

Kluwer Mediation Blog

Can We Call a Truce? Ten Tips for Negotiating Workplace Conflicts

Jeffrey Krivis (First Mediation Corporation) · Friday, May 16th, 2014

Whether two employees are fighting or a disgruntled client is on the verge of leaving, you—yes, you—can step in and help solve the problem. Here are some tricks of the trade.

Conflict happens. It happens in all areas of business. When your employees spend 40 plus hours together each week, they are bound to run into disagreements and arguments that can hurt not only their productivity but the productivity of their fellow co-workers. And if such issues are not settled, bad things can happen. Good people quit. Profitable relationships dissolve. Great companies go under. Clearly, too much unresolved conflict is hazardous to the health of your organization.

How do you deal with conflicts between your employees? Do you pray that the situation works itself out without any lasting consequences? Or do you come in with an iron fist doing what you think is right, but not paying attention to the needs of your disagreeing employees? Actually, both approaches are wrong. In a world where relationships matter more than ever, mediation skills matter more than ever. So whether you manage employees or clients or both, it's critical to learn the art of bringing harmony out of conflict.

I serve corporations and individuals from all walks of life, helping them settle disputes before they end up in the courtroom. The skills I use to mediate legal disputes can easily be used to defuse workplace conflicts. Follow my tips and you can help your employees stop beating their metaphorical heads against metaphorical brick walls and reach creative, mutually beneficial solutions.

First things first: what, exactly, is negotiation? It's reframing a situation in order to get people to shift their positions in a way that makes a resolution possible. My own formula for negotiation is as follows:

Instinct + Information = Intuition

Intuition + Knowledge = Improvisation

In short, negotiation is part art and part science. You needn't become a certified mediator in order to settle a dispute in the workplace (or at home for that matter). You just need to understand some basics about human behaviour, practice the fine art of paying attention, and offer yourself up as a

neutral party who just wants to resolve the problem.

(1) Understand the basic structure of a negotiation. The easiest guideline for structuring a session is to remember that there are five stages: convening, opening, communication, negotiation, and closure. In real life, these stages don't always follow in precise order; but understanding this structure give you a workable default when you are considering how to plan the negotiation. Look below for more details on each stage:

- *Convening Stage:* During this stage determine whether it is a good idea to talk to all of the parties during a joint meeting or whether it is best to talk to the parties separately before bringing them together.
- *Opening Stage:* This stage is often done in a joint meeting with all parties present. The purpose is to set forth each side's statement of the case. Often you will try to create a safe environment for the exchange of dialogue by coaching the parties beforehand as to what would be the most effective use of their time in joint session.
- *Communication Stage:* This stage allows the parties to express whatever legal or personal issues might affect the negotiation.
- *Negotiation Stage:* This stage is the heart and soul of the mediation. Now you create an atmosphere in which you and the parties can be flexible and innovative.
- *Closure Stage:* The final stage of mediation. At this point, the parties are coming in for a landing: everyone is aware of all the relevant information, and you work to create an outcome both sides can live with.

(2) Stagger the presentations to shift the balance of power and keep the parties off balance. Staggering the presentation creates a situation in which the balance of power quickly shifts from one side to another. This is contrary to traditional mediation theory, which generally holds that in order to create balance and procedural fairness, each side should have an opportunity to make a statement to each other at the same time. But when it's clear that this traditional approach will result only in each side's shooting bullets at each other, it makes sense to stagger the presentations so that the focus is on one side only. Then, after negotiations begin, you can redirect the focus to the other side.

(3) Check the reliability of your information. It's always a good idea to double-check that the information you've received about a conflict is true. A great way to do this is to break perceptions into component parts: reports, inferences, and judgments.

- *Reports:* The basic element of exchanging information is to report what we have seen, heard, or felt.
- *Inference:* A statement of the unknown based on the known.
- *Judgments:* Conclusions that evaluate previously observed facts and either approve or disapprove of something.

When someone reports a new bit of information, asking how the person would demonstrate the fact in a court of law can often provide surprising results. Other times, people offer inferences. Listening for inferences from either side allows you at least to mentally check the reliability of the statement and direct the parties to a better understanding of the evidence. When parties use judgment-laden words like "fraud" and "guilty" to describe their opponent, it is a good sign that you should explore the parties' underlying factual support. I once mediated a sexual harassment case in which the accused party claimed the relationship was consensual. It turned out that he had

the evidence to support his side of the story. When this information was shared with everyone involved, it was easier to bring the negotiation to a close.

(4) Appeal to the parties on an emotional level to help them understand each other's position.

When you appeal to emotions, you are seeking to get the parties to acknowledge some sense of responsibility for their actions. By the time your employees bring their problem to you, they will probably be fairly well entrenched in their beliefs about who's right and who's wrong. An emotional appeal forces each party to consider how the other might feel and what that person might have gone through as a result of the conduct alleged. Some people, in fact, operate through "emotional" intelligence than through reasoned logic. For them, connecting emotionally with the situation helps them better understand the other party.

