



Rebecca's First Pre-Caucus

I have found that even when parties are supposed to have received an overview of what to expect from the mediation, that they seldom have a good understanding of what is about to take place. The mediator begins by sharing an overview of the mechanics and philosophy: (1) that the mediator meets with each party separately; (2) that after listening to each party the mediator prepares them to face the other individual; (3) that both parties will meet together when they are ready, and speak directly to each other; and (4) that the mediator is not there to decide who is right or wrong.

Mediator – Rebecca, it is 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 will 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 OK's as the mediator speaks and concludes each thought. The tone of each interjection is one that shows cooperation, understanding, and agreement. The mediator is not stopping, but rather, going through a checklist of preliminary matter he wants to share with each party.]

Mediator – The first step is to understand you, the way you want me to understand you. After listening to you, one of my jobs will be to prepare you to meet with Nora—when you feel ready to do so. At this point I want to underscore that I am not here to judge, or decide who is right. Rather, I see my role as helping each of you by sharing tools and negotiation skills that will help you present your perspective and listen to each other, and hopefully solve the challenge you are both facing. I will be taking notes, so I can make sure I am understanding you correctly. If you need to take a break at any time, just let me know. Do you have any questions for me at this time?

Rebecca – Thanks for asking, not at the moment.

Searching for the Problem

Mediator – OK, we are 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 challenge there are at least two perspectives. This type of best-foot-forward and cooperation are elicited through the pre-caucus.

Mediator – Right, exactly.

Rebecca – Do you want me to kind of outline the problem . . .

Mediator – Right, m-hm. 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, much of which is deleted from this narrative. The point here is that

Rebecca seems to feel good about telling her side of the story.]

Mediator – [As Rebecca speaks the mediator lets her know he is listening, with such words as , right, or m-hm.]

Rebecca – Nora had a lab tech working for her, to whom she had delegated her portion of the writing. I had not 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 I brought it up at staff conference, so I felt I had given her ample notice that this needed to be done. We all have to do our part. I had spent several days working on this and felt this was a reasonable request. So . . . that's the issue.

Mediator – [Silence as 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 instance where I needed her cooperation. When I spoke to her, she actually yelled at me and got very upset. And I got upset then, because I was given a secondary job helping Ken . . . don't shoot the messenger. I felt it was very unprofessional behavior and that I did not deserve that. 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 is why its not done. Ken has so much to do, and I just wanted to help so he would not have to worry about this, also.

It took about twelve minutes to come to some understanding of what was wrong, in very general terms, from Rebecca's perspective. In contrast, when mediators let individuals get their feelings off their chest, most parties can speak for a long period of time with very little mediator

prompting.

A good way to test the waters, and check if individuals have sufficiently unburdened their feelings, is to ask the person for the positive qualities about the other. Such a question is usually asked towards the end of the pre-caucus after a person feels heard by the mediator. Here, it seemed as an appropriate time to ask Rebecca, as she appeared to be finished with what she had to say.

Admirable Qualities of the Opposite Party

Mediator – What are some positive—so that we can look at the positive side as well—what are some positive things you admire in Nora?

It is clear that there is much that has not been said, in spite of Rebecca's calm demeanor. Rebecca suggests that this is about *issues*, not about *feelings*.

Rebecca – [Her face shows some surprise.] I am 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 do not understand what positive or negative feelings towards Nora have to do with it.

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, but feel that having mutual positive qualities brought out will help . . .

Rebecca – So, there is a technique that you are trying . . .

Mediator – It may help to . . . yes.

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 do not think there is going to be a response from Nora.

Mediator – By having both of you meet together, not now, but when you are 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 solution.

Rebecca listens intently. The mediator attempts to answer Rebecca's concerns. It does not mean that Rebecca has nothing positive to say, but rather, that she does not understand how that is going to help.

Rebecca – [Looks absorbed in deep thought and unsure what to say.]

Mediator – [Laughs gently.]

Rebecca – OK, this could happen. [Rebecca says this in a joyful tone, to match the mediator's laughing.]

Mediator – So, do you have any positive qualities you admire in Nora?

Rebecca – Em, 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 as I am not really aware of them. Our work issues do not connect much, so I don't really interact with her on work issues, so the only things where I interact with her are related to using the same equipment or sharing space, and that sort of thing. I am assuming that she does . . . just fine. She has been here for a long time and has a lot of experience and does a good job of helping her clients.

The mediator now knows that Rebecca is not ready to think about positive things to say about Nora. The first part of Rebecca's statement implies a lack of personal knowledge about Nora. Later we shall hear comments that show the opposite to be true. The second half of Rebecca's comments, "I am assuming" are certainly not ones that the mediator can take to the bank. They could do more harm than good in a joint session. Such a response tells the mediator that there is a lot more than what the first few minutes of the conversation have yielded. There are other hidden issues, or at the very least the conflict has lasted so

long, that Rebecca is not able to humanize or validate anything about Nora. The mediator then attempts to elicit further comments from Rebecca about the conflict. He does so by reflecting on something Rebecca had said earlier in the conversation. The mediator's reflective comment is picked up immediately by Rebecca.

Rebecca – Well, as I said . . . we have 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 is an issue if a person does not see that as part of their responsibility. Just as important as doing another part of their job.

Although the mediator got Rebecca speaking again about the conflict, her comments were few. It seemed, at least for the moment, that there was nothing more to say.

Preparing Parties for the Joint Session

Mediator – OK, I will be meeting with Nora individually and then the goal is 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 will be down towards the end of the table because the goal 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 do not have a problem with that.

Mediator – Using each other's names and the eye contact will help keep this on a positive personal basis. Sometimes, when there is a third party and there is a difference of opinion, one or both individuals may start to look at the mediator instead of at each other. As we are moving toward this 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. The issue may be small to Nora—she does not 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 is going to respond, or feels she needs to respond. We talked 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 look at this, we keep in mind that it may not be the simple issue we, or you, feel it is.

Rebecca – OK [Throughout, Rebecca has been nodding or saying OK, letting the mediator know she is understanding.]

The mediator is preparing Rebecca for the eventuality that for Nora, the issue runs deeper than what it seems. She is being invited to keep an open mind.

POSTSCRIPT

After the camera was turned off, it became clear that Rebecca had other issues related to the conflict that were affecting her deeply. The mediator listened to Rebecca for a considerable time. The fact that Rebecca was hesitating to deal with the positive aspects of Nora confirmed that despite the apparent simplicity of the conflict situation, that Rebecca was not anywhere ready to meet with Nora in a joint session. A conversation took place about issues of interpersonal relations, so it was recognized that the conflict was more than about unfinished reports, or about getting Nora's cooperation.

Eventually, when the stakeholders are ready for the joint session, they will be discussing most—if not all—of the issues discussed in the pre-caucus. It helps to prepare the

parties. The element of surprise is not of much use, and can actually be harmful. For this reason, the mediator elicited the permission of each party, beginning with the next pre-caucus (Chapter 8, with Nora), to “share some things” with the other party. While elements of shuffle mediation may be taking place, there is a big difference between this approach and shuffle mediation. In shuffle mediation, the mediators attempt to help the parties solve a problem without necessarily ever facing each other. And so they take a proposal from one stakeholder and discuss it with the other, and prepare a counter proposal, and so on. Here, the purpose of sharing issues ahead of time is to prepare each party to face each other. This is especially important when the parties’ self-esteem may be particularly low.

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Party-Directed Mediation: Helping Others Resolve Differences

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