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ARTICLES

Mediator strategies in New Zealand: the views of the mediated.

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Mediation is a process in which an impartial neutral (or a chairman with no right of decision) assists the disputants in settling their differences. The mediator's role is to facilitate voluntary agreements by the parties themselves; the parties' final decision is their own and not the mediator's. A mediator (and, for that matter, a conciliator in a dispute of interest) tries to persuade the disputants to reach a voluntary agreement by using strategies that fall short of outright arbitration. Because the philosophy and practice of mediation tend often to be misunderstood, this paper examines some of these strategies and the importance attached to them by employers and union officers. It offers some insight into what industrial relations practitioners consider to be the strategies most likely to lead to successful mediation.

Introduction

Despite the fact that the Industrial Mediation Service (IMS) was introduced in 1970 as a rather novel addition to dispute-resolution procedures, research interest in mediation in New Zealand has been limited. There is, of course, no real "theory" of mediation and perhaps the subtleties and intangibles of the process do not lend themselves to systematic analysis. On the other hand, it may be felt that the mediation process is so simple, obvious and elementary that there is nothing to research; all that can be expected is analysis that is essentially descriptive and pragmatic. Given that much of mediation is confidential – thus leaving little or no documentary trace – there is an element of truth in the suggestion that "one can do little more than define it and wish it well" (Cullen, 1968, p. 53).

However, since it became fully operational towards the end of January 1972, there has been a remarkable increase in the number of disputes handled by the IMS. The extent to which New Zealand employers and unions have been willing to utilise this particular form of third-party intervention in conflict situations is clearly illustrated in Table 1.

Table 1 *Disputes involving the Mediation Service and Conciliation Service, 1973-1982*

Year	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982
Mediation Service	145	117	274	367	343	557	593	712	847	769
Conciliation Service	399	266	470	517	540	571	593	570	602	570

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Given this level of response, especially in the years after 1977, it seemed appropriate to mark the first decade of actual mediation with a research project which explored the attitudes of employers and union officers to the IMS and to the mediation process itself. Although the research thrust was specifically directed at the views of industrial relations practitioners over a wide range of topics, this paper examines their attitudes to the single issue of strategies used in mediation.

Research background

The project was based on a questionnaire survey conducted over a period of 4 weeks in Dunedin, Christchurch, Wellington and Auckland. In this time, it was hoped to cover a sample population of at least 200 union officers and management representatives with experience in mediation and conciliation. In fact, 218 completed questionnaires were returned from 116 employers and 102 union officers. This sample size compares favourably with similar studies in the United States and the United Kingdom. [1] It meant that the sample included most of New Zealand's major companies. Since many of the union secretaries who were interviewed act for more than one union, the sample also covered a large proportion of private sector unions. As shown in Table 2, a total of nearly 220 respondents

Table 2 *Employers and unionists responses by industrial classification*

	Employers		Unionists	
Industrial Classification	No.	%	No.	%
Agriculture, Forestry, Mining	9	7.8	4	3.9
Manufacturing	47	40.5	23	22.5
Electricity, Gas, Water	2	1.7	2	2.0
Construction	1	0.9	10	9.8
Commerce	4	3.4	6	5.9
Transport	5	4.3	12	11.8
Services	21	18.1	25	24.5
Others	7	6.0	12	11.8
Not Appropriate	20	17.2	8	7.8
Total	116		102	

gave a reasonable spread across all industry groupings and, therefore, guaranteed that the attitudes of employers and union officers in all sectors were adequately represented. It was decided in the early planning stages that a postal survey would not have given a satisfactory response rate. There were more than 50 specific questions, and many of these sub-divided so that each individual was required to give 139 separate answers to complete the 18 pages of the questionnaire. This was considered a rather daunting exercise for those with heavy work schedules. The alternative was intensive field work to interview all potential respondents in order to discuss the research, explain aspects of the questionnaire approach and encourage participation in the project. The Employers Associations in Otago-Southland, Canterbury, Wellington and Auckland were asked to prepare detailed lists of their affiliates known to be active in industrial relations in general and mediation and conciliation in particular. All listed individuals were then interviewed and firm arrangements were made for the questionnaire either to be picked up by one of the researchers

