

## THE POSTAL SERVICE'S DECISION TO USE TRANSFORMATIVE MEDIATION

by

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**EDITOR'S NOTE:** *The approach that the United States Postal Service has taken to employment dispute management is unique and, to our knowledge, has not been replicated by other employers. Among its singular attributes are its context within a unionized workforce, its emphasis on tracking user satisfaction, and its institutional objectives of improving workplace relationships rather than resolving particular disputes. With regard to this last feature, the USPS system melds the goals of conflict resolution and training – iterative conflict resolution experiences constitute opportunities for enhanced conflict management skills for the individuals involved. The requirement (dictated by the grievance procedure of the collective bargaining agreement) that disputants use the program only for claims falling within the purview of the federal Equal Employment Opportunity Commission adds another interesting wrinkle to this approach. Whatever conclusions one makes about this program, it has clearly been a triumph for the USPS, its managers and its employees.*

In 1997, the Postal Service decided to make “transformative mediation” one of the hallmarks of REDRESS,<sup>®</sup> a program for resolving EEOC complaints that the Postal Service was implementing nationwide. Because the “transformative” approach is not used by most companies’ mediation processes, this article explains why the Postal Service required REDRESS mediators to use this approach and no other.

### A. The Federal EEO Process

To understand REDRESS and the Postal Service’s decision to use transformative mediation, some background on the federal sector EEO process is necessary. Although the

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Postal Service is treated as a private employer with respect to the application of most employment and labor laws, it is governed by federal sector anti-discrimination laws and regulations. This means that postal employees have the same rights, and follow the same procedures, as other federal employees do with regard to filing complaints of discrimination on the basis of race, color, religion, sex, national origin, age, or disability.

The first step for a federal employee is lodging an informal complaint with an EEO Counselor in the employing agency. After counseling, the employee may file a formal complaint, which the employing agency is required to investigate. After reviewing the investigation results, an employee may request an agency decision on the record or a hearing before an Equal Employment Opportunity Commission (“EEOC”) administrative judge. An employee who is dissatisfied with a decision reached on the record or after a hearing may appeal to the EEOC.<sup>13</sup> After exhausting these administrative remedies, which can take well over a year,<sup>14</sup> the federal employee may seek a trial *de novo* in U.S. District Court.

Federal agencies bear the cost of processing complaints, must provide employees with a reasonable amount of official time to pursue their allegations, and cannot sanction employees for lodging non-meritorious complaints.<sup>15</sup> Since an EEO complaint imposes no cost on them and considerable cost on their employer, some federal employees file complaints to draw attention to problems unrelated to illegal discrimination. Most are centered around “communications

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13 See 29 C.F.R. Part 1614. See *also* Equal Employment Opportunity: Rising Trends in EEO Complaint Caseloads in the Federal Sector, General Accounting Office Report No. GAO/GGD-98—157BR (July, 1998), p. 2. (“EEO Report”).

14 In Fiscal Year 2002, the most recent year for which data are available, it took on average 418 days to resolve a federal sector EEO complaint. The average number of days required to obtain a decision on the merits of a complaint was 411. Source: [www.eeoc.gov](http://www.eeoc.gov).

15 29 C.F.R. Part 1614.

problems in the workplace.”<sup>16</sup> Use of the federal EEO process as a generalized grievance program has overburdened the system with complaints and caused severe backlogs.<sup>17</sup>

#### B. REDRESS Pilot

The REDRESS program began in the Florida Panhandle as part of a class action settlement. Attorneys representing the class had expressed frustration with long delays in the overburdened EEO process and asked for a speedier alternative. As a result, in 1994, the Postal Service agreed to schedule employees in three small Florida cities for mediation within 14-21 days after they contacted an EEO counselor. Postal managers were required to participate in good faith. The program was called REDRESS, an acronym for Resolve Employment Disputes, Reach Equitable Solutions Swiftly.<sup>18</sup>

In post-mediation exit surveys, both line employees and their supervisors reported high levels of satisfaction with this early opportunity to discuss and resolve workplace concerns.<sup>19</sup> Inspired by REDRESS’s success, the Postal Service expanded the program to several more locations and compared the effectiveness of inside neutrals (postal employees) and outsiders (mostly professional mediators). The professionals achieved significantly higher rates of participant satisfaction and resolution.<sup>20</sup>

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<sup>16</sup> *ADR Study*, U.S. Equal Employment Opportunity Commission, Office of Federal Operations (Oct. 1996) (“ADR Study”).

<sup>17</sup> EEO Report.

