

GAO

Report to the Chairman, Subcommittee
on Civil Service, Committee on
Government Reform and Oversight,
House of Representatives

August 1997

ALTERNATIVE DISPUTE RESOLUTION

Employers' Experiences With ADR in the Workplace



General Government Division

B-274297

August 12, 1997

The Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform and Oversight
House of Representatives

Dear Mr. Chairman:

In testimony before your Subcommittee in late 1995, we stated that the administrative redress system for federal employees was inefficient, time consuming, and costly.¹ A number of federal agencies have recognized these problems and, in recent years, have looked for some means of alternative dispute resolution (ADR) to help lessen the burdens associated with the redress system, which was designed to protect federal employees against arbitrary agency actions and prohibited personnel practices, such as discrimination or retaliation for whistleblowing. Based not only on the fact that Congress has endorsed ADR in the past, but also that individual agencies have taken ADR initiatives and the Equal Employment Opportunity Commission (EEOC) has encouraged its use, it is apparent that policymakers and agency managers have been considering the advantages of using ADR to resolve federal workplace disputes.

As part of the Subcommittee's efforts to reform the redress system, you asked us to provide information on (1) private sector companies' and federal agencies' reasons for using ADR; (2) the types of ADR these organizations have made available to their employees through procedures other than those under collective bargaining agreements and the extent to which they have put these ADR processes in place; and (3) the results, if any, they have achieved by using ADR. You also requested that, for illustrative purposes, we select a small number of private companies and federal agencies and examine (1) their experiences in planning and implementing ADR processes; (2) the extent to which they evaluated their ADR processes and the extent to which they reported that these processes have been successful in resolving workplace disputes and in lessening the costs—in time and money—associated with formal redress processes and litigation; and (3) the lessons they reported learning in planning, implementing, and evaluating their ADR processes.

Results in Brief

Many private companies and federal agencies have used ADR to avoid more formal dispute resolution processes: lawsuits and—especially in the

¹Federal Employee Redress: An Opportunity for Reform (GAO/T-GGD-96-42, Nov. 29, 1995).

federal sector—formal administrative redress procedures. One reason for the use of ADR, as reflected in the literature and reported by private and federal officials, was that traditional dispute resolution processes have been costly, in both time and money, and became especially so as the number of discrimination complaints rose sharply in the early 1990s. In addition, a number of new laws and regulatory changes in the 1990s encouraged organizations to use ADR in workplace disputes. Moreover, ADR often focuses on disputants' underlying interests; and the EEOC, among others, has noted the potential advantages of techniques that focus on understanding the disputants' underlying interests over techniques that focus on the validity of their positions (e.g., a complaint of discrimination or a defense against a complaint).

Through a broad examination of ADR use involving interviews with experts and practitioners, a review of the literature, and our earlier survey of the private sector,² we identified five main ADR methods available to private sector employees and, in some instances, to federal employees: ombudsmen, mediation, peer panels, management review and dispute resolution boards, and arbitration. According to our survey, in 1994, about 52 percent of private companies reported having some type of ADR process in place for discrimination complaints; these companies reported that they generally instituted ADR organizationwide. In contrast, 31 percent of the 75 federal agencies responding to a 1994 EEOC survey made ADR available for discrimination complaints. By 1996, this percentage had increased to 49 percent, based on responses from 87 federal agencies to an October 1996 EEOC survey. But as our review of the literature, our interviews with experts and knowledgeable officials, and our case illustrations showed, ADR availability or use was not pervasive—or even necessarily widespread—within agencies that reported having some ADR capability.

Private companies responding to our survey generally reported employing a wider variety of ADR methods than did federal agencies. Of the private firms that reported using ADR, about 80 percent used mediation, about 39 percent used peer review panels, and about 19 percent used arbitration. EEOC's surveys showed that most federal agencies that reported having ADR used only mediation.

²We sent a questionnaire to a nationally representative sample of businesses with more than 100 employees according to reports filed with EEOC in 1992. Survey results were reported in Employment Discrimination: Most Private-Sector Employers Use Alternative Dispute Resolution (GAO/HEHS-95-150, July 5, 1995).

No comprehensive data were available on ADR results in the private and federal sectors; but, as our broad examination of ADR use and our case illustrations showed, experts and officials at organizations using ADR generally considered it to be successful in resolving workplace disputes, thereby avoiding more formal dispute resolution processes.

Comprehensive data were unavailable on the extent to which ADR has saved organizations time and money, largely because most ADR programs are relatively new, and because time and cost savings have not been widely tracked or evaluated. Experts and officials at organizations using ADR generally believed, however, that avoiding litigation or more formal redress processes produced savings.

The five companies and five federal agencies that we studied as case illustrations reported having varied but generally positive experiences with ADR (only one—the Department of Agriculture—found serious flaws in its ADR program). Officials at nine of these organizations reported that efforts had been made to involve employees in developing their ADR programs, to train key participants, and to make their ADR programs known and understandable throughout the organization. The fact that the companies were not subject to the rules that govern the federal employee administrative redress system, which provides for hearings before an administrative judge, allowed them to establish ADR practices—particularly in the area of arbitration—that are not found among federal agencies. The extent to which the companies established these practices varied from one company to the next.

Most of the organizations we studied gave only limited attention to evaluating the results of their ADR programs and the time or cost savings these programs may have generated. All 10 organizations gathered at least some data on dispute resolution rates, although these data were not generally conclusive. To the extent that data were available, mediation, peer panels, management review boards, and arbitration (which is generally not available to federal employees outside of the collective bargaining process) all appeared to contribute to the resolution of workplace disputes. Mediation appeared to be particularly useful, leading to resolution in a high percentage of cases in all but one of the organizations we studied.

Data were limited regarding time and cost savings. None of the companies and only two of the agencies reported data on the amount of time saved by the use of ADR. The two federal agencies indicated that using ADR had cut about one-third to one-half the time it had normally taken to resolve

discrimination complaints. (Two other agencies indicated that ADR processes, by resolving discrimination complaints in their early stages, had reduced the number of formal complaints that were filed, along with the necessity to spend time on the associated formal procedures.) Cost savings were difficult to establish. Only one company and one federal agency had performed evaluations that produced data regarding cost savings. The company reported that with ADR in place, the overall cost of dealing with employment conflicts, including the total cost of the ADR program, was now less than half of what the company used to spend on legal fees for employment-related lawsuits. The agency that had gathered data on cost savings found that, when the cost of settlements was factored in, it was unclear whether its ADR process was less costly than the traditional equal employment opportunity (EEO) complaint process.

The lessons that the organizations we studied reported learning in planning, implementing, and evaluating their ADR programs varied, but many of them centered on ensuring that the appropriate ADR methods were adopted and that they fulfilled their potential. Some of the lessons organizations reported learning were the importance of top management commitment in establishing and maintaining a program, the importance of involving employees in the development of their ADR programs, the advantage of intervening in the early stages of disputes so as to focus more on underlying interests than on hardened positions, the necessity to balance the desire to settle and close cases against the need for fairness to all concerned, and the fact that ADR programs could help improve managers' understanding of the roots of conflict in their organizations.

Background

Federal employees have long had substantial workplace protections through an administrative redress system that was designed to safeguard them against arbitrary agency actions and prohibited personnel practices, such as discrimination or retaliation for whistleblowing. But the redress system—especially insofar as it affects workplace disputes involving claims of discrimination—has been criticized by federal managers, as well as by employee representatives, as adversarial, inefficient, time consuming, and costly.

For executive branch employees, the first opportunity for redress is within their own agencies. For matters that are not resolved at the agency level, or not handled solely under the terms of collective bargaining agreements, three independent federal bodies process employee complaints and appeals.

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- EEOC adjudicates employee complaints of discrimination, which generally are investigated first by the agencies for which the employees work;
 - the Merit Systems Protection Board (MSPB) adjudicates, among other things, employee appeals of firings or suspensions of more than 14 days; and
 - the Office of Special Counsel investigates employee complaints of prohibited personnel practices—in particular, retaliation for whistleblowing.

In some cases, a single complaint may be handled by more than one of these agencies, adding to the time and costs involved in its resolution. Finally, the law allows for further review of these agencies' decisions in the federal courts.

The Administrative Dispute Resolution Act of 1990, which required federal agencies to develop ADR policies, charged the Administrative Conference of the United States (ACUS) with (1) assisting agencies in developing ADR policies and (2) compiling information on agencies' use of ADR. The act sunset in September 1995, and ACUS was abolished in October 1995. The Administrative Dispute Resolution Act of 1996 permanently reauthorized the 1990 act and charged the President with naming a successor to ACUS to facilitate and encourage agency use of ADR. As of July 1997, no successor had been designated.³

The term ADR covers a variety of dispute resolution techniques, usually involving intervention or facilitation by a neutral third party. ADR methods—arbitration and mediation in particular—date back to the early 1900s. Originally, ADR was used mostly to resolve disputes involving employees who were covered by collective bargaining agreements. More recently, organizations began applying ADR methods to disputes involving other employees as well.⁴

Although ADR has been used as a tool—especially in resolving disputes that arise from miscommunication, personality conflicts, or alleged discrimination—many experts and practitioners cautioned that ADR is not appropriate in all cases. Inappropriate situations, they said, include

³When ACUS was abolished, the Federal Mediation and Conciliation Service (FMCS), which shared responsibility with ACUS for helping agencies develop ADR policies, assumed sponsorship of the Federal ADR Network (FAN), an interagency group that provides assistance to agencies in designing ADR systems, obtaining resources, or acquiring neutrals. In addition, FMCS assumed responsibility for ACUS' ADR research and clearinghouse activities.

⁴In discussing the availability of ADR to federal employees, this report does not include procedures available under collective bargaining process.

incidents of violence or cases of severe sexual harassment. Under the Administrative Dispute Resolution Act, ADR is also considered inappropriate when authoritative resolution of a matter is required for precedential value, the matter in dispute has significant government policy implications, or it is important to produce a full public record of the proceedings.

Scope and Methodology

To provide information on private sector companies' and federal agencies' reasons for using ADR, the types of ADR these organizations have made available through procedures other than those under collective bargaining agreements, the extent to which they have put these processes in place, and the results they may have achieved, we spoke with experts and practitioners knowledgeable about the use of ADR in the private and federal sectors, and reviewed the literature about ADR and information available from past reports and surveys.

To illustrate private and federal sector organizations' experiences in planning and implementing ADR processes, the extent to which they evaluated their ADR processes and the extent to which they reported that these processes have been successful in resolving workplace disputes and lessening costs, and the lessons they reported having learned, we judgmentally selected for study five private sector companies and five federal agencies that had some experience with ADR. These organizations reflected a range of ADR practices; had ADR processes in place a sufficient length of time to provide information about use, outcome, and lessons learned; and had at least some use or outcome data available. In the private sector, we studied Brown & Root, Inc.; Hughes Electronics Corporation; the Polaroid Corporation; Rockwell International Corporation; and TRW Inc. In the federal sector, we studied the Department of Agriculture, the Department of the Air Force, the Postal Service,⁵ the Department of State, and the Walter Reed Army Medical Center. We also studied the Seattle Federal Executive Board's Interagency ADR Consortium, a "shared neutrals" program, which provides for the sharing of ADR resources among federal agencies in the Seattle area. In

⁵In this report we included the Postal Service under the grouping of "federal agencies," even though it is an independent governmental establishment. We have done so because the Postal Service is bound by most of the same discrimination complaint processes that apply to most federal agencies. A Postal Service worker who alleges discrimination can take two courses of action concurrently: (1) the employee can file a discrimination complaint under the federal employee discrimination complaint process, and also (2) file a grievance through procedures covered by the union's collective bargaining agreement. Although both courses of action are available to Postal Service workers, this report deals only with the ADR processes that the Postal Service has made available to workers who file discrimination complaints under the federal employee discrimination complaint process.

doing these studies, we obtained information about the organizations either on-site or from telephone interviews with responsible officials, from material and data they provided, and from published information.

There are limitations to the information we present in this report. First, the case illustrations and the observations that we are reporting only illustrate ADR approaches that have been put into practice and are not intended to be considered “best practices.” Second, organizations identified through literature searches and leads from experts in the field are more likely than not to have reported successful outcomes. Third, the participation of the private sector companies in our study was voluntary, and the companies reserved the right to withhold proprietary information; this limited our ability to analyze their programs with the assurance that we had obtained all relevant data. Fourth, the views we obtained were those of agency and company management and not of employees. Finally, we did not verify the data that were provided to us.

We conducted our review between July 1996 and April 1997 in accordance with generally accepted government auditing standards. We sent copies of a draft of this report to the Chairman, EEOC; the Director, FMCS; and the Director, Office of Personnel Management (OPM) for review and comment. In addition, we asked cognizant officials from each case illustration organization to review and comment on a draft of the case illustration describing their respective organization’s ADR experiences. Their comments are presented at the end of this letter. Details of our objectives, scope, and methodology appear in appendix I.

Organizations Turned to ADR for Several Reported Reasons

According to the ADR literature as well as experts and practitioners in the private and federal sectors, organizations turned to ADR as a means of avoiding more formal dispute resolution processes. Many private sector firms turned to ADR to supplement their traditional ways of handling disputes (e.g., through the chain of command) with the intent of reducing the number of litigations. For federal organizations, ADR offered a way to avoid the burdens associated with both the administrative redress system and litigation by federal employees.⁶ Additionally, the use of ADR in the private and federal sectors was spurred in the early 1990s by a dramatic increase in the number of discrimination complaints, along with the costs, time, and frustration involved in attempting to resolve them. Several new laws and regulatory changes made companies and agencies even more

⁶For further discussion, see *Civil Service Reform: Redress System Implications of the Omnibus Civil Service Reform Act of 1996* (GAO/T-GGD-96-160, July 16, 1996).

likely to develop ADR processes. Moreover, in some quarters—such as EEOC—a recognition emerged that the interest-based approach that is the basis for some ADR techniques can be a constructive alternative to adversarial, position-based processes.

Organizations Turned to ADR to Avoid the Time and Costs Involved in Resolving Workplace Disputes

Private and federal organizations alike turned to ADR to reduce their involvement in costly and time-consuming processes: lawsuits and—especially in the federal sector—formal administrative redress procedures. In 1995, we reported that private employers were adopting ADR approaches because of their concerns about the costs—in time, money, and good employee relationships—of dealing with employment-related lawsuits and discrimination complaints.⁷ Among the five private companies we studied as case illustrations, four cited significant litigation costs as a reason for developing their ADR processes. One of the companies—Brown & Root—turned to ADR after spending over \$400,000 to defend itself in a discrimination suit. Although the company prevailed in the case, an official referred to it as “the case nobody won,” because of the human and financial costs it involved. (See app. II.)

Among federal agencies, the primary reason officials reported for making ADR processes available has been to avoid the costs—especially those involving time and organizational efficiency—associated with the redress system.⁸ For example, according to EEOC data, the average length of time it took for federal agencies to close a discrimination complaint in fiscal year 1995 was 305 days. For cases that involved both a hearing and a later appeal to EEOC, the average processing time was 801 days.⁹ As we stated in our November 1995 testimony, the prospect of having to deal with the lengthy and complex dispute resolution system can have a broader impact: it can affect the willingness of federal managers to deal with conduct and performance issues.

⁷Employment Discrimination: Most Private-Sector Employers Use Alternative Dispute Resolution (GAO/HEHS-95-150, July 5, 1995).

⁸Individual federal agencies do not bear all of the costs of redress. They do not pay for the services of EEOC and MSPB administrative judges or the cost of Justice Department defense services. In addition, agencies do not generally pay the costs of court judgments or settlements resulting from discrimination lawsuits; these costs are generally paid from the Judgment Fund, which provides a permanent indefinite appropriation to pay such costs. The Postal Service is an exception; it is required to use its own funds to pay judgment and settlement costs resulting from lawsuits.

⁹EEOC reported that for cases closed in fiscal year 1995 that involved a hearing, the average processing time was 572 days. The average processing time for a subsequent appeal to EEOC was 229 days in fiscal year 1995.

