



United States
Department of
Agriculture

USDA Dispute Resolution Board Pilot Project Evaluation

Final Report May 1994

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Evaluation Team Chair



DEPARTMENT OF AGRICULTURE

OFFICE OF ASSISTANT SECRETARY FOR ADMINISTRATION

WASHINGTON, D. C. 20250-0100

Last September the Department implemented a pilot program within the Office of Civil Rights Enforcement (OCRE), the Dispute Resolution Boards, designed to test much needed improvements in our method of handling employee discrimination complaints. The Secretary's goal was to implement a fair process that would be more timely, more cost efficient, and more user friendly (from the perspectives of both employees and managers) than the traditional method of investigating and adjudicating complaints.

A few months ago I asked Jeff Knishkowsky, an attorney in the General Counsel's office who also serves as the Department's Alternative Dispute Resolution Specialist, to assemble a team to evaluate the pilot phase of the Dispute Resolution Boards. I was particularly interested in the answers to three questions: 1) Should we keep the Boards?; 2) If so, how should they be changed?; and 3) What are the costs involved in continuing to use the Boards?

The evaluation team brought to their task a wide range of skills and an enthusiastic commitment to do the job expeditiously and well. The following report is evidence of their success, and I thank them for their efforts on behalf of the Department. I also thank everyone, especially Board members and participants, who contributed to this evaluation.

This report contains good news. The overwhelming response of participants in the Board pilot is that the process should be kept, however with important modifications. Participants expressed great appreciation for the competence and fairness of the Board members. They appreciate the opportunity the Boards offer to talk about the issues face to face, but were less satisfied when cases were settled prior to their stories being heard. They also appreciate getting stressful complaints resolved in a timely fashion so they can return to more productive activities. On the other hand, both managers and employees feel that there is undue pressure to reach a settlement agreement in all cases.

I, along with OCRE, am committed to addressing the concerns that have been raised during this evaluation. We are certain that the recommendations, when implemented, will produce an even better Board process that can be made available to employees across the Department. Through this process we have learned valuable lessons, useful not only in resolving EEO complaints, but in other areas of potential conflict within the Department as well.

If you have any comments or suggestions after reviewing this report, please feel free to share them with the Secretary's office, with OCRE, or with me. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Wardell C. Townsend, Jr.".

Wardell C. Townsend, Jr.
Assistant Secretary
for Administration



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Over the past several months, I have had the privilege of working with the team of individuals that has put together this evaluation report on the Dispute Resolution Board pilot project. The report should not be seen as the final or definitive word on the Boards, or the end of the evaluation process. Rather, it should be used as a point of departure for discussions on issues raised during the evaluation, and should be viewed as the beginning of a process involving USDA management and employees, with the goal of creating a better environment for everyone. With the experience of the Board pilot and this evaluation behind us, we now have the opportunity to move ahead and institute creative and effective dispute resolution systems in all areas of conflict at USDA.

I would like to extend my personal gratitude to a number of people who gave time to this evaluation effort. First, thanks to the Evaluation Team members, an extraordinary group of individuals committed to making USDA a better place to work for everyone. Their dedication, candor, and hard work have made this evaluation a truly rewarding experience. Thanks also to Joseph Lockley, OGC, and Jennifer Painter, OP/HRDD, for their administrative support, and Scott Binde, AMS, and Kevin Kesecker, AMS, for their graphics and computer assistance. Finally, I would like to thank all the individuals who took the time to respond to our questionnaires, participate in interviews and focus groups, and share with the Team their experiences in the EEO process. Because of their willingness to express their opinions honestly and openly, I believe there will be changes for the better at USDA.

Sincerely,

Jeffrey Knishkowy,
Evaluation Team Chair and
USDA Dispute Resolution Specialist

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EXECUTIVE SUMMARY

USDA DISPUTE RESOLUTION BOARD PILOT PROJECT EVALUATION

I. INTRODUCTION

Two general observations arise from comments made by Complainants, Responding Officials, Resolving Officials, and other parties from whom input was obtained during the evaluation process.

First, by near unanimous opinion, the Dispute Resolution Boards should be kept, in modified form. Even individuals who were not convinced that the settlement agreements were fair or that the process was working well felt that the process had merit and that it should be continued. The recommendations contained in this report address improvements to a process that is broadly seen as worthwhile.

Second, again by near unanimous opinion, a process like the Board process should be available earlier in the disputes. The participants clearly indicated that the ability to put their points of view on the table for discussion with other parties present was helpful in settling disputes, and that face to face discussion even earlier in the process would be desirable.

Although hard data that may be used to judge the time and cost of the Board process and the traditional 1614 process is incomplete, it appears that the Board process takes less time and is less costly than the traditional 1614 process. Again, using incomplete data, analysis reveals that the cost of settlements has been, thus far, higher in the Board process than outcomes in the traditional 1614 process. Overall, when considering the cost of the processes and the cost of outcomes, it is not clear that the Board process is less costly.

This report contains recommendations addressing the Board process as it was originally designed, as well as recommendations advocating the use of non-confrontational dispute resolution processes earlier in the life of disputes.

II. METHOD

During the seven week evaluation process, the Dispute Resolution Board Evaluation Team gathered information about 48 cases that were heard by the Dispute Resolution Boards, and 41 cases that were handled by the traditional (1614) process. An effort was made to get input from all of the Complainants, Responding Officials, and Resolving Officials through a survey questionnaire, individual interviews, and focus groups. Further, extensive documentary research was conducted using the files from all of the cases and written material about the

Board process as developed and distributed by the Office of Civil Rights Enforcement. Finally, input was sought from individuals who were instrumental in designing, implementing, and overseeing the Boards.

III. OBSERVATIONS

A. Before the Board Process:

1. Complainants, Responding Officials, and Resolving Officials were apprehensive.
2. All parties expected, and welcomed, the opportunity to have the facts heard by an unbiased third party.
3. Management's view was that the Department's policy is to "settle at all costs" all EEO complaints.
4. Parties were inconvenienced by scheduling inflexibility, and management, particularly Responding Officials, felt unprepared to participate in the Board conference due to problems with notification and dissemination of information.

B. During the Board Process:

5. Actual experience with the conference differed from expectations. All parties expected to be able to present evidence during the conference. Management expected to be able to have representation during the conference.
6. Parties found the Board members to be fair, unbiased and effective.
7. Complainants felt intimidated during the conference.
8. The Board process, as it currently operates, does not emphasize communication among the parties.

C. After the Board Process:

9. Complainants, Responding Officials, and Resolving Officials believe that the Board process, with changes, should continue.
10. Complainants, Responding Officials, and Resolving Officials appreciated the opportunity for early settlement of EEO complaints that the Board process offered.
11. Parties were disappointed if there was no factfinding or assessment.
12. Resolving Officials and Complainants are more satisfied with the Board process than Responding Officials.
13. Complainants are not happy with the outcome simply because they "got something."
14. Complainants were less satisfied with the process and settlements when they did not have the opportunity to talk about the issues before the Board.
15. Responding Officials are not satisfied with the outcomes.
16. The Boards, as they currently operate, facilitate settlement of complaints; they do not resolve conflict.
17. Workplace communications and relationships are not likely to significantly improve as a result of the Board process, as it currently operates.
18. Management feels strongly that it is not adequately represented during the conference.
19. Problems are arising concerning the interpretation of and compliance with settlement agreements.

D. Additional Observations:

20. Requiring parties to participate in the assessment and resolution phases of the conference may contribute to dissatisfaction with settlements.
21. Board members are unaware that parties felt pressured to settle.
22. Parties are not meeting face to face to discuss their problems prior to the Board process.
23. USDA employees want the opportunity to meet, face to face, early in the life of a dispute, in the presence of a skilled and unbiased third party, to attempt to resolve the dispute.
24. Responding Officials are concerned that cases without foundation are getting to the Boards.
25. There needs to be greater cooperation and better communication among the Boards, EEO counselors, and adjudicators.

E. Time and Cost:

1. The Board process facilitates closure of EEO complaints in less time than closures are generally achieved under the traditional 1614 process.
2. The costs of the Board process, excluding the costs of settlement agreements, are less than the costs of the traditional 1614 process.
3. The costs of the outcomes reached through the Board process were greater than the costs of outcomes in comparable cases under the traditional 1614 process.
4. Overall, when considering the cost of the processes and cost of outcomes, it is not clear that the Boards are less costly than the traditional 1614 process.

IV. RECOMMENDATIONS

1. The Dispute Resolution Boards, with the changes recommended in this report, should continue.
2. The Secretary should adopt, publicize throughout USDA, and follow, a policy that Board proceedings are intended to provide an opportunity for parties to voluntarily achieve resolution, and that resolution, while desirable, is not mandatory.
3. The Department should establish and disseminate a clear mission statement and operating procedure for the Boards.
4. The Boards should provide all parties with clear information about the Board process ahead of time, and greater scheduling flexibility.
5. The Boards should act in a factfinding and assessment role before offering mediation or resolution to the parties.
6. The assessment and resolution stages of the conference should be optional for Complainants.
7. Board members should receive formal mediation training from a qualified mediation instructor, and training in the drafting of clear settlement agreements, and the use of techniques designed to ensure that parties clearly understand the agreements they sign.
8. OCRE should work with agencies to establish a clear policy concerning agency representation and Responding Official representation during Board conferences.
9. The Department should establish, or require agencies to establish, a mechanism that ensures compliance with agreements reached during the Board process.

10. The Boards should have recordkeeping, quality control and evaluation systems in place to track the Board's activity.
11. OCRE should promptly establish clearly delineated roles and operating procedures for counselors, Board members, adjudicators, and all other components of the EEO complaints process.
12. A thorough operations review of the Boards should be undertaken as soon as possible.
13. A thorough legal review of the Boards should be undertaken.
14. An implementation team, consisting of individuals inside and outside OCRE, should be established to implement the recommendations in this evaluation report. Membership should include individuals with expertise in ADR and conflict management.
15. The Department should establish an alternative dispute resolution process or processes, to be used before the filing of a formal EEO complaint, in which employees and managers are given the opportunity to meet face to face, with a neutral mediator/facilitator, to attempt to voluntarily resolve their disputes.

ALTERNATE RECOMMENDATION:

- 16: The Department should offer an alternative dispute resolution process or processes, to be used before disputes reach any established formal or informal dispute system. The ADR process should encourage employees and managers to meet face to face, with a mediator/facilitator/ombudsperson, in an attempt to voluntarily resolve disputes of all kinds.

I. BACKGROUND

A. EEO Law.

Congress has made it unlawful for federal agencies to discriminate against employees and applicants for employment (employees) based on race, color, religion, sex, national origin, age, or handicap. Individuals who believe they were the subject of discrimination may file an equal employment opportunity (EEO) complaint against the alleged discriminating agency and seek a variety of remedies.

Regulations issued by the Equal Employment Opportunity Commission (EEOC), located in the Code of Federal Regulations at 29 C.F.R. Part 1614 (1614), govern the processing of federal sector EEO disputes. Any employee who believes (s)he has been the subject of job discrimination must first consult an EEO counselor. If the matter is not resolved in the counseling stage, the employee may file a formal EEO complaint. If a complaint is not dismissed for one of the reasons enumerated in 1614, the agency must complete an investigation within 180 days of the date the complaint was filed. After that 180-day period, the complainant may either have a hearing before an EEOC administrative judge, who makes a recommended decision for the agency's consideration, or receive an immediate decision from the agency. If unsuccessful, the complainant may appeal to the EEOC, or file a civil action in federal district court.

B. Alternative Dispute Resolution.

Recently, federal agencies have been encouraged to resolve disputes of all kinds through alternative dispute resolution (ADR) (e.g., mediation, minitrials, early neutral evaluation). Resolving disputes through ADR generally costs less in time and money than adjudication, and can result in "win win" resolutions. The Administrative Dispute Resolution Act (ADR Act) states that using ADR would "enhance the operation of the Government and better serve the public." The Vice President's National Performance Review (NPR) team's recent report on reinventing government calls on federal agencies to "expand their use of alternative dispute resolution techniques." Several civil rights statutes encourage the use of ADR as well.

Under 1614, ADR may be used at the counseling stage and after a complaint is filed. An agency may use ADR at the counseling stage if the employee "agrees to participate in the procedure." Also under 1614, "[a]gencies are encouraged to incorporate alternative dispute resolution techniques into their investigative efforts in order to promote early resolution of complaints."

C. EEO at USDA.

1. Historical.

In 1987, when the number of EEO complaints filed was on the rise, USDA began utilizing full-time EEO counselors on a pilot basis during the pre-complaint stage. Because of the high rate of resolution during that pilot, USDA began using full-time counselors on a permanent basis in 1989. The filing of EEO complaints at USDA began rising once again in 1992, increasing from 211 in FY 1991, to 463 in FY 1992, to 683 in FY 1993.

2. Secretary Espy's EEO Policy.

On April 15, 1993, Secretary Espy issued an EEO and Civil Rights Policy Statement (Policy Statement) for USDA. The Secretary stressed the need to "create an environment where employees and supervisors are able to discuss concerns openly" (Attachment 1) The Secretary stated that he expected all USDA managers to "work at understanding the basis of [EEO] complaints, and to extend every effort to resolve them, where feasible, before they reach the formal stage." Two days earlier, the Secretary issued a memorandum to agency heads concerning "EEO Complaints Resolution," in which he expressed concern about the increasing number of EEO complaints being filed against USDA. The Secretary directed all managers to "be proactive in addressing EEO issues and . . . creating work environments that encourage and support complaint avoidance." He also directed agency heads to include EEO complaints resolution as a permanent factor in each manager's and supervisor's civil rights performance element. (Attachment 2)

To implement the Secretary's EEO Policy Statement, Wardell C. Townsend, Jr., Assistant Secretary for Administration and USDA's senior EEO official, announced his intention to establish a number of programs that would "ensure fairness and equity in employment and the delivery of the Department's programs."¹ One such action was the institution of a 3-month pilot project utilizing "Dispute Resolution Boards" to resolve EEO complaints.

3. The Dispute Resolution Boards.

A number of factors led to the idea of using Dispute Resolution Boards (Boards). One of the principal catalysts was the significant increase in EEO complaints filed by USDA employees and the inability of USDA, with its existing

¹ July 29, 1993, Memorandum from Wardell C. Townsend, Jr., Assistant Secretary for Administration, to Agency Heads.

resources, to process those complaints in a timely manner.² The increase in EEO complaints produced added costs for EEO investigations, which are conducted by an outside contractor.³ Additionally, because of the delays in handling the EEO caseload, there was great disruption in the workplace and personal anguish while EEO complaints remained open.⁴ Finally, because USDA could not keep up with the rise in complaints, a significant complaint backlog developed.⁵ The Department wanted to address these problems by establishing a process that would bring employees and managers together, shortly after the filing of an EEO complaint, to talk about their problems and try to reach an early, mutually acceptable resolution of complaints.⁶ The Department's principal objectives can be summarized as follows:

- Save time by reducing the number of cases going through the entire EEO complaint process;
- Save money by resolving EEO disputes without incurring the cost of a lengthy investigation; and
- Provide a fairer and less painful EEO process to all USDA employees affected by the EEO process.

