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Conflict and dispute management system design: overview

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Editorial

Conflict and dispute management system design: overview

Shirli Kirschner

For a special edition, I thought an editorial which sets out some of the key concepts behind system design might be useful. The editorial is based on an article submitted to the AIC National Power Sourcebook.

When people are asked to think about conflict, typically their responses are uniform: broken relationships, stress, strained communication, impasse, wrong doings, time wasted and money spent. This is not conflict itself; rather it is conflict that has not been adequately dealt with and has escalated.

Conflict is a neutral concept. It is a difference of view and a reflection of diversity. Properly managed conflict can be an effective and powerful conduit for positive change.

Conflict management is about early recognition of conflicts and a process of facilitating constructive intervention before it escalates into a dispute. In contrast, the allied field of dispute resolution is about intervention in disputes to ensure effective resolution.

Organisations are faced with managing conflict and disputes in two arenas. First, managing those within the organisation itself. And second, dealing with those disputes with external parties.

Organisations can adopt a systematic approach to dealing with conflict and resolving disputes. The focus of these strategies has been classified by practitioners within the conflict management and dispute resolution arena as system design.

Systems can be designed to address conflict, or for dispute resolution. They may be used for matters which arise within the organisation, external to the organisation or a combination of these.

There are also a variety of approaches to system design depending on the desired outcome.

The papers in this bulletin have been selected to provide some practical insights into designing a system. The contributions reflect a variety of aspects relating to system design.

- Educating people about system design (this includes an overview of the steps for design).
- Internal grievance handling systems (PolyGram Music).
- Designing a dispute management system (DMS) for the National Electricity Market (Energex and ElectraNet SA).

The contributors were asked to provide an indication of the aims and objectives of their system and insights into some ➤

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➤ of the challenges and successes of the design process.

To assist in an understanding of the concept of system design, I have provided a short introduction to the concept of conflict below. I have also provided an overview of the legislative context in which the organisations within the National Electricity Market were designing their DMS.

Conflict management strategies

There are many ways of characterising approaches to conflict and different authors have taken different views. Dudley Weeks[1] identifies a number of strategies which organisations often use to deal with conflict, which may result in the conflict escalating. These include:

- Avoidance of conflict.
- Putting a band-aid over the problem.
- Bargaining to find a mid-point or compromise.
- Use of relative power to dominate.

Below are some examples which demonstrate how these strategies operate. While hypothetical, the examples are based on scenarios provided to me by organisations, amended to protect confidentiality. The issues have also been significantly simplified for the purpose of illustrating different strategies.

Internal conflict

Jo worked for XYZ Publishing, a small independent publishing house. Originally, her job was as an assistant in marketing, reporting to Tom. For a short time Jo also undertook a number of PR duties and reported to Kim, Tom's manager, on the task. A new employee was hired to take on the PR role, but Jo still attempted to continue the PR work and generally widen the scope of her duties for Kim. Tom's work was left incomplete. Rumours in the office were that Jo and Tom were not getting on.

Avoidance of conflict

Kim became aware of the office rumours and spoke to Jo about her relationship with Tom. Jo indicated that Tom did not appreciate the value of PR to the company and was trying to undermine her. Kim told Jo that a review would be undertaken of her job specification. Kim liked Jo and did not want to see her lose the position. Kim was fully aware that Tom had the authority to discipline Jo and to make recommendations about dismissing her. She did not mention this to Jo, in an attempt to appease her.

Kim had chosen to avoid dealing with the emerging conflict: the issues of Jo and Tom's relationship, the tension around reporting lines and the delineation of Jo's role. In this way Kim hoped the problem would go away.

Kim and Tom were called into a meeting with the head of Human Resources. Tom reported to HR that he and Jo had had a number of personality difficulties, that Jo had not fulfilled the tasks allocated to her and that Jo avoided his authority by dealing directly with Kim. Kim reported on her meeting with Jo and indicated the proposal to review Jo's

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➤job description. The head of HR informed Kim that as Jo reported directly to Tom, it was Tom's right to make recommendations on appropriate disciplinary action, including dismissal.

