

JUSTICE AND PEER REVIEW SYSTEMS:
A FRAMEWORK FOR ANALYSIS

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ABSTRACT

Peer review systems are one of a number of in-house dispute resolution systems employers increasingly use. Unlike other dispute resolution procedures that invoke outside third parties, such as mediation and arbitration, peer review has no professional community to provide standards or procedural guidelines. This article examines peer review through the framework of procedural and distributive justice. Critical issues are explored, and recommendations for the successful implementation of peer review systems are made.

Organizations continue to search for ways in which to resolve employee disputes in-house. The ubiquitous and often-maligned "open door policy" has given way to a number of other dispute resolution procedures including mediation, arbitration, and peer review [1]. Unionized workers most often have grievance procedures that culminate in binding arbitration, while nonunion workers receive whatever type of dispute resolution system their employer sees fit to provide. Peer review has been characterized a form of employee empowerment that can improve trust and reinforce employee participatory environments [2]. Like many dispute resolution systems, a peer review procedure can provide either a rewarding or a disconcerting experience for its users. Unlike other dispute resolution systems such as mediation or arbitration, however, peer review has no agreed-upon form or body of practitioners to encourage the development of professional standards. For example, when some employers began to require employees to use arbitration for employment discrimination complaints, there was extensive academic and professional reaction [3]. This culminated in, among other things, the development of guidelines by the American Arbitration Associ-

ation that employer-mandated arbitration procedures must meet to use its services. In contrast, when peer review is implemented, there are no such standards and few resources to draw upon in determining appropriate procedures.

The reaction of employees to dispute resolution procedures can be greatly affected by their perceptions about the fairness of the process and the decision [4]. These perceptions are often shaped by the procedures the employer chooses to incorporate into the peer review system. The purpose of this article is to provide a justice framework with which to analyze specific aspects of peer review systems and to raise issues relevant to the successful or unsuccessful implementation of such programs.

Studies of organizational justice often identify two basic forms: procedural justice and distributive justice. Procedural justice refers to the process by which decisions are made, while distributive justice is concerned with the decision outcomes [5]. Much of the literature on procedural justice indicates the importance of employee input or choice in the design of the system [6]. Most often, peer review procedures are set by the organization and, even if employee input was used to develop them, employees who eventually use them do not have the opportunity to affect the procedures post-hoc. As a result, perceptions of procedural justice will relate to the employees' experience with the procedures in place, particularly the ability to voice their concerns in meaningful ways. Distributive justice will be affected by aspects of decision making. In the area of procedural justice it is important to examine features of the policy that relate to the ability of the employee to use the system. This is represented by the ability to have the complaint heard (eligibility) and the ability to effectively represent one's complaint (access). Perceptions of distributive justice will be affected by the manner in which the decision is made. This relates to the composition of the peer review panel, the decision-making latitude of the panel, the finality of their decision, and the way in which decisions are communicated. Figures 1 and 2 illustrate the elements of peer review procedures that could affect these justice perceptions. Each of these is discussed below.

PROCEDURAL JUSTICE

Eligibility

The concept of eligibility is fundamental to an analysis of procedural justice. One of the features of most open-door policies is the ability of any employee to raise any complaint. Sheppard, Lewicki, and Minton identified this as system efficiency [7]. Their concept is that effective voice systems are simple and have broad coverage. In contrast, few organizations have such a broad spectrum for peer review programs. There are often limitations on types of complaints that can be heard and/or the groups of employees who are entitled to use the peer review system.

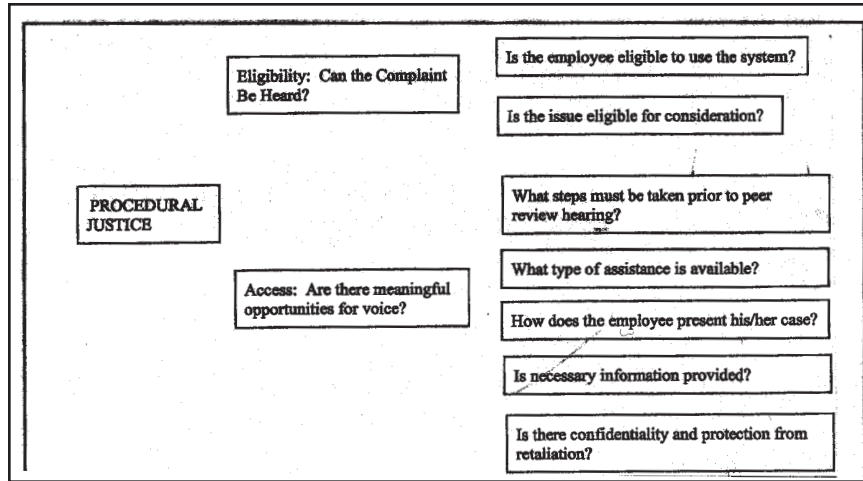


Figure 1. Framework for procedural justice.

