



**US Army Corps
of Engineers[®]**

Case Study #14

ALTERNATIVE DISPUTE
RESOLUTION SERIES



**A Case Study in Dispute Resolution
System Design: The Corps of Engineers
Early Resolution Program (CEERP) for
Allegations of Discrimination**

May 1997

IWR Case Study 97-ADR-CS-14

The Corps Commitment to Alternative Dispute Resolution (ADR):

This case study is one in a series of reports describing techniques for Alternative Dispute Resolution (ADR). The series is part of a Corps program to encourage its managers to develop and utilize new ways of resolving disputes. ADR techniques may be used to prevent disputes, resolve them at earlier stages, or settle them prior to formal litigation. ADR is a new field, and additional techniques are being developed all the time. This case study is a means of providing Corps managers with information on how to apply ADR to the Corps. It also suggests a framework for managerial decision-making regarding disputes. The information in this report is designed to stimulate thinking and encourage innovation by Corps managers in the use of ADR techniques.

These case studies are produced under the proponency of the U.S. Army Corps of Engineers, Office of Chief Counsel, Lester Edelman, Chief Counsel; and the guidance of the U.S. Army Corps of Engineers Institute for Water Resources (IWR), Alexandria, VA, Dr. Jerome Delli Priscoli, Program Manager.

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***A Case Study in Dispute Resolution System Design:
The Corps of Engineers Early Resolution Program
(CEERP) for Allegations of Discrimination***

Alternative Dispute Resolution Series
Case Study #14

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**THE CORPS OF ENGINEERS EARLY RESOLUTION PROGRAM (CEERP)
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INTRODUCTION

The U.S. Army Corps of Engineers (Corps), like many federal agencies, receives several hundred informal discrimination complaints a year. Of these informal complaints, 10-13 per month would normally become formal complaints requiring administrative processing under Equal Employment Opportunity Commission (EEOC) regulations.

The procedure for processing these complaints is time consuming, labor intensive, and very costly. Average time for the full administrative process is from 1 to 3 years, and in some instances can take from 4 to 7 years. Costs for individual complaints can go as high as \$60,000 if the complaint ends up going through the full administrative and judicial process. The number of agency personnel required to administer the process and to support the agency's position and the time dedicated to these efforts strains an organization with limited resources. Finally, while litigation results in a decision, it does not fix workplace problems nor improve management-employee relationships.

“I found the development of CEERP to be an exciting and rewarding experience because we were able to supplement the traditional adversarial discrimination complaint process with nonconfrontational ADR techniques.”

--Anita Gomez-Bennett, Chief of U.S. Army
Corps of Engineers EEO Office

In 1992, the Corps decided it needed to take a fresh approach for complaint procedures. A decision was made to focus on early resolution of allegations of discrimination by using Alternative Dispute Resolution (ADR) techniques. The term “alternative dispute resolution” describes its origins. ADR is an effort to find alternative means to resolve problems by means other than adversarial processes such as litigation. The goal of ADR is to reach mutually acceptable agreements. ADR uses a spectrum of techniques -- such as facilitation, mediation, and arbitration -- to achieve these agreements. Many of these techniques involve the use of a trained third party who is neutral on the issues in dispute. This third-party neutral may advise solely on how the parties work together to resolve the issue (process), or may recommend options for resolution (content).

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The Corps has used Alternative Dispute Resolution (ADR) techniques since 1985 to resolve contractual disputes related to its world-wide construction and environmental cleanup activities. More recently the Corps has been utilizing a technique known as Partnering, which is a preventative approach to dispute resolution. These activities are part of the Corps ADR Program, sponsored by the Chief Counsel of the Corps, Lester Edelman. The ADR program has been administered by the Corps' Institute for Water Resources, with Dr. Jerome Delli Priscoli serving as Program Manager. The entire team that set up the Corps' ADR/Partnering Program was recently awarded the Hammer Award by the Secretary of Defense, as an outstanding example of reinventing government.

In July 1992 the Corps, at the request of Ms. Anita Gomez-Bennett, the Corps Chief of Equal Employment Opportunity, established an Alternative Dispute Resolution Joint Task Force on Equal Employment Opportunity. The task force's job was to identify how ADR techniques could be applied to the traditional administrative process. Over the next four years the task force used a systems design process to develop the new program -- called the Corps of Engineers Early Resolution Program (CEERP) -- and conducted two phases of pilot testing. In December 1996 the task force recommended the adoption of CEERP on a permanent basis, and submitted it for approval by the Chief of Engineers and Secretary of the Army. The program was approved by the Department of the Army on December 18, 1996.

The CEERP project has been remarkably successful in resolving problems early and at the local level. This success has generated considerable interest on the part of other agencies, both within the Department of the Army, the Department of Defense, and in other federal departments and agencies.

"CEERP is an idea whose time has come. It works."

--Harold C. Eaton, EEO Officer

This report describes how CEERP was designed, how CEERP works, and how it was evaluated. It is intended to provide a one-stop description of the program for other agencies, as well as inform people throughout the Corps about the CEERP story.

Section 1 describes how CEERP was designed. Section 2 provides a detailed description of how CEERP works. Section 3 presents the resolution rates during the two-year pilot test. Section 4 is a summary of two sets of interviews with field and headquarters personnel who participated in the CEERP pilot testing. Section 5 is a summary of lessons learned during the pilot testing.

SECTION 1: DESIGNING THE CORPS OF ENGINEERS EARLY RESOLUTION PROGRAM (CEERP)

THE DECISION TO USE ADR

The Corps' decision to try a new approach was prodded by several considerations:

- (1) There were problems with the existing discrimination complaint process -- it was time-consuming and expensive, and when the process was over it often didn't resolve underlying workplace problems or improve management-employee relationships.
- 2) The Corps was experiencing a significant rise in the number of informal discrimination allegations and formal EEO complaints.
- 3) The Corps knew ADR worked because of its successful use in other functional areas.
- 4) The EEOC made changes in its regulations which encouraged the use of ADR by providing 60 more days for informal resolution when ADR is used.

“Personnelists need to be part of the ADR design team because so many EEO complaints concern personnel actions.”

