



Human Resources

Slash Your Clash Budget

Industry is in the throes of unprecedented change and uncertain economic realities. Conflict thrives and grows in the increasingly competitive and uncertain operating environment. Conflict impacts an organization's performance in three arenas: the amount of mistakes due to misunderstandings; employee and management disputes; and employee complaints.

In all these areas, Clash Budgets detract from an organization's mission and erode its bottom line much more than is commonly recognized. A Clash Budget is the dollar impact of hard, quantifiable costs, such as appeals, arbitration, and litigation, and increased cost ratios that are relatively easy to quantify; and soft costs due to employee anger and turnover, lack of cooperation and hostility, negative public and government relations decreased vendor compliance from poorly handled disputes, and conflicts that are ignored.

This article offers a strategy to solve conflict at an early stage, with measurable results that strengthen profits and improve customer service. The strategy evolved from our observation that, although managers, supervisors, unions, human resources professionals, and risk managers deal with conflict every day, they face two hurdles that typically prevent them from achieving early collaborative problem - solving and (win-win) settlements. As a result, the conflict grows.

First, the disputants do not perceive them as neutral. Second, the formal and informal venues for conflict resolution, such as union grievance procedures, member appeals, arbitration, and litigation, are based on adversarial (win-lose) relations in which one side usually must lose. Moreover, the conflict and its results often are a

matter of public record. That is, the process itself tends to detract from the solution. Mediation, on the other hand, is non-adversarial, neutral, pro-active, and collaborative. It is confidential and protects the future relationship between the parties. The challenge, therefore, is to purposefully implant mediation into the organization's structure, to intercept and solve conflict early on.

Stakeholders' underlying needs

Conceptually, dispute resolution systems are an organization's attempt to balance respect for the individual consistent with meeting the organization's business needs and goals. It is important to incorporate employees', managers', providers', and sometimes vendors' needs when a dispute resolution system is designed.

Our experience is that the needs of stakeholders in dispute resolution consist of four basic themes:

- They need to be heard.
- They need to understand the system.
- The system should help them identify and clarify their issues.
- It should provide them with a sense of satisfaction.

Mediation is a process in which disputing parties meet with a trained, impartial, third party mediator. The mediator hears all sides of the problem and helps the disputing parties achieve a satisfactory resolution. The primary function is to create constructive communication between the parties in a controlled forum, where they can explore their needs and build a mutually satisfactory agreement.

Unlike an arbitrator or judge, the mediator has no power to impose a decision on the parties. Instead, the mediator helps them explore their concerns, construct their own solutions, and create a mutually acceptable agreement. Using internal mediators, an organization can address disputes before they escalate. As with arbitration and litigation, the mediation process can



devise legally enforceable remedies to disputes if the parties desire it.

Perhaps most important, mediation offers a cooperative forum for resolving disputes that preserves ongoing relationships, is confidential, and often empowers the disputants. One side need not necessarily lose; there can be a win-win result. Mediation is faster than arbitration or litigation, costs less, and can be applied at an earlier stage.

Mediation translates into tangible results including:

- Decreasing policy exceptions.
- Improving retention and employee satisfaction.
- Reducing employee turnover.
- Enhancing communication between departments, management teams.

A mediation process that works well for organizations employs six distinct stages. They are: (1) the mediator's opening monologue, (2) the parties' opening statements, (3) setting the agenda, (4) brainstorming negotiations, (5) writing the agreement, and (6) closure.

Each party fully states what is at issue for them. An agenda is set, and proactive but controlled discussions, under certain ground rules, are encouraged toward resolving the issues. These continue until each party receives full satisfaction. At that point, their decisions are then documented in a written agreement that may be enforceable as law, as with any other settlement or contractual agreement.

A unique and beneficial feature of agreements reached through mediation is their high compliance rates. When parties create their own terms, rather than have a decision made for them, they become emotionally responsible or vested to that agreement. It is that vesting and ownership of the agreement that results in voluntary long-term compliance, although legal enforcement is available. For example, a series of 41 mediation agreements that we tracked through the California court

system for two years has a compliance rate of greater than 95 percent.

Parties in a dispute typically cannot, or will not, try to understand the opposing parties' position. Litigation and arbitration formalize that adversarial relationship. The mediation process, on the other hand, is based on cooperative problem solving and focuses on each party's needs, not a narrow set of legal remedies. By expanding the range of remedies available, both parties can often find a way to win.

Finally, there is no risk to trying mediation. Since all agreements are entered into voluntarily, if a party does not like the outcome, it need not sign the agreement. The court system is always available. The parties' voluntary consent means that the agreement was fair, and met their needs.

Installing a dispute resolution program

The Mediation Oriented Resolution (M.O.R.) is a dispute resolution system that we have worked with organizations to implement. The steps required to install M.O.R. provide a good template for what is typically needed. The system incorporates three features: (1) assessment, (2) mediation skills training, and (3) designing and implementing an in-house conflict resolution program.

