

12-1-2008

## A Post-Pierce Program: Using IDR to Improve the Los Angeles Fire Department's Current Complaint and Disciplinary Procedure

Jacklyn Pawlowski Floryan

Follow this and additional works at: <http://digitalcommons.pepperdine.edu/drlj>

 Part of the [Civil Rights and Discrimination Commons](#), [Dispute Resolution and Arbitration Commons](#), [Labor and Employment Law Commons](#), [Other Law Commons](#), [Remedies Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

Jacklyn Pawlowski Floryan, *A Post-Pierce Program: Using IDR to Improve the Los Angeles Fire Department's Current Complaint and Disciplinary Procedure*, 9 Pepp. Disp. Resol. L.J. Iss. 1 (2008)  
Available at: <http://digitalcommons.pepperdine.edu/drlj/vol9/iss1/4>

This Article is brought to you for free and open access by the School of Law at Pepperdine Digital Commons. It has been accepted for inclusion in Pepperdine Dispute Resolution Law Journal by an authorized administrator of Pepperdine Digital Commons. For more information, please contact [Kevin.Miller3@pepperdine.edu](mailto:Kevin.Miller3@pepperdine.edu).

# **A Post-Pierce Program: Using IDR to Improve the Los Angeles Fire Department's Current Complaint and Disciplinary Procedure**

Jaclyn Pawlowski Floryan\*

## I. INTRODUCTION

Having an alternative to litigation is important for employees and employers in all organizations and corporations. One such option is through internal dispute resolution (IDR) mechanisms. IDR mechanisms are alternative processes used instead of litigation to solve a dispute in its early stages. When organizations and corporations do not have an established set of mechanisms in place or the employees are unaware of the procedure, lawsuits result.

The Los Angeles Fire Department (LAFD) is one such organization that does not have a strong, established IDR procedure in place. Although the fire department uses certain mechanisms such as the open door policy, which will be discussed in greater detail later in this article, it is not sufficient. The firefighters do not use the procedures for fear of retaliation. Therefore, since the firefighters do not adequately use the options already available and they do not believe that the mechanisms in place are beneficial, firefighters who believe they have been wronged in some way would rather sue the fire department and seek litigation as opposed to telling their supervisor and having it resolved internally.

This paper analyzes the LAFD's current complaint and disciplinary procedure and how the flaws in this procedure have created million-dollar taxpayer-funded settlements. Part II will specifically discuss one such

---

\* Jaclyn Pawlowski Floryan is a law student at Pepperdine University School of Law and a certificate candidate at the Straus Institute for Dispute Resolution. She received her Bachelors of Science degree in Business Administration from the University of Southern California Marshall School of Business. She would like to thank Professor Peter Robinson for sharing his expertise in the dispute resolution field and her family and friends for their love and support.

example of a million-dollar settlement relating to firefighter Tennie Pierce. Part III will discuss the repercussions that occurred from this million-dollar settlement. Part IV will analyze and detail the LAFD's current complaint and disciplinary procedure. Part V will analyze the discoveries of an internal audit of the LAFD conducted by the Los Angeles City Controller. Part VI will compare and contrast the different types of IDR methods, including mediation, arbitration, ombuds programs, open door policies, peer review panels, and fact-finding procedures. Part VII will analyze the LAFD's current complaint and disciplinary procedure and why firefighters are not using it. Part VIII and Part IX will discuss the benefits and drawbacks of IDR. Part X will discuss my recommendations for a new and improved IDR procedure. Part XI will explain how the new IDR program will benefit the LAFD. Part XII will compare other organizations' reasons for using IDR mechanisms, and lastly, Part XIII will conclude this article.

## II. TENNIE PIERCE SETTLEMENT

The LAFD's complaint and grievance procedures were displayed throughout the media due to a lawsuit filed by firefighter Tennie Pierce against the LAFD and individual firefighters. The facts of the lawsuit are as follows: In 2004, fellow firefighters served Tennie Pierce spaghetti that was laced with dog food.<sup>1</sup> In November of 2005, Tennie Pierce filed a lawsuit for racial discrimination against the LAFD and three firefighters claiming that he, an African-American, was the victim of a racial prank.<sup>2</sup> The firefighters who put the dog food in Pierce's dinner were of Caucasian and Latino ethnicities.<sup>3</sup> The dog food was intended to be a practical joke after Pierce declared himself "Big Dog" during a volleyball game.<sup>4</sup> Pierce later added a retaliation charge to the lawsuit, claiming he was retaliated against after complaining about the incident.<sup>5</sup> However, the Los Angeles Superior Court judge found that more facts were needed before a retaliation claim could be proven.<sup>6</sup> The city of Los Angeles and Pierce negotiated to try to

---

1. See Sandy Banks, *For Firefighter, Sense of Brotherhood Shattered*, L.A. TIMES, Dec. 14, 2006 at Main News; Robert Lopez, *Full Probe of Hazing Claim was Rejected*, L.A. TIMES, Dec. 8, 2006 at California Metro; David Zahniser, *L.A. to Pay Black Firefighter \$1.5 million Settlement*, L.A. TIMES, Sept. 22, 2007 at Main News; see also *The LAFD on Trial*, L.A. TIMES, Nov. 30, 2006 at Main News.

2. See Banks, *supra* note 1; Lopez, *supra* note 1; Zahniser, *supra* note 1.

3. See Steve Hymon, *Judge's Ruling Stalls Retaliation Claim by Former Firefighter*, L.A. TIMES, May 1, 2007 at California Metro.