The Board concept was borrowed from the Navy and the Library of Congress.⁷ The Department envisioned having a Board consisting of three impartial USDA employees preside over a 1-day proceeding attended by a "Complainant" (the employee who filed the EEO complaint), "Responding Official" (the manager alleged to have discriminated), and "Resolving Official" (an agency official with settlement authority). The Complainant and the Responding Official(s) would testify on the events leading to the filing of the EEO complaint, after which the Board would provide the parties with an assessment of the likely outcome of

² Interviews with Mike Green, former Director, Complaints Management Division, Office of Personnel; Thomas Beaumont, Acting Director, Dispute Resolution Boards; and Wardell C. Townsend, Jr.

³ Green interview.

⁴ Townsend interview; interview with Larry Slagle, former Director, Office of Personnel.

⁵ Interview with Mike Alexander, Executive Assistant to the Secretary.

⁶ Alexander interview.

⁷ Green, Slagle interviews; Dispute Resolution Board focus group.

the case and attempt to facilitate a settlement consistent with "good business practice." It was expected that between 20% and 50% of EEO complaints could be settled at the Board stage. (Attachment 3) It was estimated that settlement of between 20%-35% of the cases would save USDA money, and the pilot would be a success.⁸

In April 1993, a focus group consisting of USDA employees in the EEO and employee relations communities began putting together the details of how the Boards might operate. USDA's General Counsel suggested that 1-person Boards might be as effective as 3-person Boards, and more efficient. The final decision was made by the Department to conduct a 3-month pilot from September to December 1993, using both 3-person and 1-person Boards. The Boards were to operate as a USDA "Reinvention Laboratory."

For each case in the pilot, the Board notified parties that they would be participating in a 1-day conference. Prior to the conference, the Board would obtain documentary information relevant to the complaint. A "Guide for EEO Complaint Examinations by the Dispute Resolution Board" (Guide) was sent to parties, and explained how the conference, consisting of factfinding, assessment, and resolution components, would work. (Attachment 4) Complainants and Responding Officials were told that they could have a representative present at the conference.

The Guide explained that during the factfinding segment, the Board would hear testimony from both the Complainant and the Responding Official. A court reporter would record the testimony. If no settlement was reached during factfinding, the Board would meet in private to review the evidence and prepare a "resolution offer." The Board would reconvene the parties to give an assessment of the case, including the likely outcome of an adjudication. Then, during the resolution stage, Board members would attempt to achieve a settlement using USDA's "Resolution Strategy." (Attachment 5) The Board would present its resolution offer to the Resolving Official, and then to all parties. The Complainant and Resolving Official (but not the Responding Official) would have an opportunity to discuss settlement options. If either the Complainant or Resolving Official wished to modify or reject the Board's offer, they had to explain why and present a reasonable alternative offer.

If the complaint was settled, an agreement would be signed. If no settlement was reached, the investigative process would continue. According to one of the Board's internal operating documents, where no resolution was reached

⁸ "Dispute Resolution Boards, Operation Summary"; Beaumont and Townsend interviews.

because a supervisor would not agree to a "reasonable offer," that fact would "be documented and transmitted to the rating official for the supervisor for consideration in the preparation of the supervisor's annual rating in the critical EEO element." (Attachment 3)

As noted above, providing a process that was fair to all sides of the complaint, and perceived that way by both management and employees filing EEO complaints, was an important objective for the Boards. It was also hoped that the Board process would salvage people in the workplace, improve communication between employees and their supervisors, and produce fair and satisfactory outcomes.⁹ Finally, in many cases, management was seen as failing to take action to resolve EEO disputes. The Board process was intended to be one in which management would be required to sit down with an employee complaining of discrimination, and discuss the dispute in the presence of a third party in an attempt to resolve the dispute, so all USDA employees could return to productive activity.¹⁰

4. Board Members.

The Board members were selected by the then Director of the EEO Complaints Management Division, and the current Acting Director of the Boards. All but one of the individuals initially selected to serve on the Boards were members of the focus group that made recommendations on implementing the Boards. For the California cases (see below), two additional Board members were added. Board members were generally selected for their "good common sense and a basic understanding of the complaint process and dispute resolution."¹¹ Another factor in the selection of Board members was diversity.¹² Training consisted primarily of teaching Board members USDA's Resolution Strategy, and discussions among the Board members in which they anticipated issues and situations that might arise in cases and discussed how to address those situations.¹³

⁹ Townsend, Beaumont, and Alexander interviews.

¹⁰ Alexander interview.

¹¹ Beaumont interview.

¹² Townsend, Green interviews.

¹³ Beaumont interview; Board focus group.

II. METHOD

A. The Evaluation Team.

In January 1994, the Assistant Secretary for Administration, David Montoya, USDA's Director, Office of Civil Rights Enforcement (OCRE), Mike Alexander, Executive Assistant to the Secretary, and James S. Gilliland, USDA's General Counsel, jointly decided that Jeffrey Knishkowsky, USDA's Dispute Resolution Specialist (DRS), should conduct an evaluation of the Boards. The DRS, an attorney in USDA's Office of the General Counsel, is responsible for implementing the ADR Act at USDA, and is a member of a government-wide group sanctioned by the Administrative Conference of the United States (ACUS) that is designing ADR systems for federal agencies.

As the first step, the DRS sought to create an evaluation team with individuals who would satisfy three criteria:

- backgrounds and expertise in pertinent areas, including EEO and personnel issues, evaluation, statistics, and ADR;
- representation of both management and non-management views; and
- diversity.

Twelve individuals, 9 USDA employees and 3 non-USDA individuals, were identified to serve on the team. The USDA employees were:

- George Justus, Equal Opportunity Specialist, Food Safety & Inspection Service, who represents that agency in the EEO complaint process;
- Pierpont Mobley, Branch Manager, EEO Compliance and Enforcement, Soil Conservation Service;
- Vivian Ortiz, Chief, Employee and Labor Relations Branch, Federal Crop Insurance Corporation;
- Delores Ruffin, Director of EEO Counseling and Mediation and a counselor/mediator, Animal and Plant Health Inspection Service (APHIS);
- Matina Sawicki, Program Evaluation Specialist, APHIS, who had recently evaluated EEO complaints resolution within APHIS;

- Gary Schmidt, an OCRE grievance examiner with experience in EEO adjudication;
- Charles Warrick, Acting Director, Compensation Division, Office of Personnel;
- Judith Works, an attorney, supervisor of the Forest Service EEO counselors, and former Dispute Resolution Board member; and
- Jeremy Wu, Chief of the Statistics Branch of the Agricultural Marketing Service, and chair of an employee focus group that had previously issued a report and recommendations on EEO issues.

The three non-USDA employees were:

- Cassandra Menoken, Director, Special Services Staff, Office of Federal Operations, EEOC;
- Nancy Miller, Senior Attorney with ACUS and Co-Chair of the Evaluation Subgroup of the ACUS Dispute Systems Design Working Group; and
- Daniel Rainey, a consultant to USDA with expertise in the design and evaluation of dispute resolution systems, civil rights, and facilitation.

This Team was approved by the Assistant Secretary for Administration, the Executive Assistant to the Secretary, OCRE's Director, and the Acting Director, Dispute Resolution Boards.

B. Scope and Objectives.

The Evaluation Team was asked to evaluate the Board "pilot," *i.e.*, the Board's operations during the three-month period beginning in mid-September 1993 and ending in mid-December 1993. USDA officials were interested in having a number of issues addressed: Did the Board process cost less in time and money than the traditional 1614 process? Was the Board process perceived as fair by all parties? Did the Board process improve working relationships? Were people satisfied with the outcomes of the Board process? Were there any downsides to the Boards? Did perceptions of the Boards change once parties went through the process? Should the Board process be continued? If so, what improvements should be made, and at what cost? Should the Board process be mandatory or voluntary? Should the Board process be used in non-EEO disputes? How does the Board process compare with the traditional EEO complaints process under 1614?

Are there are other methods of ADR that can be used to resolve EEO complaints.¹⁴

C. Cases Included in the Evaluation.

The Board pilot included those cases in which Board conferences were scheduled between September 14, 1993, and December 17, 1993. In total, 48 cases were included in the pilot, 36 in the Washington, D.C. area, and 12 involving the Western Region (Region 5) of the Forest Service. Participation by all disputing parties in the cases selected for the Board pilot was mandatory. Of the 48 cases, 1 was withdrawn by the employee, 2 were dismissed after an offer of full relief was made, 1 was not settled and continued in the 1614 process, 13 were settled prior to the day of the conference, 23 were settled on the day of the conference, and 8 were settled after the day of the conference.

1. Washington, D.C. Cases.

The Board pilot, as originally designed, was to include only EEO complaints filed by employees in the Washington, D.C. area. Included in that category were (1) all complaints which were filed with USDA, but which USDA had not, by July 29, 1993, either formally "accepted" or dismissed; and (2) complaints filed after July 29, 1993, that could be scheduled for a Board conference during the three-month pilot period.¹⁵

2. California Cases.

After the Board pilot began, a decision was made to extend the pilot to include 7 or 8 older, sensitive, and ongoing discrimination complaints in the Forest Service's Region 5, primarily involving Hispanic employees. A number of these cases had become the subject of Departmental investigations and congressional inquiries. USDA officials decided that, since these disputes were not being resolved through other means, the Boards should be utilized to assist in resolving them. Several other Forest Service cases from Region 5 were also selected to participate in the pilot. Two Boards (each 3-member) went to California for conferences during the period October 26, 1993, through November 5, 1993.¹⁶

¹⁴ Townsend, Alexander, Beaumont interviews.

¹⁵ Beaumont interview.

¹⁶ Alexander, Beaumont interviews.

3. Comparison Group.

To answer the question whether the Board process resulted in savings of time and/or money to USDA, it was necessary to compare Board cases with cases that had gone through the traditional 1614 process. After considering a number of options, the Evaluation Team concluded that the Board cases should be compared with a comparable number of recently closed complaints that had gone through the traditional 1614 process. The Comparison Group consisted of 41 cases that had gone through the 1614 process, and that were closed between October and December 1993, either through dismissal, withdrawal, settlement, or decision. The Comparison Group included complaints filed by USDA employees from all parts of the country.

D. Data Collection.

Data for the evaluation was collected primarily through four methods: (1) interviews with program officials responsible for administering USDA's EEO program and, in particular, those who developed and are administering the Boards; (2) questionnaires to users of the Board process; (3) focus groups with users of the Board process (interviews were done in cases where individuals could not attend a focus group), and with Board members, EEO counselors and adjudicators; and (4) documentary research.

1. Interviews.

Interviews were conducted primarily with officials responsible for implementing USDA's EEO policy and programs to find out what conditions led to the creation of the Boards, what those officials had hoped the Boards would accomplish, and, having had the opportunity to see the Boards in operation for a period of months, whether they believed the Boards were fulfilling those hopes. Those interviewed from USDA were: (1) Wardell Townsend, Assistant Secretary for Administration and USDA's senior EEO official, (2) Mike Alexander, Executive Assistant to the Secretary, (3) David Montoya, Director, OCRE, (4) Larry Slagle, former Director of Personnel, (5) Mike Green, former Director, EEO Complaints Management Division, (6) Tom Beaumont, Acting Director, Dispute Resolution Boards, OCRE, (7) Carol Fields, Acting Director, Employment Complaints Adjudication, OCRE, (8) Larry Cavallaro, Director, Counseling/Mediation, OCRE; and (9) Alma Hobbs, Chairperson, USDA National Performance Review Team. Also interviewed was an attorney that represents several of the Complainants.

2. Questionnaires.

A questionnaire was designed for participants in the 48 Board cases to learn about their experiences with the Board process. The same questionnaire was

developed for the Complainants, Responding Officials, and Resolving Officials in those cases. The questionnaire is divided into nine sections and 70 questions -- 65 multiple choice, and 5 essays. 89 sets of responses were tabulated: 24 from Complainants (52.2% responding), 45 from Responding Officials (60.8%), and 20 from Resolving Officials (55.6%). Two of the 48 cases were excluded from the tabulations because parties from those cases believed that settlement was reached before the Board process began, and did not complete the questionnaire.

A second, similar questionnaire was developed for the parties who participated in cases processed under the traditional 1614 approach. Because of difficulty in obtaining the names and addresses of the parties in those cases, questionnaires were sent only to the employees who filed the complaints. Due to incomplete information at the time this Report was being written, the Team concluded that no reliable comparisons between the Comparison Group and the pilot cases would be drawn. Nonetheless, some of the common themes that surfaced in the Comparison Group's essay answers are summarized in this report.

3. Focus Groups.

Focus groups were conducted to enable face to face communication with as many of the Complainants, Responding Officials, and Resolving Officials as possible in the short time available to the Evaluation Team. The focus groups were conducted between March 4, 1994 and March 15, 1994, by various members of the Team. In total, there were 18 focus groups attended by roughly 70 Complainants, Responding Officials, Resolving Officials, Board members, EEO counselors and adjudicators. In addition, there were 12 interviews in lieu of focus groups.

4. Documentary Research.

Documents were reviewed to obtain (1) information on the operations of the Boards, and (2) data concerning the time and cost of cases processed under both the Board process and the traditional 1614 process. Documentation relating to the operation of the Boards consisted principally of several internal documents explaining the objectives and operations of the Boards, the Guide and standard correspondence sent to the parties, and a document explaining the Resolution Strategy. Case files were reviewed to obtain information on case processing time and the cost of the outcomes of the cases. Finally, Board and other OCRE records were reviewed in an attempt to calculate the average cost (Board time, employee time, investigation costs, etc.) for processing EEO cases, excluding outcome costs.

E. The Evaluation Process.

After ascertaining the USDA officials' goals for the evaluation, the Evaluation Team identified three general areas of inquiry -- efficiency (time and cost issues), process (operations, fairness, user satisfaction, etc.), and outcomes (settlement/resolution costs). The Team identified the potential sources for data in each of those areas, and the methods of collecting the data. The Team then developed questions to be asked in the questionnaires, interviews and focus groups, all the time striving to ensure that questions were asked of all participants in a consistent, neutral and comprehensive manner. Responses to the questionnaires and participation in the focus groups and interviews were voluntary.

Data on the operation of the Boards was obtained from the Boards. This included standard documentation used by the Boards in each of its cases, two focus groups conducted with Board members, and an interview with the Director of the Boards. In addition, focus groups were conducted with 5 EEO counselors, and 5 EEO adjudicators to ascertain their views on the Board process. USDA officials were also interviewed to gain their perspectives on the Board's operations.

As stated previously, data concerning time, cost, and outcomes in the Board and the traditional 1614 processes was obtained through review of case files, and from OCRE's records. A checklist was created to ensure that documentary information was obtained in a consistent manner for all cases. The Evaluation Team also called USDA employees (i.e., Complainants, Responding Officials, Resolving Officials, and employee relations personnel) who participated in 4 randomly picked Washington, D.C. Board cases, and 1 randomly picked California Board case, to attempt to ascertain the value of the average time spent by USDA employees on Board cases.

