

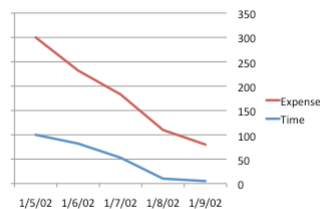
Cost-Benefit of Alternative Dispute Resolution Processes for Employers: A study in metrics and program design.

Organizations that are considering implementing new programs to address disputes in the workplace frequently wonder whether the cost of administering internal conflict resolution processes will justify the benefits of having them. Of course, many factors beyond cost are typically weighed by an organization when it evaluates whether to provide in-house conflict resolution services. The factors that may be considered are many. Among them are:

- Employee morale
- Employee productivity and time lost to conflict
- Union avoidance
- Public relations
- Corporate reputation
- Retaining control over outcomes
- Privacy of outcomes
- Time involved to resolve issues
- Expense involved to resolve issues.

Virtually all of these considerations are difficult to measure in objective terms. Many of the measures involve “psycho-metric” measures such as moral, reputation, stress, and others. And, virtually all of the metrics can be difficult to assess in objective terms absent clear before and after comparisons. Often such comparisons are impossible to draw due to the absence of structure in the internal systems to begin with.

Every now and then, however, we professionals in conflict resolution have the good fortune of being able to collect such data.



Because I have devoted the majority of my long career to working in the “dark underbelly of the beast” in various roles – attorney, employee relations manager, labor relations director, and ombudsman – I have now had several opportunities to draw meaningful comparisons in systems that involve internal conflict resolution. I was reminded of some of these

opportunities during the course of some office housecleaning when I came across some reports I prepared during my tenure in some of my various positions.

While working for a large high-tech R&D employer in the early 1990’s, I was tasked with re-designing that organization’s internal grievance and employee disciplinary

“due process” systems. The then-current systems were widely viewed as “broken” on several levels. The disciplinary review system too way too long – an average of 559 days from the time disciplinary action was taken to the time that the organization completed its *internal* review. The review time required to process a simple employee complaint (“grievances”) was nearly a year (355 days). Just to conduct the internal peer hearings cost (at the time) an average of \$6,350. This figure did not include the staff time involved for the caseworkers that coordinated the process in the Employee Relations function. The system emphasized formal internal hearings and, at the time, did not include any mediation process.

My team and I implemented a number of key improvements to the system. Among these were several that had dramatic results. First, we reviewed the processes involved and attached *concrete time limits* to each step. Second, rather than having an organization-wide pool of untrained potential hearing panel members, we recruited a cadre of people to serve in a *standing pool of panel members*. All of the members of this *pool received comprehensive training serving as panelist*, including precepts of evidence and other fact-finding skills, and comprehensive training in hearing procedure. Finally, we implemented a “*conciliation*” stage to the review process. Essentially, this was a step that provided the parties with informal mediation by a trained internal mediator.

Adding the mediation step alone resulted in the most dramatic improvements in the cost and time involved to resolve these internal cases. Implementing the internal mediation process had the added benefit that issues that were not formally reviewable in the grievance process, could nonetheless be resolved so that employees could focus on their work. No longer did dissatisfied employees have to twist their concern into a formally reviewable issue such as “discrimination” to resolve a conflict with a peer or with their supervisor.

The measurable results of these changes were dramatic!

- Average grievance processing time for formal employee complaints was ***reduced from 355 days to 147 days.***
- Average formal employee disciplinary review time was ***cut from 559 days to 29 days (95% reduction in review time)!***
- Average hearing ***costs were cut from \$6,350 to \$2,450 (61% cost reduction)*** for those cases that even required a hearing.
- Over ***80% of the cases never required a hearing*** and were resolved through the internal conciliation process.

At a later point in my career, I was selected to design and implement a new ombudsman program for this employer and to serve as its first Ombudsman. The program was implemented after a large employee lawsuit that had challenged the employer’s approach to a selective reduction in force as a cost containment/competitive measure. The workplace was rife with dissatisfied

employees and in the first three months after establishing the ombuds program, the office had already worked with over 200 employees.

In the years following the implementation of the Ombuds Office, my colleagues and I worked with literally hundreds of employees — 500 to 600 visitors annually. From its inception, there was significant anecdotal evidence that the Ombuds Program worked well for most visitors, and it demonstrated itself to be a highly effective alternative even as compared to other internal processes, such as the employee grievance procedure. In addition, statistics quickly emerged demonstrating that a formal review by an external authority such as an administrative agency or a court. Within the first year of its operation, new lawsuits dropped to zero, and formal grievances and charges with administrative agencies were literally cut in half.

Although we were able to show a pattern of higher use of formal processes (including formal complaints of sexual harassment) before the existence of the Ombuds Program, it was always difficult to demonstrate that the Ombuds Office was the direct cause of that reduction because of the possibility that other root causes could also be involved.

