S. corporations in the 1990s: Is the system in use to manage and resolve disputes with employees adequately serving our needs?

These three cases are broadly representative of an important trend in organizations: a substantial dissatisfaction with conventional approaches to dispute resolution and an attempt to stem that dissatisfaction by replacing old approaches with newly minted dispute resolution systems. The trend of dissatisfaction with current systems, the adoption of new systems, and the impact of this shift in dispute resolution are the major concerns of this book.

Having investigated ADR and conflict management systems for the past six years, we are convinced that there is a sea of change in U.S. organizations that reflects an emergence of systems of conflict management and a new paradigm for organizations. This change is diffuse in origin, young enough to be thought of as largely experimental, and without adequate evidence to evaluate its impact fully. Yet the vast majority of private corporations and a large number of public and nonprofit organizations are midstream in a change process in which they are reevaluating their approach to conflict.

Why has this occurred? What precipitating incidents cause organizations to seek to change their dispute resolution systems? What do organizations expect to gain from changing? Are there detectable differences in the approaches that different organizations are using to implement these changes? Why do some organizations—Schering-Plough, for example—reject this change in approach? And, finally, what does this systemic change mean for organizations, employees, and public institutions? These questions drive our inquiry, and our goal in this book is to provide answers to them.

INCLINATION TO CHANGE

Organizations do not set in motion a process of wholesale shift to new systems unless there is substantial dissatisfaction with the old. That is the case with dispute resolution. A number of trends have converged to produce motivation for change.

6 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

Dissatisfaction with Conventional Approaches to Dispute Resolution

The traditional approaches of organizations to disputes have been largely reactive, reflecting compliance with systems imposed on the organizations by outside institutions. Disputes with consumers, governmental agencies, and other organizations have generally been resolved in the courts and other public forums established for that purpose. The dissatisfaction with these public forums, which has been growing for some time, reached a crisis point in the past ten years.⁴ Litigation is seen as time-consuming, often going to ludicrous lengths, and costly. It is also often viewed as producing results unacceptable to either party to the dispute. Organizations view compliance with court-ordered settlements with barely concealed hostility, and at a minimum, judicial and administrative agency decisions are seen as less than perfect. In sum, the courts and administrative agencies set up to resolve disputes are viewed with antipathy, if not hostility, by nearly all, except members of the legal profession, which is an integral part of the system.

A second trend in U.S. corporate life has been the long-term decline in the labor movement and thus in the use of collective bargaining and its attendant processes to resolve employee complaints. Collective bargaining as an institution reached its high-water mark covering about a third of the U.S. private sector in the 1950s.⁵ Since that time, the labor movement has been on a steady decline to its current point, with less than 10 percent now represented by unions.

Collective bargaining provided explicit channels for the resolution of employee-employer disputes. Strikes were the means by which collective interest disputes were resolved, and, while never viewed as positive, they were effective for that purpose. Collective bargaining nearly always established elaborate grievance systems, usually culminating in a binding arbitration procedure for the final resolution of disputes over rights.

U.S. corporations never embraced collective bargaining and tried to limit its influence by fighting the existence of unions

wherever they emerged. Some corporate leaders held the naive view that when unions did not exist, conflict would disappear. More sophisticated corporations recognized that workplaces produce conflict and that if unions and collective bargaining were not the vehicle for dispute resolution, another means would have to be substituted. Elaborate human resource systems designed to surface and channel employee dissatisfaction generally did not produce an effective substitute for this important function of unionism. Minor conflicts with employees often did not surface at all, and those that did came through unwanted, expensive litigation under the ever-growing system of individual legal rights in the workplace. Thus, employers in the 1990s found themselves facing the Hobson's choice of unions they did not want or alternative but ineffective means of dealing with employee conflict.

A third source of dissatisfaction came from the changes made by organizations to deal with the increased competition from globalization and deregulation in the latter part of the twentieth century. Especially at a time when organizations were being forced to reinvent themselves, organizational effectiveness was critically dependent on a committed, well-trained, well-organized workforce. Efficient workforces offered a potential competitive advantage. Conflicts that remained unresolved or did not surface in a productive fashion severely compromised organizational effectiveness and the quality of the good or service produced.

