CHAPTER NINETEEN

Managing Difficult Negotiations:
Third-Party Approaches
Adding Third Parties to the Two-Party Negotiation Process

• Negotiations are often tense and difficult, and can lead to frustration and anger
• Negotiation over critical issues may reach an impasse
• Third-party intervention may be the only way to get negotiations back on track
Benefits and Liabilities of Third-Party Intervention

• Benefits
  – Creating breathing space or a cooling-off period
  – Reestablishing or enhancing communications
  – Refocusing on the substantive issues
  – Remedying or repairing strained relationships
  – Establishing or recommitting to time limits and deadlines
  – Salvaging sunk costs
  – Increasing satisfaction with the conflict resolution process and its outcomes
Benefits and Liabilities of Third-Party Intervention

• Limitations and liabilities
  – The involvement of third parties signals a failure of the negotiation process
  – Intervention by a third party may signal that the parties have failed to grow, to build relationships, or to become adept in managing their own interdependencies

• Each type of third-party intervention has its own particular advantages and disadvantages depending on the context
When Do Third Parties Help?

<table>
<thead>
<tr>
<th>Conditions Where Third-Party Intervention May Help</th>
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<tbody>
<tr>
<td>• Intense emotions appear to be preventing a settlement.</td>
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<td>• Poor communication is beyond the ability of the negotiators to fix it.</td>
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<td>• Misperceptions or stereotypes hinder productive exchanges.</td>
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<td>• Repeated negative behaviors (anger, name-calling, blaming others, etc.) create barriers between the parties.</td>
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<td>• There is serious disagreement over the importance, collection, or evaluation of data.</td>
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<td>• There is disagreement as to the number or type of issues under dispute.</td>
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<td>• Actual or perceived incompatible interests exist that the parties are unable to reconcile.</td>
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<td>• Unnecessary (but perceived-as-necessary) value differences divide the parties.</td>
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<td>• There is an absence of a clear, agreed-on negotiation procedure or protocol, or established procedures (such as caucuses or cooling-off periods) are not being used to their best advantage.</td>
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<td>• Severe difficulties occur in getting negotiations started or in bargaining through an impasse.</td>
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Conflict Management Approaches

**Figure 19.1** Continuum of Conflict Management and Resolution Approaches

- **Decisions Made by Negotiators**
  - Conflict avoidance
  - Discussion and problem solving
  - Informal negotiation
  - Mediation

- **Decisions Made by Private Third Parties**
  - Administrative decision
  - Arbitration

- **Decisions Made by Legal (Authoritative) Third Parties**
  - Judicial decision
  - Legislative decision

- **Extralegal Decisions**
  - Nonviolent direct action
  - Violence

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Increased coercion and more likelihood of win-lose decisions

When Is Third-Party Involvement Appropriate?

• Third-party intervention is appropriate when negotiators believe they can no longer manage the situation on their own.

• When one negotiator requests intervention, that process must be acceptable to the other parties.

• If only one party recognizes a need for third-party intervention, he or she may have to persuade the other party to agree.
Which Type of Intervention Is Appropriate?

Level of Negotiator Control over Outcome

<table>
<thead>
<tr>
<th>Low</th>
<th>High</th>
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<tbody>
<tr>
<td>Low</td>
<td>Autocracy</td>
</tr>
<tr>
<td>High</td>
<td>Mediation</td>
</tr>
<tr>
<td>Arbitration</td>
<td>Negotiation</td>
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</tbody>
</table>
Types of Third-Party Intervention

Third-party intervention may be formal or informal

• Formal interventions are designed intentionally, in advance and they follow a set of rules or standards
• Informal interventions are incidental to the negotiation
Formal Intervention Methods

There are three fundamental types of formal third-party interventions:

- Arbitration
- Mediation
- Process consultation
Arbitration

- Arbitration resolves a disagreement by having a neutral third party impose a decision.
- There are several forms of arbitration:
  - Voluntary arbitration—parties are not required to comply with the decision.
  - Binding arbitration—parties are required to comply with the decision.
  - Interest arbitration—a new contract is submitted.
  - Grievance arbitration—refers to decisions about the interpretation of existing contracts.
Arbitration

- Arbitration may have negative effects:
  - The chilling effect
    - If the parties anticipate that their failure will lead to binding arbitration, they may start working seriously for a negotiated settlement
  - The narcotic effect
    - When arbitration is anticipated, negotiators may also lose interest in the process of negotiating
  - The half-life effect
    - As arbitration frequency increases, disenchantment with the adequacy and fairness of the process develops
Arbitration

• Arbitration may have negative effects (cont.):
  – The biasing effect
    • Arbitrators must be careful not to systematically favor one side and they must maintain an image of fairness and impartiality
  – The decision-acceptance effect
    • Arbitrated disputes may engender less commitment to the settlement than alternative forms of dispute resolution
Mediation

• Mediation seeks to have the parties themselves develop and endorse the agreement
• It has been called a form of “assisted negotiation”
• It can help reduce or remove barriers to settlements, adding value to the negotiation process
Mediation

When to use mediation

• The parties need to be open to receiving help—a phenomenon known as *ripeness*

• The parties participate voluntarily—they are not forced to enter into the process

• The mediator must be acceptable to all the parties to the dispute
Mediator Models, Choices and Behaviors

• Stages in the mediation process can be roughly grouped into four categories:
  – Premediation preparation
    • Mediator gets to know the parties, explains process
  – Beginning stages of the mediation
    • Mediator manages the exchanges of proposals
  – Middle stages of the mediation
    • Mediator becomes more active to find an acceptable ‘middle ground’
  – Ending stages of the mediation
    • Mediator brings parties together to endorse agreement
Mediator Models, Choices and Behaviors

• Mediators need to consider the appropriate sequence of issues to be discussed in the negotiation
  – Gradualism: the mediator starts by addressing simpler issues and moves to more complex issues
  – Boulder-in-the-road: the mediator begins with the most complex issues to identify if the conflict is ready for resolution
  – Committee strategy: the parties are divided into subgroups to deal with different issues
Strategic Choice Model of Mediation

- Mediator's Perception of "Common Ground"
  - Low
    - High Compensation
    - Low Pressure
  - High
    - High Problem solving
    - Inaction

- Mediator's Concern for Parties' Aspirations
  - Low
  - High
When Is Mediation Effective?

