Conflict Resolution in Organizations

The Alternate Dispute Resolution (ADR) Landscape

"Your workplace may be a Fortune 500 company or a family-owned small business. It may be government offices, schools or nonprofit agencies. It really doesn't matter because conflict occurs in all workplaces." (Runde and Flanagan, 2007) Organizations working in the fast paced global business environments are a hot bed of conflicts between, cross-functional teams working in shifts asynchronously, which are composed of members from across the organization having a diversity of knowledge and skill sets. Differences in time, language, culture, systems and policies become potential sources of conflict. With frequent differences existing among team members, it is likely there will be misunderstandings, failures to communicate and interpersonal conflicts, finally leading to dissatisfaction and attrition (Guttman 2009).

Employers are often surprised when employees legally sue them. Disputes between a company and its employees can arise in several circumstances. An existing employee may allege that his/her supervisory personnel have harassed them. An employee terminated or denied promotion may allege that such employment action constitutes discrimination based on race, color, religion, sex, national origin, age or disability. Lastly, a terminated employee may assert that he or she has been wrongfully terminated and that the termination was unfair or without good cause.

The Two Faces of Conflict

Takeo Fujisawa, co-founder of the Honda Motor Company, described the positive role, conflict can play in keeping an organization upbeat, as vital: He states, 'I like Bartok and Stravinsky. It's a discordant sound and there are discordant sounds inside a company. As president, you must orchestrate the discordant sounds into a kind of harmony. But you never want too much harmony. One must cultivate a taste for finding harmony within discord or you will drift away from the forces that keep a company alive' (Tanner, 1990). Conflicts when channeled through the right tools and expertise, can lead to positive outcomes, such as a better understanding of others, improved solutions to problems or challenges, and major innovation. In a survey, roughly three quarters of workers reported positive outcomes that resulted from conflict – results that in all likelihood would not have been produced if conflict was not initiated. When conflict is effectively managed, it can be influential in solving issues and building teamwork.

However, fierce disagreements between employees are very destructive to a business. In today's environment, a single major employment dispute can result in the erosion of substantial assets because of legal fees and a potential judgement against the company. A conflict with a key executive can devastate a well-established company. The task of handling a vicious dispute can distract and unnerve an otherwise strong and efficient management team. This situation warrants a strategy that eradicates the likelihood of disruption and distraction, along with the financial and emotional cost to business. If managed improperly, businesses' productivity, operational effectiveness, and morale take a major hit, as evidenced in the CPP survey finding that 27 percent of employees have witnessed conflict morph into a personal attack, while 25 percent say that the avoidance of conflict resulted in sickness or absence from work. A Gallup research shows worldwide, just 13% of employees are engaged in their jobs -- they are involved in, enthusiastic about and committed to their work and workplace. The remaining 87% of employees are either not engaged or indifferent -- or even worse, actively disengaged and potentially hostile -- to their organizations (April 2015). A CPP survey report in 2008, found that U.S. employees spend 2.8 hours per week dealing with conflict, equating to approximately $359 billion in paid hours. The question for management, therefore, is not whether conflicts can be avoided or mitigated; the real concern is how conflict is dealt with and harnessed to thrive.

