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Report of the Ombuds Committee

May 1991

INTRODUCTION

The University of Minnesota employs a number of formal and informal procedures in the resolution of University related disputes among faculty, staff and students. The Senate Consultative Committee in the Spring of 1990 appointed a committee (Ombuds Committee) to review and evaluate the various dispute (conflict) resolution models and to make recommendations for an organizational structure that could blend existing programs/services to a paradigm to help faculty, staff and students resolve their conflicts in a confidential and timely manner. The overreaching purpose being to offer information and advice before conflicts escalate into litigious, adversarial situations using valuable university resources in time consuming and frequently unsatisfactory exercises.

The committee spent considerable time and effort in analysing the dispute resolution procedures that are currently available at the University. The first section of this report describes the result of this work. Three models- litigation, mediation, and ombuds service - were considered. For each, the advantages, disadvantages and current availability are discussed.

The second section of the report provides recommendations for changes in current dispute resolution procedures. The recommendations make use of all of the models discussed in the first section with the ombuds service model acting to coordinate and implement appropriate steps throughout the process. It was the intent of the committee to recommend as few changes in the current system as possible. While some changes will be necessary, the principle recommendations provide for filling in gaps where they exist, better overall coordination, and less overlap of services. The overall goal is more efficiency, speed and fairness in the resolution of disputes.

CURRENT AVAILABLE MODELS

Litigation

The current University Grievance Policy which is available to the entire University community follows the litigation model. These procedures include a formal written complaint and response. The parties then initiate discovery proceedings and present evidence to a third party neutral hearing panel. The parties, grievant and respondent, are required to participate in preparing and presenting the evidence. It is highly desirable that the parties have advocates or advisers to assist in this task. The panel decision is based on evidence, policy and precedent. The remedy is imposed without the consent of the parties with the final decision made by the President. (The panel decision is advisory.)

The advantages of this process are that it meets our cultural traditions of "finding truth with resulting justice" and that the facts are presented by the people (parties) with the highest motivation to a good job.

The disadvantages are that personal antagonism may permanently poison relationships within the department, the process encourages parties to conceal information and to use procedural delays, the process is time consuming and complex, the time spent is mostly not compensated (many participant, panel members, advocates) and the process may work to the benefit of the party with more access to information and with the more permanence at the University. These litigious procedures are available only to resolve disputes that allege violation of a University policy or practice, but are not available in the solution of work place conflicts, classroom environment and personal disputes.

Mediation

Mediation is a problem solving mechanism which is available to the University community through the Conflict and Change Center, University Counseling Services and the Institute of Agriculture Extension Services. This process utilizes a third party, who facilitates and guides negotiations but does not make recommendations or decisions on a settlement. Participation is voluntary and settlement is by agreement among the parties. The mediation

process can address narrow or broad issues as determined by the parties. Typically the mediation process includes intake, an orientation session, two or three fact finding meetings, negotiation proposals and a decision representing the realistic best interests of the parties, constituents or organizations.

The advantages of mediation are that it is low cost in time and dollars, allows for attention to multi-party conflicts, a skilled mediator can equalize power imbalances among the parties, and the resolution of conflict usually meets some of the interests of the parties.

The principle disadvantage is that it is highly reliant on the skills of the mediator. If the mediator attempts to impose a solution on the parties or fails to protect a powerless party from an aggressive powerful party, the situation can be made much worse. There are few, if any, due process protections in this model.

Ombuds Service

An independent third-party neutral (ombudsperson) is designated to hear complaints.

The ombudsperson performs the following roles as appropriate:

Counselor - after intake, helps the petitioner to develop a choice of options. The petitioner then chooses how to proceed.

Shuttle Diplomat - facilitates communication between the parties - reframes the situation to address key issues and concerns.

Mediator - helps disputants to come to their own written settlement in a face to face meeting.

Fact-Finder - gathers information relating to the case; researches relevant policies and precedents.

Change agent - acts as an upward feedback mechanism, keeps aggregate statistics to facilitate discussion and solution of general problems.

An ombudsperson does not advocate for either of the parties to a dispute. An ombudsperson advocates for an integrative solution that considers the interests of the parties and the policies of the institution but serves primarily the principles of justice and fairness. Every attempt is made to resolve the problem at its point of origin.

Advantages of the ombuds model are that it is confidential, efficient, and relatively inexpensive in use of time and energy. It builds a sense of community and is satisfying to the participants. The process is informal and does not require advocates. Also, the process identifies chronic problem areas that may lead to a proposal for systemic change in the institution.

The ombuds model does not work well if there is inadequate information or if the ombudsman is perceived to be biased. If the process fails, it may prejudice a later evidentiary hearing.

This model is currently available to students, to those with a discrimination complaint, and to Minnesota Extension staff.

RECOMMENDATIONS

Proposed Process and Functions of the Ombuds Service

The ombudsperson in charge of the case sets time schedules and sees that they are kept.

All notes and records kept by the ombudsperson are confidential. A Statement of Facts will be prepared by the ombudsperson and made available to the parties. It will contain public information or information which the parties have agreed to disclose. It will state clearly those facts that are agreed to by the parties and those that are disputed.

