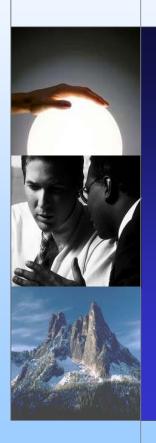
# Mediation is a Process Not an Event!



## John Bickerman

(202) 289-0400 jbickerman@bickerman.com

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### **Overview of Presentation**



- Will focus on the use of mediation
- Will cover:
  - The Basics
  - Preparatory Considerations
  - Nuts & Bolts
  - Practice Tips

#### What is Mediation or Facilitation?



- A confidential process
- A neutral person facilitates a negotiation
- The neutral has no power to impose an outcome on the disputing parties
- If the parties reach an agreement it is usually placed in the form of a settlement agreement and is binding like any other contract

## What are Interests?



- What parties really care about (needs, goals, desires, concerns)
- Underlying factors motivating each party
- Positions are the "what" (often demands); interests are the "why" (reasons for positions)

## What is an alternative?



- What a party can do away from the table, without the consent of other parties
- BATNA = Best Alternative To Negotiated Agreement
- Any agreement should be better than your BATNA

## Approach



- Separate the people from the problem
- Focus on interests, not positions
- Invent options for mutual gain
- Insist on using objective criteria

### **Barriers to Settlement**

# Why do some negotiations break down?



- High emotions
- Unrealistic expectations
- Differences in negotiation style
- Culture / Values
- Distrust
- Historical context/relationships
- Lack of or dispersed decision making power

## Different Roles for the Corps



- Corps as Trusted Neutral
- As Adversary
- As Moving Party
- As Innocent Bystander

## Assessment



- Isolated v. repetitive disputes
- Relationship of the parties (long v. short term)
- Single v. multiple parties

## Assessment



- Monolithic or not
- Linkages more than one issue involved?
- Is an agreement required?
- Consequences of agreement v. no agreement

## Selecting a Mediator



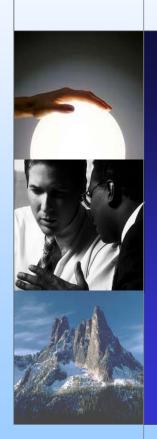
- Finding help / Selecting a mediator
  - First collaborative process
  - Setting selection criteria
  - Interviewing
  - Checking references

## Selecting a Mediator



- Organizations and Rosters
  - U.S. Institute for Environmental Conflict Resolution
  - International Association of Facilitators
- Word of Mouth
  - -- Other Project Managers
  - -- Counsel's Office

## Selecting a Mediator



- Styles
  - Facilitative
  - "Evaluative"
  - Directive
- My Approach Combination Adjust the style depending on what the parties need at any particular time in the process.

### The Mediation Process



- Selecting the Mediator
- Preparing
- Organizational Call
- Acquiring Information
- Individual Meetings
- Designing the Process
- Joint Meetings / Caucuses
- Follow-Up
- Finalizing the Settlement
- Implementing the Settlement

## What are your goals?



- Does the solution reflect your "real" needs, goals and interests in both the short and long term?
- Does it reflect the other party's "real" needs?
- Is the solution better than your BATNA?

## Intra-Party Organization: Getting your team on the same page!



- Prioritize issues
- Prioritize needs or interests
- Identify needs of other parties
- Negotiation strategy
- Dispersion of authority to negotiate
- Bringing the larger community along
- Who speaks?

## Defining Success



- Determing in Advance "Success"
  - Substantive Outcomes
  - Relationship Outcomes
  - Process Outcomes
  - Public / Precedential Outcomes

## Information Gathering



- Do the parties have sufficient information to bargain effectively?
- If not, how can the necessary information be obtained efficiently?

# Initial Tasks / Pre-Joint Session



- Individual meetings with parties
- Written reports back to parties
- Building trust with the neutral

## **Ground Rules**



- Who sits at the table?
- Who speaks?
- Confidentiality / Open meeting laws
- Dealing with the press
- Public meetings / Public consultation
- Sharing cost for process
- Need for breaks

# Clear and Effective Communication



- Think about the message you want to send
- Listen well
- Ask questions to clarify; ask "why" to determine the other's needs and goals
- Summarize your understanding of what the other party has said frequently

# Clear and Effective Communication



- Be aware of your body language
- Explain your thoughts and what they are based on
- Make clear and concise commitments

## Joint Sessions



- Agenda (public distribution?)
- Logistics food, food, and location
- Caucuses
- Making and receiving concessions
- Grandstanding / Dealing with the outrageous person

## Joint Sessions



- Less than meets the eye
- Large group dynamics
- Small group dynamics / One-on-one dynamics
- Deadline effect
- Managing expectations
- Building trust

## Caucuses



- Prepare proposals to present to other party
- Brainstorm and evaluate options
- Evaluate other party's proposals and prepare response
- Discuss any disagreements within the team

## **Deciding Whether to Settle**

## **Evaluating Success**



- Does the solution promote the desired relationship?
- Have all possible solutions been explored?
- Is the solution achievable? Are the parties committed?
- Do both parties feel the solution is "fair" or "just"?

## *Implementation*



- Clear assignments
- Funding
- Approval by governmental bodies
- Public attention
- Enforcement
- Dispute resolution provisions

## **Practice Tips**



- Not a straight line
- Ice breakers meals, group excursions
- Recording progress celebrate success
- Secret of negotiation trading issues of different value