Although conflict was seen as a natural outgrowth of contemporary organizational life, turnover of employees due to conflicts was viewed as an unproductive waste of talent and organizational resources. The fact was that a smooth-functioning organization demanded a smooth-functioning system of dispute resolution. Yet many businesses found themselves without such a system even after they had made the other organizational adjustments necessary for survival.

The total effect of these forces of dissatisfaction was a powerful motivation for organizational change. Faced with the realization that conflict is inevitable, and without effective means of dealing

8 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

with that conflict, one business after another attempted to create a new system of dispute resolution. Many went well beyond that into a new realm of conflict management.

Litigation, Dispute, and Conflict Management

Up to this point, we have used the terms *dispute management* and *conflict management* interchangeably, without a concrete distinction between them. However, although we do not wish to dwell on this topic, it is important to reflect on the differences between the two. Lawyers sometimes say that they engage in ADR routinely by trying to negotiate rather than litigate in appropriate cases. This happens after filing, however, and rarely involves trying to resolve disputes before they become litigation, much less trying to prevent conflicts from even becoming disputes.

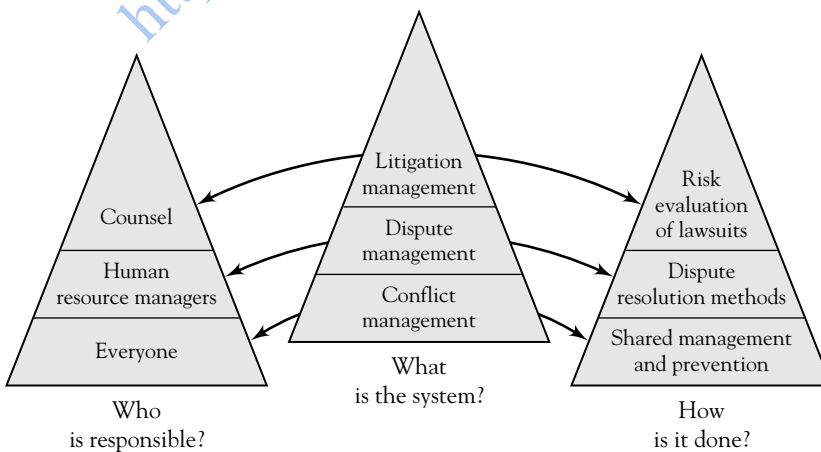
It is our belief that conflict management is much more comprehensive than dispute management. At the root of this conclusion is a distinction between conflicts and disputes. Conflicts can be seen as nearly any organizational friction that produces a mismatch in expectations of the proper course of action for an employee or a group of employees. Conflicts do not always lead to disputes; sometimes they are ignored, sometimes suppressed, and sometimes deemed unimportant enough to be left alone. Disputes are a subset of the conflicts that require resolution, activated by the filing of a grievance, a lawsuit against an organization, or even a simple written complaint.

Accepting this distinction between conflicts and disputes allows the argument naturally to progress to a divergence in the attempt to manage them. The management of disputes, which represent only the tip of the iceberg of conflict, is a significantly less complex problem. To manage disputes successfully, the organization need only maneuver the dispute into a forum most to its advantage to attain lower costs (transactional and outcome), a quicker speed of resolution, or simply a higher probability of a better outcome. Such activities would be seen as effective management

of disputes. Thus, much of what we see of dispute management looks like forum shopping.

Organizations that desire to manage conflict must go well beyond this smaller set of processes and into more facets of organizational life, encompassing a much wider range of questions, the involvement of more parts of the organization, and a more complex system. The goals of a conflict management system are broader and more numerous. Conflict management systems attempt to channel conflict in productive directions, for example, not just to manage its resolution. They spread the responsibility for conflict and its resolution to the lowest levels of the organization. Thus, they require training to be widespread. They seek to transform the organization, not just a set of processes. These and other distinctions and requirements of a conflict management system will be explored fully in this book. It is sufficient at this point to say that because of their complexity and the potential rewards they offer an organization, conflict management systems are a much more fruitful arena for inquiry and exploration. This distinction among dispute and conflict management systems, and litigation, is graphically depicted in Figure 1.1. These three systems differ in terms of the depth of their

Figure 1.1. The Conflict Pyramid



10 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

involvement in the organization, the people responsible for the management of the system, and the functions involved in the creation and maintenance of the system. Dispute management is always more complex than litigation management, and conflict management more complicated than both. We will elaborate on these distinctions later in the book.

