THE EXPANDING USE OF WORKPLACE CONFLICT MANAGEMENT SYSTEMS: CAUSATIVE FACTORS, CURRENT USAGE, AND PROSPECTS FOR SUCCESS

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I. INTRODUCTION

The last three decades have witnessed the burgeoning utilization of conflict management systems in the workplace. This paper will address the principal factors which have contributed to this relatively new phenomenon and analyze their current status in American business. Along with this perspective, this article will outline some of micro-organizational considerations at play when corporations consider whether and how to utilize these systems, and provide a framework for design and implementation.

II. SOCIAL, ECONOMIC, AND LEGAL FACTORS CONTRIBUTING TO THE RISE OF WORKPLACE CONFLICT MANAGEMENT SYSTEMS.

In the recent book, *Updating America's Social Contract: Economic Growth and Opportunity in the New Century*, the term "social contract" is defined as "the explicit and implicit agreements among members of a political community that define the rights and responsibilities of people vis-a`-vis their government". (Penner, Sawhill, & Taylor, 2000). In the workplace, various social, economic, and legal developments have given rise to a new social

contract which has, in part, brought about an increase in the use of alternative dispute resolution ("ADR") and/or conflict management systems.[1]

Traditional social contract theory in the nineteenth and first part of the twentieth century was characterized by industrialization, scientific management, standardization of employment practices, and hierarchical and authoritarian management. Conflict was considered dysfunctional and dissent in the workplace was not tolerated. The New Deal era modified traditional social contract theory through legislation which encouraged the rise of unionism and provided employees with rights and privileges they had not previously enjoyed. For those employees who chose to unionize, collective bargaining, mediation, and arbitration characterized the resolution of workplace disputes. However, it did not substantially alter management's ultimate authority. (Lipsky, Seeber, & Fincher, 2003).

The emerging social contract in the latter part of the twentieth century and the first part of the twenty-first century can be characterized as the result of various legal and economic developments. Initially, the 1960's signified a growth in individual rights with the enactment of the Civil Rights Act of 1964. Additionally, President Kennedy issued an executive order mandating collective bargaining for federal employees. However, the true transformation in the social contract began to arise in the 1980's with various economic changes. At that time, based on exponential advances in technology, the American economy began to shift from an industrial-based economy to a technology or information-based economy. Additionally, at the same time, the United States was faced with global competition in both its industrial and technological

[1] The terms "dispute resolution" and "conflict management" are, in fact, distinct terms, although they are often used interchangeably. Organizational "conflict" relates to disagreements and misunderstandings in the workplace which have not risen to the level of legal or formalized grievances or "disputes". Conflict management seeks to address the root causes of conflict in the workplace, before they become costly legal disputes, which the organization must then seek to resolve. (Lipsky & Seeber, 2006). This paper will address both.

sectors. Further, not only were American companies faced with competition from abroad, but domestic deregulation which unleashed fierce competition at home. (Lipsky, et al., 2003).

Along with these economic developments, American business was faced with an increase in business and employment litigation, leading to long delays and an increase in the cost of litigation. The last half of the twentieth century was also characterized by a dramatic decline in the density of union workers in the economy, from a high of 35% in 1954 to a low of 13.6% in 2001. (Lipsky, et al., 2003).

Against this backdrop, and in order to meet some of these challenges, American businesses began to recognize the importance of professionalizing their human resource management function. All of the forces of change discussed above caused management to reorganize the way work was performed. Many employers facing rapid technological change and global competition recognized the need for reduced hierarchy in management and team-based work performance. Management began to institute high-performance work systems ("HPWS"), which involved removing layers of supervision and delegation of authority to teams of employees to control their methods of work. Along that same line, management realized that efficiency, performance and profitability could be improved through combining jobs and eliminating job classifications. This required having workers with the skills necessary to perform various jobs in rotation and a human resource management function with the requisite ability to select, train, and retrain those workers. Another component of these changes in the work environment was the development of flexible compensation systems. In many companies, performance-based pay, production bonuses, and other contingent pay schemes began to replace automatic wage increase structures. (Lipsky, et al., 2003).