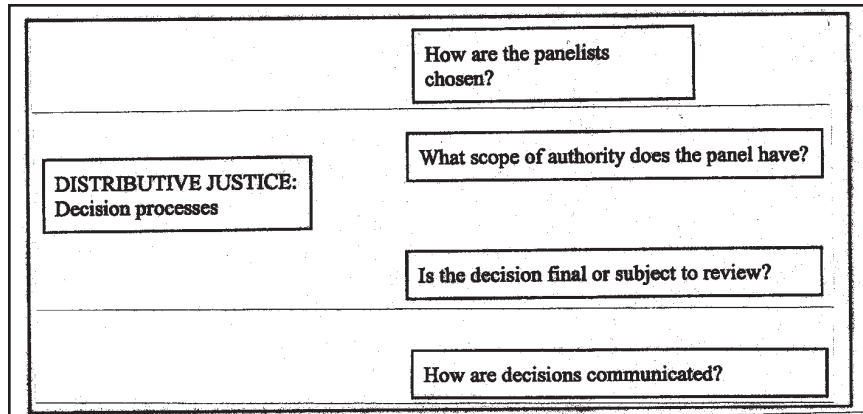


Figure 2. Framework for distributive justice.

Procedural justice perceptions will be affected by the extent to which peer review procedures attempt to filter or screen out certain types of complaints or employees. Obviously, if employees are not permitted to use the system for a complaint, they are not provided with voice. For example, some procedures provide lists of eligible and ineligible issues, while others make reference to management discretion to determine eligibility. One peer review procedure for a large high-tech organization lists “trivial, frivolous, and repetitious issues” as

ineligible [8]. Often, the decision concerning issue eligibility relates to retention of control over matters related to the allocation of resources. These may include pay raises, benefits, promotions, and layoffs. When employers exclude important concerns from the process, employees may believe this is a signal the process is weak and the employer lacks confidence in it. As a result, employees may come to share that lack of confidence. In contrast, the Donnelly Corporation procedures offer a wide-ranging group of issues that are eligible for their equity structure [9, pp. 205-221]. This promotes a sense of real empowerment in the workplace.

In addition to issue eligibility, perceptions of procedural fairness can be affected by attempts to screen out certain groups of employees from using the system. Some procedures may, for example, permit only certain categories of employees to use the system. Ewing identified several nonunion dispute resolution systems that limit use to employees who have worked for a certain time period, full-time employees, and/or nonmanagerial employees [9, p. 38]. The extent to which perceptions of procedural justice are affected is related to the reasonableness of these restrictions and their congruency with other organizational policies. Thus, the exclusion of probationary employees may be perceived as reasonable where probationary employees are treated differently from nonprobationary employees with regard to other policies. However, when there is ambiguity, such as restricting use to employees “in good standing,” such exclusions may be viewed as unfairly designed to prevent some employees from using the system.

Access

Another factor that affects procedural justice perceptions of peer review is access. Access goes to the heart of providing adequate voice mechanisms. Access has several forms including the steps one is required to use prior to the peer review hearing, assistance to those making complaints, availability of relevant information, form of presentation, and confidentiality. Each of these affects the ease and effectiveness with which an employee can use the system.

Often, peer review procedures call for the employee to speak with the supervisor at the first step. When no other options are accessible at this point, there can be a “chilling effect.” This means employees who feel intimidated or threatened by raising issues with their supervisors simply do not use the system because they cannot get past the first step. Chilling effects can be minimized by allowing employees to skip the first step or by giving them the opportunity to seek help and guidance early in the process. Control Data’s review board procedure anticipates the need to “equalize [the employee] against the power of a large institution” through the use of an employee advisory board [9, p. 189].

The need for assistance obviously affects the ability of the employee to use the procedures, but it also affects the ability to voice complaints effectively. Employee literacy can be a factor when implementing peer review plans.

Differences in verbal and written skills can place some employees at a disadvantage when they articulate their case. Some organizations may provide employees with assistance in preparing written appeals and when preparing to make appearances before the peer review panel. However, the ability to have an outside representative may have an even greater impact. As Feuille and Chachere observed in a study of nonunion complaint systems, when systems do not permit outside representation, but instead rely on representation from the company's human resources department, the effect is "the functional equivalent of being represented by management" [10, p. 35]. Procedural justice would be greatly enhanced if procedures permitted employees to bring in an advocate of their own choosing. However, there is a great reluctance to permit employees to bring in persons outside the organization and an even greater reluctance to permit attorneys to represent employees in these proceedings. Organizations may characterize this as an attempt to keep the process informal and in-house. However, employees may feel this is procedurally unjust.