Conflict Management Systems

We believe that the study of conflict management systems requires a comparison of multiple features. Systems differ on many important dimensions, each containing the potential to lead to unique outcomes. There are variations in the process of the design of a system—for example: Who is involved? How is the system created? How is the system implemented? These design features are not trivial because, as we will show, the values implicit in the design process are often reflected eventually in the system itself. Next, conflict management systems vary in the way they are structured: Who controls the system? Is the system centralized or decentralized? What are the goals of the system? Who is responsible?

Systems also vary in the procedures they employ for conflict resolution. We have investigated systems that include ombudspersons, peer review panels, facilitated discussions, mediation, arbitration, and multiple variations on these basic procedures. The choice of procedures can reflect on the values underlying the system itself. Some conflict management systems place value on participation in the conflict resolution process, some on having any disputes that occur be resolved as quickly as possible, and some value simply surfacing conflict. The solutions created to reach these fundamental goals will be reflected in the procedures used within the system.

We believe it is also important to identify and analyze the participants in the conflict management system. One simple distinction is the amount that the system relies on outsiders—neutrals and consultants, for example—to feed and maintain it. But it is important to go beyond the use of outsiders and into the organization itself. The

extent to which line managers are involved and responsible for resolving conflict is an important distinction between systems.

Finally, since (as one of our colleagues has repeatedly told us) we are what we measure, it is important to analyze what is judged by an organization to be critically important by looking at the features of the system they choose to measure and evaluate. Therefore, this is another important feature of a well-functioning system and one on which we will make comparisons.

THE CONCEPT OF A CONFLICT MANAGEMENT SYSTEM

In our development of the concept of a conflict management system, we have intentionally concentrated on decision making at the management level for two principal reasons. First, although considerable research on the operation of various ADR procedures exists, very little has been done on the formation of organizational strategies.⁶ It appears obvious to us that understanding the growth and diffusion of ADR policies throughout business in the United States, and the barriers to that diffusion, requires a clear delineation of how top managers make decisions on the management of disputes. Second, a survey of the use of ADR by the Fortune 1000, conducted by two of us in 1997, revealed that some corporations were moving beyond the use of individual ADR policies to the adoption of a system to deal with their organization's conflict management. We were especially interested in understanding the transition to a systems approach undertaken by that vanguard of U.S. organizations. We therefore have been conducting on-site interviews at a number of U.S. enterprises and collecting publicly available information on the use of ADR by other businesses and large corporations.

There is no general agreement on the precise definition of a conflict management system, even among experts.⁷ Clearly, though, an authentic system is not merely a practice, a procedure, or a policy. It is something more encompassing, which may incorporate all three—practice, procedure, and policy. Our understanding of

12 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

systems is rooted in the classic works on the system concept.⁸ We prefer the definition contained in a report prepared for the Society for Professionals in Dispute Resolution (SPIDR) by an ad hoc committee and published under the title, *Designing Integrated Conflict Management Systems: Guidelines for Practitioners and Decision Makers in Organizations*, by the Institute on Conflict Resolution at Cornell. David Lipsky was a member of that ad hoc committee.⁹ It should be noted that in 2001, SPIDR, the Academy of Family Mediators, and CRENet (Conflict Resolution Education Network) merged to become the Association for Conflict Resolution (ACR). We will use ACR when referring to this report.

The ACR committee elaborated on the five essential characteristics of an integrated conflict management system in its report, which we quote at length with the permission of ACR (we summarize these characteristics in Exhibit 1.1):

1. Scope

An effective integrated conflict management system provides options for preventing, identifying, and resolving all types of problems, including those disputes that do not fall into a category protected by statute, contract, or specific policy (such as interpersonal disputes). Its purview includes “non-hierarchical” disputes between employees or between managers. Such an integrated system is available to all persons in the workplace—workers, managers, professionals, groups, teams involved in disputes, and those close by (“bystanders”) who are affected.