III. OBSERVATIONS

From the data obtained through the 4 data collection methods, the Evaluation Team developed the Observations and Recommendations that follow. The Observations are divided into two categories: qualitative (user satisfaction, fairness, etc.) and quantitative (time and cost). There is one set of Recommendations.

Separate discussions of the California cases and the questionnaire essay responses by the Complainants in the Comparison Group precede the Recommendations.

A. Qualitative Analysis.

Based on the data collected during the evaluation, the Evaluation Team has made the following qualitative observations. We have divided this section into four parts: (1) observations about the parties' views before entering the Board process; (2) observations about their views during the Board process; (3) observations about their views after the Board process; and (4) additional observations. In those instances where the observation could fall into more than one category, we have attempted to place it in the most appropriate category. The questionnaire tabulations supporting these Observations and Recommendations are included as Attachment 6 to this report. References such as "B(5)" refer to the questionnaire number and the corresponding responses supporting the observations.

1. Observations -- Before The Board Process

Observation 1: Parties were apprehensive entering the Board process. Only 50.0% of the Complainants expected the Board process to be fair, while slightly less than 50.0% of the Responding Officials and Resolving Officials expected the process to be fair. A(3). Contributing to the apprehension was the initial correspondence from the Boards. Complainants were told their complaints "will be dismissed" if they failed to cooperate with the Board, while management was told that agencies could not provide them with representation, and that failure to cooperate would "probably" result in an "adverse inference." Complainants were also wary because of the perceived inherent bias toward management. From management's perspective, the "word around USDA" was that management had to settle all cases, and that "complainants will get something." Also, the "Guide" provided to parties before the process is an extremely formal and legalistic document, and makes the Board conference sound like a very formal proceeding.

Observation 2: Parties expected, and welcomed, the opportunity to have the facts heard by a third party. Despite the initial apprehension, Complainants wanted the opportunity to prove discrimination, while management wanted the opportunity to defend themselves.

Observation 3: In management's view, the Department's policy is to "settle at all costs" all EEO complaints, irrespective of merit. This perception is fed by, among other things, (1) Board settlement rates approaching 100%; (2) talk of success in terms of percentages; (3) emphasis on money and time; and (4) statements in the Guide such as, "Settlement is always preferred, on the right terms." According to USDA's Resolution Strategy, followed by the Boards and the EEO counselors, because there is no guaranteed winner in an EEO case, "settlement is still preferred, on the right terms, even if the chance of winning is very high." (Attachment 5)

Observation 4: Parties feel inconvenienced by, and management feels ill-prepared to participate in, the Board conference. The questionnaire responses indicate that there was insufficient flexibility in the scheduling of the conferences for all parties. B(6). Moreover, managers, particularly Responding Officials, did not have timely notification of the Board conference, and felt unprepared to participate in the conference. This feeling is attributable to a lack of understanding of the mission of the Boards, indirect communication between the Boards and Responding Officials before the conference, and, in some instances, failure to receive the Guide. A(7), B(2).

2. Observations -- During The Board Process

Observation 5: Parties' actual experience with the Board process differed from their expectations.

- 54.0% of the Complainants and 60.0% of the Resolving Officials were more satisfied with the Board process than they had expected to be. 33.0% of the Responding Officials were more satisfied and 33.0% less satisfied with the Board process than they had expected to be. C(3).
- Parties expected an opportunity to present evidence, to receive an assessment, and, in some instances, a "decision." In many cases, only the "resolution" stage of the Board conference took place.
- Management expected to be permitted to have a representative present during the conference. In some cases they were permitted to have a representative or representatives present; in other cases, especially in California, management representatives were not allowed to attend the conference. This example demonstrates inconsistency in the Boards' operations.

Observation 6: Parties found the Board members to be fair, unbiased, and effective in the conduct of the conference. Complainants overwhelmingly felt that they were treated with respect by Board members. Significantly, Responding Officials, the group that was least satisfied with the Board process, had many favorable things to say about the skills, fairness, and demeanor of the Board members. B(11)-(19).

Observation 7: Complainants felt intimidated during the Board conference. Questionnaire responses and focus groups revealed that a substantial percentage of Complainants who attended a Board conference felt this way. B(7). Factors contributing to the intimidation included the number of agency officials present

during the conference, pressure to settle, and threats of retaliation if the Complainant did not settle.

Observation 8: The Board process, as it currently operates, does not emphasize communication among the parties. While the Board conference gives parties the opportunity to sit down together in the same room to discuss the problem, sometimes for the first time, only about 10.0% of the Complainants and 27.0% of the Responding Officials felt that meetings and conversations with the other side helped to settle the complaint. Conversations centered around settlement terms and offers, not the underlying issues. C(5).

3. Observations -- After The Board Process

Observation 9: Complainants, Responding Officials, and Resolving Officials believe that the Board process, with changes, should continue. (Figure 1) The parties all recognized the potential good that can be done by a Board-type process. While not seeing the Boards as a flawless process, many see it as the best first step in the right direction. 71.0% of the Complainants and 80.0% of the Resolving Officials believe the Board process should be continued, either as is or with changes. Perhaps the most significant endorsement of the Board process came from the group that was the least satisfied with the Board process, Responding Officials: 69.0% believe the Board process should be continued. Despite concerns about the fairness of the process and outcomes in their cases, Complainants, Responding Officials and Resolving Officials want to get to the table, discuss the issues, and move on. C(6).

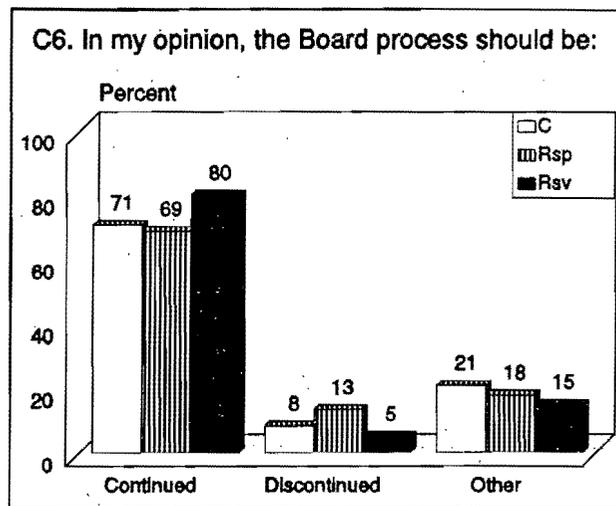


Figure 1

Observation 10: Complainants, Responding Officials, and Resolving Officials appreciated the opportunity for early settlement of EEO complaints that the Boards offered. This appreciation related primarily to the savings of time and reduction in stress. It had much less to do with the parties' satisfaction with the actual outcomes, or the way those outcomes were reached.

Observation 11: Parties were disappointed if their Board conferences did not include factfinding or assessment. Complainants clearly wanted to have the substance of their complaints heard, and wanted to demonstrate why they believed discrimination had occurred. Responding Officials wanted to demonstrate

that the complaint had no merit, and resented settling when the merits were not discussed.

Observation 12: Resolving Officials and Complainants are more satisfied with the Board process than Responding Officials. (See Figures 2, 3, 4) 60.0% of the Resolving Officials thought the Board process was fair, while 50.0% were satisfied with the overall Board process and 56.0% with the conference.

46.0% of the Complainants were satisfied with the overall Board process and found it to be fair, while 53.0% were satisfied with the conference. In distinct contrast, only 29.0% of the Responding Officials were satisfied with the overall Board process, 31.0% believe the process was fair, and 34.0% were satisfied with the conference. B(1), C(1), C(2). Resolving Officials are not directly at risk and can get cases off the books; Complainants get something and feel vindicated; Responding Officials "lose," do not get a decision, and feel pressured.

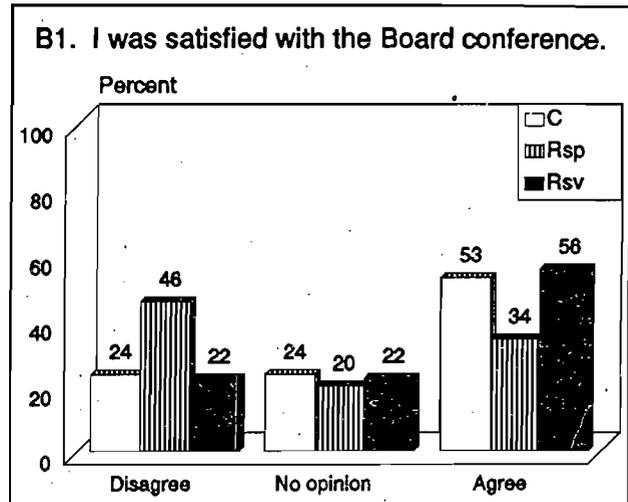


Figure 2

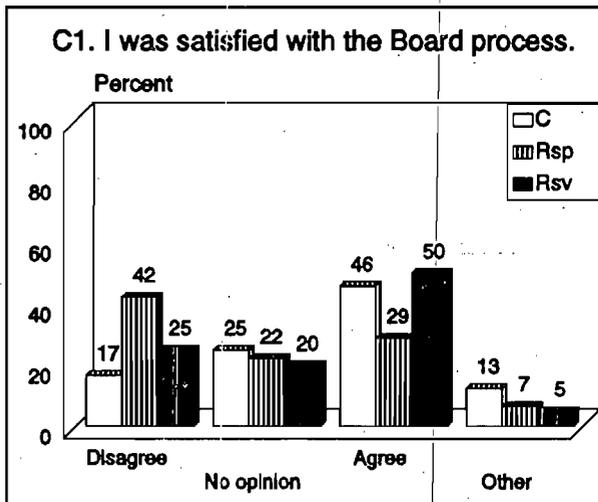


Figure 3

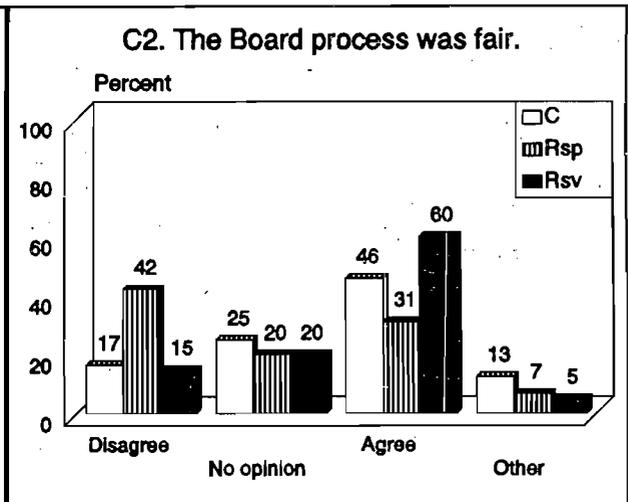


Figure 4

Observation 13: Complainants are not happy with the outcome simply because they "got something." Conventional wisdom would indicate that, in light of the high settlement rate, Complainants would have a great affinity for the Board process. However, only 38.0% of the Complainants are satisfied with the outcomes. Nonetheless, getting something now was viewed as better than going through a lengthy process with no Boards. D(1) (Figure 5).

Observation 14: Complainants were less satisfied with the process and the outcome when they did not have the opportunity to talk about the issues before the Boards. Focus groups and questionnaire essay responses reveal that Complainants want to put the issues on the table to demonstrate that discrimination has occurred, to have disciplinary action taken against managers who discriminate, and to keep others from being hurt in the future. They tend to view the Board process as being designed to eliminate their complaints rather than address their concerns.

Observation 15: Responding Officials are not satisfied with the outcomes. 53.0% of the Responding Officials said they were dissatisfied with the outcome, while 62.0% believe the outcome is not fair. D(1), D(2) (Figures 5, 6). Nonetheless, Responding Officials are happy to have the complaint settled.

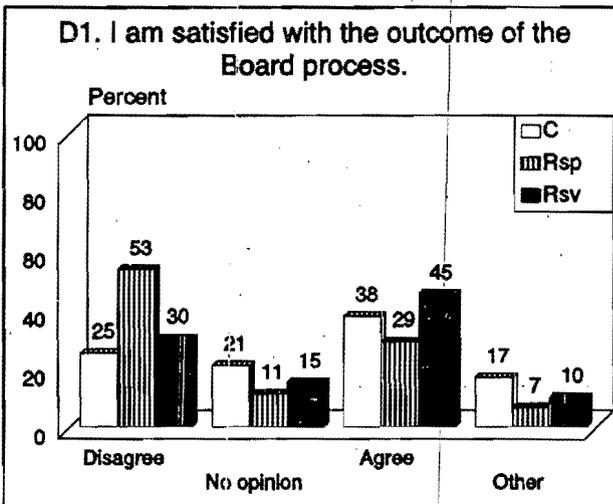


Figure 5

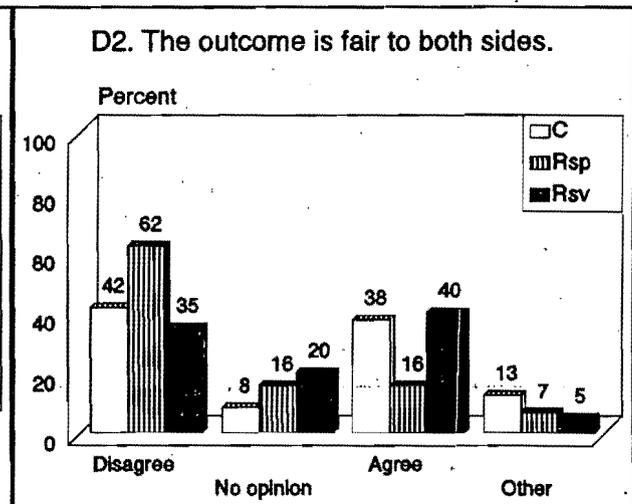


Figure 6

Observation 16: The Boards, as they currently operate, facilitate settlement of complaints; they do not resolve conflict. One questionnaire response typifies the parties' views of the Board process:

the "Dispute Resolution Board" . . . is, in fact, a settlement board, where the board members negotiate a settlement between two parties, without ever bringing the conflict to the table, much less resolving it.

A "settlement" removes the specific complaint from the books, leaving the underlying problems intact; a "resolution" addresses and, ideally, handles the underlying problems. The Department's philosophy of settling complaints is evident from the Resolution Strategy (Attachment 5) and the Guide (Attachment 4), which talk primarily about risk analysis, costs and benefits. Particularly when considering conflict in the workplace, a resolution philosophy that focuses more on promoting understanding of the underlying issues and improving communications and relationships is likely to result in greater long-term benefits than can be achieved under the current settlement philosophy.

Observation 17: Questionnaire responses indicate that communications and relationships in the workplace are not likely to significantly improve as a result of the Board process, as it currently operates. Those responses indicate that relationships and communications have worsened more often than they have improved since the Board process. Significantly, among the Resolving Officials, the group that appears to view the Board process most favorably, 25.0% said communications in the workplace had worsened since the Board process, while only 10.0% said communications had improved. E(1), E(2).

