DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
2531 JEFFERSON DAVIS HWY
ARLINGTON VA 22242-5160

IN REPLY REFER TO

NAVSEAINST 12771.2
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NAVSEA INSTRUCTION 12771.2

From: Commander, Naval Sea Systems Command

Subj: EARLY RESOLUTION SYSTEM (ERS)

Ref: (a) Administrative Dispute Resolution Act of 1990, PL 101-552
(b) Civil Rights Act of 1991
(c) National Performance Review of 7 Sep 93
(d) Executive Order 12871, Labor-Management Partnerships, of 1 Oct 93
(e) OUSD(P&R)(CPP) memo of 23 Jun 94
(f) 29 Code of Federal Regulations (CFR), Part 1614

1. Purpose. To establish the Early Resolution System (ERS) within the Naval Sea Systems Command (NAVSEA) Headquarters consistent with the provisions of references (a) through (f).

2. Scope. This instruction applies to NAVSEA Headquarters.

3. Background

a. References (a) through (f) strongly encourage agencies to use alternate dispute resolution (ADR) techniques in resolving workplace disputes.

b. Traditional dispute resolution processes often impose a decision handed down by a third party, where neither party is satisfied, and the disputants' conflict often continues or increases. In contrast, ADR can provide solutions to workplace conflicts through stakeholders' participation and buy-in. By foregoing an adjudicative or adversarial means of solving problems, ADR can resolve disputes in a more timely and cost effective manner, thereby enhancing productivity, fostering positive work relationships, and preserving scarce resources.

c. ERS is a process that utilizes informal mediation to foster open communications. ERS emphasizes the importance of quick response and constructive intervention to assist both parties in resolving conflicts at the earliest possible stage. The process provides a means through which employees at all levels may resolve work related concerns prior to use of traditional dispute resolution methods, e.g., administrative grievance or EEO complaint processes. Additionally, the ERS provides disputants the option of requesting a professional mediator to facilitate a resolution in cases where the aggrieved

party has already initiated a grievance or entered into the formal EEO complaint process. This two step approach is designed to maximize the use of mediation skills to attain long-term solutions through joint employee and management cooperation.

4. Definitions

a. Alternate Dispute Resolution (ADR). Alternative means of dispute resolution that emphasizes creativity and cooperation in lieu of adjudicative or adversarial problem solving processes.

b. Early Resolution System (ERS). The name for the ADR process adopted for use within NAVSEA Headquarters which emphasizes resolution of workplace conflicts by utilizing ombudsmen trained in mediation skills.

c. Resolution Consultant. An individual who is trained to assist the parties of a dispute in clarifying issues, identifying underlying causes, and arriving at appropriate solution(s) to resolve the workplace conflict.

d. Ombudsman. An impartial individual selected from within NAVSEA Headquarters and trained to facilitate conflict resolution through counseling, mediation or other appropriate means. An ombudsman is one example of a resolution consultant. Additional sources of resolution consultants are discussed in section 8(b).

e. Mediator. A neutral third party from outside the organization who assists disputants in finding a mutually acceptable solution to their dispute. The mediator has no independent authority and does not render a decision; any decision must be reached by the parties themselves.

5. Policy. It is the policy of NAVSEA that:

a. All NAVSEA Headquarters components will implement ERS.

b. ERS will be made available to all employees to use on a voluntary basis.

c. ERS will not be implemented as a substitute for any established formal procedure.

6. Objectives

a. Create a voluntary, non-adversarial process whereby involved parties can resolve work related concerns and disputes.

b. Promote a work environment of open communication where employees can present issues in a non-threatening forum.

c. Avoid expensive and protracted litigation and improve work relationships.

d. Allow for the intervention of an impartial third party to assist in identifying the underlying causes of the work related concerns/issues and offer remedies for resolution.