Interest in ADR Grew With the Rising Tide of Discrimination Complaints

In both the private and federal sectors, the time and cost pressures that helped spur the use of ADR increased when the number of discrimination complaints rose sharply in the early 1990s. In the private sector, the number of discrimination complaints filed with EEOC¹⁰ grew by 43 percent between fiscal years 1991 and 1994—from 63,898 to 91,189—before beginning to decline. In the federal sector, the increase in the number of discrimination complaints filed with federal agencies¹¹ was also substantial, rising by 55 percent between fiscal years 1991 and 1995—from 17,696 to 27,472.¹² In December 1994, the Commission on the Future of Worker-Management Relations reported that the rise in complaints lodged with administrative agencies and the increase in employment litigation had led employers, employee groups, and lawmakers to seek alternatives.¹³

The increase in discrimination complaints in the early 1990s can be attributed to several factors, according to EEOC, dispute resolution experts, and officials of organizations that we studied. They said that downsizing efforts resulted in a surge of complaints in both the private and federal sectors. In addition, the Americans with Disabilities Act of 1990 established new grounds for employment-related complaints by the disabled. (Federal workers had gained similar protections under the Rehabilitation Act of 1973.) Further, the Civil Rights Act of 1991 allows for the award of compensatory damages of up to \$300,000 to employees in cases where the employer has engaged in unlawful intentional discrimination. While monetary damages had previously been available to private sector complainants, under the Civil Rights Act of 1991 federal as well as private sector workers can be awarded compensatory damages, and private sector workers can also receive punitive damages in certain

¹⁰The EEOC investigates complaints filed by private sector employees against employers. Before a private sector worker can take an unresolved matter to court, he or she must obtain a “right-to-sue letter” from EEOC or a similar state or local agency.

¹¹A federal employee files a discrimination complaint with his or her agency, which investigates the complaint in accordance with regulations promulgated by EEOC. EEOC adjudicates an unresolved complaint at the request of an employee.

¹²The number of private sector complaints declined by 14.5 percent between fiscal years 1994 and 1996, while the increase in federal sector complaints has continued unabated. (Fiscal year 1996 data on federal sector complaints were not available at the time of our study.) EEOC attributes the abatement in private sector complaints partly to its 1995 policy of screening and prioritizing complaints by private sector employees. Although EEOC has not yet introduced a similar policy with regard to federal employees’ discrimination complaints, it is studying ways to streamline the complaint process.

¹³The Commission of the Future of Worker-Management Relations (commonly known as the Dunlop Commission after its chairman, former Secretary of Labor John T. Dunlop) was established by the President in May 1993 and asked to investigate several issues. One of these issues involved what could be done to enable employers and employees to resolve workplace problems themselves, rather than turn to state and federal courts and government regulatory bodies. In December 1994, the Commission completed its tasks and issued its final report.

circumstances. The act also provided for jury trials; according to the literature we reviewed, in jury trials, a plaintiff has a greater chance of prevailing and receiving a higher award than in a hearing before a judge alone. At each of the five federal agencies we studied as case illustrations, officials said the increase in complaints at their agencies was driven partly by the availability of monetary awards in addition to the previously available forms of relief. Officials at four federal agencies said it was typical for a complainant to request compensatory damages, regardless of the severity of the allegation.

Recent Laws and Regulatory Changes Encouraged ADR Use

New legislative and regulatory developments in the 1990s have supported the use of ADR in resolving workplace disputes. The Americans with Disabilities Act of 1990 encouraged the use of ADR where appropriate; and the Civil Rights Act of 1991 encouraged the use of ADR in EEO complaints lodged by workers in the private and federal sectors alike. Other examples include the Administrative Dispute Resolution Act of 1990, which required federal agencies to develop policies to address the use of ADR, and the Civil Justice Reform Act of 1990, which encouraged federal courts to use ADR in managing their caseloads. In addition to these statutory encouragements, regulatory features came into being as well. For example, EEOC issued regulations in 1992 that encouraged the use of ADR in the federal discrimination complaint process.¹⁴ And in 1995, EEOC established a policy encouraging the use of ADR for dealing with discrimination complaints by private sector employees.

Some Have Pointed Out the Value of Interest-Based Dispute Resolution

Another factor in the widening adoption of ADR practices has been a recognition that traditional methods of dispute resolution do not always get at the real or underlying issues involved between disputants and that methods that focus on the disputants' interests may have advantages. Traditional methods of dispute resolution—lawsuits in the private sector, formal administrative redress procedures in the federal sector—are predominately position-based. Simply stated, each disputant stakes out a position—such as a complaint of discrimination or a defense against a complaint—and hopes to win the case. But interest-based dispute resolution, which is the basis for some ADR techniques, focuses on determining the disputants' underlying interests and working to resolve

¹⁴In June 1997, after we concluded our field work, EEOC's Washington Field Office announced a program of mandatory mediation in federal employee cases that are suitable for a hearing before an administrative judge. The program was expected to get under way in July 1997. Mediation will be conducted by mediators from EEOC and volunteers from the D.C. Bar Labor and Employment section.

their conflict at a more basic level, perhaps even bringing about a change in the work environment in which their conflicts developed.

EEOC, among others, has noted the potential value of the interest-based approach to dispute resolution in reducing the number of formal discrimination complaints. Reflecting on the high number of discrimination complaints among federal employees, an EEOC study recently concluded that “. . . there may be a sizable number of disputes in the 1614 process [so named for the regulations governing the process—29 C.F.R. Part 1614] which may not involve discrimination issues at all. They reflect, rather, basic communications problems in the workplace. Such issues may be brought into the EEO process as a result of a perception that there is no other forum available to air general workplace concerns. There is little question that these types of issues would be especially conducive to resolution through an interest-based approach.”¹⁵

The Types and Extent of ADR Available in the Private and Federal Sectors Vary

ADR, a term that covers various techniques that many organizations have used to avoid or reduce the burden of more traditional dispute resolution processes, can include a variety of approaches, usually involving intervention or facilitation by a neutral third party. We identified five main ADR methods available to many private sector employees and, in some instances, to federal employees: ombudsmen, mediation, peer panels, management review and dispute resolution boards, and arbitration. The extent to which ADR has been made available in the private sector has been greater than in the federal sector; so has the variety of ADR methods generally made available to employees.

ADR Covers a Range of Methods From the Less Formal to the More Formal

The ADR methods we identified in our research cover a range of approaches. (These approaches are briefly defined in table 1.) At one end of the range are relatively informal processes in which a neutral party, such as an ombudsman or mediator, assists the disputants in crafting mutually acceptable solutions that satisfy their respective interests.¹⁶ At the other end are more formal processes—such as peer panels,

¹⁵ADR Study, U.S. Equal Employment Opportunity Commission, Office of Federal Operations, Oct. 1996.

¹⁶Facilitation is another technique used in the early stages of a dispute, according to OPM officials. A facilitator attempts to improve the communication process between the parties but typically does not become as involved as a mediator would be in the substantive issues. In addition, FMCS officials said another method that is becoming more widely used in the early stages of a dispute is early neutral evaluation, in which a neutral provides a nonbinding evaluation that gives the parties a more objective assessment of their positions.

management review boards, and arbitration—in which a neutral body or person may rule on the merits of the parties' positions and impose a solution. The less formal processes tend to be employed at the earlier stages of disputes, before disputants' positions have solidified; the more formal processes tend to come into play at the later stages of disputes, often just before the point at which grievants must decide whether or not to take their cases to adjudicatory forums—court in the private sector, MSPB or EEOC in the federal sector.

Table 1: Predominant ADR Methods

| Definitions of Predominant ADR Methods | |
|---|--|
| Method | Definition |
| Ombudsman | A neutral third party designated by an organization to assist a complainant in resolving a conflict. An ombudsman provides confidential counseling, develops factual information, and attempts conciliation between disputing parties. The power of the ombudsman lies in his or her ability to persuade the parties to accept his or her recommendations. Ombudsmen are also called advisors. |
| Mediation | A process in which a trained neutral third party helps disputants negotiate a mutually agreeable settlement. The mediator has no authority and does not render a decision but may suggest some substantive options to encourage the parties to expand the range of possible resolutions under consideration. Any decision must be reached by the parties themselves. |
| Peer Review | A panel of employees (or employees and managers) who review evidence and listen to the parties' arguments to decide an issue in dispute. Peer review panel members are trained in the handling of sensitive issues. The panel's decision may or may not be binding on the parties. |
| Management Review Boards | Similar to peer review, a panel of managers who review evidence and listen to the parties' arguments to decide an issue in dispute. Board members are trained in the handling of sensitive issues. The decision of the board may or may not be binding on the parties. Also called dispute resolution boards. |
| Arbitration | An adjudicatory process in which a neutral third party is empowered to decide disputed issues after hearing evidence and arguments from the parties. The arbitrator's decision may be binding on the parties either through agreement or operation of law. Arbitration may be voluntary (i.e., where the parties agree to use it), or it may be mandatory and the exclusive means available for handling certain disputes. |

Source: Adapted by GAO from materials developed by OPM and ACUS.

For a fuller discussion of how these processes worked at the private firms and federal agencies that we looked at in detail, see the case illustrations (apps. II through XI). Table 2 shows the ADR processes used at each of these organizations.

Table 2: ADR Techniques Used by Selected Private Companies and Federal Agencies

| Organization | Ombudsman | Mediation | Peer Panel | Management Review Board | Arbitration |
|---------------------------------|-----------|----------------|------------|-------------------------|----------------|
| Private Sector | | | | | |
| Brown & Root | • | • | | | • ^f |
| Hughes Electronics | • | ^a | | • | • ^f |
| Polaroid | • | • | • | • | • ^g |
| Rockwell | | | • | | • ^f |
| TRW | | • | • | | • ^g |
| Federal agencies | | | | | |
| Agriculture | | • ^b | | • ^c | • ^c |
| Air Force | | • | | | |
| Postal Service | | • | | | • ^d |
| State | • | • | | • ^e | |
| Walter Reed Army Medical Center | | • | | | |

Legend:

• indicates use of a technique by an organization.

^aMediation is used infrequently at Hughes; no written policy requires it.

^bMediation is a recent initiative at Agriculture.

^cIn February 1997, an internal task force recommended that Agriculture discontinue its Dispute Resolution Boards and adopt voluntary binding arbitration to deal with discrimination case backlogs. Boards were discontinued in April 1997.

^dBinding arbitration was used in discrimination cases in a pilot project (North Florida) but was later discontinued.

^eA board process was used on a trial basis but was later discontinued.

^fEmployees are required, as a condition of employment, to use arbitration in lieu of litigation to settle workplace disputes. Arbitration is binding on the firm and the employee.

^gArbitration is not required as a condition of employment, but employees are expected to use arbitration before taking a matter to court, and the firm's policy is, if necessary, to seek a court order compelling the employee to do so. Arbitration is binding on the company but not on the employee.

Source: Information provided by the organizations included in the table.

ADR Was More Widespread in the Private Sector and More Varied

Overall, ADR has been more widely available among private sector firms than among federal agencies. In addition, ADR has been more widely available within private firms that have it than within federal agencies that

have it. In 1994, according to a survey we did,¹⁷ about 52 percent of private firms had some type of ADR process in place for discrimination complaints.¹⁸ In contrast, in the federal sector, a 1994 EEOC survey¹⁹ showed that about 31 percent of the 75 federal agencies responding to the survey had made ADR processes available for discrimination complaints. For the years after 1994, no data were available on the scope of private sector use of ADR in the workplace, but based on discussions with experts at the American Arbitration Association, the CPR Center for Dispute Resolution, and the Equal Employment Advisory Council, use of ADR in the private sector has increased since 1994. The most recent data on the use of ADR in the federal sector are from EEOC's 1996 survey. Based on responses of 87 federal agencies to that survey, the percentage of federal agencies making ADR available had risen to 49.²⁰ We found, however, that in using percentages to compare the availability of ADR in the private and public sectors, a significant difference should be kept in mind. According to our July 1995 report, private firms using ADR generally made it available organizationwide. But as our review of the literature, our interviews with experts and knowledgeable officials, and our case illustrations showed, ADR availability or use was not pervasive—or even necessarily widespread—within federal agencies that reported having some ADR capability.

Private firms also reported that they made available a wider variety of ADR techniques than those reported by federal agencies. For example, our July 1995 report showed that of the private firms using ADR in 1994, about 80 percent used mediation, about 39 percent used peer review panels, and about 19 percent used arbitration. But according to both EEOC's 1994 and 1996 surveys, most federal agencies using ADR made only one technique available: mediation.

¹⁷Employment Discrimination: Most Private-Sector Employers Use Alternative Dispute Resolution (GAO/HEHS-95-150, July 5, 1995).

¹⁸This figure includes the use of mediation, peer review, and arbitration. The survey did not include questions relating to the use of ombudsmen or management review boards. However, because very few of the survey respondents included these techniques in response to a survey question asking if any other dispute resolution methods were used, we believe that the estimate of private sector ADR use would be only marginally higher to account for companies with an ombudsman or management review board as their only ADR technique. In addition, this figure does not include the use of negotiation and fact-finding, which were widely practiced in the private sector. Under the Administrative Dispute Resolution Act of 1996, "settlement negotiations" are no longer considered an ADR technique because (1) they do not use a neutral third party and (2) Congress wanted to clarify that standard negotiations did not fulfill the intent of the act, according to a former ACUS official.

¹⁹Cited in *ADR Study*, U.S. Equal Employment Opportunity Commission, Office of Federal Operations, Oct. 1996.

²⁰*ADR Study*, U.S. Equal Employment Opportunity Commission, Office of Federal Operations, Oct. 1996.

The availability of ADR techniques among our case illustrations was consistent with the findings of previous reports and surveys. As shown in table 2, the private firms we studied generally used a wider variety of ADR techniques than did the federal agencies. The private firms we studied had from two to five ADR methods in place, while the federal agencies generally had only one. The private firms we studied applied ADR to all types of workplace disputes; all but one of the federal agencies we studied—Walter Reed Army Medical Center—tended to limit the application of ADR to claims of discrimination.

Comprehensive Data Were Lacking, but ADR Programs Were Perceived as Beneficial

No comprehensive evaluative data were available on ADR results in the private and federal sectors, but the information we gathered in our broad examination of ADR was largely positive, as was the additional information we gathered in our case illustrations. The experiences of the specific organizations we studied was consistent with the findings of earlier reports, surveys, and literature. Although these organizations varied in the extent to which they had evaluated their ADR programs, officials at all of them generally believed these programs had been beneficial in resolving workplace disputes.

Most of the organizations we studied had data to show that their ADR processes, especially mediation, resolved a high proportion of disputes, thereby helping them avoid formal redress processes and litigation. Objective data were not generally available on the time and cost savings achieved by avoiding formal redress and litigation, nor on how the costs of dispute resolution involving ADR compared with the costs of more traditional methods. For the most part, however, managers believed that avoiding formal redress and litigation saved their organizations time and money. The organizations also reported that user satisfaction—another indicator of effectiveness or the lack of it—was generally high, with the exception of supervisors who participated in the Department of Agriculture’s dispute resolution boards.

ADR—Especially Mediation—Appeared to Be Useful in Resolving Disputes

To the extent data were available at the organizations we studied, mediation, peer panels, management review and dispute resolution boards,²¹ and arbitration all appeared to be useful in resolving workplace disputes, thereby avoiding more formal dispute resolution processes.²²

²¹Officials at Agriculture found Dispute Resolution Boards were helpful with the discrimination complaint inventory. The boards were criticized, however, as being labor intensive and expensive and not dealing with the underlying issues in disputes. (See app. VII.)

²²A case was considered resolved if it was either settled or dropped.

Mediation appeared particularly useful. Table 3, which includes all of the organizations we examined that offered mediation, shows that mediation led to a high percentage of resolutions (at least 59 percent) in all but one.

Table 3: Experiences of Private Companies and Federal Agencies That Used Mediation

| Organization | Time frame involved | Cases mediated | Cases resolved | Percent resolved |
|-------------------------------------|---|--------------------|--------------------|------------------|
| Private Sector^a | | | | |
| Brown & Root | June 1993 to Dec. 1996 | 155 | 140 | 90 |
| TRW | Jan. 1995 to Sept. 1996 | 27 | 16 | 59 |
| Federal agencies | | | | |
| Air Force | Oct. 1995 to Sept. 1996 | 1,982 ^b | 1,455 ^b | 73 |
| Postal Service, North Florida | Oct. 1994 to Dec. 1996 | 188 | 139 | 74 |
| Postal Service, Southern California | Oct. 1988 to June 1992, Oct. 1993 to June 1994, and Oct. 1994 to Sept. 1996 | 1,714 | 1,605 | 94 |
| State | May 1995 to Dec. 1996 | 8 | 3 | 38 |
| Walter Reed Army Medical Center | Oct. 1994 to Sept. 1996 | 160 | 108 | 68 |

^aPolaroid routinely offered mediation but did not provide data.

^bPredominately mediation but includes other early stage ADR techniques.

Source: Data provided by the organizations studied.