Observation 18: Management feels strongly that it is not adequately represented during the conference. The Team has struggled with understanding this problem. There appear to be two principal issues. First, the agency is permitted to have only a non-participating observer present. Agencies have expressed a desire and need to have a representative present who is knowledgeable in personnel and EEO issues and who can advise the agency on key matters (e.g., "Is this settlement legal?"). The second issue pertains to Responding Officials. Board procedures permit Responding Officials to have a representative present during the conference. However, Responding Officials may not be represented by agency personnel, but must retain their own personal representative. Responding Officials thus feel "hung out to dry." Much of this problem could be addressed through a dialogue between OCRE and agencies about the representation issues, the bases for management concerns, the rationale for the Board's policy, and possible solutions.

Observation 19: Problems are arising concerning the interpretation of and compliance with settlement agreements reached during the Board process. A number of Complainants believe that the agencies are not complying with the agreement, whereas the agencies believe that some complainants are seeking more than is provided for in the settlement. The Boards do not have a mechanism in

place for following up on settlement agreements, and Complainants and their counsel are confused about where to go with their compliance questions.

4. Additional Observations

Observation 20: Requiring parties to participate in the "assessment" and "resolution" parts of the Board conference may contribute to parties' dissatisfaction with settlements. It is generally preferable for ADR techniques to be used on a voluntary basis. Requiring parties to participate in the assessment (which is intended to serve as a reality check that leads parties to think more about settlement) and resolution components of the conference is contrary to fundamental ADR principles, may lead parties to conclude that they must settle, and, ultimately, may lead to settlements that will not last.

Observation 21: Board members are unaware that parties feel pressured to settle. In the focus group conducted with all Board members, the consensus was that parties were not settling because of pressure. While in some cases the parties may not have felt undue pressure to settle, many participants in the Board process expressed opinions to the contrary. As stated in the previous observation, pressure to settle, whether actual or perceived, is not conducive to settlements that are either satisfactory or durable. B(25).

Observation 22: Parties are not meeting face to face to discuss their problems prior to the Board process. Only 12.5% of the Complainants said they had the opportunity to meet with management during the counseling stage. The counseling/mediation program is misnamed. Currently, no commitment has been made to the mediation part of the counseling/mediation program. While mediation is occurring with certain counselors or in certain agencies, it is not happening on a consistent basis. Opportunities for early resolution of conflict are being missed. The lack of emphasis at the Department on face to face meetings between employees and managers during the early stages of conflict contributes to the filing of EEO complaints. (Figure 7) G(1), G(2), G(5).

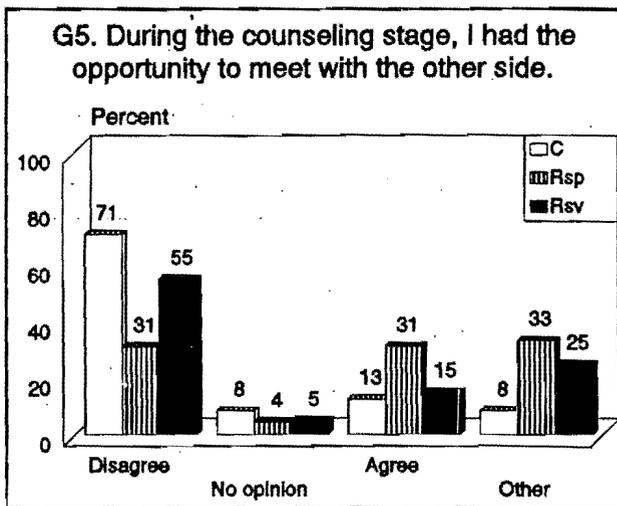


Figure 7

Observation 23: USDA employees want the opportunity to meet with each other earlier in the life of the dispute, in the presence of a skilled, unbiased third party, to attempt to resolve the dispute. All groups surveyed and interviewed believe face to face mediation needs to be offered before a formal EEO complaint is filed.

Observation 24: Responding Officials are concerned that cases without foundation are getting to the Boards. This concern seems to be based on Responding Officials' misconception that a Complainant must demonstrate that the complaint has merit before it is accepted and gets to the Board. In fact, one of the reasons the Boards were established was to hear the facts and provide an assessment of the likely outcome of an adjudication of the case. If the Boards consistently conduct factfinding and assessments, this concern on the part of Responding Officials should diminish. Additionally, if conflict is addressed at the early stages, fewer EEO complaints will need to go to the Boards.

Observation 25: There needs to be greater cooperation and better communication among the Boards, EEO counselors and adjudicators. It appears from comments made during focus groups and interviews with individuals working within USDA's EEO dispute resolution system that the different components of that system are not communicating effectively with each other, and are operating more in a competitive rather than cooperative manner. For example, criticism is directed at EEO counselors for not resolving enough disputes, and there is resentment toward the Boards because they are perceived as taking credit for resolutions achieved by the counselors.

B. Quantitative Analysis.

1. Time.

Observation: The Board process facilitates closure of EEO complaints in less time than closures are generally achieved under the traditional 1614 process.

Data pertaining to the time for processing EEO complaints in the Board and Comparison Group cases was derived from the Board's records, files for cases in the Comparison Group, and inquiries to agency employee relations and EEO personnel.

Two methods were used for comparing time. The first was to compare the time elapsed, in both groups, from the filing of the EEO complaint to case closure. This method would show the average time for processing an EEO complaint in both categories. The problem with comparing time in this manner was that many of the EEO complaints that went to the Boards had been filed, and were in the EEO complaint system, for significant periods of time before being assigned to the

Board as part of the pilot. Thus, to include those initial months in calculating time would not give a totally accurate picture of the time that the Board process took. Nonetheless, this was considered the best way to compare "apples" with "apples."

Of the 48 Board cases, 47 were closed during the Board process. Time tracking data was available for 46 of those cases. Considering the total time from filing of the complaint until closure, the average processing time for Board cases was 152 days. Of the 41 cases in the Comparison Group, time tracking data was available for 29 cases. Considering the total time from filing of the complaint until closure, the average processing time for the Comparison Group was 238 days. Thus, the Board process, on average, took 86 days less per complaint than the traditional 1614 process.

An alternative method for comparing time was used which factored out the time preceding assignment of cases to the Boards. All the cases in the pilot were "accepted" by the Boards, i.e., none of them were rejected or preliminarily dismissed because they failed to meet the basic pleading requisites for proceeding under 1614. By comparing the Board cases and the Comparison Group using date of acceptance (rather than date of filing) to closure, the Team attempted to compare only the time when the substantive claims in the complaint were under consideration.

Of the 41 cases in the Comparison Group, the Team obtained data on 17 cases that were "accepted." Using the above-referenced alternative method, the average processing time for the Comparison Group was 136 days per complaint. For the Board cases, the Team used the Board's figures for "Board days" (date of assignment to the Boards to closure), which was marginally higher than the time from acceptance to closure. During the Board process, the average time from assignment to closure was 46 days. Thus, the Board process, on average, took 90 days less per complaint than the traditional 1614 process.

2. **Cost.**

a. **Process.**

Observation: The costs of the Board process, excluding the costs incurred under the terms of settlement agreements, are less than the costs of the traditional 1614 process, excluding the costs incurred under the disposition of such cases, whether by settlement or decision.

One of the principal objectives of the Boards was to reduce the monetary cost of the EEO complaints process. Specifically, it was anticipated that the cost of lengthy investigations, including the amounts paid to investigators on contract with USDA, could be saved or reduced by achieving settlements during the Board

process. The other principal monetary cost incurred during the EEO complaint process relates to the cost of the time USDA employees expend in the process.

As will be seen below, the Team's attempt to compare the costs of processing cases under the two systems with any precision was ultimately a futile effort. Estimates given by OCRE for processing traditional 1614 cases are inconsistent, and no data exists that would permit the tracking of the actual cost of Board cases. As we note in Recommendation #10, creation of an accurate recordkeeping system is critical to the operation of the Boards, as well as the EEO complaints system as a whole.

Information on the costs of processing the Board and Comparison Group cases was obtained from documentation provided by OCRE. Information relating to the charges of the contract investigators conducting investigations in traditional 1614 cases (\$4,317.00 per case) is probably the only accurate information received with respect to case processing. This figure was supported by a printout of a database showing costs incurred in several hundred investigations in 1993. Since neither the agencies nor OCRE maintain exact records of time and cost of employee time, many of the figures reflected below are estimates based on the best information available.

For the Board cases, the processing cost per case was estimated by OCRE to be \$2,206.00. This figure was calculated by taking the grade level of the Director of the Dispute Resolution Boards (GS 14/09), 3 Board members (2 at GS 14/05, 1 at GS 13/05), and 1 technician (GS 07/04), and multiplying the average time each individual spent per case by the salary (\$/hour) of each individual. The \$2,206.00 figure includes the average time the Board staff spent preparing for and attending the Board conference. The \$2,206.00 figure appears to be derived from 1993 salaries plus overhead.

The \$2,206.00 figure does not take into account the time spent by Complainants, Responding and Resolving Officials, and agency contacts (Employee Relations Specialists, etc.) preparing for and attending the Board conference, any time spent on settlement after the Board conference is completed, or any travel costs. No statistics or estimates were made by OCRE to calculate these costs, thus making it impossible to accurately calculate or estimate the average cost of a Board case.

In an attempt to ascertain such an estimate, the Evaluation Team selected 5 random cases in the Board pilot, 4 from Washington, D.C., and 1 from California, and interviewed these parties to ascertain their grade levels, and approximately how much time each individual spent on the Board case. This approach was recommended by a financial analyst. Based on interviews with Complainants and management officials, the average cost of non-Board employee time per Board

case is estimated at \$14,107.00. Excluding the 1 California case, the average cost would be reduced by approximately \$5,000.00 per case. This was the only information outside of OCRE available addressing this cost factor. It was collected in a very unscientific manner, and is considered to be very unreliable information. Nonetheless, it is interesting to note that this is the perception of USDA employees concerning the time they expend in the EEO process.

One other method was used in an attempt to estimate the average cost of USDA employee time per Board case. OCRE's calculations of the average cost of the Board staff time assumed that Board members each spent 1 day preparing for a Board conference, and 1 day attending the conference. It is known that Complainants, Responding and Resolving Officials will each spend 1 day in a Board conference. (Note: in some cases there could be more than 1 Responding Official.) It is also fair to assume that each of those individuals, on average, will take 1 day to prepare for the Conference. Assuming the typical Complainant is a GS 07/04, Responding Official a GS 14/05, and Resolving Official a GS 14/09, the average cost of USDA employee time per Board case is \$1,765.00.¹⁷ If it is also assumed that an Employee Relations Specialist spends 1 day per case (assuming a GS 14/05), then the total cost of non-Board time is \$2,056.00 per case.

Adding the \$2,206.00 per case for Board staff time and \$2,056.00 per case for non-Board time, the result is an average of \$4,262.00 per Board case. Because the time of parties and Employee Relations Specialists is probably more than the time assumed here, the \$4,262.00 figure is probably on the low side.

For the cases in the Comparison Group, the per-case cost of the investigation is approximately \$4,317.00. While this cost is reasonably accurate, the remaining figures the Evaluation Team received relating to the in-house costs of a traditional 1614 case appear to be very unreliable. Some of the documentation provided by OCRE estimates the additional cost of investigating and adjudicating a traditional 1614 case to be \$6,000.00. This figure reportedly includes both OCRE adjudication time and the agency processing costs, including the time of the complainant, managers, employee relations specialist, adjudicators, and resolving officials.

Other information provided by OCRE suggests that the estimated cost per traditional 1614 case in the formal complaint stage is approximately \$12,298.00,

¹⁷ The grade levels used to obtain these cost figures are low, but not substantially lower than the grade levels of the actual pilot participants, as disclosed in the questionnaires. These figures are the same as the figures used to calculate the time of Board staff, and have been used here for the sake of consistency and simplicity.

including a significant overhead and operating cost factor. This figure conceivably would be augmented by information contained in another document which suggested that an employee relations specialist's time on a typical EEO complaint could range between \$3,186.00 and \$4,482.00.

Despite the lack of reliable information, because the Board process occurs early in the formal complaint process and, at least with respect to 47 of the 48 Board cases, the case ended without going to a complete investigation or adjudication, it seems fairly certain that the average cost of processing EEO complaints through the Board process will be less than the average cost of processing complaints under the traditional 1614 process.

b. Outcomes.

Observation: The costs incurred by the Department under the terms of the settlement agreements facilitated by the Boards were greater than the costs incurred under the dispositions in the Comparison Group, including settlements and decisions.

The average cost of the outcomes of the 46 Board cases for which outcome information was available was \$19,737.00. This figure takes into consideration items such as cash settlements, compensatory damages, backpay and attorneys fees, as well as the monetary value of non-cash settlements, such as training, travel, and tuition. A breakdown of outcome costs into the two geographical regions in the pilot -- Washington, D.C. and California -- shows that the average cost of the outcomes in California was \$60,250.00, whereas the average cost of the outcomes in Washington, D.C. was \$5,438.00.

By comparison, the average cost of the outcomes under the 31 cases in the Comparison Group for which closure information was available was \$4,665.00. A comparison of the 46 Board cases and the 31 Comparison Group cases shows that the outcome costs of the Board cases exceed the outcome costs of the Comparison Group cases by an average of \$15,072.00. However, if the California cases are excluded, then the Board outcomes are \$773.00 more, on average, than the Comparison Group cases.

c. Total costs.

Overall, when considering the cost of the processes and the cost of outcomes, it is not clear that the Boards are less costly than the traditional 1614 process.

C. The California Cases.

The pilot cases from Region 5 of the Forest Service involved EEO complaints that, on average, were significantly older than the Washington, D.C. cases in the pilot. Most of the California cases were specially selected for the Board pilot precisely because they were older, highly charged, and difficult to resolve. The Evaluation Team did not scrutinize the reasons why the settlements in the California cases were substantially higher than in the Washington, D.C. cases. However, it is reasonable to deduce that disputes covering longer time spans and inflicting greater damage would require higher dollar amounts to achieve settlement.

While the settlement amounts in the California cases were higher than in the Washington, D.C. cases, the California parties' views of the Board process and the outcomes were generally consistent with those of the Washington, D.C. parties. The principal difference was the greater intensity of those views. Complainants appreciated the efforts of the Board members. However, they complained that they were forced into settlements: several of them felt like they were "being pushed to buy a used car, and you had to take it then, that day, or it would not be there tomorrow." Complainants were disappointed that they did not have the opportunity to make their cases to the Board, and they complained about problems with management following through with agreements.

Forest Service management's reaction to the Board process was similarly intense. The universal feeling was one of pressure to settle, even if cases had no merit. Management felt the process was biased against them, in part because they were not allowed to have representation during the Board conferences, while Complainants had an attorney present. Also, management observed Complainants meeting with Department civil rights officials from Washington, D.C. outside the conferences, contributing to the impression of bias. Finally, management expressed the opinion that the selection of the particular California cases for the Board pilot was politically motivated.