Similarly, the form of presentation of the case can be important to justice perceptions. The most complete form of voice is the ability to present the case verbally in front of the peer review committee and the ability to hear the testimony of all witnesses. This permits the employee to give full expression of the complaint, to observe the attentiveness of the panel, and to know all the information made available to the panel. Often, procedures are vague on this issue, but it is not always the case that the complaining party hears all the testimony provided. In some cases, each witness is heard separately, while in other cases the panel does not use witnesses at all; instead they base their decision exclusively on written statements.

A related issue is the availability of information to make a complaint. This is similar to the legal concept of discovery. Information made available early in the dispute process may provide the employee with a new perspective on the issue and may lead to a resolution of the problem without a hearing. Conversely, the unwillingness of the organization to provide information the employee feels is necessary to present his/her case to the peer review panel will negatively affect feelings of procedural justice. This is another area often not specified in written procedures and, as such, is subject to inconsistency in implementation.

Perceptions of adequate voice may also be affected by system confidentiality. Employees may be reluctant to use systems in which confidentiality is not assured. This may be particularly true when there is the possibility of retaliation. Confidentiality and protection from retaliation are perhaps the most difficult issues to address through procedures. Although procedures may indicate that peer review proceedings are confidential, in reality, few mechanisms exist to enforce this. Employees may feel concerned about revealing personal information to a panel of coworkers. Ensuring that the information does not leave the panel review is difficult. If employees believe confidentiality has been breached, this will certainly have chilling effects on the future use of the procedure. Acts of

retaliation will have a similar effect. Organizations need to be vigilant in investigating complaints of retaliation and may wish to consider making retaliation one of the issues eligible for peer review.

DISTRIBUTIVE JUSTICE

Panel Composition

Composition of the panel is usually considered a strength of peer review when nonsupervisory employees constitute the majority of odd-numbered panels. This is what puts the “peer” in peer review and provides for employee empowerment. Employees understand nuances of organization life and have little difficulty putting employee complaints into the work context. This should strengthen perceptions of distributive justice.

On the other hand, the objectivity of panelists is sometimes questioned. In smaller organizations they are likely to know the employee and supervisor involved in the dispute and may have difficulty altering their previous impressions. There is also a concern that panelists may be more affected by emotion than professional, neutral third parties. To remove this problem, some peer review procedures operate only with written statements that do not identify the participants [9, pp. 185-203]. Similarly, procedures that prohibit friends or relatives from service on panels may be seen as an attempt to ensure distributive justice by providing safeguards to prevent those who may not be neutral from serving on the panel. Interestingly, few procedures provide for the “inverse” of friends or family exclusion. This may be taken into account by allowing the employee to “strike” one or more of the names of potential panelists.

Even when panels are dominated by coworkers, it is not certain that complaints are being reviewed by a “peer” group. In organizations with a wide variety of jobs and educational, economic, and social levels, panel review is a more apt description than peer review. However, organizations may wish to examine this issue and evaluate the possibility, when the workforce is very heterogeneous, of having several panels consisting of more homogeneous work groups.

Authority

While peer review is often lauded for the empowerment it brings to the workplace, many peer review procedures provide only a very narrow decision-making capability to the review panel [11]. In some cases, the peer review panel is given the authority to determine “whether or not the policy was followed” [11, p. 50]. Such a narrow construction of the authority of a peer review panel raises several questions. The first, and perhaps most important, is whether or not it is worthwhile to involve employees in a system that provides so little discretion. Second, the ability to make suggestions about the appropriateness of policies or the implementation problems associated with policies is very limited. Third, the abil-

ity of the panel to implement “just” solutions that fit the particular facts and circumstances is reduced. Finally, the ability to solve problems is limited. Some panel review procedures provide broad discretion concerning disciplinary actions (for just cause), while others give the panel the opportunity to make policy recommendations or to change policy [9, pp. 205-221]. The Donnelly Corporation offers an example of broad employee empowerment to resolve individual employee complaints as well as larger policy issues. Its “equity structure” includes a policy development process, a policy deviation process, a grievance resolution process, and a pay package process [12]. Even if organizations are reluctant to grant extensive authority to peer review, it is still possible to learn from the outcomes of the review process. For example, the results of peer review decisions can be evaluated and used to determine whether future policy changes are needed [13].

Another facet of peer review procedures is whether or not the panel has fact-finding powers. If the panel does not, its members must rely on the facts presented during the hearing by the employee and other witnesses. The advantage of fact-finding powers is that the panel gets all the information it believes relevant to making a determination on the matter. This may include access to files and the ability to speak to other managers or employees. When the panel has access to as much information as it needs, the likelihood exists that distributive justice will be greater. On the other hand, some employees may feel the panel is not objective because it is empowered to gather information the employee did not seek to provide to them. The panel’s decision to interview one person and not another person may result in feelings of injustice.