1 See Landsberger (1960), Weisenfelf (1962), Berkowitz *et al.* (1964). Research on the attitudes of the parties to conciliation in the United Kingdom (Goodman and Krislov, 1974) was based on a sample of 128 management representatives and 95 union officers.

or to be mailed to the University in Dunedin. A similar procedure was followed for all field officers employed by the 4 Employers Associations. For union officers, lists were prepared from the Federation of Labour's *Trade union directory*, but otherwise the interview programme was identical to that adopted for employers. The approach, admittedly, was time-consuming. Yet it seemed the best way of providing the type of information so necessary for a wider appreciation of the mediation process in New Zealand.

The strategies of mediation

It is difficult to generalise on the question of how to mediate. There is no set formula which points out what strategies a mediator should use in different situations. The actual combination of strategies will depend on the issues in dispute, the economic strength of each party, the economic and social importance of the company's operation, the timing of entry, the atmosphere in the community, the personalities of the disputants and, obviously, the personality of the mediator. This suggests that it is impossible to develop a single set of strategic propositions appropriate for all mediation cases. Nevertheless, it should be possible to identify a number of broad strategies around which mediation revolves. Kenneth Kressel, for example, suggests that, in practice, mediation boils down to 3 sets of strategies (Kressel, 1972): reflexive, non-directive and directive. His is a sequential view of mediation and implies that the 3 sets of strategies will parallel the particular stages of the settlement process. [2]

Early in the dispute, the mediator will adopt *reflexive* strategies. These attempt to establish the groundwork upon which his later activities will be built. At this point, efforts are directed at gaining the trust and confidence of the parties, identifying the real leaders and understanding the relationship between the disputants. Later, a mediator will start to apply *non-directive* strategies aimed at increasing the probability that the parties themselves – with a minimum of manipulation from a mediator – will reach an acceptable solution to the dispute. This is a "mid-wifery kind of mediation" (Kressel, 1972, p. 13). During this stage, a mediator will try to create a favourable climate for negotiation by patient listening, controlling hostility, trying to resolve the easier issues early on and generating positive expectations that agreement will finally be reached. The last stage of *directive* strategies refer to the mediator's active and vigorous attempts to deliberately pressure and manoeuvre the parties into ending a dispute. Forcing the parties to face reality, pressing them to change their bargaining positions, making substantive suggestions for settlement and generally applying pressure to settle are all part of a more aggressive or "caesarean approach to mediation" (Kressel, 1972, p. 13).

Kressel's classification has been accepted by other researchers in a useful and convenient summary of the types of strategies that might be expected of mediators at different stages in a dispute (Kochan and Jick, 1978; Gerhart and Drotning, 1980). It certainly offers a taxonomy of strategies capable of general application. In terms of the present study, it seemed to provide an effective framework for investigating the frequency with which particular strategies are used in New Zealand and the importance attached to them by employers and union officers.

The frequency of particular strategies

In the questionnaire, respondents were asked to specify how frequently certain strategies are used by a mediator (or conciliator) acting as chairman without right of decision. This was done by having them rate each one of 16 strategies on a 4 point scale from "Very Often", "Often", "Not Often" to "Never". It must be acknowledged that this requires a great deal of sophistication from respondents; to accurately recall what different

2 That the choice of appropriate strategies is related to different points in the negotiating process has also been argued by Walton and McKersie (1965), Stevens (1967) and Kochan (1973).

mediators had attempted to do in previous disputes is not an easy task. Nevertheless, the frequency with which each strategy occurs in mediation (based on percentage responses in each of the 4 categories) is given in Table 3. The evidence clearly shows that all strategies are frequently used by mediators. Even though the formal *organisation* of mediation in New Zealand differs markedly from other countries, it would appear that the essential strategy "mix" inside the actual mediation *process* is basically the same.