--Dan Carpenter, HR Specialist

SETTING UP THE TASK FORCE

The first step was the establishment of a task force called the Corps of Engineers' Alternative Dispute Resolution Joint Task Force on Equal Employment Opportunity. The task force was normally referred to as “the EEO-ADR Task Force.” The EEO-ADR Task Force was made up of EEO officers and specialists, Human Resources personnel, and Labor Counselors from all levels of the Corps (Districts, Divisions, Headquarters). The Chair of the task force was Frank Carr, the Corps' Chief Trial Attorney and Dispute Resolution Specialist, who was also active in setting up the Corp's ADR Program in his role as Chief Trial Attorney for the Corps. Jean Riggs, the EEO Office's Complaints

“The use of a systems design approach in the development of CEERP resulted in a product that maintains the integrity of the EEOC discrimination complaint process while offering employees and managers new tools to resolve and rebuild relationships.”

--James A. Huffman, EEO Complaints Manager

Program Manager, and Linda Beckles, Chief Labor Counselor, served as task force coordinators at Corps headquarters.

THE SYSTEMS DESIGN APPROACH

The System Design Approach follows a careful deliberative process for establishing an ADR program. The basic steps in this process are:¹

Perform a Needs Analysis

The needs analysis focuses on an organization's real concerns. As part of this analysis the organization identifies: (1) *interests*, what the organization wants to accomplish by using ADR, (2) *principles*, standards to follow in pursuing the interests, and (3) *sources of conflict*, the substantive, procedural, and interpersonal problem sources, and the attitudinal or institutional barriers to resolution.

Design a System

Designing a system consists of (1) selecting the ADR method(s), (2) creating procedures, and (3) preparing informational materials and (4) and considering budget constraints. Program designers need to carefully describe the method and procedures. ADR terminology is sometimes used by organizations to describe very different things, so a detailed description is needed to prevent any confusion. Program designers also develop publications describing the program, and

¹ This description of ADR systems design is taken from Frank Carr, *How to Design a Dispute Resolution Program*, Commentary, Vol. 12, No. 3, March 1994 and Frank Carr, *Alternative Dispute Resolution: A Deliberative Process to Establish an Organizational Program*, Federal Bar News and Journal, Volume 40, No. 7, August 1993.

awareness training materials that will be used during pilot testing. Finally, designers identify a budget for the pilot testing including training, personnel time, and cost of external third parties (such as external mediators).

Conduct Pilot Testing

The purpose of pilot testing is to observe the designed system under actual conditions before totally committing the organization to the ADR program. It also gives a chance to test methods and implementation approaches. Initial steps include:

- Set a completion date for the testing program
- Define precisely the procedures that will be used during the pilot
- Select the sites at which these procedures will be tested
- Secure local management support for ADR and the test program
- Conduct both awareness training and skills training for individuals involved in program implementation
- Provide technical assistance to people implementing the pilot program

Evaluate the System

Collect and evaluate information from the pilot test sites to determine whether the ADR method and procedures are effective. Specific steps include:

- Identify the factors that affect the organization's perception of success
- Define measurable goals
- Identify the measurable indicators that goals are being met
- Collect the information
- Analyze the information and identify any changes that are needed

Implement the Program

Assuming the pilot has shown that the ADR approach can be effective, implement the program incorporating the needed changes identified during the pilot test. Implementation requires obtaining senior management support, providing incentives for using the program, and continued support, review, and reinforcement.

HOW THE CORPS USED THE SYSTEM DESIGN APPROACH

The Corps used the system design process described above to develop the CEERP. Here is a summary of the Corps' experience:

CONDUCTING A NEEDS ANALYSIS AND DESIGNING THE SYSTEM

During mid-1992 the EEO-ADR Task Force worked together in a series of workshops to analyze the existing complaint program, identify the obstacles to dispute resolution, define interests and principles for a new program, and select an ADR method. Because the task force had representatives from all levels of the organization, task force members were able to provide insights about organizational needs at each level of the Corps. The task force also reviewed the use of ADR by other federal departments and agencies to resolve discrimination complaints.

The task force considered a number of possible ADR techniques including conciliation, mediation, facilitation, peer review, disputes review panels, settlement conferences, and non-binding arbitration. After considerable research and deliberation, the task force decided to use mediation as the ADR technique most suitable for resolution of EEO complaints, and developed a procedure for offering mediation as an option to the standard administrative procedure during the pre-complaint process. The task force concluded that the new mediation option should be tested at one district in each Division of the Corps.

The task force also developed informational materials describing the procedure, prepared awareness training lesson plans, and scheduled training of Corps personnel who would serve as mediators. It also developed forms to collect the information needed for program evaluation.

"This system of alternate dispute resolution can and has allowed both parties to return to the business at hand without the acrimony normally associated with the adversarial process."

--Omar M. Zen, Labor Counselor

CONDUCTING PILOT TESTING

The Corps issued an Engineer Circular (regulations) describing the steps to follow during the pilot program. The pilot test was the first approved use of ADR procedures to resolve EEO complaints in the Department of the Army.

The Corps concluded that, as a matter of both convenience and cost, mediators would need to be Corps employees rather than external professional mediators. The task force members and EEO Officers and specialists from each district attended a 40-hour mediation skills training course that included extensive role-playing of cases similar to those participants might be expected to mediate. The mediation training was conducted by private professional mediators under the Corps ADR Program contract.

To support CEERP, the task force developed lesson plans and slides for awareness training that would be given to managers, union officials, and employees to explain CEERP. It also issued "TIP" papers on how to implement the program.

EVALUATING THE PILOT PROGRAM

At the end of the first year, the results from the pilot program were positive, but the number of mediated cases was so small that it was hard to make strong statistical claims. So the decision was made to expand the program to cover the entire organization and conduct a second phase of pilot testing.

