

Early and Effective Dispute Resolution in Higher Education

Jim Wohl, Ombuds Officer
University of Connecticut, USA

Conflict is an inherent feature of most universities. Generally, universities are driven towards multiple and often conflicting missions, are composed of multiple constituencies under differing contractual relationships with the university, exhibit formalities of shared governance while maintaining a hierarchical, even monastic, organizational structure, and are under perennial financial duress. The competition among campus constituencies and university missions breeds many complicated interest-based conflicts that are not well suited for the formalized grievance procedures often found in academic institutions. These features of academe and changes in wider society have prompted universities to explore different methods of managing conflict. The two most common practices adopted by American universities are ombudspersons and campus mediation programs.

The perspective shared here is of an ombudsman with experience at three large public universities in the United States. This perspective, like the observations of the other panelists, centers on how the ombudsman role is positioned within an overall conflict management system in a university. As we have heard, the overall conflict management system is usually composed of unassisted, informal, advocacy, and adjudicative modalities of resolving conflict. The degree to which an institution relies on each of these distinct approaches is best understood by looking at dispute resolution from two angles. First, the degree to which

constituents (faculty, non-faculty employees, students, administrators) are organized within the organization and proscribed apparatus for addressing complaints impacts, if not defines, the channels available to complainants. Secondly, the legitimacy of each channel has direct impact on the utilization of the each of the other channels, amplifying the early resolution of conflict. For example, contractually specified grievance procedures, arising out of collective bargaining or shared governance agreements, and channels designed for the student population, including whether students are organized as a union or government, will typically result in well defined multistep grievance systems with an appeal process. The effectiveness of these systems in adjudicating disputes, in terms of timeliness, trust, and legitimacy, will impact how desirable alternative unassisted, informal, and advocacy routes of dispute resolution are employed. Similarly, trust in and effectiveness of the advocacy channels, most explicitly available in the unionized environment, will influence the use of adjudicative and informal pathways. Moreover, as Lin has described, informal pathways, like mediation programs and ombudsmen, can have a salutary effect, through education and skill development, on the viability of unassisted conflict resolution and problem solving.

As an ombudsman, whose office is defined clearly as an assisted informal channel for conflict resolution, my point of view rests on the proposition that, first, all four mechanisms of conflict resolution mentioned by Lin are necessary in any complex institution, especially universities. Secondly, the trust in and

effectiveness of each of these four systems make each of the other channels more viable and effective themselves. Or, taken from the negative perspective, the absence or ineffectiveness of any one of the channels overly stresses or burdens the other channels, obstructing their effectiveness and threatening their success.

The ombudsman role at both unionized and nonunionized institutions where I have worked is positioned as an early dispute resolution channel. Employees are encouraged, but not compelled, to make use of the Ombuds assistance prior to pursuing more formal adjudicative channels. As such, the ombudsman role is positioned in front of the more formal advocacy and adjudicative methods. In each setting, the formal grievance procedures require that employees must attempt to informally resolve their concern before filing a grievance. In some of these systems, a *looping back* to an informal channel can occur by mutual agreement even after the formal grievance procedures have begun. Thus, the Ombudsman design intends to animate the recommendation or requirement to seek early and informal solutions to grievable problems.

Directing complainants to informal channels enhances advocacy and adjudicative channels.

A common concern of those serving as advocates (eg. union representatives) or adjudicators of employee disputes is the high number of issues that are brought forward that are ill suited for the formal channels. Very often these issues arise out of communication problems or interpersonal frictions rather than discrete

administrative actions or decisions. In these situations, the investigative and evaluative functions of these channels are cumbersome; rarely is there an identifiable policy or procedure that has been violated. Advocates and adjudicators find themselves in the unenviable position of making a judgment on fairness that can be quite elusive. It has been quite common for individuals in these roles to wish the parties had assistance available in exercising the informal solutions they are required to pursue prior to initiating a grievance. Many officers in these positions find that having a venue to which to refer parties in such cases very appealing. According to these officers, early assisted informal conflict resolution therefore has two benefits on advocacy and adjudicative systems: narrowing the catchment of cases to those most suited for these formal channels, and secondly, parties arriving at these channels after unsuccessful assisted informal conflict resolution are better prepared, more articulate in their complaints, and more committed to those processes.

Strong and effective formal channels enhance early conflict management.

When opportunities exist for unions and other constituent groups to serve as strong advocates for employees in controversies with administrators or university policies, the informal work of ombudsman and mediation programs have a more powerful influence in the early resolution of disputes. Similarly, well-designed and legitimate adjudicative methods in the form of grievance panels, external review bodies, and appellate procedures also enhance the informal channels. This is partly true because the specter of a powerful adversarial process waiting

in the wings while an informal approach is attempted can serve as a lever for parties to work harder to find solutions early. In addition, when strong formal channels exist and parties choose to exercise informal options, a message of cooperation accompanies this effort that often invites reciprocal cooperation.

Conclusion

The principle underlying comprehensive conflict management in complex institutions is to provide the types of channels that the people undergoing the conflict would choose to use if they had a choice. Sometimes it is the type of issue itself that makes one channel more appropriate than another and sometimes it is the type of individual that will dictate the appropriate channel. Just as employees seeking interest based results may be dissuaded from adversarial channels, employees seeking to assert their rights or seeking punishment for another are generally ill suited for informal channels like an ombudsman or mediation. What's available to employees dictates the conflict competency of an institution. The adage "if all you have is a hammer, then everything looks like a nail" seems appropriate to the ways an institution provides opportunities to resolve employee conflicts.

Several problems can also result from multi-door conflict resolution channels in an institution. First, having multiple channels can be confusing or intimidating for a minority of employees and stifle their willingness to raise issues. For others, multiple channels can lead to "forum shopping" and abuses of the conflict

management system. A third untoward effect is the problem of elevated sanctions where supervisors or other administrators are more willing to deliver more aggressive or severe penalties on employees knowing that the severity will be later overturned in a confidential manner by an informal conflict resolution channel. In this way, pernicious supervisors can be abusive without facing public sanction by an advocacy or adjudicative process. These uncommon negative consequences rarely outweigh the benefits of multiple informal and formal conflict resolution avenues for employees.