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Exploring negotiation and mediation options before arbitration or litigation: Which alternative dispute resolution is best for settling workplace conflicts

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Abstract
The alternative dispute resolution techniques of negotiation, mediation and arbitration are now being recommended more often for settling common workplace disagreements between parties instead of always depending on court litigation. This article provides an overview of these common dispute resolution techniques of negotiation and mediation so more employees and managers can see their advantages and disadvantages for application in their departments and organizations. Additionally, the article covers hybrid dispute resolution and online dispute resolution options for parties that work in distant locations nationally or internationally. Suggestions and recommendations are provided for facilitating negotiations, mediating disputes between parties through mediators or ombudspersons, and selecting from various relevant forms of hybrid or online options.

Keywords: Negotiations; mediation; arbitration; litigation; alternative dispute resolution; ADR; hybrid and online dispute resolution; conflict management; ombudsperson

Introduction
Negotiation plays a significant role in the working life of every professional and individual in society. Negotiating is often the most flexible method of solving disputes compared to arbitration and litigation. Before jumping into a dispute negotiation unprepared, despite the uncertainties and fears, it makes sense to identify and clarify the interests of all parties before initiating the process. It is understandable to think that trying to find common interests is difficult, because "People's problems lie not in their conflicting positions, but in their side's needs, desires, concerns, and fears" (Fisher and Ury, 1991, p. 42) [12]. Consequently, due to these fears and uncertainties, some disputing parties just want to win at all costs by resorting to aggressive and bullying behaviors which cause unnecessary emotional distress on everyone (Cavico, Mujtaba, Lawrence, and Muffler, 2018) [5]. As such, one should get outside of his/her comfort zone by aiming to be fair to all parties and understanding everyone's needs and desires. By not focusing on the common interests of all parties and holding on to one's own position, negotiators can fail to look at a solution beyond their own stated interests because they are naturally concerned with trying to do a good job arguing for their own party's needs and desires, leading others to see this as a win-lose mindset.
To prevent the win-lose paradigm in any negotiation process, it helps to understand not only the differing needs of each party, but also finding relevant solutions that don't conflict with these differences of opinion between the two parties. When disputing parties cannot come to an amicable process and outcome through direct negotiations, they can resort to mediation where a mediator facilitates the discussion among the two sides. If mediation does not work, then arbitration is another option before resorting to formal litigation through the courts. Some employers have a mandated contract that employee-employer disputes go through forced arbitration. As a condition of employment, this contract is usually signed by new recruits during the hiring process to waive their right to sue in workplace disputes. Forced arbitration is one area of employment law that has not always helped in creating transparency in punishing the guilty party as many victims of sexual harassment feel like they did not get just outcomes. As table 1 shows, many popular brands have been involved in forced arbitration cases over the past decade.

Table 1: Forced Arbitration 2020

S. No	Top Corporate Defendants (all categories)	Top Corporate Defendants (employment)
1.	Family Dollar	Family Dollar
2.	Windstream Communications	Dollar Tree
3.	AT&T	TBC Retail
4.	American Express	Menards
5.	Western Culinary Institute	Chipotle
6.	Tinder	Charter Communications
7.	Corn Appliances	Core logic
8.	American Home Shield	Macy's
9.	Citibank	E-Telequote Insurance
10.	Charter Communications	Halliburton

Source: American Association for Justice.
Link: https://www.justice.org/resources/research/forced-arbitration-in-a-pandemic

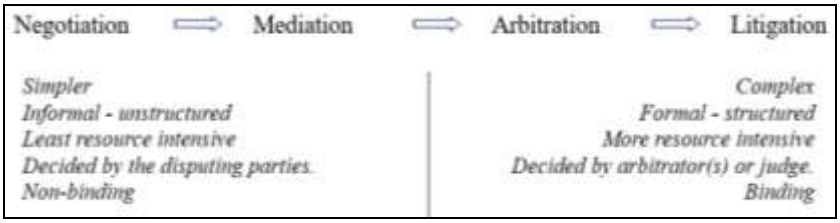
We know that many people and industries suffered when the 2020 pandemic forced courtrooms across the country as much of the legal system transitioned to trials by Zoom and other online forums. Yet, "the secretive world of forced arbitration kept going strong," since "an analysis of closed arbitration claims…shows that consumer and employment forced arbitrations increased during the pandemic" (Forced Arbitration, 2021, para. 2) [13]. While forced arbitration providers do not provide data on how many cases are filed each year, they do document how many are closed, showing a 17% jump in new cases closed in 2020 over 2019. Yet, the likelihood of success remains very low (4.1% in 2020) since consumers are more likely to be struck by lightning than win a monetary judgement award in a forced arbitration in the United States (Forced Arbitration, 2021) [13]. The good news is that recently, "many companies have dropped forced arbitration in limited circumstances," as firms like "Facebook, Google, Lyft, Microsoft, Uber, and Wells Fargo have all yielded to pressure to drop forced arbitration for sexual harassment claims" (Forced Arbitration, para. 6). Similarly,

Faced with the prospect that forced arbitration might not be the corporate Get out of Jail card it was designed to be, Amazon dropped forced arbitration requirements as part of its "conditions of use." The company had been hit with roughly 75,000 claims alleging that its Alexa-equipped devices were recording customers without their consent. Since each claim involved upwards of $2,900 in fees just to start the arbitration proceedings, Amazon found itself potentially on the hook for tens of millions of dollars before a claim was even heard (Forced Arbitration, 2021, para. 12) [13].

Instead of always requiring employees and consumers to abide by the forced arbitration clause, it might serve employees, consumers, and employers well to encourage transparent negotiation and mediation strategies in jointly solving the minor workplace disputes and dilemmas to each party's satisfaction.

Sometimes, having a neutral third party to facilitate, negotiate, or mediate a minor workplace dispute can be a good win-win strategy. There is the example of a librarian serving as a third-party mediator for two people that have differing positions and interests. One party wishes to open the window to get fresh cooler air from outside while the other person does not want to because he or she does not like to feel the draft, perhaps due to nasal dryness or allergies. By looking at these two seemingly different positions, the librarian opts to open a window in another room where there is no draft (Fisher and Ury, 1991, p. 42) [12]. The same can be applied to everyday work life and personal events that can lead to a conflict between colleagues or family members. Sometimes we can very easily be blinded to different needs and not see a third option which is why an outside third party can often resolve this with alternative resolutions or techniques to create a win-win outcome. In the everyday work life of an individual, these third-party solutions are almost always beneficial and can conclude a negotiation much faster without too many stressful discussions.

