

Resolution of Disputes

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Introduction

In the society and business organizations, different human beings have their own personal values and attitudes that often lead to conflicts among them. Workplace disputes are one of the biggest issues in the organizations and every employer wants to avoid these kinds of issues (Luthans, 2006). Unresolved conflicts and disputes create a negative impact on the performance of the employees. In addition, conflicts reduce the morale and enthusiasm of labor that ultimately increase the rate of employee's turnover and job dissatisfaction (Furnham, 2005). Thus, it is integral for the employers to recognize and address the predictability and certainty of conflict, so that they can resolve small disputes and issues before becoming major problems in the growth of individual as well as the company (McKenna, 2000).

In order to resolve these kinds of conflicts and disputes, it is not possible to always apply litigation as an option. In this concern, one of the most suitable options used by the business owners as well as society is the alternative dispute resolution (ADR)¹. Alternative dispute resolution is a process that is used to resolve conflicts and legal disputes among the parties without applying any kind of litigation and legal court case (Alternative Dispute Resolution, 2009). It is a less formal, less expensive and less intimidating process in comparison to the courtroom. Negotiation, mediation, and arbitration are the three main processes for the resolution of disputes (Lynch, 2001). All these types are similar in a way that they all help in resolving disputes with the involvement of a third person.

Negotiation

Negotiation refers to bargain for individual or collective advantage to satisfy various issues or disputes through an agreement. It is an elementary method of alternative dispute

¹ S. Lancken., 2000, 'The Preliminary Conference: Option or Necessity?' Australian Dispute Resolution Journal, Vol. 196, No. 11.

resolution. Negotiation can take place in personal situations, legal proceedings, nonprofit organizations and business. The person who works in the negotiation process is called negotiator (Requejo & Graham, 2008). Thus, negotiation can be defined as the process of bargaining between the two parties, in which both the parties agree according to their mutual understanding.

Mediation

Mediation is the Alternative Dispute Resolution (ADP) that is offered by EEOC as an alternative to the traditional litigation process. In this, a neutral third party is engaged in assisting the opposing parties to reach at a resolution in the cases of discrimination (Erickson, 2006). The involvement of the neutral party is purely a voluntary task. It involves the parties to take the issues in clearing up the misunderstandings and this process remains fully confidential.

The working of mediation is done with the agreement of both parties, a mediator is an experienced person but it's not necessary that the mediator is from EEOC; he/she may be recommended by any party (Luthans, 2006). These include the use of neutral third party that voluntary and could be appointed from any side. The effective outcomes have given this practice a cutting edge over other practices².

Arbitration

In arbitration procedure, a neutral third party listens to both the parties and makes recommendations that are binding on the parties. An arbitrator hears and analyzes the proofs for making final decisions to solve out the issue (Schoenfield, 2000). Arbitration procedure can be of two types voluntary and compulsory. In arbitration, the disputes can be settled very quickly, but it provides only a voluntary method of dispute resolution³.

² I. Engleberg, D. Wynn & R. Schuttler, 2003, 'Conflict and cohesion in groups', Working in groups: Communication principles and strategies, 3rd Edition, Boston: Houghton Mifflin. 146-170.

³ D.L. Erickson, 2006, 'Two alternatives to Litigation: An Introduction to Arbitration and Mediation', Dispute Resolution Journal, Vol. 60, No. 4, pp. 42-47.

Comparison of Mediation with Negotiation and Arbitration

All these three process mediation, negotiation and arbitration are designed to resolve the conflicts between various parties and individuals, who are unable to reach at the point of mutual agreement (Furnham, 2005). Some similarities among all these process are as followed:

Similarities in the process of Mediation and Negotiations:

- Both mediation and negotiation can take place directly with the permission of concerned parties. In both negotiation and mediation processes, the parties are tried to convince each other with their arguments⁴.
- Negotiation is also similar as the process of meditation as in both the process the participants struggle towards the mutual understanding. Both processes use a problem solving approach instead of advisories one (Bercovitch & Jackson, 2001). Sometimes both of the processes are very useful to resolve complicated conflicts and issues.
- In the process of ADR, meditation and negotiation are simple processes of conflict resolution that have definite and semi-formal structures. Both processes use an orderly way for the mutual agreement and understanding of people (Requejo & Graham, 2008). These processes do not require any kind of commitment to reach an outcome because all the outcomes are unpredictable. Both of these processes are non-binding⁵.
- In addition, one of the main similarities between both of the processes is that both mediation and negotiation are very costly and time consuming processes (Wisinski, 1993).
- Negotiation and mediation develop the skills of a person to resolve the small matters, but the decisions are not legally bound.