The Seattle Interagency ADR Consortium is not included in table 3 because it is neither a company nor a federal agency. The Consortium reported resolving 153 of 171 cases (89 percent) mediated between May 1993 and February 1997. Overall, the reported resolution rates for the Seattle Interagency ADR Consortium and the private and federal organizations using mediation were similar to rates reported in the literature and in past studies. The Justice Center of Atlanta, for example, reported a resolution rate of about 70 percent among the more than 50,000 cases it has mediated since 1977.²³ The private sector organizations we studied applied mediation to a variety of workplace disputes, but whether the resolution rates varied with the nature of the dispute was unknown. Among the federal agencies we studied, only one—Walter Reed Army Medical Center—applied mediation to a variety of workplace disputes. At Walter Reed's ADR Center, the resolution rate varied with the nature of the

²³The Justice Center of Atlanta is a private, nonprofit organization recognized as one of the leading institutions in the United States for the practice and teaching of mediation.

dispute: 83 percent for disputes that the center classified as “communication” cases, 67 percent for EEO cases, and 43 percent for cases involving disciplinary actions. The other three agencies using mediation generally used this technique almost exclusively in cases of alleged discrimination.²⁴

Among three of the four federal agencies we studied with experience in mediation, the limited data available suggested that mediation was more useful than the traditional processes for resolving discrimination complaints. For example, data from the Postal Service’s Southern California EEO Processing Center showed that from fiscal year 1988 to fiscal year 1996, about 94 percent of the informal cases that were mediated were settled, compared with 57 percent of those that went through traditional counseling.

Peer panels and management review boards also contributed to bringing cases to closure at the organizations we examined. Moreover, in the four private firms, where employees receiving unfavorable decisions through the peer or management review process could take their complaints to arbitration, relatively few did. (See Hughes Electronics and Polaroid case illustrations, apps. III and IV.) The one federal agency we studied that used a board process to resolve formal discrimination complaints—Agriculture—collected data on results during a pilot study and found that of the 32 cases heard, 23 (72 percent) were settled on the day of the hearing.

Arbitration has not traditionally been one of the procedures made available to federal employees seeking redress outside the terms of collective bargain agreements. But, according to the ADR Counsel at the Federal Mediation and Conciliation Service, the laws and regulations governing matters appealable to EEOC and MSPB do not prohibit its use. The Administrative Dispute Resolution Acts of 1990 and 1996 allow federal agencies to use arbitration if all the parties consent to its use, so long as the agency does not require any participant to consent to arbitration as a condition of entering into a contract or obtaining a benefit (e.g.,

²⁴Contacting the EEO office and consulting with a counselor is the first step in the federal discrimination complaint process and is commonly referred to as an “informal” complaint. The counselor is to explore the nature of the issue, determine whether the basis for the issue is covered under EEO regulations, conduct a limited inquiry, and attempt to facilitate a resolution. If a resolution cannot be reached, the employee can file a “formal” written complaint with the agency.

employment).²⁵ The 1996 act also requires that before using binding arbitration, the agency consult with the Department of Justice on its appropriateness. The act also requires that the arbitrator interpret and apply relevant statutory and regulatory requirements, legal procedures, and policy directives.

More widely available in the private sector than in the federal sector, arbitration was available to employees outside the collective bargaining process at all five companies we studied.²⁶ All five companies reported that arbitration helped them avoid or reduce the amount of employment-related litigation. Moreover, at Rockwell, the company's Assistant General Counsel said he believed that in many cases the mere availability of arbitration made it easier for the company and former or current employees to resolve disputes without resorting to either arbitration or litigation. Similarly, TRW and Brown & Root officials told us that having an arbitration program opened the door to settlements; at Brown & Root, 43 of 74 arbitration requests between June 1993 and December 1996 were either settled or dropped without an arbitration decision.

Although Comprehensive Data Were Lacking, ADR Was Perceived to Have Saved Time and Money

Comprehensive evaluative data on the extent to which ADR has saved time and money by avoiding formal redress or litigation in the federal and private sectors were not available, largely because (1) most ADR programs are relatively new and (2) time and cost savings have not been widely tracked or evaluated. Moreover, according to the CPR Institute for Dispute Resolution, there is no central source of information on ADR cost savings and benefits (or even the typical costs of litigation) in the private sector.²⁷ An official of the American Arbitration Association said that information about ADR cost savings and benefits in the private sector is limited because companies are not always forthcoming with proprietary data and because many companies' ADR programs are relatively new. Similarly, there is no

²⁵At the time of our review, Agriculture was considering the recommendation of an agency study to incorporate voluntary binding arbitration into its dispute resolution program on an interim basis to deal with its backlog of discrimination cases. Also, under authority contained in legislation exempting it from most federal personnel laws, the Federal Aviation Administration has established a three-member panel to hear appeals made by its nonbargaining unit employees of adverse personnel actions previously appealed to MSPB. The panel is composed of a management representative, an employee representative, and an arbitrator.

²⁶At Brown & Root, Hughes Electronics, and Rockwell, use of arbitration in lieu of litigation is a condition of employment (see apps. II, III, and V). At Polaroid and TRW, arbitration is not mandatory, but employees are expected to use arbitration before taking a matter to court, and the firm will, if necessary, seek a court order compelling the employee to do so (see apps. IV and VI).

²⁷ADR Cost Savings and Benefits Studies, CPR Institute for Dispute Resolution, 1994.

central source of information on ADR cost savings and benefits in the federal sector. Before ACUS was abolished in October 1995, it reported on the status of federal government ADR initiatives, stating that “there are few measurable data documenting hard savings or substantive impact. This is true in part because many programs are still quite new; however, developing this type of information has proven difficult even for established programs.”²⁸

Likewise among the five private firms and five federal agencies we studied, data generally were not available on the time and cost savings achieved by avoiding redress and litigation through ADR, nor on how the costs of dispute resolution involving ADR compared with the costs of more traditional methods. Nevertheless, managers said they generally believed that by avoiding redress and litigation, ADR saved their organizations time and money.

Regarding time saved by the speedier resolution of disputes, data from two of the federal agencies we studied indicated that the use of ADR had decreased the time it had normally taken to resolve discrimination complaints by between 36 and 52 percent. (See case illustrations for Agriculture and Air Force, apps. VII and VIII.) Data from two other agencies indicated that ADR processes, by resolving discrimination complaints in their early stages, had reduced the number of formal complaints filed as well as the time required for seeing them through to resolution. (See case illustrations for Postal Service and Walter Reed, apps. IX and XI.)

Regarding cost savings, objective information was sparse. Among the private companies we studied, Brown & Root provided the most extensive information. (See app. II.) In the first 3 years in which it used ADR, Brown & Root reported that the overall cost of dealing with workplace disputes (including the annual cost of the ADR program itself) was less than half of what the company had been accustomed to spending on legal fees for employment-related litigation.

Cost savings among federal agencies were as difficult to determine as those among private firms. No federal agency quantified with precision cost savings from ADR. The primary reason may be reflected in the experience of Agriculture, the only federal agency in our study that evaluated costs. Agriculture’s pilot evaluation team, which attempted to

²⁸Toward Improved Agency Dispute Resolution: Implementing the ADR Act, Administrative Conference of the United States, Feb. 1995.

compare the costs of Agriculture’s Dispute Resolution Boards with the traditional dispute resolution process for EEO complaints, found that it could not do so with any precision because of the lack of detailed records. (See app. VII.) The team reported that estimates of complaint processing costs under traditional procedures were inconsistent and that there were no data with which to track the costs of cases processed by the boards. With this caveat, the team reported “it seems fairly certain” that EEO complaint-processing costs using boards were less than those under the traditional process. However, when settlement costs were considered, it was unclear whether boards were less costly because board-facilitated settlements were more costly than settlements and decisions in a comparison group of cases handled by the traditional process. The team said that creating an accurate recordkeeping system would be critical to the operation of the boards as well as to the EEO complaint system as a whole.

Reported User Satisfaction Generally Was High at the Organizations We Studied

Comprehensive data on user satisfaction with ADR was not available for the private or federal sectors. Among the organizations we studied, five—Brown & Root, Hughes Electronics, Postal Service, Agriculture, and Walter Reed—had surveyed their ADR program users. Brown & Root reported that users were satisfied with its procedures while Hughes did not provide the results of its surveys. (See apps. II and III.) Two of the three federal agencies also reported generally high user satisfaction, but Agriculture reported significant disparities among the parties to disputes.

The Postal Service’s survey approach was unique in that it compared satisfaction rates among mediation users (in this case, at its North Florida pilot) with those among participants in the traditional EEO process (at other Postal Service locations). The Postal Service surveys found, for example, that 90 percent of the mediation users believed that the process was fair, compared with 41 percent of the participants in the traditional EEO process. Further, 72 percent of mediation users were satisfied with the outcomes of their disputes, compared with 40 percent of the participants in the traditional process. (See app. IX.)

Unlike the Postal Service surveys, Walter Reed’s surveys were not comparative. Further, only employee participants in the program were surveyed. Of the survey respondents, 90 percent rated the overall performance of the ADR program and of the mediators themselves from good to excellent, 73 percent indicated that they would use the program

again, and 72 percent indicated that they would recommend the program to others. (See app. XI.)

Agriculture's surveys and focus groups involving participants in its Dispute Resolution Board process revealed that supervisors who had been charged with discrimination had less favorable opinions of the process than did employees and resolving officials.²⁹ For example, 42 percent of the supervisors did not believe the process to be fair, compared with 17 percent of the employees and 15 percent of the resolving officials. Moreover, 53 percent of the supervisors were dissatisfied with the outcomes of their disputes, compared with 25 percent of the employees and 30 percent of the resolving officials. According to Agriculture officials, supervisors felt the Dispute Resolution Board process undermined their authority. They also said that a "settle at all costs" policy encouraged employees to file complaints. A recent Agriculture report recommended significant changes in Agriculture's ADR program, including discontinuing boards. Agriculture discontinued the boards in April 1997. (See app. VII.)

The Case Illustrations: Varied but Generally Positive Experiences With ADR Were Reported

As reflected in the case illustrations (see apps. II-XII), the companies and federal agencies we studied took various approaches to planning and implementing ADR. Most of them made efforts to involve employees in developing their ADR programs, to train key participants, and to make their ADR programs known and understandable throughout the organization. Because the private firms were not subject to the rules that govern the federal employee administrative redress system, some of them had established ADR practices—particularly in the area of arbitration—that are not found among federal agencies. These practices varied from one company to the next. While most of the organizations we studied gave only limited attention to formally evaluating their ADR programs, the common thread among our case illustrations was a continuing use of ADR and a perception that ADR was worthwhile. The lessons learned by these organizations in planning, implementing, and evaluating their ADR programs centered on how to ensure that the appropriate ADR methods were used and that they fulfilled their potential.

²⁹Under the Dispute Resolution Board process, a "resolving official" representing the department would be present to negotiate a settlement with the employee.

Efforts to Involve Employees and Train Key Staff Were Widespread but Varied

The organizations we studied varied in the ways in which they involved their employees in planning their ADR programs as well as how they made employees aware of these programs. The extent to which these organizations involved and trained their employees related to whether they were overhauling their dispute resolution systems or adding or integrating into their existing systems a particular ADR technique. Although nine of the organizations involved their employees in designing their ADR programs, and all but Agriculture provided training to employees and managers who would play key roles in the ADR process, some provided greater opportunities for involvement or more widespread or extensive training than others.

Officials at nine of the organizations we studied reported that measures had been taken to make their ADR processes known and understandable to employees. When Hughes Electronics, for example, initiated its dispute resolution boards, it not only trained prospective board members in their duties, but it trained executives and managers throughout the company in conflict resolution techniques and introduced all employees to the new program through brochures, newsletters, and supervisory guidance, according to the Corporate Manager for Equal Employment Opportunity and Workforce Diversity Programs. To introduce its pilot mediation program, the Postal Service conducted two 1-week conferences for managers, trained staff as mediators in each location, and developed a video about the program. Walter Reed gave mediation training to its ADR Center staff, which then conducted numerous briefings for employees. In addition, Walter Reed's commander issued a memorandum explaining the ADR program and encouraging its use.

Organizations Took Differing Approaches to ADR

Of the five main ADR methods we identified, the most widely available were mediation and arbitration. Seven of the organizations we studied reported routinely making mediation available; the differing ways in which they implemented their mediation programs illustrated a variety of possible approaches. All five of the companies we studied offered arbitration, which, as noted earlier, is generally unavailable to federal employees outside the collective bargaining process. The arbitration policies of the five companies illustrated some key differences between their redress systems and those of the federal agencies we studied.

Mediation was the most widely used technique among the organizations we studied. Most of the organizations reported using both internal and external mediators. Among the private firms, for example, Brown & Root

and Polaroid reported they used their own employee volunteers as mediators most of the time. However, employees at these companies could ask for a mediator from an external source (such as the American Arbitration Association). Among the federal agencies, the Air Force selected mediators according to the issues involved—its practice is to assign mediators to the kinds of cases in which they specialized—and gave some consideration to the preference of the parties involved. The mediator could be an EEO counselor trained in mediation or an external mediator from another Air Force installation, another federal agency, a contractor, or a “shared neutrals” program. A shared neutrals program, such as the Seattle Interagency ADR Consortium (see app. XII) is a cooperative venture in which federal agencies create a pool of mediators who are available to agencies that do not have their own mediators or that want a mediator from outside the agency.

Variation existed in the types of issues that were subject to mediation and in the point at which an employee could elect to use it. Two of the three private sector companies that reported they regularly used mediation—Brown & Root and Polaroid—offered mediation for a wide array of issues and at any point in the dispute resolution process. The other company, TRW, usually offered external mediation as a step before arbitration. Among the federal agencies, the Walter Reed Army Medical Center was alone in having established mediation for a wide array of disputes. The others generally reported confining the use of mediation to discrimination and to a point very early in the discrimination complaint process. This point occurred after an employee had contacted his or her agency’s EEO office (the first step in the federal discrimination complaint process) but before the employee had filed a formal complaint. Among the agencies we studied, mediation was offered at this point as an alternative to the counseling that is required by the regulations governing the discrimination complaint process.

Just as federal employees are generally expected to exhaust the administrative processes available to them before going to court,³⁰ employees of the private companies we studied were expected by their employers to use arbitration before initiating a lawsuit. In some ways, arbitration is to the private sector what the administrative redress system is to the federal sector: for example, both are adjudicatory in nature and intended to provide due process, and both are meant to provide employees with a means of being heard on issues that could be taken to court. But the arbitration policies of the private firms we studied provided at least two

³⁰29 C.F.R. Part 1614.

examples of ways in which this private sector dispute resolution method can differ significantly from the federal government's approach.

First, at three of the firms we studied—Brown & Root, Hughes Electronics, and Rockwell—employees were required, as a condition of employment, to use arbitration in lieu of litigation to settle disputes. (See apps. II, III, and V.) At each of these three firms, the arbitrator's decision was binding on both the company and the employee. The employee's judicial recourse was limited to petitioning a court to review the arbitration decision.³¹ In contrast, federal employees have recourse to the administrative redress process and the courts. A discrimination complainant who is dissatisfied with the available administrative remedies may take his or her case to federal district court for a de novo³² trial.

Second, all five of the private companies we studied required their employees to share in the costs of arbitration. In contrast, federal employees do not share in the costs of the administrative redress processes available to them.³³ Officials at each of the firms we studied said the requirement that employees share in the costs of arbitration was intended to ensure the impartiality of arbitrators as well as to discourage frivolous complaints. Sharing of arbitration costs by employees and employers was one of the key quality standards for private arbitration recommended by the Commission on the Future of Worker-Management Relations.

So that they would not discourage legitimate complaints, four of the private firms we studied charged employees only a nominal fee or capped the employee's share. Two companies imposed a nominal fee: Brown & Root required employees to pay \$50; Polaroid required them to pay \$100. The other three companies—Hughes, Rockwell, and TRW—required employees to pay up to half of the arbitration costs. But TRW capped the employee share at 2 days' gross pay, and Hughes limited the employee

³¹EEOC opposes mandatory binding arbitration as a condition of employment because it views such policies as interfering with individual protected rights under civil rights statutes. Employers with mandatory binding arbitration, such as the companies we studied, believe that arbitration does not impinge on the substantive rights of employees.

³²In a de novo trial, a matter is tried anew as if it had not been heard before.

³³In addition to sharing in arbitration costs, workers at the five private sector companies are responsible for their attorney fees and the costs of discovery that they initiate. Similarly, federal workers are responsible for their attorney fees, costs of discovery that they initiate, and related expenses, such as for copying and mailing. Generally, employees can recover these expenses if they are the prevailing party.

share to 2 weeks' net pay in cases of hardship. Rockwell did not cap the employee's share.