Based on the first year's experience, however, one change was made in the program. EEO Officers who served as mediators discovered that by using the skills they had learned in mediation training, they were often successful at resolving pre-complaints when a problem first surfaced. Based on this experience, the Corps decided to authorize a front-end 3-day period during which the EEO Officer has an opportunity to intervene and attempt to resolve a problem informally before an EEO Counselor is assigned. This process is called "conciliation." At the end of the three days, if the problem has not been resolved, the EEO Officer refers the person to the normal EEO pre-complaint counseling, a process that must be completed within 30 days. After counseling is completed, but during that 30 day period, the person making the allegation may be offered the opportunity for mediation. When mediation is accepted, it must be completed within 60 days. If an issue remains unresolved, and the aggrieved person wishes

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to continue with the allegation, the process reverts to the traditional EEO administrative process.

“We all worked really hard on this project because ultimately we believed in its value.”

--Marianne E. Price, EEO Officer

The second year of the pilot program was completed late in 1996. The results were extremely encouraging:

- The Corps was able to resolve over 77% of pre-complaint problems through conciliation within the first three days after they were brought to the attention of the EEO Officer.
- The Corps was able to resolve 65% of the remaining pre-complaint problems that used mediation.
- CEERP has reduced discrimination complaint transaction costs by approximately 90%.

In addition to these measurable benefits, CEERP has made a less tangible but no less important contribution to improved communication between Corps employees and managers. [More information about the results during the pilot testing is provided in Section 3 and Section 4.]

Following completion of the pilot program, the task force met to evaluate the program. Based upon this evaluation the task force made several changes before recommending that CEERP be made permanent. Among the changes made by the task force were:

- The list of circumstances when mediation would not be offered was simplified.
- The role of the Corps Division EEO Officers (the Corps has three organization levels: district, division, and headquarters) was expanded to include oversight management responsibility for the ADR program both at the division level, but also at all district offices within that division.

The task force also made a number of minor revisions: the Engineering Circular was rewritten as an Engineering Regulation; the awareness training lesson plan was revised to make the training shorter; a plan and criteria were developed to certify mediators; the information pamphlet for employees was revised; and the evaluation forms were simplified. The task force also recommended that there be some sort of continuing internal advisory committee for CEERP that would meet on an annual basis to advise the Corps' Director of EEO.

IMPLEMENTING THE PROGRAM

In December 1996, the EEO-ADR Task Force presented a recommendation that CEERP be made permanent for handling pre-complaint allegations of discrimination. The Department of the Army approved CEERP on December 18, 1996. The Corps has begun full implementation, based on the plan developed by the EEO-ADR Task Force.

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SECTION 2: HOW CEERP WORKS

CEERP has an early-resolution focus, targeting the “pre-complaint” period as the best time to resolve a problem. CEERP makes two major changes in the normal EEO pre-complaint process:

- 1) A 3-day conciliation period is inserted at the front end, before the pre-complaint processing clock begins to tick, and
- 2) If the person with the problem agrees to mediation, the pre-complaint process is extended an additional 60 days to conduct mediation in an attempt to achieve a mutually acceptable resolution. If there is no resolution of the problem, and the individual wishes to proceed with a formal complaint, the EEO Officer uses whatever time is left to complete pre-complaint processing.

These changes are exceptions to the normal EEOC procedures. However, the EEOC regulations state that if an agency has an approved ADR program, it can extend the time taken on the informal process. The Department of the Army approved the Corps’ ADR program on a pilot basis, allowing the exceptions for the duration of pilot study. Subsequently the Army approved CEERP on a permanent basis, so the exceptions remain in effect so long as the ADR program remains an option.

Here’s more information on each of the two ADR opportunities:

Conciliation

The term “conciliation” is defined as:

“...an informal process involving a neutral third party who assists others in resolving problems by working on communications and relationships. The conciliation process is similar to mediation; however, the conciliator takes a less active role with the parties. Conciliation precedes mediation and focuses on reducing tension through clarifying facts and understanding the value of good relationships.”²

² U.S. Army Corps of Engineers Engineering Circular No. 690-1-693, 30 April 1995, pg. 10.

As discussed above, the conciliation period was added after the first year of the pilot project. District EEO Officers involved in the program observed that after mediation training they were able to use mediation skills to resolve a number of problems before they were even referred to EEO counseling. If informal problem-solving was going to be not only permitted but encouraged, the Engineer Circular had to provide clear authority to offer this opportunity.

“It is axiomatic that resolution of workplace disputes at the earliest practicable stage benefits both management and the aggrieved individual.”

--William E. Gulley, Labor Counselor

Because the process is informal, each EEO Office may handle the conciliation period in a slightly different manner. One of the most frequent approaches is to have initial conversations with both the “aggrieved person” (the official term used for the person raising the problem) and the supervisor or manager alleged to have engaged in discriminatory behavior. Following this, the EEO Officer may call a meeting with the person making the complaint and the supervisor or manager, either together or separately. The purpose of this meeting is to give both parties the opportunity to be heard, identify the issue(s), and explore options for resolution. Conciliation provides a comfortable and neutral atmosphere for communication. Corps staff involved in CEERP report that an important benefit of the program is improved communications generally. They feel a real benefit of the program is an improved working relationship, not just resolution of the immediate problem.

If the individual raising the problem is satisfied with the outcome from conciliation, and has no need to pursue the problem, a Memorandum for the Record is prepared. This Memorandum is shown as Appendix I. The key sentence in the Memorandum is: “After conducting the informal inquiry, and discussing the findings with you, you stated that the matter has been resolved to your satisfaction and you accept my findings.” The Memorandum should be signed by both the aggrieved person and the EEO Officer.

If the aggrieved person is not satisfied after conciliation, the individual is referred to a counselor, which starts the 30-day clock on the EEO pre-complaint process.

Mediation

A mediator is a neutral third party who assists the parties in reaching a mutually satisfactory resolution of a dispute.³ In many ways, a mediator does most of the same things a conciliator does: makes sure people feel listened to, creates a safe environment for discussion, helps clarify the issues, and assists with generating options for settlement.