This broad scope is important for several reasons. First, it allows employees and managers to raise concerns without framing them as violations of legal rights. This encourages employees and managers to raise concerns early and in a manner that is more likely to be conducive to problem solving. Second, a broad scope encourages employees and managers to address conflict between peers and problems that are not associated with a known individual. These conflicts can become destructive of organizational goals when there

Exhibit 1.1. The Five Characteristics of an Integrated Conflict Management System

- **Scope:** A system should have the broadest feasible scope, providing options for all people in the workplace, including employees, supervisors, professionals, and managers, to have all types of problems considered.
 - **Culture:** A system should welcome dissent (or tolerate disagreement) and encourage resolution of conflict at the lowest possible level through direct negotiation.
 - **Multiple access points:** Users of a system should be able to identify and have access to the person, department, or entity most capable (in terms of authority, knowledge, and experience) of advising the individual about the conflict management system and managing the problem in question.
 - **Multiple options:** A system should allow users the choice of more than one option for resolving a problem or dispute; more specifically, a system should contain both rights-based and interest-based options for addressing conflict.
 - **Support structures:** A system requires support structures that are capable of coordinating and managing the multiple access points and multiple options; the structure should integrate effective conflict management into the organization's daily operations.
-

is no avenue for their constructive resolution. Third, while integrated conflict management systems are often introduced because of intra-workplace concerns, very frequently organizations expand the use of these systems to external complaints, as a means for receiving, preventing, and resolving concerns of customers, clients, and members of the public.

2. Culture

To manage conflict effectively, an organization must accept conflict as inevitable. Many organizations discourage the constructive management of conflict by sending the message that those who raise concerns are themselves the problem. Effective integrated conflict management systems communicate the propriety of raising concerns and encourage employees and managers to address these concerns as early as possible and at the lowest possible level. An

14 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

integrated conflict management system provides an environment in which people can voice a concern or dispute without fear of retaliation. Employees, supervisors, and leaders are all trained to address conflict constructively, are supported in their efforts to do so, and are held accountable for results. Persons who are access points for the system may also serve as coaches for the disputants, helping them to resolve their dispute without proceeding to other options within the system. For example, Polaroid Corporation's policy stresses a commitment to create an environment that recognizes disputes as a natural cultural process and communicates to employees that they can expect to air their issues with full assurance of "safe harbor" and without adverse repercussions.

3. Multiple Access Points

An integrated conflict management system allows employees to enter the system through many access points, such as supervisors, union stewards, workplace leaders, employee assistance practitioners, human resources officers, ethics officers, conflict management coordinators, ombudspersons, internal legal counsel, health care providers, religious counselors, and equal employment opportunity personnel. Employees are not bounced from one department to another. The availability of multiple access points significantly reduces barriers to entering the system and encourages employees to address problems early and constructively.

4. Multiple Options

An integrated conflict management system gives employees the opportunity to choose a problem-solving approach to conflict resolution, to seek determination and enforcement of rights, or to do both. Employees have the opportunity in appropriate cases to move between rights-based grievance procedures and interest-based processes; within existing statutory and contractual restraints, they are not required to choose prematurely between the two. For exam-

ple, an employee who files a grievance may also be able to pursue mediation if all disputants agree. Effective systems minimize red tape so that employees may access multiple options and resources.

Why Are Multiple Options Necessary?

Rights-based processes, such as grievance procedures, arbitration, adjudication, and appellate processes, provide the opportunity to seek a determination of whether legal or contractual rights have been violated. These rights may arise from employer policy, individual or collective bargaining contracts, statute, or common law. Rights-based processes are essential to an effective integrated conflict management system because:

- They provide the opportunity to seek redress for unfair treatment or violations of statutory rights, such as the right to work free of discrimination, harassment, or unsafe working conditions.
- A small percentage of disputants in any organization very strongly prefer a rights-based approach.
- For some issues, a rights-based approach is more appropriate.

Interest-based options, such as direct negotiation and mediation, use problem-solving techniques to address the perceived needs of the complainant or other parties. Interest-based options are essential to an effective integrated conflict management system because:

- They are flexible, enabling disputants to maintain more control over the process and the outcome, which results in greater satisfaction.
- They can be used at the lowest level and when the conflict first surfaces, resulting in faster, more cost-effective solutions, often with less damage to workplace relationships.
- They can boost morale by providing the potential for healing and strengthening workplace relationships between employees,

16 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

and for helping bystanders whose morale or working conditions may have been damaged by the dispute.