<sup>18</sup> Bingham & Hallberlin (1998). Postal Service Expanding Workplace Dispute Resolution Program. *Consensus: MIT-Harvard Public Disputes Program*, No. 40, October, 1998.

<sup>19</sup> C. Hallberlin, *Transforming Workplace Culture Through Mediation: Lessons Learned from Swimming Upstream*, 18 Hofstra Lab. & Emp. L.J. 375, Spring, 2001.

<sup>20</sup> Bingham, Chesmore, Moon, Napoli (2000). Mediating Employment Disputes at the United States Postal Service: A comparison of In-house and Outside Neutral Mediator Models. *Review of Public Personnel Administration*, Winter, 2000, pp. 5-19.

### C. REDRESS National Rollout

The aim of the REDRESS pilots was to resolve EEO complaints more swiftly, and the facilitative style of mediation proved to be a highly effective way of achieving this goal. The national rollout of REDRESS had a second and even more ambitious aim: to improve how the organization manages conflict.<sup>21</sup> For decades, outside observers had been criticizing the Postal Service's rigid, autocratic management style.<sup>22</sup> As technology advances made the communications industry increasingly competitive, the Postal Service faced increased pressure to improve labor-management relations.<sup>23</sup>

A key indicator of workplace strife was the inordinately large number of grievances and EEO complaints filed by postal employees.<sup>24</sup> Although postal employees constituted only 30% of the federal civilian workforce, by 1997 they accounted for 50% of all federal EEO complaints. The volume had reached crisis proportions: 30,000 informal complaints a year, almost half of which turned into formal complaints.<sup>25</sup>

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21 Bingham & Hallberlin (1998).

22 *Report of the United States Postal Service Commission on a Safe and Secure Workplace*, The National Center on Addiction and Substance Abuse at Columbia University, August, 2000, p. 46 ("Califano Report"). See also *U.S. Postal Service: Labor-Management Problems Persist on the Workroom Floor*, General Accounting Office Report No. GGD-94-201B (September 1994); Bingham & Napoli (2000), *Employment Dispute Resolution and Workplace Culture: The REDRESS Program at the United States Postal Service*, *The Federal Alternative Dispute Resolution Deskbook*, pp. 507-526, American Bar Association, Washington, DC.

23 *U.S. Postal Service: Little Progress Made in Addressing Persistent Labor-Management Problems*, General Accounting Office Report No. GAO/T-GGD-98-7 (November, 1997), p. 1. See also 18 Hofstra Lab. & Emp. L.J. at 378.

24 See Califano Report. Unlike other federal workers, postal employees can file a grievance and EEO complaint regarding the same subject matter, and often do.

25 EEO Report, p. 4.

The benefits of a settlement can be ephemeral. A settlement removes an EEO complaint from the system, but a dissatisfied employee can file a new EEO complaint (or grievance) the next day. Thus, the Postal Service needed to get at the heart of the matter -- the relationship issues that were generating the flood of complaints. In *The Promise of Mediation*, published in 1994, Baruch Bush and Joseph Folger claimed their approach could transform the parties' capacity to handle conflict and forge positive relationships.<sup>26</sup> This was exactly the sort of fundamental change the Postal Service was looking for, so it asked the authors to develop a training program for putting those ideas into practice.<sup>27</sup>

#### D. The Transformative Approach

Transformative practice stems from a very different theory of conflict than the one underlying facilitative and directive mediation. In these latter models, the mediators' task is to help the parties negotiate a mutually satisfactory settlement. The mediator encourages the parties to identify and articulate their interests, and to share information relevant to these interests and how they can be satisfied. The hope is that once the parties begin operating from a shared understanding of the facts and each others' interests, they can figure out a rational way to satisfy those interests, or the mediator can suggest one. Anger, frustration, and other emotions are seen as impediments to the mediation process. Some mediators believe the best way to handle emotions is to let the parties vent; others see no place for emotion and prohibit outbursts at any time. In either case, the aim is to "separate the people from the problem," i.e., to move from stridency to rational problem-solving.

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<sup>26</sup> Bush & Folger (1994). *The Promise of Mediation*. Jossey-Bass: San Francisco.

<sup>27</sup> Bingham & Hallberlin (1998).

The transformative theory views conflict as a crisis in relationship; conflicts often develop because one or both of the parties believe they have not been treated well by the other party. People in conflict are angry and distrustful, so they are not able to communicate well enough with each other to resolve their differences. Conflict resolution occurs when both parties have the strength and confidence to recognize each others' perspective on the conflict, even if they do not agree with it. While the focus of transformative mediation is on the parties' relationship, settlement of the dispute that brought them to the table is a natural and common outgrowth of the process.

