



ADR Newsletter

DEPARTMENT OF VETERANS AFFAIRS (VA)
OFFICE OF RESOLUTION MANAGEMENT (ORM)

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B.J. Ocker -Editor

ORM SAYS FAREWELL TO ROSA C. FRANCO, DEPUTY ASSISTANT SECRETARY

Ms. Rosa C. Franco, Deputy Assistant Secretary (DAS) of the Office of Resolution Management (ORM) retired effective January 3, 2014.

As the DAS, Ms. Franco served as the principal advisor to the Assistant Secretary for Human Resources and Administration on the Equal Employment Opportunity (EEO) complaint process and Alternative Dispute Resolution (ADR) in VA.



With more than 20 years of management experience in the field of EEO, ORM was fortunate to have Ms. Franco as its leader.

Ms. Franco shared following in a message to ORM:

"It has been a great pleasure to work in ORM from its inception and an honor to be at its helm for the past eight years. I will miss working with you to improve the work environment of more than 330,000 dedicated civil servants so they can devote their considerable skills and talents to this honorable mission of ours.

I think back fondly to Hunt Valley, and the excitement and energy of creating a new organization. We accomplished much in those early years. Our achievements have grown exponentially since then, as we have added valuable team members. I am very proud of where we are as an organization".

Please join ORM in congratulating Ms. Franco on her retirement and sending our best wishes on her future endeavors.

IN RECOGNITION OF EXCELLENCE...

...ANNOUNCING THE

2013

ALTERNATIVE

DISPUTE

RESOLUTION

(ADR)

AWARDS.



**Nominate an Individual or Group Who Has Shown Excellence
in Working Toward the Goals of the VA ADR Program.**

Nominations must be submitted to ORM by January 16, 2014.

To request the nomination packet:

E-mail ORMADRAwards@va.gov

Editor's Corner: What does neutrality *look* like?

- B.J. Ocker, ADR Specialist

An important skill required by neutrals during conflict resolution is identifying nonverbal cues from the participants. Equally as important, is recognizing the nonverbal cues given to the disputing parties by the neutral. According to Cherry (2013), "Scientific research on nonverbal communication and behavior began with the 1872 publication of Charles Darwin's The Expression of the Emotions in Man and Animals. Since that time, there has been an abundance of research on the types, effects and expressions of unspoken communication and behavior. While these signals are often so subtle that we are not consciously aware of them, research has identified several different types of nonverbal communication". The most common nonverbal cues are facial expressions and body language; however, appearance is also an important type of communication to consider.

Studies indicate that personal appearance has a direct impact on business outcomes, influencing impressions during interviews, and promotional opportunities. Although there are limited studies related to the impact of appearance on the outcomes of conflict resolution, I contend that the personal appearance of neutrals similarly affects conflict resolution outcomes. Unless the resolution session is being conducted telephonically, typically the first direct contact made with participants is visual; they will see the neutral prior to having a conversation. In this brief interaction, impressions are made and can impact how the session will evolve. It is you that the other person, group or audience sees and before you have time to open your mouth and give an account of yourself, certain assumptions, both consciously and subconsciously, have been made. Research has shown that clothes that are dirty, worn, or wrinkled can give others the impression that you don't care enough about yourself. Some then assume that, if you don't care enough to look professional, you don't care enough to do professional work.

Take in to consideration all aspects of the role of neutral when preparing for a mediation. Keep in mind that personal appearance is as important as being prepared to conduct the session. Ensure that you present yourself in a professional manner with an emphasis on maintaining neutrality. Avoid wearing uniforms or other clothing that identifies your primary duties, or could be perceived as siding with either party.

Remember: First impressions are very important - they can be about attitude as well as dress. Visual impact is at least as important as verbal impact; people will very quickly make assumptions based on your facial expressions, the clothes you wear, how well groomed you are and your body language.