4. Banks, *supra* note 1.

5. See Banks, *supra* note 1; Lopez, *supra* note 1.

6. See Hymon, *supra* note 3.

reach a settlement.<sup>7</sup> In November of 2006, the city council approved a \$2.7 million settlement.<sup>8</sup> However, the Mayor vetoed the deal in response to a public uproar after the discovery of Pierce's personal involvement in other hazing activities and pranks.<sup>9</sup> In January of 2007, the city council then voted to retain outside counsel to replace the city attorney lawyers.<sup>10</sup> On September 21, 2007, the city council voted to settle the case for \$1.5 million plus \$60,000 in back pay, which would classify Pierce as a twenty-year city employee and qualify him for higher level pension benefits.<sup>11</sup>

The fire department's records show that the battalion chief called for a full investigation, but the Deputy Chief, the head of the department's disciplinary investigation, rejected that recommendation.<sup>12</sup> Instead, the Deputy Chief relied on firefighters' written statements to suspend the firefighters involved, "ranging from six days to one month off without pay."<sup>13</sup> The records and interviews show that the firefighters were never formally questioned.<sup>14</sup> Two city fire captains claimed reverse discrimination after being punished for the Tennie Pierce incident.<sup>15</sup>

### III. REPERCUSSIONS FROM SETTLEMENT

The Tennie Pierce settlement opened the LAFD to additional legal disputes involving peer-to-peer discrimination. In addition to the Tennie Pierce settlement, a total of \$11 million was paid to three other firefighters.<sup>16</sup> In one case, a jury ordered the City to pay Brenda Lee, a black lesbian firefighter, an award of \$6.2 million based on her allegations of racial,

---

7. See Steve Hyman, *Council Oks Hiring of Outside Lawyers in Bias Case*, L.A. TIMES, Dec. 20, 2006 at California Metro.

8. See Banks, *supra* note 1; Lopez, *supra* note 1; Zahniser, *supra* note 1; *The LAFD on Trial*, *supra* note 1; see also Steve Hyman, *Ex-Firefighter is Awarded \$1.7 Million*, L.A. TIMES, Apr. 14, 2007 at California Metro.

9. See Banks, *supra* note 1; Lopez, *supra* note 1; Zahniser, *supra* note 1; *The LAFD on Trial*, *supra* note 1; Hyman, *supra* note 8.

10. See Zahniser, *supra* note 1; Hyman, *supra* note 7.

11. See Zahniser, *supra* note 1.

12. See Banks, *supra* note 1; Lopez, *supra* note 1.

13. Banks, *supra* note 1; see Lopez, *supra* note 1 ("Fox wrote Bamattre and asked for a 24-day suspension for Tohill and 30 days for Burton. Fox later recommended a six-day penalty for Arevalo.").

14. See Lopez, *supra* note 1.

15. See *Reverse Discrimination Suit Gets Trial Date*, L.A. TIMES, Feb. 7, 2007, at California Metro.

16. See Zahniser, *supra* note 1.

sexual, and sexual orientation discrimination.<sup>17</sup> A jury also awarded \$1.7 million to Brenda Lee's co-plaintiff who claimed he suffered retaliation after he tried to help Lee.<sup>18</sup> All of the lawsuits caused Mayor Villaraigosa to force the last fire chief, William Bamattre, into retirement.<sup>19</sup> Due to the Tennie Pierce settlement, the Fire Department's legal payouts totaled \$13.5 million during that fiscal year.<sup>20</sup>

The Tennie Pierce settlement resulted in a thorough investigation into LAFD complaints.<sup>21</sup> Following the settlement, audits of the LAFD uncovered "erratic disciplinary policies, poor leadership and a hostile work environment."<sup>22</sup> The City audited the LAFD's internal disciplinary process, and the audit found the process to be "plagued by pervasive and systemic problems including inadequate investigation, poorly trained advocacy and arbitrary penalties that make it difficult to determine the extent of racial and sexual harassment."<sup>23</sup> According to the executive summary of the Personnel Department audit, "The LAFD's system of administering employee discipline fails to meet the city policy standard of fair, equitable, progressive discipline."<sup>24</sup>

#### IV. LAFD'S CURRENT COMPLAINT AND DISCIPLINARY PROCEDURE

The LAFD's complaint and disciplinary procedure begins with a preliminary inquiry into the event by the immediate supervisor.<sup>25</sup> The immediate supervisor must then determine if the event warrants progression through the channels of the LAFD's chain of command or if the immediate supervisor can appropriately handle it themselves.<sup>26</sup> There is one exception to the supervisor's decision power.<sup>27</sup> The LAFD has a "Zero Tolerance Policy," which states that complaints relating to discrimination must proceed up through the channels and ultimately be reported to the Fire Commission's

---

17. *See id.*

18. *See Hyman, supra* note 8.

19. *See Lopez, supra* note 1; Zahniser, *supra* note 1; Hyman, *supra* note 8.

20. *See Zahniser, supra* note 1.

21. *See Zahniser, supra* note 1; Letter from Laura Chick to Mayor Villaraigosa (January 26, 2006), available at [http://www.lacity.org/ctr/audits/ctraudits18035136\\_01262006.pdf](http://www.lacity.org/ctr/audits/ctraudits18035136_01262006.pdf); Los Angeles City Controller, Review of the Los Angeles Fire Department Management Practices, January 26, 2006.

22. *The LAFD on Trial, supra* note 1; Lisa Richardson, *Fire Station Pranks or Harassment*, L.A. TIMES, Mar. 11, 2006, at Main News.

23. Lopez, *supra* note 1; Richardson, *supra* note 22.

24. Lopez, *supra* note 1.

25. *See* Los Angeles City Controller, *supra* note 21, at 37.