Another element to consider about negotiations is that different and even opposite or diametrically opposed positions (such as seller and buyer) can often work better for each side than being on common grounds (such as seller and seller looking for buyers). For example, when buying a product, we establish and recognize that the seller has more of an interest in selling that product rather than keeping it as costly depreciating inventory in storage, and you as the consumer are deciding that the product is worth the tradeoff of the cost. In this situation of totally different positions, it can lead to a negotiation transaction in each party's favor. When trying to negotiate as buyers and sellers, each side may get a compromise in his or her favor as a result since both parties are interested in the exchange. When the buyer feels that the cost of an item is too expensive for him or her at the current time, the seller might offer discounts, rewards, warranties, etc. to bring the transaction into a win-win outcome. In some cases, we can offer or get a concession that was never originally planned that might be very useful to the other party, a concept known as *dovetailing* (Fisher and Ury, 1991, pp. 75-77) [12]. The main point is that both the buyer and seller should be involved in open and transparent communication regarding their positions so they can help each other negotiate with good intentions to reach a win-win outcome. Of course, reaching a successful conclusion requires understanding the foundational elements of good negotiations and planning for win-win outcomes without needing mediation, arbitration, or litigation. As presented in Figure 1, dispute resolution options can range from simpler to complex, informal to formal, and non-binding to binding. Depending on the complexity and comfort level of the disputing parties, an appropriate dispute resolution option can be selected to reach a viable outcome. Let us begin by reflecting on the two most common options, starting with negotiations and then mediation.



*Visual created by the authors.

Fig 1: Commonly-used dispute resolution options

Negotiation

Human beings are diverse with different tastes, preferences, needs, and values which can be in conflict at times. Consequently, negotiations become a necessity for living a life of peace and prosperity alongside others in the family, community, department, organization, and society in general. Negotiations are therefore indispensable to our progress as peoples, cultures and nations with clashing viewpoints, values, ideals, and ideologies governing our behaviors and relationships with our fellow colleagues across all boundaries. For progress, which requires peace to take place, we need to negotiate towards win-win outcomes. Besides making business deals, effective negotiation practices can have many other uses as well, such as conflict resolution strategies among various nations or opposing parties.

Negotiations are an inevitable part of our human reality, and each person will eventually have to negotiate important issues at some point in life. People negotiate constantly with almost everyone within their lives. Without open and transparent negotiations, human society and civilization would not be where they are today. In fact, we negotiate not because we want to, but because we must do so to achieve progress and results in a peaceful manner. For example, we often negotiate with our family members (parents, spouse, and children) regarding summer vacation opportunities in terms of what to do, where to go, and what to give up, etc. Of course, in the family it is more critical and essential to create win-win outcomes, so nobody feels like a loser. And it is even more important to separate the issue being negotiated from the people involved. Regardless of whether one is dealing with a family member, a boss, or a foreign supplier, Latz (2004) [25, 26] offers the following foundational principles or guidelines for successful negotiations:

1. Negotiate strategically-not instinctively.
2. Confidence and success come from knowledge and practice.
3. The power of preparation always makes a difference.
4. Protect your reputation, and theirs.
5. Learn by doing.

It is incumbent upon everyone to do his/her homework before going into negotiations. Latz proposes what he calls the "*Five Golden Rules of Negotiation*," which are as follows:

1. Information is power-so get it.
2. Maximize your leverage.
3. Employ "fair" objective criteria.
4. Design an offer-concession strategy.
5. Control the agenda.

It is the duty of modern negotiators to build winning strategies and tactics in personal dealings and at work through preparation, bargaining, and effective implementation. This can be accomplished by developing flexible negotiation plans and maintaining strategic business relationships. Everyone must realize that negotiation is an important part of our daily lives and survival. As such, negotiation is about life, and life is about negotiation (Robinson, 1996) [44]. Regardless of the process, steps, or model used, negotiators should always open the negotiation by stressing mutual benefits to all parties involved, being clear and positive, implying flexibility, creating interest in the dialogue rather than allowing a prolonged monologue by the bigger or more powerful party, demonstrating confidence and trust, and promoting goodwill through a win-win paradigm.

It is a fact that negotiation can play a role in the working life of an individual. Negotiations take place each day without us always knowing or being conscious of the fact that it is taking place. Perhaps just in the past week, one may have had the honor of utilizing his or her knowledge of negotiating to buy a new car, purchase a computer for business or personal use, rent a new apartment, or sell a house. Some of these negotiation deals can be very positive while others are not always satisfactory to one or both parties. In some cases, despite the "lose-win" outcome, leaving the relationship or closing the business is not an option for the organization, so one can use the problem-solving orientation in negotiation which focuses on the opportunities for joint gain. It is important to simply focus on the desired goal, and not be distracted by emotions.

It is also important to never take no as a permanent answer, since a "no" answer today does not necessarily mean no forever. To be a successful negotiator in life you must be bold to think outside the box, not be arrogant and have a sense of confidence that goes beyond what people think. Negotiating is something we do each day without always knowing we are doing it. If you are not getting a good deal based on your understanding, then "It does not hurt to ask, because if you don't ask, you don't get." As the saying goes, "ask and you shall receive."

The thought of negotiating may be a fearful idea to most adults initially, but once you have gained the basic skills and the ability to negotiate it will build your confidence. Negotiation does help in many instances, for example when one is buying a car, landing a good job, succeeding at work with multiple teammates that have conflicting schedules, getting out of debt, and even managing personal and professional relationships towards win-win outcomes for all relevant parties. So, developing the skills of negotiation can:

1. Help you build confidence.
2. Ensure you are getting a fair deal.
3. Find the middle ground by making relevant concessions as needed.
4. Increase your ability to listen, empathize and learn.
5. Gain more friends and allies.
6. Develop your interpersonal skills.
7. Hone your strategic planning skills (Skills You Need, 2023)

Negotiation, like conflict, is an evitable part of life, and everyone gets involved in using it in some part of his/her life; yet most of us do not get any formal education on its importance, strategic uses, and skills. As such, negotiation can be a challenge for most adults that naturally do not like "conflict" or aggression. Since people often get into negotiating unprepared, many working professionals do not always know how they come across in negotiations or how assertive they have been in a specific event. Additionally, some individuals who do not take notes or keep a record are likely to forget important details of what their counterparts say. However, negotiations do not need to be associated with aggression or conflict. In fact, we can learn to be good negotiators through the development of empathic listening and assertiveness skills while speaking the truth and making sure everyone is heard in the negotiation process.

Negotiation requires planning, goal setting, strategizing, Gaining agreement between parties regarding the main issue to be negotiated, collaborating, practicing the skills and various techniques, and closing the process with a win-win agreement. It is important to learn more about the details of negotiations, mediation, and arbitration, as well as the fact that the use of hybrid dispute resolution (HDR) is becoming more common in most developed economies. Negotiation and mediation provide more control over the process to the disputing parties; otherwise, the next option is arbitration, where the parties present their arguments to a neutral arbitrator who can make the final decision. Alternative dispute resolution (ADR) is a much cheaper and more efficient process for settling conflicts, compared to litigating an issue in court. It is good to see that the legal system is encouraging ADR in our litigious American society. Nonetheless, when negotiating, each party is likely to bargain based on their stated positions. The key drawbacks of positional bargaining are the fact that an agreement between the two parties becomes less likely due to anger, rigidity, or lack of flexibility, and arguing over positions can be very inefficient because the more extreme and rigid a party's position, the more time, resources, and effort will be expended in negotiations. It should also be noted that arguing over positions can damage the relationship between the disputing parties as anger and resentment build and are not easily forgotten. Instead of simply focusing on one's own position, it is best to practice what is known as principled negotiation.

