



Rebecca's First Pre-Caucus

The mediator begins by briefly explaining the philosophy and mechanics of Party-Directed Mediation.

MEDIATOR: Rebecca, it's a pleasure to have the opportunity to work with you. Last week, I mailed some reading materials for you to take a look at. I wanted to review just a couple of points and see if you have any questions. I'll meet with you first and listen with the idea of trying to understand the conflict from your perspective. [The mediator smiles frequently and speaks in a reassuring tone.]

REBECCA: OK. [Rebecca interjects several OKs as the mediator speaks and concludes each thought. The tone of her interjections express cooperation, understanding, and agreement.]

MEDIATOR: My first step is to understand you the way you wish to be understood. After listening to you, one of my jobs will be to prepare you to meet with Nora—when you feel ready. I want to stress that I'm not here to judge or decide who is right. I see my role as helping each of you by sharing tools and negotiation skills that will permit you to present your perspective in the best possible light, listen to each other, and hopefully solve this dispute. I'll be taking notes, so I can make sure I'm understanding you

correctly. If you need to take a break at any time, just let me know. Do you have any questions?

REBECCA: Thanks for asking; not at the moment.

Searching for the Problem

MEDIATOR: OK, we're ready to begin. So, tell me, from your perspective . . . what has happened . . .

REBECCA: Obviously, I can only explain from my perspective. [Rebecca wants to appear cooperative, and shows insight. For every disagreement, there are at least two perspectives. This type of cooperation is elicited through the pre-caucus.]

MEDIATOR: Right. Exactly.

REBECCA: Do you want me to kind of outline the problem?

MEDIATOR: Right. Start there, and we can go into more detail as we need to.

REBECCA: Ken Matsushita, the analytical lab manager, delegated the completion of a year-end report to me. Each person in the team had to do his or her part, but it was my job to collect all that information and edit it into a coherent piece. [Rebecca seems calm and from time to time smiles and laughs a little as she goes into further detail. She seems to feel good about telling her side of the story.]

MEDIATOR: M-hm. [As Rebecca speaks, the mediator's positive minimal responses let her know he is listening.]

REBECCA: Nora had a lab tech working for her, to whom she delegated her portion of the writing. I hadn't received the report, so I spoke to her, left a couple of messages taped to her door, e-mailed her with a copy to Ken, and brought it up at staff conference. So, I felt I had given her ample notice that it needed to be done. We all have to do our part. I spent several days working on this and felt it was a reasonable request. So, that's the issue.

MEDIATOR: [The mediator finishes writing down some notes.] Still nothing has been done?

REBECCA: No.

MEDIATOR: OK.

REBECCA: And this has been . . . easily a couple of months now.

MEDIATOR: Is this an isolated instance, or are there others?

REBECCA: There was another time when I needed her cooperation. I was helping Ken. When I spoke to her, she actually yelled at me and got very upset. And then I got upset. Don't shoot the messenger! I felt it was very unprofessional behavior that I didn't deserve. I just wanted to check it off my list. And so, that issue was turned over back for Ken to deal with. It's no one's highest priority, and maybe that's why it's not done. Ken has so much to do, and I just wanted to help. So he wouldn't have to worry about this also.

It takes about twelve minutes to come to some understanding of what was wrong, in very general terms, from Rebecca's perspective. When mediators let individuals get things off their chest, most parties can speak for a long time with very little prompting. Several factors might have contributed to Rebecca's reticence: the inhibiting presence of a camera; or a third party, who—despite his remarkable interpersonal skills—had limited exposure to the empathic listening approach.

But returning to the pre-caucus, a good way to test the waters and check if individuals have sufficiently unburdened their feelings is to ask people for the positive qualities of the other. Such a question is usually asked towards the end of the pre-caucus, after a person feels heard by the mediator. It seems an appropriate time to ask Rebecca, as she appears to be finished with her narrative.

Admirable Qualities of the Opposite Party

MEDIATOR: So that we can look at the positive side as well—what are some positive things you admire in Nora?

REBECCA: [Her face shows some surprise.] I'm not sure what that has to do with an issue, or resolving an issue? We talked about a specific problem with a start, and hopefully, a finish at some time. I don't understand what positive or negative feelings towards Nora have to do with it.

Rebecca suggests that this is about *issues*, not about *feelings*. This might well be a clue to the mediator that despite Rebecca's calm narrative, she is far from being ready to meet with Nora.

MEDIATOR: In preparing to bring the two of you together—which is a goal of this process—we want this not to just be about the issues involved. Having mutual positive qualities brought out will help.

REBECCA: So, there's a technique that you're trying . . .

MEDIATOR: Yes. It may help to . . .

REBECCA: But, but from *my* position, I feel . . . I've done what I can to do my job. [Hopeless.] I've done what I can. I don't think there's going to be a response from Nora.

MEDIATOR: By having both of you meet together—not now, but when you're ready—some of these points may be brought up and discussed. Maybe we won't reach a solution. But maybe we will be able to. Considering positive attributes about each other may help us reach a positive resolution.

