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Mediating Faculty and Staff Disputes:

The Evolution of the University Mediation Program of the University of Minnesota

by

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Abstract

University Mediation Program (UMP) began in 1987 with 13 mediators. Mediations are provided to faculty and staff of the University of Minnesota, at no cost to the parties. The Single Blind system of mediation was introduced using faculty and staff as mediators for nearly 200 mediations since its inception.

In The Beginning

The Conflict and Change Center began in 1986 as one of several basic research centers funded by the John and Flora Hewlett Foundation with the purpose of taking a unique look at the process of social disputing. This rare opportunity gave way to practical exercises in line with traditional academic models, e.g. targeted seminars, speaker series, local and regional conferences, the letting of research grants, and the occasional paper. Our purpose was to fuse theory and practice. Initially we focused on theory.

The Twin Cities of Minneapolis and St. Paul had the good fortune of being a leader in the alternative dispute resolution field. Community Mediation Boards, court annexed mediation, and legislated Farm/Credit mediation were well established. The Conflict and Change Center had been created to bring the robust resources of the University of Minnesota, with its rich research and outreach history, as a full partner into this larger environment. The University of Minnesota, the largest employer in the State other than the State itself, was to be our initial crucible to test how theory

may fuse with practice.

In 1989, a paper was given at the National Conference for Peace and Conflict Resolution in Montreal, Canada, by Thomas E. Wagner, then Senior Vice Provost of the University of Cincinnati (Wagner, 1989). In this paper he described the value of various models of mediation extant in University systems at that time which approached disputing among faculty. This was unique, because up to that point the main discussion of mediation within the context of Higher Education was to relegate mediation as a disputing tool for students and those who administered their social welfare on campuses.

As noted by Wagner, mediation available or proposed for faculty was positioned as the alternative role either in parallel or interactively with the well-established formal grievance systems. The result was the process of "grievance-mediation" which, while allowing for needed flexibility in process, attached mediation as a subordinate cooperative tool relative to the mainstream competitive confrontation of grieving.

In the late 80's the Conflict and Change Center set out consciously to alter the conflict culture of our university. The goal was strategic in that we developed a basic theory surrounding the process of altering a culture from inside. Yet, in retrospect, the actions (trainings, policies, services, interventions) were more in response to the needs of the University that were presented to us rather than a set of pro-active, leading devices meant to induce the University to follow a set path. The old saying, "When the student is ready, the teacher will appear" applies in this regard, understanding that our role was both.

There Was Theory

From the time of the great library in Alexandria, Egypt, peoples have been creating institutions that would capture knowledge, hold it, and guard its integrity against the vagaries of contemporary fashion. Institutions of Higher Education are not known for their adaptability to change. The internal structures are created precisely to keep change measured against the criterion

of whether the change allows the institution to either withstand change or create knowledge without losing its soul. The community of scholars acts as most communities, their acceptance of change from within allows for controlled change. This is preferred over externally induced change.

Our approach was to induce the change from within. The Model for introducing mediation into the core of the University was based on the following principles and assumptions:

1) Institutionalization of change systems comes from altering the perception, structure and use of power in an organization;
2) Faculty are the core power source in academe, followed by academically linked administrators;
3) From our own testing as well as experience, the primary strategy for disputing in the University is to avoid conflicts and to accommodate extreme demands of faculty and staff;
4) A University is an interposing of two primary organizational cultures - one bureaucratic and the other collegial. Therefore, both sub-cultures must be recognized and attended to in order to affect organizational change;
5) Borrowing from mediating principles, to mediate change there is a need to create a culturally neutral status as regards both cultures;
6) While bureaucracies use quasi-litigious competitively based dispute systems such as grievance procedures and supervisory arbitration, collegial cultures create disputing systems based primarily on loose affiliations where cooperative models are desired to maintain the "community of scholars";
7) Approached organizational changes that are top-down favor bureaucratic systems. Bottom-up approaches favor collegial dynamics. We will attempt an "infection" model of organizational change by infecting individuals throughout both sub-cultures, interactively and at all levels.