The main goals of "principled negotiations" are to focus on people, explore interests of both parties, develop viable options for a win-win outcome, and use objective criteria in the process to decide on options / ideas based on the merits instead of haggling towards a win-lose outcome (Fisher and Ury, 1991) [12]. One should look for mutual gains by finding the common ground for win-win outcomes. Ultimately, the disputing parties become the problem-solvers as they attempt to reach a wise outcome in an amicable manner. Principled negotiations can lead to a successful outcome because it is more integrative and requires both parties to be engaged in finding a win-win solution that is fair based on reason and principle (rather than pressure and aggression). The integrative process requires the seeking of joint gains by either approaching or expanding mutually beneficial outcomes. In this process, the parties see themselves as having a common problem and therefore become problem-solvers. This is why such a negotiation has been referred to as win-win bargaining, or interest-based negotiation.

Roger Fisher and William Ury, in their book entitled "*Getting to yes: Negotiating Agreement without Giving In*" (1991), emphasized that a "good" negotiation is more than just getting to "yes" in a dispute among parties. In other words, a good negotiation or agreement is one that is wise and efficient for the relevant parties, and it improves their relationships. A good, negotiated agreement can satisfy the interests of all parties, and are considered fair and sustainable since true partners want to preserve their relationship for the long-term. However, getting to such a positive outcome for all parties is no easy task, especially when there are interpersonal challenges among the disputing parties.

Since negotiation is a consensual bargaining process of reaching agreement on a disputed matter (Nolan-Haley, 2021, p. 19) [37], Fisher and Ury (1991) [12] recommend that negotiators should work on the following basic principles:

1. Separate the people from the problem among the parties.
2. Focus on interests, not positions each party takes.
3. Invent multiple options-mutual gains for both parties.
4. Insist that the result be based on objective criteria that are mutually agreed upon by both parties.

When it comes to "separating the people from the problem," there is a retail example where Valorie and Cathy were at times verbally abusive among the two of them and developed some hostility towards each other. It got to a point when they were calling each other names, sometimes as retail customers witnessed. After several weeks, this hostility was brought to the manager's attention by a retail customer. So, the manager had to deal with it immediately by having them sit down with him. When asked what the problem was, each employee immediately attacked the other person's character and described how mean and stupid the other person acts in the department when the manager is not around. Of course, this discussion was not going anywhere towards a healthy resolution, as they were physically and mentally becoming more stressed and angrier. So, the manager reminded them that Valorie came to the department one year ago, has been a great help, and still works part-time with much scheduling flexibility to accommodate the department. He emphasized that Cathy has been with the company as a senior full-time employee for over a decade and has done a wonderful job. The manager asked them to stop the insults and explain what the real issue was that initially bothered them about the other person and hurt their productive working relationship. After about one hour of going back and forth where the manager asked for one person to talk and another to listen, it was found out that Cathy believed that Valorie was after her job and wanted her fired. Valorie said she was not interested in Cathy's job but did want Cathy and everyone else in the department to be happy with her performance so she could eventually become full-time with the company in any location, not necessarily in the present department or position. Valorie said she works hard to make her senior colleague, Cathy, pleased with her performance but hardly ever hears any positive feedback. Getting to the core issue of Cathy feeling that Valorie wanted her fired so she could get her job was like peeling an onion one layer at a time very slowly, and very patiently. Once the real reason why each person felt unhappy with the other person was discussed and Cathy knew that Valorie was not interested in her job but did want her to serve as a coach and mentor since she had seniority and experience, we could negotiate on how to have a productive working relationship in the department and to always behave professionally.

Mary Greenwood, in the book "*How to Negotiate Like a Pro: How to Resolve Anything, Anytime, Anywhere*," (2017) [15] emphasizes the negotiators should focus on the goal while agreeing on common issues based on important priorities. And negotiators should look forward and look at the big picture to reach a win-win settlement. The negotiator should focus on talking about the facts of the dispute (the real problem) between the two parties and should ensure that a person's character is not attacked. The negotiator should highlight the most important interests of the two parties in the negotiation so they can reach a mutually

beneficial outcome. In the retail management example, the manager served as a coach, referee, facilitator, and/or mediator to encourage a productive negotiation directly between Valerie and Cathy so they could reach a mutually beneficial understanding of saying "yes, we can work towards a win-win outcome for both of us" without needing to formally contact the human resources department.

Mediation

Working together requires some ground rules to work professionally, preserve the relationship, and improve productivity. As such, a mediator working with both parties can rely on the recommendations of experts and agreed-upon rules among all parties to begin and end a negotiation process. All parties must first understand mediation, its purposes, and agree on the common ground rules.

Generally, when two or more parties cannot reach an agreeable decision regarding a disagreement, a third party can be brought in to facilitate a constructive settlement. These third parties are called mediators, and the process by which grievances are aired is called mediation. Often viewed as the referee in a pivotal match up, mediators are not judges; they are in place to help parties reach a mutual agreement by focusing on tangible outcomes. Agreements by compromise do not solve underlying emotional or organizational conflict and are not the most favorable solutions sought by either party (Eilerman, 2006) [10]. However, mediation can guide conflicting parties to a mutually acceptable resolution, in a cost-effective, expedient manner, and provide closure to uncomfortable situations. Mediation can be very useful in employment disputes between co-workers or colleagues. When two or more parties cannot reach an agreeable decision regarding a disagreement, a neutral third party like an ombudsperson can be brought in to facilitate or mediate a constructive settlement.

Neutral parties, such as religious leaders or ombudspersons, have been used as mediators in international conflicts, and many countries have sent high-level officials and representatives to broker global peace deals (GAMA, 2006) [16]. Today, many companies employ mediation as their first line of dispute resolution, and the process is readily accepted by organizations in many countries (Raworths, 2006) [43]. As such, mediation can be used in most disputes and is often considered a safe, effective process that assists "communications for agreement" (Melamed, 2006, p. 1) [29]. Parties with conflicting views, who are unskilled in negotiating, can use mediation to reach a middle ground by making sensible concessions to reach a "win-win" outcome.

A trustworthy, reliable, and honest ombudsperson can be a good mediator. Good mediators have reputations that precede them, and they are retained for their ability to understand and analyze cases (Harris and Palma, 2007) [18]. They are essential to a productive mediation session. A skillful mediator sets a collaborative tone and focuses on the needs of parties without blaming either side (Pickett, 2006) [41]. A talented mediator can paint a gloomy picture of what the future may hold if the case is not settled and often points out the unpredictability of jury deliberations and subsequent verdicts. Their experience and guidance allow them to identify options for parties using a practical approach. Good mediators do not necessarily require technical expertise but should be creative, visionary, trust-worthy, and broad thinkers who maintain a sense of humor and remain detached from the situation at hand (Kanaris and Mujtaba, 2024; Raworths, 2006) [23, 43].

