

Kluwer Mediation Blog

Pace of mediation in labor disputes

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A significant motivation for businesses to choose mediation in labor disputes is the hope that mediation works fast and so will provide clarity within a short time frame. This then, is mediation's propagation. Of course, the short time frame is only a correct "advertising-argument" to a certain extent. Mediation can be extremely short. My shortest mediation lasted only 1.5 hours. However, for the speed of a solid mediation, it is necessary to determine what pace the parties each require. There are a number of related general truths I will discuss below, in a few examples drawn from aphorisms.

In many of my mediations concerning problems in cooperative relationships or labor disputes between supervisors, managers and employees, the difference in required pace between the participants is remarkable. Employers or managers often have full schedules and there are many matters more important than the one regarding just this one employee. Managers or employers are often not emotionally involved, but they experience the "dysfunctional employee" problem as a professional problem. They often have a clear idea about the mediation outcome (exit of employee) and they would like to attain that result as quickly as possible. Time is money.

The employee whose job, and, consequently, his/her income is at stake, is personally involved, particularly when relations at work have been in place for a long time. He or she will usually feel a large range of emotions and so will need a lot of time to return from an emotional state to a business-like way of thinking in order to be able to make a rational decision about his/her future. Another aspect that could explain the difference in pace, is the difference in knowledge-levels between employer and employee, which may indicate that the latter needs time to consult an adviser about the intended decisions to test them on feasibility and practicability.

The mediator – in his/her professional role – is even less emotionally involved. This means that he/she will often apply a faster pace than the slowest-paced party. The danger here is that the mediator and the 'fastest' participant both would 'gallop' through the various stages of the mediation only to realize at the end that the slowest-paced participant has not been able to keep up.

The law of the slowest-paced participant

In mediation, the law of the slowest-paced participant is applicable. Only if the slowest-paced participant follows the process of situation-to-interests, and from interests-to-solutions with regard to mutual interest, can a solution be worked out that is acceptable to all, and so will be sustainable and tenable. It is a well-known fact that people in an emotional state are unable to listen to each other. Our brain will not allow us, because when we are highly emotional, we are in our limbic system, which tells us to flee or fight and it prevents us from listening to the other and concentrating on him/her. It is necessary for emotions to subside down, and the parties in conflict

need to be heard first and they need to be aware. The mediator is a role model, which means that first the least emotional party, and then the other party, will open their ears to what the others have to say. The mediator sets an example by listening to both parties, reflecting on emotions and content and then summarizes or re-formulates the content. This creates an eye in the storm of conflict and a bubble in time, creating space and time to actually understand the mutual situation. In many cases, the mediator can do ‘invisible’ work on the difference in pace of both parties, by initially paying much attention, and by requiring the manager to concentrate on the employee’s interests and concerns. Sometimes, the manager is unable to do this because he/she is too engrossed in his/her own concerns and interests with regard to a quick solution, or all the other matters that keep him/her occupied besides mediation. In that case, it is important that the mediator, and, as far as I am concerned, deals with the effects of difference in pace in the caucus, and with a solution to affect speed in the mediation in the short term.

When a difference in pace in caucus is evident, I tend to discuss the course of the mediation with both participants, and what they might need from each other. In cases where difference in pace is evident, the employee usually indicates that he/she thinks the manager has no time, or does not want to take the time to listen, and that he/she thinks the manager only wants to get rid of the employee, and that the employee feels he/she is only a ‘number’.

The employer, on the other hand, complains about the employee’s slowness and about the importance of a fast solution and his/her busy schedule, which keeps him/her from spending hours upon hours in mediation. This requires a differentiated approach.

The more concrete the better

I discuss situations with the employee that he/she wants the manager or employer to notice: “Imagine the employer would listen...what would you like to tell him/her; what are the really important facts he/she should know about your background and interests?” I investigate what is truly important to the employee through continued questioning and rephrasing and I allow him/her to restate in words which will also be heard by the employer or manager.

The principle here is the more concrete the better. After all, interests can only be met if the objectives are completely clear.

I also look into the needs of the employee with regard to letting go of the past and to start working on the future. I also ask questions about individual commitment: “what would it mean to you if you would succeed in finding a solution that would satisfy you both? What would you contribute?” and “how can you shape your own future?” This method of questioning and listening has the intended effect of the employee knowing what he/she wants to reveal, what he/she wants for the future, what the limitations are. This means that the pace of the mediation can be stepped up...on the condition that the employer wants to listen as well.

Slow is fast.

First, I discuss the matter of time pressure with the employer or manager. I usually start the conversation by asking if the manager is under much time pressure and if he/she experiences it that way. Of course, I will accept this as a given. This discussion usually ends with the employer’s wish to have the mediation executed as efficiently and effectively as possible. This brings us to possible methods. The following patterns occur:

- Each individual, employees included, will only be able to listen if emotions have subsided
- If people listen and emotions can be expressed, emotions will subside
- Each reproach hides an aspiration
- Emotions are motives to attain improved conditions
- Subsiding emotions allow space for realism and a sense of reality
- If anyone takes the time to listen and others feel they are being heard, communication and its

efficacy multiply by a factor 5.

If all these matters have been discussed, I ask the employer how he/she wants to continue the conversation. I often ask if he/she could consider the time reserved for mediation as “a bubble in time, an eye in the storm”.

All the time in the world for some attention

The bubble in time indicates the available time to pay full attention to the partner in conversation and to individual interests and not allow the head to occupy “anything that needs to be done outside the mediation”. If there is no effective attention to the other person, effective listening is impossible, which leads nowhere.

This approach has led to spectacular changes in focus, which, in turn, have led to acceleration in mediations that seemed to have stalled due to differences in time perception, and thus in attention span.

Attention saves time, and, consequently, money!


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