In sum, the Department's good intentions in trying to resolve bitter, longstanding disputes have resulted in Forest Service management feeling convinced that they are presumed guilty of discrimination, and Complainants being unhappy about their settlements. While the cost of settlements was high in comparison to the Washington, D.C. cases, use of the Boards in these California cases was a unique endeavor, and does not reliably indicate the types of disputes the Boards would undertake in the future.

D. The Comparison Group's Responses.

The Comparison Group complainants who responded to the questionnaire had many observations about the traditional EEO complaint process, and suggestions for improving that process. Some of the more frequently expressed comments were:

- **Speed up the EEO complaints process.** The lengthy process takes a toll on the work environment, family life, careers, and personal health.
- **EEO complaints should be handled by an independent, impartial group of individuals.** Independence and impartiality were cited, not only with respect to the individuals who decide EEO complaints, but also EEO counselors, who are often seen as working for management. These employees did not trust the current system. Only one of the employees had heard about the Boards. Several said they would have utilized the Boards had that option been offered, but several others expressed distrust over who would be sitting as Board members.
- **Resolve EEO disputes earlier in the process.** In this connection, counselors should play a greater role in dispute resolution.
- **Better educate employees of their rights and options in the EEO process.** Several responding employees complained that they did not understand their rights, and that information was withheld from them.

IV. RECOMMENDATIONS

Recommendation 1: The Dispute Resolution Boards, with the changes recommended in this report, should continue.

Recommendation 2: The Secretary should adopt, publicize throughout USDA, and follow, a policy that Board proceedings are intended to provide an opportunity for parties to voluntarily achieve resolution, and that resolution, while desirable, is not mandatory.

Recommendation 3: USDA should establish a clear mission statement and operating procedures for the Boards, which should be documented in a clear written policy that should be disseminated throughout USDA, and applied consistently in all cases.

Recommendation 4: The Boards should ensure that all parties receive timely notification that they are involved in the Board process, provide them with a clear written and oral explanation of how the Board process works, and provide scheduling flexibility to the parties attending a conference, so that all parties may participate fully and fairly in the process.

Recommendation 5: The Boards should act in a factfinding and assessment role before offering mediation or resolution to the parties.

Recommendation 6: The assessment and resolution stages of the Board conference should be optional for Complainants.

Recommendation 7: Board members should receive formal mediation training from a qualified mediation instructor, and training in other essential skills, including the drafting of clear settlement agreements, and the use of techniques designed to ensure that parties clearly understand the agreements they sign.

Recommendation 8: OCRE should work with agencies to establish a clear policy concerning agency representation and Responding Official representation during Board conferences.

Recommendation 9: The Department should establish, or require agencies to establish, a mechanism to provide follow-up after settlements are reached in the Board process to ensure that parties are complying with the terms of the agreement.

Recommendation 10: OCRE should have ongoing quality control and information systems in place and a coherent recordkeeping system for the Boards and the entire EEO complaint process.

Recommendation 11: OCRE should promptly establish clearly delineated operating procedures for counselors, Boards, adjudicators, and all other components of the EEO complaints process, and publicize those procedures to the USDA community.

Recommendation 12: The Department should conduct a complete operations review of the Boards, using experienced operations personnel, as soon as possible.

Recommendation 13: A thorough legal review of the Board's operations should be undertaken.

Recommendation 14: An implementation team, consisting of individuals inside and outside OCRE, should be established to implement the recommendations in this evaluation report. Membership should include individuals with expertise in ADR and conflict management.

Recommendation 15: The Department should establish an alternative dispute resolution process or processes, to be used before the filing of a formal EEO complaint, in which employees and managers are given the opportunity to meet face to face, with a neutral mediator/facilitator, to attempt to voluntarily resolve their disputes.

ALTERNATE RECOMMENDATION:

Recommendation 16: The Department should offer an alternative dispute resolution process or processes, to be used before disputes reach any established formal or informal dispute system. The ADR process should encourage employees and managers to meet face to face, with a mediator/facilitator/ombudsperson, in an attempt to voluntarily resolve disputes of all kinds.



DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20250

April 15, 1993

EEO AND CIVIL RIGHTS POLICY STATEMENT

It is customary for Secretaries of Agriculture to issue strong statements about their concern for equal opportunity and civil rights. Since coming on board, I have talked with scores of employees as well as members of the public. I know that many employees, at all levels, are absolutely committed to the goal of ensuring equal opportunity for all in employment and program delivery.

However, many also believe strongly that past EEO statements, while sincere, were not reenforced with the necessary actions and follow up that critical policy issues require. Many feel that the Department's efforts have focused too much on process, and too little on results. Therefore, I would like to share some of my concerns, goals, and expectations in this important area.

My goal is to make the Department of Agriculture a place where equal opportunity for all Americans is assured and where promoting civil rights is essential to employee and managerial success. Ours is a diverse society. Diversity is a source of strength for USDA as we tap the talents, creativity, and energy of all Americans who desire to serve, or who have an interest in the programs and services that we provide.

To ensure these results, we must first improve our system of accountability. In line with this policy, managers and supervisors will be evaluated for their performance in EEO and civil rights. Success in this vital area will be an important factor in the performance assessment of every employee. It will be considered in their competition for monetary awards as well as for future responsibility.

We will improve the ability of civil rights and EEO related units to accomplish their duties in a manner that is timely and of high quality. The present EEO complaint process is burdensome and it is often misunderstood. It is time consuming and expensive for employees and for the Department. There is also concern that some civil rights related units are positioned so as to lessen - rather than enhance - their ability to perform functions vital to the success of each agency.

We will create an environment where employees and supervisors are able to discuss concerns openly without fear of reprisal or retaliation. I am especially concerned about allegations of a "culture of reprisal" at USDA. Many persons feel that filing EEO complaints will be detrimental to one's career. I am also aware of several instances of overt racist and sexist remarks and acts which no one should have to endure.

All of these considerations point to the need for change. We must have the courage to change, especially the way we manage our most precious resource, our people. A key

element of reinventing government is that we change how we interact with one another, and how we treat one another. My goal is to create a participatory work environment at Team USDA that allows everyone to realize their full potential, and increases our productivity, without the waste of human resources.

In line with this policy, our actions will be directed towards positive accomplishments in the Department's efforts to attain a diverse workforce, ensure equal opportunity, respect civil rights, and create a work environment free of discrimination and harassment based on gender or sexual orientation.

I expect all managers to develop a positive, problem solving approach to handling employment and program discrimination complaints, to work at understanding the basis for complaints, and to extend every effort to resolve them, where feasible, before they reach the formal stage. Further, there is simply no room for management by discrimination, reprisal, or fear in the new USDA and such activities will not be tolerated.

We will eliminate discrimination from our program delivery system, reach out to groups which have historically been neglected, and ensure that we are inclusive, rather than exclusive, in all aspects of our program delivery. We will communicate in such a manner that everyone making an inquiry or participating in USDA programs understands how programs will benefit them. We are the "people's" department. Barriers that prevent the full participation of under-served groups will be overcome.

Under secretaries, assistant secretaries and agency heads must ensure that all managers are committed to each of these goals and that their performance appraisals take into account specific and timely accomplishments in these areas. I also expect agency heads to examine the placement of civil rights units and ensure that they have adequate support.

This policy is more than a sincere statement of intent. It is a personal commitment to take the actions necessary to ensure implementation. Each employee, at every level, will be held personally accountable for her or his performance in ensuring equal opportunity and promoting civil rights.


MIKE ESPY
SECRETARY



DEPARTMENT OF AGRICULTURE

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20250

SUBJECT: EEO Complaints Resolution

TO: Agency Heads

Breakdowns in personnel and management practices that cause inequities in the work environment result in EEO complaints. Currently the Department has over 700 formal EEO complaints on which decisions must be issued by September 30, 1993. Additionally, the Department has averaged over 55 new formal EEO complaints per month since the beginning of the fiscal year. This is more than twice the average monthly rate experienced in previous years. I find this trend unacceptable. I believe managers can and should settle most complaints at the lowest level possible in the EEO complaints process. This does not mean managers are to settle every complaint at any cost nor should managers view complaint settlement as a buy out or personal defeat. In fact, in most situations, managers should aggressively seek resolution to complaints when it is the right thing to do or when it represents a good business decision. Effective immediately,

- (1) all managers are directed to take every reasonable opportunity to be proactive in addressing EEO issues and for creating work environments that encourage and support complaint avoidance;
- (2) agency heads are to endeavor to resolve as many as possible of the outstanding EEO complaints filed against their agency by September 30, 1993; and
- (3) agency heads will include complaints resolution as a permanent factor in each manager's and supervisor's civil rights performance element.

I urge you to take a personal interest in establishing and maintaining work environments that create conditions that will encourage managers to resolve EEO complaints early in the complaint process and support complaint avoidance strategies through improvements in management and personnel practices.


MIKE ESPY
Secretary

ATTACHMENT 2

Dispute Resolution Boards - Overview

Objectives

- Early resolution of minor issues
- Reduction of formal complaints needing adjudication
- Expeditious full relief determinations
- Implementation of a "good business practice" approach
- Conciliation service for managers and employees
- Confidential and impartial case merit assessment

Operation

- * Formal complaint is filed and joined with counselor's report
- * Technician obtains appropriate Focus report on profile
- * Intake specialist dismisses appropriate complaints
- * Board chair/Agency specialist accepts issues in complaint
- * Technician requests certified agency files on the issues
- * Board is assigned the complaint
 - Chair is selected and two members appointed
- * Technician notifies employee and Agency of assignment
- * Agency identifies responding managers
- * Agency also empowers a supervisor to agree to a resolution
- * Technician furnishes user manuals to parties
- * Office Manager schedules Board travel and lodging
- * Board goes to dispute site
- * Board conducts an inquiry with the parties all present
 - Board reviews the record with the parties
 - Board gets stipulation of facts agreement from parties
 - The employee makes an opening presentation
 - Chair asks clarifying questions
 - Board asks clarifying questions
 - Managers ask clarifying questions
 - Managers give articulated reasons and presentation
 - Chair asks clarifying questions
 - Board asks clarifying questions
 - Employee asks clarifying questions
 - Board deliberates and reaches a consensus
 - on the likely outcome of the case
 - on an appropriate remedy to propose
 - Board discusses resolution (and reasons) with management
 - Board discusses resolution (and reasons) with employee
 - Resolution agreement prepared and signed
 - Board facilitates negotiations
 - if employee makes reasonable counter proposal
 - Reporter/stenographer prepares transcript if no agreement
- * Board moves on to another case or returns to office
- * Investigation completed using minimum impact procedures

Guiding Principles

The USDA Resolution Strategy is used

Interests, costs, work force relationships, risk

Good business practices are implemented

Relief considers contributory actions of all parties

Factual assessment is based on the testimony and case theory

Open development of the evidence facilitates resolution

Expectations

Between 20 and 50% of formal complaints are closed

Factfinding conference is held within 30 days of complaint acceptance

Hearing and either resolution or evidentiary file is usually completed in a day

Subsequent investigation is usually limited to corroborating witnesses, and may be conducted by phone or interrogatory

Board averages two cases a week (100 a year)

Resources (Office Manager, clerks) are shared with other divisions in the Dispute Resolution Staff

Other considerations

Employees and Managers may have a representative present

Regular rules on representatives apply

The Agency may have an observer present, but not as a participant

The Agency must provide an individual with the authority to resolve the complaint to participate in resolution discussions

Prehearing discussions between the parties and the Board may be conducted

Ex parte communications between the Board and either party are permitted

Dispute Resolution Boards

Background

Historically, EEO complaints took a long time to process (USDA average closure of 660+ days). However, USDA used this time very productively in the last ten fiscal years (1983 through 1992), closing 1571 out of 2869 EEO complaints (54%) by a voluntary resolution agreement signed by the parties instead of a decision or a withdrawal.

Effective October 1, 1992, new EEO complaint processing regulations significantly shortened the time frame for processing. This was accomplished by eliminating the stages at which USDA historically was most productive in settlements. In addition, new legal remedies (compensatory damages) and publicity have led to an increase in complaint filings.

Authority

EEO complaint processing regulations (29 CFR 1614) provide some discretion in the method of investigation (as long as it is neutral and impartial) and encourage the use of techniques that lead to voluntary resolutions.

Proposal

Dispute Resolution Boards - a program for early neutral intervention in the investigation process by a Dispute Resolution Board to provide confidential assistance to employees and supervisors involved in work place disputes where discrimination is perceived as a possible motive.

Early neutral intervention and case merit assessment may be done by one or more practitioners. Consensus by a group of three is perceived as more acceptable to employees and supervisors involved in employment disputes. However, one practitioner is more efficient.

We propose to test the approach using two Dispute Resolution Boards in the Washington metropolitan area. One Board would have three members, and the second Board just one member. We would measure resolution rates and case processing rates for each approach over a 4 to 5 month period (August through December, 1993). We would also compare case closure rates, closure time frames, processing costs, and relief provided by regular full processing versus the Board approach.

If successful, the Boards would be instituted on a staged basis (geographic service centers) for the rest of the Department's cases. Full implementation would be completed by the last quarter of FY 94.

Resources (full program of 6 Boards)

Each Board has 3 members. Members rotate responsibilities as the Chair

Each Board has a Clerk Stenographer capable of completing a verbatim transcription of the Board proceedings

Each stenographer has a stenograph machine, plus a laptop computer for wordprocessing.

The Division has a director, technician and intake specialist, in addition to the Boards

Forms/Letters

New acceptance letters to the employee and Agency, notifying them of the accepted issues, the DRB appointment, and the time frames for the hearing

Appointment of Board member letters (New part of acceptance package)

Manuals that describe the procedures used by the Boards, the roles and responsibilities of the parties, and the expected outcomes

Request letters to the agency for:

Merit Promotion files

Adverse action and discipline files

AD 435s, 182s, etc. for the relevant office

Supervisory documents or incident reports

Certification of the file form

Letters returning files to the Agency

Standard Board opening statements

Stipulation of facts form

Standard settlement agreement form

Standard Board directed relief forms, including standard certification of full relief form

Letters transmitting

settlement agreement to the Agency for implementation

the testimony and records to the investigation division for completion of the investigation

a report of any lack of resolution effort to the Agency

Operation Summary

Once a formal complaint is filed and the investigation is begun by a Board, the process will be interrupted after the testimony of the employee and supervisors involved for an immediate assessment of the facts, the issue in dispute, the options available for resolution, and the Secretary's request for good business sense solutions. The Board will confidentially apprise the employees and supervisors involved in the dispute of the likely outcome of an adjudication, and assist them in coming to a voluntary closure of the dispute, if possible.

An overview of the specific operation of the process is attached. If the Board is successful, the EEO complaint is closed very early in the process with a voluntary resolution, and the supervisor will have exceeded the performance expectation in the EEO critical element for complaint resolution. The Board will be effective and save costs if at least 20% of cases are resolved. Higher resolution rates are actually expected.

