



Labour mediation and dilemmas of mediators

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Abstract: The subject matter of this article is relating to an alternative dispute resolution. Besides the transactional costs through traditional conflict solution the quality of human ties will be deteriorated, too. If the parties have an interest in cooperation, they should seek to find more peaceful solutions. I am convinced that mediation offers to solve organizational problems effectively. I have been studying labour mediation for about 14 years which is similar to the organizational type in many aspect. For example the 'Claiming mediation model' improved by myself in 2009 demonstrates how the disputants are willing to choose this method or refuse it in organizational conflicts, too. Even if there are several obstacles like biases, stereotypes, parties' different behave samples based on socialization in different circumstances in the past or dilemmas of mediators.

1 Labour mediation and some thoughts of organizational disputes

In the past fourteen years I have studied conflicts extensively. I have always sought to find out if there exists a truly efficient method to improve human relationships that have deteriorated. In the beginning I was primarily preoccupied with the reasons that bring about conflicts and the traditional techniques that are used to handle them (e.g. those aiming for compromise), then gradually I began to focus on technics of alternative dispute resolutions (ADR). I discovered that mediation, which can be assessed a greatly advantageous method, is used only fairly few times according to the opportunities for using it.

The subject matter of this paper is related to the world of organizations.

In recent years we have heard a lot about employees protesting or deteriorating working conditions, closed and reopened factories, and increasingly insecure jobs. One of these factors may cause more stress at workplaces, which increases the chance of conflicts

and disputes between the stakeholders. Obviously there is the global economic crisis as a final explanatory factor in the background.

The reason behind the conflicts, manifesting themselves in labour disputes, is often disagreement about employees' wages. On the other hand there are conflicts, where it would be needed to solve the frustrating situation at micro-level. In case of conflicts inside of working groups, people can argue with each other because of personal or organization-related problems. In handling these disputes the parties often give preference to traditional strategies, such as litigation, strikes etc., which are big losses for the parties involved and has negative externalities. The win-lose situation negatively affects the relationship between the parties and the market environment of the corporation: communication and cooperation for the operation of the company may deteriorate, which has a negative impact on operation of production processes, supply chain business partners' cooperation as well. Furthermore, it also makes more difficult to ensure optimal working conditions. While protests, bilateral trials based on compromise and court cases take up a lot of energy, time and money, mediation, which represents a softer method, is a service free of charge for a period of eight days in case of labour disputes, but not of other organizational conflicts, usually helps disputing parties reach a consensus after only 2-5 rounds of negotiations.

Mediation means that an impartial person, whose cooperation/involvement was mainly jointly requested by the parties, attempts to dampen tensions in order to move the parties involved out of the emotional and positional way of bargaining, and steers them towards a consensual agreement. This agreement is elaborated by the parties.

The Hungarian Labour Mediation and Arbitration Service (Munkaügyi Közvetítő és Döntőbírói Szolgálat), provided by the state is entitled to settle institutionlized labour disputes. The parties make contact with each other, they clash their views and attempt to settle the dispute.

In the new Labour Code it is likewise possible to mediate collective labour disputes as interest disputes which emerges as a result of the clashing of the interests of employee and employer representation organisations, as well as their alliances. One element is brand new, the so-called Conciliation Committee, where mediation also may be used, than other ADR technics, too. In practice the themes typically handled in mediation cases: wage disputes, privatization cases, collective redundancy, issues of collective agreement.

As a result of asymmetrical power relations between the parties, employers and employees LMAS reports reveal that 93% of the mediation cases were concluded with a written agreement and were provided free of charge, since none of them extended beyond the time limit that allows free services, except one or two cases. Even so 5-10 cases per year are being dealt with by mediation.

Bipartite actors of national industrial relations reach along a complex set of factors to the use of mediation. Among the hosts situated multiple logical relations leading to the rejection or the choice of mediation, and cause-and-effect relationships can be seen in the model drawn up by myself, respectively. In general 'social partners' can be replaced

with the expression of ‘parties’ from any organizations, as the experience shows that similar obstacles, or just factors contributing may arise in conflicts among people, within groups, between supervisors and subordinates, and between departments.

