

# Mediation – practicum

Sociology, Communication



What kept the two sides glued to the negotiating table was their mutual desire to stay out of court. Although for different reasons, a court case would not help the causes of Manasseh Pulp & Paper Company (Manasseh) and Shawnee Power Company (Shawnee). Manasseh had two reasons for wanting to settle the dispute out of court. First, the company was not financially healthy. It feared that the combined cost of taking down the dam and bringing Shawnee to court would dangerously drain the company coffers.

Second, it considered Shawnee a big customer for their specialty papers and believed, correctly, that filing a suit would certainly mean losing a sizable amount of business. (Selig, 2002) Although Manasseh appeared adamant in its initial demand, I believe that the company was really hoping for a favorable out of court settlement.

Shawnee, on the other hand, had its own reasons for avoiding a court case. Even before the problem with Manasseh arose, the company had already received an order from the Environmental Protection Agency (EPA) requiring it to clear the river of their toxic metal discharge. The company counsel pointed out that a suit involving the same issue might work to their disadvantage in that it might force EPA to compel Shawnee to speed up its compliance with the clean-up directive.

Shawnee would not want this to happen because it would mean an earlier cash outflow for the project. Moreover, if Shawnee lost a court case with Manasseh (and the probability was very high because unquestionably, Shawnee was the source of the toxic metal in the river), the company

counsel feared that such a ruling might cause a negative influence on the EPA regarding their directive on the toxic metal clean-up. (Selig, 2002)

The aforementioned motivations compelled both parties to keep on discussing possibilities despite recurring impasses brought about by their conflicting interests. The counsels of both parties played a significant role in maintaining interest in the discussion not only by their constant reminders about the undesirability of litigation, but also by their active participation in efforts to look for mutually-beneficial alternatives. It must be properly noted that during one of the lulls in the discussion, it was the remark of one of the legal counsels that “ it would be a lot simpler and cheaper if we could repair the dam instead of having to take it down,” (Selig, 2002) that started the ball rolling again.

Notice should also be made of the participants’ enthusiasm in following-up any new ideas that came from discussants from both sides of the table every time an impasse occurred. When one of the attorneys made the remark about the possibility of a repair being cheaper, it was a Manasseh vice president who followed it up by asking “ if we were to repair this dam, could we restore railway service over the top and also use it once again to generate electricity?” (Selig, 2002)

Another constructive quality shown by the parties to the conflict was their readiness to look at the issue from all sides and take into account radical departures from their original demands and objectives in order to investigate all possible areas of agreement. For instance, the final solution found by the parties – that of repairing the dam, restoring the railway service, and

operating a turbine that would generate power (Selig, 2002) – was a far cry from their original plan of dredging the toxic wastes and dismantling the dam. However, since both parties were determined to look for a solution, their discussions stretched that far.

The successful resolution of the problem faced by Manasseh and Shawnee as shown in this case history, is evidence that if parties to conflicts adopt the correct attitude before embarking on conflict resolution processes, solutions that could benefit all parties involved are almost always available. That attitude would include a determination to resolve the issue in a way that would benefit the two sides. To achieve such an attitude, both parties are required to come prepared to open up, speak freely, patiently listen to arguments, empathize with the other's situation, and be prepared to utilize all pieces of information arising out of the discussions to explore possible avenues of success.

As a tactical move, it might help to stand firm on one's position, but for the sake of a successful negotiation, one should never close the door on proposals from the other side. In the case history presented, several issues stalled the discussion. The first hurdle proved to be the differential amount of \$2.2 million that Manasseh insisted must be paid by Shawnee and which Shawnee expectedly rejected. (Selig, 2002). However, because both sides were decided to settle things out of court, that disagreement, and all other subsequent differences of opinions, did not deter them from seeing the process to its final conclusion.

The Manasseh – Shawnee negotiation showed that in cases where the parties to a conflict are both intent on resolving their common problem, the mediator becomes redundant. A mediator is someone who has no interest in the case, personal or otherwise, and his or her neutrality is supposed to afford him or her with an unobstructed view of the possible solutions to the conflict.

However, in the subject case history where both parties were determined to cooperate in order to find a mutually-beneficial solution - out of court - their positive attitude was enough to provide them with a certain amount of neutrality that enabled them to stay focused on looking for possible solutions to their shared problem. Of course, full realization of the dire consequences to both parties in case they failed to reach an agreement proved decisive. Both Manasseh and Shawnee, for instance, were fully aware of the urgency of repairing the dam before it collapsed because they were advised by their respective counsels that they “ would probably be held jointly and severally liable for the consequences of such a collapse.” (Selig, 2002)

The six-month deadline fixed by the Corps of Engineers for the removal of the dam provided an added impetus for the two parties to stay on the negotiating table in spite of several impasses until a solution was finally found. (Selig, 2002) Based on this case history, it would therefore be safe to conclude that given the proper guidance and control from the proper authority, it only takes total cooperation from both parties to render the mediator redundant.

## REFERENCES

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Selig, E. I. (2002). Mediation Principles: An Environmental Case History.  
Dispute Resolution