All of these measures comprised the typical HPWS. However, with this reorganization of work and increased employee involvement came the need for employee participation in decision-making, and along with that, the management of conflict. As a result, many managers came to recognize the need for not only delegating the responsibility for work to teams of employees, but also delegating to employees the authority to deal with inherent conflict which arises from employee interaction in teams. (Lipsky, et al., 2003).

Turning back to the legal environment for a moment, specifically in the employment context, the traditional legal system forced employers to defend claims which might ultimately prove to be unmeritorious, but required the need to incur substantial legal expenses toward that end. (Estreicher, 2001, Colvin, 2006). For those cases which did have legal merit, the employer ran the risk of a substantial monetary verdict and resultant negative publicity. The growth of ADR procedures provided the possibility of quicker, cheaper, and simpler methods for achieving resolution of legal disputes for employers, while at the same time avoiding negative publicity. (Colvin, 2001; 2006; Wheeler, Klaas, & Mahony, 2004).

Judicial recognition of this concept in the employment arena occurred in the case of *Gilmer v. Interstate/Johnson Lane*, where the Supreme Court sanctioned the enforcement of an arbitration agreement involving a claim under the Age Discrimination in Employment Act. Relying on the Federal Arbitration Act, the court compelled Gilmer to submit his claim to arbitration and denied his access to relief in the courts.

The benefit to employers of the *Gilmer* decision was that by adopting mandatory employment arbitration agreements, the uncertainty and risk of large jury awards could be reduced with a simpler, faster, and cheaper alternative. (Colvin, 2001; 2006; Estreicher, 2001). As a result, over the course of the next decade, many employers began requiring employees, as a

mandatory condition of employment, to sign agreements requiring arbitration of any legal claim against the employer. (Colvin, 2004b; 2006). Although many employee advocates bemoaned the effect of the *Gilmer* decision on the statutory rights of employees (Stone, 1996; Zack, 1999), the subsequent decision of the Supreme Court in *Circuit City Stores v. Adams*, resolved most remaining doubts regarding the enforceability of these agreements. In the meantime, without any definitive action to amend the Federal Arbitration Act to reverse these decisions, the legal debate then shifted to the standards of due process which must be satisfied in order for these agreements to be enforced, which is still on-going on a case-by-case basis. (Colvin, 2004a; 2006; Lipsky, et al., 2003; Wheeler, et al. 2004).

Currently, judicial and legislative action on these issues has not been lacking. On February 12, 2009, H.R. 1020, termed the Arbitration Fairness Act of 2009, was introduced and is currently pending before the House Judiciary Committee of the 111th Congress. Among other things, this bill seeks to exempt employment and civil rights disputes from the coverage of the Federal Arbitration Act. As of this writing, the fate of this legislation is uncertain. In April of 2009, the Supreme Court issued its ruling in *14 Penn Plaza v. Pyett*. In this case, the court ruled that provisions in a collective bargaining agreement between a company and union that clearly and unmistakably require union members to arbitrate statutory discrimination claims are enforceable and therefore arbitrable under the collective bargaining agreement.

III. PATTERNS OF UTILIZATION OF WORKPLACE CONFLICT MANAGEMENT SYSTEMS.

A. Union Dispute Resolution Procedures

While the majority of this paper is devoted to conflict management systems in non-union workplaces, such is not to imply that alternatives to traditional dispute resolution in a labor

relations context (i.e. arbitration) are not available or useful. Grievance mediation as a prelude to arbitration can serve as an effective means of resolving many workplace disputes in a unionized setting. Although labor arbitration has been widely used in this country since the 1940s, it has been the subject of criticism for many years. It was intended to be fast, inexpensive and informal, and certainly meets those objectives when compared to traditional court litigation. However, over time, much arbitration has grown into a slow, expensive, and formal process. (Goldberg, 1982; Schmedemann, 1987). There is a sense among many labor-management professionals that the decision in arbitration is often irrelevant to the problem that caused the grievance to be filed in the first place. (Goldberg, 2005). There also appears to be a sense among many labor-management professionals that the arbitration process is abused at times, by both management and labor. (Goldberg, 1982).

