2001

Handling Workplace Conflict: Why Transformative Mediation?

Robert A. Baruch Bush

Maurice A. Deane School of Law at Hofstra University

Follow this and additional works at: http://scholarlycommons.law.hofstra.edu/hlelj

Part of the Law Commons

Recommended Citation


Available at: http://scholarlycommons.law.hofstra.edu/hlelj/vol18/iss2/1

This document is brought to you for free and open access by Scholarly Commons at Hofstra Law. It has been accepted for inclusion in Hofstra Labor & Employment Law Journal by an authorized administrator of Scholarly Commons at Hofstra Law. For more information, please contact lawcls@hofstra.edu.
ARTICLES

HANDLING WORKPLACE CONFLICT: WHY TRANSFORMATIVE MEDIATION?

Robert A. Baruch Bush*

The several articles in this Symposium represent a unique and multifaceted examination of the largest workplace conflict mediation program in the United States—the United States Postal Service's ("Postal Service") REDRESS Program. Begun on a pilot basis in 1994 as part of the settlement of a class-action discrimination lawsuit, REDRESS was subsequently expanded to a nationwide program for mediation of discrimination claims, available to all of the Postal Service's over 800,000 employees. However, it is not only the size of the REDRESS Program that makes it a remarkable development in the field of workplace conflict resolution—and the field of mediation generally. Equally significant is the fact that the Postal Service decided to employ a specific model of mediation within the program, called

---

* Harry H. Rains Distinguished Professor of Arbitration and Alternative Dispute Resolution Law, Hofstra University School of Law. Fellow, Institute for the Study of Conflict Transformation.

1. This Symposium was inspired by two lectures delivered at Hofstra University School of Law in the fall of 2000, one by Cynthia J. Hallberlin as the Rains Distinguished Lecturer and one by Dr. Joseph P. Folger as part of a symposium on transformative mediation co-sponsored by the Law School and the Institute for the Study of Conflict Transformation. The author thanks the editors for their dedication in bringing all the articles together, and also thanks the various authors for their individual contributions.
“transformative mediation.”

This model, first articulated as such by myself and Dr. Joseph P. Folger in 1994, focuses on the capacity of the mediation process to do more than simply produce settlements. We argue that mediation, if practiced in certain ways, can help parties change the quality of their interaction from negative and destructive to positive and constructive, in the very midst of conflict, as they explore issues and possibilities for resolution. It was this potential that attracted the Postal Service’s interest, because they perceived a need to change the “workplace conflict culture” itself in the organization, not merely to settle complaints. The resulting collaboration between the Postal Service, our colleagues, and ourselves was an extraordinary exercise in translating theory into practice, with powerful impacts on the life of an organization and thousands of its members. This Symposium examines those impacts from multiple points of view, and is thus an important contribution to the developing literature on both workplace mediation and the transformative model. To introduce the Symposium, these comments offer a brief analysis of why the Postal Service chose to employ the transformative model of mediation specifically.

Models of mediation practice can be distinguished in a number of ways, including: how they interpret conflict as a phenomenon; how they frame the mediator’s goals and define success in mediation; and how they picture appropriate and inappropriate mediator practices. On these factors, two primary models of practice can be identified in the field today: the transformative model and the transactional model.

The transactional model takes an essentially psychological/economic view of human conflict. According to this


3. The two colleagues who worked most closely with us in developing the mediation training model used in the Postal Service’s REDRESS Program were Dorothy J. Della Noce and Sally G. Pope. Many other colleagues joined us in actually providing the training to REDRESS mediators.

4. The identification of these two primary models is common in the field, although the specific labels differ. See BUSH & FOLGER, supra note 2; DEBORAH M. KOLB, WHEN TALK WORKS: PROFILES OF MEDIATORS (1994); KENNETH J. KRESSEL & DEAN G. FRUIT ET AL., MEDIATION RESEARCH: THE PROCESS AND EFFECTIVENESS OF THIRD-PARTY INTERVENTION 1989. The term “transactional” is used to reference a single overarching theoretical framework that is given various names by various scholars. See, e.g., BUSH & FOLGER, supra note 2 (referring to this as the “problem-solving” orientation); KOLB, supra note 2 (referring to the “settlement” frame). See generally Linda L. Putnam, Challenging the Assumptions of Traditional Approaches to Negotiation, 10 NEGOT. J. 337 (1994) (referring to “transactional exchange”). The suggestion to describe the second primary model of mediation as “Transactional” was the product of conversations with Dorothy Della Noce.
model, a conflict represents a problem in satisfying the parties’ incompatible needs and interests, the mediator’s goal is to generate an agreement that solves tangible problems on fair and realistic terms, and good practice is a matter of issue identification, option creation, and effective persuasion to “close the deal.” In this model, there is heavy reliance on mediator initiative and direction, because both are useful in generating settlement. This is a very popular model of practice, in one variation or another.5