If the complaint is not closed by resolution, the investigation process is resumed and completed. Using the Board, the process will be quicker and less intrusive than current investigation procedures. If the complaint is not closed by resolution because a supervisor will not agree to a reasonable offer presented by the Board, this fact will be documented and transmitted to the rating official for the supervisor for consideration in the preparation of the supervisor's annual rating in the critical EEO element.

GUIDE FOR EEO COMPLAINT EXAMINATIONS
BY THE DISPUTE RESOLUTION BOARD (DRB)

I. INTRODUCTION

This guide explains what the Dispute Resolution Board (DRB) process is and how it works. It describes how complaints are processed and examined by the DRB, and how participants should carry out their roles. The guide illustrates how the DRB examination is used by the U.S. Department of Agriculture (USDA) as a fact-gathering process at the start of the investigation stage as well as an early neutral intervention and assessment process to attempt resolution of Equal Employment Opportunity (EEO) complaints.

This guide was developed because the DRB examination is unlike most other investigative formats. Neither is the DRB examination procedure the same as a hearing. The popular idea of a hearing arises primarily from exposure to courtroom-like formats. For most of us, this view comes from either personal experience with adversarial processes such as MSPB, EEOC, or films depicting courtroom scenes. A primary reason why this guide has been written is because the DRB examination is different from that type of hearing, and from the usual investigation process. It is a very informal process.

This guide is primarily addressed to the parties (as defined in the next section), but is also intended for use by those who provide administrative support for the process. Its objective is to present information to all involved in order to maximize the opportunity to resolve the complaint. It also provides technical guidance and practical suggestions to help the parties prepare and support their positions.

Personal pronouns like "you" are used throughout this guide. In this context, "you" refers to the parties to the complaint and any representatives. Complaints, by their nature, produce a dispute over facts and their meaning. Therefore, the words "sides" and "parties" in this guide are used in the sense that there are two sides to the issues being considered.

II. DEFINITIONS

The parties consist of the complainant (the individual who brought the complaint), the responding official(s) (the individual(s) who is responsible, in whole or in part, for the actions or conditions under dispute) and the resolving manager (an individual who has the authority to provide relief, including full relief, on the complaint). The parties bear primary responsibility for resolving the dispute.

The Board Member, or Members (Board) is a person or persons skilled in investigative technology, factual assessment, problem solving and negotiation techniques. The Board is responsible for conducting fact finding inquires, assessing the issues in dispute, and presenting a resolution offer that will bring the dispute to voluntary closure. On a three member Board (or single member Board), the Board Chair is the presiding official in the examination, is in charge of all proceedings, and serves as the main examiner. He or she is responsible for developing relevant evidence for the record no matter whose position it supports, and for ruling on the relevancy of evidence submitted by either side.

Due Process in this administrative examination provides each party the opportunity to have full knowledge of the record used to judge the issues and reach conclusions. The use of a disinterested, unbiased Board is part of administrative due process, as is providing for the presence of both parties at the examination where they may hear the evidence as it

is presented. The opportunity for the complainant and responding official to testify under oath, and the parties to react to the composite record are other features of the administrative due process concept.

III. OVERVIEW

The DRB examination process is an efficient procedure for beginning the investigation and achieving resolution of complaints. It consists of two parts, a Fact Finding conference and a resolution conference. In comparison with other investigative methodologies and techniques, it is administratively faster and more economical since it is normally completed in one sitting. Thus the parties are normally absent from their regular duties only once and the TDY of the Board is minimal. It may also offer a greater opportunity for informal resolution than a succession of individual interviews of witnesses by a factfinder. At the Fact Finding Conference, the Board will place the complainant and responding officials under oath or affirmation, interview them, and assure a verbatim record of their testimony is made. The parties may ask questions to clarify or develop facts not covered by the Board's questions.

The Board Chair may rephrase or prohibit questions if they are insulting, demeaning, irrelevant or unduly repetitious. The complainant and responding official will be permitted to make a narrative statement to present their case prior to direct questioning. The examination may be briefly recessed to clarify matters at hand, if requested. In summary, the complainant and responding official are given an opportunity to testify and all parties hear all testimony. All responding officials will be present throughout the Fact Finding Conference. If you are a responding official, you can expect the complainant and

his or her representative, if any, to hear all of your testimony and arguments as you state them for the record. You will be asked to state your reasons in detail for any decision or action you took or recommended that affected the complainant or that is related to such a decision or action. You will be able to indicate what evidence you believe supports your position. Both parties hear the facts as they come to light.

If you are the complainant or the responding official you can expect the Board to question you on the specifics of the case and invite you to provide any additional information you want the record to contain. The Board may prohibit additional information which is not relevant to the accepted issues or basis. The Board may ask you to reaffirm statements you have already submitted in your written complaint. This is to clarify and have under oath your original statement, and to make sure it still represents your position. Whether you are the complainant or responding official you can expect the Board members to ask you to identify precisely the specific events which led you to the conclusions you have drawn.

When you come to the Fact Finding Conference, you should have all of the specific facts about each issue committed to memory or written down. These specifics should include precise reference to time, place, surrounding conditions, exactly what happened, who did it, who else knows about it, why it was done, etc.

A claim of discrimination is usually analyzed under a legal test of three parts. First, an inference of discrimination (prima facie case) must be established. This is usually done by direct or indirect comparison of treatment, but may also be done by direct indications of bias. Should there be a prima facie case of discrimination, then the analysis proceeds to

the articulation of legitimate, nondiscriminatory reasons for the contested issues. For example, if someone explains specifically why the selectee was considered best qualified, then a reason has been articulated. Finally, if a reason is given, the analysis moves to whether the articulated reasons are legitimate, true and nondiscriminatory, or whether they are a pretext masking discrimination. The parties should be aware that testimony may not always be taken in the same order as the analysis sequence just described. In this administrative process, it is the total and final record that is important. The legal test is called the preponderance of evidence. This means that one conclusion is more likely than another. It may also be envisioned as a simple majority of the evidence.

IV. PRELIMINARY PROCEDURES

When a complaint is selected for examination by the DRB, the parties will be notified by the Board of the time and place of the conference. The notification will alert the parties to the immediate need for detailed preparation and that they must submit to the Board an indication of the documentary evidence that is available. The Board will officially obtain all relevant documents. Parties should also advise the Board immediately of any special needs or accommodations. The parties will be allowed a reasonable amount of official time for preparation and presentation of materials to the Boards. The Board will request and review documentation for the investigative file prior to the examination.

The Board Chair will open the conference with a clarification of the issues and an explanation of the procedures. The Board Chair will acknowledge the documentary file as it exists on that date. It is not intended that the Fact Finding Conference will be used to introduce documents into the record. Therefore, the withholding of material for

introduction at the Fact Finding Conference, or at a later proceeding is not appropriate. The Fact Finding conference will be essentially limited to the taking and recording of statements under oath and taking note of the documents in the record. The final decision on all matters involving the examination process rests with the Board Chair.

V. THE FACT FINDING CONFERENCE

The Fact Finding Conference will be opened by the Board Chair. At the beginning of the Fact Finding Conference, the Chair will open the record by recognizing those in attendance. The Chair will identify the issues and basis which have been accepted by the Department for consideration. The Chair will acknowledge the existing file of documentation and obtain stipulations of facts from the principals. The principals are identified as the complainant and responding officials. The complainant and the responding official may have a representative present who may provide advice and guidance, but shall neither testify on behalf of either principal nor ask questions of the other parties.

The principals will be placed under oath at the beginning of their statement. There will not be opening or closing statements or arguments. The complainant will be provided the opportunity to present his/her statement first. This statement should address the accepted allegations and basis. Statements should be as specific as possible, identifying what was done, the dates, and individuals who may have additional relevant information. At the close of complainant's statement, the Board, beginning with the Chair, will ask questions for clarification and additional testimony beyond that provided by the complainant. Since this is an administrative process and the Board will control the examination, objections to the lines of inquiry will generally not be allowed. Responding official's will then be allowed

to ask questions of the complainant for clarification or rebuttal purposes. Irrelevant, repetitious or offensive questions will be prohibited by the Board. The Board may rephrase any questions asked to allow a full and fair response.

Each responding official will then be provided the opportunity to present a statement which should articulate reasons for the challenged treatment or actions. Statements should be as specific as possible, identifying what was done, the dates and individuals who may have relevant information. At the close of the responding official's testimony, the Board, beginning with the Chair, will ask questions for clarification and additional testimony beyond that provided by the responding official. Complainant will then be allowed to ask questions of the responding official for clarification or rebuttal purposes. However, irrelevant, repetitious or offensive questions will be prohibited by the Board. The Board may rephrase any questions asked to allow a full and fair response.

In conducting the fact finding, the process may disclose sources of relevant facts which did not come to light earlier. Principals should be prepared to inform the Board of the source and location of additional material and the names and locations of other relevant witnesses.

The Board may briefly recess the conference at any point for necessary purposes such as clarifying uncertain points with technical experts. The Board may also recess the meeting at any point where either party suggests a possible compromise or specific resolution. The examination will then be reconvened to either record the terms of settlement or proceed with the investigation of facts.

Participants in the examination shall be fully responsive to the Board's

questions and requests for documents. Nonparticipating parties shall have no active role in the examination unless specifically called upon by the Board. Since the testimony at the Fact Finding Conference is covered by the Privacy Act, participants should not disclose testimony provided at the fact finding. Participants are bound by the Board's procedures for the orderly conduct of the meeting. Participants will conduct themselves in a professional and courteous manner. Participants should advise the Board, in advance of the meeting, of any special needs.

VI. PRESENTING YOUR EVIDENCE

This section is intended to help improve your participation in the examination process, and to effectively present your perspective. It is included in the interest of due process to help participants plan their approach and to give the Board the best chance to fully develop the facts of the matter.

The examination process is expected to produce all of the material information known to the principals about the complaint issues. Your participation by testifying and offering exhibits has the purpose of communicating your position to the other parties as well as for the record. You will be asked to restate and confirm, under oath, statements you have already made in any written submissions. You will be asked to clarify the meaning of your assertions and most importantly, to state how you know they are true. This is not meant to doubt your honesty, but rather to find out the precise source of fact and the logic you relied upon to support your conclusions. There will be no better time than during the examination to establish your position on each point at issue.

A representative is not necessary for your participation in the process. If you choose

to have a representative, you should select someone who can provide you guidance on the best way to present your position. The best representatives have good ability to assess facts, are able to recall details and events, can research and interpret policies and regulations, and are skilled in organizing material for factual presentation.

You are fundamentally looking for support for your view of the facts in this case. Your chances for demonstrating that support increase according to how well you distinguish between fact and non-fact. Personal judgement does not hold much evidentiary weight. In responding to questions and in presenting your testimony, you need to assert facts that are relevant and nothing more. State your facts and explain the meaning you believe is inherent in these facts. Show where you place the weight and what logic you have used in connecting the facts with your conclusions. Your objective in this process is to develop a clear and convincing record.

VII. THE RESOLUTION CONFERENCE OVERVIEW.

Every reasonable effort should be made to resolve the complaint without the necessity of carrying it to a final agency decision. The earlier resolution is achieved, the less frustrating for everybody involved. Voluntary settlement is a resolution of the complaint and is not only authorized, but encouraged. All parties should be on constant alert for opportunities to settle at every stage of the complaint process.

When the testimonial phase of the Fact Finding Conference is complete, and if no resolution is reached, the Board will present a neutral assessment of the facts and the likely outcome of the case, with an explanation, to all parties (including a resolving official). Then the Board will propose a resolution offer for closure. In considering the resolution of

complaints, a reasonable analysis is necessary to determine what offer of settlement is appropriate in each individual case. To make this determination, the Board will consider underlying interest involved, cost, impact on relationships, and risks. Each of these factors is further explained below.

Interests

The first step in deciding how to resolve a dispute is usually the recognition of the important interest involved in the case. For example, for management this may be hiring/promoting the best qualified, correcting/preventing inappropriate behavior/performance, achieving program objectives, encouraging/rewarding good performance, or minimizing work flow disruption. For the complainant, this important interest may be career advancement, remaining competitive with others, keeping a good reputation, or achieving greater job satisfaction. The objective for the parties then becomes retaining as much control over achieving these important interests as possible. Adjudication removes all control from both parties in the dispute and hands it to a third party. Settlement is the method that both parties keep control of their interests and fate.

Cost

Where two options are acceptable, the lower cost option is preferred. Long term average costs are the appropriate measure, since they factor in both processing expenses and relief payments.

Relationships

Maximizing positive relationships and minimizing adverse impacts on relationships are important considerations. How management views the complainant how peers view the

complainant, the impact of resolution on others in the worksite, and the impact of processing on coworkers, friends, and family are all considerations.

Risk

In balancing the first three factors, the strengths and weaknesses of the case must be assessed. Risk of loss varies with the individual case facts, theory of discrimination involved, pattern of actions taken, and level of documentation available. Risk may be stated mathematically (30 percent, 3 out of 10, 30/70) or generically (low, moderate, average, high). High risk may make settlement imperative for either party. Low risk means settlement would be on more favorable terms. Settlement is always preferred, on the right terms. There is no guaranteed winner or loser in any adjudication. Every case has a risk of loss for either party.

In applying these factors to a dispute, several considerations are important. You must remember to analyze the situation with these points in mind. First, in each case, there are many potential resolutions, ranging from no relief to full relief. Each option has a different impact on the underlying interests and relationships, costs a different amount, and affects risks differently. In every case, there is a good resolution for both parties. The Board will use the factors above to identify and justify a resolution.

Second, whether one is right or wrong, or did or did not discriminate, or is or is not a victim of discrimination, is not a factor in managing resolution. If one goes to litigation, it is important that one have a high probability of success. Maximizing control over interests, costs, relationships and risk is what is important in resolution. Every case has strengths and weaknesses on both sides. These strengths or weaknesses do not necessarily

have anything to do with being right or wrong. For those who wish to litigate for a moral principle, it is important to remember that an overriding principal is what is best for the organization as a whole, or the individual on the whole, not the personal feelings of the individual. If one is absolutely right in the decision being challenged, and one can achieve the interests involved by resolution, it is against this principle to risk those interests in the hands of a third party solely in an effort to be declared right.

Third, normally, the underlying interests are the most important factor in the case. However sometimes relationships or risks predominate. In no case is cost to be the only factor or the most important factor to the Department. Parties should work to minimize cost, but not at the expense of interests or relationships.

Fourth, once an acceptable resolution is identified, and bargaining parameters are established, the Board will seek an agreement from the parties. If this is not possible, the demands of the disagreeing party will be analyzed to ascertain their impact on interests, costs, relationships, and risks. Where significant drawbacks exist, they may justify going forward to adjudication. Where benefits outweigh drawbacks, resolution is still preferable to adjudication, and the Board may proceed to attempt closure by resolution on those terms.