Union may have right to participate in some EEO settlement discussions

By Anjali Patel, Esq., **cyberFEDS**® Legal Editor Washington Bureau

DID YOU KNOW? If a proposed EEO settlement changes any terms of employment that affect bargaining unit members, the law gives unions the right to prior notice and an opportunity to negotiate regarding those conditions of employment, said Steve Sharfstein, the chief of labor relations for the Uniformed Services University of the Health Sciences.

During the LRP audio conference [Where EEO & LR Intersect: Coordinating Efforts for More Effective Agency Management](#), Sharfstein also pointed out that "settlements of EEO matters may not be inconsistent with provisions contained in collective bargaining agreements."

Meetings to discuss a formal EEO complaint settlement fall within the statutory definition of grievance under Section 7106(a)(2)(A) of the Federal Service Labor-Management Relations Statute, he added. As such, unions are entitled to prior notice and an opportunity to be represented at such settlement meetings.

Generally, "the union has a statutory right to bargain over changes in terms or conditions of employment" that affect bargaining unit members, Sharfstein explained. In some instances, the settlement of an EEO matter may establish a new policy or program, or modify an existing one in such a way that a bargaining obligation arises, he explained.

In addition to the right to negotiate, the FSLMRS provides unions the right to be *present* at "any formal discussion between one or more agency officials and one or more employees in the [bargaining] unit if the meeting discusses any grievance or any personnel policy, practice, or general condition of employment."

In addition, the Federal Labor Relations Authority has found that formal discussions include meetings within the formal stage of the EEO process, such as settlement discussions, mediation, and investigation sessions concerning formal EEO complaints. The underlying purpose for the union's presence is to ensure that resolution of the individual complainant's interests are not inconsistent with the rights of the union or other bargaining unit members, and to ensure that any settlement provisions are consistent with collective bargaining agreements.

The FLRA has also found that the union's formal discussion rights do not extend to matters arising at the informal, counseling stage of the EEO process. During the informal stage, an employee has a right to confidentiality. Nevertheless, even settlements at the informal stage need to be consistent with the contract and statutory bargaining obligations, he explained.

Sharfstein stressed that the union has the right to notice and an opportunity to be *present* whenever a grievance is filed or a discussion of general terms and conditions of employment takes place.

It's important to note, however, that the union's "right to attend a formal discussion and the right to negotiate are independent," he explained.

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In fact, 95 percent of EEO settlements probably do not involve changes in conditions of employment that would give rise to a bargaining obligation, he noted. Examples of such settlements include employee-specific relief provisions, such as training to enhance promotion prospects or priority consideration for future promotions, said Sharfstein.

However, settlements that would establish a new mentoring program or modify the merit promotion process would need to be negotiated prior to implementation because the agreement changes general terms and conditions affecting other unit members, he noted.

Of particular note is an FLRA decision finding that the union's right to prior notice and an opportunity to be present at a formal discussion overrides an employee resistance to union involvement. See *Department of the Air Force Tucson, Ariz. and AFGE, Local 2924*, [110 LRP 33498. 64 FLRA 845](#) (FLRA 05/28/10).

EEO negotiability

Agencies have an obligation to negotiate over certain EEO issues and can use the negotiation process to alleviate perceptions of unfairness, Sharfstein said. But "just because something is negotiable doesn't mean management has to agree to it."

The key to negotiating over EEO issues is that agencies can't negotiate something that would excessively interfere with management rights under the FSLMRS or would otherwise conflict with existing laws or governmentwide regulations.

Here are some examples of EEO-related issues unions and agencies may negotiate:

- Processes and procedures for employees claiming reasonable accommodation, such as to whom to submit requests.
- Work assignments or assistance for employees with disabilities or medical conditions.
- Procedures to improve the transparency of certain selection procedures, such as for special assignments or details.
- Specific time frames for processing various steps within the EEO process that do not conflict with those outlined by the Equal Employment Opportunity Commission.