The differences between conciliation and mediation have to do with the greater formality and structure of the mediation process, the mediator's level of control over the process, and the amount of participation by the parties in defining their interests and reaching settlement. Conciliation is more informal than mediation. The parties do not elect to enter conciliation; the EEO Officer simply undertakes to do whatever can be done to improve communication and define the real problem. Often this leads to resolution. With mediation, the EEO Officer issues a formal invitation to the aggrieved person to enter into mediation, and this person decides whether to enter into it, signing an agreement to do so. The mediator is a neutral person who sets up and directs a 1-2 day mediation session, involving face-to-face meetings between the parties. The mediator can be more active in controlling the process because the parties agreed to enter mediation. The mediator may choose to caucus with the parties, work with the parties to define their interests, and may even propose a solution that might be acceptable but which neither party is willing to propose. The mediator can not make decisions for the parties. The aggrieved person may choose to leave mediation at any time.

“Mediation allows the parties to meet and discuss the “real” issues of the conflict. Often times this is the first time the parties have ever discussed the “true” issues and sought resolution.”

--Carol Crottie, Mediator

³ EC No. 690-1-693.

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The Corps does not make the offer to mediate in all situations. Under CEERP, the EEO Counselor provides information on the mediation process and its availability as part of the first interview. Then the EEO Counselor conducts the required inquiry into the circumstances of the complaint and briefs the EEO Officer. The EEO Officer in turn meets with the local ADR Team. The ADR Team consists of the EEO Officer, a Labor Counselor (an attorney), and a representative appointed by Human Resources. The ADR Team decides whether to offer mediation based on the circumstances of the case and an assessment of the potential for resolution. The reasons not to offer mediation are:

- The pre-complaint alleges class discrimination
- The aggrieved person is a non-Corps applicant for employment
- The pre-complaint concerns a matter which has already been decided by the Department of Army, the EEOC, or a U.S. Court

Once an offer is made, the aggrieved person must decide by the 29th day of the pre-complaint period whether to accept mediation. Once that decision is made, the pre-complaint clock is extended 60-days for mediation. The aggrieved person must sign a formal agreement to enter mediation. A copy of this agreement is provided in Appendix II. This signed agreement specifies that the aggrieved person may terminate mediation at any time, and has the right to proceed with the formal administrative process the aggrieved person so chooses.

In addition to deciding whether to offer mediation, the ADR Team also recommends a Resolution Official. The Resolution Official is the Corps

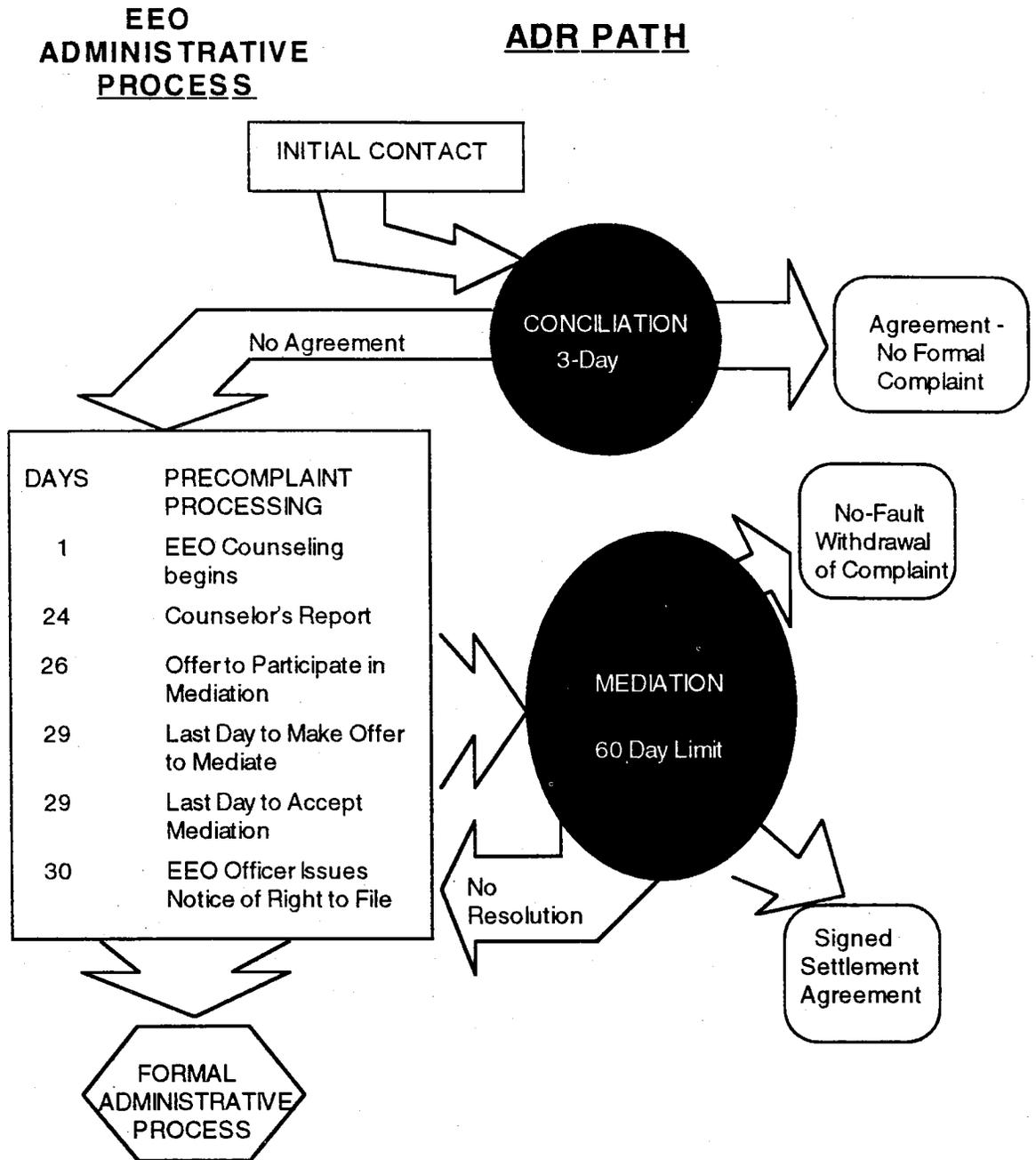


FIGURE 1
CEERP PROCESS FOR EEO PRE-COMPLAINTS

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official who can make binding commitments on behalf of the Army. One of the goals of mediation is to reach a final settlement. This is more difficult if no one in the room has the authority to make commitments on behalf of the Corps. The Resolution Official has full authority to bind the Corps within the limits of the law and EEOC regulations.