⁴ E.F. McKenna, 2000, Business Psychology and Organizational Behavior: A Student's Handbook, 3rd Edition, Psychology Press.

⁵ W.R. Requejo & J.L. Graham, 2008, Global Negotiation: The New Rules, New York: Palgrave Macmillan.

- Both of these processes can be used in the following situations, for instance: dispute between the company and consumer for a particular product, disputes between two leaders of different nations over the issue of country development, etc. (Requejo & Graham, 2008).

Similarities in the process of Mediation and Arbitration:

- Mediation and arbitration are also same as in both the processes there is a requirement of third party to resolve the disputes and problems. The third party in the mediation process is known as mediator, and in arbitration it is known as an arbitrator (Erickson, 2006).
- Both of these processes are used when collaboration technique does not work. The person who is acting as a mediator or arbitrator should be well trained in conflict resolution and has a prior understanding of the team's policies and rules⁶.
- Both the processes support the third parties to resolve the conflict within a reasonable time and reduce cost by involving a legal entity in the resolution process.
- A mediation-arbitration proceeding to resolve disputes have more control on the parties and these also provide an opportunity to pursue a consensual settlement. In addition, both of the processes assure end of dispute through agreement or binding arbitration, because both the processes can used for any kind of legal case (Schoenfield, 2000).
- Both the processes are private and confidential. The conclusion of dispute resolution process of both the process is legally bounded and given by the third party in the light of various evidences and proofs⁷. Both the processes have a definite and formal structure

⁶ M.K. Schoenfield, 2000, October, 'The Hidden (Philosophical) Traps in Mediation and Arbitration', The Practical Lawyer, pp. 13-15, viewed 15 September, 2010 [online]

⁷ A. Furnham, 2005, The Psychology of Behavior at Work: The Individual in the Organization, 2nd Edition, Psychology Press.

that comprises some stages to resolve technological and critical disputes faster rather than litigation in the court.

- Both the techniques can be used for the following examples like discrimination and illegal treatment in the organization, business disputes, disputes between company and consumers due to the faulty product and services, family disputes etc. (Erickson, 2006).
- Both mediation and arbitration promote communication and cooperation, reduces hostility, preserves the on-going relationship, allows a person to avoid uncertainty and stress and results into a win-win solution (Gabel, 2003).

Contrasting of Mediation with Negotiation and Arbitration

Although the objective of all these ADR technique are same, but basic concept and processes of these dispute resolution techniques are entirely different. Differences among all these ADR techniques are as followed:

Differences in the process of Mediation and Negotiations:

- In the process of mediation, there is a third party that helps in solving the conflict. He/she does not impose his/her decision on the parties involved in a conflict. In some countries like U.K, mediation is a very popular method of conflict resolution⁸. On the other hand, in the negotiation technique, there is no particular third party that helps in solving the conflict. It is a voluntary dispute resolution method (Capozzoli, 1999).
- Mediation can be a very peaceful method for conflict resolution with the community as well as the government (Engleberg, Wynn & Schuttler, 2003). Contrary to this, in the negotiation process, the parties in dispute come to a mutual agreement and the conflict is

⁸ G.A. Van Kleef, C.KW De Dreu & A.S.R. Manstead,, 2006, 'Supplication and Appeasement in Conflict and Negotiation: The Interpersonal Effects of Disappointment, Worry, Guilt, and Regret', *Journal of Personality and Social Psychology*, Vol. 91, No. 1, pp. 124–142.

solved. But, behind the scene both the parties can be taught the tactics of dispute resolution by some church authority, social worker or friend⁹.

- In the mediation process, the mediator can organize a common meeting with both the parties or organize a meeting with individual parties. Nevertheless, in the process of negotiation, parties can meet with each other without any legal restrictions (Lancken, 2000).
- In the mediation, the mediator has no power and authority to make final decision and bind his/her decision over the parties. He/she cannot behave as a judge to resolve the disputes, whereas in the negotiation, parties can bind in a mutual agreement with the mutual consensus (Lynch, 2001). In the negotiation process, parties have their own interest. Consequently, they become unfair or partial to reach at the final result. On the other hand, in the mediation process, the mediator has no personal interest, so he/she plays a neutral and impartial role.
- In the mediation, in order to identify the real issue and problem, the mediator plays a role of devil advocate, whereas, in the negotiation, in order to convince opposite sides, parties always use persuasion to influence and modify their behavior (McKenna, 2000).
- The process of mediation is always voluntary, whereas some time the negotiation processes are non-voluntary such as union negotiations¹⁰. The process of mediation may not be failed because the party always prefers a third party's decision, but the negotiation process can be failed sometime, if the parties do not support each other to work together and parties have many conflicts (Requejo & Graham, 2008).