Mediation can be useful in the employment setting when there are two companies trying to resolve a dispute and wish to avoid going to court for a prolonged or stressful litigation; as such, there is a need for a neutral third party to help facilitate a solution. If big concessions are being made, a neutral third party would be helpful in making sure that neither party feels cheated nor set up. Likewise, mediation is also useful when there are personal problems between two employees. If an employer wishes to resolve a problem with two employees to promote a safe and healthy work environment, mediation would be beneficial in these types of situations since mediators are meant to be neutral, keep the cool in a room, and they typically allow for parties to break out and meet individually if they are not comfortable discussing certain topics in the presence of the opposing party.

The practice of mediation is something that is historically insular, which allows for mediation to resolve issues that should remain confidential and private through the wishes of the affected employees and the company. Besides the power and ease of mind that mediation can bring to all levels at a company, it is also inexpensive compared to arbitration or litigation. While mediators are not necessarily lawyers, they do have the experience to move a conversation in the right direction respectfully. When identifying issues, they can help disassociate blame and focus on the matter at hand. In addition to reframing a conversation, having a neutral third-party present could be a good reinforcement to always keep the collaboration environment healthy and ethical.

Mediators and Ombudspersons

A mediator can function just like an ombuds person in solving morally complex dilemmas in the workplace. According to the Ombuds Association (2023) [38], an ombuds is a person who provides a safe space for complex issues between parties to explore viable options to resolve conflicts and bring systemic concerns to a company for a resolution. We can differentiate between a mediator in that an ombuds serves as a representative / middleperson for the affected party and the company, while considering all ethical consequences. Of course, both mediator and ombuds roles are neutral parties, and an ombuds must pay attention to the ethical consequences of all final agreements. Overall, like a mediator, an ombuds can play a role in resolving employment disputes among conflicting parties by remaining neutral and non-judgmental between opposing sides.

Mediation is a confidential, informal, voluntary process where a neutral party helps to resolve a conflict. It allows people to settle disputes and discuss their issues. Some of the functions of a mediator are to reduce stress, retain valuable employees, avoid more formal processes such as going to employment tribunal, stop more grievances from being raised, and avoid paying high costs in litigation (ACAS Working for Everyone, 2023) [1].

Organizational ombuds work with individuals and groups in an organization to provide a safe space to talk about an issue, dilemma, or concern, explore options to help resolve conflicts, and bring systemic concerns to the attention of the organization for resolution. An organizational ombuds, while serving as a mediator or facilitator, must operate in a

manner to preserve the confidentiality of those seeking services, maintain a neutral/impartial position with respect to the concerns raised, work at an informal level of the organizational system (compared to more formal channels that are available), and remain independent of formal organizational structures (Ombuds Association, 2023) [38]. Organizational ombuds work in all types of public and private sector organizations, including government agencies, colleges and universities, corporations, hospitals and other healthcare entities, and not-for-profit organizations, foundations, and associations (Ombudsman Association, 2023) [39].

While an organizational ombuds is an individual who serves as a designated neutral party within a specific organization and provides conflict resolution and problem-solving services to members of the entity (internal ombuds) and/or for clients or customers of the institution (external ombuds), they do not advocate for individuals, groups, or entities, but rather for the principles of morality, fairness, and equity. The organizational ombuds do not play a role in formal processes, investigate problems brought to the office's attention, or represent any side in a dispute (Ombudsman Association, 2023) [39].

Some characteristics of the organizational ombudsperson include traits such as confidential, informal, independent, and impartial assistance to individuals through dispute resolution and problem-solving methods such as conflict coaching, mediation, facilitation, and shuttle diplomacy. The organizational ombuds respond to concerns and disputes brought forward by visitors to the office and may convey trends, systemic problems, and organizational issues to high-level leaders and executives in a confidential manner. The ombuds professionals listen and understand issues while remaining neutral with respect to the facts. They assist in reframing issues and developing and helping individuals evaluate options. An ombuds may refer individuals to one or more formal organizational resources that can potentially resolve the issue.

The ombuds representative can mediate with the employees and the organization to make sure all legal and ethical norms are being followed. The ombuds must remain neutral with both parties and assist in options that would benefit all stakeholders.

Autonomy In Negotiations and Mediations

Having autonomy in negotiations and mediation is a key attraction for parties to try alternative dispute resolution options, since the option of court litigation leaves little room for independent choices. The good news is that the level of autonomy or the degree to which the parties possess the right to make their own decision about the process and outcome of a negotiation or mediation depends on the initial ground rules or contract. Each party should do some homework to decide how much autonomy he or she wants to exercise in the negotiation and mediation process. Of course, each party will reserve the same rights. Skilled parties might aim for direct negotiations, while others might opt for mediation where a neutral party facilitates the discussion among the disputing parties. There is a greater level of autonomy in direct negotiations as opposed to mediation, where a third party is involved. In negotiations, one is dealing directly with the opposing party, where mediation involves the mediator who facilitates the dispute resolution process.

Mediation can be used with or without litigation. Oftentimes, parties prefer a jury to decide their fate rather than agree to a compromise. Usually, this results in dissatisfaction by both parties due to length and cost (Raworths, 2006) [43]. Although not a panacea, mediation can be quite effective and successful.

It should be noted that the mediator is not the judge, jury, or trier of fact, but an impartial third party who is well-versed in spotlighting the possible outcomes, merits, and pitfalls of a claim. Their purpose is not to decide the dispute, coerce either side, and unduly influence or direct resolution of issues (Blitman, 2018) [3]. Further, a mediator must remain unbiased and never allow his/her opinion to permeate the proceedings in any manner at any time. A skillful mediator sets a collaborative tone and focuses on the needs of parties without blaming either side.

There is certainly more autonomy in direction negotiations than mediation and arbitration. The important thing is to recognize the key differences between these ADR techniques. In negotiations you are working with your own team and have multiple approaches to how you want to reach a solution. Mediation is what comes after a negotiation has failed. Negotiations are still in play, but you are instead getting one step closer to closing off the conversation entirely. In the mediation stage you realize that your options are more limited, and the mediator is there as a neutral party to keep negotiations cool and facilitate a solution. For example, distributive bargaining means that one side must gain something, and the other side may lose something. The same can be said with positional bargaining as relationships can easily deteriorate if one party is digging heavily into their own position, applying pressure, is cynical towards the other party, and seeks to be the party that wins at all costs (Fisher and Ury, 1991, p. 23) [12]. Such unprofessional behaviors are not acceptable in mediation due to the presence of a mediator, since the process of mediation is designed so the two parties have an equitable chance of reaching a win-win agreement without coercion or manipulation. Naturally, the set up for mediation is designed to facilitate an agreement by each party getting what they perceive is fair. Unlike certain direct negotiation tactics, where putting on a meltdown as a show or being inconsiderate can be seen as a gain, these things are monitored in mediation (Greenwood, 2017, p. 26) [15].