Mediation, as an alternative to arbitration, has the potential to overcome many of the frustrations mentioned above, and the limitations imposed by the process of arbitration. Studies of the grievance mediation process in various labor-management relationships over the past 25 years have proven this potential. Studies have indicated that cost savings can be achieved in a grievance mediation process since there is no need for extensive preparation and presentation by attorneys; nor is there any need for transcripts, post-hearing briefs, or a written decision. (Goldberg, 1982; 2005). Studies have also shown that mediation is quicker than arbitration due to the informality of the process. There is no need for the use of subpoenas and discovery, or the elaborate development of strategy by counsel. As there is no perceived bias in mediators as opposed to arbitrators, a protracted selection process is not an issue. (Goldberg, 1982).

Another interesting benefit of a grievance mediation process is the likelihood that after participating in the process, the parties have an increased ability to resolve grievances without a

mediator’s help. After learning creative and collaborative approaches to resolving disputes, the parties learn how to use these tools to resolve disputes without a mediator’s help, at earlier stages. The tools developed in mediation can help the parties approach other disputes in the same fashion. In fact, the potential exists with mediation to transform the groups used in mediation into groups organized for the purpose of resolving other issues in the labor-management relationship. (Goldberg, 1983; 2005; Schnedemann, 1987). With its focus on self-determination between the parties, mediation reduces the alienation and tension that typically arises in a labor relations dispute, and has the potential to create an environment for mutual understanding and trust. As a result, the parties find it possible to resume and promote a good working relationship. (Schnedemann, 1987). Along that same line, grievance mediation can help eliminate the “scar tissue” caused by arbitration. (Block, Beck & Olson, 1996). Additionally, a settlement that results from an interest-based grievance mediation process is voluntary and has the potential produce a result which is more satisfactory to both parties (compared to arbitration, where only one party wins), and therefore, more likely to last. (Goldberg, 2005). Finally, the impact of grievance mediation on settlement rates is well-established. In a study performed by the Mediation Research and Education project, which has conducted thousands of grievance mediations in the labor-management field since 1980, 86% of those mediations have resulted in a settlement. (Mediation Research and Education Project, 2008).

However, there is paradox with this process; only 3% of labor agreements include a step in the grievance-arbitration process for grievance mediation. (Feuille, 1999). Feuille posits that the explanation is that grievance mediation is a rather fragile process, and only works when both parties are committed to it, and management generally prefers arbitration in order to pressure

labor to withdraw marginal grievances and as a more viable process for ensuring durable resolution of disputes.

B. Non-Union Conflict Management Systems

Recent surveys indicate that over half of non-union organizations have some type of formal dispute resolution and/or conflict management processes. (Colvin, 2003; 2006; Lewin, 2004). Contrary to the rather limited forms found in union settings, these mechanisms are diverse and fluid, with a variety of forms and structures. Before embarking on an analysis of these processes, it is important to make a critical distinction in their respective functions. One category of procedures is known as “determination procedures”, and involves an ADR actor or decision maker determining the resolution of a dispute. A second category consists of “facilitation procedures”, which involves an ADR actor facilitating the resolution of a dispute. Arbitration is a typical determination procedure, whereas mediation involves a facilitation procedure. (Colvin, 2006).

An alternative way of classifying conflict management systems is in their “internal” or “external” nature. Those processes that are internal to the organization include open door policies, ombudsmen, managerial mediation, and peer review boards. These are considered more cost-effective and are utilized in the earlier phases of a dispute. External processes generally include external mediation and arbitration. They are usually more expensive and are utilized later in the dispute. (Lipsky, et al., 2003). These conflict management or ADR processes are not mutually exclusive, in the sense that all determination processes are external, and all facilitation processes are internal, or vice versa. For example, the two most common types of determination procedures are peer review and arbitration. Peer review is an internal, determinative process;

whereas arbitration is an external, determinative process. The following is a summary of the various forms of conflict management processes utilized by organizations:

Open Door Policy. An open door policy is probably one of the most common features in workplace systems. However, the concept has almost become stale in many organizational cultures. It implies that the supervisor or manager believes in open dialogue with employees and encourages them to talk through differences or issues that may arise. In order to be affective, an open door policy must be broadly disseminated and reinforced as a core element of the organization=s culture. The arguments surrounding the success of open door policies are mixed. Some observers suggest that it is highly overrated as an appropriate mechanism for conflict resolution due to the fact that supervisors are not appropriately trained to problem-solve with employees; supervisors are too busy to effectively deal with these issues; and employees perceive a high risk of retaliation for utilizing the process. On the other hand, many observers believe that despite these obstacles, the open door model still resolves about 90% of all employee issues and complaints. As in most employment policies, the key to a successful open door policy is sufficient training of supervisors, who must receive coaching in conflict resolution and communication skills. (Lipsky, et al., 2003).