- They allow for creative solutions not available through rights-based processes.
- Disputants may be more satisfied with the result and the process, which leads to more voluntary compliance with the settlement.
- They can be used by disputants who are unwilling to use rights-based processes.
- They provide redress for issues that do not fit into a “grievable” or actionable category. Traditional grievance procedures require an employee to label a concern as a violation of some right. Some employees turn to rights-based processes for lack of another option, when their issue is not actionable under a statute or grievance mechanism. In such cases, a quick and direct interest-based process may be the ideal mechanism both to bring a “non-actionable” dispute to the surface and to resolve it.
- They reduce the burden on the rights-based processes by deflecting many disputes to a more appropriate process. This allows rights-based systems to function more effectively for those who seek resolution through them.
- They provide ways for employees to come forward with information about problems such as safety hazards, drug and alcohol use, threats to national security, conflict of interest, waste, fraud, theft, harassment, potential violence, or even equipment repair needs, without fear that they will be swept, against their will, into an investigation or adversarial process.
- They provide a mechanism for employees who simply wish to suggest a change of policy, procedure, or structure in the organization, to recommend re-orientation of a team project, or to start an orderly process for dealing with a policy, group, or department that is seen to be a problem.
- They foster skills that enhance teamwork and other effective workplace interactions, and reinforce positive organizational values.

- They help reduce turf battles, accommodate the many different philosophies that operate in an organizational setting, and promote respect for diversity.

Critically, multiple options provide avenues for bringing to the surface underground issues that destroy morale and reduce productivity. Some employees will not come forward with a problem because they fear they will be thought disloyal, will be considered a complainer, will become involved in a confrontation, will lose their privacy and dignity, or will face reprisal. Others will not use rights-based processes because of the psychological—and, potentially, economic—costs of seeking redress. Others do not trust those in the supervisory chain of command. The way persons address conflict is affected by ethnic and cultural background, educational level, gender dynamics, and individual temperament. Multiple options provide the greatest opportunity to resolve concerns early and easily, before they escalate into more destructive, time-consuming, and costly disputes.

5. Support Structures

To develop an effective integrated system, an organization must provide necessary systemic support and structures that coordinate access to multiple options and promote competence in dealing with conflict throughout the organization. These structures nurture systemic change. They make interest-based language and behavior an everyday practice and change the way employees deal with both dissent and conflict. By integrating these structures and options, the organization moves toward “conflict competency.”¹⁰

To successfully implement an integrated conflict management system, an organization must develop support throughout its infrastructure. People at all levels of the organization must believe and communicate the same message: that conflict can and should be actively managed through one of the many channels of the integrated conflict management system.

18 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

Designers of systems need to pay particular attention to questions of fairness, an issue we address in detail in Chapter Five. Here, it is sufficient to say that the ACR committee, after considerable debate, reached agreement on eight essential elements of a fair conflict management system:

1. To the extent possible, participation in a system should be voluntary.
2. The privacy and confidentiality of the processes should be protected to the fullest extent allowed by law.
3. Neutrals (mediators, arbitrators, ombudspersons, and so forth) should be truly neutral and impartial.
4. Neutrals should be adequately trained and qualified.
5. The legitimacy of a system will be enhanced to the extent that it is “characterized by diversity in [its] core of neutrals, including mediators and arbitrators.”
6. A system should have policies that specifically prohibit any form of reprisal or retaliation.
7. A system must be consistent with an organization’s existing contracts, including collective bargaining agreements.
8. A system must not undermine the statutory or constitutional rights of the disputants.

Our own research has shown that some organizations that claim to have conflict management systems could not meet all the criteria prescribed by the ACR committee. In fact, in U.S. organizations today, a system as prescribed by ACR is more the ideal than the reality. Our studies of organizations that we believe have systems, even though they may fall short of the ideal recommended by ACR, reveal several other characteristics these organizations share:

A proactive approach. The organization’s approach to conflict management is proactive rather than reactive. The organi-

zation has moved from waiting for disputes to occur to preventing (if possible) or anticipating them before they arise.¹¹

Shared responsibility. The responsibility for conflict (or litigation) management is not confined to the counsel's office or an outside law firm, but is shared by all levels of management.

Delegation of authority. The authority for preventing and resolving conflict is delegated to the lowest feasible level of the organization.

Accountability. Managers are held accountable for the successful prevention or resolution of conflict; the reward and performance review systems in the organization reflect this managerial duty.