26. *See* Los Angeles City Controller, *supra* note 21.

27. *See id.*

Equal Employment Opportunity Officer.<sup>28</sup> Equal Employment Opportunity complaints can also be reported to the Fire Chief, Fire Commission, or any Chief Officer.<sup>29</sup> The “Zero Tolerance Policy” also provides employees with information related to reporting discrimination complaints to external agencies.<sup>30</sup>

“[I]f the immediate supervisor believes the event [can be handled] at the local level, corrective measures may include a counseling session, written notice to improve, or no further action.”<sup>31</sup> On the other hand, if the event is deemed appropriate to progress through the channels, then a reprimand is given by the supervisor and the preliminary inquiry information is sent through the chain of command to the appropriate Bureau Commander.<sup>32</sup>

The Bureau Commander then “offers input as to the validity of the complaint, and subjectively determines whether the event warrants [further] progression to the Operations Commander.”<sup>33</sup> If no further progression is deemed necessary, then the reprimand is filed in the employee’s official personnel file in the LAFD’s Personnel Services unit.<sup>34</sup> Likewise, if the event warrants further progression, then “the reprimand and preliminary inquiry information are forwarded to the Operations Commander.”<sup>35</sup>

If a disciplinary case rises to the level of Operations, the Operations Commander evaluates the case and subjectively determines if additional penalties or an investigation are needed.<sup>36</sup> If the Operations Commander decides that no additional penalties or investigation is required, then the reprimand stands and the matter is closed.<sup>37</sup> However, if the Operations Commander determines that the event warrants additional penalties, investigation, or both, “the case is given to the Operations Executive Officer who is responsible for managing the disciplinary process for cases forwarded to the Bureau of Operations.”<sup>38</sup> This Officer directly supervises

---

28. *See id.*

29. *See id.*

30. *Id.*

31. Los Angeles City Controller, *supra* note 21.

32. *See id.*

33. *Id.*

34. *See id.*

35. *Id.*

36. *See* Los Angeles City Controller, *supra* note 21, at 38.

37. *See id.*

38. *Id.*

the two-year rotation cycle of advocate investigators.<sup>39</sup> If the Operations Commander decides that an investigation is needed and has permission from the Fire Chief, an advocate investigator is assigned to the case.<sup>40</sup>

The Operations Command consists of approximately sixty-six captain advocate investigators and two full-time special duty captain advocate investigators.<sup>41</sup> Special duty captain advocates are “assigned to Operations on a full-time basis for two to three years.”<sup>42</sup> “[F]ield captain advocates are [used] when the department advocates workload is too great.”<sup>43</sup> The advocates are to act as fact finders and provide an objective assessment.<sup>44</sup>

At the end of an investigation, the advocate details which rules and regulations were violated and gives his findings to the Operations Officer.<sup>45</sup> If an additional penalty is deemed appropriate, the following resources are used to arrive at the appropriate punishment: the Los Angeles Civil Service Guideline to Disciplinary Standards, the draft of the LAFD Guideline to Discipline, and the employee’s personnel history with the LAFD.<sup>46</sup> “The Executive Officer may [, however,] also render penalties with the approval of the Operations Commander without additional investigation if the facts of the case are not in dispute and additional penalties are determined by the Operations Commander to be warranted.”<sup>47</sup>

“Before [a] penalty may be finalized, a pre-disciplinary hearing, or “Skelly” hearing, must be held and the subject has the right to have a United Firefighters of Los Angeles City union representative.”<sup>48</sup> The “Skelly” hearing includes the Operation Commander, Operations Executive Officer, the advocate, the subject, and the union representative.<sup>49</sup> This hearing considers the defendant’s point of view, including new information, and the proposed penalty may be decreased based on the defendant’s testimony.<sup>50</sup> A Board of Rights hearing is mandatory when the penalty is a suspension of thirty days or more.<sup>51</sup> In addition, “if an employee disagrees with any penalty, they have the right to request a Board of Rights hearing and have

---

39. *See id.*

40. *See id.*

41. *See* Los Angeles City Controller, *supra* note 21, at 38.

42. *Id.*

43. *Id.*

44. *See id.*

45. *See id.*

46. *See* Los Angeles City Controller, *supra* note 21, at 38.

47. *Id.*

48. *Id.*

49. *See* Los Angeles City Controller, *supra* note 21, at 38-39.

50. Los Angeles City Controller, *supra* note 21, at 39.

51. *See id.*

another on-duty LAFD personnel act as their defense representation at the expense of the city.”<sup>52</sup> The “Board of Rights hearing consists of three LAFD Chief Officers selected through a process guided by the City Charter.”<sup>53</sup> The Board determines if the accused is guilty, and, if so, sets a punishment.<sup>54</sup> The Fire Chief also has the ability to intervene and decrease the Board’s punishment.<sup>55</sup>

## V. INTERNAL AUDIT OF THE LAFD

In 2006, the Los Angeles City Controller conducted a review of the LAFD’s management practices.<sup>56</sup> This audit showed that complaints and the formal investigative and disciplinary actions taken regarding harassment, hazing, and hostile work environment are “inconsistently handled, poorly tracked and subjective.”<sup>57</sup> Interviews showed that there was a “greater prevalence of harassment, hazing and hostile work environment” than indicated in the investigations.<sup>58</sup> More instances occur than are reported.<sup>59</sup> The audit also revealed that fire chiefs are “unable to identify the number of disciplinary actions taken against firefighters” or “whether the same offense receives the same level of discipline.”<sup>60</sup>

The audit also analyzed the Operations Executive Officer and Department Advocate Investigator positions.<sup>61</sup> A potential conflict of interest is created through these positions because, since the positions rotate individuals through them, the “individuals work with the same people that they are investigating.”<sup>62</sup> In addition, the training for these positions is inadequate.<sup>63</sup> Although the investigators are provided with a manual, the manuals are highly technical and the information in the manual is “not sufficient to provide a complete understanding of circumstances” and to

---

52. *Id.*

53. *Id.*

54. *See id.*

55. *See* Los Angeles City Controller, *supra* note 21, at 39.

