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What Corporations Need to Know About How to Install an Integrated Conflict Management System

In Part I last month, U.S. Transportation Security Administration conflict management **Deborah A. Katz** provided the background that has led to the agency's establishment of a comprehensive Integrated Conflict Management System that includes dispute resolution process but also builds communication and problem-solving capacity influencing all types of interactions that produce conflict within the agency's 43,000 employees.

In this month's concluding interview, Katz examines the application of the TSA's cutting-edge conflict work. In Part II of her interview with veteran New York conflict resolution specialist **Judith Cohen**, who is executive director of Access Resources, an ADR consulting firm, Katz explains how methods used nationwide by her Model Workplace Program Office can help corpo-

• PART II OF II •

rate leaders enhance communications and be more productive.

Judith Cohen: *We could say that fallout from the current economic crisis is putting the corporate sector into a kind of start-up mode. It certainly may make it difficult to get attention and resources for an ICMS-style initiative. In what ways does this environment of change and uncertainty provide an opportunity like the one that you faced in designing your ICMS?*

Deborah A. Katz: Anything that increases pain in the organization provides an opening for something, like an ICMS, that will decrease pain. We have found that increasing trust, encouraging collaboration and providing a common problem-solving language and approach has enabled sites to withstand some of the stress in our environment and the trauma of change.

What kinds of divergent expectations would an ICMS leader find in a corporation with a

more established culture? In what ways does it pose different kinds of challenges? How would planning and implementation be different?

Prior to the TSA, most of the organizations that I had worked in had long established cultures or even several subcultures. The

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challenge is that separate fiefdoms can develop over time and divisions or work groups can become territorial and reluctant to share information or to collaborate.

The key to success in such organizations would be to "model the model" by making sure to include in ICMS design and development both early adopters and contrarians as well as representatives of all the disparate groups. Together they will help you figure out how to counter inertia and transcend divisions and divergent interests, to enhance communication and cooperative problem solving. I confess that I was skeptical at first, but you really have to learn to trust the process.

Can you make up an example of a representative dispute at a corporation and how that might travel through its course if the company had an ICMS?

Once a conflict has escalated into a dispute, the process is not markedly different than it would be in any dispute resolution system that includes both interest-based and rights-based options, except that practitioners might be more transparent during an interest-based intervention so that conflict management skills and principles are reinforced.

Let's say, for example, there is a TSA work group that is having a great deal of internal conflict that might, if left unaddressed, result in complaints to the Om-

budsman or the Office of Civil Rights. Getting out in front, a corporation with an ICMS might have a practitioner do an assessment, talk to some of the key players, and then do some group training combined with facilitated work on the issues that have been identified.

Separately, the practitioner also might provide feedback and coaching to the manager. Again, personal responsibility is key. Interventions should refer to concepts in prior ICMS skills training so that the conversation isn't about pointing fingers, but about solving mutual problems, and ICMS principles are reinforced.

Are there other differences as to how conflicts would be handled with an ICMS, rather than through a traditional dispute resolution system?

The big difference is what might happen to prevent or foreshorten escalation. For interpersonal issues, whether hierarchical or peer to peer, employees at all levels are encouraged to raise the issue and use the communication and interest-based problem-solving skills they have been taught.

They can seek help from co-workers, supervisors who are given more resolution skills, or talk to the national Ombudsman or a local conflict coach where available. Coaches get intensive training and practice before they begin coaching solo, and help employees analyze the conflict from various perspectives, determine their objectives, and work through various options for handling the matter.

There also are several internal rights-based options for employees raising hierarchical issues that provide alternatives to employees. Peer review panels composed of three peers and two managers, hear cases involving disciplinary actions or "grievable" management actions. Panel decisions on whether policies and practices have been applied fairly and consistently are final. Mediation may be offered as an alternative to peer review. Serious disciplinary actions also may be appealed to a Disciplinary Review Board at TSA headquarters.

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Where the individual employee is not comfortable raising an issue directly, he or she may submit it through their site's confidential or anonymous options. Or the employee can call the Ombudsman. Soon we hope to be able to add mediation skills to the ICMS coordinators' toolbox, as well as other key employees, and to train internal mediators.