• Mediation effectiveness can be viewed from a variety of perspectives:
  – The mediator-parties relationship,
  – The relationship between the parties,
  – The issues and the parties themselves

• Mediation appears to be more effective in situations marked by moderate levels of conflict

• Mediation is less effective as a strategy when parties differ on important issues or have major differences in their expectations for a settlement
Process Consultation

• “A set of activities on the part of a consultant that helps the client to perceive, understand, and act upon the process events which occur in the client’s environment”

• The objective is to defuse the emotional aspect of conflict and improve communication between the parties

• Process consultants focus only on improving communication and conflict management procedures
Process Consultation Behaviors

• The first step is often to separate the parties and interview them individually
• The consultant structures a series of dialogues or confrontations between the parties
• The process consultant encourages the negotiators to confront their differences
Process Consultation Behaviors

• Research findings indicate that process consultation:
  – Is less likely to work as an intervention when the parties are deeply locked in a dispute over one more major unresolved issues
  – May be an ineffective technique when dealing with short-term relationships
  – May be ineffective when the substantive issues in the dispute are distributive, or zero-sum
  – May be ineffective when the level of conflict is too high and parties are more intent on revenge or retribution than reconciliation
Combining Formal Intervention Methods

• Disadvantages of arbitration include:
  – Negative consequences for negotiators when they anticipate a third-party intervention
  – Removal of outcome control from negotiators
  – Possible lack of commitment to implementing the imposed outcome
Combining Formal Intervention Methods

• Disadvantages of mediation include:
  – Lack of impetus or initiative to adhere to any particular settlement or to settle at all
  – Possible perpetuation of the dispute, perhaps indefinitely
  – Possible escalation of the dispute into more damaging, more costly forms
Combining Mediation and Arbitration

- Mediation-arbitration
  - Should have a complementary and facilitating effect on dispute resolution, but only for final-offer arbitration

- Arbitration-mediation
  - Stage 1: the arbitrator holds a hearing and reaches a decision
  - Stage 2: mediation occurs
  - Stage 3: the arbitration ruling is revealed and is binding on both parties
Informal Intervention Methods

Three dominant styles:

• Inquisitorial intervention
  • Exerts high control over the process and the decision
    – Asks questions, controls who speaks, invents solution

• Adversarial intervention
  • Exerts high control over decision but not the process
    – Passively listens then makes decision

• Providing impetus
  • Exerts low control over process and no control over the decision
    – “If you don’t find a solution I will impose one”
Informal Intervention Methods

![Diagram showing the relationship between degree of managerial outcome control and degree of managerial process control. The diagram has four quadrants: High High (Inquisitorial Intervention), High Low (Mediational Intervention), Low High (Adversarial Intervention), and Low Low (Providing Impetus).]
Which Approach Is More Effective?

• Managers tend to control the solution versus true mediation (2/3rds of the time)
• Five dimensions that account for form of intervention
  1. Amount of attention manager gives to the issue statements rather than underlying problems
  2. Degree of voluntary acceptance of solutions
  3. Third party versus disputant control over outcomes
  4. The third party’s personal approach to conflict
  5. Whether the dispute is handled publicly or privately
• Timing of the intervention plays a role
Timing of the Intervention

Three general stages:

– Prevention of conflict
  • Intervention prevents conflict from occurring

– Resolving conflict
  • Conflicts that have emerged are managed

– Containing conflict
  • Ongoing conflicts that are a challenge to resolve are contained
Alternative Dispute Resolution Systems

- Alternative Dispute Resolution Systems (ADRs) represent a process to resolve a dispute
  - Preventive ADR systems
    - Causes in contracts for disputes go to ADR automatically
  - Negotiated ADR systems
    - Mechanisms for parties to resolve disputes without the help of a third party
  - Facilitated ADR systems
    - Provide a neutral third party to resolve disputes
Alternative Dispute Resolution Systems

• ADRs (cont.)
  – Fact-finding ADR systems
    • Use expertise of third parties to determine the facts in a specific situation and how the facts should be interpreted
  – Advisory ADR systems
    • Use a third party to determine likely outcome if dispute went to arbitration, court, etc.
  – Imposed ADR systems
    • Third party makes binding decision
    • Most common form of ADR
Alternative Dispute Resolution Systems

**Imposed ADR**
- Binding arbitration

**Preventive ADR**
- ADR clauses
- Partnering
- Consensus building
- Negotiated rule making
- Joint problem solving

**Advisory ADR**
- Early neutral evaluation
- Private judging
- Summary jury trials
- Minitrials
- Nonbinding arbitration

**Negotiated ADR**
- Principled
- Positional
- Problem solving

**Fact-Finding ADR**
- Neutral expert fact-finding
- Masters
- Magistrates

**Facilitated ADR**
- Mediation
- Conciliation
- Ombudsperson
Alternative Dispute Resolution Systems

- Five features of healthy ADRs
  1. They are all encompassing, available for use by all people and for all types of problems
  2. There is a conflict competent culture where conflict can be surfaced and managed safely
  3. There are multiple access points to the system
  4. There are options and choices that allow disputants access to coaches and mediators
  5. Support structures institutionalize the ADR system and provide safeguards