56. *See* Letter from Laura Chick to Mayor Villaraigosa, *supra* note 21.

57. Los Angeles City Controller, *supra* note 21, at 3, 5, 30.

58. *Id.*

59. *See* Los Angeles City Controller, *supra* note 21, at 5, 30.

60. Los Angeles City Controller, *supra* note 21, at 6, 30.

61. *See* Los Angeles City Controller, *supra* note 21, at 40-42.

62. Los Angeles City Controller, *supra* note 21, at 40.

63. *See* Los Angeles City Controller, *supra* note 21, at 5, 34, 40-42.

prepare those who are investigating cases and determining penalties.<sup>64</sup> Furthermore, there are no set guidelines for how to perform a professional investigation.<sup>65</sup> The audit concluded, “The lack of adequate training and commitment to human relations issues send a message that harassment is not taken seriously and will be tolerated.”<sup>66</sup> The audit also concluded that extreme behavior would eventually develop because subtle behavior was being condoned.<sup>67</sup>

Due to the findings of an earlier audit, a human relations development committee was formed to incorporate the recommendations of the audit.<sup>68</sup> However, in 2001, the LAFD had still not completely addressed the issues that were up for recommended implementation in the audit.<sup>69</sup> A “comprehensive tracking system of disciplinary activities” was supposed to be established to help ensure fair, equal and consistent application of discipline.<sup>70</sup> The LAFD labeled this issue as completed, however, currently “no department-wide comprehensive tracking system for discipline cases” exists.<sup>71</sup>

## VI. TYPES OF IDR METHODS

There are many different types of IDR methods. Some of the most popular include mediation, arbitration, ombuds programs, open door policies, peer review panels, and fact-finding procedures. These methods can be used alone or combined. The appropriate combination of methods depends on the unique culture of the organization.

### A. Mediation

Mediation is a process where “two or more parties come together to discuss their dispute in an attempt to reach a mutually acceptable agreement.”<sup>72</sup> The mediator is a neutral party who does not have any power

---

64. Los Angeles City Controller, *supra* note 21, at 34, 41.

65. *Id.*

66. Los Angeles City Controller, *supra* note 21, at 52.

67. *Id.*

68. Los Angeles City Controller, *supra* note 21, at 31.

69. *Id.*

70. Los Angeles City Controller, *supra* note 21, at 31-33.

71. Los Angeles City Controller, *supra* note 21, at 31.

72. Jessica Oser, Note, *The Unguided Use of Internal ADR Programs to Resolve Sexual Harassment Controversies in the Workplace*, 6 CARDOZO J. CONFLICT RESOL. 283, 292 (2005). See also Lisa Pell, Note, *Is Alternative Dispute Resolution Really An Alternative for Federal Employees? Possible Suggestions for Encouraging Federal Employees to Participate in ADR Programs*, 6

to impose a solution on the parties.<sup>73</sup> The mediator helps the parties try to understand one another and discuss their issues.<sup>74</sup> The mediator assists the parties in determining what they believe would be the best solution for themselves.<sup>75</sup> The mediator's functions include: "identifying the issues, clarifying the parties' interests, providing a channel of communication, focusing the negotiations on productive areas of discussion, assisting in the development of options for the resolution of the dispute, assisting the parties in documenting an agreement, clarifying alternatives to agreement, and coordinating and educating the parties."<sup>76</sup>

### *B. Arbitration*

Arbitration is an adjudicatory process similar to litigation.<sup>77</sup> However, it is distinguishable from litigation in (1) the parties' ability to choose whether they want the arbitrator's decision to be binding, and (2) the parties' ability to choose if they want the arbitration to be confidential.<sup>78</sup> Arbitration is a "process in which disputing parties present evidence and conduct direct and cross examinations of witnesses in front of a neutral or panel of neutrals selected by the parties," and after reviewing the evidence, the neutral reaches a decision.<sup>79</sup> The decision the neutral reaches can be binding or non-binding.<sup>80</sup>

### *C. Ombuds Programs*

The definition of an ombudsperson is:

---

CARDOZO J. CONFLICT RESOL. 313, 325-26 (2005); Ronald J. Bald & Evette E. Ungar, *An Alternative Dispute Resolution Systems Design for the United States Coast Guard*, 3 J. AM. ARB. 111, 134-35 (2004).

73. Oser, *supra* note 72, at 292. *See also* Pell, *supra* note 72; Bald & Ungar, *supra* note 72.

74. Oser, *supra* note 72, at 292. *See also* Pell, *supra* note 72; Bald & Ungar, *supra* note 72.

75. Oser, *supra* note 72, at 292. *See also* Pell, *supra* note 72; Bald & Ungar, *supra* note 72.

76. Oser, *supra* note 72, at 292. *See also* Pell, *supra* note 72; Bald & Ungar, *supra* note 72.

77. Oser, *supra* note 72, at 294. *See also* Pell, *supra* note 72, at 319-23; Bald & Ungar, *supra* note 72, at 127-29.

78. Oser, *supra* note 72, at 294. *See also* Pell, *supra* note 72, at 319-23; Bald & Ungar, *supra* note 72, at 127-29.