The Conflict Life Cycle and Associated Behavior

The figure 1 below depicts a conflict on time / intensity axis.   The potential for conflict exists whenever people have different needs, values, or interests; this is the "latent" conflict stage. The conflict may not become apparent until a "triggering event" leads to the emergence (or beginning) of the obvious conflict. Emergence must be followed quickly by settlement or resolution, or it may lead to escalation, which can become very destructive. Escalation however cannot continue indefinitely. De-escalation can be temporary or can be part of a broader trend toward settlement or resolution, or intensification may lead to a stalemate, a situation in which neither side can win. If the pain of continuing the conflict exceeds that of maintaining the confrontation, the parties are in what Zartman (1989) calls a "hurting stalemate," which often presents an ideal opportunity for negotiation and a potential settlement. Finally, if and when an agreement is reached, peacebuilding efforts work to repair damaged relationships with the long-term goal of reconciling former opponents.
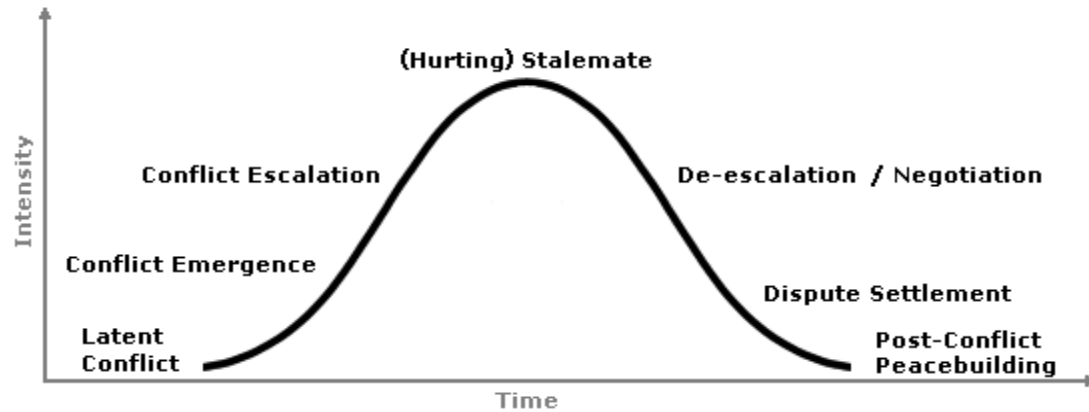
Fig1: Conflict Life Cycle   Source: Six Rivers.org

Actual conflicts usually do not follow a linear path. Rather, they evolve in fits and starts, alternatively experiencing progress and setbacks toward resolution. Delineating different stages is also useful in efforts to resolve conflict. By recognizing the different dynamics occurring at each stage of a conflict, one can appreciate that the strategies and tactics for participants and interveners differ depending on the phase of the conflict. Table 1 depicts the stages of conflict and the associated behavior displayed by the participants engaged in a conflicting situation.

Table 1   Stages of Conflict and Associated Behavior

Stage of Conflict	Behaviours and Signs
Beginning	- Incompatible goals - Open or covert conflict - Avoidance of conflict - Palpable tensions
Early Growth	- Confrontation - Polarization of positions - Seeking allies - More covert strains
Deadlock	- Conflict at its peak - Blame apportioned - Communication breakdown between parties - Entrenched positions and perceptions
Plausible Alternatives	An acceptance / realization that the problem needs to be resolved

Working together for a Resolution	• Working towards resolution • Collaboration and consensus.

As mentioned, escalated conflicts in organizations result in loss of productive man hours, tarnished brand image and market reputation. Individuals caught up in a conflict at work can be distracted from their work and affecting their long-term career plans. The situation can impact on their home life, creating a vicious circle of pressure and discord. If the situation becomes formalized to the extent that legal proceedings are involved, there can be a significant financial cost to both the organization and the individual. In a CIPD survey (2008) a respondent indicated, 'A lot is gained, from people talking about their problems before an employee with a grievance goes to the law. Many conflicts are escalated by external involvement. When employees go for external advice, additional claims are always added. Too much formalization leads to escalation of problems which lead to stress for all concerned and costs.'

Alternative Dispute Resolution (ADR) is an increasingly popular option that allows people to resolve disputes outside of court in a cooperative manner. ADR can be faster, cheaper and less stressful than going to court. Most importantly, the use of ADR can provide greater satisfaction with the way disputes are resolved.

Alternate Dispute Resolution - ADR

The term "alternative dispute resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. The term can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or mini - trials that look and feel very much like a courtroom process. Processes designed to manage community tension or facilitate community development issues (between the corporate and the adjoining communities/ stakeholders) can also be included within the rubric of ADR. ADR systems may be generally categorized as negotiation, conciliation/mediation, or arbitration systems.