Table 3 *Total group percentage responses by the frequency of mediator strategies*

Strategies	Very Often	Often	Not Often	Never	Total Responses
Reflexive					
Getting the trust and confidence of the parties	43.0	46.9	9.6	0.5	209
Identifying the real issues in dispute	39.2	49.8	11.0	–	209
Identifying the real leaders	27.9	39.7	26.0	6.4	204
Understanding the relationships between the disputants	23.3	60.5	16.2	–	210
Non-Directive					
Explaining how mediation will proceed	38.5	39.9	19.7	1.9	208
Controlling hostility	22.2	53.2	21.7	2.9	207
Trying to solve minor issues early on	27.2	39.3	32.5	1.0	206
Patient listening	44.7	49.0	6.3	–	206
Controlling the pace of meetings	20.8	45.4	30.9	2.9	207
Keeping the parties talking	32.4	57.5	10.1	–	207
Directive					
Making suggestions for compromise	38.6	46.6	14.3	0.5	210
Pressing hard for compromise	30.3	39.4	27.9	2.4	208
Trying to force the parties to face reality	15.0	50.7	31.9	2.4	207
Trying to move the parties from positions previously held	21.3	52.6	23.2	2.9	207
Helping the parties to save face	18.7	51.0	27.4	2.9	208
Trying to change the parties' expectations	13.5	49.0	35.1	2.4	208

However, there are interesting differences in the frequency with which some strategies are introduced. These differences deserve closer scrutiny. When all the strategies are ranked both by percentage responses in the single category "Very Often" and by percentage responses in the combined category "Very Often" and "Often", the least frequently used strategies are always the 2 that try to force the parties to face reality and try to change the parties' expectations. These are both *directive* strategies. Again, 4 out of the 6 *directive* strategies are in the lower half of the frequency ranking based on percentage responses in the category "Very Often", 5 out of the 6 *directive* strategies are in the lower half of a frequency ranking based on percentage responses in the combined category "Very Often" and "Often". Although all strategies are frequently used, it would seem that mediators in New Zealand are much more inclined to adopt a passive than an aggressive role in mediation. Mediators may have accepted all of the strategical underpinnings of mediation, but one strongly suspects that there still remains "the mistaken impression that his role will be less active than an arbitrator" (Grills, 1979, p. 30).

The importance of particular strategies

The frequency of mediator strategies offers a very brief insight into the strict mechanics of the mediation process. However, the importance attached to these strategies by the sample of employers and union officers is perhaps of greater concern. To gauge how important these 2 groups consider the various mediator initiatives to be in helping to resolve industrial disputes, respondents were asked to rate the same 16 strategies on a 4 point scale from "Very Important", "Important", "Doubtful Importance" to "Not Important". In Table 4, it is interesting to note how close agreement is between the

Table 4 *Employers (E) and unionists (U) percentage responses by the importance attached to mediator strategies.*

	Very Important		Important		Doubtful Importance		Not Important		Total Responses	
	E	U	E	U	E	U	E	U	E	U
Reflexive										
Getting the trust and confidence of the parties	65.2	68.8	32.2	25.8	1.7	5.4	0.9	–	115	93
Identifying the real issues in dispute	86.1	83.2	13.0	16.8	0.9	–	–	–	115	95
Identifying the real leaders	31.6	32.6	51.8	39.1	14.0	20.7	2.6	7.6	114	92
Understanding the relationships between the disputants	36.0	47.4	50.9	42.1	12.3	10.5	0.9	–	114	95
Non-directive										
Explaining how mediation will proceed	19.3	37.9	56.1	38.9	21.9	18.9	2.6	4.2	114	95
Controlling hostility	27.0	38.3	58.3	45.7	14.8	11.7	–	4.3	115	94
Trying to solve minor issues early on	27.2	41.5	43.0	30.9	27.2	23.4	2.6	4.3	114	94
Patient listening	46.1	50.5	48.7	45.2	5.2	4.3	–	–	115	93
Controlling the pace of meetings	20.9	25.5	53.9	39.4	23.5	26.6	1.7	8.5	115	94
Keeping the parties talking	44.7	60.2	46.5	33.3	8.8	6.5	–	–	114	93
Directive										
Making suggestions for compromise	21.1	32.3	69.3	52.7	8.8	15.1	0.9	–	114	93
Pressing hard for compromise	13.9	10.8	40.9	33.3	35.7	40.9	9.6	15.1	115	93
Trying to force the parties to face reality	36.8	23.7	43.9	50.5	17.5	17.2	1.8	8.6	114	93
Trying to move the parties from positions previously held	19.3	12.6	58.8	44.2	20.2	35.8	1.8	7.4	114	95
Helping the parties to save face	26.3	26.9	55.3	33.3	15.8	28.0	2.6	11.8	114	93
Trying to change the parties' expectations	17.9	8.6	56.3	36.6	24.1	47.3	1.8	7.5	112	93

