

Dealing with Impasse (Mediator and Advocates – Each can help the process!)

Participants in mediation know that it is not altogether unusual for parties to get stuck during negotiation. Sometimes they may not want to move forward, or may not be able to proceed for any number of possible reasons. There may be fear, anger, inability to think of good options, or one of the parties may have a feeling of being coerced into something they do not want. Some strategies for dealing with impasse are as follows:

- Look deeper for underlying interests, concerns, or fears. Once those get addressed, parties usually find it easier to move on.
- Explore the use of appropriate experts to offer a different perspective or additional input on the issue(s).
- Explore the emotional and financial costs of not settling.
- Remind the parties that the issues will be decided at some point by third party but negotiation is their opportunity to maximize their control.
- Look for a different approach. For example, the parties often are trying to get concessions from each other. When this happens, defensiveness sets in and it becomes a tug of war. The mediator can help them come at this from another angle by asking what each would like to offer in response to the concerns and preferences of the other. Or ask: “What would it take for you to let go of that”?
- The mediator or advocate might suggest short-term solutions, allowing the parties to try out some of their ideas before deciding on the final agreement. The parties will need to be clear, perhaps in writing, that this is a short-term agreement and is not meant to be the final solution.

Practical Tips – Considerations Summary:

Parties are at an impasse when they find that they are unable or unwilling to move forward. Impasse can occur for various reasons including:

- parties having anxiety about **their needs not being met**,
- parties may believe that the options available to them are **not in their best interest**,
- one or the other of the parties may refuse to cooperate for **vindictive reasons**,
- **foot dragging** which can be a form of passive aggressive way of dealing with the other party,
- parties may not be **clear on their rights**, and
- parties **may not trust each other** to live up to any agreements they might reach.

When the mediator or advocate, along with the parties feel stuck, there are a number of ways to get beyond such impasse.

- **Conduct separate meetings (caucus).** Go deeper into interests and feelings. Explore additional options, evaluate options, and help develop proposals. Provide for some reality testing; what will happen if there is no resolution here? What is your best alternative to a negotiated solution? Will the alternatives give you what you want? How much will you be involved in determining the outcome?
- **Check if the parties wish to take a break.** Sometimes taking a break and coming back later gives parties time to reflect and develop new perspectives to bring to the negotiating table.
- **Summarize gains made and ask what the next steps should be.** This can help the parties see that they are not very far apart, or that they have demonstrated an ability to develop solutions.
- **Focus on the future and away from the past.** When parties focus on the future, they are moving

away from the blame game (history) to talking about how they want things to be different in the future.

- **Leave the issue for now and move to another.** Putting a difficult issue on the shelf and dealing with others that are easier may give new hope for dealing with the difficult one later.
- **Gather more information.** Sometimes getting more information from experts such as an attorney, accountant, management, or other authority on the subject will make it easier to move forward since better information leads to better solutions.
- **Discontinue the session and set up another time to meet.** This may be a good time to assign homework to the parties, to get information, summarize their ideas, bring questions, or
- **Ask the parties, in caucus, what they need in order to move on.** This question often gets to the root of what is leading to the stalemate. It is not unusual that a party's needs could be addressed either by the mediator or the other party.
- **Introduce experimentation.** Help the parties to agree on a short-term solution that they can try and see if it will work for them. They may find that the solution works for them or that it needs some fine tuning to serve as a long-term solution.

Resources:

1. Goodwin, C. (Summer 2008) Troubleshooting Impasse in a Collaborative Case, Collaborative Review, 10(2), 12-13.
2. Berman, Lee Jay (August 2008). Impasse is a Fallacy
<http://www.mediate.com/pfriendly.cfm?id=4154>



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