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Dukes of Hazard: **mediators & workplace conflict**

by *Celène Adams*

Once upon a time there was a small, privately owned company whose founder hired his son, a young MBA graduate to preside over the business and its staff, including the vice-president – a fifty-something veteran who was a repository of knowledge unduplicated anywhere else in the company.

But it wasn't long before the age-old battle between youth and experience began to take its toll. The sage vice-president chafed under the guidance of the unseasoned new command and, after several shouting matches, the company founder decided he must choose between his son and his long-time colleague. But since he didn't want to lose his son and couldn't afford to lose his colleague, he didn't know what to do.

This [true story] is a dramatic but fairly typical example of the kind of conflict you see in the workplace, says Dan Dana, president of the U.S.-based Mediation Training Institute International (www.mediationworks.com) and author of *Conflict Mediation for Everyday Worklife* (McGraw-Hill, 2001).

A lot of time and energy go into resolving conflicts in the workplace. "Unmanaged employee conflict is responsible for



65% of work performance problems; up to 42% of employees' time is spent engaging in or attempting to resolve conflict and many managers spend almost a third of their time dealing with conflict," writes Dana.

Costs of conflict

Further, workplace conflict is expensive. "The average cost of an harassment complaint to an employer in the U.S. is \$400,000 when you factor in legal costs, productivity costs and lost opportunity costs," says Anne M. Wallace, Q.C., a partner in Saskatoon, Saskatchewan-based Wallace Meschishnick Clackson Zawada (www.wmcz.com). "Many businesses measure the cost of conflict by looking at their legal costs for dealing with grievances, harassment and other complaints. [But] the more significant costs ... include the time and energy of the people involved in the conflict, the time and energy of the people trying to resolve the conflict and the impact on employee productivity in the entire workplace when conflict is occurring," Wallace says.

Loss of employees is another cost of conflict in the workplace. "In voluntary terminations, in about 60% of the cases,

when the exit interview is done, it's reported that a chronic unresolved conflict was a significant factor in the decision to leave the company," Dana says.

An ounce of prevention...

The good news is that in companies that use informal mediation (conversational airing of disputes) as a preliminary step before litigious complaint, 80 - 90% of the conflicts are resolved without the need for third-party intervention. Conflict mediation specialists can train staff to use informal mediation techniques to resolve their own disputes or can intervene to facilitate mediation themselves where necessary.

In Canada, there are no governing bodies to regulate what credentials qualify mediation specialists to do this. However, most associations, such as the ADR Institute of Canada (www.amic.org) or the Mediation Training Institute of Canada (www.mediationworks.com) have basic requirements of a 30 - 40 hour course and some experience as criteria for membership. Associations may also have various degrees of membership, such as practicing, associate, retired, student or full member.

Conflict resolution techniques

How do you train employees to settle their own disputes? There are several techniques, says Bernard Morrow, an

adjudicator with the Information and Privacy Commission of Ontario and a private provider of ADR consulting and mediation services (mediate@interlog.com). For example, open-ended questions that elicit the parties' interests - their hopes, expectations, desires and fears - diffuse potentially volatile exchanges and enable constructive communication. Paraphrasing and reframing are two other techniques to isolate the core issues at the root of the dispute, ensure both parties stay focused on them and put them in a perspective that addresses the parties' issues instead of their emotions.

"Paraphrasing can be used to confirm for the speaker that the listener has heard what the speaker has said. Reframing then moves the focus of the discussion to exploring, in a positive way, the speaker's underlying interests and how they can be met. For example, someone might make a statement like: 'You don't listen to me anyway, so why should I give my opinion.' A paraphrase might be: 'If I hear you correctly, you feel that when you have something to say that it's not being heard.' The reframe could then be: 'When you have something to say you would like your views to be respected, considered and taken seriously.' The reframe has allowed the focus to move from a negative mindset to a positive and productive exploration of the speaker's hidden interests: respect and consideration of their views," says Morrow.

Once the parties understand that the core issue is not personal but is, rather, a communications breakdown, they can go on to address the actual problem.

Training employees in these techniques is very behaviourally prescriptive and concrete, Dana says. "We almost have a script....We give them phrasing and we have some role plays so people can practice." The first step is the approach. One employee approaches the other with an "I" statement - "I'd like to talk to you about ...". That's followed with a request and an acknowledgement of the other party's interests - "Do you think that's a good idea? I think it might save you time ...". If this is met with an objection, a simple selling technique can be used: "First you legitimize the objection by responding to it and then you describe a potential outcome and how that might benefit the other party."

Create a mediation environment

Self-mediation involves a four-step process, Dana says. The first step is finding a time to talk. You have a conversation about having a conversation. The purpose is simply to come to an agreement to meet. Step two is to ensure that the context supports the dialogue - there won't be telephone interruptions, there will be sufficient time (an hour-and-a-half is recommended) etc. The third step is to use the primary tasks outlined above in that setting. The objective is to come to a breakthrough, or a mutual attitude shift from me-against-you to us-against-the-problem. Once that happens, step four is to make a deal.