In a few cases, the Resolution Official might be the manager or supervisor involved in the case, if the expectation is that a settlement can be achieved directly between the supervisor and the person making the allegation. More frequently, the Resolution Official is a senior management official from the District or Division Office. This is particularly important in cases where the person making the allegation needs to feel that the problem is being heard by someone who can resolve it, or the Corps needs to be confident that the supervisor or manager has acted in a manner consistent with EEO regulations and law. The Resolution Official will normally sit in on the mediation session, to learn all the facts of the case and be able to make commitments if appropriate.

The EEO Officer selects the mediator within seven days. Normally the mediator will be a Corps employee, trained in mediation. The EEO Officer has the option of using an outside professional mediator, but that is usually not done for cost reasons. Since the mediator must be someone other than the EEO Counselor who conducted the initial inquiry into the problem, and the number of trained mediators within a district is usually 1-2 people, the mediator is often an EEO Specialist or EEO Officer from another Corps District Office.

The mediation session takes 1-2 days. The structure of the session is at the discretion of the mediator, with the consent of the participants. If settlement is reached, a signed settlement agreement is prepared. It is also possible to have a partial settlement, i.e., some issues may be settled, but others remain unresolved and go through the formal complaint process (Appendix III). An individual may also refuse to sign a settlement agreement but decide not to press his/her claim through the formal EEO process.

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I have literally seen a manager and employee, at the beginning of mediation, not look at each other across the table. After a couple of days delving deeper into the conflict, the parties reached a settlement and the two were able to shake hands and smile. Two months later...the relationship is still very good!"

--Sharon K. Brown, EEO Officer

The complete schedule of events is shown in Figure 1 on the previous page. The days shown are the final limits -- the tasks may be completed earlier than shown.

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SECTION 3: CEERP RESOLUTION RECORD DURING PILOT TESTING

The resolution record for CEERP during the pilot testing demonstrates clearly the value of early dispute intervention by a neutral third party. In 1994, the first year CEERP was used, mediation was used in 16 cases with a 92% resolution rate. During 1995 and 1996, both conciliation and/or mediation were used. The 1995 - 1996 resolution rates were 72% and 92% respectively, almost twice as high as the Corps resolution rates (48% and 49%) during the same two-year period, and more than double the Army rate of resolution (38%) for EEO pre-complaints. These resolution rates are summarized below:

Table 1
RESOLUTION RATES 1994 - 1996

Period	Conciliation	Mediation	Total ADR	Resolved	Resolution Rate
1994	-	16	16	14	92%
1995	53	38	91	72	79%
1996	151	78	229	208	91%

Although more cases were resolved by conciliation than mediation during 1995-1996, this does not mean that mediation is a less useful tool. It is far more likely that conciliation resolves the easiest problems, leaving the more difficult allegations for mediation.

When both techniques are combined, it leaves only 9% of the cases not resolved at the end of the pre-complaint process. Even if a complaint is filed, CEERP produces a better climate for settlement later in the EEO Process. A significant number of the pre-complaint problems that were not officially resolved through conciliation and mediation did not result in formal complaints or, if a formal complaint was filed, were resolved within a few weeks of filing.

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SECTION 4: SUMMARY OF INTERVIEWS

In addition to measuring the resolution rate, the Corps has made two appraisals of how the CEERP program is working, using informal interviews with those people most directly involved in implementing the program. The first series of interviews was conducted by Frank Carr, the EEO-ADR Task Force Chair, and Jim Huffman, who replaced Jean Riggs as the Complaints Program and Policy Manager in the Corps' EEO Office in Washington D.C. Another series of interviews was conducted by Creighton & Creighton, Inc., the Corps ADR Program contractor. Creighton & Creighton primarily interviewed task force members of EEO Officers or Labor Counselors who had been active in implementing the pilot test. A brief summary of the overall perception of CEERP as reported in these interviews is provided below, with more detail in Appendix IV. Section 5 contains a number of "lessons learned" from these interviews.

"As a result our complaints are resolved earlier and with a higher degree of satisfaction... The program works!"

-- James E. Redic, EEO Officer

Carr and Huffman Interviews

There was a high level of support for the CEERP. Employees consistently used words such as "fair" to describe the process. Also, they said that both conciliation and mediation helped them get underlying issues or the real problem out in the open. Aggrieved persons found they could raise problems they were unable to talk about in the working environment. Supervisors and managers also reported that conciliation and mediation provided a process that made communications easy. Problems could be discussed during conciliation or mediation that could not be discussed in the workplace. Supervisors and managers described the program as less formal, less threatening, and less likely to result in litigation. Both aggrieved persons and supervisors found that problems could be resolved at the local level, by the people directly involved, without intervention by outside parties.

Creighton & Creighton Interviews

All but two of the people interviewed rated CEERP at 8 or higher on a scale of 10 (outstanding). Five people gave the program a score of 10. The two people

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reporting lower scores did so not because they were unhappy with the program, but because they felt the program was still not being used as widely as it should be in the Corps. In fact, their scores for use of the program in their own Districts were both 8.

When people were asked how they thought employees would rate the program, the

“CEERP is a process that allows two parties to sit down with each other, talk with each other and most importantly, listen to and understand each others position.

-- William T. Hill, Mediator

average score was 7.8 on a scale of 10. A distinction was made between employees who had experienced the program, and those who had not, with employees who had gone through the program very supportive. A few people reported that employees who “didn’t get all they expected” did not rate the program as highly. The general feeling was that the more the program is used, the more employees will have a positive reaction.

Everyone who was interviewed enthusiastically supported having CEERP become permanent. They were also excited by the possibility that it might serve as a model for the rest of the Army or for other agencies. Many commented on the possibility of using the ADR approach for other workplace disputes. They could envision a dispute resolution center where employees could go to resolve a variety of issues through the use of conciliation and mediation.