A few years into the operation of the Ombuds Program, we had the strange good fortune of encountering a situation where we could clearly and unequivocally demonstrate the cost benefits of the program. During the same timeframe (actually stemming from the same general organizational initiative), two visitors came to work with the ombuds office to resolve virtually identical issues. The results and comparisons are show in the table below.

**Cost Comparison – Two Near Identical Employment Dispute Cases
One Handled Informally by Ombudsman Program and One Processed Through Court System**

Employee Profile:

- Both individuals were employees in the same organization during the same timeframe.
 - Both employees were approximately 50 years old.
 - Both held the same middle management position and job title in similar business support groups in a large Research and Development Organization.
 - Both had similar educational background and degree-levels.
 - Both were garnering approximately the same salary level at the time that their respective employment disputes arose.
 - Both were members of minority groups (one Hispanic and one East Indian).
- Both approached the organization's Ombuds Office during the same general timeframe and during the tenure of the same top managers.

| | | Employee "A" | Employee "B" |
|--|-----------------------------------|---|--|
| HANDLED AT OMBUDS LEVEL | Scope of issues in dispute | Employee was demoted and reassigned. Earning potential was decreased. Employee claimed retaliation. | Employee was demoted and left in an unassigned position. Earning potential reduced. Employee claimed retaliation. |
| | Nature of Settlement Offer | Settlement Offer included: <ul style="list-style-type: none"> • An independent, in-house (i.e. peer employee) fact-finder to; investigate claim; • Fact-finder to recommend damages, if any, as appropriate; • Senior manager to review recommendation and approve or modify as he/she deems appropriate. | Settlement Offer included: <ul style="list-style-type: none"> • Monetary settlement only. |
| | Amount of Offer | Resulting offer included: <ul style="list-style-type: none"> • \$10,000 in back pay • \$7,500 increase in annual salary | Initial offer included: <ul style="list-style-type: none"> • \$50,000 lump sum award • Full release of claims |
| | Status of Offer | Accepted and approved by employer and employee. | Accepted by employee, but rejected by employer. |
| | Jury Award | | As a result of a full jury trial employee was awarded: |

| | | | |
|-----------------------------------|---|--|--|
| HANDLED THROUGH LITIGATION | Jury Award | N/A | As a result of a full jury trial employee was awarded: \$400,000 |
| | Legal Fees | None | To close of jury trial: \$640,000 |
| | Time Required to Resolve | 3 months | 7 years |
| | Total Estimated Cost | \$17,500 | \$1,040,000 |
| | Final Outcome | Employee quickly resumed leadership role in comparable management position in new organization and continued productive career. | Employer appealed decision. Employee remained essentially unassigned during entire legal process. Employee did not assume new management position. Additional fees and costs were incurred by both parties. Final outcome was deemed confidential and not disclosed. |
| | Final Estimated Comparison of cost | The cost benefit of the early settlement (to the point of the jury award) was \$1,022,500 . This amount would have funded the entire annual budget of the Ombuds Program involved for nearly <i>three years</i> . | |

Conclusion

I have been asked to design and implement many new programs during through my career to this point. Program design and implementation is one of my first loves. I've had many great opportunities to design and implement new programs including higher education due process and complaint systems, grievance procedures in union and non-union settings, a variety of new ombudsman programs – the latest of which operates in a completely on-line setting. Through this experience, one of the most important things I have learned is the value of metrics. It is extremely helpful to fully understand your starting position and to have a clear idea of what you seek to improve. The only way to meaningfully measure improvement is to have clear baseline metrics that establish the starting point for comparison and then to identify metrics through which you can draw comparisons.

The metrics that I have found most useful over the years are fairly straightforward: time, cost, and outcomes. While the metrics may be straightforward, the approaches to improving them may not be as direct. For example, one obvious goal of providing

training to a standing grievance panelist pool was to *improve the quality of the outcome*. However a less obvious outcome of providing that training, was a vast improvement in hearing times. The reason? – the hearing panels felt more confident in conducting the hearing and required far less staff support and *ad hoc* training through the course of each individual hearing.

Conducting cost comparisons can be challenging. For example, to measure hearing cost, I first had to review the many previous hearings and find out the categories of employees that had been chosen to conduct the hearings. Then, knowing that these panels were typically comprised of top-level engineers and scientists, I could calculate the average hourly rate involved for the typical grievance committee member. Using this rate, I could then review the records to see how many hours were, on average, involved by these individuals to meet, get oriented to the case, hold the hearing, and prepare a report. Once this assessment had been made and each step studied for time and cost, I was much more equipped to engage in the redesign process, to look for ways to shorten steps and to reduce cost even if the same employees with the same salary levels served on the review panels.

For those of us who have devoted large portions of our careers to working with people in conflict, it can become easy to focus on the complex, human aspects of our work and to forget that virtually all of this sort of work does, in fact occur within a structure with its own systems and processes. It is sometimes easy to lose focus on the opportunities to measure and improve our work if we fail to occasionally look up from the trees to appreciate the whole forest.