For this deal to last, it has to have three elements. It must be balanced; there must be a benefit for each party and it must also be behaviourally specific. For example, you wouldn't want to make a vague agreement to "get along better in future". Instead, be clear about who will do what, when and how. Finally, the agreement must be written down. This is not a legally binding document but simply captures the good faith of both parties and provides a record they can return to in future if necessary, Dana says.

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What questions should organizations ask themselves about their conflict resolution processes?

- Do we have a conflict resolution process?
- Does everyone in the workplace know about it?
- Is everyone in the workplace trained in conflict resolution?
- Does everyone feel comfortable using the process?
- Is the process consistently applied?
- Does everyone feel that management is solidly behind the process?
- Does the process resolve the true conflict or merely the presenting problem?
- Does the process seek to find blame as its primary goal?
- Is the process confidential?
- Does the process take inherent power imbalances between managers and employees into account?
- Does the process help our employees to prevent future conflicts?
- Are new employees oriented to the conflict resolution process?
- Does the process/program cover all conflicts including harassment?

[Contributed by Anne Wallace and by Bernard Morrow and Lauren M. Bernardi, co-authors of "Resolving Workplace Disputes," Canadian Manager, Spring 1999]

Types of conflict

Although conflict in the workplace is usually associated with sexual harassment and/or racial or gender discrimination, these are only the most obvious types of conflict.

In fact, the vast majority of workplace conflict is not related to either harassment or discrimination but occurs for other reasons. "One major example of this is the bully...someone who causes conflict because they are a bully. Other examples include things like concerns over fairness of work assignments, basic different styles and approaches to work, differing personality types, fears about job security, management/union disputes, and so forth. Harassment and discrimination are the tip of the iceberg. The reason we have seen so much focus on these is that these are the areas where human rights legislation has stepped in to protect workers. For a lot of workplace conflict, unless there is a conflict resolution policy in place, there is nowhere for the employee to go for help," says Wallace.

Mistakes

Even if an organization does have a conflict resolution policy in place, if it's merely a complaint mechanism rather than a conflict resolution program, it will not necessarily resolve the problem. Many organizations make the mistake of providing third-party investigation into an employee complaint, followed by sanctions for one or the other of the employees' involved. But this doesn't address the underlying problems that may have caused the conflict, Wallace says.

There are various approaches to dealing with workplace conflicts and any conflict resolution policy should have two

components: it should take into account both the structure of a conflict resolution system and its design.

Develop and use internal systems

For example, the structure of the policy's grievance system could specify that complaints be informally aired with an employee relations specialist before filing a formal grievance. Or, it could stipulate either that managers unilaterally resolve conflicts or that employees resolve conflicts amongst themselves. And it could indicate when an HR manager should mediate or in what circumstances a lawyer is to be called in. The design of the policy, on the other hand, should recognize that the best way to resolve conflict depends on the nature of the conflict itself and should outline some techniques for use in various situations.

An ideal conflict resolution system will discourage third-party mediation unless necessary, encouraging employees to work out differences themselves but supporting them with a hierarchical structure they can turn to if they encounter difficulties. This structure could include a neutral internal or external facilitator and/or an investigation into the situation before attempting resolution. If the employer has potential legal liability, it could involve consulting legal counsel.

Core competencies

There are core competencies that are common to all successful conflict resolution processes, whether they are resolved by the individuals involved or mediated by a third party.

There are three primary tasks parties must accomplish, says Dana. The first is the ability to stay engaged in dialogue

about the problem. "Human nature prompts us to try to come up with solutions...to offer our own ideas about how to solve the problem [or] ...to quit too soon.... The second task is to listen for and be able to hear conciliatory gestures, which are sometimes very subtle.... [For example], somebody says, in the heat of argument, 'You know I could deal with what you're asking me to do but I will not do that if you keep treating me like a second-class citizen.... So if you hear that whole statement, the average person...will react defensively to the second part....; whereas the mediator will notice the first part.'" The mediator then brings the attention back to the conciliatory gestures that are hidden within argumentative dialogue. The third primary task is not to do anything except the first two tasks – in other words, stay focussed on specific issues and don't try to analyze what motivates the parties' behaviour.

But is it realistic to expect employees to settle their own conflicts? If a company is investing in a conflict resolution system it is realistic to expect employees to commit to it. You can make it a performance issue, Dana says. But if there's no managerial support, you can't expect employees to take the initiative.

Managerial support is crucial to making employees feel safe enough to use any conflict resolution process. Indeed, it's what made the difference for our two combative executives. When the company's founder called in a professional mediator, the situation turned into a win-win proposition for all. Once each party was given the opportunity to express his views, the tension broke down and both gained an appreciation for the other's strengths.