Evaluation Was Generally Not Extensive, but Organizations Continued Using ADR and Believed It Was Worthwhile

Most of the organizations we studied gave only limited attention to formally evaluating their ADR programs. Among the companies, the evaluation efforts reported by Brown & Root were the most extensive, including routine data gathering on program costs and benefits and employee satisfaction as well as annual evaluations by persons outside the firm (see app. II). Among the federal entities, the Postal Service had under way an extensive evaluation by an outside consultant, and the Air Force had an evaluation in the design stage. Agriculture had evaluated its Dispute Resolution Boards in the pilot phase but not in the 3 years in which the boards operated. More recently (between December 1996 and February 1997), Agriculture's Civil Rights Action Team conducted 12 "listening sessions" that included an opportunity to hear participants' perceptions of the board process. This was not an evaluation *per se*, but led to recommendations that resulted in discontinuing the boards (see app. VII).

Although extensive evaluation has generally been lacking, the organizations we studied, as discussed earlier, almost all had positive perceptions of the results of their ADR programs. To the extent data were available, they supported these perceptions, including the belief that ADR lessened the costs—in time and money—associated with formal redress processes and litigation. Brown & Root, as discussed earlier, reported that in the first 3 years of ADR use, the overall cost of dealing with workplace disputes (including the annual cost of the ADR program itself) was less than half of what it had been just for legal fees to cover employment-related litigation. Brown & Root also reported that the number of employment-related lawsuits had been reduced to nearly zero, and the number of cases filed with the EEOC or similar entities had been reduced by half. While other organizations had only limited data, they said they believed that early resolution of disputes and the avoidance of formal redress and litigation not only saved time but avoided costs as well. Perhaps the best indicator of the organizations' belief in ADR was that all of them continued to use some form of ADR.

The only instance among our case illustrations in which the operation of an ADR program was found to be seriously flawed was at Agriculture, where the report of the Civil Rights Action Team recommended that dispute resolution boards be discontinued (see app. VII). The same report

recommended that Agriculture use more interest-based ADR techniques outside the EEO process and that mediation and voluntary binding arbitration be used.

**Organizations Cited
Lessons About Making
ADR Work**

The organizations we studied each cited lessons learned in planning, implementing, and evaluating their ADR programs. These lessons were varied, but many of them centered on ensuring that the appropriate ADR methods were used and that they fulfilled their potential.

Six of the organizations reported emphasizing the need for visible support of ADR by top management, citing the difficulty of marketing and sustaining ADR efforts in its absence. Four of the organizations said they had learned the importance of involving employees in the development of their ADR programs. One reason was to ensure that the choice of ADR approaches meshed with the organization's culture; another was to establish trust in the ADR process.

Six of the organizations said they learned that dispute resolution efforts have a greater likelihood of success if they occur early in a dispute before positions have solidified and underlying interests have been obscured. Postal Service officials, for example, said their organization had this lesson in mind when it adopted a policy of providing mediation of complaints within approximately 2 weeks of a request for mediation services (see app. IX). Agriculture, having found that its dispute resolution boards did not deal with the underlying issues in workplace disputes, has begun giving mediation training to its counselors and developing a conflict resolution policy that encourages early intervention (see app. VII).

Two federal agencies—Walter Reed and Agriculture—said they learned that special care must be given to balancing the desire to settle and close cases against the need for fairness to employees and managers alike. For example, at Walter Reed, where the ADR program received largely positive responses in its employee participant surveys, the dispute resolution officer said he had learned that some supervisors viewed settlements with suspicion, feeling that settlements seemed to “give away the store.” As a result, he said, resolving officials at Walter Reed have become more judicious in making settlements. (See app. XI.)

Five organizations reported finding that ADR served a purpose merely by giving employees an opportunity to be heard. Employees, they said, got something worthwhile merely out of having their “day in court.” Further,

four organizations also reported finding that by following the outcomes of ADR processes, management became more aware of the causes of workplace disputes, of the organizational policies or decisions that led to complaints, and of systemic concerns that had not otherwise been apparent. Brown & Root's Associate General Counsel for Human Resources, for example, said some of the mediation settlements and arbitration awards alerted management to problems within the company, and this brought about changes in its sexual harassment and drug testing policies and procedures (see app. II).

Agency Comments

We sent copies of a draft of this report to the Chairman, EEOC; the Director, FMCS; and the Director, OPM for review and comment. In addition, we asked cognizant officials from each case illustration organization to review and comment on a draft of the case illustration describing their respective organization's ADR experiences. We received responses from all organizations except Polaroid; their comments were of a technical or clarifying nature. We considered the comments and made changes as appropriate in finalizing this report.

We are sending copies of this report to the Ranking Minority Member of this Subcommittee; to the Chairmen and Ranking Minority Members of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs and its Subcommittee on International Security, Proliferation, and Federal Services; and the Directors of the Office of Personnel Management, the Federal Mediation and Conciliation Service, and the Office of Management and Budget; the Chairman of the Equal Employment Opportunity Commission; and other interested parties. We will also make this report available to others upon request.

Major contributors to this report are listed in appendix XIII. Please contact me at (202) 512-9039 if you or your staff have any questions concerning this report.

Sincerely yours,

A handwritten signature in black ink that reads "Michael Brostek". The signature is written in a cursive style with a large initial "M".

Michael Brostek
Associate Director, Federal Management
and Employment Issues

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Abbreviations

| | |
|---------|---|
| AAA | American Arbitration Association |
| ADR | alternative dispute resolution |
| ACUS | Administrative Conference of the United States |
| EEAC | Equal Employment Advisory Council |
| EEO | equal employment opportunity |
| EEOC | Equal Employment Opportunity Commission |
| FMCS | Federal Mediation and Conciliation Service |
| MSPB | Merit Systems Protection Board |
| OPM | Office of Personnel Management |
| S/EEOCR | U.S. Department of State Office of Equal Employment Opportunity and Civil Rights |

Objectives, Scope, and Methodology

In his letter of July 1, 1996, the Chairman of the Subcommittee on Civil Service, House Committee on Government Reform and Oversight, asked us to assist the Subcommittee in its efforts to reform the administrative redress system for federal employees by developing information about federal and private sector experiences in using alternative dispute resolution (ADR) processes to resolve workplace disputes. Specifically, he asked us to provide information on (1) private sector companies' and federal agencies' reasons for using ADR, (2) the types of ADR these organizations have made available to their employees through procedures other than those under collective bargaining agreements and the extent to which they have put ADR processes in place, and (3) the results, if any, they have achieved by using ADR. In addition, he asked that we illustrate the practices of selected federal agencies and private sector firms in using ADR processes to resolve workplace disputes for employees not covered under collective bargaining agreements by addressing the following questions.

1. What were the experiences of the selected federal and private sector employers in planning and implementing ADR processes?
2. To what extent did these employers evaluate their ADR processes and to what extent did they believe that their ADR practices have been successful in resolving workplace disputes and in lessening the costs—in time and money—associated with formal redress procedures and litigation?
3. What lessons did the selected agencies and companies report that they learned in planning, implementing, and evaluating their ADR processes?

Because of the Chairman's interest in reforming the federal employee redress system, we primarily focused on ADR use in the types of disputes that federal employees can appeal to the Merit Systems Protection Board (MSPB) or the Equal Employment Opportunity Commission (EEOC), and not those generally grieved under collective bargaining procedures. For the private sector, we developed information about ADR processes for employees not covered under collective bargaining agreements.

To develop information about federal agencies' and private sector companies' reasons for using ADR, the types of ADR they have made available other than those under collective bargaining agreements, the extent to which they have put these processes in place, and results derived from using ADR, we reviewed available literature and spoke to experts in the field. Among the experts with whom we spoke were officials from MSPB, EEOC, the Office of Personnel Management (OPM), the Administrative

Conference of the United States (ACUS), the National Academy of Public Administration, the Federal Mediation and Conciliation Service (FMCS), the American Arbitration Association (AAA), the CPR Center for Dispute Resolution, and the Equal Employment Advisory Council (EEAC). To develop information about the types of ADR processes offered by federal employers and the extent to which these processes are offered, we used the results of EEOC surveys of federal agencies that were reported in February 1994 and October 1996.³⁴ To develop information about the types of ADR processes offered by private sector employers and the extent to which these processes are offered, we used the results from one of our surveys.³⁵

In identifying the predominant ADR methods used in the private and federal sectors, we applied definitions based on materials developed by OPM and ACUS. Because ADR is an evolving field, there is some inconsistency among practitioners in the terms they use to describe their ADR approaches. For this reason, we occasionally grouped different organizations' ADR approaches under the same names, although the organizations themselves called these approaches by different names. We discussed this practice with each of the affected organizations and obtained their concurrence.

To illustrate private and federal sector organizations' experiences in planning and implementing ADR processes, the extent to which they evaluated their ADR processes and the extent to which they reported that these processes have been successful in resolving workplace disputes and lessening costs, and the lessons they reported having learned, we judgmentally selected for study five private sector companies and five federal agencies that had had some experience with ADR. Because there is no readily identifiable inventory of federal and private sector³⁶ ADR users, we used a variety of methods to identify candidates for case illustrations. To identify federal agencies using ADR, we reviewed surveys of federal agencies by EEOC and ACUS, reviewed literature about federal agencies using ADR, reviewed information that federal agencies reported to EEOC, and spoke to officials knowledgeable about ADR use in the federal government, including officials from MSPB, EEOC, OPM, ACUS, and FMCS. To identify private sector companies using ADR, we reviewed available

³⁴EEO ADR Survey (Feb. 1994) and ADR Study (Oct. 1996), U.S. Equal Employment Opportunity Commission, Office of Federal Operations.

³⁵We sent a questionnaire to a nationally representative sample of businesses with more than 100 employees according to reports filed with EEOC in 1992. The results of this survey were reported in *Employment Discrimination: Most Private-Sector Employers Use Alternative Dispute Resolution* (GAO/HEHS-95-150, July 5, 1995).

³⁶Our survey reporting the percentage of private sector employers using ADR did not include the names of companies.

literature and spoke to experts on the private sector's use of ADR, including officials from the AAA, CPR Center for Dispute Resolution, and EEAC.

We judgmentally selected agencies and companies (1) that reflected a range of ADR practices; (2) that had ADR processes in place a sufficient length of time to provide information about use, outcome, and lessons learned; and (3) that had at least some use or outcome data available. The federal agencies we selected were the Department of Agriculture, the Department of the Air Force, the Postal Service, the Department of State, and Walter Reed Army Medical Center. We included the Postal Service, even though it is an independent governmental establishment, because it is bound by most of the same rules governing the resolution of discrimination complaints that apply to most other agencies. We also studied the Seattle Federal Executive Board's Interagency ADR Consortium, a shared neutrals program in the Seattle, WA area, because it is a cooperative interagency effort to make mediation services available at little or no cost to users. In the private sector, we studied the following large companies: Brown & Root, Inc; Hughes Electronics Corporation; the Polaroid Corporation; Rockwell International Corporation; and TRW Inc. Our final selection of companies was dependent on their willingness to participate in the study. We obtained information about the organizations either on-site or from telephone interviews with responsible agency and company officials, material and data that they provided (e.g., policies, procedures, employee handbooks, statistical information, and evaluations), and published information.

There are five limitations to the information we present in this report. First, the case illustrations and the observations that we are reporting are not representative of a broader universe. They are intended only to illustrate ADR approaches that have been put into practice and that have, to some extent, reported demonstrable results. We do not intend that they be considered "best practices." Second, organizations—particularly private sector companies—identified through literature searches and leads from experts in the field, are more likely than not to have reported successful outcomes. While it is possible that some private sector companies have had poor experiences with ADR, these companies are less likely than others to have made their experiences public or to have drawn attention to themselves. Third, while federal agencies are required to cooperate with us, the participation of the private sector companies in our study was voluntary. Moreover, the companies reserved the right to withhold proprietary information, which limited our ability to analyze their programs with the assurance that we had obtained all relevant data.

Appendix I
Objectives, Scope, and Methodology

Fourth, the views we obtained were those of agency and company management. We report the results of employee or ADR participant surveys provided by some of the agencies and companies, but we did not directly obtain the views of employees. Finally, we did not verify data that were provided to us; some of the data provided was testimonial.

We did our work in Denver, CO; New York, NY; Seattle, WA; and Washington, D.C. from July 1996 to April 1997 in accordance with generally accepted government auditing standards.

Case Illustration: Brown & Root, Inc.

Brown & Root, Inc., headquartered in Houston, Texas, provides construction, engineering, and maintenance services worldwide. Together, its two business units employ about 27,000 people in the United States, all of whom are covered by the company's alternative dispute resolution (ADR) program.³⁷ The program, implemented in June 1993, includes an ombudsman-like role, mediation, and arbitration as well as a toll-free hotline for employee assistance.

How the Processes Work

A Brown & Root employee unable to resolve a dispute through the chain of command can contact the dispute resolution program administrator or an ombudsman—at Brown & Root referred to as an advisor. The advisor (or the program administrator) is to provide independent and confidential assistance to the employee, which can include such things as simply listening to the problem, answering questions, acting as a go-between, getting the facts, coaching the employee on how to independently resolve the problem, and providing referrals to other company resources. The advisors are trained mediators and often provide informal mediation. Should the dispute remain unresolved at this point, the employee can opt for in-house mediation, provided by trained employee volunteers.

The next two steps—external mediation and arbitration—are generally used only for issues involving statutorily protected rights. The employee pays a \$50 processing fee to take his or her dispute to external mediation or arbitration; Brown & Root pays additional costs.

An unusual feature of Brown & Root's dispute resolution program is its Legal Consultation Plan that provides financial assistance to help employees obtain their own attorneys to assist them in their employment disputes. The employees pay a \$25 deductible (for each dispute); the plan then pays 90 percent of the attorney fees, up to a maximum benefit of \$2,500 annually.

According to Brown & Root's dispute resolution program brochure, its program is intended as the exclusive means for the final resolution of employment disputes and is mandatory for all employees. The company advised its employees in advance of the program implementation date of June 1993, that by continuing or accepting employment with Brown & Root after this date, they were agreeing to use the program, rather than the court system, to resolve all employment-related claims against the company. Company literature about the program further advises that if an

³⁷Called the Brown & Root Dispute Resolution Program.

employee were to file a lawsuit, Brown & Root would ask the court to dismiss the case and refer it to the company's dispute resolution program.³⁸

Experiences in Developing ADR Processes

The impetus for looking for better ways to manage employee conflicts and resolve employment disputes grew, in part, from "the lawsuit that nobody won," according to the Brown & Root's Associate General Counsel for Human Resources. In this case, the company paid over \$400,000 in legal fees to its outside counsel in successfully defending itself in a discrimination suit. The Associate General Counsel said that because of the tremendous financial and human cost of litigation, in the summer of 1992, Brown & Root assembled task forces to evaluate its dispute resolution process. These task forces were composed of company managers from the legal, employee relations, and operations functions as well as outside experts and consultants. A conflict management consultant interviewed nearly 300 employees about their views on the existing dispute resolution process and on various alternatives. The program design resulting from the task forces overhauled the company's dispute resolution system and provided for the installation of processes through which employees could bring their workplace disputes. The program design was approved in February 1993 and was implemented the following June. A communications consulting firm assisted in the marketing effort that included briefings, mailings, and brochures.

In implementing the program, Brown & Root established a full-time program administration position³⁹ to oversee the program and trained a cadre of employees who had volunteered to serve, as a collateral duty, as mediators and advisors. Between 125 and 150 employees received 40 hours of mediation training; about 75 of them received an additional 10 hours of advisor training. The company also provided a 1-day orientation to between 30 and 40 human resource and training staff, who in turn provided training to other company employees. In addition, Brown & Root created two management training programs as part of the implementation strategy: a half-day program on interpersonal conflict management and a 16 to 20-hour course on interorganizational conflict management. The rest of Brown & Root's employees were sent various pieces of literature to educate them about the program.

³⁸As of December 1996, Brown & Root had obtained court orders compelling arbitration in three cases.

³⁹The program administrator reports to a policy committee made up of the general counsel, employee relations vice president, and the senior U.S. operating officer in addition to other operating officers.

Resolving Workplace Disputes and Lessening the Time and Costs Associated With Redress and Litigation

Brown & Root routinely collects and analyzes data to evaluate the costs and benefits of its dispute resolution program as well as employee satisfaction. A key indicator of the program's success is that of achieving prompt resolution early in a dispute, according to the Associate General Counsel for Human Resources. He said that, overall, between 80 and 90 percent of disputes are resolved in 2 months or less, mostly through the advisor program. From June 1993 through December 1996, according to information the company provided, about 88 percent of the 1,600 cases handled were resolved without resorting to formal mediation or arbitration. As of December 1996, 155 cases had been mediated, with a resolution rate of 90 percent. Also as of December 1996, decisions had been made on 31 of 74 arbitration requests, the remainder having been settled or dropped. Arbitration is the lengthiest process, taking from 6 to 18 months from the filing of a complaint to the issuing of an arbitration decision.