Putting a band-aid over the problem

Human Resources and Tom discussed the issue, looking at the overall strategic direction of the publishing company. HR was of the view that it would be useful to restructure the department and redefine the position held by Jo. HR felt that the difficulties presented an opportunity to effect the restructure, provide Jo with a tax effective package and, at the same time, avoid having to initiate time-consuming disciplinary processes. It was felt that this would represent a mutually beneficial outcome.

Given that Kim had had the majority of dealings with Jo, Kim was asked to have the conversation. Kim explained the restructure to Jo and provided her with a generous redundancy package, well above industry standards. Twenty-six days later Jo filed proceedings for unfair dismissal alleging, among other things, that the redundancy was a sham.

The combined strategy of avoiding the conflict and then attempting a 'band-aid' solution of a timely redundancy had caused the conflict to escalate. Jo understandably (based on her conversation about the job description with Kim) felt that this was not a genuine redundancy. She was angry at not having been consulted or fairly treated. As the underlying issues had never been addressed Jo was more likely to seek redress outside the organisation than if she had had a good working relationship with the organisation itself.

In the event that XYZ had dealt with some of the underlying issues, and discussed the options openly with Jo, an escalation of the dispute to the courts may have been avoided.

Inter-organisational conflict

The remaining strategies are examined using a hypothetical example from the wholesale electricity market.

Grunt Pty Ltd and TransmoNet were negotiating a service agreement which would cover the relationship between the parties on commencement of the National Electricity Market. TransmoNet was in a monopoly position for the provision of the services in the State in which Grunt operated. TransmoNet wanted an indemnity for loss in respect of any and all liability arising from any failure to

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deliver transmission services. Grunt said that being liable for loss would ensure TransmoNet had an incentive to provide service and therefore be accountable.

The parties reached an impasse. It appeared as if the contract itself would not be finalised for market start, leaving both parties unprotected.

Using bargaining to resolve the conflict

TransmoNet suggested the indemnity extend only to consequential loss and offered a concession over another clause under consideration. Finally Grunt accepted the concession and settled on an indemnity which was more limited and did not extend to consequential loss.

TransmoNet failed to supply services and Grunt suffered a loss. TransmoNet said that it was not liable because the failure was a 'force majeure event'. The contract clearly stated that TransmoNet was not liable in the event of a force majeure. However, it was not clear whether the particular event fell within the definition provided in the contract. Grunt immediately filed proceedings.

The bargaining over of the clauses allowed the parties to resolve the immediate conflict: a difference in view over the clause. The process, however, did not grapple with the underlying issue causing the conflict — the level of risk, the level of service and the respective responsibilities to be adopted by each party. Accordingly, any slight variation on the facts as negotiated was likely to result in a new conflict. The communication strategy adopted, bargaining, was unlikely to provide a mechanism or a model for the parties to deal with the new issue without it escalating. In the circumstances the conflict escalated, in this case, to the court.

The court held that it did not need to consider the issue under the contract as TransmoNet had an indemnity under the Code.

Following the decision Grunt tried to negotiate with TransmoNet to at least obtain a discount on the fees paid during the period when services were not provided. It also asked for a full report on what had happened.

TransmoNet's lawyers wrote to Grunt refusing the request. The letter stated that TransmoNet intended to rely on its rights as provided in the contract and under the Code.

Using power to dominate

Grunt then approached the Regulator and its participant forum, using TransmoNet's response to gather support for a Code change to be promulgated. The proposed change included limits on the indemnity and allowed ➤

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➤ an external audit of TransmoNet's processes in the event that there was any interruption to supply. It was designed to ensure that TransmoNet was liable in the event of negligence and that its processes were generally transparent to ensure accountability.

The Code change panel then passed the Code change.

TransmoNet, by using its power, had forced Grunt to utilise the same strategy to try to level the playing field. Although there has not yet been any analysis of the tensions between the parties in this type of situation, it may be that the balance may have swung too far to compensate for the first party's actions.

Some alternate strategies for managing conflict

A strategic approach to identifying and managing conflict can avoid escalation.

This requires a pro-active approach within an organisation to integrate a concept of conflict management within the organisation's culture. There are a number of strategies which can be adopted to facilitate this.

Empower people

• Ensure training in negotiation and conflict management for frontline staff allowing them to quickly identify conflict and manage it.

Applying this strategy to the XYZ Publishing scenario would have meant the manager, Kim would have identified handling the issue of the reporting structure and personality clash as a separate and important issue when she first became aware of the tension.

