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Arbitration, Neutral Adjudication, Conciliation, Mediation: What's in a Word? Designing and Naming ADR Processes – The Example of an Industrial Relations Dispute in Germany

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Mediation and conflict management often require the design of complex processes that might involve different interventions with different parties or stakeholders over considerable time. Consider mediation in the planning stages of public projects or mediation and facilitation involving communities involved in claims for compensation against governments or companies. Or consider mediation inside organisations, in which a large number of people from different departments and levels of hierarchy may be involved. In these kinds of scenarios, mediation is a process that takes time, and may need a number of different constellations of joint and private meetings with different stakeholders, with the third-party neutrals sometimes having different mandates concerning their authority to facilitate, or consult and make recommendations.

I was surprised recently when I heard that a large ongoing collective bargaining dispute in Germany has been referred to a multi-part resolution process with various neutral third parties working on different and independent processes.

The biggest German airline, Lufthansa, has for a long time been in dispute with the Independent Flight Attendant Organisation (in German Unabhängige Flugbegleiter Organisation or UFO) over pay and working conditions. The dispute has escalated: the chair of UFO was dismissed from his job by Lufthansa and the airline contested the organisation's authority to act as a trade union representing flight attendants at the airline, while UFO organized several strikes last year that cost the airline millions. A board of independent conciliators was established, consisting (as is often the case) of well-known public figures (an ex-premier of a German federal state and the ex-CEO of the German labour agency), but the conciliation broke down with no settlement and further industrial action was threatened.

The dispute has now been put on hold to allow a new three-part resolution process. The conciliation will be resumed, with the same two conciliators, and will focus on the elements of the dispute relating to pay and contractual terms. A second third-party neutral, a former judge, has been appointed to address all other legal issues that may not relate to pay tariffs, though it is not clear on the basis of what has been reported how much actual decision-making power he has as opposed to the authority to recommend. A third process is a mediation between Lufthansa and UFO with an experienced mediator, aiming to discuss non-material issues between the parties, and to ensure that communication improves for the future – this sounds like an exercise in the establishment of trust and rebuilding relationships. In order for this process to get started, cabin

attendants have received a one-off payment and the trade union has agreed to suspend all strike action for the duration.

This is a remarkable and almost certainly unprecedented attempt to resolve a long-standing and bitter industrial relations dispute using a selection of DR mechanisms. Not being privy to any of the talks, I cannot say how this came about in the tough negotiations between the two parties. The fact that Lufthansa has a new head of personnel has been reported as influential in this context.

This story is not only instructive as a lesson in how to design a DR process, but also in that it has resulted in these different ADR options being widely reported in the German press, including on national television news. That ADR is featured in the media is a good thing, no doubt. But the reporting confirms that too little is known about the variety of processes ADR can offer and what they might entail in detail.

I wonder how many readers and viewers understand the terms that were used in German to name the three processes (conciliation, neutral evaluation or adjudication, mediation in English) and the differences in approach they stand for. It is to be expected that the Lufthansa and UFO negotiators have agreed and laid out clear authority and scope for each of the three processes, and yet their use of terms is also not entirely coherent, at least to this outside observer.

Each party has published information about this, and they have used different terms than I have here, particularly in their information in English. They have been calling the conciliation process on tariffs arbitration, which is not a translation of the German word *Schlichtung* (conciliation). I am not convinced that this is the right word in this process. The negotiated result of the process will be put to a trade union members' vote. The conciliators will not have decision-making powers. And yet, the word arbitration has been used in international reporting on this process too, almost certainly as a result of the parties themselves using it.

So what do we learn from this? That ADR has a variety of processes to offer and that they can be cleverly combined in one and the same dispute. And that when different processes are used, given that we do not always have a common, widely understood and firmly established vocabulary for them, we will always need to work on the detail of what they are and are not authorised to do. Just as all mediators should ensure they do with potential clients.

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