Issues of primary interest to groups, such as scheduling, or to the organization, like security, systemic, or national issues, have their own set of options both locally and nationally for raising, routing and resolution. In addition to the usual management channels, these include local and national employee advisory councils, Safety Action Teams at every airport, a variety of standing and ad hoc work groups, and web-based options.

Middle level management is given training that includes group problem solving. ICMS coordinators and others are trained in facilitating effective workgroups. Management meetings and employee workgroups often employ skills and concepts from cooperative problem solving training.

It is all about shifting culture and building internal competency across the organization that actively manages differences, rather than just bringing in conflict management practitioners for conflicts that have escalated—although TSA does that too.

What is the purpose of the broad ICMS structure, which opens a variety of places and ways to raise and address issues and concerns?

Equal employment cases may include a host of workplace issues that are not, strictly speaking, equal employment issues. All of that information can be valuable for the organization. What I can tell you is that the value added by a full-blown ICMS structure is that having a variety of effective processes for raising and routing issues and concerns provides a much bigger window into what's going on in the organization than can be gleaned from just "cases."

As an ICMS embraces all kinds of issues and concerns, the range of issues that can surface through ICMS practices and processes is much broader than the

range of issues that go to dispute resolution processes. The systemic issues can be identified much earlier. That's why it is so important that you include in your ICMS structure not only ways to raise concerns, but also ways to capture them, consistent with any confidentiality that may be offered in some processes, identify trends, and ensure follow-up.

This seems like a big investment of resources—and given the upheavals in the economy—launching an ICMS may not be seen as a corporate priority. How much of a piece

Decreasing the Pain

The issue: Building a better workplace.

The method: A government agency establishes a comprehensive Integrated Conflict Management System.

Will it work elsewhere? Will it resolve conflict? Yes. And yes, but its purpose is much broader. Are you willing to commit to transforming your workplace?

of the organization pie does an initiative like this require? Does the return justify it with such scarce resources at this time?

It actually may not involve a big investment of resources for an established company that likely has many of the elements already in place. For those companies, it will be mainly a question of filling in the gaps and building a coherent, integrated system by connecting existing dots. It also may be a question of redeploying some existing resources that are already directed toward organizational development, training, change management, etc.

I should also point out that we managed to do a lot by leveraging limited resources. For example, our classes are mostly taught by people within the workforce that we train to be trainers. We did this because we did not have the funds to hire enough trainers, but it has served

us well by building internal capacity and giving the material what amounted to an endorsement by peers. Also, as I mentioned, a lot of the outreach, design and development have been done by employees in addition to their regular duties in operations. Doubtless we could have made progress more rapidly with more personnel and resources, but necessity has been the mother of much invention as well as buy-in and engagement.

From a corporate perspective, it is more effective and efficient when issues are resolved as close to the origin as possible, and employees are fully engaged. Many studies have correlated employee engagement with high performance. In the end, each corporation will have to decide for itself whether sufficient need exists to justify the expenditure of resources.

If you were in-house counsel at a corporation and you thought that the organization would benefit from an ICMS, what initial steps might you take?

It is important that you establish goals and do a needs analysis to help persuade key players, supply a baseline for setting milestones and help your corporation shape its ICMS.

Establishing direct and collateral litigation costs will certainly get people's attention. But to garner support for a full ICMS, you should use multiple assessment options.

One organization I know did 360 evaluations on all of its executives. It found that many scored lowest in conflict management. Employee surveys and focus groups can also help you establish the range of common issues across the organization, familiarity with and confidence in current options, and where collaboration breaks down.

You can also look at metrics across the organization, and by unit, such as attrition and complaints. You can use tools that might illuminate this data like exit interviews or surveys. Optimally, you can correlate these metrics with overall organizational goals and objectives, including performance measures.

In assessing need, it is important to remember that the ICMS serves everyone, and that the ability to raise issues and manage conflict within the ranks of middle- and upper-level management is just as important as it is at the organization's front

lines. When we work with groups and ask them to anonymously identify issues, we are often surprised how similar the concerns are, regardless of rank.

Likewise, the groups are surprised when they realize just how many kinds of conflicts are a daily challenge for them and how few of these issues can be resolved through any conceivable rights-based process.