There are no rules to regular direct negotiations, but the mediator sets the rules in mediation. There are many possibilities about how the parties want to approach a negotiation. Whether or not they get the solution they want can depend on how well they read the other party's body 'language, reaction to certain tactics, and their likes and dislikes. A mediator may intervene during a caucus and remind a party if they are overreaching, which won't happen in the direct negotiation processes. In direct negotiations, there will be no third party that can ease both parties from getting carried away with their own passion. If a side is being totally unreasonable or rude in a negotiation the mediator can just close the discussion immediately (Greenwood, 2017, p. 29) [15]. In negotiations, the two parties may go on even if things become tense. There is much more autonomy in negotiation versus mediation. Mediation provides less autonomy. As Greenwood states "It is hard for some parties to wrap their minds around the self-determination aspect of mediation" since "Sometimes they

still want to know what the mediator thinks about the case and who is right or wrong" (2017, p. 30).

Party autonomy is a common attraction shared in both negotiation and mediation processes. However, party autonomy plays a much more integral role within mediation. Under most mediation frameworks, the disputing parties not only choose their mediator and type of mediation process, but also must consent without any coercion to the mediated settlement. The mediator does not have any authority to impose a solution on the parties and they retain their autonomy whether to settle it by consent.

Fisher and Ury (1991) [12] explained that a good agreement is one which is wise and efficient, and which maintains or even improves the parties' relationship. Negotiations often take the form of positional bargaining, where each party opens with their position on an issue. The parties then bargain from their separate opening positions to agree on one position. The process begins with the analysis of the situation or problem, of the other parties' interests and perceptions, and of the existing options. The next stage is to plan ways of responding to the situation and the other parties. Finally, the parties discuss the problem trying to find a solution on which they can agree. Good agreements focus on the parties' interests, rather than their positions. One's position is something that a person has decided upon as a fair outcome without always thinking of the other side. One's interests are what causes a person to decide regarding agreements and concessions in reaching a final deal (Fisher and Ury, 1991) [12].

The difference between negotiation and mediation, in brief, is that negotiation involves only the parties, and mediation involves the intervention and assistance of a third party, the mediator as a facilitator in the parties' effort to resolve their dispute (International Mediation Institute, 2023) [20]. The cost disadvantage of mediation is that it can still be expensive and not result in a resolution. A simple negotiation between the parties can resolve a dispute for free; but employing counsel to represent the parties and employing mediation can cost a significant amount of money.

Self-Determination and Arbitration

Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome, including mediator selection, process design, and participating in or terminating the process. In the arbitration process, the disputing parties have no self-determination option as they present their case to one or more impartial third persons who are empowered to render a decision (Nolan-Haley, 2021) [37]. According to Greenwood (2017, p. 68) [15], self-determination typically implies that decisions made during the mediation are to be made by the parties themselves, not the mediator. The mediator's job is to help facilitate the mediation between the two parties, but the mediator cannot exert coercion or undue influence on the parties to resolve the case in a certain way. However, this power of decision-making would be transferred to the arbitrator if they choose to go into arbitration.

Greenwood emphasizes that the negotiators and mediators should focus on talking about the facts of the dispute (the real problem) between the two parties and should ensure that a person's character is not attacked. So, the mediator does not make any decisions. The negotiator and mediators should highlight the most important interests of the two parties in the negotiation so they can reach a mutually beneficial outcome on their own. In negotiations and mediation, the parties have the power to decide to resolve their dispute by talking about it and by making concessions as per their agreement; or they can leave the final decision to the process of arbitration where an arbitrator makes the final decision. Additionally, they can even go into litigation where a judge decides. When negotiation and mediation are not possible, the next logical option is usually arbitration. Arbitration is defined as,

A process where parties present their arguments to a neutral arbitrator who makes the decision. This is an alternative to litigation (going to court) and is one of the procedures known as alternative dispute resolution, or ADR. Labor/management arbitration is one of the oldest kinds of arbitration. The arbitrator is like a judge, while the parties make their own decisions in mediation and negotiation (Greenwood, 2017, p. 63) [15].

In negotiations or mediation, the parties make the final decision, but in arbitration the parties present their case, and the final decision is made by the arbitrator (Nolan-Haley, 2021) [37]. By choosing to go into arbitration, the disputing parties have elected to give the decision-making power to a third person known as the arbitrator (Greenwood, 2017, p. 51) [15]. The arbitration process is less formal than litigation where the arbitrator makes the final decision, which can be binding or non-binding. When there are disputes between labor and management, arbitration is usually binding, which means that the arbitrator's decision cannot be appealed or overruled unless there is confirmation or evidence of discrimination or bias. Non-binding arbitration decisions are those that the disputing parties can choose to reject if they are not happy with it. As such, they might end up litigating the issue in a court before a judge, which can be more time-consuming and costly.

Mediation and arbitration are both means of resolving conflicts or legal issues, also called alternative dispute resolution outside of the courtroom. They are both used in helping two parties reach an agreement without a lengthy legal battle. The main difference between the two is who makes the final decision. Mediation is a confidential process with a mediator. With mediation, the final decision is reached by agreement between the two conflicting parties, while arbitration calls on an arbitrator to analyze the case details and reach a verdict. Mediation is a non-binding process while arbitration can be binding or non-binding. The arbitration process is more structured like a court case. Each party makes an opening statement and presents their side to the arbitrator. Mediation provides freedom to clients who want to solve their issues and costs less than that of arbitration.

Arbitration and negotiation are two forms of processes involved in dispute resolutions between two parties. The formats and nature of arbitration and negotiation are different from each other. In arbitration, both parties appoint a third-party arbitrator or arbitrators. Negotiation involves two parties and a facilitator. The facilitator allows both sides to talk and negotiate their disputes. The facilitator records the process including the parties' positions, their agreement, and discussions. Unlike arbitration, the resolution in negotiation is not legally binding (Difference Between, 2023) [8].

Arbitration

As mentioned above and articulated by the American Bar Association (2023, para. 1) [2], "Arbitration is a private process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments." Of course, arbitration is not mediation because here the neutral arbitrator has the authority and obligation to make a final decision which can be binding or nonbinding. The arbitration structure can be very similar to a court-imposed trial where the parties make opening statements, while also presenting evidence regarding their case to the arbitrator. However, "compared to traditional trials, arbitration can usually be completed more quickly and is less formal (American Bar Association, 2023, para. 3) [2]. Unlike negotiation and mediation, the two sides arguing their case have little to no control over the timing, structure, and formality of the arbitration process.

Once all parties are heard, the arbitrator makes a final judgement and may discuss his/her rational for the award decision. The binding arbitration decision is final, can be enforced by a court. However, it can be appealed on very narrow grounds. The non-binding arbitration award is usually advisory and can become binding and final if it is accepted and signed as such by the disputing parties.

Litigation

Litigation is generally seen as a process where the disputing parties take their case to the local court so a formal judgement can be rendered using civil procedure rules. So, it is formal, structured, time-consuming, and is usually used to solve rights-based disputes through the local court system. It is often used for disputes such as breaches of contract, injury claims, employment violations, or even divorce procedures.

Litigation involves getting expert legal counsel to file a lawsuit with an appropriate branch of the local judicial system and go through the development of arguments for one's dispute. Litigation tends to have a discovery phase where there is the formal exchange of pertinent information through scheduled courtroom trials and appeals (Litigation and ADR, 2023) [28]. Unlike negotiation and mediation, the disputing parties have little to no control over the timing, structure, and formality of the litigation process. The final decision is usually binding and can only be appealed to the higher branch of the court system.