Ombudsmen. Another option in the design of ADR programs, especially for larger organizations, is the organizational ombudsman. An ombudsman is a neutral or impartial official within an organization who facilitates informal and confidential assistance to employees in addressing work-related concerns, and who may also recommend systemic organizational change based upon issues which arise. In order to be effective, the ombudsman’s position must be located outside the ordinary line management structures. Studies from several large

organizations have found that the ombudsman process is cost-effective in reducing employee litigation and turnover. (Lipsky, et al., 2003).

Managerial Mediation. Many progressive organizations are beginning to provide basic mediation training to managers and line supervisors, designating conflict resolution as a key supervisory competency. In managerial mediation, the manager convenes disputing employees and attempts to explore mutually acceptable solutions to all forms of workplace conflict. An increasing minority of progressive organizations are providing basic conflict resolution training to supervisors and managers as part of their toolkit. (Lipsky, et al. 2003).

Peer Review Boards. This process has been used in many blue collar manufacturing organizations for a number of years, often for union-avoidance purposes. Depending on how the process is structured, decisions of the peer tribunal may be final and binding, or only advisory on the employee or management. Generally, employees are pre-selected and trained by human resource personnel or an outside consultant. The basic assumption in the peer review process is the idea that employee disputes should be resolved through internal mechanisms, not in litigation. Another assumption is that resolution of disputes by peers is a more credible and acceptable process to the aggrieved employee. Of course, this model also assumes that peers can be capably trained as fact-finders and decision makers. Opponents of this process argue that due to the increased complexity of workplace disputes, its time has passed. It can also be viewed as difficult to administer due to employee turnover and resultant retraining; it requires staff resources to manage the process; and many claimants desire an external forum. Nevertheless, it remains a valid problem-solving model. (Lipsky, et al., 2003).

Executive Panels. Executive panels provide the opportunity for employees to present their disputes to a panel of the organization's senior executives and/or managers. The

assumption here is that employees feel upper executives will be objective and potentially sympathetic to their claims. These panels typically have three to five executives, usually at the vice-presidential level, who are not connected to the employee whose claim is being presented, either operationally or geographically. It has been found to be effective in a variety of settings, but is most common in smaller organizations with accessible executives. Research indicates that a surprising number of employees prefer this process and feel no reluctance in raising issues to senior management. (Lipsky, et al., 2003).

External Mediation. External mediation (as well as arbitration, discussed below) differs from the above processes in that it is external to the organization. Due to the slow trend toward the use of internal employees as workplace neutrals discussed above, the vast majority of workplace systems today (if they exist), primarily use the services of external mediators. The argument in favor of this alternative is that what these neutrals lack in terms of knowledge of the organization and keeping the dispute within the organization, they offer certain advantages such as a greater knowledge of employment discrimination law and demonstrated experience as a mediator of workplace disputes. This option can be cost-effective in that the mediator is only hired on an ad hoc basis. Additionally, they bring presumed objectivity as an outsider, providing them with greater credibility with the claimant. External mediation can involve disputes of a interest-based or non-statutory nature, such as inter-personal conflicts or the application of company policies, as well as disputes alleging some violation of an employment discrimination statute. External mediation also offers the benefits of confidentiality and speed. (Lipsky, et al., 2003).

Fact-Finding. In this process, a neutral fact-finder, either internal or external to the organization, investigates the facts surrounding a dispute and makes recommendations to senior

management. Fact-finding does not involve an evidentiary hearing, and the fact-finder is authorized to pursue whatever leads are considered important in reaching a conclusion. The fact-finding report can be used as the basis for a final management decision on an issue, or as the basis for further negotiations. (Lipsky, et al., 2003).