Ongoing training. Education and training in relevant conflict management skills are an ongoing activity of the organization.

Feedback loop. Managers use the experience they have gained in preventing or resolving conflict to improve the policies and performance of the organization.

WHY STUDY CONFLICT MANAGEMENT IN THE WORKPLACE?

This book is about new systems of managing workplace conflict. Obviously, organizations also face other types of conflict: conflicts with their customers, conflicts with other organizations, and perhaps conflicts with regulators. Although all these sources of conflict are worthy of study, we focus primarily on the workplace, for four reasons.

First, the management of conflict with consumers and other businesses is more often than not done by a simple, mundane approach. Organizations try to manage predictably occurring disputes. Many credit card firms and other organizations providing services to consumers expect a certain number of disputes with their own customers to arise. These organizations wish primarily to

20 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

resolve these disputes in as cheap and quick a fashion as possible. AT&T, for example, adopted a well-publicized arbitration scheme for the resolution of disputes with its long-distance telephone customers. Although this particular scheme has been successfully challenged in the courts,¹² it is reflective of a larger attempt to remove customer disputes from the court system and put them into forums more easily managed by the corporation.

Second, business conflict management is more opaque and the study of it more problematic than the examination of the workplace. Both the process and the results of private conflict management are shielded from public scrutiny. The same is true in business-to-business conflict. Indeed, one strong motivation for the use of arbitration in business-to-business disputes is that the evidence, the process, and the outcome are not matters of public record, as would be the case in most disputes in the court system. Thus, gathering data on business-to-business disputes is difficult, if not impossible, in most situations. This kind of conflict also seems to be most subject to instrumental motivations. Organizations seek to manage business-to-business disputes once they arise, not conflicts that can be productively channeled. For these reasons, we chose not to study business conflict management.

Third, our own background, experiences, and expertise are in the workplace. In addition, our case studies have revealed that two, or even more, philosophies and approaches to conflict can exist across dispute areas even within a single organization. That makes the topic rich and interesting. An organization might be completely dissatisfied with existing systems of dispute resolution for employment matters, for example, and at the same time be completely satisfied with the courts as a forum for resolving all of its business-to-business disputes. Such an organization could be proactive in employment matters, seeking to surface conflicts before they become full-blown disputes, and completely reactive to other kinds of conflict, preferring to resolve them only when forced. We have found few, if any, corporations that have a consistent strategic approach to the management of different types of disputes.

Finally, we focus on the workplace and systems of employment conflict management because that area is the most controversial and potentially the most beneficial to business. Several significant Supreme Court decisions made in the past decade relate to employment conflict management systems.¹³ These decisions allowed employers to require employees to sign “predispute waivers,” which are discussed thoroughly in Chapter Seven. Although these legal challenges have focused primarily on predispute waivers of statutory rights in favor of arbitration forums, the attendant controversy has caused wide-ranging discussion and examination of these systems.

Critics have charged that employee rights and access to justice are being compromised in the name of business efficiency. Advocates adamantly argue that organizations with effectively functioning systems of conflict management will gain significant advantages over their competitors as they minimize the costs of unnecessary, expensive disputes with their own employees, without diminishing the rights of those employees. How can these competing claims of sacrificed justice and organizational expediency be reconciled? We believe that this is an important and significant question for employers, employees, and the public.

The employment milieu also offers a significant opportunity for study. This is a time, as we will show in this book, of vast change and even of an acceleration of change in organizations. There is widespread experimentation in the development and implementation of conflict management systems. At this point, enough knowledge about these systems and case studies exists to begin to evaluate this change. Many organizations have sufficient experience to be able to reach conclusions about the effect of these changes. Thus, we have an opportunity to compare practices across organizations and integrate those comparisons into some conclusions.

This is particularly true as we study and report on the motivation of organizations to change their approach to employment conflict management and on how the systems are designed and implemented. There are not sufficient data for the effective evaluation of

22 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

the long-term functioning of these systems and their indirect effect on other organizational goals. Corporations are still searching for best practices; there is no accepted model of the best way to go. Our examination of system development at this time can contribute to that search for the dominant model.

OUR METHODOLOGY AND DATA

In this book, we combine the data we have gathered over the past five years from four separate but interrelated research efforts. We also rely on the wide-ranging published literature on conflict management, dispute resolution, and the evaluation of dispute resolution systems and their components.