Alternative Dispute Resolution

In our highly litigious society, alternative dispute resolution is becoming more important than ever before to bring fair and quicker outcomes to parties standing at an impasse. According to Nolan-Haley (2021, p. 1) [37], "ADR is an umbrella term that refers generally to alternatives to the court adjudication of disputes, including processes such as negotiation, mediation, arbitration, and various hybrids". Sometimes ADR is referred to as "appropriate dispute resolution" or "amicable dispute resolution."

ADR, like negotiations, is a consensual bargaining process between parties that cannot solve their disagreements by themselves but want to reach a mutually agreed upon outcome. In ADR, the disputing parties do not always have to take part in the ADR process, and if they do, they do not have to necessarily abide by the outcome, unless there is a contractual agreement (Nolan-Haley, 2021; Connerty, 2006, p. 267-8) [37, 7].

The good news is that alternative dispute resolution training is available through professional organizations, continuing education programs, and more recently universities have been offering degrees in conflict resolution, negotiation, and mediation. These training programs provide a comprehensive understanding of conflict and lay the foundation for resolving workplace disputes. Most institutions teach core competencies, theory, skills, and tools useful for managing conflict, along with ethics. This training builds confidence and effectiveness or doing the right things; however, practice is the only true way to assess and grow one's skill.

Generally, before going into a formal or informal dispute resolution process, some suggestions and advice for effective negotiations are as follows (Mujtaba, 2007) [33]:

1. Know your substance and be well prepared.
2. Specify clear objectives and know your bottom line.
3. Develop personal relationships but be careful not to be manipulated.
4. Seek opportunities for informal get-togethers since it is where most of the initial contacts will be made.
5. Meticulously follow local protocols: people from Asia, Latin America, and Africa are usually more status conscious than Americans.
6. Understand national sensitivities and do not violate them.
7. Assess the flexibility of your opponent and the obstacles s/he faces.
8. Understand the decision-making process and build up your position by taking advantage of each step.
9. Pin down details.
10. Build trust.
11. Aim for a win-win outcome.

Culture and ADR

Culture plays a vital role in the success or failure of negotiations and overall dispute resolution (Cavico, F. J., Mujtaba, Petrescu, and Muffler, 2015) [6]. Salacuse (2004) [45] lists the impact of culture on various factors in Figure 2, and sites specific examples of negotiations that failed due to cultural differences. For instance, Enron tried to establish a contract in India but the negotiations were hampered because the Indians felt the negotiations were being rushed. Essentially, Enron personnel did not comprehensively research Indians' negotiating styles and goals; thus, the company failed to determine how negotiations are handled in the other region (Mujtaba, 2007) [33]. Negotiators from different cultures and even different languages might view the purpose of a negotiation differently. Some people view negotiations in a timeline while others are more concerned with establishing a long-term relationship. Also, Americans communicate verbally while other cultures might communicate more through nonverbal cues. Essentially, a negotiator that is well informed about the various cultural differences of their counterparts could possibly have a more successful negotiating experience.

Negotiators and researchers should critically think about and study the preferred styles of their counterparts to act like a pro (Greenwood, 2017) [15]. Culture is something that is ingrained in individuals and sometimes when dealing with other cultures people assume things are done the same way everywhere.

Fig 2: Cultural Elements in Negotiations (Salacuse, 2004) [45]

Marty Latz (2004) [25, 26] focuses on three significant steps a negotiator should follow when attempting to negotiate across different cultural boundaries. The first step discusses the importance of being educated on the essential negotiation strategies; a negotiator cannot expect to have a successful negotiation without a clear understanding of the elements involved. Success in a negotiation is derived from the negotiator thinking strategically rather than instinctively. Once educated on the strategies, the next step emphasizes the importance of applying these negotiation strategies in different ways with different cultures. For instance, an American negotiator is more likely to be straightforward with his/her distribution of information while a Japanese negotiator utilizes a more indirect means of information sharing. The final step involves utilizing a certain level of patience and understanding when negotiating across cultural boundaries.

In a cross-cultural setting where negotiators speak different languages, although it will slow down the process, the importance of having an expert translator is critically important to make sure everyone has the same understanding.

In the discipline of active dispute resolution, negotiation and mediation options are great approaches to settling disputes. Culture is one of the greatest aspects that influence the effectiveness of this philosophy in providing resolution. This is because culture significantly influences communication and expectations, which are critical requirements in mediation. For example, cultural background can influence how individuals communicate, solve problems, and perceive fairness. In other words, emotions, information sharing, and decision making are significantly influenced by cultural norms (Ebner, 2015) [11]. Therefore, appreciating cultural diversity is essential for an active dispute-resolution process. Furthermore, some disputes are triggered by misunderstandings following different cultural beliefs and languages today. Therefore, negotiation and meditation play a crucial role and is recommended when parties involved are from different ethnicities and have different primary languages. The process of negotiation and meditation involves both parties feeling included and free to express their problems, The mediator directs this reframing to ensure it is effective (Ebner, 2015) [11]. However, the process requires strict observation of culturally based communication skills and considerations to foster a bridge surpassing possible barrier. Additionally, a mediator must employ cultural humility and respect throughout the negotiation process. For example, for a party with limited English language skills, the mediator must utilize specialized adaptations to lead in a negotiation. A proficient interpreter is essential in the process who understands the individual's native language and English. This interpreter must be trained to exercise confidentiality and integrity while facilitating clear communication. Additionally, they must be patient and empathetic for an effective process since language barriers can influence the party from expressing their emotions and concerns accordingly. This means that additional aspects like gestures and visual expression can be utilized. Conducting this process respectfully and appropriately can help to provide a fair resolution.

Negotiating in cross-cultural situations requires an awareness of one's own cultural values and an alertness to the cultural interests of others (Nolan-Haley, 2021) [37]. Negotiation or mediation process should be tactful and well thought out, regarding different ethnicities or primary languages. Cultural and ethnic differences should be an important factor. The negotiation process can be influenced by cultural differences such as communication styles, values, beliefs, and attitudes (Harvard, 2023) [19]. Some cultures would consider it impolite to speak and stare directly in the other party's face, while people in other cultures may consider it assertive and professional. There are adaptations that can be made for a party who has little or no language proficiency. Language barriers could stand as an impediment to communication. If there is a party that speaks another language, there should be an interpreter for an effective negotiation or mediation process for a successful outcome. The interpreter should be fluent in both languages and should be trained in interpreting for mediation (Oxford Academic, 2023) [40]. Visual aids can also be used. Some visual aids that can be used are videos, diagrams, and props. Plain and simple language in communication is recommended in all cross-cultural settings. Avoid technical jargon and use simple words and phrases that are easy to understand. Patience is also a plus, since parties that speak another language may need more time for the information to be processed after it is

interpreted. It can take longer to communicate with someone who does not speak your language fluently; so, it is important to allow extra time for communication (Oxford Academic, 2023) [40].