According to information provided by the company, in the dispute resolution program's first 3 years, the overall cost of dealing with employment conflicts, including the total cost of the program (the program's current annual budget is about \$500,000) is less than half of what the company used to spend on legal fees for employment-related litigations. Legal fees alone are down about 90 percent (for the first 3 years of the program). Settlement costs have remained about the same since the program's inception, although there have been more settlements under the new program. In addition to the operating costs of Brown & Root's dispute resolution program, the company invested about \$250,000 in development costs, including outside consultant fees, legal fees, and the cost of mailing literature about the program.

Another indicator of the program's success, according to the company's Associate General Counsel, is that the number of employment-related lawsuits has been reduced to nearly zero, and the number of cases filed with the Equal Employment Opportunity Commission or similar state entities has been reduced by half.

Brown & Root employees appear to be satisfied with the program. According to a speech by the Associate General Counsel, confidential anonymous surveys of the users of the dispute resolution program reported satisfaction with its procedures.

Lessons Learned by the Organization

According to the company's Associate General Counsel for Human Resources, Brown & Root has learned several lessons about what makes a dispute resolution program effective. One lesson learned is that management's unwavering commitment and constant attention are prerequisites to the growth of an effective program. Brown & Root said, for example, that the general counsel's active role and organizational stature were crucial in launching the program and in maintaining its success. Also, Brown & Root said it learned that the effectiveness of a program is directly related to a company's investment in training and to its frequency of communication.

Also crucial to creating a program that will be widely accepted, in Brown & Root's experience, is ensuring the users' involvement in designing the program. The company said it learned that most employees prefer a collaborative dispute resolution process to an adjudicatory one.

The company also said it learned that mediation settlements and arbitration awards can alert management to problems within the organization. Upward communication by the dispute resolution program administrator has had a like effect.

Finally, Brown & Root said it learned the program has not been subjected to overwhelming use by chronic complainers, and the legal consultation plan has not been a financial burden. As of December 1996, 149 employees had received about \$169,000 under the legal consultation program.

Case Illustration: Hughes Electronics Corporation

The Hughes Electronics Corporation, headquartered in Los Angeles, CA, designs and produces high technology systems for military, scientific, and commercial applications. The company's various domestic business units employ approximately 69,000 workers—about 84 percent of whom are not covered under a collective bargaining agreement.⁴⁰ In January 1993, Hughes added to its dispute resolution system⁴¹ an ombudsman-like role, a management review board, and an arbitration process for its employees who are not covered under a collective bargaining agreement.⁴²

How the Processes Work

The first step for a Hughes employee who is unable to resolve a grievance through the chain of command is to talk with an “executive advisor” whose role is similar to that of an ombudsman. The advisor, whom the employee chooses from a pool of senior executives, helps the employee evaluate the grievance's merits and attempts to facilitate resolution. Failing resolution, the employee can have a hearing before a management review board (called the Consensus Review Board) composed of three managers outside the chain of management of both the employee and management respondent.⁴³ The board convenes within 60 days of the date of a written complaint, meets with each party separately, and issues its decision usually within 10 working days. The executive advisor may help the employee prepare for the hearing and assist the employee during the hearing. The board can order corrective action, such as rescinding a discharge or modifying a performance rating, but it cannot alter company policy or award monetary damages. Although the company is bound by the board's decision, the employee may request arbitration if dissatisfied.

Arbitration, the final step in Hughes' dispute resolution process, is mandatory for employees hired after January 1, 1993, who are required, as a condition of employment, to sign an agreement to use binding arbitration to resolve disputes not resolved through other processes. For employees hired before January 1993, arbitration is optional. Whether mandatory or elected, arbitration is binding on both the company and the employee.⁴⁴ An

⁴⁰As a result of the sale of its defense business and a reorganization expected to take place in the latter part of 1997, Hughes Electronics will be divested of certain business units and retain about 15,000 employees.

⁴¹Called the Employee Problem Resolution Procedure.

⁴²Some variance exists, across Hughes' business units, in the specifics of the dispute resolution system.

⁴³Management selects the board members from a pool of senior executives and managers.

⁴⁴If an employee hired after January 1, 1993, bypasses binding arbitration and files a lawsuit, Hughes will ask the court to dismiss the suit and compel use of the company processes.

arbitrator can award remedies, including monetary damages, the same as a court can. Arbitration costs are divided equally between the disputant and the company. The cost-sharing arrangement for arbitration, as explained by Hughes' Corporate Manager for Equal Employment Opportunity and Workforce Diversity Programs, was to let all parties to a dispute have a stake in the process and to help avoid frivolous use of arbitration. In cases of hardship, however, the company will limit the employee's share to 2 weeks' net pay.

Experiences in Developing ADR Processes

The rising costs of employment-related litigation served as the catalyst for Hughes to change its program.⁴⁵ According to the Corporate Manager for Equal Employment Opportunity and Workforce Diversity Programs, the company researched the "best practices" in dispute resolution used by other companies. The company also conducted a "cultural audit" to find out what types of complaints were being surfaced, what the issues were, who was complaining, and what workplace values were prevalent. Additionally, according to an article coauthored by Hughes' Vice President for Workforce Diversity, employee focus groups and surveys showed that employees considered the existing dispute resolution program too time consuming and too management oriented and felt that it denied employees the opportunity to tell their own stories.⁴⁶ Hughes also used pilot tests to gauge the likely success of various ADR techniques.

In implementing the program, Hughes trained prospective board members in how to conduct hearings, assess the merits of parties' arguments, and render fair and impartial decisions. Hughes also trained executives and managers throughout the company in conflict resolution techniques, and educated employees—through brochures, supervisory guidance, and newsletters—about the new program, according to the Corporate Manager for Equal Employment Opportunity and Workforce Diversity Programs. Hughes rolled out the new program in January 1993.

⁴⁵David R. Barclay and William A. Carmell, "Benefits of a Resolution-Centered ADR Program," *Corporate Counsel's Guide: Alternative Dispute Resolution in the Employment Context*, Business Laws Inc., ch. 16 (Chesterland, Ohio: Dec. 1995). Mr. Barclay is Hughes' Vice President for Workforce Diversity; Mr. Carmell is a labor and employment attorney with experience in developing alternative dispute resolution programs.

⁴⁶Ibid.

Resolving Workplace Disputes and Lessening the Time and Costs Associated With Redress and Litigation

According to the Corporate Manager for Equal Employment Opportunity and Workforce Diversity Programs, Hughes has not formally evaluated the program but views the program as successful. Although there is no empirical evidence to suggest that the dispute resolution system has reduced overall costs associated with external complaints and litigation, he cited some positive trends. One was the downward trend in the number of complaints filed with the Equal Employment Opportunity Commission and corresponding state agencies, which dropped from 154 in 1992 (the year before the new program was implemented) to 29 in 1995, and to 45 in 1996. Another trend was a reduction in employment-related lawsuits, which dropped from 54 in 1992 to 23 in 1995, and to 47 in 1996. He cited incentive programs during downsizing and improved business conditions as possible factors contributing to these trends.

Most cases are closed with the decision of the management review board. From January 1993 through December 1996, of 80 management review board hearings, 29 cases were decided in the employee's favor. Resolutions included rescinded disciplinary actions, terminations, and layoffs as well as modifications to performance appraisals. Of the 51 cases not decided in the employee's favor, only 1 went to arbitration, with the employee prevailing. The Corporate Manager for Equal Employment Opportunity and Workforce Diversity Programs said one reason why others may not have chosen to arbitrate their dispute is because they had had their "day in court" before the management review board.

Hughes surveys employee attitudes about the company's dispute resolution process in two ways, according to the Corporate Manager for Equal Employment Opportunity and Workforce Diversity Programs. One way is in a written survey provided to all employees who use the company's dispute resolution program. The other way is periodic focus groups of employees and managers. Although the official did not provide the results of these processes, he said that Hughes has not received any indication that its cost-sharing arrangement for binding arbitration discouraged employees from pursuing their complaints.

Lessons Learned by the Organization

Hughes has learned several lessons from its Employee Problem Resolution Procedure. For example, according to the aforementioned article, the review board hearing serves an important function just by giving an employee the chance to tell his or her own story. Also, according to the article, "Key to any such program is effective planning and implementation by both in-house counsel and the human resources department in devising

Appendix III
Case Illustration: Hughes Electronics
Corporation

a process that is not simply adversarial, but focuses on resolution.” It is also important, according to the Corporate Manager for Equal Employment Opportunity and Workforce Diversity Programs, to obtain employee input on how well the dispute resolution process is working in order to add to the trust between management and employees.

Additionally, Hughes developed a greater understanding of the roots of conflict and discovered the need to reexamine the role that human resources personnel play in conflict resolution, according to the article coauthored by Hughes’ Vice President for Workforce Diversity. The article also stated that the company learned to focus on the underlying reasons for reversals of company decisions, which has led to an in-depth reexamination of the management decisions that led to specific employee complaints.

Case Illustration: Polaroid Corporation

The Polaroid Corporation, headquartered in Cambridge, MA, employs 6,500 nonunion workers in manufacturing imaging products. Polaroid has long offered alternative dispute resolution (ADR) techniques as part of its traditional dispute resolution process. Since the 1950s, Polaroid has offered all grievants a hearing before a panel of three company officers; and nonmanagerial employees have had access to arbitration. In January 1995, Polaroid added mediation, peer panels, an ombudsman program, and a program to help grievants take part in the dispute resolution process.

How the Processes Work

A Polaroid employee is encouraged to use mediation at any stage of a grievance or appeal. The employee may choose from among 60 in-house mediators or, if the employee prefers, an external mediator. If the matter is not resolved earlier in the dispute resolution process, the employee can request a hearing before a panel of three company officers or a peer panel.⁴⁷ Panel decisions are binding on the company, but a panel's prerogatives are limited. For example, a panel may order the reinstatement of a wrongfully discharged employee, but it cannot order Polaroid to pay damages to the employee. Arbitration is the final step for nonmanagerial employees appealing disciplinary or discharge actions. An arbitrator may award the employee the same remedies as a court, including monetary damages. Although Polaroid expects its employees to use the company's dispute resolution processes, an employee who is unable to resolve a grievance to his or her satisfaction through those processes can take the matter to court.

Polaroid provides grievants with training about its dispute resolution processes. In addition, the company's four full-time ombudsmen hear employee concerns, conduct investigations and inquiries, and help employees decide on their course of action. Polaroid also provides coaching and training for grievants and a company "grievance assistant" can help grievants throughout the process by suggesting strategies, preparing written statements, and developing oral presentations.

With one exception, Polaroid pays all ADR program costs. An employee who takes his or her case to arbitration must pay \$100 toward expenses. If

⁴⁷For nonmanagerial employees, the peer panel is composed of three nonmanagerial and two managerial-level employees. For managerial employees, the panel consists of three managerial-level and two nonmanagerial employees. Under policy changes that had been proposed at the time of our study, Polaroid would replace officer or peer panels with "appeal panels" composed of a variety of managerial and nonmanagerial employees.

the employee prevails in an arbitration hearing, Polaroid refunds the \$100 payment.

Experiences in Developing ADR Processes

Polaroid's current dispute resolution program has its roots in a pilot that began in October 1993 at its plant in New Bedford, MA at the suggestion of a small group of plant employees. While the pilot was under way, a Polaroid task force, assembled to redesign the company's entire dispute resolution program, researched the best practices of 22 companies, obtained the views of various employee groups, and examined the results of the New Bedford pilot. The task force's proposals were critiqued by focus groups drawn from all levels of company staff before being finalized and put into practice in January 1995.

Polaroid established the Grievance Administration Office to oversee the appeals processes and train employees, according to the Human Resources Manager, Corporate Dispute Resolution. The company trained selected employees as ombudsmen, mediators, peer panelists, and grievance assistants. Peer panelists, for example, were given 2 days of training on due process and the proper conduct of hearings; and grievance assistants were given training in company policies, problem solving, and conflict resolution, according to information provided by the company. Supervisors received the same training as grievance assistants; Polaroid's rationale was that supervisors are the first line in preventing and resolving disputes, according to the former Senior Corporate Counsel. Further, Polaroid trained its human resource management staff in facilitating conflict resolution. Finally, Polaroid educated its employees about the company's dispute processes, using video presentations, small meetings, newsletters, and other printed materials.

Resolving Workplace Disputes and Lessening the Time and Costs Associated With Redress and Litigation

Polaroid has not formally evaluated and does not track the costs of its ADR processes, but management officials believe that the company's ADR processes have been successful in resolving disputes and avoiding the time and expense associated with litigation.

Management officials noted that most cases in Polaroid's dispute resolution program are resolved before they reach the panel or arbitration levels. They said that each year, only about 30 to 40 cases are heard by peer or company officer panels (for the most part, grievants select peer rather than company officer panels) while three or four cases go to arbitration. Employees have prevailed in about one-third to one-half of the

panel hearings and in about one-fourth of arbitration hearings. The peer panel and arbitration processes are not very time consuming, according to Polaroid's former Senior Corporate Counsel. She said peer panelists generally spend several hours in preparing for and hearing a case; they deliver their decisions in 7 to 10 days. An arbitration hearing usually takes about a half day (although prehearing conferences add time to the process) with a decision rendered within 30 days.

Also, according to Polaroid's former Senior Corporate Counsel, no employee has ever gone to court after losing an arbitration decision. She attributes this success to the fact that grievants get "their day in court" within Polaroid's dispute resolution program.

Polaroid officials also spoke highly of the company's experience with mediation, which was used extensively in grievances associated with downsizing. They told us that mediation techniques expedited the grievance process and, at a minimum, made settlements more likely by clarifying the issues.

There is some indication that employees generally have a favorable view of the company's dispute resolution processes. About two-thirds of the employees Polaroid surveyed at its New Bedford plant indicated that the pilot program as a whole was "somewhat" to "extremely" effective.

Although it revamped its dispute resolution system in 1995, Polaroid is considering further revisions to decrease the resolution time for serious cases—such as firings, which currently take 12 to 18 months—to a maximum of 14 weeks. The policy under consideration would require mediation to be used, reduce the number of grievance steps below the panel and arbitration levels, and impose stricter process time deadlines.

Lessons Learned by the Organization

Polaroid learned two important lessons, according to the former Senior Corporate Counsel. The first was that most disputes could be resolved through informal processes. The second lesson was that one outgrowth of progressive dispute resolution processes is the enhancement of personnel management. She said that since Polaroid provided the processes and the climate for employees to raise issues and concerns, supervisors and managers have become more accountable for adhering to company policies. And because a cluster of grievances can indicate a problem in a work unit or dissatisfaction with a company policy, the system helps keep management aware of systemic or organizational concerns.

Case Illustration: Rockwell International Corporation

Rockwell International Corporation, headquartered in Seal Beach, CA, designs and builds automation, communications, semiconductor, and automotive products worldwide.⁴⁸ It has about 60,000 domestic employees, 50,000 of whom are nonunion. In May 1993, Rockwell added arbitration to its existing dispute resolution procedures for its nonunion employees.⁴⁹ Eight of Rockwell's 12 business units offer peer panel review as another ADR technique to be used before arbitration.

How the Processes Work

A Rockwell employee who is unable to resolve a dispute through the traditional chain of command can request a peer panel review in the eight Rockwell business units that offer this technique. The panel, randomly selected by computer, has five members, three of whom are from the same payroll group as the disputant, and two of whom are managers. The panel normally meets within 30 days of the request, evaluates the facts presented, and usually decides the outcome of cases within 1 day. The panel can overturn or modify a disciplinary or discharge action and can award back pay, but it cannot award exemplary or punitive damages. Although Rockwell is bound by the peer panel decision, an employee who is dissatisfied with the decision can request arbitration.

Arbitration, the final step in Rockwell's dispute resolution process, is mandatory for employees hired after January 1, 1993, who are required to sign a "Mutual Agreement To Arbitrate Claims" as a condition of employment.⁵⁰ For those hired before January 1993, signing the agreement is voluntary, except that they cannot be promoted into management or exercise company stock options unless they sign the agreement. Rockwell did not implement the arbitration policy for all employees hired before 1993, reasoning that in California (where many Rockwell employees reside), courts would require specific consideration for the arbitration agreement to be binding and would not consider merely continued employment to constitute such consideration.

Arbitrators can award remedies, including monetary, exemplary, and punitive damages, just as a court can. The disputant and the company share arbitration costs equally, although the arbitrator may award

⁴⁸In December 1996, Rockwell's aerospace and defense units were acquired by the Boeing Corporation. This illustration discusses Rockwell's dispute resolution processes before the acquisition.

⁴⁹Rockwell's ADR program is known as the Employee Issue Resolution Process.

