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ADR in the workplace

Transformative and facilitative mediation case studies: workplace conflict

Carolyn M Manning

Case studies were used to examine the efficacy of transformative and facilitative mediation to address workplace conflict. This approach provided participants with an opportunity to reframe their negative perceptions of each other and to shift their interpersonal dynamics into more favourable territory. In the majority of cases, anecdotal feedback suggests that both the participants and their respective employers were satisfied with the outcomes generated via mediation.

Introduction

This article examines the efficacy of a combined transformative and facilitative approach to mediation in resolving workplace disputes. All of the agreements achieved were negotiated between the participants themselves. Third parties such as legal representatives were not involved in this process.

Much of the empirical evidence evaluating the success of mediation has focused on measuring the satisfaction levels of the participants.¹ A study conducted by the Indiana Conflict Resolution Institute in 1999 found that postal workers who participated in mediation were generally more satisfied with the process, the mediator and the outcome when transformative mediation was used by an external mediator, as opposed to when a directive/problem-solving model was used by an internal mediator.²

Transformative mediation has been described by Bush and Folger³ as a means of offering opportunities for personal growth and recognition between parties in conflict. They are critical of the problem-solving or settlement based approach to mediation, which they argue fails to address the origins of conflict between parties. Bush and Folger assert that the key ingredients of transformative mediation are 'empowerment' of the individual and the ability to relate to others beyond oneself, which they describe as 'recognition'.⁴ It can be argued that the transformative component of mediation originates from the parties' willingness to reappraise and reinterpret the intentions or behaviour of the 'other', in a less malevolent manner. This re-evaluation can facilitate an attitudinal shift into positive territory. It can be argued that the settlement-based model of incremental bargaining mitigates against opportunities for this type of outcome, as the focus is on problem solving.

Definition of 'mediation'

Many conventional definitions of mediation do not tend to accommodate the personal growth objectives of transformative mediation, as discussed above by Bush and Folger. For example, mediation has been defined as a process whereby 'participants, together with the assistance of a neutral third party(s) systematically consider alternatives and

reach a consensual settlement that accommodates their needs'.⁵ The transformative model with its emphasis on recognition and achieving shifts in perspectives between the parties is less well served by this definition. Transformative mediation is defined as an approach or intervention that focuses on addressing the underlying source of tension between the parties and improving the relationship.⁶ Facilitative mediation seeks to address the needs and interests of the parties⁷ and the mediator assists with the formulation of an agreement by 'asking questions, validating and normalising their points of view'.⁸

Definition of 'successful mediation outcome'

This study defined a mediated outcome as a written agreement or verbal undertaking concluded as a result of mediation. In this study, with one exception, all agreements were concluded in writing. A successful mediation outcome was defined as an agreement concluded at the end of the mediation process which incorporated either transformative or practical outcomes. Data was also gathered about the durability of the mediated agreements.

A transformative outcome was defined as a commitment by the parties to improve their communication and relationship with each other. An example



of a transformative component incorporated into a mediated agreement was a commitment by the parties to regularly meet in an effort to rebuild their relationship. Not all of the transformative shifts that occurred during mediation were necessarily incorporated into the agreement outcomes. Although the mediator observed these shifts they were not systematically recorded, which was a limitation of this study. For example during one of the mediations there was an acknowledgement of an apology which arose from one participant's recognition that her behaviour had a negative emotional impact on the other party, yet this was not included in the formal agreement.

A practical outcome was defined as a mediated component which was largely functional in nature which did not predominantly focus on shifting the interpersonal interactions between the parties. For example, in one of the cases cited in this study, an agreement was reached whereby a supervisor agreed not to give instructions to staff whilst serving customers (which they reported was both distracting and irritating) and instead, agreed to give this feedback at other times.

Method

This study consisted of 20 cases (some of which involved single and multiple complainants) that were referred to Carolyn Manning Consulting Services for mediation. The mediations all involved interpersonal conflict between individuals within the workplace. The results of this study were based on outcomes documented in the written or verbal agreements that were concluded following mediation and these were assessed for their content in regard to practical or transformative outcomes.