VIII. RESOLUTION CONFERENCE PROCEDURES

At the close of the Fact Finding Conference, the Board will meet privately to deliberate the issues, review the evidence gathered during the Fact Finding Conference, and prepare a resolution offer. The Board will meet again with the parties to give an assessment of the dispute, including which facts are more likely true and what the likely outcome of an adjudication would be. The Board will discuss its proposed offer with the resolving official,

and then present their resolution offer to both parties. The resolving official must be a participant in the Resolution Conference. The resolving official and the complainant will each have an opportunity to discuss, modify, or reject the offer.

In the event that the resolving official or the complainant elects to modify or reject the Board's resolution offer, they must give specific reasons for modification or rejection, and must present a reasonable alternative offer.

Any resolution is binding and will be reduced to writing, and be signed by both parties before the Resolution Conference is closed. Both parties should be prepared to seriously consider reasonable solutions to the case at this time. If no resolution is reached, the attempt will be documented and forwarded to the Director, Dispute Resolution Staff for further action.

DISPUTE RESOLUTION STRATEGIES

I. Barriers

General Culture

Win

Violence

Perceptions of correctness

No discrimination

Procedures followed

Within rights to make decision

Perceptions of weakness

Willingness to resolve will foster complaints

Superiors will not respect a manager that resolves

Subordinates will not respect a manager that resolves

II. Development of the USDA Resolution Strategy

Management denied hazard pay

Grievance filed

Arbitration invoked

Expert testimony

Agency litigated for important principle

Loss became high probability

Resolution achieved with no impact on principle

The challenge was to get from grievance to resolution quicker

III. The Resolution Strategy

Interest, prerogatives, flexibilities

Identify the ISSUE

Determine the prerogative involved

Assess its impact/importance

Cost comparisons

Determine the amount at risk

Determine the average amount lost

Determine cost of resolution

Determine cost of processing

Impact on work relationships

Save the good employee

Respect average employee

No REWARD for the poor employee

Determine impact of resolution on others

Risk analysis

Establish the facts

Apply the law

Assess strengths and weaknesses of the case

Quantify the chances

IV. Apply the strategy

Each option is considered separately

Options range from full to no relief

Authority exists to provide full relief

There is always a good option for resolution

Merits of the claim are not important

Who is right is irrelevant, who will win is important

Resolution is not a loss, or an admission

Resolution is controlled by the parties

Factors vary in significance

Cost is never the only, or most important factor

Other factors may become most important

Justify going to litigation

When the employee will not accept management's reasonable offer

When the employee's offer is unacceptable

V. Mediation tips

Prepare - know the situation

Establish a bottom line (best alternative)

Provide bargaining room

Nothing settled until all settled

Each concession smaller and smaller

Its not over until its over

Get everything pinned down

Get it in writing

Be specific in terms

Make the agreement self executing

A. Interests, Prerogatives, Flexibilities

The first step in determining whether and how to resolve a dispute is usually the identification of the important management interests involved (hiring/promoting the best qualified; correcting/preventing inappropriate behavior/performance; encouraging or rewarding good performance; achieving program objectives; minimizing workflow disruption). The objective then becomes the retention of as much control over these interests as possible. When adjudication is selected by management, instead of resolution, management interests and prerogatives are being placed in the hands of a third party, not only in the individual dispute, but possibly in other similar circumstances as well. The greater the policy implications, the greater the need for managers to retain as much control (by resolution) as possible. Settlement IS the best method of protecting management interests.

B. Cost Comparisons

Managers should strive to minimize costs, especially those that are not directly tied to program objectives (such as complaint processing costs). Where two options are both acceptable to management, the lower cost option is generally preferable. Long term total average costs should be factored in. For example, if a complete remedy is \$6000; settlement is possible at \$4800; and adjudication will cost only \$3000; while it may appear adjudication is favored, it is only as long as one wins 70% or more of the time. Settling 10 cases cost \$48,000. Adjudicating ten cases [\$30,000] and losing only 3 [\$18,000] also costs \$48,000.

C. Impact on Workforce Relationships

Managers should strive to maximize good relationship and minimize adverse factors in relationships. Three situations usually must be considered. First, the current relationship/performance assessment of the complainant must be determined. If the complainant is a satisfactory or better employee, management must decide if it wants to begin battle with the employee. Second, peer assessment of the complainant must be accurately determined (settlement with a bozo should not be a simple "caving in"). Finally, settlement options must be assessed for impact on other employees.

D. Risk Analysis

An integral part of balancing the first three factors is assessing the risks of a case in terms of strengths and weaknesses. This will vary depending on case facts and the theory of discrimination involved. Odds of winning can be mathematically estimated (i.e., 30%, 3 out of 10, 30-70, etc.) or roughly calculated (low [0 to 25%], medium [26 to 75%] or high [76% and up]). Amount of risk, if high, may make settlement imperative. If low, settlement would be appropriate only on very favorable terms. The important operative is that settlement is still preferred, on the right terms, even if the chance of winning is very high. There is no guaranteed winner or loser.

A. The Strategy is Applied to Options

In each case, there will be innumerable options. These range from absolutely no relief all the way to full relief. Each option will have a different impact on management interests; cost a different amount of money; impact differently on the workforce; and affect long term risks differently. In every case, there is a resolution that is completely acceptable to management. The model is used to identify it, determine the acceptable bargaining leeway, and justify the resolution.

B. The Merits of the Claim Are NOT a Factor

Whether one is right or wrong is not important in resolution management. Winning the case is what is important, and this depends on the strength and weaknesses of the case. Every case has strengths AND weaknesses. For those who wish to maintain the "moral principle", a manager is not right squandering tax dollars to satisfy a personal belief in having done the right thing. The right thing is what is best for the organization and the attainment of organizational objectives. Finally, if one is absolutely right, and one can achieve those same interests by resolution, it is morally reprehensible to risk management interests in the hands of a third party to satisfy the personal belief.

C. There is no Formula to Weigh the Factors

Usually, management interests will be most important in the case, but occasionally, impact on workforce will predominate. Risk factors also play a significant role if chance of success drops below 70%. Cost, however, never is the sole factor or the most important factor in resolution. It is cheaper to settle every case for full relief than to process cases. Management should work to minimize costs, but not at the expense of interests or impact on workforce. Cost is therefore to be considered, but not to predominate the decision making process.

D. Use the Strategy to Justify Litigation

Once an acceptable resolution is identified, and bargaining parameters established, the key is obtaining complainants agreement. If this cannot be obtained, complainant's demands should be analyzed under the model to ascertain their impact on interests, costs, workforce and risks. Where significant drawbacks exist, the model will justify going forward. If benefits still predominate over drawbacks, then resolution on those terms is still preferable to going forward to adjudication. The analysis at this stage can be likened to picking the terrain on which the conflict will be decided (Resolution is management's home court advantage, or, don't be Custer at the Little Bighorn).

FACTS

OPTION 1
NO RELIEF

OPTION 2

OPTION 3

OPTION 4
FULL RELIEF

INTERESTS

COSTS

WORKFORCE

RISKS

Dispute Resolution Board Questionnaire Results

A. Background

A1. I was

- 24 the employee who filed the EEO complaint.
(including 1 job seeker)
- 45* the official responding to the EEO complaint.
- 20* the official with authority to resolve the EEO complaint.

89 Total qualified responses received

- 24 out of 46 (52.2%) complainants (C).
- 45 out of 74 (60.8%) responding officials (Rsp).
- 20 out of 36 (55.6%) resolving officials (Rsv).

* Includes 6 who were both responding and resolving officials.

A2. Who represented you during the Board process?

	C	Total Rsp	Rsv
Attorney	13		
Non-attorney	1	3	
No one	8	36	17
Other/no resp	2	6	3

A3. Did you expect the Board process to be fair?

	C	Total Rsp	Rsv
Yes	12	22	8
No	2	8	6
Don't know	9	15	6
No response	1		

A4. Did you have a choice in participating in the Board process?

	C	Total Rsp	Rsv
Yes	6	7	10
No	15	38	10
Don't know	1		
No response	2		

A5. Did you expect the Board process to resolve the complaint?

	C	Total Rsp	Rsv
Yes	12	22	12
No	6	6	4
Don't know	5	17	4
No response	1		

A6. Did you read a copy of the Guide?

	C	Total Rsp	Rsv
Yes	21	29	17
No	1	13	3
Don't know		2	
No response	2	1	

A7. Did you understand from the Guide how the Board conference would work?

	C	Total Rsp	Rsv
Yes	16	22	16
No	2	17	2
Don't know	2	3	1
No response	4	3	1

B. Satisfaction With The Board Conference

B1. I was satisfied with the Board conference.

	C	Total Rsp	Rsv
Strongly disagree	3	6	1
Disagree	1	10	3
No opinion	4	7	4
Agree	4	8	6
Strongly agree	5	4	4
Not applicable			
No response	7	10	2

Dispute Resolution Board Questionnaire Results

B2. The conference worked just as it was described in the Guide.

	C	Total Rsp	Rsv
Strongly disagree	1	4	1
Disagree	5	6	1
No opinion	3	6	8
Agree	1	5	5
Strongly agree	6	3	1
Not applicable	1	11	2
No response	7	10	2

B5. The Board conference was informal.

	C	Total Rsp	Rsv
Strongly disagree	6	5	
Disagree	1	7	2
No opinion	5	7	6
Agree	4	10	7
Strongly agree	2	5	2
Not applicable			
No response	6	11	3

B3. The facilities and room where I appeared before the Board were comfortable and satisfactory.

	C	Total Rsp	Rsv
Strongly disagree	2		
Disagree		3	1
No opinion	1	10	6
Agree	4	14	6
Strongly agree	11	8	5
Not applicable			
No response	6	10	2

B6. There was sufficient flexibility for me in the scheduling of the Board conference.

	C	Total Rsp	Rsv
Strongly disagree	9	17	6
Disagree	2	3	3
No opinion	3	4	3
Agree		6	5
Strongly agree	3	3	
Not applicable		1	
No response	7	11	3

B4. I expected the Board conference to be informal.

	C	Total Rsp	Rsv
Strongly disagree	4	3	1
Disagree	2	8	3
No opinion	4	8	6
Agree	4	10	6
Strongly agree	3	4	1
Not applicable	1	1	
No response	6	11	3

B7. I felt intimidated during the Board conference.

	C	Total Rsp	Rsv
Strongly disagree	3	9	7
Disagree	5	12	5
No opinion	2	5	2
Agree	1	5	1
Strongly agree	7	3	2
Not applicable			
No response	6	11	3

Dispute Resolution Board Questionnaire Results

B8. I was satisfied with the fact finding part of the conference.

	C	Total Rsp	Rsv
Strongly disagree	4	6	1
Disagree	1	7	3
No opinion	2	8	6
Agree	1	7	5
Strongly agree	2	2	2
Not applicable	7	3	
No response	7	12	3

B11. I trusted the Board member(s).

	C	Total Rsp	Rsv
Strongly disagree		4	1
Disagree	2	3	1
No opinion	6	9	3
Agree	2	11	10
Strongly agree	6	7	2
Not applicable			
No response	8	11	3

B9. I was satisfied with the assessment part of the conference.

	C	Total Rsp	Rsv
Strongly disagree	4	5	1
Disagree		5	3
No opinion	2	8	5
Agree	4	6	3
Strongly agree	1	4	4
Not applicable	6	5	1
No response	7	12	3

B12. The Board was impartial.

	C	Total Rsp	Rsv
Strongly disagree		4	1
Disagree	2	5	2
No opinion	5	8	4
Agree	4	14	9
Strongly agree	6	3	1
Not applicable	1		
No response	6	11	3

B10. I was satisfied with the resolution part of the conference.

	C	Total Rsp	Rsv
Strongly disagree	4	14	2
Disagree	2	4	3
No opinion	3	6	3
Agree	2	5	7
Strongly agree	5	1	2
Not applicable	2	3	
No response	6	12	3

B13. The Board was biased in favor of the employee.

	C	Total Rsp	Rsv
Strongly disagree	10	7	4
Disagree	2	5	6
No opinion	2	9	4
Agree	1	6	2
Strongly agree	1	5	1
Not applicable	2	1	
No response	6	12	3

Dispute Resolution Board Questionnaire Results

B14. The Board was biased in favor of management.

	C	Total Rsp	Rsv
Strongly disagree	5	14	6
Disagree		8	7
No opinion	4	7	3
Agree	2	1	1
Strongly agree	4	1	
Not applicable	2	1	
No response	7	13	3

B17. The Board members were skilled in fact finding.

	C	Total Rsp	Rsv
Strongly disagree	1	3	1
Disagree	2	2	1
No opinion	3	7	9
Agree	3	14	5
Strongly agree	4	4	1
Not applicable	4	3	
No response	7	12	3

B15. I was treated with respect by the Board.

	C	Total Rsp	Rsv
Strongly disagree	1	1	
Disagree		1	
No opinion	1	4	
Agree	7	14	11
Strongly agree	9	14	6
Not applicable			
No response	6	11	3

B18. The Board members were skilled in assessing facts.

	C	Total Rsp	Rsv
Strongly disagree	1	2	1
Disagree	1	2	1
No opinion	5	10	7
Agree	3	14	7
Strongly agree	3	2	1
Not applicable	4	3	1
No response	7	12	3

B16. The opposing side was treated with respect by the Board.

	C	Total Rsp	Rsv
Strongly disagree		1	
Disagree			
No opinion	2	4	
Agree	6	14	11
Strongly agree	8	14	6
Not applicable	2	1	
No response	6	11	3

B19. The Board members were skilled in problem solving.

	C	Total Rsp	Rsv
Strongly disagree	2	1	1
Disagree	1	4	1
No opinion	3	13	8
Agree	5	8	5
Strongly agree	4	4	1
Not applicable	2	3	1
No response	7	12	3

Dispute Resolution Board Questionnaire Results

B20. The Board members were skilled in negotiation/mediation.

	C	Total Rsp	Rsv
Strongly disagree	2	1	1
Disagree	2	5	2
No opinion	4	10	4
Agree	1	11	8
Strongly agree	6	4	1
Not applicable	2	2	1
No response	7	12	3

B23. Assessment was an important part of the Board process.

	C	Total Rsp	Rsv
Strongly disagree	1	8	1
Disagree	1	5	2
No opinion	2	5	6
Agree	6	7	4
Strongly agree	3	4	2
Not applicable	5	4	2
No response	6	12	3

B21. I was able to fully present my side of the story to the Board.

	Emp	Total Rpd	Rsv
Strongly disagree	3	7	
Disagree	2	3	
No opinion		4	4
Agree		9	5
Strongly agree	6	7	5
Not applicable	6	4	3
No response	7	11	3

B24. The Board actively encouraged me to accept a resolution.

	C	Total Rsp	Rsv
Strongly disagree	4	1	
Disagree		2	
No opinion	6	1	2
Agree	3	6	7
Strongly agree	2	15	7
Not applicable	3	8	1
No response	6	12	3

B22. Fact finding was an important part of the Board process.

	C	Total Rsp	Rsv
Strongly disagree	1	10	1
Disagree	1	5	2
No opinion	3	7	7
Agree	3	5	3
Strongly agree	4	5	2
Not applicable	5	1	2
No response	7	12	3

B25. Pressure applied by the Board on me was appropriate.