Hybrid Dispute Resolution

The hybrid dispute resolution (HDR) process is becoming more common now due to its relevancy to specific contexts and situations, cost savings, and ability to quickly reach an amicable conclusion between the disputing parities. HDR usually integrates various elements of traditionally used dispute resolution processes, such as mediation and arbitration, into one. For example, the *mediation-arbitration* (aka "med-arb") process usually counts on the same neutral third-party expert to mediate and/or arbitrate based on the situational context and needs of the parties involved. Of course, all mediators and arbitrators initially encourage the parties to negotiate towards a mutually agreeable outcome. However, when negotiation or mediation is not possible, the parties often resort to arbitration, which is often cheaper and more efficient than a prolonged litigation through the legal system. In arbitration, the parties present their arguments to a neutral arbitrator who makes the final decision (Nolan-Haley, 2021; Greenwood, 2017) [37, 15], although he or she might encourage mediation and negotiation at the initial stages.

HDR options, especially when combined with online dispute resolution (ODR), provide certain advantages related to efficiency, reduced cost, faster outcome, simplicity, and convenience. ODR is defined as "a dispute resolution process that operates entirely by electronic means, without the need for the parties in dispute to meet physically. The actual dispute resolution procedures used may include some of the types of alternative dispute resolution (ADR) systems" (Connerty, 2006, p. 304) [7]. As experts learn and experiment, more precautions will be put in place to overcome some of the challenges associated with online dispute resolution. For example, the United Nations' forum on *World Intellectual Property Organization* (WIPO) instituted a system to specifically deal with the virtual problem of what is commonly referred to as '*cybersquatting*,' which is the abusive registration of Internet domain names. Similar policies will evolve and be put in place to create guidelines for fair virtual dispute resolution.

One benefit of the online dispute resolution is that an organization's buyers and sellers can use the online dispute resolution services to quickly file a complaint and the other party can respond asynchronously. In most cases, the complaints and responses will appear on a secure platform that is only accessible with strict security such as password authentication procedures. Over the past several decades, it has been said that "The future of online dispute resolution (ODR)-or online alternative dispute resolution-seems assured in a world where cyber trade and cyber commerce increase day by day," as "the day of the *cyber arbitrator*-or the cyber online dispute resolver-has arrived" (Connerty, 2006, p. 331) [7].

One should be aware that the disadvantage of virtual dispute resolution might be more impactful or severe if one party has less expertise in online communication or if the data is hacked (Mujtaba and Cavico, 2023) [34-36]. It should also be noted that ODR can be perceived as impersonal due to its virtual nature, which might not always be helpful to the parties in settling their differences and maintaining a functional relationship. Nonetheless, HDR and ODR can allow mediators and arbitrators to control the process so the parties can reach a viable conclusion in a cost-efficient and speedy manner. For example, med-arb is designed to be cost effective and saves time. A neutral third party is designed to play the role of the mediator and the arbitrator. If the mediation fails, the process goes straight into arbitration, which saves time from re-explaining the whole story to another neutral third party. However, parties may want to re-consider sharing their interests in the mediation phase if they know that the same person is doing the arbitration as well.

Arb-med (arbitration-mediation) is the same process in reverse, and it can encourage parties to resolve disputes themselves. An arbitrator will write their judgement in secret at the end of the arbitration, and their decision will be the selected decision if the mediation process fails to find a resolution. This process can encourage both parties to find a solution, but it can also worsen the transition to mediation by making both sides more determined to make sure they win a more favorable outcome in the arbitration process. It also can pressure the parties to accept the mediated deal if they are worried about the arbitration settlement (Nolan-Haley, 2021, pp. 278-280) [37]. The pros of online dispute resolution are that it saves time, money, and long-distance problems with going to a traditional face to face setting. It is very beneficial to international disputes where all three factors are serious obstacles. ODR is also useful for settling domain name cases or transactions that are done internationally. The cons to ODR can be faulty internet or equipment that can easily become dysfunctional in a meeting, thus disrupting the fragility of a situation. This can come off as rude or unprofessional to the other party. Another con is that ODR can bring a huge disadvantage to one party or both parties with time zones. If international parties are meeting at an inconvenient time for one or both parties, this can worsen the dispute and create a sense of stress and grogginess which can cause parties to make huge mistakes that they would not have made in their normal hours, create a sense of imbalance if one party feels disadvantaged by trying to come to a resolution quicker, and imbalances can create distrust or resentment towards the third party or the other group. ODR can also diminish the sense of personal connection, interest in the session, and create enforcement difficulties if parties living in different countries simply choose to ignore resolutions. Ignoring resolutions can make it so because enforcing decisions becomes impossible or slow if countries have different jurisdictions. There can also be security concerns with technology, or there could be difficulties with international laws versus domestic laws if the dispute is between cross-cultural borders. The same goes for language barriers, most of which can happen in a face-to-face interaction with foreign parties but are more likely to happen online (Nolan-Haley, 2021, pp. 284-285) [37].

Hybrid mechanisms such as the summary jury trial and early neutral evaluation programs have been established in most courts. These processes use third parties to facilitate negotiation and help manage cases in an efficient and responsive manner (Nolan-Haley, 2021, p. 241) [37]. There are several processes in hybrid dispute resolution such as, mini-trial, med-arb, conciliation, reference, ombudsperson, dispute review board, consensus building, collaborative

governance, online dispute resolution, negotiated rulemaking, and fact-finding.

One of the processes of hybrid dispute resolution used in healthcare is the process of ombudsperson (ombuds). According to Nolan-Haley (2021, p. 283) [37], an ombudsperson is a neutral individual employed by a company to assist employees in resolving workplace disputes and ethical dilemmas. These individuals hear complaints, engage in fact finding, and generally promote the resolution of disputes through informal methods such as mediation and counseling. The ombudsperson is usually working in the department for hearing and resolving complaints. Ethical guidance for an ombudsperson is available from the American Bar Association. In healthcare facilities, for example, the ombudsperson usually mediates for both patients and employees.

Being in their own chosen surroundings can allow the parties to be more comfortable with the process. Beyond saving attorney time and judicial resources, ODR saves the businesses from excessively litigating too many claims in the court system. The reality is that any time spent in court or lawyers' offices does little to promote one's business or serve the organization's clients and suppliers.

Enforceability concerns arise, especially in cross-border disputes. Language barriers and cultural differences can also be issues in communication. While online negotiation can be faster, the chances of concessions and fair agreements can be reduced. Due to the lack of face-to-face interactions, ODR can appear very impersonal. Due to technical issues, the potential inaccessibility for online means for various periods can be a major drawback for some parties. Additionally, confidentiality can be breached by disputants and online hackers. As internet usage continues to expand, it has become increasingly necessary to design efficient mechanisms for resolving online disputes because traditional mechanisms, such as litigation, can be stressful, time-consuming, expensive, and raise jurisdictional problems (Ponte, 2023) [42].

Recommendations

Just like soccer, football, tennis, dancing, running, jogging, Tae kwon-do, karate, and other sports, negotiating is a skill-based profession. The more you plan and negotiate, the more confident and skilled you will become at aiming for a successful outcome for you and all relevant stakeholders.