The transformative model, by contrast, takes an essentially social/communicative view of human conflict.6 According to this model, a conflict represents first and foremost a crisis in some human interaction—a crisis with a common and predictable character. Specifically, the occurrence of conflict tends to destabilize parties’ experience of both self and other, so that each party feels both more vulnerable and more self-absorbed than they did before the conflict. Further, these negative attitudes often feed into each other on all sides, in a vicious circle that intensifies each party’s sense of weakness and self-absorption. As a result, the interaction between the parties quickly degenerates and assumes a mutually destructive, alienating, and dehumanizing character. For most people, according to the transformative theory, being caught in this kind of destructive interaction is the most significant negative impact of conflict.

However, the transformative model posits that, despite conflict’s natural destabilizing impacts on interaction, people have the capacity to regain their footing and shift back to a restored sense of strength/confidence in self (the empowerment shift) and openness/responsiveness to other (the recognition shift). Moreover, these positive moves also feed into each other on all sides, and the interaction can therefore regenerate and assume a constructive, connecting, and humanizing character. The model assumes that this transformation of the interaction itself is what matters most to parties in conflict—even more than settlement on favorable terms. Therefore the model defines the mediator’s goal as helping the parties to make empowerment and recognition shifts, and thus to change their interaction from destructive to constructive, as they explore specific disputed issues. Success is

5. For a discussion regarding the characteristics and popularity of the transactional model, see BUSH & FOLGER, supra note 2, at 55-77.

6. The summary given here is based on BUSH & FOLGER, supra note 2, and on other (unpublished) materials developed for seminars and workshops by the Institute for the Study of Conflict Transformation.
measured, in transformative mediation, not by settlement but by party shifts toward strength, responsiveness and constructive interaction. Effective practice is focused on supporting empowerment and recognition shifts, by allowing and encouraging party deliberation and decision-making and inter-party perspective-taking in various ways. 

All this summarizes the theory of the transformative model. It took the vision of the Postal Service’s Law Department, and in particular its former Alternative Dispute Resolution Counsel Cynthia J. Hallberlin, to connect this theory with the reality of the needs of a major employer—not simply to settle Equal Employment Opportunity claims but to begin to change the “workplace conflict culture” of the organization. Hallberlin saw transformative mediation as a tool to change the way managers and workers were interacting, not only in the conflicts they brought to mediation, but in the workplace thereafter. She and others felt that if employees experienced “voice and choice”—Postal Service shorthand for empowerment and recognition—in REDRESS™ mediation, this would help them communicate and interact constructively in the workplace; while the potential for these valuable “upstream effects” would be lost if a transactional mediation model were used.

Along with her colleagues Karen Intrater, Traci Gann, Kim Brown, and Kevin Hagan of the Postal Service Law Department (and supported by former General Counsel Mary Elcano), Hallberlin realized that settlement-oriented mediation might “close cases” expeditiously, but still leave the parties stuck in destructive, alienated interaction as they returned to the workplace. The expected consequences might include continued conflict, lost productivity, poor morale, and worse. Using transformative mediation created the potential to regenerate constructive interaction, so that parties could not only resolve specific issues but regain the capacity to work together effectively. Managers and workers could leave behind the shaken confidence in themselves and hostility to one another that their conflicts had generated, and move forward together productively.

This vision of the REDPRESS™ Program’s creators took the theory of transformative mediation a giant step closer to the reality of workplace conflict. When they “rolled out” the program nationwide in 1998—training roughly 3,000 mediators in the transformative model and offering all Postal Service employees access to the program—theory and reality met face to face. The subsequent history of REDPRESS™ has been a challenging, exciting, and extremely productive chapter in the
development of the mediation field. The articles in this Symposium capture a good deal of that history and provide several illuminating perspectives on it.

The first article, by Ms. Hallberlin herself, describes the genesis of the REDRESS™ Program. She describes how the lessons she learned as a litigator for the Postal Service convinced her of the need for greater use of mediation in handling discrimination claims. She also explains why the transformative model seemed best suited to the goals she and her colleagues were aiming for in the REDRESS™ Program. Hallberlin then gives a short sketch of the rapid growth and development of the program, and its documented success. In this account, she emphasizes the importance of the choices that were made about how to measure success, including the use of some novel research methods and measures. She also highlights some of the major challenges she and her colleagues encountered along their way to persuading the Postal Service’s top management of the value of REDRESS™ mediation. Hallberlin’s article is a unique account of the establishment and development of this unique program.