79. Oser, *supra* note 72, at 294. *See also* Pell, *supra* note 72, at 319-23; Bald & Ungar, *supra* note 72, at 127-29.

80. Oser, *supra* note 72, at 294. *See also* Pell, *supra* note 72, at 319-23; Bald & Ungar, *supra* note 72, at 127-29.

[A] neutral or impartial administrator or manager within an institution, who may provide confidential and informal assistance to anyone within that institution in resolving work . . . related concerns, who may serve as counselor, go-between, mediator, fact-finder or upward feedback mechanism, and whose office is located outside ordinary line management (or academic) structures.<sup>81</sup>

Corporate ombudspersons are intended to be outside of the management structure, “even though they are employed and paid by the corporation.”<sup>82</sup> They handle a wide range of issues including employee salaries, terminations, discrimination, and sexual harassment complaints.<sup>83</sup> Ombudspersons also identify and track systemic workplace disputes.<sup>84</sup> An ombudsperson, although outside of the management structure, is still an employee of the company, which creates tension between wanting to promote neutrality and confidentiality and the responsibility of the ombudsperson to the company.<sup>85</sup> One of the biggest challenges ombudspersons face is their duty to maintain confidentiality, because this is difficult as an employee of the company.<sup>86</sup>

#### D. Open Door Policies

An open door policy means “managers’ doors are open to employees who wish to discuss concerns and complaints.”<sup>87</sup> This workplace policy encourages employees to meet with and discuss their workplace problems with their immediate supervisor or manager.<sup>88</sup> The biggest flaw in this system is that employees often make their appeals by going up the chain of command in their workplace.<sup>89</sup> This creates problems because supervisors will often feel pressured to support the decisions made by lower level supervisors instead of evaluating the problem themselves.<sup>90</sup>

---

81. Oser, *supra* note 72, at 295. See also Bald & Ungar, *supra* note 72, at 136.

82. Oser, *supra* note 72, at 295. See also Bald & Ungar, *supra* note 72, at 136.

83. Oser, *supra* note 72, at 295. See also Bald & Ungar, *supra* note 72, at 136.

84. Oser, *supra* note 72, at 295. See also Bald & Ungar, *supra* note 72, at 136.

85. Oser, *supra* note 72, at 295. See also Bald & Ungar, *supra* note 72, at 136.

86. Oser, *supra* note 72, at 296. See also Bald & Ungar, *supra* note 72, at 136.

87. Oser, *supra* note 72, at 297.

88. *Id.*

89. *Id.*

90. *Id.*

### *E. Peer Review Panels*

“Peer review panels are groups of employees who review and decide grievances.”<sup>91</sup> These panels combat the employee’s suspicion that supervisors will sympathize with each other and will automatically disfavor the complaint of the employee.<sup>92</sup> Peer review panels are comprised mainly of peer employees, even though they are management-designed and administered.<sup>93</sup> A panel evaluates the dispute and provides a decision that is not binding.<sup>94</sup> The main purpose of this type of peer review is to resolve disputes before a formal complaint is filed.<sup>95</sup>

### *F. Fact-Finding Procedures*

Fact-finding procedures involve internal investigations into the employee’s complaint.<sup>96</sup> A neutral fact-finder conducts a hearing where both sides present their arguments, and the neutral explains his factual findings.<sup>97</sup> The neutral’s factual findings are non-binding on the parties.<sup>98</sup> The parties then decide if they want to accept or reject the neutral’s findings.<sup>99</sup> There are multiple forms of fact-finding procedures.<sup>100</sup> A company can appoint a neutral to investigate the complaint.<sup>101</sup> The parties can decide in advance if the neutral’s opinion will be optional or final.<sup>102</sup>

“Expert fact-finding” is a specific type of fact-finding in which the company appoints an expert to investigate a technical matter and make either a conclusive or a non-binding opinion.<sup>103</sup> Another form of fact-finding is called “joint fact-finding,” in which each party elects a representative to

91. Oser, *supra* note 72, at 298.

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. Oser, *supra* note 72, at 298. *See also* Bald & Ungar, *supra* note 72, at 131.

97. Oser, *supra* note 72, at 299. *See also* Bald & Ungar, *supra* note 72, at 131.

98. Oser, *supra* note 72, at 299. *See also* Bald & Ungar, *supra* note 72, at 131.

99. Oser, *supra* note 72, at 299. *See also* Bald & Ungar, *supra* note 72, at 131.

100. Oser, *supra* note 72, at 299. *See also* Bald & Ungar, *supra* note 72, at 131.

101. Oser, *supra* note 72, at 299. *See also* Bald & Ungar, *supra* note 72, at 131.

102. Oser, *supra* note 72, at 299. *See also* Bald & Ungar, *supra* note 72, at 131.

103. Oser, *supra* note 72, at 299. *See also* Bald & Ungar, *supra* note 72, at 131.

negotiate with the other party's representative to try to resolve possible factual disputes.<sup>104</sup>

#### VII. WHY IS THE LAFD'S CURRENT COMPLAINT AND DISCIPLINARY PROCEDURE NOT USED BY FIREFIGHTERS?

The current complaint and disciplinary procedure, described above in Part IV, can most likely be categorized as an open door policy. An open door policy is one type of IDR and is the most basic and least formal type.<sup>105</sup> As seen from the audit conducted, a downfall of this type of IDR is that there are more issues and complaints than are actually reported and investigated.<sup>106</sup> The audit referred to above discovered, through interviews of firefighters and research, that there is a fear to report complaints.<sup>107</sup> In addition, the entire disciplinary process is untracked and subjective.<sup>108</sup>