⁹ J. Bercovitch & R. Jackson, 2001, January, 'Negotiation or Mediation?: An Exploration of Factors Affecting the Choice of Conflict Management in International Conflict', *Negotiation Journal*, Vol. 17, No. 1, pp. 59-77.

¹⁰ S. Lancken, 2000, 'The Preliminary Conference: Option or Necessity?' *Australian Dispute Resolution Journal*, Vol. 196, No. 11.

Differences in the process of Mediation and Arbitration:

- One of the important differences between mediation and arbitration is that the mediation cannot make final decision but an arbiter can. In the arbitration, the bargaining situation is studied by the neutral third party. The third party listens to both the parties and gathers relevant information for solving out the dispute (Schoenfield, 2000).
- In the process of mediation, the third party cannot act as the judge who helps in solving the dispute, whereas in the arbitration process, the third party acts as a private judge for dispute resolution. Arbitrator always acts as a jury in any kind of dispute resolution process and listen both sides to reach at final decision¹¹. On the other hand, mediator discusses about the issues and tries to lighten the reason behind the disputes.
- Mediation is mainly used to resolve the disputes between the seller and buyers, disputes between families and couples, disputes between two nations to resolve the conflicts related to wars, etc. (Bercovitch & Jackson, 2001). On the other hand, Arbitration is commonly used in labor disputes, wage disputes among individuals, or the conflict between the fire fighters. Arbitration is used voluntarily and is usually quicker and less expensive, whereas mediation is an expensive and time consuming process (Erickson, 2006). Arbitration is a kind of collective bargaining system and is the best technique to solve the government and community conflicts other than the organizational conflicts.
- Mediators promote the settlement opportunities and influence the behavior of parties to reach at a voluntary agreement, whereas arbitrator works to understand the situation to reach at the result (Wisinski, 1993).

¹¹ D.L. Erickson, 2006, 'Two alternatives to Litigation: An Introduction to Arbitration and Mediation', *Dispute Resolution Journal*, Vol. 60, No. 4, pp. 42-47.

- Settlement situation identified with the help of mediation process is always non-binding. In order to make a legal settlement process through mediation, the parties have to request for 'agreement settlement'. Nevertheless, the decisions used by arbitration are also legally binding and a non-binding process take places as per the special request of parties only (Engleberg, Wynn & Schuttler, 2003).
- Another difference between the process of mediation and arbitration is the ability of the parties. If the dispute resolution process has been started, the parties can withdraw at any time in the mediation, but in arbitration process, the parties are able to withdraw from the dispute resolution process in some specific situations¹². These situations are: the parties can withdraw before reaching at the final decision and if the parties have not signed any arbitration clause (Erickson, 2006). If the parties have signed clause, they have to follow the decision taken by the arbitrator. In addition, there is not any contract made by the parties in the mediation process. And if, the parties made any contract to reach at the consensus decision, they cannot quite the dispute resolution process without reaching at the end (Gabel, 2003).

Conclusion

Thus, on the basis of above discussion, it can be said that the above described techniques play different roles to solve organizational and non-organizational conflicts faced by the society and business firms. These techniques are selected as they will help in peaceful conflict resolution and will give definite solutions for the conflicts between the parties (Lynch, 2001). In the process of dispute resolution, negotiation is the basic steps. If the process of negotiation unable to agree the parties, they impasse and parties can try mediation process (Engleberg, Wynn & Schuttler,

¹² S. Gabel, 2003, October, 'Mediation and Psychotherapy: Two Sides of the Same Coin?' Negotiation Journal, Vol. 19, No. 4, pp. 315-328.

2003). In the process of mediation impasses, the parties have another option to choose arbitration. In the mediation process, they can get final legal solution and resolve disputes (Erickson, 2006). These techniques will help in giving a quick decision to the parties and will save time as well as money.

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