Arbitration. In most workplace systems, only statutory or contract claims are allowed to proceed to binding arbitration. In other organizations, all other claims alleging violations of company policies or other non-statutory discrimination must be resolved earlier in the process, or must be withdrawn by the employee. Those professionals in the field which support the inclusion of statutory claims argue that if the goal of a conflict management system is to resolve conflict, non-statutory claims should not be excluded. On the other hand, most employers tend to exclude these claims due to the potential cost and fear of employee abuse. Arbitration processes typically involve one of two design features. The first is a voluntary post-dispute feature that does not require the employee to submit their claim to arbitration prior to the dispute arising. Rather, after the dispute arises, the employee can choose to arbitrate the claim, or proceed to court. The second type is a mandatory pre-dispute feature that does obligate the employee to agree, in advance that all disputes with the employer will culminate in arbitration, which will be final and binding. Generally, the agreement is made a condition of employment. This feature is the more controversial of the two, and has been the subject of much litigation. (Lipsky, et al., 2003).

In 1997, the Institute for Conflict Management of the Cornell University School of Labor and Industrial Relations conducted a survey of the Fortune 1000 to determine the utilization of these various processes. Responses were received from approximately 60% of those companies. The study revealed that the two most utilized forms of processes in the employment context were mediation and arbitration. The responses revealed that 78.6% of the organizations had utilized

mediation, and 62.2% had used arbitration in attempting to resolve employment disputes. The findings with respect to the other processes were less dramatic. Approximately 37% of the respondents reported utilizing internal grievance mediation, with the utilization of both peer review and ombudsman programs resting at about 10%. When asked about their most preferred method of ADR process, the respondents reported mediation at 63% and arbitration a distant second at 18%. (Lipsky, et al., 2003).

In 2003, the authors of this study readily admitted that although several years had passed since the study had been performed; it remained the only comprehensive study of ADR in the U.S. corporate world. They remained "quite confident" that the evidence of patterns of ADR usage and levels of satisfaction continued to have validity. In fact, based on subsequent field research, the authors indicated that the corporate use of ADR had increased since the study had been published. (Lipsky, et al., 2003).

IV. ORGANIZATIONAL AND ENVIRONMENTAL FACTORS INFLUENCING USE OF WORKPLACE CONFLICT MANAGEMENT SYSTEMS.

As indicated above, organizations have multiple choices in the selection of conflict management processes. This selection process cannot be undertaken without analyzing the organizational and environmental factors at play, which can affect the selection of the most appropriate alternative or alternatives.

From an external or environmental perspective, one of two primary situations may be present. First, the company may develop a conflict management system as a "union substitution" strategy. Under a union substitution strategy, management in a nonunion company adopts employment policies resembling those in union establishments. Considering that arguments of workplace justice are commonplace in union organizing drives, management offers at least a

partial substitute for the grievance and arbitration systems found in unionized workplaces. In fact, this strategy was an important factor in the early development of nonunion ADR systems. (Colvin, 2006). Although it is arguable that a union substitution strategy is no longer meaningful given the decline in union density, it can also be argued that the strategy itself is useful as a continuing means of avoiding unionization. (Colvin, 2003; Lipsky, et al., 2003). When union substitution is the driving force for an ADR system, the type of procedure selected is important. Specifically, the development and adoption of peer review panels have been strongly associated with a union substitution strategy, as they allow employees to be involved in remedying alleged unfair treatment in the workplace. (Colvin, 2003). This is not to say that unions are unilaterally opposed to conflict management systems, at least where a collective bargaining relationship currently exists. In fact, some unions have discovered that many employee complaints that fall outside of the mandatory subjects of bargaining can be addressed effectively through conflict management systems, thereby potentially increasing the influence of unions into areas traditionally considered to be within the realm of management authority. (Lipsky & Seeber, 2000).

Another important external environmental factor can be found in pressures from the legal system. The degree to which a company considers itself exposed to employment litigation will directly impact its decision to implement an ADR system. Employment arbitration is most strongly associated with a litigation avoidance motive. (Colvin, 2003; 2004a; 2006).