A great example of this is a case I mediated that involved Dan, a systems analyst who had been downsized after 10 years with his company, was suing his former employer for wrongful termination. When he was finally allowed to tell his story in mediation, everyone was stunned by the raw emotion that came pouring out. Dan had lost his parents as a child and had always spent Thanksgiving and Christmas with co-workers. He saw the company as family—literally—and thus felt hurt and betrayed by the lay-off. As it turned out, the company was ultimately able to re-employ Dan as a consultant. He got to start his own business and his old company got to continue benefiting from his services. But if Dan hadn't been allowed to express the emotional connection he felt with the company, and tell it in front of his old boss, the answer would never have presented itself.

(5) Think creatively about ways people can cooperate rather than clash. In every negotiation, there is a tension between the desire to compete and the desire to cooperate. Be on the lookout for signals that support a cooperative environment. That's where the most creative solutions are born. These kinds of "joint gains" are often born of conflict.

Take the case I recently mediated that involved Golden State Grocers and its objection to being billed for a three-week "training cruise" taken by its employees of its computer-consulting firm Apex. Golden State felt ripped off by being charged for what looked like a vacation; Apex insisted that its employees worked intensively on Golden State's account during the cruise—and besides, "this is how it's done in consulting." The solution I helped them find involved forming a whole new company, Golden Apex Seminars, which offered training services to other retailers. Instead of spending my time divvying up the consulting bill, I spent it building up the relationship between the parties. Suddenly, the money dispute that had started the mediation became secondary to the created value of a new, mutually beneficial business venture.

(6) Deliver bad news with pacing and patience. Most of us will actively resist accepting new or difficult information that is unceremoniously dropped on our heads, and parties in a conflict are no different. When you have bad news to deliver, parcel it out slowly to give them time to absorb it. This is all about timing. When a child asks a parent for a raise in allowance, for example, she knows instinctively that the best time to ask is not when her parents are worried or distracted but when things are comfortable in the house. The "slow drip" is one way to pace yourself, softening up the parties and ensuring they are receptive before you give them the bad news.

(7) Use the "one-step" approach—prepare a proposed agreement based on the ideas of all the parties. This approach allows for circulation of a draft agreement or memorandum that is subject to comments and criticism by both sides in a safe way. Neither side is being forced to accept the

agreement, but you have prepared it with the knowledge that the parties will most likely accept it. You then present it in such a way that the parties are asked to accept or reject the proposed agreement as outlined in the draft.

(8) Sweeten the agreement with an apology, an acknowledgement of misunderstanding or some other symbolic gesture. Always tap into your employee's primary reason for presenting his conflict to you and try to couple any agreement with a nonmaterial statement, such as an apology or a gesture of appreciation. It will help achieve a more durable agreement.

Consider the case I mediated between Margaret (a waitress who was fired after nearly 40 years of service with the same restaurant) and Sheryl and Ted (the restaurant owner and manager), both of whom she was planning to sue for age discrimination. Margaret had been very emotional throughout the mediation and it took hearing her story before I could realize it would take more than money for her to be satisfied. She said she loved the restaurant and the customers and couldn't understand why Sheryl and Ted hadn't come to her directly to tell her why they were letting her go. Sheryl and Ted decided to show how much they truly appreciated Margaret's years of service by naming two awards in her honour, having a celebratory party tribute and giving her a lifetime of free meals at the restaurant and a substantial sum of money. The awards provided Margaret with a connection to the restaurant that would last even after she died. That made her feel important and valued, which is all she had really wanted from day one.

(9) Trust your intuition and see where it takes you. Intuition can be a powerful mediation tool. It is especially useful in situations where you're dealing with preconceived notions and need to improvise. Remember effective improvisation is a product of skill (education plus experience) and intuition. If you trust your intuition that one of the disputants reached a conclusion based on inadequate or inaccurate information, you can follow that intuition and seek to verify the facts. You can then use these facts to turn a perception around and open the conversation to a discussion of a principled agreement for both sides.

(10) Finally, realize that every conflict can't be solved. What if you've tried and tried to help two warring factions find a fair solution and you just can't? It may sound odd coming from a mediator, but some conflicts just aren't winnable. Not every negotiation is going to have a win-win outcome. Not everyone can live together in harmony. There are times you just have to accept that both parties are going to leave the table equally unhappy. Isolate the participants if possible and just move on.

Get comfortable with the idea that when it comes to mediating your employees' problems there are no hard and fast rules. Negotiation is all about going with the flow and seizing opportunities as they arise. You can familiarize yourself with the tools—indeed you *must*—but there's no substitute for jumping right in.

Improvisational negotiation is kind of like jazz. You have to know your chords, your scales, your patterns, your licks. But ultimately, these are building blocks, not formulas. The chords you use depend on the chords you hear from the other participants, and vice versa. It's a conversation. It's organic. There are no limits on what can come out of mediation, and that's what makes it such a powerful skill.

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