An organization's decision to use mediation skills training and/or implement a dispute resolution program must be developed in stages. As mediation is itself a collaborative approach to problem - solving, the same approach is needed when an organization and its employees adopt a mediation program. Employee buy-in is necessary, especially where a collective bargaining agreement exists. Every organization has a different baseline culture and has unique dispute resolution needs. A program should be tailored, on a modular basis, to design a program that fulfills your needs and avoids duplication of your existing strengths and

resources.

Assessment process

An assessment is required to: (1) review existing programs, if any; (2) determine if there is a need for a conflict resolution program; (3) become familiar with the organizational culture; and (4) determine where the organization desires to implement conflict resolution.

The assessment process contains several components, including directed confidential interviews with selected managers and employees. In addition to determining the organization's needs and gaining the individuals' insights, these encounters set the foundation for mediation and explore possible program alternatives. Assessing an organization's Clash Budget is also required, the hard costs and soft costs due to disputes that are poorly handled and conflicts that are ignored, through software-based programs and more traditional survey instruments. Focus groups, confidential questionnaires, or a combination of both, can also be conducted. While focus groups allow a chance to validate expressed opinions and comments, employees tend to be more comfortable with the confidentiality provided by anonymous questionnaires.

At this point, the senior management team is apprised of the results and recommendations for further action. In a collaborative fashion, action plans for the next stages of implementing a dispute resolution system are developed.

Customer service and mediation skills training

The dispute resolution training needs of an organization vary. Whether your organization establishes a formal mediation program, or simply desires employees to be better equipped to manage conflict, training is the next stage.

For some, simply having selected employees, such as the human re-



sources staff, customer services contacts, risk managers, line managers, supervisors, union stewards, or others, receive customer service and mediation skills training as it applies to conflict management, is enough. These individuals would not be expected to serve as formal in-house mediators. Typically, between eight and 12 hours of training is sufficient. To establish formal in-house mediation capabilities, selected personnel will undergo more extensive training. In our experience, an adequate level of expertise can be gained through a 30-hour basic training curriculum.

Objectives should include learning: the mediation process for dispute resolution; conflict management skills; how mediation improves employee and customer relations; skills for fostering proactive (collaborative) problem-solving and team building throughout the organization; and how to achieve win-win solutions rather than compromise settlements.

Selected participants need to be introduced to the administrative structure and details of implementing the proposed dispute resolution program. For environments with collective bargaining agreements, union members and stewards should learn that mediation does not threaten any union prerogatives, and can enhance their own effectiveness, and stature.

In-house mediators should have an opportunity for mentoring with experienced mediators once the training is completed to preserve the integrity of, as well as demystify, the mediation process. In particular, the trainee should co-mediate and observe a professional mediator in action. Mentoring can be ongoing to account for unique experiences and the addition of new in-house mediators.

The process of going live involves three sets of activities: (1) formalizing the procedures, (2) initiation and process flow, and (3) orienting

stakeholders.

Formalizing the procedures

- Draft procedures and create a formal structure for the program. How a dispute will be processed into mediation must be understood and accepted by all stakeholders, especially managers and supervisors.
- Depending on your organization's needs, forms such as the following may be required: agreement to mediate, limitations waiver, confidentiality agreement (includes waivers to confidentiality) and a written agreement.
- Update employee handbooks to explain mediation and the program.
- Revise employee contracts to include provisions concerning mediation and the program.
- Agree on what data needs to be collected internally for the dispute resolution program.

Initiation and process flow

- A centralized system should be developed to coordinate mediators with cases. A program coordinator/employee must be assigned, someone well regarded for his or her integrity and ability to maintain confidentiality. This person will be responsible for data collection and dissemination and general administrative oversight. Due to multiple existing responsibilities, a member of the senior management team shouldn't be assigned this task.
- Assigning disputes to in-house mediators will begin.
- If the in-house mediation is successful, the matter is closed.
- A written agreement is forwarded to the human resources and health services departments, and others as agreed. Although mediation is by law confidential, the parties can agree to waive confidentiality. The primary reason is that human resources, health services, or others will need to know the terms of the agreement.
- If the matter is unresolved at this first stage level, there are several

options such as using a professional mediator, upper management review, or reverting to other existing/mandated remedies.

- Union issues should be processed through the in-house mediation program. This does not affect an employee's right to file a grievance if an agreement is not reached through mediation, or even in tandem with the mediation. In the latter case, the grievance can be withdrawn after a successful mediation.
- There will be certain disputes that will automatically go to outside mediators. Reasons for this include confidentiality and neutrality concerns and the magnitude of the conflict. In some instances, it may be necessary to assign two mediators (for example, a male and female in certain sexual harassment conflicts to avoid the appearance of bias.)

Orienting stakeholders

The program must be properly introduced to employees and managers. Conducting brief presentations on-site will educate stakeholders about mediation and apprise them of the new program. In certain circumstances, it may be necessary to provide certain key union representatives with personal presentations.

Orlando Blake is president of The Blake Group in Elgin, Ariz., which specializes in working with organizations to sustain company growth through enhancing management capabilities, reducing conflict, and increasing communication. He has held executive positions at Mercantile National Bank, as senior vice president, and Warner Bros., Inc., as director of personnel for North America. Before starting The Blake Group in 1993, he was director of human resources for GUESS? Inc., a leading multinational apparel manufacturer and retailer.