You may have a plan for serving as a mediator to settle a dispute or even for directly negotiating with your bosses for a salary increase, a promotion, or a more suitable work schedule by following some basics such as the following (Skills You Need, 2023):

1. **Be prepared:** Proactively research and organize beforehand with an opening statement (see the example in the next section). If you want a promotion or better compensation, then do some research about the salary range for the position in question and/or your credentials for future advancement. Try to also understand the other side's position, limitations, and boundaries.
2. **Discuss:** Begin the session by being transparent and clear, while allowing everyone's points of views to be heard. Clarify your reasons for the salary increase and listen to the boss's opinion of the company requirements for granting an increase. This will help everyone to understand the situation and prepare accordingly for the future.
3. **Understand the goal:** The goal should be focused on the desired outcome or objective that each person is bringing to the table. What are your strengths, values, period of service, upgrades to bargain for an increase, and overall credentials?
4. **Find a win-win option:** Find a solution that will meet your needs while benefiting all parties equally, including the organization.
5. **Come to an agreement:** Decide on which option or offer is best and plan accordingly. Focus on maintaining a professional and healthy relationship because a no response today can become a yes response in the future.
6. **Execute:** The agreed contract, deal, promotion, or salary increase should be put into action with full agreement of everyone involved.

Opening Statement Example

In this hypothetical example, imagine you have been asked to intervene in an employment dispute in your organization where you work as a lead team supervisor for Team A (Garner, Tiffany, 2023) [14]. The two employees in question, Mary Jones and Richard Smith, are co-workers on Team B. They were assigned to work on a big presentation for the Senior Leadership Summit that will take place several months from now at the end of October 2024.

Their duties for this assignment were to collect data, create Power Point slides, and give their presentation to their Supervisor on Team B, Brandon Rogers. The goal of this assignment was to determine where Team B can increase its productivity. When Mary and Richard presented to Supervisor Rogers, a huge fight erupted with Mary and Richard yelling expletives at each other. Mary said Richard was not pulling his weight and was lazy and she did all the work. Richard said that he did his assigned part, and that Mary did not understand the instructions and called her stupid. Supervisor Rogers has asked you to intervene in this dispute because he feels that it will be more appropriate for an outside supervisor to assist. Supervisor Rogers does not want to involve HR at this point and neither do Mary or Richard, who both have a history with the company and performance-related issues.

Given your background in the *Alternative Dispute Resolution*, Supervisor Rogers came to you and asked you to serve as the neutral mediator between Mary and Richard. You will *serve as a neutral, third-party mediator* to help with this miscommunication conflict, reduce the tension, and increase the productivity to get the assignment done. For this hypothetical exercise, the following opening statements can serve as a template example for the mediation process.

Opening Statement Sample

Working together requires some ground rules to work professionally, preserve the relationship and improve productivity. As such, a mediator working with both parties can rely on the recommendations of experts and agreed upon rules among all parties to begin and successfully end a negotiation process. All parties must first understand mediation, its purposes, and agree on the common ground rules.

Generally, when two or more parties cannot reach an agreeable decision regarding a disagreement, a third party is often brought in to facilitate a constructive settlement. These third parties are called mediators and the process by which grievances are aired is called mediation. Often viewed as the referee in a pivotal match up, mediators are not judges; they are in place to help parties reach a mutual agreement by focusing on tangible outcomes. Agreements by compromise do not solve underlying emotional or organizational conflict and are not the most favorable solutions sought by either party. However, mediation can guide conflicting parties to a mutually acceptable resolution, in a cost-effective, expedient manner, and provide closure to uncomfortable situations.

As a third-party, neutral mediator, I understand that you two, Mary Jones and Richard Smith, have been co-workers for a while now. You were both assigned to work on this important presentation for the Senior Leadership Summit that will take place in a few months. Congratulations on being selected for such an important project. Obviously, based on the outcome thus far, it appears that you have worked hard on this project.

Your duties for this assignment were to collect data, create Power Point slides, and give a presentation to the Supervisor, Brandon Rogers. The goal of this assignment has been to determine where Team B can increase its productivity.

During your presentation, a disagreement erupted between you, where there was some yelling, name-calling, and/or accusations being exchanged. My understanding is that you do not want to involve the human resource department at this point and agree to resolving this conflict through mediation so there is no more miscommunication, no unnecessary tension, and better team performance between you both.

Is my understanding accurate?

Thank you both for confirming the accuracy of my understanding and your common goal of successfully resolving this dispute immediately without engaging the human resource department personnel. Since negotiation is "generally defined as a consensual bargaining process in which parties attempt to reach agreement on a disputed or potentially disputed matter" (Nolan-Haley, 2021, p. 19) [37], we should agree on the following basic principles:

1. Separate the people from the problem among the parties.
2. Focus on interests, not positions each party takes.
3. Invent multiple options-mutual gains for both parties to have a win-win outcome.
4. Insist that the result be based on objective criteria that are mutually agreed upon by both parties.

Can we agree on these four principles?

Thank you for agreeing to these principles. Kohli (2021) [24] explains that negotiation is a method to resolve a dispute between parties that choose to meet and try to resolve the dispute amicably, in a manner that is beneficial to both sides. As such, for any negotiations process to be successful, there must be open, respectful, and collegial interactions regarding the problem or conflict. As such, we must all agree to abide by the following logistical norms and rules:

1. Directions and time allotted for a response will be controlled by the mediator.
2. All discussions will be conducted in a professional manner, based on facts.
3. Only one side speaks at a given time, while the other side listens.
4. There will be no name calling, no yelling, and no personal accusations of the other person.
5. If anyone becomes too emotional and needs a break, any party can ask for a 20-minutes timeout or break.
6. We can agree to disagree respectfully.

Can we agree on these logistical norms?

Thank you for agreeing to these norms. If we all agree and say "yes" to these norms, then let us begin the collaboration and negotiation process to come up with a successful, efficient, and wise outcome for all parties, including the supervisor and the organization. Of course, feel free to speak up at anytime if you believe any of the agreed-upon rules, norms, and principles are being violated.

Summary

Disputes and conflicts in society as well as at work are inevitable between colleagues, employees and managers, organizational leaders, board of directors, and even suppliers and clients due to different needs, desires, and goals. When managed effectively, disputes and conflicts can lead to innovation and better results for all parties involved. However, if disputes and conflicts are not managed and resolved in a timely manner through amicable means, they can become dysfunctional, stressful, costly, and time-consuming challenges. In this paper, we have discussed the importance of negotiation and mediation to solve workplace disputes, which are often better than having to go through forced arbitration or court-imposed litigations that involve legal counsel and prolonged trials. In direct negotiations and mediation, the disputing parties have more control over the process and outcome, where such freedoms are non-existent in arbitration and litigation proceedings.

The article has been organized in such a way that the reflections on negotiations, mediation, arbitration, and litigation can be a good overview for disputing parties as they choose what option is best for them. Suggestions, recommendations, and skills for effective negotiation have also been offered for win-win outcomes.

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