

Workplace Disputes Minutes: Steve Klatsky

I attended the first meeting on the Workplace Dispute group meeting on 28 Oct, and thought I would report to you what occurred and some specifics.

1. Generally:

Over 140 attendees from 45 agencies, with at least 10 folks from DOD elements. The acquisition and claims meetings apparently had about 40 people each. The group was divided into about 12 small groups to discuss what participants needed in the way of assistance, and what they thought the working group should and should not do. While they tried to put all the DOD people together in the same group they did not. The small group facilitators, who seemed to all be from FDIC, seemed to try to view all of DOD as monolithic. All of us DOD folks described that we had to be treated separately. After the small group session ended, each group gave a report out, from which the para 2 specifics come.

By the way, per yesterday's DOD meeting: At no point did any of the co-chair even hint that they would be dealing with policy matters--directives, binding or coercive in nature, nor did they mention future Attorney General activities with respect to government-wide initiatives. I certainly will look out for that in future sessions.

2. Specifically:

The following are items that were reported out to the entire group by the 12 small group facilitators, and some of my thoughts on a few.

1. Federal Employee Unions: The IAG (interagency group) will consider inviting Federal employee union representatives to future sessions. SAK: makes sense to me, especially, you need buy in from union on ADR programs and processes that deal with issues covered by the negotiated grievance procedure. In the AMC REDS (Resolving Employment Disputes Swiftly) program, our three pilot sites all report union support for ADR.

2. Evaluating/ Assessing/Measuring ADR Success: Several groups expressed the need for assistance from other agencies who have tried re determining how to measure ADR success, so that management will continue to support and devote resources. SAK: The August 1997 GAO study: Employers' Experiences with ADR in the Workplace concluded that one overriding problem with ADR is the lack of metrics or methods to measure savings and benefits.

3. Recognition: There is a need to recognize individuals whose ADR work has been beneficial to agencies.

4. Management Acceptance of ADR: There is concern that although top management may express support for ADR, it is the middle managers and first-line supervisors who must be convinced on a day-to-day basis.

5. Role of EEO Counselors as Mediators: The basic question here is whether there is an ethics issue when counselors in an EEO office act as third-party neutrals. SAK: This is a multi-faceted issue. I participated as an adjunct faculty member for the Defense Equal Opportunity Management Institute Mediation Course in September. Most of the students were EEO counselors, managers, officers. They are very confused as to the relationship between ADR and the traditional counseling role played by EEO. This is especially so, since EEOC has long stated that the fact-finding process of USACARA and OCI is a form of ADR. I taught from the draft EEOC 1614 ADR section and noted that the EEOC management directive may address this. A section of the draft 1614 on ADR states that " (it is open as to) whether the mediator or counselor will complete the counselor's report if mediation or other means of ADR fails." This has EEO professionals very nervous, and may cause EEO to view ADR as a threat to their future.

6. Mediation--Ethics: Concern raised about confidentiality of mediation process; that is, what aspects of the transactions occurring during mediation can or can not be revealed. SAK: The reenacted ADR legislation added a narrow confidentiality provision. Lots of unanswered questions.

7. Sharing Insights: The IAG Web Site has forums to discuss issues. SAK:great!

8. ADR Options beyond Mediation: What are other possible ADR processes for workplace disputes? SAK: Our REDS program offers a menu that includes mediation, peer review panels and factual discovery. I personally think using mediation is great. But, it is important to view ADR as an opportunity to improve workplace environment, and not just to resolve actual or potential disputes. Mediation only does not do this.

9. Budget: A problem? Obviously, yes. SAK: Management must accept the start-up costs inherent to beginning ADR. They have to trust that this will be beneficial as against long range cost of litigation.

10. Managers View ADR as a "give away". Hurts use and expansion of ADR. SAK: Management is the barrier to expanded use of ADR. ADR requires active participation of managers--they can not hide behind technicalities or be protected by an agency representative. One of our local union Presidents said to our REDS review team that his union likes ADR because it requires "poor managers" to explain themselves, and "exposes" poor management.

11. Data on cost comparisons between ADR and traditional dispute resolution means: Necessary to maintain top management commitment to ADR. SAK: One of my reasons for participating in the IAG. We will need this as we move from REDS pilots to AMC-wide use.

12. SES ADR Performance Evaluation for ADR: Mentioned that SES personnel should have supporting ADR as a performance rating. SAK: This might turn into a policy issue that OSD would be interested in.