What are some challenges you should be prepared for?

Corporate culture does not necessarily require or reward conflict management competency in its executives or those aspiring to become executives. Many executives think they are more competent than they are, or that at their level conflict is someone else's problem. Corporate culture rewards self-confidence, which often translates as assertiveness, and yet hard-hitting executives and managers can be among the most conflict "avoidant," the most prone to delegate people issues, and the least likely to allow issues and contrary views to surface and be heard.

Below the leadership ranks, managers may feel that their authority is undermined and feel uncomfortable with new roles and expectations. Those responsible for existing organizational processes that deal with disputes, whether established through collective bargaining or otherwise, may feel threatened by the aspects of the ICMS that focus on individual responsibility and empowerment. The ICMS's focus on addressing differences proactively and its encouragement of cooperative problem solving within the chain of command and across organizational lines also can be threatening to middle managers.

How can the people driving ICMS implementation within the organization deal with these obstacles?

I can't emphasize enough that stakeholders, whether they are a part of the system or end-users, should be engaged in design, development, and implementation.

An ICMS can be designed to complement any work environment. Stakeholders may not see it that way at first but, once the organization's leadership commits to an ICMS and makes it clear that it is not the flavor of the month by demonstrating unity and support, stakeholders will have

to work together to help the organization figure out how their important interests can be met while the system serves the interests of the organization as a whole. It will take patience, and skilled facilitation, but it can be done.

What are some ways that you might be surprised as you conduct a preliminary assessment or start developing your ICMS?

One thing that surprised me at first was how hungry people are to master ways to handle the differences that bedevil them daily. In the workplace, they are relieved to be told that conflict is normal and to be given a common problem-solving language and tools. Employees tell me that they use these skills at home with their teenagers. The heavy lifting is not developing receptivity to the training, but creating an environment that reinforces the training, and makes it easy and safe for employees to raise issues and practice the skills they have learned.

What are some options for program implementation?

An ICMS need not require creation of a new office, particularly if there already is a corporate or agency office that is focused on culture, collaboration, conflict management in the broader sense, organizational effectiveness, or employee engagement, and if that office is viewed as both influential and credible by key organization players. I don't think there is a magic formula for who in an organization should drive ICMS implementation, and where that box should fit on the organizational chart.

The ICMS champion should have leadership access and support. He or she will need to be an internal consultant but will also need to be able to get things done and manage a program within an organization. Ideally, the ICMS champion should be outside the command chain, and perceived as neutral. As building trust is critical to the process, it helps to have it be someone within the organization who already has strong relationships and understands the organizational culture. It also helps to have some subject matter expertise.

Critical to success is that while the designated champion should foster and drive ICMS design and development, the ICMS itself should be owned by the entire organization and, for the most part, should

not reside in that office. For example, my office fosters and develops the ICMS but generally does not own it or its components. Local sites implement their own ICMS components. Accountability for ICMS implementation is imposed by the established management structure, rather than by my office.

Nationally, the TSA has an Ombudsman Office, an Office of Inspection (for allegations of criminal activity, mismanagement, waste, fraud, and other integrity issues), an Office of Civil Rights and Liberties, and a web-based tool, the Idea Factory, that enables employees to submit innovative ideas on TSA programs, processes and technologies. Employees can add to and rate the ideas online which are then vetted and implemented if found beneficial.

The TSA's Office of Human Capital administers the peer review program available in the field for grievances and disciplinary actions. It also manages the Disciplinary Review Board at headquarters. All of these are part of TSA's ICMS, but are independent of my office.

The one ICMS component that my office manages is a National Advisory Council. It is composed of both rank and file and middle-level field management from across the country. The council members, who serve two-year terms, work intensely with headquarters program offices and TSA leadership on issues ranging from security equipment and procedures, to worklife quality. The council is establishing a network reaching all airports to further enhance the two-way communication between headquarters and the field at all organization levels.

What role can outside counsel play? How does it benefit outside counsel to recommend their clients take actions that appear to limit billable hours if the program is successful?