The second article, by my colleague Dr. Joseph Folger, takes a step up to the theoretical level, to explain the challenges of documenting the “transformative impacts” of REDRESS™ mediation. He offers a brief history of the development of “qualitative” research methods in the social sciences—by contrast to the “quantitative” methods usually used to study the mediation process—and argues that measuring transformative impacts like empowerment and recognition necessitates the use of qualitative research tools. He also explains how both the transformative model and the qualitative methods suited to study it are based on the same, ideologically-based, premises about human behavior, premises that differ significantly from those underlying other mediation models and research methods. Folger thus reminds us of the primary significance of ideology—values and beliefs—in both conflict intervention and social science, a theoretical insight that remains critical to bear in mind as theory is carried into practice.

The next two articles are good examples of the type of qualitative research needed to document the effects of the transformative model, whether in the REDRESS™ program or elsewhere. The first, by Tina Nabatchi and Lisa Bingham, is a “process evaluation” study using coding methodology to interpret responses to open-ended survey questions. The survey was directed to Postal Service employees (“ADR Specialists”) who serve as coordinators for the REDRESS™ Program,
one of whose jobs is to choose which mediators to employ, after observing mediators and assessing their effectiveness in using the transformative model. The ultimate aim of the study was to determine, by coding and interpreting the ADR Specialists’ responses, whether REDRESS™ mediators are in fact employing the transformative model as intended. This “qualitative” data about what is actually occurring in mediation sessions is crucial to assessing whether the success documented by quantitative studies of the REDRESS™ Program can fairly be linked to the use of a transformative model of practice. The study concludes that the Specialists’ answers provide some initial evidence that REDRESS™ mediators are in fact using the transformative model as intended, since the ADR Specialists monitoring them understand the model well and are probably selecting mediators who adhere to it.

The next article, by Joseph Folger, James Antes and Dorothy Della Noce, reports on a second qualitative study of the REDRESS™ Program. That study used focus-group interviews to generate thirty-four “case studies” of actual mediations and then subjected the cases to thematic analysis to determine whether “transformative effects” are evident in the mediations. The interview methodology was used, rather than direct observation, because of confidentiality limits followed by the Postal Service. Data analysis was inductive, looking across the range of the cases for emergent patterns in the effects of the mediation on the parties’ interaction. The main aim of the study was to determine whether the emergent patterns or themes reflected “transformative effects”—either empowerment shifts or recognition shifts of various kinds by the parties. The study identifies eight types of effects as emergent from the cases, and most of them do involve positive shifts in the way the parties view themselves and each other, and in the way they communicate with each other in the mediation. This study thus provides evidence that the use of the transformative model in REDRESS™ is working to change the quality of interaction between parties to workplace conflict in the Postal Service.

Taken together, the two studies included in this Symposium provide evidence that the mediation being done in the REDRESS™ Program is indeed following the transformative model, and that using this model of mediation is helping parties to make positive changes in

---

7. Those studies are referenced and described in the articles in this Symposium by Hallberlin, Nabatchi, and Bingham, and Intrater and Gann.
8. Only sixteen of the actual cases are reported in the article.
the quality of their interaction, as they address disputed issues together. Read together with previous studies of REDRESS^TM mediation— which document high levels of party satisfaction and tie that satisfaction to parties' valuing of the opportunities mediation offered for self-determination and self-expression—the studies included here support the tentative conclusion that transformative mediation is actually being practiced in the REDRESS^TM Program and that it is having the kinds of impacts that the theory would predict.

The final article in the Symposium, by Karen Intrater and Traci Gann, offers a glimpse of where the REDRESS^TM model is headed. It describes the steps taken to extend REDRESS^TM mediation to cases that have proceeded to the stage of formal complaints, with lawyers involved on both sides. Having seen the impacts of mediation in cases at earlier stages, the Postal Service decided to make it available in these cases as well, through what they call the REDRESS^TM II Program. Perhaps the most interesting part of this development is the enlistment of lawyers in utilization of transformative mediation, through seminars on advocacy in mediation for Postal Service lawyers, creation of a website for complainants' counsel, and organizational incentives for openness to the use of mediation in cases at the formal complaint stage. While the progress of this new program has yet to be studied, the initiative demonstrates the Postal Service's strong commitment to taking full advantage of the transformative potential of the mediation process.

In sum, this Symposium offers a unique and varied look at a program that represents a highly significant development in the mediation of workplace conflict, as well as a truly remarkable effort to carry a new theory of conflict intervention into the concrete world of practice. The articles that follow include the perspectives of program designers and administrators, conflict theorists, and social science researchers. The result is a rich and provocative brew that should interest all those involved in workplace conflict issues and in issues of mediation theory and practice.

9. See supra note 7 and accompanying text.