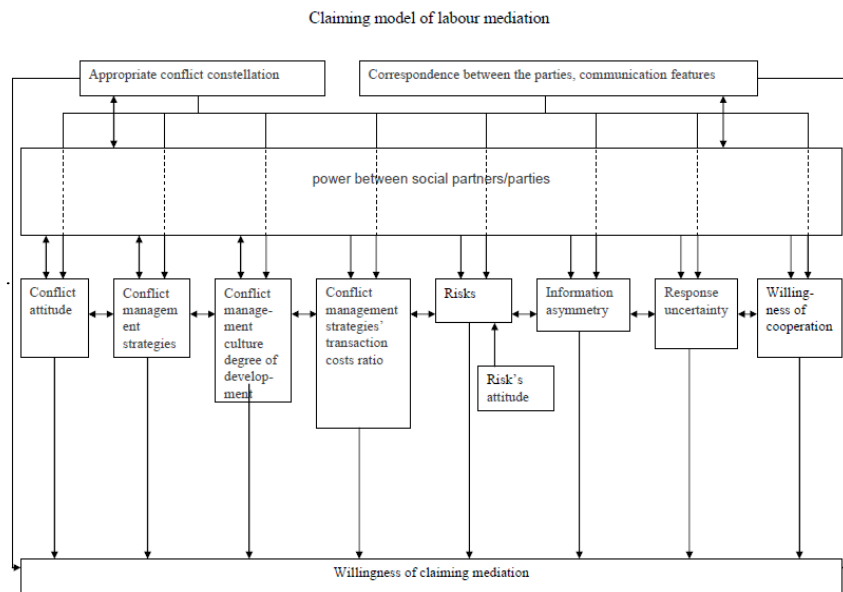


Figure 1
Claiming model of labour mediation

Source: Lovász, Gabriella (2009): The effectiveness and reception of labour mediation from the point of view of social partners. Own model. Ph.D. dissertation. Corvinus University of Budapest, 83.p.

Information asymmetry and risks interact, for example. The model elements mostly directly result in the use of mediation (eg. conflict constellation), but some do only indirectly (risk attitude). Whether the parties invoke the mediation to the dispute, many items itself and are jointly determine, starting from the inaccurate stereotypes from the mediator until the quality of communication between the parties. Examples for the element first mentioned: „How come the mediator will not represent my interests? Doesn't he/she want to help? Does he/she side with the other party then?” The latter factor demonstrates a rather low level in case of social partners and in some cases of interpersonal conflicts.

In Hungary it is necessary some official representation of employees’ interests in order that labour disputes can be settled through mediation. However this opportunity is only available in a small proportion of all employees.

There is no any form of representation of employees’ interests in more than three-quarter part of workplaces (78%), as it was mentioned relating to a research for „Workplace employment conditions – 2010”. The study finds that according to the results of research neither trade unions nor works councils are represented in the

workplace in case of more than two-thirds of employees working on sites with at least 10 people.

