

# mediation with joe salama



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How Mediation Works, Part One: Identifying Underlying Interests - August 17, 2009  
by Joe Salama

There are many different philosophies and styles of mediation, some more suited to specific applications than others. But, despite these differences, the basic concepts behind how mediation itself works are relatively straightforward. One of the most important concepts in resolving a dispute is to distinguish between positions and real interests.

Each party has taken a position before entering the mediation. The position is based on weeks, months, or sometimes years, of disagreement with the opposing party/parties, and is well-entrenched. Examples of these positions might be something like the number of weeks vacation offered to the employees of the company in a labor dispute, or the total number of computers that need to be shipped to a retailer to make up for a deficiency from a prior month in a commercial dispute. And the parties have been arguing over these positions with little or no success, precipitating the call to the mediator.

The key for the success of the meditation is for the mediator to ascertain the true interests of the parties underlying these positions. This is, generally speaking, not always easy to do.

Intertwined with the positions, of course, there are often several layers of emotion, including: Avoidance, blame, hostility, ego/fear of showing weakness, saving face, and the list continues. Often, a large part of the mediation involves getting through these emotional barriers. It is important for the mediator to be delicate, focused, positive, and to keep things moving in the right direction in order for the mediation to survive this part of the session, or else one of the parties may walk out or otherwise withdraw from the mediation. Once these aspects have been addressed, the interests of the parties can begin to surface.

The number of weeks of vacation time offered to the employees may have actually been a position that was taken because of an underlying interest in avoiding another unpaid week of vacation - in other words, it was an affordability/productivity

issue rather than simply a vacation issue. Now that it has been identified, it would invite a possible solution that was not otherwise ascertainable by allowing the employees to earn extra vacation time, maybe even two extra weeks, based on how many hours they work during the year.

The total number of computers that need to be shipped in the commercial dispute - it may turn out that the retailer simply had an interest in protecting its reputation with one big customer, which was ruined because of the deficiency last month, and the retailer may have even over-inflated its current month's needs as a way of penalizing the wholesaler. A possible solution which now presents itself would be for the parties to work together to make that particular customer's computer needs feel especially met for the next few months at a much lower cost than what the retailer's opening position initially was.

In the real world, it is not always possible to ascertain the true underlying interests for each of the parties, not all parties are always open to a rational exploration of possible solutions to their problems and, unfortunately, not every conflict is always resolved through mediation. But it always astounds me how often people tell me that I will never get the other side to agree to mediation, and the other side jumps on the opportunity. Suffice to say, the chances are good that all sides to a conflict are equally frustrated, and willing to try a different method of resolving their conflict. Further, mediation continues to enjoy an amazingly high rate of success.

One final comment, although it is important that you find a mediator with experience in the type of dispute you would like resolved, it is also very important that you feel comfortable with the mediator you select and can communicate effectively with him/her. Do not simply select a mediator based exclusively on reputation without first speaking with him/her to see if the mediator can truly understand you and your interests.