

**Collaborative Mediation can be utilized to resolve a variety of conflicts within an organization:**

### **SENIOR MANAGEMENT CONFLICT**

Most conflicts between fellow employees can normally be resolved through an organization's existing informal and/or formal dispute resolution processes. However, disputes between the most senior members of an organization can present unique and sticky problems. The conflict may involve a new executive struggling to adapt to a new working environment. Egos may play a significant role in the conflict, and the executives may be unwilling to "let their hair down" in front of anyone from within the organization, making resolution more difficult. Resolving conflicts may involve discussing business issues that have not been shared with others in the organization. Collaborative mediation can simultaneously address these concerns and resolve the conflict.

### **Alternative to LABOR CONTRACT ARBITRATION**

Going to arbitration to resolve an issue covered by a collective bargaining agreement can be a risky and potentially costly option. Well-trained arbitrators will make their decisions based on who is "right", rather than what seems fair, or what **works best** for the parties involved. In most cases, an employer who has handled the situation well will want to have the issues decided based on a strict interpretation of the contract. However, at times it is to the advantage to the employer to create a collaborative solution to the situation that is not bound by the terms and history of the contract. In these situations, collaborative mediation can offer of the opportunity for a win-win solution rather than a win-lose confrontation. (In the event that the mediation is unsuccessful, the issue can still be resolved through arbitration.)

### **WORKPLACE ACCOMMODATIONS**

Under the Americans with Disabilities Act and other state and federal laws & regulations, an employer is obligated to make a "reasonable accommodation" to any employee who has difficulty in performing their job function, in the work environment and with the tools and materials made available by the employer. It is not unusual for employer and employee to disagree about what constitutes a "reasonable accommodation" in a given situation. Even if an employer feels justified in saying "no" to an employee request, and feels confident in being able to prevail if the employee files a discrimination complaint, the employer could still pay a price in two ways:

1. The out-of-pocket costs, time, and energy involved in defending against the discrimination complaint, and
2. Loss of employee morale and productivity for this and possibly other employees.

Collaborative mediation can offer a more cost-effective solution to the problem. It will often generate creative alternatives previously not considered by either the employee or the employer, at a cost that is acceptable to the employer and which satisfies the concerns of the employee. Such a solution can end up being a public work relations "win" for the employer in the eyes of employees.

### **Allegations of DISCRIMINATION/HARASSMENT**

Discrimination and/or harassment are very sensitive issues to the affected employee(s). It is common for employees to not trust in-house resources to be fair in dealing with them. If a discrimination complaint is filed with a government agency, the costs to the organization in money, time, and energy can be substantial, even if the employer prevails. Moreover, the employee who loses a discrimination charge is inevitably a less motivated and less productive employee. The mere filing of a discrimination complaint often adversely affects productivity of co-workers and friends of the aggrieved employee.

Discrimination complaints settled with the involvement of government agencies tend to be resolved based on who is "right" and usually leave one party (if not all parties) feeling shortchanged. Complaints resolved through collaborative mediation, on the other hand, tend to not only resolve the specific problem leading up to the complaint --- they also heal the deeper wounds that inevitably accompany such complaints.

### **CUSTOMER/CLIENT PROBLEMS**

Most problems and complaints brought by customers/clients are resolved by the salespeople responsible for dealing with that party. However, an employer may occasionally find that is unable to accommodate a

customer request, and yet is concerned about losing the customer if their request is turned down. In these situations, collaborative mediation offers a unique opportunity to generate creative options not previously considered by either the organization or the customer. Additionally, by investing the time and money involved in the mediation process, the employer can demonstrate their loyalty and commitment to finding solutions to the needs of their customer. It is not uncommon for information to come out in the mediation that enables the organization to sell additional products and services to the customer

### **SUPPLIER/VENDOR DISPUTES**

As any purchasing or quality control manager will attest to, working with suppliers and vendors inevitably involves problems. While most of these problems get resolved in the normal process of doing business together on a day-to-day basis, occasionally a particularly sticky problem can arise that defies resolution. Assuming that the organization wants to maintain an ongoing working relationship with the vendor/supplier, using collaborative mediation to resolve these particular sticky problems can pay significant dividends. In addition to resolving the problem at hand, utilizing collaborative mediation inevitably builds trust and enhances the relationship with the vendor/supplier. Trained mediators can often ferret out issues underlying the conflict that neither the employer nor the supplier/vendor were conscious of. Identification and resolution of the underlying issues can often have positive impacts on the organization's relationships with other suppliers as well.

### **Pattern of problems between MANAGER AND SUBORDINATES**

Occasionally a situation develops where an otherwise highly regarded manager has similar problems in working with most or all of the employees reporting to him or her. "Poor communications" is invariably one of the complaints (and often the main one) expressed by the subordinates. When individual coaching of the manager does not resolve the problem, collaborative mediation can often come up with solutions not previously considered by any of the parties involved. By caucusing ("shuttle" negotiations) between the manager and subordinates, mediators can often surface underlying issues and potential solutions that the parties to the conflict were previously unaware of. The mediators can act as the spokesperson for the subordinate group in presenting their grievances and concerns to the manager, without identifying the specific individual(s) having each complaint. The mediators are able to express the subordinates' concerns in terms that the manager can hear more easily than the words used by the subordinates. Caucusing separately with the manager also reduces the threat level to the manager. Knowing that the mediation process is confidential encourages the manager to candidly vent his or her concerns and frustrations about the situation, without fear of those comments being related back to anyone in the organization.

### **Special problems with EMPLOYEE TERMINATIONS**

In today's fast-paced business environment, it is not unusual for an employer to realize the need to sever its relationship with an employee who has a record performance problems, only to find that the documentation of prior coaching and performance discussions is either absent or does not support the termination decision. The classic wisdom given out by most Human Resources professionals is to continue the poor performer's employment until such a solid case for termination can be documented. Another alternative to consider at this juncture is collaborative mediation. In most of these cases, the employee knows that the employer is unhappy with his or her contribution, and often would actually prefer to move on to another situation. By bringing in a third-party mediator, it is possible for the employer to clearly communicate its intended resolution to the situation, while avoiding the possibility of a future claim of constructive discharge. Additionally, it gives the employer a chance to find out what kind of a "package" it would take to get the employee to walk away from the situation without raising any claims of wrongful termination. By caucusing separately with the employee and employer ("shuttle" negotiations), the mediators can determine the employee's "bottom line" without first disclosing what kind of a package the employer might consider giving the employee. Additionally, any offers generated by the employer in mediation are covered by California Evidence Code §1119, and therefore can not be brought as evidence by the employee in any future litigation, in the event the mediation was unsuccessful in reaching an agreement.