The LAFD does not have an adequate system implemented to track complaints.<sup>109</sup> Formal investigations are usually conducted by fire captains who are inexperienced and untrained investigators.<sup>110</sup> These investigators are also usually assigned to investigations of the same division to which they will return to work after their rotational special duty assignment is completed.<sup>111</sup> The investigators are thus in the position of having to conduct an investigation of a firefighter with whom they might work in the near future, which creates an inherent conflict of interest.<sup>112</sup> The LAFD's disciplinary process does not include comprehensive written guidelines and procedures.<sup>113</sup> Few standards even exist by which to judge the performance of those exercising disciplinary activities.<sup>114</sup> The Disciplinary Process Overview Manual is also not widely distributed.<sup>115</sup> To further compound the problem, this manual lacks detailed explanations as to what constitutes a rule violation, the process for handling rule violations through the disciplinary processes, and the level of discipline to be applied for each

---

104. Oser, *supra* note 72, at 299. *See also* Bald & Ungar, *supra* note 72, at 131.

105. Oser, *supra* note 72, at 297.

106. Los Angeles City Controller, *supra* note 21, at 3, 5, 30.

107. Letter from Laura Chick to Mayor Villaraigosa, *supra* note 21.

108. *See* Los Angeles City Controller, *supra* note 21, at 3, 30, 39.

109. *See id.*

110. Los Angeles City Controller, *supra* note 21, at 3, 5, 30.

111. Los Angeles City Controller, *supra* note 21, at 5.

112. *See id.*

113. *See* Los Angeles City Controller, *supra* note 21, at 34.

114. *See id.*

115. *Id.*

infraction.<sup>116</sup> There is not a detailed written disciplinary process, thus creating “an environment where accountability is not required” and “subjectivity controls the decision making process.”<sup>117</sup> The LAFD Guideline to Discipline was drafted, but it was never adopted by the LAFD.<sup>118</sup> In addition, those that act as the immediate supervisors in the field do not receive any type of investigative training, and therefore, do not have the training that is necessary to conduct preliminary inquiries.<sup>119</sup>

Although the LAFD has conducted training sessions to address the hostile workplace behavior issue, the training was “inadequate, too broad, and outdated.”<sup>120</sup> The training was administered by external consultants who had no familiarity with the unique culture that exists within a fire department.<sup>121</sup> In addition, the training was a “one size fits all’ corporate approach.”<sup>122</sup>

The initial determination by the immediate supervisor of whether or not the matter should proceed through the chain of command is subjective in nature since the LAFD has no set guidelines for the supervisors to follow when making the determinations.<sup>123</sup> Therefore, with the current procedure, consistency is difficult to achieve.<sup>124</sup>

There is no clear standard regarding which situations require advancement through the channels.<sup>125</sup> Thus, in two identical initial inquiries to the immediate supervisor, “one may be managed or suppressed at the fire station level and the other may be advanced ‘through [the] channels.’”<sup>126</sup>

Reprimands from the Bureau Commander at the Bureau level are not tracked.<sup>127</sup> This eliminates the opportunity to be able to identify behavioral trends that, when taken as a whole, may require training or intervention.<sup>128</sup>

---

116. *Id.*

117. Los Angeles City Controller, *supra* note 21, at 35.

118. Los Angeles City Controller, *supra* note 21, at 39.

119. *See* Los Angeles City Controller, *supra* note 21, at 41, 42.

120. Los Angeles City Controller, *supra* note 21, at 52.

121. *Id.*

122. *Id.*

123. *See* Los Angeles City Controller, *supra* note 21, at 35.

124. Los Angeles City Controller, *supra* note 21, at 37.

125. *See* Los Angeles City Controller, *supra* note 21, at 37-38.

126. Los Angeles City Controller, *supra* note 21, at 38.

127. Los Angeles City Controller, *supra* note 21, at 37.

128. *Id.*

Therefore, the LAFD lacks the opportunity to identify “department wide measures that may need to be taken to correct overall poor behavior.”<sup>129</sup>

According to Tennie Pierce, if a firefighter complains to the captain, “then the captain calls everybody into the kitchen” and the firefighter creates “a hostile work environment for” himself.<sup>130</sup> Pierce said that he decided to sue when “the environment became unbearable.”<sup>131</sup>

## VIII. BENEFITS OF IDR

The LAFD needs to implement a multi-step dispute resolution program to ensure that the majority of complaints or issues are resolved before they make it to litigation, which may end up costing taxpayers millions of dollars.

There are numerous advantages of having a successful IDR program within an organization. It provides management with an early detection mechanism to draw attention to problems that are brewing.<sup>132</sup> It allows problems to be addressed directly before they develop into statutory charges.<sup>133</sup> These programs also increase employee morale by providing appropriate channels for problem solving assistance.<sup>134</sup> IDR systems work to resolve most work disputes internally so the privacy of the employees is preserved and the employer avoids media publicity of sensitive information.<sup>135</sup>

One major benefit of a successful IDR program is to “shield internal disputes from external scrutiny.”<sup>136</sup> IDR programs also help “maintain a working relationship between disputing employees.”<sup>137</sup>

## IX. DRAWBACKS OF IDR

Some drawbacks are associated with IDR mechanisms. The biggest problem is the perceived bias that is intrinsic in a program designed to investigate and penalize, that is also created and controlled by the

---

129. *Id.*

130. Banks, *supra* note 1.

131. Banks, *supra* note 1.

132. Margaret L. Shaw, *Designing and Implementing In-House Dispute Resolution Programs*, A.L.I.-A.B.A. COURSE OF STUDY 447, 452-53 (1999).