7. ERS Procedures

a. Employees are always encouraged to utilize their chain of command as the first option in resolving a work related dispute.

b. If still unresolved, individuals may elect to utilize the ERS prior to proceeding under either the administrative grievance or the EEO complaint process. Employee participation in the ERS is always **strictly voluntary** and the employee may withdraw from the ERS at any time. If the employee elects to use the ERS, appropriate management official(s) and staff members(s) of the Human Resources Center Naval Sea Systems Command (HRC NSSC) must participate.

c. When utilizing the ERS, the time requirements for an employee to initiate a review under either the administrative grievance or EEO complaint process will be extended to provide an opportunity to achieve a resolution which may make further steps unnecessary. In instances where an administrative grievance or EEO complaint has already been initiated, time requirements will be held in abeyance to provide the employee an opportunity to seek a mediated solution to their concerns through the ERS.

d. The ombudsman, as an impartial third party, will gather pertinent facts, work to improve communication and understanding between the parties, help the parties explore alternative solutions to resolve the issue(s), and attempt to facilitate agreement between the parties. The ombudsman must be responsive to employee concerns and ensure that each issue is treated fairly. The ombudsman does not have the authority to decide the dispute, but rather assists the parties in achieving the goal of resolving the matter in a way that is mutually acceptable.

e. To ensure that employee concerns are addressed in a timely manner, the ombudsman will complete his/her inquiry and dispute resolution efforts within five (5) workdays from the date of initial employee contact. To meet this objective, the ERS has been structured to provide the parties to the dispute and the ombudsman flexibility to the maximum extent practicable to

achieve resolution with minimum paperwork. At the expiration of the 5 workday timeframe, the employee may elect to:

(1) Extend processing under the ERS;

(2) Initiate/resume action under the administrative grievance process; or

(3) Initiate/resume action under the EEO complaint process.

f. Assistance in resolving workplace disputes utilizing resolution consultants under the ERS may be obtained as follows:

(1) Employee contacts an ombudsman or other resolution consultant directly.

(2) Referral to a resolution consultant by an EEO Counselor/Specialist. In advising an employee of his/her rights and responsibilities under the EEO complaint process, the EEO Counselor/Specialist will advise the employee of the option of electing the ERS, discuss the effect on regulatory timeframes, and will offer to assist the employee with a referral to a resolution consultant.

(3) Referral to a resolution consultant by an HRC NSSC Employee Relations Specialist. In advising an employee of his/her rights and responsibilities under the administrative grievance process, the Employee Relations Specialist will advise the employee of the option of electing the ERS, discuss the effect on regulatory timeframes, and will offer to assist the employee with a referral to a resolution consultant.

(4) Supervisory referral to a resolution consultant. When addressing an employee's concerns, supervisors will advise the employee of the option of utilizing the ERS and will offer to assist the employee with a referral to an ombudsman or other resolution consultant.

(5) Supervisory request for a resolution consultant. While an employee may decline to participate in the ERS, a resolution consultant remains a valuable asset to supervisors and may be contacted for advice on achieving a mutually beneficial solution to the conflict.

g. All parties involved in the ERS will be required to maintain confidentiality of all records and discussions except when the matter involves a criminal act or could jeopardize public health or safety. Where the confidentiality requirement

precludes effective inquiry into the issue(s) raised, the resolution consultant will advise the employee of the options to:

(1) authorize use or release of required information; or

(2) terminate action under the ERS.

h. Upon completion of inquiry and resolution efforts by the ombudsman/resolution consultant with the parties involved in the dispute, one of the following actions will occur:

(1) A written resolution agreement will be signed by the parties involved in the dispute;

(2) A written, no-fault withdrawal of the concern will be signed by the employee; or

(3) Resolution is not achieved and the employee will be advised in writing by the resolution consultant of the option to initiate or resume action under either the administrative grievance or the EEO complaint process.