SECTION 5: LESSONS LEARNED

Participants in pilot testing learned a number of lessons that will be useful in implementing the program now that it is permanent. These lessons may also be of value to other agencies hoping to establish a similar program. A summary of lessons learned is provided below:

- ***Well-trained, supportive EEO Officers are crucial to the program's success***

Based on the pilot test, the comfort level and enthusiasm of the EEO Officer is critical to success. If the EEO Officer is well informed, understands the program, and is committed to it, the program is far more likely to be successful. During pilot testing it became clear that some Corps EEO Officers did not yet understand or feel comfortable with conciliation and mediation. This can occur if individuals are not sufficiently trained, and do not feel confident of their own skills as a mediator. This discomfort can affect their attitude towards the program. In other cases, informal resolution is a new way of doing business and requires a change in people's understanding of their job.

“...CEERP...fosters better working relationships between the parties because it addresses their underlying interests. Allowing the parties to decide for themselves how to resolve their disputes has been much more satisfying for the participants than the traditional adversarial process.”

--Denise D. Frederick, Labor Counselor

- ***A strong, cohesive ADR Team is an important ingredient of success***

All Corps offices have an ADR Team consisting of the EEO Officer, Labor Counselor, and a representative from Human Resources. The basic tasks of the ADR Team are to review the Counselor's report, determine whether to offer mediation, recommend a Resolution Official, brief the Resolution Officer, and ensure availability for reviewing settlement agreements. Effective ADR Teams can also play an important role in championing the program.

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During the pilot testing there were reports of tensions or “partnering problems” in some ADR Teams. In some cases the problems were due to personalities, but there were organizational conflicts as well. The Corps will continue to work to build more cohesive teams. Without a strong ADR Team there is considerable danger that team members may give conflicting advice to the Commander.

- ***There must be clearly defined management responsibility for championing the program and making sure that all Commands are using it***

At the end of the pilot test period, most of the people interviewed expressed some disappointment or frustration that some parts of the organization were not using the program. Several people reported that some EEO Officers did not understand the program, and that the program was too complicated and difficult to explain to employees. Others suggested that it was going to be easier to get consistent application of the program once it was no longer a pilot study, but official Corps policy. They felt that once this occurred, it would be easier to get the remaining parts of the organization on board. Based on this evaluation, the task force concluded that it was necessary to clarify management responsibility for program implementation. Division EEO Officers, who already review the activities of District EEO Officers, were given increased responsibility for evaluating how the program is used in each District, providing a quarterly report to the Division Commander.

“I think we need to focus attention on getting employees and managers to understand and trust these alternative procedures.”

-- Patricia West, EEO Officer

- ***Ensure that employees fully understand the process***

In some Districts, employees were hesitant to voluntarily use mediation. In a number of cases this was because employees did not understand the process, or EEO Officers were not fully confident of the program. Employee willingness to use the process increased as other employees in the organization had positive experience with it. More emphasis by Commanders, and the involvement of unions may also increase employee participation. One of the most crucial factors

in employee willingness to use the process is their perception of the impartiality of the local EEO Office.

- ***Avoid the “everybody who goes through mediation gets something” mind set***

Care has to be exercised to ensure that mediation is not perceived as a “give away” technique. The attitude that anybody who goes through mediation is somehow “entitled” to money or some other material benefit does not bode well for a successful program. Managers or supervisors should not feel they have to come up with something material. These attitudes should be addressed in both employee and managerial training.

“In CEERP mediation, the parties can come together in a neutral environment to discuss the issues and attempt resolution with mediator assistance before the situation becomes emotionally or negatively charged.”

-- Linda Beckles, Labor Counselor

- ***Work with employee labor unions while establishing the program***

Those EEO Officers who reached out to unions found them generally responsive and supportive of the program. Some have included the unions in any training. Others report that unions want to meet with the ADR Team in their districts.

- ***Combine awareness training with other mandatory agency training***

Staff attendance at CEERP awareness training (about a 30-minute session) is voluntary, so only some Corps employees have gone through the course. The attendance rate can be improved by combining CEERP training with other EEO training that is mandatory, or with other Army mandatory training sessions. Combined training is particularly beneficial to field offices, as repeat visits are very time consuming and expensive.

- ***Provide a separate training program for managers***

Managers need to discuss issues beyond those covered in employee awareness training, such as the role of the Resolution Official, and expectations of success. The managers' training and employee awareness training can be done during the same day.

- ***Ensure timely access to mediators***

In some Corps districts there were problems getting access to mediators quickly. Sometimes they had to borrow them from other districts, and mediation had to be timed based on the mediator's availability. The Corps has chosen to rely primarily on internal mediators, but even if contractors were used, there would still be scheduling issues.

- ***Ensure adequate staffing***

Conciliation can be used only during a very short three-day time period. This means there must be sufficient EEO staff to be able to address problems rapidly when employees raise them. If EEO Officers are not able to respond in a timely manner, the opportunity to use conciliation is lost.

- ***Avoid over-emphasis on resolution rates***

Some individuals expressed the concern that if a program is driven by the pressure to get high resolution rates, it is possible to lose sight of the value of fostering communication, improved relationships, and teamwork. High resolution rates are not necessarily synonymous with harmonious working relationships. Even when there is no immediate resolution the process may be beneficial in other ways. Even without full resolution, the area of disagreement may have been reduced. Communication between supervisor and employee is sometimes improved even if there is not resolution. Mediation may create an understanding of the problems that leads either to eventual resolution prior to adjudication or to withdrawal of the complaint.

Also, there are alternative explanations for why resolution rates are different from one district to another. Some organizations have more serious and complex problems. Also, in some districts so many of the "easier" problems are being resolved through conciliation that resolution rates for mediation may actually decline because only the most difficult problems are reaching mediation.

- ***Ensure that reporting procedures are not cumbersome***

EEO Offices are more likely to use conciliation and mediation if the reporting requirements are not cumbersome, and the forms are “user-friendly.” Many reporting requirements are driven by EEOC and Army regulations, not Corps requirements.