133. Shaw, *supra* note 132.

134. *Id.*

135. Cecilia H. Morgan, *Employment Dispute Resolution Processes 2004*, 11 TEX. WESLEYAN L. REV. 31, 33-34 (2004).

136. Oser, *supra* note 72, at 283.

137. Oser, *supra* note 72, at 283-84.

employer.<sup>138</sup> Using an internal program also raises concerns of procedural fairness including confidentiality, neutrality, and “inequality in bargaining power between the company and a single employee.”<sup>139</sup>

#### X. RECOMMENDATIONS FOR A NEW AND IMPROVED IDR PROCEDURE

The LAFD needs to implement a new and improved dispute resolution procedure for handling discipline and complaints. The new procedure needs to be one that will solve the problems associated with the current open door policy, and that the firefighters will feel comfortable using without fear of retaliation. Employees also need to be encouraged to come forward with complaints without fear of retaliation or other retribution.

An IDR mechanism needs to be implemented that allows employees to “share personal issues and observations with someone outside the chain of command.”<sup>140</sup> The current investigatory team, which consists of those who rotate in for two-year special assignments, needs to be changed.<sup>141</sup> The rotation is ineffective because “investigations require in depth training, knowledge, and experience at [a] level [that] usually [takes] more than two years to attain.”<sup>142</sup> There needs to be “a separate Internal Affairs Division within the LAFD with permanently assigned investigative staff who possess the necessary expertise, experience and training to conduct the . . . investigations.”<sup>143</sup>

A way to ensure that the firefighters report complaints is to implement particular IDR mechanisms. Ombuds programs can achieve positive results within the fire department. Currently, firefighters are afraid to report a complaint because they fear retaliation.<sup>144</sup> This is because they have to report the complaint to their immediate supervisor.<sup>145</sup> If the LAFD were to implement an ombuds program, then firefighters would be able to report their complaints to the ombudsperson, who would then investigate the complaint instead of the immediate supervisor. This would allow for

---

138. Oser, *supra* note 72, at 286.

139. Oser, *supra* note 72, at 293.

140. Los Angeles City Controller, *supra* note 21, at 32.

141. See Los Angeles City Controller, *supra* note 21, at 38, 41.

142. Los Angeles City Controller, *supra* note 21, at 41.

143. Los Angeles City Controller, *supra* note 21, at 46.

144. Los Angeles City Controller, *supra* note 21, at 2, 51.

145. Los Angeles City Controller, *supra* note 21, at 2, 37.

confidentiality, as well as the possibility of diminished bias, because ombudspersons are not within the direct chain of command.<sup>146</sup>

Once the ombudsperson had investigated the complaint, they could send the parties to mediation. Mediation would allow any underlying issues to be revealed to the other party in an attempt to reach a mutually satisfying agreement.<sup>147</sup> Mediation would allow for discussion between the parties that would not normally occur during a trial or within an environment that thrives on hazing and pranks.

As a final step, before firefighters are allowed to file a complaint in the court system, they should be required to go through arbitration. The arbitration would allow the parties to see how a court would most likely decide their particular case. One benefit of arbitration, compared to litigation, is that those who have firsthand expertise in the field, as well as firsthand experience with the unique culture that a firefighter position presents, could evaluate the facts of the case.

The new multi-step internal dispute disciplinary process needs to be detailed and formally written in order to remove the subjectivity and must be “formally incorporated into LAFD’s policies and procedures.”<sup>148</sup> “Once the specific discipline guidelines have been developed,” all of the supervisors need “to administer them in accordance with the policy.”<sup>149</sup> This could involve making the employees aware of the new process and how it has improved from the previous one.

There also needs to be a “centralized mandatory tracking and reporting system for disciplinary and corrective actions.”<sup>150</sup> With an established multi-step program, it will be much easier to track because every department is following the same process, and there are now objective rules that need to be followed. There also needs to be an independent party who periodically reviews “the disciplinary tracking and reporting system for consistency and compliance.”<sup>151</sup> This could be one part of the ombudsperson’s job description.

---

146. Oser, *supra* note 72, at 295. See also Bald & Ungar, *supra* note 72, at 136.

147. Oser, *supra* note 72, at 292. See also Pell, *supra* note 72; see also Bald & Ungar, *supra* note 72.

148. Los Angeles City Controller, *supra* note 21, at 35.

149. *Id.*

150. Los Angeles City Controller, *supra* note 21, at 6, 45.

151. Los Angeles City Controller, *supra* note 21, at 46.

## XI. HOW WILL AN IDR PROGRAM BENEFIT THE LAFD?

IDR programs “shield internal disputes from external scrutiny.”<sup>152</sup> The programs allow disputes to be resolved before they can make it to the court system and become public.<sup>153</sup> This would be highly advantageous to the LAFD because lawsuits such as Tennie Pierce’s would not be on the front page of the news exposing the fire department’s internal issues to the public at large. Exposure of internal disputes to the public hurts the LAFD because the public focuses on the internal issues rather than the good the LAFD does externally, tarnishing the entity’s reputation.

IDR programs help “maintain a working relationship between disputing employees.”<sup>154</sup> Mediation is one example of this because mediation allows the parties to come together and discuss underlying issues or feelings that are not allowing the dispute to be resolved.<sup>155</sup> This would be especially advantageous to LAFD members because firefighters are not considered to be average corporate employees since they have to both work and live together, thus a working relationship between them is more necessary than in a typical organization.<sup>156</sup> Therefore, if firefighters were able to quickly resolve a dispute, the working environment would be much more productive and harmonious.