In the spring of 1997, Lipsky and Seeber surveyed the general counsel or chief litigators of the Fortune 1000 on topics related to ADR. We were interested in whether the trend toward ADR and away from the courts was as widespread as we thought by observation. This survey and one other¹⁴ remain the only widespread empirical data on ADR usage by U.S. corporations. The detailed results of our survey have been published elsewhere.¹⁵

The empirical results from that survey were the springboard that led to this book. In asking questions in that survey related to the overall corporate strategic approach to dispute resolution, we uncovered significant differences based on corporate size, industry, and competitive pressures. Other significant differences in corporate behavior were based on such individual characteristics as the history of the company and the preferences of those responsible for determining the company's strategic direction. The results were informative, but we found ourselves with as many new questions as ones we had answered.

Although we do not rely heavily on that data in this book (we do report some of the findings in Chapter Three), that survey served as the jumping-off point for the hypotheses about organizational behavior that we present here. The data on individual corporations piqued our interest in learning more about some of the

companies, so two of us, Lipsky and Seeber (assisted in large part by Lavinia Hall), chose approximately forty companies for further examination. Coincidentally, at about the same time, Fincher began to survey and conduct case studies of workplace dispute and conflict management in a large sample of organizations. It became apparent that Lipsky and Seeber, on the one hand, and Fincher, on the other, were studying the same organizational phenomena using virtually the same methodology, and so we decided to join forces to write this book. In combination, the organizations we studied number more than fifty. They cover a broad spectrum of industries and represent a cross section of approaches and philosophies to ADR and conflict management.

These firms do not represent a random sample of the Fortune 1000 research and are not all from that group. The sample consists not only of large private sector corporations but also of several public sector and nonprofit organizations. We provide examples of organizations that range across a spectrum, from those that have fully developed conflict management systems to those that rely completely on litigation to resolve their disputes. All of the organizations we have studied, however, are large by almost any standard, and accordingly their experience with conflict management systems does not necessarily represent that of medium-size and small employers.

We also chose our sample of cases on pragmatic grounds. Each of these organizations has a very public posture toward conflict management in that they have gathered and shared information—through conferences or other presentations or publications—and each was either willing to talk to us about their experience or had published enough information to allow us to report on those efforts. In Appendix A, we list all the organizations that are mentioned in the book at which we conducted interviews. For each of the firms personally accessed, we attempted to schedule interviews with corporate chief executive officers, chief financial officers, general counsel, human resource executives, and managers at some of their specific sites. We were seldom able to interview all of these corporate

24 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

officials, however. Usually we did succeed in conducting intensive interviews with top human resource executives and general counsel or other lawyers in the counsel's office. Occasionally, we were able to interview other managers in the corporation. These interviews were conducted throughout the period 1999 through 2001. We also gathered substantial material on those companies and others from publicly available conventional sources. All this has allowed us to build a rich understanding of the strategic approach to conflict management, as well the implementation strategies and processes, for approximately fifty large organizations.

A third body of data on which we rely is one of the very few comprehensive surveys of the neutral profession. In 1999, two of us, Lipsky and Seeber, were permitted to survey the active membership of the National Academy of Arbitrators (NAA), the premier professional society of labor-management arbitrators. Although that survey had multiple purposes, a significant portion of the data collection focused on the switch within the profession from union-management arbitration to employment arbitration and mediation. We collected demographic, caseload, and attitudinal information on over six hundred neutrals. This information allows us another important lens through which to view the development of conflict management systems.¹⁶

We also rely on the use of research, case studies, and secondary material gathered and published by many other academics and professionals in the field of conflict and dispute resolution. In the end, we have built a detailed understanding of the experiences of well over fifty large organizations and cite throughout the book from that knowledge.

Although the data we have are rich and extensive, the usual limitations of the case study approach are applicable here. We do not have statistically reliable measures of many of the subjects on which we comment. Widespread survey data are just not available, and there are important difficulties in gathering such information. Of no small significance is a general reluctance by large organizations to put the effort into data gathering on system experience.

The organizations that do collect a lot of information on their system have a natural reluctance to share it. Nonetheless, in spite of the data limitations, we can comfortably claim this book to be the most comprehensive effort in this arena to date.

