

Mediation in the Workplace

By: Marcel C. Faggioni

Prologue

Grievance arbitration has been employed as the predominant method in which to deal with workplace dispute for years. With accountability and efficiency becoming greater concerns in lean times, both Employers and Unions are now beginning to realize that other options of dealing with conflict have to be utilized. Different formats of workplace mediation are now beginning to make inroads in the workplace dispute resolution forum. Benefits to both working relationships and finances are being recognized and attributed to dispute resolution methods that focus on relationship-building and indirectly, cost reduction. It's a matter of employers assessing their current employee or labour relations environment and selecting the means that would best suit their needs.

Although formal workplace dispute resolution has been ingrained in work processes for years, conflict has become such an accepted part of work life that not enough attention is paid to resolving it at times. Knowing how to effectively handle dispute should be essential to any manager's skill set. Whether in a unionized environment or not, due to extensive media exposure of labour disputes everyone in both the public and private sectors has become at least somewhat familiar with the grievance arbitration process. Although arbitration is final and binding, the path to this ultimate resolution is often riddled with high cost and adverse effects to the labour-management working relationship. This has forced employers and unions to explore the merits of alternative and preventive methods of workplace dispute resolution.

The Grievance Arbitration Process

The grievance arbitration process is the predominant forum for dispute resolution in the world of labour relations. Grievance arbitration continues to be a means by which the parties, typically a union and an employer, could ensure industrial peace during the life of a collective agreement. The process involves the use of a neutral third-party to decide on a question in dispute arising from the collective agreement. The neutral third-party could be embodied as a sole arbitrator or as a tripartite board of arbitration. Generally, the person or persons participating in an arbitration board are practitioners in the field of labour relations. The grievance arbitration process has taken on many of the characteristics of a courtroom procedure, along with many of its trappings; including prohibitive costs. As a result, organizations and labour groups have ventured to consider and utilize alternative means of resolving their impasses and outstanding disputes.

One of the more popular forms of alternative dispute resolution mechanisms currently in use is grievance mediation. With grievance mediation, a neutral third-party mediator is mutually selected to facilitate the resolution of their dispute. This is quite different from an arbitration process in the sense that under arbitration, the arbitrator makes a final and binding decision;

while under the mediation scheme, the mediator does not impose a decision, but rather facilitates and fashions a resolution with the complete involvement of the disputing parties. Recent data suggests that grievance mediation has been an effective method of resolving outstanding disputes at a much lower cost to the participants.

Handling Disputes

Disputes at the organizational level encompass a number of different scenarios; including interpersonal conflict, sexual harassment or just plain harassment, employee versus employee conflict, employee versus management conflict, organizational change, etc. Various methods may be employed to deal with these disputes. In some cases, neutral fact-finding may be a means by which the root of conflict is unearthed and brought to the surface through objective investigation and recommendations for resolution. In other scenarios, the use of relationships by objectives (RBO) may be the best means of resolving a conflict on a broader scale. Under RBO, the disputing parties are brought together in order to ventilate their grievances and complaints. Once this is done, the parties, with the assistance of one or two (2) mediators/facilitators, develop terms by which the parties could assume a much more peaceful co-existence. The terms are generally principles by which both parties could establish a more productive working environment without undertaking potentially destructive confrontational approaches when dealing with one another. The emphasis in effectively dealing with disputes is to address the root of the problem at the early stages of the conflict. Disputing parties tend to become more polarized with respect to their positions as time goes on.

Helping Prevent Disputes

Education is the key. Managers sometimes forget that they are required to effectively manage employees, not just programs or exceptional caseloads. They therefore require an intimate understanding of organizational policies and procedures and/or collective agreement language. Although human resources staff are to be resources on such issues, as well as issues directly related to labour legislation, it is both inefficient and impossible for them to be involved in all decisions made by managers in their interactions with staff. Senior management should arrange to have its human resources staff, or if unavailable an outside human resources consultant, train its managers on the workings of human resources management and labour/employee relations. This will help prevent the misapplication of policies and procedures and collective agreement terms and conditions by managers. A consistent and sound management platform will no doubt help prevent workplace dispute.

Senior management should also ensure that they keep an eye on dispute 'hot spots' in the workplace. It should investigate areas with high levels complaints or grievances in an effort to explore the root of the problem, be it management style, problematic employees or the nature of the work itself. Regardless of the source, such preventive measures are helpful in promoting cooperative working relationships and overall efficiency.

Preventive mediation can be instituted to resolve poor workplace relationships, to clarify issues of potential conflict or tackle dispute hot spots. This process fosters open and frank communication of the issues related to the dispute or potential conflict so that the focus is switched to conflict resolution, rather than the achievement of positional goals. In essence, the parties work together to resolve the dispute through a mutual understanding of each other's issues and ideas for resolution. This process is somewhat related to negotiated rule-making, which involves the negotiating of workplace rules and practices between those most involved to help ensure full understanding and buy-in for those affected. A mutually agreed-upon set of rules, much like a collective agreement, should prove to be more readily adhered to by management and staff.

Making the workplace more rewarding and enriching for employees is also a definitive step in promoting workplace harmony. Quality of Work Life (QWL) programs seek to involve employees in the decision-making process. It resembles negotiated rule-making but on a more regular basis. In fact, such programs become entrenched in an organization's culture. Essentially, employees have a say in how their jobs are conducted and operate. Consequently, employers are provided with an ongoing audit and self-improvement mechanism as the fate of work processes are continually being effected by those directly involved.

A word of caution . . . obviously, no method is foolproof. The organization has to be prepared and committed to an alternative dispute process and if so, it has to choose the method most conducive to its current labour environment. Buy-in is essential, and as with any other mediation or dispute resolution process, the parties have to be committed to resolution. In the end, it is this demonstrated commitment that facilitates understanding and cooperation.