Create an atmosphere for problem solving rather than one that is adversarial

• Clarify what needs and interests lie underneath each party's stated positions.
• Focus on common needs and interests, rather than opposing ones.
Looking at the scenario of TransmoNet,

the reason the parties could not agree on the clause was a reflection of a difference in view as to appropriate levels of service and who should bear the risk for an outage. By identifying those interests, the parties could have negotiated on their respective underlying needs and assumptions about allocation of risk.

By identifying the underlying issues, the parties could then be encouraged to look at solutions such as insuring against the risk and adopting performance monitoring, rather than just focusing on the indemnity issue. This creates a greater prospect of meeting both parties' needs as identified.

Use conflict as a learning experience

• Focus on the specific dispute as an opportunity to learn and prevent similar problems in the future.
• Ensure specific action items for the future.

In the case of both XYZ Publishing and TransmoNet, this could mean having a feedback loop from specific conflicts to analyse whether there are systemic or underlying causes.

In the case of XYZ Publishing this might require training of management to allow them to deal with issues in the future and encouraging regular management debriefs on team members who are jointly managed.

• Build in strategies to help the parties to continue to develop trust so differences can be dealt with properly. This is particularly important where there is an ongoing relationship.

One way of ensuring conflict is used as a learning experience is to design a conflict management system.

Internal grievance handling systems (PolyGram)

Conflict is inevitable in the workplace, where there are not only personal issues, but issues involving conditions of work, a changing environment and interaction with managers and supervisors.   ➤

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➤ Corporate or organisational culture generally involves beliefs, values and norms for the participation within that workplace.[2]

It is important for a conflict management system designer to understand these cultural elements and ensure that the system can operate within the existing framework.

A conflict management system would ensure the 'feedback loop' to allow XYZ Publishing to learn from the 'Jo' scenario and implement appropriate training/coaching programs. A dispute resolution system (grievance handling system) would have provided Jo with a forum for resolving her grievance without commencing proceedings.

Designing a dispute management system for the national electricity market (Energex and Electranet SA)

The National Electricity Market is due to commence in December 1998. It will be regulated pursuant to a national scheme of regulation known as the National Electricity Law. The Law provides for a Code, which contains additional provisions to the regulation of the 'Market' (the Code).

Section 8.2 of the Code contains a separate dispute resolution procedure for certain disputes arising under the Code.

The first stage requires that each participant must adopt and implement a dispute management system which meets the criteria determined by the National Electricity Code Administrator (NECA) following consultation with Code Participants.

The Code recognises the potential advantages of proper conflict management and dispute resolution strategies. Chapter 8 of the Code sets out a number of objectives for conflict management. The strategy should:

- Be simple, quick and inexpensive.
- Preserve or enhance the relationship between the parties to the dispute.
- Place emphasis on conflict avoidance.

- Encourage resolution of disputes without formal legal representation or reliance on legal procedures.

A flowchart representing Ch 8 of the Code has been included on p 72 of this Bulletin.

Use of conflict management

Conflict management awareness can be integrated as an important management tool within any organisation. A system can be most effectively implemented by the involvement of those people who deal with conflict within the organisation. It should also involve an analysis of where a system might assist in making the organisation more effective and how the organisation itself deals with conflict. In this way the design can ensure that the system is more easily integrated into the existing organisational culture.

The steps in system design are set out in Jennifer David's article 'Developing a course for teaching system design' on p 66. ●

Resources

1. Cathy A Costantino and Christina Sickles Merchant *Designing Conflict Management Systems* (Jossey-Bass Inc. Publishers, 1996).

2. Roger Fisher, Elizabeth Kopelman and Andrea Schneider *Beyond Machiavelli, Tools for Coping with Conflict* (Harvard University Press, 1994).

3. Dr Dudley Weeks *Conflict Partnership Process — Video Workbook* (Legal Resources Trust, 1998).

4. *National Electricity Market Dispute Management System The DMS Guide* http://www.neca.com.au

Endnotes

1. The Conflict Partnership Process, Dr Dudley Weeks, Workbook 1992.

2. Aimee Gourlay and Jenelle Soderquist, 21 *Hamline Law Review* at 261, Hamline University, St Paul, Minneapolis.

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