

ADR & Labour Relations: What Labour and Management Need to Learn

**The Honorable Mr. Justice
George W. Adams**

Conflict is neither good nor bad—it simply reflects differences. You cannot make the conflict go away by entering into a process that denies the existence of underlying differences between labour and management.

[M]anagement should be representing the interests of shareholders; unions should be representing the interests of workers, and in the process of doing that, sometimes cooperation is the most effective way of doing it, and sometimes being confrontational is the only way to do it. (Downie and Coates 1994, 70)

This reality takes us back to the fundamentals of conflict resolution. Generally, there are three ways to resolve conflict:

1. Domination

Domination is the easiest way to resolve conflict and the costliest approach because it does not produce stable outcomes. People forced into agreement continue to resist long after the ink is dry and, ultimately, try to impose their own will. Conflict is never solved by subjugation.

2. Compromise

The problem with this, our most prevalent approach, is that the parties, anticipating compromise, ask for more than they expect to get. In the result, the parties never know what the other really thinks and wants. When real compromise occurs, the parties feel a corresponding real loss which they will strive to recover. Thus, the same conflict occurs over and over, sometimes to the point of dysfunction.

3. Integration

Integration requires invention, not letting one's thinking stay within the boundaries of two mutually exclusive alternatives. It creates something new, which usually constitutes real progress for all parties and, therefore, produces greater stability. Subsequent differences, when they occur, are at a higher and more nuanced level. Interest-based bargaining and other forms of alternative dispute resolution (ADR) are all about integration. Integration is also what third parties can bring to the bargaining table because they are not as close to the problem.

The opportunities to integrate objectives are much more prevalent than we tend to appreciate, particularly in ongoing relationships. Unfortunately, it is easier to fight or confront than to suggest a better way. To suggest a better way or to be open to such suggestions, you must really understand the problems at issue and the underlying interests of the opposing party. This is hard work. Fighting, in contrast, is more exciting and takes less preparation. This produces the following paradox. Our aggressive behaviours help create the very situation to which we have to respond. Aggressive action, trash talk, threats and misrepresentation provoke responses in others we do not like and often cannot control.

The reality, however, is that much conflict in labour relations is about control. Real control depends on the cooperation of others—on uniting the ideas of those affected. This means we must

genuinely confer with our opponents, listen carefully to detect their needs and show the empathy we want reciprocated.

In my view, therefore, we cannot teach and study methods of genuine conferencing enough. Only in this way can we hope to identify the real values on both sides and solutions consistent with those values. ADR is aimed at creating environments where this kind of problem solving can go on. ADR is not about a set of tools called mediation or arbitration or early neutral evolution. Rather, it is about the mindset that created those tools and which today should be looking for improvements to them and for additional alternatives.

Labour and management can learn much from ADR if we understand that acronym to stand for an inventive mindset aimed at creating elegant, durable and voluntary solutions.

Some Suggestions for Union and Management

- Experiment more with grievance procedures. Change who attends. Alter the number of levels depending on the nature of the grievance. Add mediation.
- Have neutral chairs at certain dispute resolution levels. A neutral can make these discussions more problem solving in methodology.
- Have an outside person present during grievance procedures to create a 'protected' environment. This may put the parties on their best behaviour and instil a civility conducive to rational dialogue.
- Experiment with alternatives to grievance procedures such as joint ombuds offices. Does every grievance require the formality and dispute resolution of the grievance procedure?
- Have quarterly meetings of company and union executives for no other reason than to 'chew the fat.' Building relationships depends on trust. There can never be too much contact between labour and management representatives, the less formal the better.
- Write mediation into more grievance procedures.
- Require med/arb of rights disputes. The grievance procedure is an adjudication process and med/arb makes this clear.
- Give arbitrators the right to direct mediation. Never ending arbitration brings the system into disrepute. When an arbitration is adjourned, mediation should be directed.
- Review the best conferencing techniques in across-the-table bargaining situations and within the organization as a whole. Knowing how to show empathy and provoke reciprocal cooperation can be learned. We need to work at it. Training is desirable.

From a speech given at the First Annual Labour Arbitration Conference, Toronto, Ontario, October 31, 1997.

Reference

Downie, Bryan and Mary Lou Coates. 1994. *Traditional and New Approaches to Human Resource Management*. Kingston, ON: IRC Press, Industrial Relations Centre, Queen's University.