THE DESIGN AND OUTLINE OF THE BOOK

We seek to accomplish two objectives in this book and to appeal to two audiences. Our first goal is to explain the rise of conflict management systems in the United States. To that end, we have built an organizational model in the tradition of the social sciences that seeks to explain corporate motivation and differences among corporations. We hope this model will allow others to do further research to explain why this rise has occurred and why organizations choose different paths.

We then turn to our second goal, which is to give readers an understanding of how organizations build conflict management systems. Here, we rely heavily on a synthesis of our knowledge of corporate practice. In the end, it is our hope that this book will be of use to scholars and teachers of conflict management and dispute resolution, as well as to the community of professionals who make these systems work.

The book is organized toward the fulfillment of these goals. In Part One, we devote three chapters to the understanding of why conflict management has become such an important subject in organizations. Chapter Two examines the traditional means by which conflicts and disputes were handled in the workplace. This is done in the context of the contemporary debate over the social contract. We present the principal methods of conflict resolution and the root causes that have undercut their contemporary usefulness. Our goal here is to explain the dissatisfaction with the old and to set the stage for the creation of the new. In Chapter Three, we present evidence on the creation and use of alternatives to the traditional means of dispute resolution. We make the argument that ADR is primarily a stop on the way to the creation of more complete and integrated

26 EMERGING SYSTEMS FOR MANAGING WORKPLACE CONFLICT

conflict management approaches that followed closely on the heels of the ADR movement. We argue that ADR is more properly aligned with dispute management than with conflict management. Chapter Four, which closes Part One, discusses the creation of what we believe to be an important component of an emerging social contract in the workplace, the management of conflict. We focus here not only on external environmental forces for change but also on the process of change within the organization—the dynamics of strategic choice.

Part Two focuses primarily on the second goal we have set for ourselves. In these four chapters, we use our case studies of organizations to explain how conflict management systems are created and implemented. We look at what we consider to be the important design questions and options that confront the decision makers within organizations. Chapter Five focuses on the fundamental design questions and principles. It starts with the question of who designs the system, examines the uses of the systems in terms of people and conflict eligibility for participation, and concludes with the specifics of the internal features of dispute resolution that are incorporated in the conflict management system.

In Chapter Six, we present a discussion of the critical factors that have influenced system design to this point in its development. Certainly, the legal environment for arbitration has been evolving over the past decade, and we present the major points in a series of court decisions that influence design choices and outline the principles the system creators should consider. In addition, we look at other external features not affected by the legal environment, but that provide significant choices in system design. We discuss the sources for and qualifications of neutrals, a significant set of information for designers in organizations that choose to use external mediators or arbitrators.

Chapter Seven considers the second principal stage of the creation of a system: the start-up and implementation phase. In this chapter, we look at how organizations have handled everything

from pilot programs to training to communication of systems change. In Chapter Eight, we describe the final design phase in the creation of conflict management systems. We not only look at the questions of what to measure and how to measure it, but we also present some of the early evidence on the performance of conflict management systems gathered by large organizations and independent researchers.

In Part Three, we return to more universal questions about the future of conflict management systems. Any talk about change in organizations must confront the flavor-of-the-day problem. If one looks back just ten years, and certainly twenty years, at the significant trends affecting management, it is easy to find examples of trends that were expected to affect every organization and the way in which they conducted their business. The literature is full of examples of such universalities that in retrospect were simply wrong or were discovered not to solve a problem as effectively as predicted.

In Chapter Nine, we attempt to deal with these questions as they apply to our topics. We recognize that despite the evidence we have marshaled, conflict management systems may be another passing fad. We recognize that there are very real barriers to the universal adoption of this strategic approach to the management of conflict. We have identified six key factors and questions that we believe predict whether conflict management systems will be a blip in the history of organizational management or a feature common to all successful organizations in the future. Chapter Ten, which ends the book, discusses what we believe to be the critical issues and dilemmas affecting this field of study and practice. In addition, we have provided two appendixes that we believe will assist some readers. Appendix A is a list of all the organizations to which we refer in this book. Appendix B lists many of the most common ADR terms and definitions. This glossary is not intended to be complete. There are many other glossaries available on the Internet and through the publications of significant neutral organizations.



<http://www.pbookshop.com>