⁵⁰If an employee who has signed this agreement bypasses the company's processes and files a lawsuit, Rockwell will file a motion in court to compel arbitration.

reasonable fees to the prevailing party.⁵¹ The arbitrator's decision is final and binding on both the company and the employee.

Experiences in Developing ADR Processes

In 1993, after the company spent over \$1 million in attorney's fees in winning a lengthy case that alleged wrongful discharge and handicap discrimination and having gained first-hand knowledge of the time and expense that lawsuits can involve, Rockwell's top executives decided to incorporate arbitration into the company's existing dispute resolution process, according to the company's Assistant General Counsel.

In implementing the arbitration program, Rockwell first asked its 950 highest paid executives to sign the Mutual Agreement to Arbitrate Claims, reasoning, the Assistant General Counsel said, that it would not be fair to ask employees to participate in a program from which top executives were exempted. The arbitration program was then communicated to employees through a letter explaining the program, an arbitration handbook addressing questions employees would be likely to ask, and a video about the arbitration process. The Assistant General Counsel said that it cost between \$18,000 to \$23,000 for legal advice, developing and distributing copies of videotapes, and printing and distributing booklets.

Rockwell then tasked its individual business units with updating their own dispute resolution procedures to incorporate additional ADR approaches. Based on the results of focus groups and other techniques, 8 of the 12 business units incorporated peer review panels, in addition to arbitration, into their procedures.

Resolving Workplace Disputes and Lessening the Time and Costs Associated With Redress and Litigation

Rockwell has not evaluated its ADR program but believes it has been successful because, according to Rockwell's Assistant General Counsel, (1) the "Mutual Agreement To Arbitrate Claims" has not been challenged in court; (2) the company has been able to avoid the costs of litigation and outside counsel, as the company was represented by its own counsel in the arbitrations; and (3) only one employee who signed the arbitration agreement has filed a lawsuit against the company.⁵²

⁵¹Rockwell's Assistant General Counsel explained that arbitrators follow court rules in making such awards and that judges are very reluctant to award attorney's fees to companies unless the plaintiff's action was frivolous.

⁵²At the time of our study, the company was filing a motion to dismiss and compel arbitration.

The official also said he believes that there have been numerous instances in which the arbitration agreement made it easier for Rockwell and a former or current employee to resolve differences short of either arbitration or litigation. He noted that from May 1993 (when the program started) through June 1996, only two cases went to arbitration; the company prevailed in the first one, while the employee received some relief in the second case.⁵³ A third case was pending arbitration at the time of our study.

The Assistant General Counsel also pointed out the effectiveness of peer panels in resolving disputes. Ten cases had been heard by a peer review panel between May 1993 and June 1996, and while the company prevailed in 9 of the 10 cases, none of them went on to arbitration.

Lessons Learned by the Organization

Rockwell learned several lessons from its experiences, according to the company's Assistant General Counsel. One lesson learned was that because many of Rockwell's top corporate executives were involved in the wrongful discharge/handicap discrimination case by testifying either at a trial or at a deposition, they were keenly aware of the time and costs involved in employment litigation. This led to a partnership and shared vision among the top legal and human resource officials to exploring ways to reduce such time and costs.

Another lesson the Assistant General Counsel said the company learned is that for an arbitration process to be accepted, a good communications process is needed on how the arbitration process works. Rockwell also found it important for the communication to be frank. For example, while Rockwell's arbitration handbook explained that arbitration was a fair and less expensive way to settle a dispute, it also explained that an employee seeking to "hit the jackpot" would probably be disappointed because a windfall award is less likely under arbitration than in a jury trial. The handbook explained that an arbitrator's award is more likely than a jury's to be based on the merits of a case rather than on extraneous or emotional considerations.

A further lesson Rockwell learned involved the "Mutual Agreement To Arbitrate Claims" that was made a condition of employment beginning in 1993, according to Rockwell's Assistant General Counsel. He said there was a "little" negative reaction from some management employees because they would not be able to take advantage of employee stock

⁵³Neither of these cases were in business units that offered peer review.

Appendix V
Case Illustration: Rockwell International
Corporation

options without signing the “Mutual Agreement To Arbitrate Claims.” But, Rockwell learned, the provision could be made acceptable to employees if the company made sure that it was applied fairly and ethically by (1) ensuring that the program did not take away from employees any of their substantive rights; (2) including the company’s top executives in the program; and (3) providing employees with consideration for signing the agreement, instead of merely imposing the requirement as a condition of employment.

Case Illustration: TRW Inc.

TRW Inc., headquartered in Cleveland, OH, provides products and services for the space, automotive, and defense markets worldwide. More than 90 percent of its 33,000 U.S. employees are not covered under collective bargaining agreements. In January 1995, TRW adopted a companywide ADR program for these workers. The company made arbitration available companywide.⁵⁴ Some TRW business units offer mediation and peer review in addition to traditional dispute resolution procedures. TRW also operates a “hotline” to provide employees an independent and confidential source of advice and assistance.

How the Processes Work

While arbitration is a companywide policy, TRW’s approximately 60 business units have the prerogative to develop their own dispute resolution processes, according to the company’s Senior Corporate Counsel for Labor and Employment. Some business units, including TRW’s Systems Integration Group (SIG), include ADR techniques along with arbitration in the dispute resolution continuum. Under SIG’s procedures, employees can choose a hearing before a peer panel or mediation before taking a matter to arbitration.

In most instances, a SIG employee first submits his or her dispute for management review, which includes internal mediation conducted by human resources staff. If the matter is not resolved or dropped, the employee can elect to have a hearing before a five-member peer review panel⁵⁵ that may be followed by external mediation, or bypass the panel and request external mediation. A peer review panel’s decision is binding on the company, although its remedies are limited to actual damages; for example, it can order that a wrongfully discharged employee be reinstated with back pay but cannot award damages. Before a SIG grievant who is dissatisfied with a peer panel’s decision can take the matter to arbitration, the dispute must be submitted for external mediation. Arbitration is the final step at SIG as well as at all other TRW business units. Arbitrators may award remedies just as a court would do.

With one exception, TRW pays all dispute resolution costs. Its share of arbitration costs depends on the outcome of the case. An employee who chooses to go to arbitration and does not prevail is liable for half the cost

⁵⁴TRW provides for two forms of arbitration. One model is the single arbitrator; the other is a panel selected by the employee and management and may also include an arbitrator. Most TRW business units have adopted the single arbitrator model.

⁵⁵The panel, called the Appeals Committee at SIG, is composed of five members selected from a pool of employees nominated by other employees. The grievant selects three panelists and management selects two.

of arbitration but not more than 2-days' base pay.⁵⁶ TRW expects its employees to use the company's dispute resolution processes before litigating a matter. If an employee bypasses TRW's processes and files suit, the company will petition the court to compel the use of company arbitration.

Experiences in Developing ADR Processes

According to TRW's Senior Corporate Counsel for Labor and Employment, company downsizing efforts in the early 1990s and a general proliferation of employment-related lawsuits led to much employment litigation. She said that Human Resource and Legal Department staff believed that ADR could help resolve cases more quickly and less expensively. Consequently, TRW required that its business units adopt arbitration to supplement existing grievance procedures.

Before putting its arbitration program into effect in January 1995, TRW trained key staff and marketed the program throughout the company, according to the Senior Corporate Counsel for Labor and Employment. She said that TRW contracted with a law firm for a 2-day program to give human resource management staff (1) an overview of mediation and arbitration and (2) instruction on how to conduct discovery, prepare a brief, interview witnesses, and take depositions. The marketing initiative, which began in the summer of 1994, included group meetings in field units, video presentations, and articles in company newspapers. The company also sent literature on the arbitration program to all employees. She also said that before the program went into effect, TRW obtained employee feedback through focus groups and surveys. SIG supplemented the parent company's initiatives with its "Dispute Resolution Process Guide"—a step-by-step description of, and questions and answers about, the dispute resolution processes at SIG.

Besides the costs of training staff and marketing the program (which the company did not track), the start-up process required the near full-time efforts of three staff from the human resources, communication, and legal offices for about 6 months.

⁵⁶The extent to which employees share in arbitration costs was under review by the company at the time of our study, according to the TRW's Senior Corporate Counsel for Labor and Employment.

Resolving Workplace Disputes and Lessening the Time and Costs Associated With Redress and Litigation

Although TRW has not formally evaluated its arbitration program, the company's Senior Counsel for Labor and Employment said that the program has succeeded in resolving disputes and avoiding the time and expense associated with litigation. Information she provided showed that from January 1995 to September 1996, companywide, 40 grievants requested arbitration. Of these disputes, 27 had been submitted to mediation; 16 (59 percent) of them were resolved. Of the 13 cases not mediated, two were arbitrated; the entire process took 4 to 5 months. The other cases were pending.⁵⁷

According to the Senior Counsel, there has been a significant drop in discrimination and other employment litigation, although some of this decrease is due to the company's improved economic condition since 1994 and the end of downsizing. She also noted that existence of the arbitration program redirected some court cases to TRW's dispute resolution forum. She explained that five employees had bypassed TRW's arbitration process and filed lawsuits. After TRW informed the plaintiffs' attorneys about the arbitration program, four of the five plaintiffs withdrew their suits to first seek resolution through arbitration. The fifth plaintiff agreed to arbitration after TRW filed a motion in federal district court to dismiss or stay a lawsuit, pending arbitration. In addition, several employees who filed lawsuits before the arbitration program went into effect subsequently requested binding arbitration as an alternative to the judicial process. TRW's Senior Counsel further noted the fact that since only two cases had been arbitrated in the program's first 21 months, this showed the effectiveness of mediation and other dispute resolution measures.

TRW's Counsel's Office surveyed human resources staff in mid 1996 about their perception of the arbitration program. Among the staff's responses was that employees seemed willing to use ADR because a third party is involved in the process. They also said that more concerted efforts are made at each step to reach an acceptable solution. Further, the staff said the process seems to have reduced the number of "frivolous" lawsuits.

Lessons Learned by the Organization

TRW has learned several lessons, according to the company's Senior Counsel for Labor and Employment: (1) that, contrary to expectations, the establishment of the arbitration program did not result in an overwhelming number of complaints; (2) that most grievants simply want

⁵⁷Data on ADR use by all of TRW's individual business units was not available. However, between January 1995 and November 1996, 15 cases were filed at SIG in which the grievant had the option of going to peer review or directly to external mediation. Of the 15 cases filed, 13 were resolved (12 through mediation).

to “have their day in court” to tell their story to a third party; and (3) that an employee’s request for arbitration often opens the door to settlement, whether through mediation or other settlement discussion. Finally, responses by TRW human resources staff to a company survey indicated that having the program keeps management “on their toes” as far as documenting and addressing issues as they occur.

Case Illustration: U. S. Department of Agriculture

The U. S. Department of Agriculture, headquartered in Washington, D.C., manages agriculture, food safety, nutrition, natural resources, community development, and scientific research programs. Agriculture and its 16 agencies employ about 108,000 people. In 1993, Agriculture provided mediation training to its full-time equal employment opportunity (EEO) counselors.⁵⁸ In January 1994, it established Dispute Resolution Boards to handle the rapidly growing volume of EEO complaints.⁵⁹ In 1996, Agriculture announced a policy requiring its agencies to develop conflict resolution programs outside the EEO complaint process that used alternative dispute resolution (ADR) techniques like mediation, to intervene early in disputes to prevent them from becoming formal EEO complaints. This case illustration discusses the operation of Dispute Resolution Boards.

How the Process Works

The Dispute Resolution Boards operated in an adjudicatory-like fashion as an initial step in the formal EEO complaint process. The three-member boards required 1 day for preparation and 1 day for the hearing or conference, which had two phases: fact-finding⁶⁰ and resolution or settlement. During fact-finding, the board heard sworn testimony from both the employee and the supervisor and obtained other evidence. Following deliberations, the board met jointly and separately with the parties to facilitate resolution and offered them an assessment of (1) the strengths and weaknesses of their respective positions and (2) which party would likely prevail if the case proceeded further in the process. If resolution resulted, the parties signed a written settlement. If there was no resolution, information developed during fact-finding became part of the investigation record.

Because the board lacked resolution authority, an agency official with authority to enter into settlement agreements—called a resolving official—participated in the proceedings. According to Agriculture’s Washington Regional Service Center Director, the resolving official was authorized under verbal Agriculture policy to commit the department to monetary settlements up to \$2,500, in addition to back pay and attorneys’ fees, without higher-level approval.

⁵⁸The 40-hour training was provided by the Justice Center of Atlanta.

⁵⁹As a result of the recommendation of an internal Agriculture evaluation (see p. 60), boards were discontinued in April 1997.

⁶⁰Regulations governing the EEO complaint process require the parties to cooperate during fact-finding.

Experiences in Developing the ADR Process

The significant increase in EEO complaints, the inability to process them in a timely manner, and a burgeoning complaint backlog prompted Agriculture's then Assistant Secretary for Administration to adopt the board concept to save time and money by reducing the number of cases going through the entire complaint process.⁶¹

In April 1993, a task force of EEO and employee relations staff began planning how the boards would operate. Agriculture conducted a pilot from September 1993 to December 1993 with board members selected from EEO and human resource staff for "their good common sense and basic understanding of the complaint process and dispute resolution," according to Agriculture's evaluation of the pilot. Diversity was also a selection factor. According to agency officials, based on the pilot, Agriculture decided that a board would have three members rather than one because a three-person board would (1) more fully develop the record and identify issues requiring further investigation, (2) be viewed as more credible by the parties, and (3) allow for diversity among the members. In January 1994, a board was established in the Washington Regional Service Center. The officials also said that because of resource constraints, boards operated in only four of the six regional service centers before being discontinued in April 1997 and had been used in only about 12 to 15 percent of the EEO cases.

Resolving Workplace Disputes and Lessening the Time and Costs Associated With Redress and Litigation

Agriculture evaluated the results of the 3-month pilot, comparing 48 cases going through the board process to 41 cases handled by the traditional EEO complaint process. Evaluation results showed that of the 48 pilot cases, 16 were withdrawn, dismissed, or settled prior to the day of the hearing. Of the 32 remaining cases, 23 settled on the day of the hearing. Another 8 settled after the day of the hearing. The one case not resolved continued to be handled by the traditional process. Board cases were resolved in less time than the traditional process, requiring an average of 152 days from filing of the complaint until closure (including 46 days from the time a case was assigned to a board to closure); the comparison group averaged 238 days.⁶²

The evaluation team reported that while it could not compare costs of the board and traditional processes with any precision because exact records of time and cost were not maintained, "it seems fairly certain" that EEO

⁶¹The history of Agriculture's Dispute Resolution Boards was discussed in USDA Dispute Resolution Board Pilot Project Evaluation, May 1994.

⁶²Ibid.

complaint processing costs using boards were less than the costs under the traditional process. However, when settlement costs were considered, it was unclear whether boards were less costly because board-facilitated settlements (averaging \$19,737) were more costly than settlements and decisions in the comparison group (averaging \$4,665).⁶³

Generally, employees and resolving officials had more favorable opinions about boards than did the supervisors, according to the evaluation. Of respondents to the evaluation team's survey, 42 percent of the supervisors were dissatisfied with the board process compared with 17 percent of the employees and 25 percent of the resolving officials. Forty-two percent of the supervisors said the process was unfair, compared with 17 percent of the employees and 15 percent of the resolving officials. In addition, 53 percent of the supervisors were dissatisfied with the outcomes compared with 25 percent of the employees and 30 percent of the resolving officials.

Lessons Learned by the Organization

Based on the evaluation, Agriculture learned that while boards had been helpful in dealing with the complaint inventory, they were labor intensive and expensive and did not deal with the underlying issues in disputes. This is the reason why Agriculture has begun training counselors in mediation and developed a conflict resolution policy encouraging its agencies to intervene early in disputes, according to the former Deputy Director of the Office of Civil Rights and Enforcement.

Another lesson learned relates to the politics of settlement. Officials said that in the beginning, there was a push to settle and close cases. They said that the settlement policy discouraged supervisors and affected their attitude toward the board process because they perceived that their authority was being undermined. At the same time, the settlement policy may have encouraged employees to file complaints. Agriculture has since stated that in making settlements, officials should ensure that appropriate weight is given to the merits of a case. Additionally, some Agriculture officials said that they believe the prospect of receiving a cash settlement may have motivated some employees to file complaints, and the expectation of receiving cash may have impeded resolution.

The above lessons were reinforced by the Civil Rights Action Team that studied how Agriculture treated both customers and employees. In its

⁶³Includes cash settlements, compensatory damages, back pay and attorneys' fees, and the monetary value of noncash settlements such as training, travel, and tuition.