groups in their ranking of strategies considered important for successful mediation. Employer and union officer rankings by percentage responses in the category "Very Important" and the combined category "Very Important" and "Important" correlate highly ($\rho = 0.82$ and 0.88 respectively). There is a general consensus over the ranking of the 4 strategies considered the most important and the 2 considered the least important. There is little doubt that industrial relations practitioners believe that identifying the real issues in dispute, getting the trust and confidence of the parties, patient listening and keeping the parties talking are strategies central to the mediation process. Less enthusiastic support for pressing hard for compromise and trying to change the parties' expectations is significant because it underlines the fact that much less importance is attached to the *directive* strategies of mediation. In fact, a distinct lack of relish for an assertive, strong-

arm approach by mediators is confirmed when all 16 strategies are ranked on the basis of percentage responses in the combined category "Very Important" and "Important". Five out of the 6 *directive* strategies are placed in the lower half of the frequency ordering both by employers and union officers. The exception, making suggestions for compromise, is ranked fifth by employers and sixth by union officers. This, in itself, is interesting. It can be argued that this strategy is the least assertive of the *directive* strategies. If mediators go much beyond offering settlement options, they might be accused of "biased meddling" (Miller, 1983, p. 35).

The close agreement between employers and union officers in ranking the 16 strategies is repeated, to some extent, in their percentage responses to each of the strategies. In the combined category "Very Important" and "Important", the parties' actual responses are separated by less than 3 percentage points for 8 out of the 10 *reflexive* and *non-directive* strategies. When the weight of percentage responses are taken together in the categories "Very Important" and "Important" for the 6 aggressive strategies, 2 things stand out. First, the percentage responses from union officers are consistently lower than from employers. Secondly, the gap between the 2 groups is especially marked in the case of trying to change the parties' expectations, helping the parties to save face and trying to move the parties from positions previously held. Although the evidence again confirms a reluctance by both parties to embrace *directive* strategies, it is obvious that this reluctance is much stronger for union officers than it is for employers.

Some implications

The results drawn from the research on the attitudes of the mediated to mediation clearly show that industrial relations practitioners are a little uncomfortable with aggressive mediation. This, one suspects, has created a vicious circle: because the parties are uncomfortable with *directive* strategies, mediators tend not to be aggressive; because mediators are not aggressive, the parties get more used to passive strategies; because the parties commonly face passive strategies, they become uncomfortable in situations where the mediator tries to be intense and assertive. There is always the risk, of course, that aggressive behaviour by a mediator will irritate and antagonise the parties. However, a legitimate concern with mediator acceptability and maintaining the good will of the parties should not disguise the fact that, at some point in the process, mediators need to be as much involved in ploys and strategems as either of the disputants. It may be necessary for a mediator to assume the role of forceful advocate for a variety of reasons. The parties, for example, may not be able to determine what is really important in the dispute; they may have become too concerned with certain solutions and lost that flexibility to consider other approaches; they may not realise that alternative solutions do exist; they may be constrained by "political" forces from putting forward new proposals. At this stage, it might be better that mediators be criticised for being too aggressive rather than for being too timid, dull, listless or too unimaginative.