Intake - The complainant provides a full account of the situation from his/her perspective. Based on this description the case is assigned to the Student Ombuds Service (if the complainant is a student), EEO (if the case involves discrimination), Minnesota Extension Service (if the complainant is from this

unit) or Staff and Community Ombuds Service (if none of the above). While intake may be done at any of the preceding offices, the claimant should be referred to the appropriate service as soon as possible, if it becomes necessary to do so. After the ombudsperson in charge of the case has completed the intake and researched relevant policies and/or precedents, the claimant is given a list of options from which to choose. If the claimant wishes to pursue the case with further assistance from the ombudsperson, they must give formal approval before any respondent can be contacted. Periodic meetings by ombudspersons from all tracks will be necessary to review current caseload.

Options to the ombuds process include mediation and litigation through the current Grievance Policy. The ombudsperson may recommend mediation especially if any of the following factors are present:

1. facts aren't known or aren't available and/or parties don't agree on facts.
2. multiple parties and/or issues
3. higher probability of resolution if the parties meet face to face
4. parties are involved in on-going relationships
5. situation does not involve a violation of written university policies or procedures.

If the case is not resolved through the ombuds process and the claimant wants to pursue through the University Grievance Procedure, the ombudsperson shall send the Statement of Facts for the case to the University Grievance Officer with the request that grievance procedures be followed.

It will be necessary to revise the current Grievance Policy so that the Statement of Facts prepared by the ombudsperson serves as the input document for the grievance procedure. The first contact of the claimant with the ombuds service should serve to satisfy the timeliness requirement of the Grievance Policy.

* The Staff and Community Ombuds Service will recruit and train advocates to assist those claimants who are going through the formal grievance process.

Follow up contact with the clients will survey their level of satisfaction with their experience and provide the opportunity for suggesting improvements.

An annual report to the Regents will include evaluation of the service, case statistics such as the type and number of cases, basic demographic information on clients and disposition of cases.

Recommendations for change to the community will be part of this report and will serve as part of the upward feedback change agent function in improving the overall environment of the university for students, staff, and faculty.

Structure

The committee agreed on the need for a Staff and Community Ombuds Service to serve those members of the University Community and the public for which no ombuds service is currently available. Several organizational options were considered. After a series of discussions, the Committee acknowledged that the number of possible organizational structures was many and that a proactive position would be to settle on one plan, agree to test it for a finite period (three years was suggested), and then to evaluate it in order to decide whether the structure is adequate and has worked well so that it can be recommended to Central Administration as a permanent process, is adequate but needs fine tuning and reevaluation, or is so woefully inadequate that it should be eliminated and a different model tested.

The committee recognized that four subsets of the University community (i.e., students, those who have an action before EEO, those who are represented by unions, and those who are in Extension) already have ombuds programs in place. Thus, the Committee, distinguished those who already have the ombuds program in place (the "haves") and the remaining subsets ("all others"). The plan which the Committee finally agreed upon calls for cases involving the "haves" to go directly to the specific "have" ombuds service. The remaining cases, which would involve all other members of the University community (faculty, professional/academic, civil service, student employment and public) would go to the "all others" ombuds service. The process for the "all others" ombuds service

would stipulate that if a case involving any of the "haves" is brought to the "all others" ombuds service, the person who takes the case will immediately refer it to the appropriate "have" ombuds service. Those cases not referred would be handled by the "all others" ombuds service.

The office of the "all others" ombuds service would be staffed by a small number of part-time persons who will be selected from the constituent groups (students, civil servants, faculty, professional/academic, public, EEO, Minnesota Extension). It was suggested that 7 part-time staff be utilized at the outset, each working .2-.4 FTE depending on the dollars available for salary, the amount of service that needs to be provided, and the amount of release time that each could negotiate with his or her unit. The staff from the "have" group (students, EEO, Minnesota Extension) would be designated by the constituent groups (SOS Administrator, Director of EEO, Dean of Minnesota Extension, VP for External Relations). Since the ombuds service program will be housed under the President's office administratively, it is recommended that the President's office conduct an internal search for individuals to represent faculty, P/A and civil service. A person who is presently serving on one of the four "have" ombuds services might be selected. Thus, a person who works for the student ombuds service could have a .2 assignment to the "all others" ombuds service. It is the Committee's expectation that the "haves" representative(s) would make certain that cases that should be directed to one of the "have" ombuds services would actually be so directed. In addition, the Committee expects that each of these representatives would be able to serve as an ombudsperson for the "all others" ombuds service and handle a case in an unbiased fashion without reference to the group with which he or she has the major time commitment. The assumption under which the committee has operated is that all who serve as ombudspersons will be rational, logical, sensitive, compassionate, competent, and unbiased individuals who can effectively serve the ombuds program. The staff will elect one of their members to perform administrative functions. Representatives from all of the ombuds services ("haves" and "all others") will meet quarterly (or more often if necessary) to discuss matters of mutual concern.

An Ombuds Service Advisory Board will be appointed by the Committee on Committees to oversee and coordinate all ombuds activities.

The Committee recommended that the entire ombuds service program ("haves" and "all others") have a 1-800 telephone number so that those on the coordinate campuses will have easy access to the service.

The Committee recommends that the "all other" ombuds service be called Staff and Community Ombuds Service.

Overlapping Services

Since the intake functions of the University Grievance Officer will be performed by the Ombuds Services, the University Grievance officer appointment may be reduced or eliminated. It is possible that the remaining functions of the University Grievance Officer may be performed by the Chair of the University Grievance Committee.

The Student Advocate Service (SAS) and the Faculty/Academic Staff Advocacy and Grievance Advisory Program will no longer perform intake or mediation functions. They will deal only with grievances that have been referred to the University Grievance Officer by the appropriate ombudsperson.

SAS will continue to assist students charged with scholastic misconduct or a violation of the Student Conduct Code.