Two other related external environmental factors are market competition and government regulation. Increasing competition has forced many companies to examine every facet of their operations to in an effort to reduce costs and increase efficiency. Along that same line, government regulation of the workplace and the increased potential of employee suits under

burgeoning employment statutes had imposed costs on the office of in-house counsel and the human resource management function. In an effort to comply with legal mandates and reduce costs, companies may opt for ADR systems as a means of reducing the cost of doing business. (Lipsky, et al., 2003).

Various internal organizational factors are also at play. First, a company's human resource management strategy may affect its decision to implement non-union ADR procedures. When companies adopt HPWS, discussed above, authoritarian and hierarchical relationships are surrendered to more egalitarian structures. With the adoption of team-based production, the need for effective conflict resolution procedures arises with employees assuming responsibility for preventing and resolving conflict in the workplace. Additionally, the creation of dispute resolution mechanisms may enhance the effectiveness of work teams. (Lipsky, et al., 2003; Kochan, Katz, & McKersie, 1986). With respect to the form of dispute resolution which is adopted, Colvin (2003) found a significant association between HPWS and the adoption of peer review panels. The adoption of HPWS may also affect the specific design components, such as including strong due process protections for employees in order to avoid perceptions that the process is biased toward management. (Colvin, 2004a).

Another internal factor (which could be classified as a hybrid internal-external factor) is the company's exposure profile. Related to this factor is the existence of a precipitating event. The exposure profile relates to the degree of litigation to which the company is potentially exposed, given the segment of the economy in which it does business, as well as its geographical location and the extent of unionization. The higher the profile, the more likely it is that the company will adopt a dispute resolution process. The precipitating event factor recognizes that a major lawsuit and/or negative publicity have received the attention of top management, who will

then seek ways in which to avoid the costly, public and time-consuming nature of litigation. (Lipsky, et al., 2003).

V. ALLEGED STRENGTHS AND WEAKNESSES OF WORKPLACE CONFLICT MANAGEMENT SYSTEMS

The primary argument for utilization of a conflict management system is that it provides the advantage of a faster, cheaper, and more efficient method of resolving workplace disputes. While settlement costs are not expected to vary significantly from traditional litigation under a conflict management system, the transaction costs of litigation are considered significantly higher. In the United States, it is not unusual for the transaction costs of litigation to be two or three times greater than the settlement costs. (Lipsky & Seeber, 1998).

In the 1997 Cornell study, many respondents preferred utilization of conflict management or dispute resolution systems due to the cost of litigation and the time needed to achieve a settlement. Over 80% of those responding believed that mediation saved time and money, and only slightly fewer (70 %) believed arbitration saved time and money. An additional interesting result from the study was that 83% believed mediation was desirable because it allowed the parties to resolve the dispute themselves, without one being imposed by a third party. Other factors supporting the desirability of mediation and arbitration in the study were that they: (1) provided a more satisfactory process (mediation – 81%; arbitration – 60%); (2) involved more experienced neutrals (mediation – 53%; arbitration – 50%); (3) preserved relationships better than litigation (mediation – 59%; arbitration – 41%); and (4) provided more satisfactory settlements/decisions (mediation – 67%; arbitration – 35%). (Lipsky, et al., 2003).

While the Cornell study is probably one of the most comprehensive in the field today, true empirical evidence concerning the efficiency and effectiveness of conflict management

systems is lacking in current research. From an efficiency standpoint, it is hypothesized that conflict management systems offer improvement over traditional dispute resolution methods in terms of time and money. However, the fact cannot be disregarded that the costs of creation and maintenance of a new conflict management system are real, while the benefits are somewhat speculative and difficult to measure. Regarding the effectiveness of a system in terms of fairness, access, due process, and impartiality, the evidence is also lacking. Although it is postulated that conflict management systems possess these attributes, a true measurement is wanting in the research, outside of evaluations conducted of specific organizations. The same can be said of hypothesized indirect organizational effects such as improved morale, decreased turnover, union avoidance, and enhanced organizational flexibility and communication. In fact, it is in this area that there is the most speculation and least evidence available. (Lipsky, et al., 2003; Lipsky & Seeber, 2006).