Appendix VII
Case Illustration: U. S. Department of
Agriculture

February 28, 1997, report,⁶⁴ the team recommended sweeping changes to how Agriculture resolves workplace disputes, including using more interest-based ADR techniques outside the EEO process to resolve complaints and their underlying issues at the lowest possible level. To deal with the EEO case backlog, the team recommended using mediation and voluntary binding arbitration. The team also recommended discontinuing boards. The Executive Assistant to the Deputy Director of Agriculture's Office of Civil Rights said that criticism of the boards was not about their design but about how they implemented the agency's settlement policy.

In addition to recommending that Agriculture abandon a "settle at all costs" policy, the team said that the performance of EEO counselors and other Agriculture personnel with dispute resolution responsibilities should not be assessed exclusively or primarily on their settlement or resolution rates. Further, the team recommended that all Agriculture employees receive civil rights training and that managers receive training to enhance their "people skills."

The Secretary of Agriculture has accepted the team's findings. An implementation team was established to draft new settlement and conflict management policies as well as to set up a conflict management program. Agriculture said that the team is expected to complete its work by the end of the summer 1997.

⁶⁴Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team.

Case Illustration: U.S. Air Force

The U.S. Air Force, with facilities worldwide, employed more than 571,000 personnel in fiscal year 1996, including about 183,000 civilians. In the Air Force, the alternative dispute resolution (ADR) method that is emphasized is mediation, which has been used in personnel issues since 1990, particularly in civilian employee equal employment opportunity (EEO) cases. The Air Force has trained its EEO counselors in mediation to foster its use.

How the Process Works

Civilian employees who believe they have been discriminated against can contact an EEO counselor who, if unable to resolve a particular matter, may suggest mediation.⁶⁵ Both parties—employee and supervisor—must agree to mediation, which can occur at any point in the dispute. The Air Force's goal is to provide mediation within 4 weeks of a request for its use, according to the deputy dispute resolution specialist.

A mediator is selected depending on the issues involved (the Air Force prefers to match a mediator to a case with issues in which he or she specializes) and, to a limited extent, on the preferences of the parties. The mediator could be the counselor whom the employee initially contacted; another counselor not involved in the case; or an external mediator from another Air Force installation, the Department of Defense's shared neutrals program, another federal agency, or a contract mediator. In addition to the disputants, the mediator must arrange for an Air Force official, who is authorized to agree to settlement terms, to directly participate in, or at least be kept informed of, the mediation proceedings in order to approve any proposed settlement terms. If a matter is resolved, the parties sign a settlement agreement, which is subject to a higher-level review before becoming final.

Experiences in Developing the ADR Process

Air Force officials said workplace ADR efforts began in 1990, when the Air Force started providing mediation training to grievance examiners and complaint investigators. A more structured ADR program was established in January 1993 when the Secretary of the Air Force, in a memorandum, called for using ADR in appropriate cases, designated the Deputy General Counsel as the Air Force Dispute Resolution Specialist and, among other things, required (1) development of an ADR implementation plan, and (2) an annual progress report.

⁶⁵Kirtland Air Force Base is an exception. The base's Mediation Center, established in December 1993, is separate from all formal processes and handles disputes ranging from grievances under collective bargaining agreements to EEO complaints.

In planning the program, General Counsel staff canvassed the public and private sector legal communities about best practices and program successes, according to a memorandum prepared by the Air Force's General Counsel describing the status of the Air Force's ADR initiatives. An ADR Working Group determined that the ADR program should emphasize stakeholder education and awareness by briefing those most affected by disputes, including EEO and senior military and civilian personnel.

In implementing the program, the Air Force continued training EEO counselors in mediation; at the time of our study, over 1,000 Air Force personnel (most of whom had dealt with employment disputes) had been trained, according to the General Counsel's memorandum. The training course is a 24-hour program.⁶⁶ To help less experienced mediators further develop their skills and to promote ADR use, the Air Force established the Mediator Mentoring Program, under which trained but inexperienced mediators apprentice with highly skilled and experienced mediators.

A major marketing initiative began in 1996 with plans to brief key staff at all major commands. Efforts have included on-site multimedia briefings and briefings via satellite to more than 20 Air Force installations. Further, the Office of the General Counsel has publicized ADR efforts through its newsletter ADR News!.

The Air Force has been developing ADR guidance and information resources. At the time of our study, the handbook Air Force Mediation Handbook: Mediating Civilian Personnel Workplace Disputes was in final drafting stages. In developing the handbook, the Air Force used input from EEO counselors and personnel specialists. The Air Force is also developing an Internet site called The ADR Source, which will offer information about ADR programs in the Air Force, at other federal agencies, and in the private sector. These and other efforts are being underwritten by a budget that in fiscal year 1997 is \$400,000.

⁶⁶Training providers have included the Justice Center of Atlanta and the Federal Mediation and Conciliation Service as well as other contractors.

Resolving Workplace Disputes and Lessening the Time and Costs Associated With Redress and Litigation

An evaluation of the Air Force's program, as it relates to the resolution of EEO complaints, is expected to be completed by late 1997, according to Air Force officials.⁶⁷ Preliminary data show that the Air Force ADR program is successful in resolving workplace disputes and in lessening the time and costs associated with redress, according to the memorandum from the Air Force General Counsel. The extent to which costs are saved is a subject of the ongoing evaluation. However, the General Counsel said that resolving EEO disputes at the earliest possible time and at the lowest organizational levels helps keep both tangible and intangible costs (e.g., diversion of resources from mission accomplishment and morale problems) low.

In fiscal year 1996, the Air Force reported using ADR in 1,807 EEO cases, resolving 1,339 (74 percent) of them. It also reported that the amount of time it takes to resolve cases has declined. The average number of days to settle formal EEO complaints decreased from 329 to 136 between fiscal years 1992 and 1995. The General Counsel said that this is explained, in part, by the use of ADR. During this period, the average time to close formal complaints (including through a settlement) declined from 401 to 201 days. The Air Force also reported significant time savings in resolving informal EEO complaints.

Lessons Learned by the Organization

In her memorandum, the Air Force General Counsel said that the ADR program has achieved important results in a relatively short period of time because of (1) strong support from senior management, (2) the fact that at least one employee has worked full-time on implementing ADR initiatives, (3) training and awareness briefings, and (4) financial support for ADR initiatives.

The Air Force learned additional lessons from a survey of Air Force personnel who reported using ADR techniques to resolve personnel disputes.⁶⁸ Among the lessons learned was that early use of ADR enhances the potential for resolving the dispute in a way that satisfies the parties' underlying interests, whereas when time drags on without a resolution, people tend to "dig in their heels" and fight for their position. Another lesson was that mediation helps overcome disputes arising from poor communication, which is at the root of many disputes. Mediators also

⁶⁷An evaluation of the Kirtland Air Force Base Mediation Center was in final review at the time of our study. Preliminary data show the center resolved 51 of 72 (71 percent) cases mediated between December 1993 and October 1996. In addition, 90 percent of users responding to a survey between December 1993 and July 1995 reported they were satisfied with the services.

⁶⁸These lessons are documented in Air Force ADR Program (FY 94-96); Lessons Learned by Using ADR to Resolve Civilian Workplace Disputes, in draft at the time of our study.

reported learning the importance of preparation, including explaining the mediation process to the parties; becoming generally familiar with the nature of the dispute; encouraging the disputants to review the facts of the dispute before mediation begins; and coordinating with appropriate officials (e.g., one authorized to agree to settlement terms). They also learned that not every case is appropriate for mediation, such as cases involving “chronic complainers” and those in which complainants have an inflated sense of what they might be entitled to receive. However, Air Force officials emphasized that even in such cases, if mediation might be helpful, it should be tried. The officials told us that other cases that are not appropriate for mediation are those involving fraud or those that are the subject of an Inspector General investigation. Further, the mediators reported that written agreements build trust, cooperation, and understanding.

Finally, Air Force officials noted that providing mediation training to the Air Force’s EEO counselors was worthwhile. Although not all counselors became skilled in or comfortable with the mediation process, the training helped many of them do a better job of resolving EEO matters, whether they used mediation or more traditional counseling methods.

Case Illustration: U. S. Postal Service

The U. S. Postal Service, an independent governmental establishment headquartered in Washington, D.C., is the nation's largest civilian employer with more than 800,000 workers. Although most employees are covered under collective bargaining agreements under which they can file equal employment opportunity (EEO)-related grievances, they can simultaneously file complaints under the EEO complaint system for federal employees. Mediation was introduced in 1986 in the EEO complaint program in Santa Ana, now within the Postal Services' Southern California EEO Processing Center. In 1994, the Postal Service piloted a headquarters-sponsored EEO complaint mediation program⁶⁹ in its North Florida District. At the time of our study, there were 20 pilot mediation sites.

How the Process Works

Postal Service workers who believe that they have been discriminated against can contact the EEO office where they receive information about mediation and a form to make a request. Mediation is offered in lieu of the customary counseling in the informal phase of an EEO complaint. If a senior complaint processing specialist approves mediation, it is to be scheduled within approximately 2 weeks of the request. The Postal Service representative at mediation is to have settlement authority or have access to an official with that authority. If the parties achieve resolution, they are to sign a settlement agreement.

The source of the mediators varies by location. The Southern California EEO Processing Center uses EEO counselors trained in mediation. The North Florida District uses contract mediators. Other locations, if they do not use internal mediators, obtain mediators from a shared neutrals program or contractor.

Experiences in Developing the ADR Process

A variety of factors led to the Postal Service's growing use of mediation, according to Postal Service officials. The grass roots program in Santa Ana was suggested by an EEO specialist experienced in mediation. In 1992, General Counsel and human resources staff at Postal Service headquarters began developing an agencywide alternative dispute resolution (ADR) policy in voluntary compliance with the Administrative Dispute Resolution Act of 1990 and to take advantage of federal employee EEO complaint system regulations encouraging ADR use. The first pilot under the agencywide initiative was in the North Florida District, its selection

⁶⁹The Postal Service's program is known as REDRESS (Resolve Employment Disputes, Reach Equitable Solutions Swiftly).

spurred by a need to comply with a consent decree resulting from a lawsuit.⁷⁰ The Postal Service expanded EEO complaint mediation to other sites because of the high number of complaints and the sense that many complaints are rooted in personality conflicts that should be resolved in some other forum, according to the Manager, EEO Compliance and Appeals.

In developing the agencywide ADR policy, the General Counsel and human resources staff at headquarters researched ADR practices at large firms and consulted with dispute resolution experts, according to Postal Service officials. The officials said that the Postal Service contracted with a marketing firm to conduct focus groups to obtain supervisor and rank-and-file employee perceptions of the EEO complaint process and what could be done to improve it. On the basis of their research, focus group results, and other input, the Postal Service decided to use outside mediators in North Florida provided under contract by the Justice Center of Atlanta, to lend more credibility to the process. Before implementing this first pilot, the Postal Service obtained feedback from supervisors and union representatives.

Officials told us that support for expanding the ADR program came from the Postal Service's quality improvement program known as "Customer Perfect," which provided top-level policy endorsement, funding, and publicity. Under this program, they said that the Postal Service has provided conflict management and ADR training to about 1,100 managers and supervisors. It also held two week-long conferences to help managers from the cities with pilot programs design an ADR program and develop an implementation plan. Further, it trained staff as mediators in each location, developed a video and brochure about the program, and provided on-site program development assistance. Headquarters program staff have conducted numerous briefings at locations across the nation. The Postal Service has also worked with the unions to get their support.

Finally, the Postal Service's program implementation plans include a comprehensive evaluation of user satisfaction and cost effectiveness of mediation at the pilot locations. The evaluation is being conducted by an assistant professor at Indiana University's School of Public and Environmental Affairs as a research project at no cost; the Postal Service is paying for administrative support.

⁷⁰Under the terms of the consent decree, which sunset in October 1996, the Postal Service had offered binding arbitration.

Resolving Workplace Disputes and Lessening the Time and Costs Associated With Redress and Litigation

As of June 1997, the Postal Service's evaluation was still under way. However, data reported from North Florida and Southern California show that mediation resolved a higher proportion of complaints in the informal stage than did the traditional process. Resolution rates were 74 percent (139 of 188 cases between October 1994 and December 1996) in North Florida and 94 percent (1,605 of 1,714 cases between October 1988 and September 1996) in Southern California. In the Southern California EEO Processing Center, for example, only 57 percent of cases that went through traditional counseling were resolved. In the North Florida program's first year, the "flow-through" rate (the rate of informal complaints becoming formal complaints) dropped from 43 to 22 percent, according to the ADR Counsel.

Postal Service surveys of employees and supervisors in North Florida who had used mediation and of those in a comparison group (in other locations) who had used the traditional process showed user satisfaction with mediation far exceeded user satisfaction with the traditional process. For example, 90 percent of mediation users said the process was fair compared with 41 percent of the comparison group. Seventy-two percent of the mediation users were satisfied with the outcomes compared with 40 percent of the comparison group.

Mediation was not very time consuming. In the Southern California EEO Processing Center, the typical mediation required about 90 minutes; cases in North Florida averaged 197 minutes.

Lessons Learned by the Organization

Foremost among the lessons the Postal Service learned is the importance of top-level support in establishing and sustaining a program, according to Postal Service officials. For example, the Southern California program, established with the support of the human resources director, saw the use of mediation in informal cases decline from 58 percent in fiscal years 1989 through 1992 to about 10 percent following management changes resulting from restructuring in 1992.

Postal officials said that keys to a program's growth are demonstrable results and early successes. The ongoing evaluation should be particularly helpful in this regard. Because starting a mediation program requires a Postal Service district to pay start-up costs, officials said they learned that some managers need convincing data to decide whether mediation is a worthwhile investment.

Officials said they also learned that the user-friendly dispute resolution program increased the number of informal complaints. However, based on North Florida's experience, a lower proportion of informal complaints turned into formal complaints, and the overall number of formal complaints declined. Postal Service officials attribute this reduction to employees' (especially supervisors) having developed conflict management competencies after having gone through mediation, some on several occasions. Officials also said that it is important to intervene promptly in a dispute while the issue is fresh in the disputants' minds and their positions have not hardened.

Case Illustration: U. S. Department of State

The Department of State, headquartered in Washington, D.C., advises the President in formulating and executing foreign policy. State's approximately 13,000 U.S.-based employees are classified either as foreign service (58 percent) or civil service (42 percent). In 1989, State implemented a legislative mandate that created the Ombudsman for Civil Service Employees to address concerns about the treatment of its civil service employees in relation to its foreign service employees. In May 1995, State launched a pilot mediation program to deal with equal employment opportunity (EEO) complaints. State also tested dispute resolution boards in EEO complaints in 1995 and 1996. Further, in June 1997, State developed procedures for mediating grievances.

How the Processes Work

A State employee can choose from several channels when seeking assistance to resolve a workplace dispute, including the Ombudsman for Civil Service Employees, the Office of Equal Employment Opportunity and Civil Rights (S/EEOCR), and the grievance office.

The Ombudsman for Civil Service Employees reports directly to the Secretary of State and is to provide (1) advice on how programs and policies affect the interests of civil service employees and (2) counseling to employees on career and work-related matters. The ombudsman's office is to assist individual employees by providing confidential counseling on workplace issues, such as answers to their questions about employee rights. Although rarely a party to dispute resolution, the ombudsman is to outline approaches for employees dealing with conflict and resolving disputes.

S/EEOCR has used mediation and dispute resolution boards to deal with EEO complaints. It uses mediation in the informal phase of an EEO complaint. Employees are provided information about mediation by counselors and when they visit the S/EEOCR office. Participating in mediation is voluntary for the employee but mandatory for management. In addition to the employee and the supervisor, a management representative with the authority to approve a settlement is party to the mediation. During the pilot, State has used internal mediators and mediators from a Washington, D.C.-based shared neutrals program. If the matter is resolved, the parties sign an agreement that is reviewed and monitored by S/EEOCR.

In 1995 and 1996, S/EEOCR used dispute resolution boards⁷¹ on a trial basis to resolve formal complaints. The three-member board operated in an adjudicatory-like fashion. While the board had no resolution authority, it offered the parties an assessment of (1) the strengths and weaknesses of their respective positions and (2) which party would likely prevail if the case proceeded further in the process. If a resolution resulted, the parties signed a written settlement. If there was no resolution, information that was developed during the fact-finding phase became part of the investigation record.

Under procedures developed in June 1997, an employee visiting the grievance office may be offered mediation. If mediation is opted for, grievance office staff will contact State's dispute resolution specialist to obtain the services of a mediator.