Rebecca listens intently. She seems absorbed in deep thought and unsure what to say. The mediator attempts to answer her concerns. Rather than assume Rebecca has nothing positive to say, the mediator feels that perhaps she has not given herself permission to see Nora in a positive light.

MEDIATOR: [Laughs gently.]

REBECCA: OK, this could happen. [Joyful tone matches the mediator's laughing.]

MEDIATOR: So, do you have any positive qualities you admire in Nora?

REBECCA: I don't really know Nora very well, personally. I know her as a colleague in the lab. So, I can't make any sort of comments on personal sort of things. I'm not really aware of them. Our work issues don't connect much, so I don't really interact with her on work issues. My only interactions with her are related to using the same equipment or sharing space and that sort of thing. I'm assuming that she does . . . just fine. She's been here for a long time and has a lot of experience and does a good job of helping her clients.

The mediator is now certain that Rebecca is not ready to allow positive feelings for Nora to surface. The first part of Rebecca's statement indicates her lack of personal knowledge about Nora. Later, we shall hear comments that show the opposite to be true. The second part of Rebecca's statement—"I'm assuming"—does not constitute a positive reflection about her contender. Her comments could do more harm than good in a joint session.

These kinds of responses tell the mediator there is a lot more to the story than what the first few minutes of the conversation have yielded. There surely must be other issues hidden behind the dispute narrative. Rebecca is not ready to validate anything about Nora.

The third party proceeds to elicit further comments from Rebecca about the conflict. He does so by reflecting on something Rebecca said earlier. The mediator's reflective comment serves to prime the pump and is picked up immediately by Rebecca.

REBECCA: Well, as I said, we've lost a lot of people . . . support staff . . . and now there are things around here that the professional staff have to take responsibility for, such as keeping lab areas clean, because we share . . . and that's an issue, if individuals don't see that as part of their responsibility. Just as important as other tasks.

Although the mediator encourages Rebecca to speak again about the conflict, her comments are few. At least for the moment, it seems there is nothing more to say. The lack of positive comments by Rebecca about her adversary should have been a warning. Thinking of a joint session is premature.

Preparing Parties for the Joint Session

MEDIATOR: OK, I'll be meeting with Nora individually, the goal being to bring the two of you together.

REBECCA: [Agreeing.] Yes.

MEDIATOR: The two of you will actually be sitting as you and I are now, where you can have eye contact. I'll be down towards the end of the table. Again, the objective is for the two of you to meet together and talk. It will be helpful, when you meet, if you will each use each other's names.

REBECCA: I don't have a problem with that.

MEDIATOR: Using each other's names, and having eye contact, will help keep this on a positive note. Sometimes, when there's a third party and there are differences of opinion, one or both individuals may start to look at the mediator for support—instead of at each other. Moving toward the goal of a joint session, one thing to keep in mind is trying to find positive qualities about each other. For you—to summarize—this is basically a simple issue: you want Nora to provide you with her part of the write-up, so you can turn in the report to Ken. The issue may be small to Nora—perhaps she doesn't want to be bothered with the write-up—or there may be other underlying issues. As she comes to the table, one thing to keep in mind is how she's going to respond—or feels she needs to respond. We spoke about helping someone save face. If Nora comes to the table feeling she just has to turn in her write-up and hasn't done it, she may feel that she has to come in and say, "I was wrong." This may seem simple, but for some people it may

not be. As we examine all of this, we will keep in mind that it may not be the simple issue we, or you, feel it is.

REBECCA: OK. [Throughout, Rebecca has been nodding and letting the mediator know she is understanding.]

The mediator is preparing Rebecca to discover that, for Nora, the issue may run deeper than it seems. Rebecca is being invited to keep an open mind—in the way of a very gentle challenge.

POSTSCRIPT

After the camera was turned off, it became clear that other issues related to the dispute were deeply affecting Rebecca. The mediator listened to her for a considerable time. The fact that Rebecca hesitated to mention Nora's positive qualities confirmed that, despite the apparent simplicity of the conflict, Rebecca was not ready for a joint session with Nora. Issues of interpersonal relations were raised, in addition to the matter of unfinished reports.

When parties are ready for a joint session, they are able to talk freely about most—if not all—of the issues discussed in the pre-caucus.

Beginning with the next pre-caucus, the mediator elicits permission from Nora and Rebecca to “share some things.” While elements of what is termed *shuttle* diplomacy may be taking place, there is a big difference between it and Party-Directed Mediation. In shuttle mediation, third parties attempt to help contenders solve a dispute without necessarily confronting each other. A proposal is taken from one party and discussed with the other, a counterproposal is prepared, and so on.

In Party-Directed Mediation, the objective in sharing issues ahead of time is to prepare the parties to dialogue. This is especially important when one or both parties' self-esteem is particularly low. Or when blind spots need addressing ahead of time. Either way, some of the element of surprise is removed. Mediators will have a sense as to when this technique will be useful.