#### E. Key Ground Rules

The process is voluntary for complainants, and they may bring a representative of their choice, be it a union steward, a colleague, a friend or relative, or an attorney. While complainants are encouraged to speak for themselves, having a representative often helps them feel more at ease in what may be an emotionally tense dialogue. Postal managers must participate in mediation in good faith but are under no pressure to settle.<sup>28</sup> The mediators are always outside (non-postal) professional neutrals, and the mediation takes place within two to three weeks of the date the complaint is lodged.

#### F. Additional Benefit

In addition to addressing the relationship issues that are at the heart of so many complaints, the transformative approach has also helped the Postal Service build faith in the neutrality of the mediators. Because REDRESS mediators are selected, trained, scheduled, and paid for by the Postal Service, line employees need assurance that the mediators are going to be

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<sup>28</sup> The Equal Employment Opportunity Commission recently began ordering mediation in all cases in which the complainant requests a hearing in front of an administrative judge. However, REDRESS remains voluntary at the initial, informal stage of the federal EEO process.

evenhanded. It is easier for employees to perceive as neutral those mediators who allow the parties to set their own agenda, refrain from evaluating positions, and do not push settlement, rather than more proactive mediators.

#### G. Achievements

The Postal Service tracks both whether the REDRESS program is working well on a day-to-day basis and whether it appears to be achieving its long-term goal of improving how workplace conflicts are managed. Key indicators of whether the REDRESS is functioning properly are:

◆ *Participation:* The percentage of EEO complainants who opt for REDRESS mediation. The Postal Service is currently exceeding its goal of 75% participation. Given the Postal Service's size and level of EEO activity, this level of participation means there are more than 10,000 mediations per year.

◆ *Satisfaction:* On post-mediation exit surveys, employees and managers express satisfaction with the process over 90% of the time and satisfaction with the mediator over 95% of the time. Employees are satisfied with the outcome 64% of the time, and managers 69% of the time.

The Postal Service has attempted to determine whether transformative mediation is having a long-term impact through both micro and macro level studies. In a micro level study that involved interviewing parties several months after they mediated, 92% of a sample of postal managers and 28% of a sample of line employees reported that mediation had influenced their approach to conflict resolution, particularly with regard to the importance of listening. The

effects appear to be cumulative: employees and supervisors who mediate multiple times are more likely to report a change in outlook.<sup>29</sup>

On a macro level, since REDRESS became available nationwide in 1999, there has been a 40.5% decline in the percentage of postal employees who initiate a new EEO complaint. Moreover, far more of the complaints filed are resolved quickly and informally. As a result of the initial REDRESS rollout, the percentage of complaints entering the formal, litigious stage of the federal EEO process has declined by 28%.<sup>30</sup> There has been an additional 3% decline since 1999. As a result of these achievements, REDRESS has won a number of awards.<sup>31</sup>

#### H. Applicability to Other Organizations

At the time the Postal Service turned to transformative mediation, it faced unmatched levels of employment litigation. However, that does not mean transformative mediation is appropriate only for an organization in crisis, or one that needs to transform its workplace culture. Conflict is present in every workplace, and every organization has employees who feel they have been poorly treated in some way. Whether or not their anger or frustration gets expressed through legal channels, it impedes productivity. Since the transformative approach is better suited to addressing interpersonal issues than a transactional (settlement-focused) process, it may make good business sense even for organizations with only moderate or light levels of

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29 Anderson & Bingham (1997). Upstream effects from mediation of workplace disputes: Some preliminary evidence from the USPS. *Labor Law Journal*, Vol. 48, pp. 601-615.

30 Bingham & Novac (2001). Mediation's Impact on Formal Discrimination Complaint Filing Before and After the REDRESS Program at the United States Postal Service. *The Review of Public Personnel Administration*. American Society of Public Administration, Vol. 21, No. 4, Winter, 2001.

31 In 1999, the United States Office of Personnel Management ("OPM") recognized REDRESS for excellence in program evaluation. In 2000, OPM recognized REDRESS as an overall "Outstanding ADR Program" and the American College of Civil Trial Mediators gave REDRESS its "Institutional Award of Excellence." In 2001, the CPR Institute for Dispute Resolution gave REDRESS its "Significant Practical Achievement" award.

employment litigation to follow the postal model. In addition, many organizations share the Postal Service's need to build trust in company-supplied mediators, and the transformative approach makes this easier.