In contrast, here are some examples of EEO-related issues unions and agencies may not negotiate:

- Requiring that vacancies be filled only with qualified employees in underrepresented groups.
- Requiring that jobs be redesigned to enhance promotional opportunities.
- Requiring EEO counselors be appointed from union-submitted nominations list.

November 5, 2013

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Who Likes Conflict?

By Steven Goldman, ADR Specialist

OK, now that your curiosity is peaked I will say most people do not like conflict. Occasionally, some enjoy being challenged with friendly bantering of words and are not afraid of disagreements, but most of the time we prefer to avoid conflict. So what is conflict anyway? The dictionary defines conflict several ways: To come into collision or disagreement, to be contradictory or in opposition, to clash, fight or contend; do battle.

While very few people enjoy the prospect of conflict, it's something that all of us have or will undoubtedly encounter at some point in our lives. We encounter it every day in stores, driving, offices, at home, and with co-workers. It is probably safe to say if you work with at least one person you might encounter conflict. Keep in mind that it is natural, normal, and should be nothing to fear.

We all have lots in common with those we are in conflict with as far as how conflicts get started and why issues escalate to a breaking/boiling point. For the most part, workplace difficulties fall into common categories to include: poor communication or miscommunication, employee attitudes, honesty, insubordination, treatment of others, work habits, etc... A combination of employees, cultures, and policies have the potential to create a highly synergistic team or create some of the most traumatic conflict you've encountered in your career. Either way we all must be able to handle conflict or know your resources for dealing with conflict.

Communication often lends itself to be a huge contributor to and also the resolution of conflict. Word choice, tone of voice, and body language all contribute to whether or not we understand each other verbally, non-verbally, and in written form. Using vague or confusing language causes communication misfires. We all should choose our words wisely and in a way that invites dialogue, makes for a less stressful work environment, and models good communication.

Having difficulty with someone you work with can weigh heavily on you. Conflict isn't fun and exerts a lot of energy and can spill over to involve others in the work area and ultimately the mission. When things escalate to this point it is critical to attempt to resolve the differences and create a conflict free environment. People react to and manage conflict differently. Several people in the same situation may have distinctly different reactions. To make matters more complex, not only do they act differently in conflict, but the same person may respond one way in one situation and react in another way in a different situation. Methods of conflict management styles range from: giving in, avoiding the fight, fighting it out, compromising, and working together. Each method has advantages and disadvantages for each person and situation.

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Avoiding Conflict in the Workplace

By Katherine Graham, from Mediate.com



No employee wants to become embroiled in a workplace dispute. If conflict at work isn't resolved, it can cause stress, frustration, loss of sleep, a bad temperament, illness or other issues for individual employees.

According to research undertaken by personality assessment consultancy OPP in conjunction with the Chartered Institute of Personnel & Development, 85% of employees have to deal with conflict at some point. Perhaps not surprisingly, another big trigger for disputes is the relationship that employees have with their line managers. Is it possible to avoid workplace conflict entirely? The answer is: probably not. Conflict, disputes and disagreements are a part of daily life so it's important that people feel able to deal with them when they arise. However, there are tactics that people can adopt to reduce the risk of becoming involved in conflict that adversely affects their health. We've highlighted some of them below:

1. Be positive.

If you want to work in a more positive environment, you have to be positive. It's amazing how much of an effect a cheerful disposition can have during the working day. In addition, a number of studies show that positive people are better placed to deal with stress, anxiety and challenges. Remaining positive will make it more difficult for others to behave badly towards you, thereby reducing the likelihood of you becoming involved in serious disputes.

2. Be aware of personality clashes.

The OPP report indicates that 49% of workplace conflict can be attributed to personality clashes. Managers find this type of problem difficult to resolve, although there is value in identifying underlying tensions before things become serious.

Avoiding certain individuals in the office won't work but you should certainly not become involved in other people's disagreements. Cliques in the workplace can be particularly damaging and can even result in dismissals if the environment becomes impossible. If anyone asks you to align yourself with them against others, simply say that you value working with everybody.