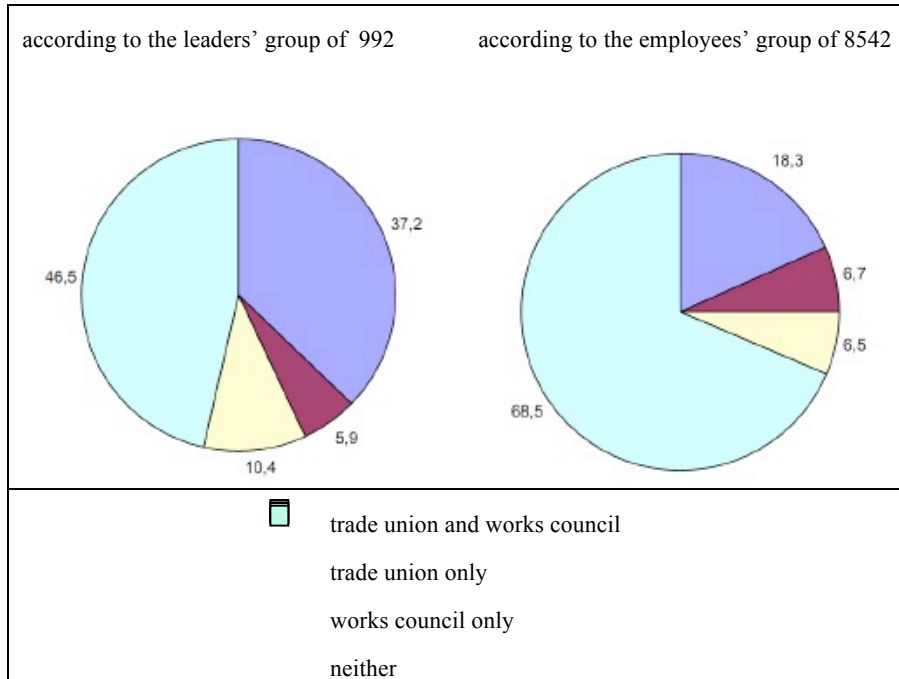


Figure 2
Trade union? Works council? None of them?
(calculated on employees, not on sites)

Source: Neumann, László: Trade Union? Works council? None of them? = Labour Review 2011 February.
2.p.

However in Hungary the effectiveness of mediation does not necessarily motivate social partners to use it, although in a wider organizational environment it becomes more popular. Nevertheless the method does not look back on a long tradition in Hungary. Anglo-Saxon and other countries (eg Germany) have far more experiences in it. I presume that it will take more years before mediation becomes more wide-spread.

2 Dilemmas of mediator

Some examples for difficult tasks and related dilemmas of mediators are:

- maintaining neutrality
- identifying needs

- acceptance

If the mediator faces a situation during a mediation settle, which occurred in her or his life earlier, too, can easily lose the impartiality. Although the mediators are usually familiar with this kind of danger of the mediation, even experienced mediators are hard to resist the temptation. The mediator better empathize with the party subconsciously, whom experiences are similar to those of him or her.

Some organizations inside of the areas of labour mediation on abroad (LRC, FMCS) take into account the professional lives of labour mediators, and implement relevant arrangements and regulation. In Hungary there have not been taken such measures and rules until now, excepted some general rules.

However it demands extraordinary efforts from the mediator to handle the issue impartially. If mediator seems not to be thriving in the given situation, referred to bias he or she has to bring the decision not to begin the meeting, or to suspend it. But where is the diving line? Nobody knows it surely. Mediator's responsibility to make the relevant decision on time, before the parties recognize that something was wrong.

It is similarly difficult to identify the needs of the parties. People are often socialized in an environment, where the needs automatically display as expectations. Although either have different meanings. By means of so-called nonviolent communication of which toolbar has to be demonstrated by mediators for the parties, if it is needed, through that the parties may can express their real needs. It can be helpful, if the parties explore the typical groups of general needs (eg. safety) with assistance of the mediator at the beginning of the dispute resolution procedure, and determine which of them dominate the situation concerned.

It's high time to emphasize the absolute inherent phenomena in a conflict situation. Namely the impatient behaviour with impaired consciousness of parties. The mediator's task is to clear the reason for conflict. If it is succeeded, there is a change in the attitude of the parties. They become more open to exploring options and to receiving recommendations.

Further dilemmas:

In case of unbalanced power of the parties the dispute involved in it means a serious problem to use the mediation. In conflicts between supervisor and subordinate or client and customer service member there is a stronger lack of empathy and one of the parties is in a more vulnerable situation.

The question of moral duty of mediator emerges in situations where the impartial party has an important aggregation of pieces of information in viewpoint of deserving or facilitating balanced power relations, but the expert of conflict resolution does not let known those with both parties or one of them. Mediator may not really suggest and noway impact the procedure through that he or she delivers a more favorable position for one of the parties. If he or she withholds the information mediator also makes a mistake, because then parties can only find a less favorable solution for their problem,

or one of them can find a worse position. If this party perceives it later, after the agreement, for example, than mediator's prestige may deteriorate.

I close my thoughts with a final, but evergreen dilemma. There is an often emerging issue that not only organizational coaches or labour professionals, but also lawyers mediate organizational conflicts. They are certainly experts of the legal environment, which is very useful in a fairly complex legal regulation system, which the Hungarian one demonstrates. The main question is whether a real chance is that a lawyer who was accustomed to represent interests as far as possible of one party in the court, will be same neutral in case of both parties, than professionals from other areas?

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