8. Resolution Consultants

a. **OMBUDSMEN.** A cadre of NAVSEA headquarters personnel, trained to facilitate conflict resolution through counseling, mediation or other appropriate means and who possess an understanding of both the administrative grievance and EEO complaint processes, will serve as ombudsmen. Ombudsmen will be selected by heads of directorates and appointed by the Commander upon certification of training by HRC NSSC to a two-year collateral duty assignment. Appointments may be extended and terms will be staggered to provide continuity. Considerations in selecting ombudsmen include:

(1) credibility and trust within the organization;

(2) skill in defining issues and options;

(3) communication skills;

(4) access to top management;

(5) knowledge of the organization; and

(6) personal commitment to the ERS process.

b. Additional sources of trained resolution consultants include:

(1) HRC Early Dispute Resolution Unit (HRC-042);

(2) HRC Employee Relations Unit (HRC-041B);

(3) HRC EEO Complaints Team (HRC-041E); and

(4) Counseling and Referral Service (C/RS) staff.

9. Mediation

a. While it is recognized that not all employee concerns will be resolved through the efforts of the ombudsmen/resolution consultants, the command remains committed to taking all reasonable steps to reach a mutually beneficial solution. Consequently, the ERS provides employees and managers the additional option of utilizing a professional mediator from outside the organization to assist in resolving the dispute.

b. HRC NSSC will offer to provide a trained, certified mediator upon:

(1) Completion of the inquiry/fact finding and establishment of an administrative grievance case file, or

(2) Acceptance of the formal EEO complaint and request for assignment of an investigator from the Office of Complaints Investigation.

c. The cost for a professional mediator is charged to NAVSEA Headquarters on a fee-for-service basis.

10. Training

a. HRC will provide appropriate training for ombudsmen in counseling, mediation and other required skills to enable them to assist the parties in conflict resolution by clarifying issues, identifying underlying causes, and arriving at appropriate solutions to resolve the dispute.

b. With the assistance of HRC-042, ombudsmen will conduct ERS awareness training for personnel within their respective components in order to:

(1) Explain the ERS concept and procedures;

(2) Promote support for the ERS and obtain buy-in from all levels within the organization; and

(3) Foster an understanding of the role of the ombudsman

or other resolution consultant and the responsibilities of the employee and the supervisor in the ERS.

11. Program Evaluation. HRC-042 will continually evaluate the effectiveness of the ERS utilizing appropriate indicators aimed at assessing the degree to which the ERS is meeting its goals. Measures will be used to examine the impact of the ERS on participants and overall mission accomplishment. Resolution consultants will provide statistical information required by HRC-042 to perform these assessments. Indicators will include:

a. Cost to the command and the disputants of ERS versus traditional dispute resolution processes.

b. Time required to solve disputes using the ERS versus traditional dispute resolution processes.

c. Resolution rates achieved using the ERS versus traditional dispute resolution processes.

d. Impact on case inventory using the ERS versus traditional dispute resolution processes.

e. Participant satisfaction with the ERS versus traditional dispute resolution processes.

12. Responsibilities

a. Commander/Vice Commander/Executive Director/Directorate and Staff Office Heads

(1) Champion the ERS process by identifying ombudsman to be trained, and publicizing and promoting its use.

(2) Ensure the delegation of authority to resolve work related concerns or disputes.

(3) Provides necessary resources to implement the ERS.

b. Managers and supervisors will support implementation of the ERS within their respective organizations.

c. Director, HRC

(1) Administer the ERS.

(2) Provide appropriate training for ombudsmen in counseling, mediation and other required skills needed to serve as resolution consultants.

(3) Assist the ombudsmen in presenting ERS awareness training.

(4) Evaluate overall effectiveness of the ERS on a quarterly basis by establishing a baseline and using clearly defined, quantitative program effectiveness indicators, e.g., cost, time, settlements, and ERS participant surveys.

(5) Maintain and publish current list of resolution consultants including the NAVSEA headquarters ombudsmen.

13. Action. Addressees will implement the ERS process for the resolution of workplace disputes upon receipt of this instruction.

G. R. STERNER

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