Miller makes the valuable point that no acceptable scheme has yet been devised to measure the effectiveness of neutrals in disputes procedures (Miller, 1983, p. 28). Nevertheless, there is some recent evidence that active and aggressive mediator strategies appear to be somewhat more successful than passive strategies. Although the impact of *directive* strategies are a little more decisive in dealing with non-wage issues than they are with wage issues, they do help in narrowing the differences between disputants even when issues remain unsettled. A point of interest from American experience, given the lukewarm support for *directive* strategies from New Zealand unionists, is that aggressive strategies are more likely to persuade unions rather than employers to make concessions during mediation (Kochan and Jick, 1978). A comprehensive study of impasse procedures by a team from Case Western Reserve University established that intense mediation is more frequently used by private or *ad hoc* mediators than full-time agency mediators (Gerhart and Drotning, 1980). The agency mediator, continually moving from case to case, cannot

be expected to maintain that high level of intensity and concentration over a sustained period that is at the heart of assertive mediation. However, research data again supports the finding "that more intense behavior by a mediator is associated with greater progress in negotiations and a greater likelihood of settlement" (Gerhart and Drotning, 1980, p. 101).

Although fresh evidence, admittedly from overseas experience, points to the fact that intense mediation should be encouraged, changing New Zealand attitudes to accept more frequent use of *directive* strategies will take time. The tendency for the more aggressive form of mediation to be carried out by *ad hoc* mediators in the United States has already been noted, but that alternative does not really exist in this country. The IMS does not have attached to it teams of suitably qualified private or "home-town" mediators. The heavy work load carried by its staff of 6 mediators, therefore, makes it extremely difficult for them to sustain the momentum required of intense mediation over long periods of time. Furthermore, intense mediation can be rather unpleasant; being totally committed to obtaining a settlement might even involve "deliberate deception" (Stevens, 1963, p. 129). Many disputants will not easily be persuaded to accept aggressive mediation as the route to final settlement. They will prefer, in certain circumstances, to fall back on section 64(4)(e) of the *Industrial Relations Act* – which allows the mediator to arbitrate – rather than submit to the pressures of aggressive mediation. Indeed, a pattern is already beginning to emerge: the New Zealand neutral commonly enters a dispute "as a mediator and may leave as an arbitrator" (Miller, 1983, p. 29).

Finally, a more enthusiastic approach to the use of *directive* strategies is not without some cost in terms of potential long-run alienation of certain parties from agency mediators. The private mediator can take the risk of irritating the parties by his aggressive behaviour because he may never again have to face them. For the full-time agency mediator, the likelihood of once more meeting up with one or other of the disputants is much greater and so maintaining rapport with the parties is crucial for his future effectiveness. This cost might be considered totally unjustified when evidence given in Tables 5 and 6 suggests that the parties are more than reasonably satisfied with the mediation process as it presently operates.

Table 5 *Employers and unionists responses by whether the Mediation Service has made a positive contribution to labour – management relations.*

	Yes		No		Not sure		
Group	No.	%	No.	%	No.	%	Total
Employers	80	70.2	13	11.4	21	18.4	114
Unionists	65	65.7	19	19.2	15	15.2	99

Table 6 *Employers and unionists responses by whether settlement would be more difficult without mediation.*

	Yes		No		Not sure		
Group	No.	%	No.	%	No.	%	Total
Employers	92	80.0	14	12.2	9	7.8	115
Unionists	67	68.4	21	21.4	10	10.2	98

Conclusion

Mediation is an art, not a science. It is an artistic enterprise where the most crucial set of determinants of the effectiveness of the mediation process are the strategies employed by individual mediators. Given the multiplicity of styles (and the wide diversity of approaches) adopted by mediators, it is not always easy to generalise on the essential strategies of mediation. This has helped to perpetuate a certain mystique about the mediation process. This paper tries to remove some of this mystique. It argues that it is possible, in fact, to recognise 3 broad sets of strategies. This provides a useful research framework in which to measure the frequency that certain strategies are used in mediation and the importance attached to these strategies in terms of achieving settlement. Although the basic approach has been essentially descriptive, the paper does raise one interesting question. Will the mediation process in New Zealand be improved if mediators display a greater willingness to adopt (and employers and union officers display a greater willingness to accept) more aggressive mediator strategies?

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