Negotiation systems create a structure to encourage and facilitate direct negotiation between parties to a dispute, without the intervention of a third party. Mediation and conciliation systems are very similar in that they interject a third party between the disputants, either to mediate a specific dispute or to reconcile their relationship. Mediators and conciliators may simply facilitate communication, or may help direct and structure a settlement, but they do not have the authority to decide or rule on a settlement. Arbitration systems authorize a third party to decide how a dispute should be resolved.

It is important to distinguish between binding and non-binding forms of ADR. Negotiation, mediation, and conciliation programs are non-binding, and depend on the willingness of the parties to reach a voluntary agreement. Arbitration programs may be either binding or non-binding. Binding arbitration produces a third party decision that the disputants must follow even if they disagree with the result, much like a judicial decision. Non-binding arbitration produces a third party decision that the parties may reject. It is also important to distinguish between mandatory processes and voluntary processes. Some judicial systems require litigants to negotiate, conciliate, mediate, or arbitrate prior to court action. ADR processes may also be required as part of a prior contractual agreement between parties. In voluntary processes, submission of a dispute to an ADR process depends entirely on the will of the parties.

Significant Characteristics of ADR

Although the characteristics of negotiated settlement, conciliation, mediation, arbitration, and other forms of community justice vary, all share a few common elements of distinction from the formal judicial structure. These elements permit them to address development objectives in a manner different from judicial systems.

1) Informality

Most fundamentally, ADR processes are less formal than judicial processes. In most cases, the rules of procedure are flexible, without formal pleadings, extensive written documentation, or rules of evidence. This informality is appealing and important for increasing access to dispute resolution for parts of the population who may be intimidated by or unable to participate in more formal systems. It is also important for reducing the delay and cost of dispute resolution. Most systems operate without formal representation.

2) Application of Equity

Equally important, ADR programs are instruments for the application of equity rather than the rule of law. Each case is decided by a third party or negotiated between disputants themselves, based on principles and terms those seem equitable in the particular case, rather than on uniformly applied legal standards. ADR systems cannot be expected to establish legal precedent or implement changes in legal and social norms. ADR systems tend to achieve efficient settlements at the expense of consistent and uniform justice.

3) Direct Participation and Communication between Disputants

Other characteristics of ADR systems include more direct participation by the disputants in the process and in designing settlements, more direct dialogue and opportunity for reconciliation between disputants, potentially higher levels of confidentiality since public records are not typically kept, more flexibility in designing creative settlements, less power to subpoena information, and less direct power of enforcement. The participation of disputants in the settlement decision, the opportunity for reconciliation, and the flexibility in settlement design seem to be important factors in the higher reported rates of compliance and satisfaction.

Although ADR programs can play an important role in many development efforts, they are ineffective, and perhaps even counterproductive, in serving some goals related to rule of law initiatives. In particular, ADR is not an effective means to:

- ✓ Define, refine, establish and promote a legal framework.
- ✓ Redress pervasive injustice, discrimination, or human rights problems.
- ✓ Resolve disputes between parties who possess greatly different levels of power or authority.
- ✓ Resolve cases that require public sanction.
- ✓ Resolve disputes involving disputants or interested parties who refuse to participate, or cannot participate, in the ADR process.

ADR Practices

Generally there are three main types of formal alternative dispute resolution techniques that are commonly used. They include mediation, arbitration and collaborative law each of which will be discussed below:

Arbitration

While arbitrations are technically voluntary, many people agree to participate in arbitrations before a dispute even arises.   For example, many formal contracts require that any dispute arising out of the contract be arbitrated. In arbitration, the parties agree to have their case heard by an impartial person, the arbitrator, who issues a final and binding decision. Typically, an arbitration case is heard much faster than a court case would be heard and is less expensive than a formal litigation. This approach is relatively new and is not as widely used as other types of alternative dispute resolution practices.