Results

Of the 20 cases, 17 resulted in an agreement formulated at the time of mediation. In the remaining three cases, the mediation was not completed.

Of the 17 agreements, 82% included transformative components, and 88% included practical components. Examples of transformative outcomes in the agreements included the following:

- a commitment to work respectfully with each other;
- communicate effectively with each other and make time to hear each other;
- to build a good relationship and put the past behind them;
- a commitment to rebuild the trust and rapport enjoyed in the past;
- a shared understanding that personal happiness in the workplace was important and both parties agreed to work towards this goal.

There was no systematic follow up process to determine the durability of the mediated agreements, however, limited data was available for 15 of the 17 cases. Feedback was obtained from either the employer or the participants in the mediation. Of the 15 cases, all of the agreements were in place and operational after a minimum of two weeks. One month later, 12 of these agreements were still operational and all but one of these included transformative components in the agreement. In three of the cases where follow up occurred after 12 months, all of the agreements were still in place and all had transformative components in the agreements.

Discussion

In this study, mediation presented participants with an opportunity to shift their perceptions of each other in a way that enhanced their relationships within the workplace. This outcome was achieved in many of the cases but not all. A total 82 per cent of the agreements included transformative components and 70 per cent had a combination of transformative and practical components.

Although it may be desirable for relationships to be 're-examined and realigned',⁹ this form of resolution is not always practicable if the goal of the parties is expressed as a demand for punitive solutions to be delivered via management. Although separating the parties in conflict may be an appealing short term solution for many employers, tensions and differences are likely to flare up again in future contexts such as at meetings, lunch rooms, corridor interactions, functions, etc.

In conclusion, this study has

demonstrated the efficacy of using a combined transformative and facilitative mediation model to resolve workplace conflict. However, the model alone is not necessarily sufficient to generate transformative or facilitative outcomes — rather, it is the interaction and interventions of the mediator and those which occur between the parties themselves within this framework that creates transformative opportunities. ●

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Endnotes

1. For example: J Daniel *Assessment of the Mediation Program of the US District Court for the District of Columbia*, Administrative Conference of the United States, 1995 <www.crinfo.org/action/search-profile.jsp?key=14982&type=print> at 21 June 2006; C Depner, K Cannata, I Ricci 'Client evaluations of mediation services: the impact of case characteristics and mediation service model' (1994) 32(3) *Family and Conciliation Courts Review* 306–325 at <www.crinfo.org/action/search-profile.jsp?key=13978&type=print> at 21 June 2006; L Bingham *The National Redress Evaluation Project Annual Update: Is Mediation Transforming Workplace Conflict at the United States Postal Service?* Unpublished paper, Indiana University, cited in J Rendon and J Dougherty 'Going postal: a new definition and model for employment ADR' (2000) *The Houston Lawyer*, <www.txtmediator.org/toolkit/Going%20Postal.htm> at 15 May 2006.

2. Rendon and Dougherty, above note 1.

3. R Bush and J Folger 'Transformative mediation and third party intervention: ten hallmarks of a

transformative approach to practice
(1996) 13(4) *Mediation Quarterly* 277.

4. Above note 3.

5. R Altamore 'Alternative Dispute
Resolution and People with
Disabilities', (2005) 24(2) *The
Arbitrator and Mediator* 41–52.

6. Boule *Mediation: Principles,
Process and Practice*, Sydney:
Butterworths, 1996 at p 29.

7. Above note 6.

8. Z Zumeta 'Styles of Mediation:
Facilitative, Evaluative and
Transformative Mediation' (1998)

*Journal of the Du Page County Bar
Association*, <[http://www.dbca.org/
brief/sepissue/1998/art20998.htm](http://www.dbca.org/brief/sepissue/1998/art20998.htm)>
at 15 May 2006.

9. Burton (1986) cited in A Tidwell
Conflict Resolved, Great Britain:
Biddles Ltd, 1998 at p 9.