Some organizations require that employees use IDR mechanisms as a “prerequisite to filing a complaint with the court system.”<sup>157</sup> If the LAFD were also to adopt this approach, cases such as Tennie Pierce’s would have had the chance to be resolved prior to being filed, instead of ultimately costing taxpayers millions of dollars.<sup>158</sup> This approach would have forced Pierce to exhaust the other dispute resolution mechanisms such as mediation to see if the dispute could be resolved. Tennie Pierce told reporters that he only wanted an apology from the other firefighters. According to Tennie Pierce, if the captains would have admitted to putting the dog food in his dinner and apologized for it, he “would have washed it clean. But they

---

152. Oser, *supra* note 72, at 283.

153. Oser, *supra* note 72, at 283-84.

154. *Id.*

155. Oser, *supra* note 72, at 292. *See also* Pell, *supra* note 72; *see also* Bald & Ungar, *supra* note 72.

156. Los Angeles City Controller, *supra* note 21, at 34.

157. Oser, *supra* note 72, at 285.

158. *See* Banks, *supra* note 1.

didn't."<sup>159</sup> Assuming this statement was true, this case would have been resolved before it made its way to the court system because the mediation process would have been able to get below underlying feelings and interests.

## XII. REASONS FOR THE USE OF IDR MECHANISMS IN OTHER ORGANIZATIONS

The use of IDR mechanisms within corporations and organizations has increased tremendously over the last ten years.<sup>160</sup> These mechanisms include mediation, arbitration, and peer review programs.<sup>161</sup> "Many U.S. companies have incorporated the use of [IDR] mechanisms into their internal corporate procedures and policies."<sup>162</sup> Some companies even "mandate that employees use internal ADR mechanisms as a prerequisite to filing a complaint with the court system."<sup>163</sup> The reasons include:

[T]he desire to resolve disputes efficiently and cost effectively, the need to reduce the caseload of our overburdened public legal system, the desire to shield internal disputes from external scrutiny, the need to maintain a working relationship between disputing employees, the desire to improve corporate culture by encouraging employees to have a problem solving mindset, and the desire to avoid public vindication.<sup>164</sup>

Some examples of other employers that have implemented internal conflict management programs are the U.S. Postal Service, Hughes Aircraft, Brown and Root, and Halliburton. The U.S. Postal Service is the country's second largest employer and within the first twenty-two months of its implementation of an IDR program, eighty percent of disputes were resolved.<sup>165</sup> Hughes Aircraft "initiated a multi-step dispute resolution program."<sup>166</sup> In the first year, seventy percent of employees' claims were resolved to employee satisfaction before reaching the program's third step, and sixty percent of all of the claims submitted to step three were resolved to the employee's satisfaction.<sup>167</sup> Brown and Root reported that seventy-five percent "of the complaints were resolved within 8 weeks of initial program

---

159. See Steve Hyman & Jim Newton, Firefighter Settlement Sharply Splits Council, L.A. TIMES, Nov. 29, 2006 at Main News, available at WLNR 20604598.

160. Oser, *supra* note 72, at 283.

161. *Id.*

162. Oser, *supra* note 72, at 284.

163. Oser, *supra* note 72, at 285.

164. Oser, *supra* note 72, at 283-84.

165. Lamont E. Stallworth, Thomas McPherson, & Larry Rute, *Discrimination in the Workplace: How Mediation Can Help*, 56 DISP. RESOL. J. 35, 84 (2001).

166. Shaw, *supra* note 132, at 453.

167. Shaw, *supra* note 132, at 453.

contact,” and ninety-eight percent were resolved in pre-arbitration stages.<sup>168</sup> Halliburton’s employment dispute resolution program resolved eighty-three percent of all cases filed in four weeks or less and sixty-six percent in one week or less.<sup>169</sup>

### XIII. CONCLUSION

The LAFD’s current complaint and disciplinary procedure falls short of sufficient. Although they have an open door policy in place, this procedure has proven inadequate. The firefighters do not feel that reporting problems to their supervisor resolves the issue. Instead, firefighters are afraid to report an issue to their supervisor for fear of retaliation. There is also no means for tracking disciplinary problems both on an individual and department-wide basis. There is no standard established or enforced for disciplinary matters, and supervisors lack the proper training needed to conduct thorough investigations. Therefore, the LAFD needs to implement a multi-step IDR procedure to solve the problems with the current inadequate procedure.

A multi-step program would satisfy the necessary procedural elements needed to rectify the LAFD’s current procedure. The multi-step program would combine an ombuds program with mediation and arbitration. An ombuds program would solve the problem of fear of reporting a complaint to a supervisor for fear of retaliation. Mediation would allow for the underlying issues of a dispute to be discussed and possibly a mutual solution to the problem. Mediation would also create a forum for apology. Arbitration would be the final step in the procedure. Arbitration would allow disputing parties to see how a court would possibly rule if the case were to be brought to litigation. It also provides a neutral party’s opinion on an issue. Arbitration would not have to be binding. Non-binding arbitration would allow the parties to implement the advisory opinion if both parties so desire. Lastly, if none of these mechanisms can solve the problem, then a party would be able to bring a lawsuit and take the issue to court.

Although it is highly likely that this recommended procedure would not resolve all disputes, it would dramatically decrease the amount of lawsuits as well as alleviate the fear of retaliation if firefighters report a problem. If the LAFD were to implement the multi-step program recommended above, there

---

168. Shaw, *supra* note 132, at 453.

169. Morgan, *supra* note 135, at 33.

would be a vast improvement in IDR, which would ultimately bring greater efficiency to the LAFD.