- ***Address the concern of managers and supervisors that they will be pressured to settle***

Supervisors and managers, far more than employees, are likely to feel pressured to reach a settlement. This sense of pressure may be created by the EEO laws and regulations themselves, not by the ADR process. But because the ADR process is new and different, it may get blamed for the pressure supervisors and managers feel. These concerns need to be discussed openly and directly during training, and during the preparation for mediation.

- ***Brief the Resolution Official properly before mediation***

Resolution Officials need to clearly understand the authority they have to resolve disputes on behalf of the Commander. Also, they need to know the limits of settlement under the EEO laws. The Resolution Official should be given a formal written designation spelling out this authority. The Resolution Official also needs to understand that during the mediation itself most of the discussion takes place between the aggrieved person and the supervisor or manager. Often the Resolution Official is in the position of putting a stamp of approval on an agreement worked out directly between those two parties. One of the reasons it is important for the Resolution Official to go through the mediation is to develop a thorough understanding of the problem. This may help lead to a settlement during the mediation, or it may permit the Resolution Official to find the basis for a resolution even after mediation has been concluded.

“The mediation process can really bring the best out in the participants. As a mediator, I have been impressed with the sincerity and creativity that the parties bring to the process.”

-- Kathleen E. Moore, Mediator

- ***Provide follow-up training and other skills-building activities for mediators***

During the pilot test, Corps in-house mediators received one week of mediation training, and often had the opportunity to co-mediate before working alone. A number of mediators still expressed a desire for additional skills building, including a “refresher” training course, and periodic meetings among mediators. As such, there may need to be several different levels of training.

- ***Use co-mediation as a training method for mediators***

A number of districts have used two mediators, a process called “co-mediation.” While there are concerns about the additional cost associated with using two mediators, co-mediation has proved to be effective and provides good experience. Inexperienced mediators find co-mediation with an experienced mediator is very important in building their confidence and comfort with being able to mediate alone. So while it may not be essential for settlement, it is an important tool in developing skilled mediators.

“When two mediators are used, they can be mutually supportive of each other and complement each other’s skills to assure that the process runs smoothly.”

-- Bill Meeks and Harry Brown, Mediators

- ***Develop criteria for evaluating the qualifications of external mediators***

Several districts would like the flexibility of using mediators from other agencies or hiring private mediators. This is seen as helping solve the problem of having mediators readily available. On the other hand, some are worried about how to tell which private mediators are truly qualified. There are considerable differences in what people are calling “mediation.” Some kind of quality control is needed. The ADR Team has proposed criteria for assessing who is qualified as a mediator.

- ***Clarify the relationship between Corps Labor Counselors (attorneys) and the Resolution Official during legal reviews***

There is a need for a legal review of proposed settlements to ensure that the settlement does not include remedies beyond those permitted law. This is the pure legal review. However, the role of the Labor Counselors is less clear when they advise Resolution Officials about the management impact of the proposed resolution. Ultimately, decisions about management impact belongs to the Resolution Official.

- ***The involvement of attorney representation may be useful***

There have been several positive experiences from having employees represented by attorneys. In particular, attorneys have done a good job of representing the concerns of employees who are timid or who have a major communication problem with a supervisor or manager.

- ***Employees should be informed that while they have the right to be represented by an attorney, the agency cannot pay for attorney fees for an informal process***

In CEERP, an aggrieved person has the right to be represented by an attorney. However, the government does not pay attorney fees for representing an employee during the informal process, including conciliation and mediation. The aggrieved person must be prepared to pay attorney fees without the possibility of reimbursement. This fact should be explained during awareness training and prior to mediation, so that there is no expectation of recovering attorney's fees as part of the settlement.

- ***Recognize that conciliation or mediation will not resolve issues if people aren't motivated to resolve them***

A small percentage of individuals think going through the entire complaint procedure up to adjudication is a way of getting even for perceived grievances. Mediation may be useful in making these attitudes visible, but may not be sufficient to achieve resolution.

***A Case Study in Dispute Resolution System Design:
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Appendix I

ER 690-1-693
25 May 97

[Use Letterhead Stationery]

Your Office Symbol]

Date _____

MEMORANDUM FOR THE RECORD

SUBJECT: Conciliation With an allegation of Discrimination

1. This refers to your visit to the EEO Office on [date] to discuss a matter pertaining to [List issues and bases - Who, What, When, Where, Why and How].
2. After discussion, it was determined that the matter raised an allegation of discrimination. You asked me to try to resolve the matter through conciliation prior to assigning the matter to an EEO Counselor for pre-complaint counseling. I have therefore provided you with a Rights and Responsibilities Notice. You have also designated below your desires regarding anonymity and right to representation.
3. This is to inform you that mu conciliation efforts have concluded without written resolution. As such, I have assigned your matter to [name], EEO Counselor, who will contact you to schedule an initial interview.

OR

This is to inform you that my conciliation efforts have resulted in a written resolution. A copy of the negotiated settlement agreement (NSA) is attached.

OR

This is to confirm that you do not wish to continue pursuing the allegations of discrimination which you presented to me on (date). Attached is your Notice of Right to File a Discrimination Complaint.

EEO Officer/EEO Specialist *Signature & Date*)

I request _____ or waive _____ my right to anonymity.

I request _____ or waive _____ my right to representation at this time.

rec'd _____
Aggrieved Person (*Signature & Date*)

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Appendix III

U.S. Army Corps of Engineers
Early Resolution Program

UNRESOLVED ISSUES AFTER MEDIATION

(Note: Before completing this form, direct aggrieved person to read Privacy Act Statement).

NAME: _____

DCPDS CATS NO. _____

DESCRIBE THE ALLEGED DISCRIMINATORY ACTION(S)/ISSUE(S) NOT RESOLVED DURING MEDIATION:

PRIVACY ACT STATEMENT

AUTHORITY: Federal Sector Equal Employment Opportunity, 29 CFR Part 1614, Section 1614.105 describes pre-complaint processing.

PURPOSE AND USE: The purpose of this form is to provide information concerning unresolved issues remaining after completion of the mediation process. The form will be used by EEO Officers to analyze the types of issues, if any, that mediation has not been able to resolve.