It is surprising what a minuscule percentage of conflicts that plague organizations are amenable to resolution through any rights-based process. By suggesting ICMS implementation, outside counsel is helping the client to "quiet the noise" so that counsel and client can focus on the significant interests and issues that need their attention.

The ICMS also adds to the managers' toolkit by helping ensure that issues and

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concerns are elevated before they have the potential to bring down corporate leadership or the organizations they lead.

Outside counsel is well positioned to provide legal review of ICMS enabling documents, such as charters and manuals, documentation for mediation processes, etc. Outside counsel can play the role of a neutral broker in the collaborative design process, provide a much needed objective perspective on design and development, and access to best practices at other organizations. These are critical tasks.

How can inside counsel contribute more value to their organizations by proposing such programs to their leadership?

Inside counsel may be particularly attuned to the organization's culture and politics. They may be especially well positioned to serve as both an internal consultant and reality check for leadership on the decision to implement an ICMS and on the design process. Additionally, inside counsel see the breadth and depth of the issues across the corporation, and can help develop options for addressing them and for providing systemic solutions.

Any final words of encouragement for considering development of an ICMS in their own organization?

As a lawyer, I was accustomed to giving advice and mopping up when advice wasn't asked for or wasn't taken. While an ICMS doesn't happen overnight, watching minds

and habits change, and the ICMS evolve, has been personally enriching, an honor and a privilege. Moreover, I cannot stress enough that enabling interests and concerns to surface, be heard with respect and discussed constructively not only supports employees, it supports the entire organization and should be a critical component of any approach to risk management and organization development.

For questions about the U.S. Transportation Security Administration's ICMS design and development, contact Deborah Katz at dkatz98041@aol.com.

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Master Checklist

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should be used carefully, however, because they may create jurisdictional issues if the arbitrators do not resolve the dispute within the specified time, and generally it is advisable to allow the tribunal's limited authority to extend the limits.

If you are representing the seller, you may prefer arbitration at a more deliberate pace under traditional institutional rules with no limit on the time between commencement and award.

2. Should the parties consider a "phased dispute resolution agreement"? A phased agreement, also referred to as a multistep or multi-tier agreement, is designed to first seek a consensual resolution through nonbinding procedures and, if not successful, proceed to a binding phase, such as arbitration.

Comments: A multistep dispute resolution clause generally is a sensible business move for companies to resolve disputes before entering into expensive, adversarial processes such as litigation or arbitration.

When drafting a multistep clause, check to see if the issues below are covered:

- Clear triggers that mark the beginning and end of each phase;
- Explicit time limits for each nonbinding phase; and
- Provisional relief options during the nonbinding phases.

3. What should the scope of the dispute resolution clause be? Should it be a broad or narrow one?

The List, Revised

The purpose: A seminal article on drafting for international arbitration contracts is updated.

What's new? Judicial review, consent to judgment, forum consideration choices, and more.

The biggest benefit: That may come when you add to the questions answered here based on your own experience. How do you deal with these issues?

Comments: Whether you have a broad or narrow clause has enormous consequences down the road. For example, if you incorrectly draft a narrow clause, you could find yourself in a court unwittingly litigating one aspect of the contract while you are arbitrating another aspect. The consequences of this lack of foresight could be significantly higher costs, major inconvenience to the client, and the risk of inconsistent results.

But if you include a broad form clause in, for example, a patent licensing agreement, and your client wants to preserve fully its traditional appellate rights in the event the validity of its patent is challenged, then the broad clause is the wrong choice.

If the agreement contains a broad clause, the parties may want to consider adding language that in the event a party must apply to a court to enforce the clause, the noncomplying party will pay the other side's legal fees and costs to discourage any blatant disregard of the clause by either party.

4. Should the arbitration or other dispute resolution agreement, either broad or narrow, be without prejudice to any other rights and remedies which the parties may have at law in the particular jurisdictions where the agreement is to be performed or where the dispute might arise?

Comments: This drafting issue is particularly important for banking institutions and other creditors because of the existence in many countries, including the United States, of statutory or common law rights of offset.

A creditor may not want to give up those special rights, even though it wants to include an arbitration provision in its loan agreement. An example is where a lender wants to preserve its statutory and common law rights to take title to