Then Practice

In order to initiate our program, a series of monthly seminars on Negotiating Skills in Higher Education were conducted for anyone in the University who had supervisory responsibilities. This allowed all staff and faculty from the rank of senior secretary and above to attend. Within three years nearly 400 University members attended, representing 114 departments and all five regional campuses, including a member of the Board of Regents.

A significant part of the seminar was the foundation work for cooperative disputing and its benefits as compared to competitive systems. Approximately 28% of the participants were faculty. Mediation was highlighted and UMP described with the intent of teaching a broad scope of community members how to access the mediation process. Both unassisted and assisted negotiation role-plays were utilized.

The dual culture model of the University was always a lively point given that each seminar had a broad cross section of both cultures. We posed our goal as the design and implementation of "authentic arenas" in which disputes among and between faculty and staff could be resolved. The question raised was always, authentic to whom? Grievance systems were seen as especially alien to the collegial culture. This model was seen as a weapon that the bureaucratic culture would use to shape up those who resided in the collegial culture. Authentic to us meant an arena for disputing which was eligible for all faculty and staff by virtue of its ease of accessibility, low cost to the institution, and reliance on interest-based disputing which minimized the coercive affect of individual or organizational power. The concept of the authentic arena for disputing was an attempt at shifting the culture towards the authentic internal rhythms of the community.

And Mediators

A memorandum was sent to the Deans, Directors, and Department Heads of the University, asking if they could identify a situation over the past year where, if a mediation system existed, they would have requested its use. They

were also asked to nominate an individual in their organization that they felt would make a good mediator. The usual return for such feedback requests was expected to be in the range of 10- 15%. One hundred and ten of nearly three hundred Deans, Directors and Department Heads responded. A brief advertisement was put in the daily university school paper announcing that training was being proposed for "candidates" who wished to mediate within the University community.

It was critical for those who wished to be trained as mediators to recognize that their eligibility to mediate demanded that they go through the training, be reviewed by external mediators, and observe mediations. In past training which I have given, the percentage of candidates who were judged ready to mediate ranged from 40 to 70%. There was no reason to assume that university staff and faculty would be any different. The designator of candidate was purposely used to have them understand that their competency had to be tested. This was very helpful at that point when, as expected, several faculty and staff were not allowed to mediate. There was no correlation between academic or bureaucratic rank and the acceptance or declination as a mediator.

The Mediator Training

Sixteen mediator candidates were selected for training after individual interviews. The initial forty hours of training took place over two months. The training was given during the normal work hours. A significant part of the training was aimed at having the candidates understand the root causes of conflict within this bi-cultural organization. All mediators had to be prepared to deal with disputes which were rooted within one of the cultures or which were complex intersections of the two. The formal, traditional mediation training and role-plays were geared to address these possibilities. The final evaluation was a day-long process where each candidate had to mediate two cases using mediators from outside the University as role players. Therefore, four external mediators evaluated each candidate. These external

mediators played a critical role in evaluating, quantitatively and qualitatively, the competency or each candidate. The final decision as to who would pass to mediator status was made by the trainer, i.e. this author, informed by the evaluations of the external reviewers.

Mediating was presented as a privilege within the University Community. No payment was given and no public recognition was provided. UMP mediators had to act as independent resources carrying only the tools of the mediation process. At the close of the training, a wine and cheese reception was held attended by the president of the University. This was the only official recognition given or expected by the mediator candidates.

As projected, eight of the candidates were ready to mediate; four were well prepared but not yet ready; and four were judged as needing significant improvement. The highest rated candidate was an administrator in Health Services. The second highest was a secretary in the Physical Education Department. Of the eight top rated candidates, three had faculty rank.

The Single-Blind Mediation Model

The model by which the mediation system operates is referred to as the "Single-Blind Model." UMP mediators are trained to carry out a single mediator process. Another mediator or candidate is assigned to the mediation but only as an observer, there to provide needed feedback and debriefing after the mediation. The single mediator is used as well in multi-party mediations. Therefore, much of the training prepared the candidates for adjusting these skills to large groups. This has been of particular value in retrospect, for the average number of parties per mediation has risen over the course of the past ten years to over three parties per mediation.