Finality

What happens after the committee has rendered a decision is also an important aspect of peer review procedures. Often, committees make “advisory” recommendations that are subject to ratification by an upper level of management [9, pp. 173-184]. While this provides management with control over the final result of grievances, it does not promote empowerment, nor a real sense of justice within the organization [14]. Other options include a final and binding decision-making authority, an additional appeal for either party, or an additional appeal for the employee only. An appeal to arbitration following peer review is a feature of the dispute resolution system at St. Vincent Medical Center. Although this represents a very expensive system, it certainly has beneficial effects on perceptions of distributive justice [15].

Decision Feedback

Research suggests that how the employee learns about the decision and whether or not any justification is provided may affect the perception of distributive justice even when the decision is a negative one [16]. Peer review procedures

do not always address this explicitly. Variations include verbal feedback from the committee, verbal feedback from human resources, and written feedback from the committee. Feedback directly from the committee is more consistent with positive perceptions of procedural justice. When the committee has a broad scope of authority, it may be best to have the decision given verbally to the employee by the peer review panel. This emphasizes that the decision was made by the peer panel and provides the employee the opportunity to hear the rationale of the panel and any recommendations it has made.

IMPLEMENTING SUCCESSFUL PEER REVIEW SYSTEMS

Employees and managers need to have confidence in the rationale for implementing the program. Peer review works best when there is trust in the organization and when other organizational policies reflect the organization's commitment to fair solutions. Therefore, organizations should ask themselves why they wish to implement a peer review system. There is a general perception that nonunion organizations implement dispute resolution procedures as a method of union avoidance [17]. If this is the primary goal, organizations may be disappointed with the results. Such a motivation may mean current problems exist that may not be easily resolved with a peer review system. Moreover, the peer review system may become the field on which larger disagreements are played. This will make the peer review politicized and generally ineffective as a justice mechanism.

A more effective motivation is the genuine desire to provide employees with organizational justice [see 10]. When this is a motivation, the organization should develop procedures with an eye toward this objective. The amount of control the company wishes to relinquish to the procedure should be determined. This will affect the types of complaints the system will handle and the finality of the peer review panel's findings. Organizations reluctant to provide full access and final decision making should reconsider their commitment to the peer review procedure. In some situations, instituting an ombudsperson or some form of mediation may be preferable. Or, it may be better to implement a pilot peer review program with a definite end date. At that time, the organization can assess the success of the program, make necessary modifications, or decide another option would better meet the needs of the organization.

When implementing a peer review system, there should be a match between the organizational philosophy and other human resource policies. Organizations that are largely autocratic, for example, may not be well-suited for a quick transfer to a peer review process. Peer review is more congruent with empowered workplaces, where employees are more accustomed to making—or at least giving input into—decisions. Similarly, peer review is a better fit in organizations that have extensive employee-friendly human resource policies. This provides a

bridge to employees and, it is hoped, a measure of trust in employee relations programs.

A related implementation consideration is the organizational infrastructure to support a peer review program. Resources are often needed to assist employees in making their complaints, particularly in the initial steps of the process. Access depends, in part, on the ease with which employees can use the system. Therefore, human resource professionals should be prepared to provide support to employees who have questions about using the system or need assistance in making their complaints.

Organizations should also consider the effects of these policies on supervisors and managers. Managers at both Coors and Donnelly are quick to point out that their peer review programs are not well-suited for other organizations. As one supervisor at the Donnelly Corporation observed: "It's difficult to be a supervisor in this company" [9, p. 2]. Reliance on traditional authority of managers must be tempered by the need to listen to employee concerns and react to difficult situations with thoughtful and consistent actions. This calls for the development of selection criteria that address the attributes supervisors need to be effective in these situations and for specific training of current supervisors. Similarly, incumbent supervisors may need training to prepare themselves to manage in a situation where their decisions can be overruled by peer review.

Peer review systems can solve organizational problems, but they can also create them when they are poorly implemented. Organizations considering peer review should weigh the costs and benefits and consider the types of procedures that will help them achieve their objectives. An evaluation system should accompany a peer review program, permitting the organization to review not only employee perceptions of effectiveness, but also to use the peer review process as a learning tool for the organization. The types of issues that are raised may indicate the need for change, clarification, supervisory training, or employee training. A successful peer review system is one that solves organizational problems within a framework of procedural and distributive justice, provides the organization with the information needed to improve organizational outcomes, and instills a sense of fair play among employees.

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ENDNOTES

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