Beyond the arguments concerning the lack of empirical evidence supporting the advantages of a conflict management system, there are "real-life" objections to these systems raised by corporate executives and counsel. The Cornell study revealed that many of the respondents disliked mediation and arbitration due to the lack of procedural rules and safeguards, which are provided in conventional litigation. With respect to utilization of arbitration in these systems, many respondents were reluctant to place the resolution of their case in the hands of an arbitrator and risk an unfavorable result, due to the deference which courts accord to their awards and the difficulty of obtaining a reversal. Along that same line, several respondents complained that arbitration is becoming increasingly complex and adversarial, and beginning to approach traditional litigation in its costliness. (Lipsky, et al., 2003).

Outside of the arguments regarding arbitration, many respondents in the Cornell study objected to the use of mediation and other procedures in conflict management systems, for a variety of other reasons. One principal objection noted was the opposition of senior management, when principles are firmly held and a compromise outcome will generally result. Along that same line, many corporations were opposed to the process as it is often viewed as threatening to middle managers, whose decisions are often the source of the dispute and may not be supported in the ultimate resolution of the matter. Finally, many corporate representatives lack confidence in the expertise of neutrals, both mediators and arbitrators. (Lipsky, et al., 2003).

VI. FACTORS WHICH PROMOTE THE SUCCESS OF WORKPLACE CONFLICT MANAGEMENT SYSTEMS

In 2001, the Society of Professionals in Dispute Resolution ("SPIDR") conducted a study to provide guidance to organizations contemplating the introduction of conflict management systems. At the outset, it should be noted that SPIDR recommended an *integrated* conflict management system ("ICMS"), which is distinct from the general concept of a conflict management system in the traditional sense. The difference focuses on the scope of the system. A general conflict management system involves and concentrates more on traditional dispute resolution processes such as grievance procedures, mediation, and arbitration. The study indicated that these processes only address the symptoms of conflict and not its source. On the other hand, an integrated system addresses the source of the conflict and attempts to provide a means for dealing with conflict throughout the organization. (Gosline, et al., 2001; Lipsky & Seeber, 2006).

SPIDR recommended five elements which were critical to the success of an integrated system: (1) a broad scope, providing options for addressing all types of workplace conflict; (2)

an organizational culture that accepts conflict as natural and inevitable; (3) multiple points at which employees can access the system; (4) processes which are both rights-based and interest-based; and (5) adequate organizational support structures. (Gosline, et al., 2001; Lipsky & Seeber, 2006).

With respect to the scope of the system, the study recommended that system should provide employees the opportunity to voice any type of workplace-related issue. For example, under such a system, an employee could raise an issue concerning the terms and conditions of the employee's job, quality of work-life issues such as personality differences, up to alleged statutory violations by the employer. Regarding the organizational culture, the study indicated that many organizations restrict effective conflict management by discouraging employees from expressing concerns or voicing complaints. On the other hand, an effective ICMS requires that managers communicate to employees that the voicing of their concerns is encouraged. Of course, in order to encourage that expression, the organization must have a culture that prohibits retaliation when voice is expressed. (Gosline, et al., 2001; Lipsky & Seeber, 2006).

As to the argument for multiple access points, an ICMS is to be contrasted with a more traditional system which requires progressive steps up a hierarchy in order to have the conflict addressed. The SPIDR study proposed that the effectiveness of the system will be enhanced if employees are allowed to pursue whatever procedural avenue with which they feel most comfortable. Along that same line, the study counseled that an ICMS should have both rights-based and interest-based options, which can be either internal or external to the organization, as mentioned above. Whereas an interest-based option focuses on reconciling the underlying interests of the parties, a rights-based option focuses on deciding on which party is "right". (Gosline, et al., 2001; Lipsky & Seeber, 2006).

Internal interest-based options include, for example, open door policies, peer mediation, managerial mediation, and ombudsmen. External interest-based options include such processes as external mediation, fact-finding, and advisory arbitration. The primary form of an external rights-based option would be arbitration, while internal rights-based options include peer review boards and executive panels. (Gosline, et al., 2001; Lipsky & Seeber, 2006).

