

TOPICS RAISED ON REFLECTION OF THE FAILED MEDIATION EFFORT

1. Negotiation sessions involving only employees vs. elected officials and concerns about satisfying open meeting requirements.
2. Shuttle mediation – challenges of allowing/encouraging communication at breaks to support the formal meetings.
3. Lessons of conflict assessment: how to fully consider the range of forums available to disputants (RE: the pending state assembly legislation: Sullivan Acts II and III).
4. Framing the conflict as a “water dispute”

For now, I seek comment individually to me, (stephens@sog.unc.edu) but plan to add those comments to offer a kind of threaded conversation on each of the points below.

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Negotiation sessions involving only employees vs. elected officials and concerns about satisfying open meeting requirements.

The two boards decided they wanted mediation, but recognized they could not meet together privately. The approach taken was for the boards to go into closed session for purpose of advising their respective attorneys, and then have the mediator convene those attorneys accompanied by no more than one member of each board present, in the closed mediation session. This was deemed to satisfy the open meetings law.

This arrangement points out the tensions and competing values for openness and privacy in negotiation and mediation on public issues involving public bodies.

I am beginning to draft some guidance for local government leaders – elected and appointed – on how to balance these values and meet the legal requirements to manage public and private settings for seeking to resolve high profile public conflicts.

Here are some resources I have identified, but I seek other references:

Lauri Diana Boxer-Macomber. September 2003. “Too Much Sun? Emerging Challenges Presented by California and Federal Open Meeting Legislation to Public Policy Consensus-Building Processes.” Sacramento, CA: Center for Collaborative Policy. See: http://www.csus.edu/ccp/publications/TooMuchSun_abstract.stm

Chad Ford, April 2000. “Behind Open Doors: North Carolina’s Open Meetings Act and Mediator Standards of Confidentiality.” Local Government Law Bulletin #094. Chapel Hill: School of Government, UNC-Chapel Hill. 8 pp. Free online access: <http://shopping.netsuite.com/s.nl/c.433425/it.I/id.228/f>

L. Susskind, S. McKearnon, and Jennifer Thomas-Larmer. eds. (1999). The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement. Thousand Oaks, CA: Sage Press, 1999. - has chapters on *Dealing with the Press* and *Legal Issues in Consensus Building*, but not attention to roles of government employees vs. elected officials in negotiation/consensus-building efforts.

I am only now investigating:

Lee, C. W. (2007). Is there a place for private conversation in public dialogue? Comparing stakeholder assessments of informal communication in collaborative regional planning. The American Journal of Sociology, 113(1), 41-96.

Shuttle mediation – challenges of allowing/encouraging communication at breaks to support the formal meetings.

Given the arrangement for formal mediation, but with most board members in separate rooms, in retrospect it made me wonder about my promoting some degree of one-on-one informal and private exchanges between the two boards. This could occur during breaks in the mediation, or as a three-stage process: the representatives would report to their respective boards, then have a recess for the purpose of informal, private one-on-one cross-board discussions, followed by reconvening each board in private session to give guidance to the attorney-board member negotiation team. Then they would move back to the private mediation session.

There were plenty of such informal, but serious, exchanges leading up to the mediation, and perhaps the cross-board relationships had become frayed at that point. However, it seemed like some kind of additional communication channel, especially once some new ideas or proposals were active, could have been useful.

Have others designed, or at least observed, the kinds of multiple communication channels to supplement, but not supplant, the formal mediation process on public issues? My interest is in process design, particularly in a short time period setting (my mediation was one day) so some kind of authorized, parallel discussions could be productive.

Lessons of conflict assessment: how to fully consider the range of forums available to disputants (i.e., the pending state assembly legislation: Sullivan Acts II and III).

The evaluation points to the advantage the Board of County Commissioners (BOCC) seems to have had in terms of protecting their position (supported by state law) on charging for water at the same rate for city and county customers. Moreover, the evaluators found that the BOCC felt they also had a strong position with the local state legislative delegation to modify state laws to assure provision of water to county residents as long as it was available – the Sullivan III proposal.

My reflection is that I could have done a better conflict assessment to understand about the BOCC's BATNA (best alternative to a negotiated agreement) for prevailing through action of the North Carolina General Assembly. Similarly, my mediation would have had to focus more on this BATNA – how the City Council and BOCC understood this option – for negotiations to have been more productive.

Framing the conflict as a “water dispute”

While this was the primary issue of concern between the Asheville City Council and Buncombe County BOCC, it may have been more productive to explicitly frame the mediation as “water and other inter-jurisdiction matters” to both increase the range of trade-offs, and to place “water problems” in a larger set of fiscal and service questions.

I cannot comment on the content of the mediation sessions (per my pledge of confidentiality), but I have learned that this kind of broader framing – even when parties come in with one BIG ISSUE – will probably be helpful in seeking new thinking, different options, and a wider range of trade-offs to reach a resolution.