Experiences in Developing ADR Processes

For advice on implementing the ombudsman mandate, the Office of the Ombudsman said it contacted the Ombudsman Association and federal agencies with an ombudsman. The ombudsman (a collateral responsibility for a senior executive) has a full-time assistant (a mid-level civil service employee) who has received mediation training. State publicized the ombudsman's office by issuing an announcement when the first ombudsman was appointed. At the outset, the ombudsman's office said it held approximately 30 meetings with U.S.-based employees to learn their concerns. The ombudsman's office has continued to get a sense of employee concerns through its participation in task forces and working groups, according to the ombudsman's assistant. Publicity has also been provided through the Department of State magazine and through departmental notices and bulletin board postings.

In late 1994, State appointed its first dispute resolution specialist; and the current dispute resolution specialist said that he works closely with the Office of the Ombudsman and S/EEOCR, among others. In early 1995, State established the Alternative Dispute Resolution (ADR) Working Group, with representatives from several department bureaus. The working group invites employee representatives to its monthly meetings. Also, in March 1995, a group of State employees received mediation training at the Foreign Service Institute; as of July 1997, the dispute resolution specialist said that there was a roster of 15 foreign and civil service employees from which State could draw for mediation services. Additionally, State said

⁷¹Board members were from the Department of Agriculture. See app. VII for further discussion on the operation of dispute resolution boards at the Department of Agriculture.

that the Foreign Service Institute enhanced the mediation module in its negotiations art and skills course.

According to the Associate Director, S/EEOCR, State initiated the pilot mediation program in May 1995 to (1) deal with the EEO case backlog, (2) find a more cost-effective way to resolve EEO-related disputes in the early stages, and (3) provide an alternative forum for employees who do not want to file EEO complaints. He said that the mediation program has been publicized in State's magazine and in a department notice.

The Associate Director, S/EEOCR, said that State's use of dispute resolution boards occurred when it accepted an offer from the Department of Agriculture for six trial board hearings without charge, with the understanding that State would pay Agriculture between \$3,000 to \$4,000 plus court reporter fees for each case beyond the trial period. He said that State opted not to use the Agriculture-operated boards beyond the trial period.

The dispute resolution specialist told us that State's more recent initiative to mediate grievances came about as a result of the efforts of the ADR Working Group and himself.

Resolving Workplace Disputes and Lessening the Time and Costs Associated With Redress and Litigation

The ombudsman does not keep records of counseling outcomes, believing that this would undermine confidentiality, according to the ombudsman's assistant. However, she estimates that an average of three to five civil service employees visit the office weekly (in addition to phone inquiries) and, based on feedback she has received from them, believes that their needs have been met. Although the ombudsman is generally not involved in resolving workplace disputes, State believes that his availability to address employee concerns prior to their filing a formal action has helped reduce the EEO caseload.

According to the Associate Director, S/EEOCR, mediation has been used in only about 3 percent of State's EEO cases. Between May 1995 and December 1996, mediation was used in nine cases, achieving closure in three of them (one case was still in process at the time). He attributed this low utilization to complainants' aversion to the process as well as State's failure to give ADR higher priority.

Of the five cases heard by boards, State reported that two were resolved. Although State discontinued using the Agriculture-operated boards, it may

consider adopting boards using State staff as board members, according to the Associate Director, S/EEOCR, because a board (1) facilitates communication between the parties, (2) costs about the same as an EEO investigation, and (3) produces an immediate investigation report.

Lessons Learned by the Organization

State has learned numerous lessons in implementing its ADR initiatives. The ombudsman's assistant said that the fact that the ombudsman's office initially set modest goals for achieving organizational change avoided inflated expectations of what the ombudsman's office could do to deal with workplace conflict and discontent. She said that the downside to that strategy, however, was that the ombudsman's accomplishments may not have been recognized in the first few years. She also said that outreach efforts and the program's confidentiality feature, however, helped overcome initial employee skepticism.

Another lesson, the Associate Director, S/EEOCR noted, was that a program can stagnate when there is a lapse in program leadership, which occurred when the dispute resolution specialist position remained unfilled between January and August 1996.

More lessons have come out of the mediation pilot. The Associate Director, S/EEOCR said he came to understand complainants' aversion to mediation. He said they do not want to confront their supervisors but want an investigation and hearing to vindicate their position. Also, complainants avoid mediation because they want an advocate and mistakenly believe S/EEOCR will be their advocate. He also said outside mediators carry more credibility than internal mediators and that the shared neutrals program is not only a source of mediators but a way of matching a mediator's experiences and demographics to that of the parties and the issues. Further, he said he learned mediation training alone does not equip a person to mediate EEO cases. The position also requires a person with the right temperament and an understanding of EEO issues.

A February 1996 State briefing memorandum discussed other lessons about mediation. One lesson was a recognition of the need to remove management from direct involvement in the mediation process and instead appoint management representatives who have been briefed on ADR. Another lesson was to exclude as possibilities for mediation any cases that set precedent or involve large monetary settlements, significant investigation, a violation of criminal law, or issues dealing with security.

Case Illustration: Walter Reed Army Medical Center

The Walter Reed Army Medical Center, in Washington, D.C., providing medical services to active and retired military personnel and their dependents, has approximately 3,900 civilian employees, about a third of whom are covered under collective bargaining agreements. In October 1994, Walter Reed established the Alternative Dispute Resolution (ADR) Center to achieve quick resolutions of workplace disputes and to avoid more costly redress channels mostly by using mediation. Its services are available to all employees, except those employees who are covered under a collective bargaining agreement must obtain written approval from their union.

How the Process Works

A Walter Reed employee visits (or is referred to) the ADR Center—a separate unit within Walter Reed’s personnel office—where the dispute resolution officer is to determine whether a matter is appropriate for the center to handle. Besides the employee and supervisor (who must participate), the parties to mediation usually include a senior manager (called a resolving official) with the authority to commit Walter Reed to the terms of a settlement agreement. If a resolution is reached, the parties sign a settlement agreement.

Experiences in Developing the ADR Process

According to Walter Reed officials, the ADR Center was established at a time when EEO cases were at an all time high, workplace tensions were high, the workforce was discontented, and Walter Reed’s image was suffering. The base commander, civilian personnel officer, EEO officer, and the Diversity Council developed the ADR Center in response to these conditions.

In the 6-month period before opening the ADR Center, the civilian personnel officer said she researched ADR principles and practices, studied ADR programs at other organizations, consulted with an outside expert, and examined the culture of conflict within Walter Reed. She said that as a result of the study, Walter Reed established the ADR Center as a separate branch of the civilian personnel office to intervene early in a given dispute before the employee sought assistance from the EEO office, believing that many disputes resulted from poor communications or other interpersonal problems. Another reason for locating the ADR Center within the civilian personnel office was because of the importance of expertise in personnel rules and regulations when dealing with workplace disputes.

Walter Reed originally assigned three persons to the ADR Center and trained them in mediation.⁷² To publicize the program, the base commander issued a memorandum to all employees; a later memorandum from the U.S. Army Medical Command also endorsed the use of ADR. To further acquaint employees with the program, the center conducted over 1,000 1-hour briefings. In addition, because Walter Reed believes that most disputes can be prevented or quickly resolved if employees have the right kind of skills, the ADR Center arranged for about 160 staff to receive one-half to 1 day of training in conflict resolution. The training materials included workbooks and videotapes.

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Although there has been no formal evaluation of Walter Reed's ADR program, the ADR Center officials presented indicators that they said they believed show the program to be successful. Of the 160 cases that went through the Center's ADR processes in its first 2 years of operation, 108 (67.5 percent) were resolved. The typical mediation required no more than two sessions and a total of from 4 to 6 hours. Because the center operated outside the EEO complaint process, cases dealt with issues other than those the Center classified as EEO. The cases that were most frequently dealt with were ones that the Center called "communication" issues (36 percent), disciplinary actions (23 percent), and performance appraisals (16 percent). Only 15 percent of the cases dealt with EEO issues. The ADR Center resolved two-thirds of the EEO cases. It was most successful in resolving communication cases (83 percent) and least successful in cases involving disciplinary actions (43 percent). Settlement agreements often involved handshakes, apologies, training, or other reasonable relief the employees requested.

Walter Reed's Office of Internal Review and Audit Compliance reported that the number of EEO complaints, grievances and appeals, and disciplinary and adverse actions dropped substantially in the ADR Center's first 2 years of operation (fiscal years 1995 and 1996), compared with the 2 years before the center opened (fiscal years 1993 and 1994). EEO complaints decreased 47 percent from 76 to 40, grievances and appeals dropped almost 80 percent from 147 to 30, and disciplinary and adverse actions decreased 55 percent from 369 to 165. In addition, informal EEO complaints dropped from 204 in fiscal years 1993 and 1994 to 25 in fiscal years 1995 and 1996. There was, however, some disagreement among Walter Reed officials about the extent to which Center efforts contributed to these reductions.

⁷²The ADR Center was authorized two staff at the time of our study.

The decline in formal redress cases reduced the workload of the civilian personnel and EEO offices, which was able to meet its responsibilities even though it was being downsized, according to the Office of Internal Review and Audit Compliance. Precise cost savings created by avoiding formal redress were not available, but the dispute resolution officer said that for each EEO investigation avoided, Walter Reed saves between \$2,000 and \$3,000 that the Defense Department charges for an investigation, plus court reporter costs. Walter Reed's Chief of Internal Review and Audit Compliance reported that ADR has resulted in better and cheaper ways of resolving disputes, but he did not quantify savings. He also reported that the ADR Center's personnel costs for fiscal years 1995 and 1996 were about \$344,000. According to Walter Reed's dispute resolution officer, the investment in training (mostly provided by contractors) totaled about \$36,000.

Employee satisfaction with the ADR services was high, according to ADR Center surveys of first-year users. Of the respondents, 90 percent rated the overall performance of the ADR program and the performance of mediators from good to excellent, 73 percent reported that they would use the program again, and 72 percent reported that they would recommend the program to others. Seventy percent of the respondents reported that their working relationships and environment had improved.

Lessons Learned by the Organization

Walter Reed officials said that one important lesson they learned is that it is necessary to understand the culture of conflict within an organization in order to establish an appropriate ADR program. Another important lesson is that the support of top management is essential to a program's success. The dispute resolution officer said Walter Reed's ADR program was established in large measure with the strong support of the former base commander. Despite this support, he found that Center staff have had to constantly nurture the program through continuous marketing and education efforts.

The dispute resolution officer also said he learned that merely giving an employee an opportunity to tell his or her side of the story—whether or not the employee prevails—can give the employee some measure of satisfaction. He also said that although employee satisfaction with the ADR services was high, he had learned that some managers viewed settlements with suspicion, believing that settlements undermined their authority and seemed to “give away the store.” He said that, as a result, resolving officials have become more judicious in making settlements.

Appendix XI
Case Illustration: Walter Reed Army Medical
Center

One further lesson Walter Reed officials said they learned is that by establishing the ADR Center, they opened a less formal channel for employees to seek assistance before an issue erupts. They said Center staff have been able to get to the underlying issues and direct employees to the most appropriate resource, such as cases in which the underlying source of the employee's problem is outside the workplace.

Case Illustration: Seattle Interagency ADR Consortium

The Seattle Federal Executive Board's⁷³ Interagency Alternative Dispute Resolution (ADR) Consortium is a "shared neutrals" program that began providing services in April 1993. The interagency group, comprised mostly of volunteer federal employees, offers low- or no-cost mediation services to more than 25 participating federal agencies in the Seattle, WA, area.⁷⁴ The consortium uses the comediation model (two mediators working in tandem on each case) to deal with various types of employment-related disputes, including discrimination complaints, interpersonal conflicts, and grievances filed by collective bargaining unit members.

How the Process Works

The consortium offers agencies access to mediation services without necessarily having to invest in training their own mediators or purchasing mediation services. The consortium also fills agencies' needs for external mediators. Agencies generally participate in the consortium by contributing volunteer employees to be trained as mediators, although this is not a requirement. There is no cost to an agency unless it contributes personnel to the pool. In such case, costs to the agency are for mediation training (\$650 per mediator) and for the amount of time the employee spends in training and performing consortium-sponsored mediation. There is no charge to agencies for mediation services, but agencies have paid mediators' travel expenses. As of July 1997, the consortium had a pool of 78 mediators who provided their services as a collateral duty.

Consortium mediation services are arranged by a person chosen by the participating agency to be the contact between the agency and the consortium. This person functions as a gatekeeper, determining whether the consortium's mediation process is appropriate to a specific dispute. A request for services then goes to the consortium. When the request for mediation services has been accepted, a designated consortium member first considers the nature of the dispute and the characteristics of the disputants (e.g., race and gender), and then selects two members of the consortium's mediation pool best suited for the mediation team. The disputants (an employee and his or her supervisor or peer) then agree on a mutually acceptable site and time for the mediation to take place. When appropriate, an official of the disputants' agency, identified during the intake process, who has authority to approve the terms of a resolution is present at the mediation.

⁷³Federal Executive Boards are comprised of the top executives of federal agencies represented in a federal region to provide closer coordination among the agencies.

⁷⁴The consortium has expanded to include the governments of the City of Seattle, King County, and the Port of Seattle.

Mediation generally takes about 3-1/2 to 5 hours, during which time either party may end the mediation if dissatisfied with the process. If a settlement is reached, the parties sign a settlement agreement. If there is no agreement, the employee can pursue the matter through the conventional redress channels. Whether or not there is a settlement, the disputants are asked to complete an evaluation of the mediation. The mediators themselves also evaluate the process.

Experiences in Developing ADR Resources

The idea for establishing the consortium belonged to two federal employees who, in November 1992, had recently completed mediation training and believed that mediation was a useful alternative to formal redress processes. They proposed the idea to the Seattle Federal Executive Board in January 1993, which approved it in March 1993. One of the reasons for establishing the mediator pool was to make available to agencies a cadre of mediators with the diverse backgrounds appropriate to a wide variety of situations. The price of contributing to this pool would be small compared with that of developing similar capabilities at multiple agencies.

The consortium chose the comediation model for two main reasons. One reason was that new mediators could be trained by having them work side-by-side with more experienced, certified mediators. The other reason was that the consortium would be better able to respond to the diversity of issues and disputants.

The consortium's mediator training program is extensive, consisting of classroom training, role playing, and on-the-job experience. The training, administered by a local county dispute resolution center, consists of 40 hours of classroom training, a written 10-hour take-home test, and observation of at least 6 mediations. In addition, each trainee conducts a mock mediation that is judged by the training provider's certified mediators. The successful trainee then apprentices as a comediator with a certified mediator. The apprenticeship consists of about 10 comediations, each of which is critiqued by the certified mediator. At the apprenticeship's conclusion, the training provider evaluates the critiques and determines whether the apprentice should be certified at the journeyman level. In addition to formal training, there are monthly in-service meetings.

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According to a consortium cochairman, the consortium has filled the need of the 25 participating federal agencies in the Seattle area by providing high quality mediation services for nearly any kind of situation at low cost. The consortium's results have not been formally evaluated; however, the consortium cochairman said he believed that the high resolution rate has helped participating agencies avoid the time and costs of redress and litigation.

Between May 1993 and February 1997, the consortium mediated 171 cases, settling 153 (89 percent) of them. Data on the nature of settlements were being analyzed at the time of our study, according to the consortium member responsible for the effort.

User satisfaction with the process and with the mediators is also high, according to the consortium's surveys of users. Of evaluations received from 75 users (survey results were not broken out by successful and unsuccessful mediations), 84 percent reported that their overall level of satisfaction with the mediation process was good to excellent, while 73 percent of the respondents who reached agreement said that their level of satisfaction with the agreement was good to excellent.

Lessons Learned by the Organization

The cochairman attributes the consortium's success to the training, development, and evaluation process for the volunteer mediators and to the evaluations completed after each mediation. The post mediation evaluations have been valuable in making improvements to the program, according to the cochairman. Some of the improvements include scheduling for longer and multiple sessions and having more caucuses between individual parties and mediators. A major change was made as well in the intake process, which at first was managed by the training provider. Because the employees of the training provider were not familiar with government agencies, early mediations did not always include an agency representative with the authority to approve the terms of a resolution. As a result, consortium mediators with an understanding of government organizational structures now handle the intake process.

Another lesson learned, according to the consortium cochairman, was that some benefits derive even in cases not resolved through the consortium mediation. In these cases, issues in dispute often become clarified, which may help bring about later resolution.

Appendix XII
Case Illustration: Seattle Interagency ADR
Consortium

The cochairman said that there have also been lessons learned about trends in agencies' use of consortium mediation services. Initially, the consortium's mediation services were underutilized. However, through marketing efforts and as consortium successes became known by word-of-mouth, use of the consortium's services has increased to a point at which the pool of volunteer mediators is now being used to its limits. Still, the cochairman believes, more federal agencies in the Seattle area could be participating. Some of these agencies, he learned, are reluctant to expose their operations to mediators from outside the agency. The cochairman said he believes that outreach geared to individual agencies is needed to encourage them to participate in the consortium.

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