DISCLOSURE: Personal information provided on this form is given on a voluntary basis. Failure to provide this information, however may result in the form being completed from other available sources without the aggrieved person's participation.

Aggrieved Person *(Signature & Date)*

EEO Officer *(Signature & Date)*

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Appendix IV

ADDITIONAL POINTS

***A Case Study in Dispute Resolution System Design:
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Appendix IV ADDITIONAL POINTS FROM INTERVIEWS

Below is a summary of additional points covered in the interviews conducted by Creighton & Creighton, Inc., the Corps ADR Program contractor:

Management Support for CEERP

Senior management is viewed consistently as exhibiting very high levels of support for CEERP. Senior management sees the program as a way of getting things resolved in a timely manner, and found it consistent with Corps values about "taking care of people." There is a difference of opinion among middle-level managers about the program. Those managers who have actually used conciliation or mediation, would rate the program quite highly (in the 8-10) range. Those managers who have not used the program would be more neutral (5-6) either because they don't know much about the program, or don't like the fact that -- once the ADR Team has made a decision to offer mediation, and the employee has accepted that offer -- it is compulsory for affected supervisors or managers. There are numerous stories about managers who started out as skeptics but are now enthusiastic supporters of the program.

There were no reports of management opposition or resistance to the program. This program is recognized as having full support of the senior management of the Corps, and receives a high level of support in each of the Districts. It helps that the Corps is experienced with ADR, and has had significant benefits from its use in other areas.

Issues on Which CEERP Was Used

Conciliation and mediation were used to resolve issues as diverse as:

- denial of training
- abuse of time
- position classification
- denial of promotion
- performance appraisal
- inability to communicate with supervisor or didn't like boss
- sexual harassment

The people interviewed reported that a number of problems had to do with broader workplace issues, even though they were presented initially as related to race, age, gender, or disability.

There were some dramatic results with rather unexpected issues. One case involved an employee who was diagnosed as manic-depressive, a form of mental illness. A mediated settlement was reached which included her request to meet with her co-workers to explain the symptoms associated with the disease, so they could be more understanding. Another interviewee described two employees who were "at each other's throats" about work assignments. The mediation took a full two days, but led to acceptable solutions. Another case that started out as a problem about sexual harassment, ended up having to do with poor communication. There was also successful resolution of cases involving "multiple-filers," people who have filed a number of complaints. One involved successful resolution of a complex problem with a person who had filed 12 complaints, and another reported resolution of a case that involved entrenched racial hostility and claims of 3 reprisal actions.

Benefits of Using Conciliation and Mediation

The benefits from using conciliation and mediation that were most frequently reported included:

- Successful resolution
- Improved communication and employee relations generally, even if there isn't resolution of all problems
- Easy for people to talk -- issues were more readily identified and understood -- even when people had been unable to talk about these problems in the past
- Perceived discrimination problems were resolved when the focus was put on the problem rather than on discrimination as the perceived cause of the problem
- Employees are heard by management officials above their immediate supervisor
- Non-biased
- Looks at fundamental interests not "rights"
- Helps the participants see each other as people, not as roles.
- Fits the regulations but still has flexibility
- About problem-solving, not blame

Most people liked having a structure for the conciliation process. Previously, many EEO Officers had tried to resolve things informally but lacked either the structure or the skills to pull it off.

Several people who received mediation training said that there were side-benefits from being involved in the program. The skills they had learned proved very useful in other parts of their job, and also led to improved communication in their personal and family lives.

Conciliation/Mediation Techniques that Proved Most Helpful

A number of conciliation or mediation techniques were singled out as having particular value:

- Spending time with both people before the formal session
- Just getting people talking to each other
- Having all the information in front of both parties
- Defining roles and expectations during the process
- Providing a structure in which the relative power of the parties is equalized -- overcoming the fear of talking with the supervisor
- Breaking down the issues, separating the issues so they're not all intertwined
- Defining objective criteria or standards and measuring the solutions against them
- Outlining the issues on a flip chart or butcher paper, letting both sides see that their issues have been heard
- Getting the participants engaged in seeking their own solutions, coming up with a resolution themselves
- Caucusing with both parties after a joint session.
- Immediately processing the settlement agreement once there is an agreement to settle.

Long-Term Perception of Equity and Fairness

Employees feel that settlements have proven equitable and fair in the long-run. There is little "buyer's remorse," with people agreeing to a settlement but feeling unhappy about it later. The fact that settlements are reached voluntarily increases the perception that the outcome was fair.

Adoption throughout the Corps

CEERP is not yet used in all District throughout the Corps, although this will be changing now that the pilot test period is over, and CEERP is institutionalized. Surprisingly, the most frequent explanation for why some Districts have not yet implemented CEERP has to do with the EEO Officers themselves. Reasons given include: EEO Officers in smaller Districts are feeling totally swamped; some see adoption of this program as additional work not as a solution; some feel insecure and uncomfortable as mediators, so have not promoted it; others are reported to be more comfortable with their old role.

Most useful skills during mediation training

When asked which skills in the mediation training had proved most useful, the skill most frequently mentioned was active listening or reframing. This is the skill of summarizing in your own words what the other person has said, checking it out to be certain it was understood. This skill is useful not only in assuring people they have been heard, but often identifies fundamental issues or concerns without all the accompanying blame and accusation, so that both parties can focus on the real issues.

Other skills that proved valuable were learning to listen for fundamental interests, and learning to break problems down into manageable issues. During the training, mediators learned to acknowledge issues with an active listening response, then write them up on a flip chart. This helped people to separate the issues so they could be addressed one-by-one.

Role play practice was mentioned as being very important, even by people who hated to role-play. People appreciated the chance to actually apply the skills in near-actual circumstances, with critique from experienced mediators. They saw it as particularly important in building confidence. The role-play practice was also important in learning how to display objectivity and neutrality.

The training also taught EEO officers a whole different role. Until the training, many thought of themselves as processors of complaints or as having to come up with the solution to the problem. In mediation they learned how to create an environment in which the people involved in the issue took responsibility for solving their own problem. This change in role represented a fundamental shift in how they did their job.

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