
Kluwer Mediation Blog

Corporate Culture And Business Mediation

Paul Eric Mason (International Counsel, Arbitrator and Mediator) · Tuesday, September 4th, 2018

Culture Includes Corporate Culture in Business Mediations

Many articles have been written about cross-cultural negotiation and the role of culture of participants in international mediations. However, relatively little has been said about the role of corporate culture.

Those of us who have worked in small and large enterprises know first-hand what this means. Practically every company, whether a small family owned shop or a huge multinational, has its own set of written or unwritten values, objectives and modes of operation. Sometimes these are formalized with mission statements and the like on company websites and internal and external communications, while in other companies these represent unbroken family values shared among relatives for generations.

Even before mediation of a business dispute is contemplated, a gateway question will be whether the business/corporate cultures of the parties recognize that a mediated approach to disputes is legitimate and fits with their company's cultural values. Some companies will want to bend over backwards to please their customers, suppliers and business partners, while others are competitive to the hilt and oriented to litigate sharply. In any case, a good mediator will try to find out as soon as possible by going behind and beyond corporate optics and slogans.

Once mediation is accepted by the parties, the corporate culture question shifts to how the cultures and their interplay will affect the way the mediation is conducted. For example, as former corporate counsel, International Legal & Government Affairs Director for Latin America, Russia and Canada, I have worked for both dog companies and cat companies. An internal business client described these as follows: in a dog company, when the CEO makes a pronouncement, everyone from the Vice-Presidents on down tries to follow it to the letter. In a cat company, on the other hand, when the CEO makes a pronouncement, every upper and middle manager tends to interpret and implement it in the way he or she believes most appropriate. Now try to imagine mediating a dispute between dog and cat companies, each with several negotiating team members. A co-mediator or assistant could be helpful in this situation.

Some companies, especially large ones with separated, distinct operational functions, require the various affected functions to "buy into" a given process or arrangement. This presents a challenge with cat companies and those with so-called "matrix-management" styles whereby practically everyone reports to two superiors – one on a geographical axis and the other on their functional

line. This is decision-making squared and cubed, with endemic delays and internal disagreements. It also complicates mediating internal employee-management and other disputes within one of these companies. However, with businesses now moving at an ever-quicken pace to keep pace with technology, the morose matrix management style may well have gone the way of the dodo bird. It did help finish off one of the companies I used to work for.

Many smaller family-run companies only require the ok of the owners. Latin America can present a challenge in this regard due to presence of some large Latin American family-owned companies, including Latin owned multinationals. Some may still run on the owner's say-so, while others the disputes of which I have mediated have adopted U.S. multinational standards and decision processes. Some of these standards and processes were inherited via M & As where Latin American entities bought U.S. or European multinationals, an interesting reverse twist to what had been the trend before.

Certain companies, notably those which are publicly traded and so may feel more exposed, have what I would call an "HR attitude" which spills over into the business side that "if we do this for you, we'll have to do the same for everybody". The larger the company, the more complicated this attitude can become. This of course runs counter to several basic principles of mediation, such as confidentiality and individualized mutually crafted resolutions in place of standardized centrally devised ones. It came up in one of my recent mediations in the context of a higher selling price for its produce sought by a family-owned seller. The multinational buyer did not feel it could grant this concession without having to give it to all sellers.

And who makes the decisions in each side's negotiating team? While negotiating a multi-million dollar IT deal over 20 years ago for a large client with a Japanese multinational on the other side, it was the oldest, quietest gentleman sitting in the far rear of the room who had the most influence, possibly due to his age and experience which are highly valued in Japanese culture. On the other hand, when serving as a mediator between Japanese and U.S. companies earlier this year, I saw things had indeed changed in the internet-driven world. The young Japanese executive wanted to take our picture and post it on Facebook, and played an extremely active verbal role in the negotiations. National cultural stereotypes looked shattered.

These are but a few examples of how business and corporate culture can affect mediation – first, whether mediation is accepted at all by the parties, and if so, how it may play out.

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