3. Communicate respectfully.

The old mantra of 'treating people as you would like to be treated' is a good tactic in avoiding workplace conflict. Asking people for their co-operation rather than giving instructions, enquiring about people's weekends and thanking others for help they have given you will help you to maintain positive relationships with others.

You should also be careful of how you convey messages by email. It's easy to cause offence because the other person can't see your body language and you can't adjust what you have said when you see their reaction.

(continued on page 8)

(Who likes conflict? continued)

Conflict can be costly when overlooked and ignored. Resolving conflict at the lowest level possible saves time, money, increased workdays/productivity, and energy. Employees should be empowered to handle the issues themselves.

There's no one cookie-cutter approach for workplace dispute resolution options but our alternative dispute resolution (ADR) program is a great option to consider as a first choice rather than a last resort. Use the ADR process early on to possibly prevent a problem from spiraling out of control. The goal continues to be to break down barriers to communication and build bridges to a better workplace for all.

(Avoiding Conflict in the Workplace continued)

4. Don't get involved in emotional manipulation.

Some people are used to getting their own way by using emotions, be they anger, fear or upset. If they succeed in doing this in the workplace, it will cause resentment and lead to arguments or blame shifting. If you have to deal with someone who regularly becomes tearful, you should simply tell them that you're going to give them some breathing space, walk away and then return at another time. A calm approach will help you to avoid unnecessary conflict and contribute to a better working environment.

5. Know what's important

Disputes can grow from the smallest of issues. Something as inconsequential as taking someone else's lunch from the fridge can escalate into accusations of poor work performance. Once you have an impression of a colleague from a particular incident, you will look for other examples, however small, to reinforce that opinion.

It's important to acknowledge that squabbles will take place now and again and that they should stay at that level – minor disagreements that should be figured out and forgotten.



Looking for ADR resources?

VA Learning University (VALU) has several options for those interested in resources for conflict resolution continuing education. Additionally, an excellent selection of books are available in the Books 24X7 link found on the Talent Management System (TMS) website. Users may also be able to access these books on personal devices including tablets and smartphones.

For more information go to: <http://www.valu.va.gov/Home/TMSResources>

Click on the Books 24x7 link and follow the TMS login directions.



Workplace ADR Program

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Mediation:

A Solution to Workplace Disputes



Core Values "ICARE"

- I**ntegrity
- C**ommitment
- A**dvocacy
- R**espect
- E**xcellence

The Workplace ADR Program solicits articles for VA's quarterly ADR newsletter. The purposes of the newsletter are to communicate information relating to the use of ADR in workplace disputes, and to serve as a resource for those interested in learning more about ADR and its application within VA.

We invite you to submit ideas and articles for the newsletter through your respective administrations:

- ◇ VHA to Sherron Jernigan (10A2E),
- ◇ VBA to Johnny Logan (20M42),
- ◇ NCA to Nicole Maldon (40A),
- ◇ VACO staff offices to your VACO ADR Liaison,
- ◇ Labor organizations to your ADR Council Representative.

We are looking for ideas and articles on ADR related topics, noteworthy activities, initiatives, accomplishments, best practices, or other items designed to educate and inform VA employees and managers on ADR and its benefits in addressing workplace disputes. We hope the VA community will find the newsletters a useful resource for obtaining interesting and helpful information representing ADR activity throughout VA.

For more information, visit our website:

<http://vawww.va.gov/adr/>



Nominate a Colleague for a 2013

ALTERNATIVE DISPUTE RESOLUTION (ADR) AWARD

AWARD Categories:

Individual

- ADR Effort by an Employee
- ADR Effort by a Manager
- ADR Effort by a Certified Neutral
- ADR Effort by an Office of General Counsel Employee
- ADR Effort by a Senior Executive

Team

- A Workplace ADR Program
- A Workplace ADR Committee/Council/Forum