Finally, the study advocated that an ICMS should have an adequate support structure in order to succeed. This would include, at a minimum, the commitment of senior management, adequate human resource and physical support, as well as ongoing training of managers, supervisors and employees. (Gosline, et al., 2001; Lipsky & Seeber, 2006).

Beyond these strategic considerations, the SPIDR study endorsed eight essential elements in the design and implementation of an ICMS dealing with fairness and due process: (1) voluntary participation; (2) protection of privacy and confidentiality; (3) neutral and impartial third parties; (4) trained and qualified neutrals; (5) diversity; (6) prohibition of retaliation; (7) protection of collective bargaining rights; and (8) protection of statutory rights (Gosline, et al., 2001; Lipsky & Seeber, 2006). Some of the more common issues with regard to some of these elements are summarized in more detail as follows:

Voluntariness. Employees must have free choice to use any procedural option within the system. Whether external or internal, interest-based or rights-based, the option must be allowed to be selected by the employee voluntarily. In order for this principle to have effect, individuals should be well-informed of the options available. Along that same line, employees should have the right to select options in the continuum as they wish, instead of being forced to access the system in a sequential, step-by-step manner. While senior managers often prefer a progressive

requirement, most design consultants prefer the benefit of a more flexible approach. (Lipsky, et al., 2003).

Protection of Privacy and Confidentiality. Employees should have the assurance that their issues will be held in confidence by their organizations and by those working with them to resolve their issues, to the extent possible. Without this protection, many individuals would be reluctant to use the system and the system would fail. This protection must be reinforced continuously by the organization and by those involved in the process. (Lipsky, et al., 2003).

Impartial and Qualified Neutrals. The neutrals, whether internal or external, must be neutral and impartial. They must not have any interest in the outcome of the process, and if the participants perceive that any neutral is biased, the entire credibility of the system is endangered. Along that same line, the neutrals must be trained and qualified to perform their duties, recognizing that different process options require a different skill set. External neutrals should be chosen from established, independent rosters. For internal neutrals, the organization is responsible for insuring that they have adequate training. (Lipsky, et al., 2003).

Diversity. In order to be credible, the internal and external neutrals must have diverse backgrounds, in terms of race, gender, national origin, and general background. (Lipsky, et al., 2003).

Prohibition of Retaliation. In order to be successful and effective, any fair workplace system must contain a prohibition against retaliation. Retaliation consists of any negative consequence resulting to any participant in the process. Without this guarantee, participants who perceive that they suffer retaliation, put the success and credibility of the system at risk. Therefore, any workplace system and its actors must assure users that retaliation will not occur,

and also provide a mechanism for complaints to be addressed if an act of retaliation appears. (Lipsky, et al., 2003).

VII. CONCLUSION

There can be little question that the American workforce has undergone profound and fundamental economic, social and legal change over the last few decades. The transformation in the social contract in the workplace, the development of the global economy and how work is performed, in addition to alterations in the legal environment, have all lead to adjustments in the manner in which conflict is approached in employment. Both in union and nonunion environments, employers have explored more efficient and economical means of managing conflict and resolving workplace disputes, both internal and external to the organization. While some of the processes are more focused on internal conflict management, others are more concerned with external dispute resolution.

Unfortunately, more current research is lacking on the utilization of these systems, and their effects. As indicated above, in 2003, the authors of the original Cornell study concluded that the earlier 1997 study was still the most comprehensive study available. While the authors remained confident that the usage of and satisfaction with these systems had increased, this conclusion was based on field research alone. (Lipsky, et al,, 2003). These scholars as well as others have suggested the need for new research based on a new paradigm of multivariate factors in order to more fully evaluate the efficacy of these systems. (Lipsky & Avgar, 2004; Bingham, 2007). In 2007, the authors of the Cornell study pointed out that evaluations of integrated conflict management systems was often frustrated by the differences between internal program sponsors and outside, often academic, program evaluators. For example, they noted that academic evaluators value the purity of their research consistent with accepted social science

standards, whereas program sponsors and administrators have objectives that are much more pragmatic. (Lipsky, Seeber, Avgar & Scanza, 2007).

Nevertheless, it is clear that much effort has been expended in how best to design and implement these programs. However, more research is necessary to determine the efficacy and efficiency of these approaches in managing conflict and reducing employment disputes.

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