Mediators enter the mediation with only the names of the parties to assure there is no conflict of interest due to prior interactions. The author, as coordinator of the UMP process, does not discuss any of the substantive information surrounding the particular case. Therefore, the mediator enters the mediation arena blind to the conflict at hand. These

conditions demand that the mediators be particularly skilled at bringing out the salient information from all parties and being assertive in questioning for the sake of being able to understand often complex disputes.

The purpose behind this approach is to emphasize the division of labor which drives the mediation process. The mediator takes responsibility for the process; the parties take responsibility for the outcome. The parties are clearly aware that the mediator has been given this role because of her or his particular competence in the process of mediation. The mediators are put on a rotating list. The next mediator on the list is assigned the next mediation. While there is often a request by the parties for a mediator having certain academic or experiential characteristics, no matching of mediator to case category has been done. In this respect, we have never had a party decline to mediate because a match would not be made.

After the mediation, the mediator and observer debrief: A written evaluation form is completed by the observer, shared with the mediator, and then sent to the Conflict and Change Center. In the 68% of the mediations that reach a written agreement, a copy of the agreement is given to each party and one copy sent to the Conflict and Change Center. The mediator does not keep a copy. Notes are not taken during the mediation by the mediator so there is no need to destroy any of the mediator's notes. Periodically, the mediators and candidates will gather. At this time, specific cases are discussed with no references made to the name of the parties or the name of the department. The parties bear sole responsibility for the communication of the mediated outcome. The mediator will simply acknowledge whether the mediation was held or not.

The Test

The theory behind the single-blind model is that, by having competent mediators, the mediation process they were taught would apply to any conflict. If the parties understood that they had to create the shared meaning, guided by the mediator, the mediator could focus on the structural attributes of a

sound mediation: reality testing, interactive processing of interests, emotional venting, option building and agreement writing.

There are moments when practice provides a test of theory with awesome clarity. During the first year of operating the UMP, a request for mediation came from an academic department dealing with the physical sciences. The case dealt with a dispute between two male tenured faculty, the junior of which had obtained a large grant allowing for significant procuring of technical equipment for the department. The senior of these two faculty, however, was stopping the accessing of the grant money because he would not agree to the co-investigator role assigned to him by the tenured faculty member who was junior to him. The conflict had broiled for a year. They finally agreed to mediate. My next mediator to be assigned was the twenty-nine year old, female secretary from Physical Education.

Such points in the bridging of theory to practice make one pause. Our program is hinged on a model of shared responsibility for cooperative outcomes based on a division labor within the dispute arena. Competent mediators need not have expertise in the apparent substance of the conflict. This concept is still hotly debated. The single-blind model, however, supports the culture by distinguishing between the power of process expertise and the power of substantive expertise. In theory, if the mediator is able to resist the seduction of crossing this line, the parties will find themselves empowered to generate enduring agreements.

In one hour and forty-five minutes, an agreement was reached and signed by the two faculty members and the mediator.

Institutional Outcomes

The positive evidence within the University ranges from the structured to the casual. For example, the Extension Division had maintained a policy of using mediation as the follow up to supervisor-supervisees disputes rising from performance evaluation. Mediation has been institutionalized in the formal grievance policies of the University. When a recent labor union had

gained its right to organize a significant portion of the clerical work force of the University, UMP was requested to mediate the labor-management disputes, which were projected during the first year of reorganization.

While periods of intense evaluation have taken place, the more profound responses come from the unsolicited calls from supervisors, faculty, and staff who thank us for the University Mediation Program. Intractable conflicts had been resolved leading to an enhanced quality of life in the department or work group. That is the essence of a conflict friendly institution. The quality of life increases because conflict can be approached from within the culture by using its own rhythms to support cooperative disputing.

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