Collaborative Law

Collaborative law is a new way to resolve disputes by removing the disputed matter from the litigious court room setting and treating the process as a way to "trouble shoot and problem solve" rather than to fight and win. As part of the collaborative law method, both parties retain separate attorneys whose job it is to help them settle the dispute. No one may go to court. If that should occur, the collaborative law process terminates and both attorneys are disqualified from any further involvement in the case.

Mediation

In mediation, an independent mediator works with the parties to come to a resolution. Mediators are trained professionals who are able to help the parties communicate and accept a fair resolution of their dispute. A mediator does not have the authority to impose a solution on the parties. If the mediation is successful then the parties will sign a legally enforceable mediation agreement to which they each agree to abide. If the mediation is ultimately unsuccessful then the parties will fail to reach an agreement and can take their dispute to court.

Mediation is neither adversarial nor argumentative, but rather cooperative and collaborative. Mediation is especially effective when used at the initial phase of any disagreement, before conflict escalates in the workplace or in relationships. An early intervention can prevent both sides from becoming entrenched, and the difference turning into a full-blown dispute. If the disagreement is resolved early, there is less chance of the working relationship breaking down irrecoverably. This improves the likelihood of maintaining good and productive employment relations in the longer term. The table below gives an insight to the landscape of ADR highlighting the difference between Mediation, Arbitration and Litigation (Courts and legal action) to further clear the concepts.

Table: 2   Differences between Mediation, Arbitration and Litigation

	Mediation	Arbitration	Litigation
Control	Parties Negotiate & Determine Result	Arbitrator(s) Controls Outcome	Judges & Juries Control Outcome
Binding or Non-Binding	Non-binding unless parties reach agreement	Usually binding; no appeal	Binding; subject to appeal
Risk	Parties Agree on Mutually Acceptable Terms	Win-Lose	High Risk Jury Awards
Neutral or Decision maker	Parties Agree on Mediator	Parties Agree on Sole Arbitrator, Parties Don't Pick Neutral Arbitrator	Decision maker is randomly assigned
Confidentiality	Private	Private	Public
Party Interaction	Collaborative Negotiation	Adversarial	Adversarial
Procedure	Informal/Flexible	Structured	Highly Structured Rules of Evidence and Procedure
Duration	Days	Months	Years
Cost	Least	More	Most
Scope of Discovery	Least	Less than Litigation	Most
Precedent Effect	Avoids setting a precedent	Avoids setting a precedent	Adverse result can establish future precedent

Remedy	Creative solutions involving any business interest	Limited to money and other legal rights and remedies	Primarily money and other legal rights and remedies
Impact on Parties	Can Preserve/Repair Existing Relationships	Often "Burns the Bridge"	"Burns the Bridge"

Source : Accord ADR Services

The distinguishing factors highlighted give a clear indication to the reasons why Mediation and Arbitration are preferred as conflict resolution mechanisms today. Examples of disputes often settled by ADR include but are not limited to:

- Business disputes- contracts, partnerships

- Property / Land use disputes- property transfers, boundaries etc

- Family disputes- divorce, property, custody, visitation, support issues

- Consumer / Collection disputes- repairs, services, warranties, debts

- Employment disputes- employment contracts, terminations

- Landlord/tenant disputes- evictions, rent, repairs, security deposits

- Neighborhood disputes / relational disputes or other civil or personal conflicts

- Personal injury / Insurance disputes- accidents, coverage, liability

Finally, it will often be a cost-effective method of resolving workplace issues, when compared with the costs of managing a lengthy grievance process or tribunal claim. Organizations should consider training line managers in handling 'difficult conversations' to increase their confidence and skills and so avoid the need for third-party intervention. Some employers may also rely on experienced HR professionals to intervene when line managers have failed to resolve an issue and, by using skills similar to those of trained mediators; they may achieve an effective solution.

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