	C	Total Rsp	Rsv
Strongly disagree	5	8	4
Disagree	2	3	1
No opinion	5	8	6
Agree	2	4	4
Strongly agree		2	1
Not applicable	3	9	1
No response	7	11	3

Dispute Resolution Board Questionnaire Results

C. Satisfaction With The Overall Board Process

C1. I was satisfied with the Board process.

	C	Total Rsp	Rsv
Strongly disagree	2	13	2
Disagree	2	6	3
No opinion	6	10	4
Agree	4	10	6
Strongly agree	7	3	4
Not applicable		2	
No response	3	1	1

C2. The Board process was fair.

	C	Total Rsp	Rsv
Strongly disagree	3	11	1
Disagree	1	8	2
No opinion	6	9	4
Agree	4	8	8
Strongly agree	7	6	4
Not applicable		2	
No response	3	1	1

C3. I was more satisfied with the Board process than I originally expected.

	C	Total Rsp	Rsv
Strongly disagree	4	10	1
Disagree	3	7	1
No opinion	1	9	5
Agree	4	9	6
Strongly agree	9	6	6
Not applicable		2	
No response	3	2	1

C4. I was less satisfied with the Board process than I originally expected.

	C	Total Rsp	Rsv
Strongly disagree	9	6	8
Disagree	1	12	3
No opinion	2	7	4
Agree	3	7	2
Strongly agree	3	8	1
Not applicable	3	3	1
No response	3	2	1

C5. Meetings and conversations I had with the other side during the Board process helped to resolve the complaint.

	C	Total Rsp	Rsv
Strongly disagree	7	14	2
Disagree	4	3	3
No opinion	2	4	1
Agree	1	8	7
Strongly agree	1	4	4
Not applicable	5	11	2
No response	4	1	1

C6. In my opinion, the Board process should be

	C	Total Rsp	Rsv
Continued as is	4	5	2
Continued/change	13	26	14
Discontinued	2	6	1
Other	1	4	1
Not applicable			
No response	4	4	2

Dispute Resolution Board Questionnaire Results

D. Satisfaction With The Outcome

D1. I am satisfied with the outcome of the Board process.

	C	Total Rsp	Rsv
Strongly disagree	5	16	3
Disagree	1	8	3
No opinion	5	5	3
Agree	6	8	5
Strongly agree	3	5	4
Not applicable		2	
No response	4	1	2

D2. The outcome is fair to both sides.

	C	Total Rsp	Rsv
Strongly disagree	5	22	5
Disagree	5	6	2
No opinion	2	7	4
Agree	3	5	5
Strongly agree	6	2	3
Not applicable		2	
No response	3	1	1

D3. The prospect of an adverse mark on my EEO appraisal element affected my decision to settle.

	C	Total Rsp	Rsv
Strongly disagree	14	16	9
Disagree	1	7	2
No opinion	2	2	1
Agree		2	1
Strongly agree	1	6	4
Not applicable	3	11	2
No response	3	1	1

D4. If the complaint was resolved before there was a Board conference, it was because I did not want to appear before the Board.

	C	Total Rsp	Rsv
Strongly disagree	2	12	3
Disagree	1	1	1
No opinion	2	1	
Agree		1	1
Strongly agree		1	
Not applicable	17	27	14
No response	2	2	1

E. Improvement In Work Environment

E1. After the Board process, the relationships in my work environment

	C	Total Rsp	Rsv
Improved	3	8	6
Stayed the same	6	13	8
Worsened	4	9	3
Other/left	7	10	3
Not applicable	1	1	
No response	3	4	

E2. After the Board process, communications with the other side in my work environment.

	C	Total Rsp	Rsv
Improved	2	4	2
Stayed the same	6	12	9
Worsened	5	8	5
Other/left	5	14	3
Not applicable	2	1	
No response	4	6	1

Dispute Resolution Board Questionnaire Results

E3. As a result of the Board process, I expect my work environment to have

	C	Total Rsp	Rsv
Changes/better	7	15	7
No change	2	14	6
Changes/worse	3	7	3
Uncertain future	3	3	2
Not enough time		2	1
Not applicable	3	1	
No response	6	3	1

F2. The other side is complying with the settlement terms.

	C	Total Rsp	Rsv
Strongly disagree	5	4	2
Disagree	3	2	3
No opinion	2	5	3
Agree	2	5	3
Strongly agree	9	10	5
Not applicable	2	14	1
No response	1	5	3

E4. As a result of the Board process, I expect the USDA work environment to have

	C	Total Rsp	Rsv
Changes/better	12	12	8
No change	4	5	2
Changes/worse	2	14	5
Uncertain future		6	2
Not enough time	1	5	3
Not applicable	1	1	
No response	4	2	

F3. I expect the resolution to be fully carried out.

	C	Total Rsp	Rsv
Strongly disagree	1		
Disagree	3		
No opinion	2	3	1
Agree		9	5
Strongly agree	13	25	13
Not applicable	3	5	
No response	2	3	1

F. Durability Of Resolution

F1. I am complying with the settlement terms.

	C	Total Rsp	Rsv
Strongly disagree			
Disagree			
No opinion	2	1	1
Agree	1	4	
Strongly agree	20	29	17
Not applicable	1	10	
No response		1	2

F4. Since the resolution was reached, disputes have re-occurred.

	C	Total Rsp	Rsv
Strongly disagree	7	11	4
Disagree	2	4	
No opinion	3	3	4
Agree	2	5	5
Strongly agree	3	4	3
Not applicable	5	17	2
No response	2	1	2

Dispute Resolution Board Questionnaire Results

F5. I have changed my mind about the resolution since the Board process.

	C	Total Rsp	Rsv
Strongly disagree	5	15	7
Disagree	2	7	3
No opinion	2	3	2
Agree	2	3	1
Strongly agree	6	2	4
Not applicable	5	12	2
No response	2	3	1

F6. The other side has changed its mind about the resolution since the Board process.

	C	Total Rsp	Rsv
Strongly disagree	6	5	3
Disagree		2	1
No opinion	1	6	5
Agree	2	1	1
Strongly agree	2	2	
Not applicable	11	22	7
No response	2	7	3

F7. Signing a settlement agreement during the Board process means that the EEO dispute has been resolved.

	C	Total Rsp	Rsv
Strongly disagree	7	8	4
Disagree		3	2
No opinion	4	2	
Agree	4	6	2
Strongly agree	5	15	11
Not applicable	2	7	
No response	2	4	1

G. EEO Counseling

G1. During the counseling stage, my side attempted to resolve the complaint.

	C	Total Rsp	Rsv
Strongly disagree	2	1	
Disagree		2	
No opinion	5	3	3
Agree	1	7	4
Strongly agree	14	19	9
Not applicable	2	12	4
No response		1	

G2. During the counseling stage, the other side attempted to resolve the complaint.

	C	Total Rsp	Rsv
Strongly disagree	16	17	6
Disagree	2	6	2
No opinion	2	3	7
Agree	1	3	2
Strongly agree		1	
Not applicable	2	13	3
No response	1	2	

G3. During the counseling stage, the EEO counselor attempted to resolve the complaint.

	C	Total Rsp	Rsv
Strongly disagree	6	9	1
Disagree	3	2	2
No opinion	3	5	4
Agree	4	5	5
Strongly agree	5	10	5
Not applicable	2	13	3
No response	1	1	

Dispute Resolution Board Questionnaire Results

G4. Knowing that the complaint would be referred to the Board affected my participation in the counseling stage.

	C	Total Rsp	Rsv
Strongly disagree	9	15	6
Disagree	2	6	1
No opinion	1	1	1
Agree	1	1	2
Strongly agree	2	1	
Not applicable	7	19	10
No response	2	2	

G5. During the counseling stage, I had the opportunity to meet with the other side.

	C	Total Rsp	Rsv
Strongly disagree	14	8	7
Disagree	3	6	4
No opinion	2	2	1
Agree		9	2
Strongly agree	3	5	1
Not applicable	1	14	5
No response	1	1	

G6. The EEO complaint could have been resolved during the counseling stage.

	C	Total Rsp	Rsv
Strongly disagree	4	9	4
Disagree		4	2
No opinion	1	4	2
Agree	3	4	5
Strongly agree	11	11	4
Not applicable	3	11	3
No response	2	2	

H. Employment And Personal Background

H1. Grade level

	C	Total Rsp	Rsv
GS 1-8	9	2	
GS 9-12	8	4	
GS 13-15	5	35	10
SES/GS 16-18		4	10
Wage grade			
Other	2		

H2. Race/National origin

	C	Total Rsp	Rsv
Asian/Pacific	2		1
Black/African	12	5	2
Hispanic	3	2	
Native	1		
White	5	35	16
Other	1	2	1
No response		1	

H3. Gender

	C	Total Rsp	Rsv
Male	6	28	15
Female	18	16	5
No response		1	

Dispute Resolution Board Questionnaire Results

H4. Age

	C	Total Rsp	Rsv
Under 20			
20-29	4		
30-39	3	2	
40-49	11	21	5
50-59	4	16	14
60-69	1	5	1
70 or above			
No response	1	1	

H5. Highest education level attained

	C	Total Rsp	Rsv
High school <			
High school	13	8	2
Bachelor degree	6	17	7
Master's degree	5	14	3
Doctorate degree		5	5
Other		1	2
No response			1

H6. Specify the number of times (including this one) within the last 3 years that you were:

- _____ an employee who filed EEO complaints.
- _____ an official responding to EEO complaints.
- _____ an official resolving EEO complaints.
- _____ a witness in EEO proceedings.

Summaries will be denoted by X1-X2-X3-X4 where X1 is the number of times reported to be an employee who filed EEO complaint; X2 is the number of times reported to be an official responding to EEO complaints; etc.

Employees:

- 15 reporting 1-0-0-0
- 1 reporting 1-0-0-60+
- 3 reporting 2-0-0-0 or 2-0-0-1
- 1 reporting 8-0-0-0
- 4 reporting unknown, unclear, or no response

Responding Officials:

- 25 reporting 0-1-0-0, 1-0-0-0, 0-1-0-1, 0-1-1-0, or 0-2-0-0
- 5 reporting 1-1-0-1, 0-3-0-0, 0-2-2-0, or 0-1-3-0
- 2 reporting 0-2-1-3 or 0-(3+)-0-(3+)
- 3 reporting 0-5-3-0, 0-5-2-1, or 0-7-4-2
- 1 reporting 0-1-(30+)-(20+)
- 4 reporting 0-(10-15)-5-3, 0-0-(10-15)-0, 0-10-2-8, or 0-15-5-0
- 1 reporting 0-(25+)-0-1
- 1 reporting as employee, responding official, and witness.
- 1 reporting as witness.
- 2 reporting no response.

Resolving Officials:

- 7 reporting 0-0-1-0, 0-1-1-0, 0-1-2-0, 0-2-2-0, or 0-0-5-0
- 5 reporting 0-2-1-3, 0-4-4-0, 0-5-2-1, or 0-5-3-0
- 3 reporting 0-0-10-3, 0-0-17-0, or 0-(≥10)-0-0
- 1 reporting 6-10 participations
- 1 reporting 0-(10-15)-5-3
- 1 reporting 0-20-10-0
- 1 reporting 0-0-300-0
- 1 reporting no response

QUESTIONNAIRE METHODOLOGY

Two questionnaires were designed as part of the evaluation effort: one questionnaire for participants in the 48 Board cases, the other for participants in the Comparison Group cases.

The Board questionnaire was developed for the three principal parties who participated in each of the first 48 cases processed by the Boards: the Complainants, the Responding Officials, and the Resolving Officials. The list of these parties was provided by the Dispute Resolution Staff to the Evaluation Team chair. The cases were each assigned a case number, and the identity of the participants was concealed from a team member whose task was to subsequently tabulate the questionnaire results. The draft questionnaire was first reviewed by the entire evaluation team and then tested by one group of employees and another group of managers in mid-February 1994. Based on the test group results, the amount of time needed to complete the non-essay portion of the questionnaire was estimated to be less than 30 minutes. The final questionnaire is divided into nine sections and 70 questions. All but 5 questions contained multiple choices for selection; the remaining 5 questions were essays.

Beginning February 18th, about 150 packages, each containing an introduction letter from the Executive Assistant to the Secretary, the questionnaire and its instructions, and a self-addressed, stamped envelope, were mailed to the participants in the Board pilot. The questionnaires were coded to authenticate the received responses. The first completed questionnaire was received on or about February 28th. The team leader logged in the received questionnaires, which were then passed on to the designated team member for computer entry and processing. Non-essay answers for each questionnaire were entered and processed by using the SAS software package; essay answers were further coded and entered as WordPerfect files. About 25 percent of the received questionnaires were randomly selected and verified by another team member for accuracy. The interim questionnaire results were tabulated and distributed to team members several times as they became available. Responses from officials who served as both Responding and Resolving Officials were counted twice in the final tabulation, once as a Responding Official and once as a Resolving Official.

As of April 1st, 83 qualified questionnaires were received. Six of the 83 responses were from individuals who participated in the pilot as both Responding Official and Resolving Official. Their responses were considered in both categories, bringing the number of responses tabulated to 89. Three responses were disqualified because the individuals either did not participate in the Board process or participated in a different capacity in the Board process. Also, in two of the 48 Board cases, the respondents believed that settlement agreements were reached at such an early stage that the case did not belong to the Board process. These cases were excluded, thereby reducing the number of Board cases to 46. (Note:

these two cases were excluded for purposes of the questionnaire responses only; all 48 cases were considered in connection with the quantitative data.)

The Board questionnaire was sent to 48 Complainants. As previously mentioned, two cases were determined not to be Board cases. Of the remaining 46 Complainants, 24 returned a completed questionnaire. Therefore, the response rate among Complainants was 52.2%.

Of the 77 individuals identified by the Team as Responding Officials and who returned questionnaires, 3 claimed that they did not participate in the Board process. Among the questionnaires received, 39 individuals identified themselves as the Responding Officials, and 6 identified themselves as both Responding and Resolving Officials. The response rate for Responding Officials was therefore 45 out of 74, or 60.8%.

Only 38 Resolving Officials received a questionnaire because some individuals served as a Resolving Official in multiple cases. Two cases were excluded as not a Board case. Thirteen (14) Resolving Officials returned a completed questionnaire. Including the 6 officials who served as both Responding and Resolving Officials, the response rate for Resolving Officials was 20 out of 36, or 55.6%.

A second questionnaire was developed for the two principal parties who participated in one of the 41 cases processed under the traditional 1614 approach: the employees who filed an EEO complaint and the officials identified to respond to the complaint. An attempt was made to obtain questionnaire responses from the participants in the 1614 cases. Questionnaires were sent to the employees who filed the complaints. However, because of difficulty in obtaining the names and addresses of the officials involved in the 1614 cases, questionnaires were not sent to that group. Because the Comparison Group responses were not sufficiently complete to draw definitive conclusions, no tabulations of those responses are contained in this report.