

A Benefit Resolution Mindset

By

Rick Voyles, Ph.D.

President

Conflict Resolution Academy, LLC

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It is fear of loss that catapults people into conflict. It is fear that can keep them from resolving it. In a mediation, if the fear of loss outweighs the benefit of the offer, then it will be impossible for the party to choose resolution. A participant at the mediation table must believe that he or she will be better off accepting the offer; to embrace a settlement option it must improve the condition of the party. The benefit of gain, being better off, must outweigh the fear of loss, being worse off. This is true for both the complainant and the respondent at the table.

Psychology of Conflict

I often see people make decisions around a fear of loss and a desire to be better off. If there is a benefit that, in their minds, will make them better off, then the decision is easy. If the benefit offered cannot outweigh the loss, then the decision is easy.

Fear of loss is at the heart of conflict. That is often why they file a complaint. Complainants pursue court action, grievance, and/or EEO action, because of something being lost. Whether the loss is objective or the loss is subjective, a party engages in conflict to either: stop the loss, lessen the loss, or get back what was lost. While it may not be possible to rebalance the scales of "justice" by returning what was lost, in the complainant's mind *something* can be put on the scale to restore balance.

The fear of loss also weighs heavy on the mind of the respondent. A respondent comes to the table thinking no wrong was done. The complaint is bogus. Therefore, to do anything at the mediation table represents loss in the mind of the respondent. In some ways, just coming to the mediation table can represent loss to the respondent. To the respondent, giving up something as a settlement creates an imbalance in the scales of justice.

Therefore the fear of loss level is high at the mediation table, or to keep our weight metaphor consistent, heavy on the mind of the parties. One of the roles of a mediator with a benefit resolution mindset is to identify the benefit of gain and the fear of loss pivot point. Identifying potential benefits may tilt the balance away from the fear of loss. The question, then, is what benefit are they willing to settle for at the mediation table.

Every conflict has a benefit scenario at work. The fight is for something, tangible or intangible. The benefit typically relates to the outcome: to gain something, to not lose something, to minimize the loss. A resolution decision will, in the party's mind, improve

the condition of the party. Improvement means the benefit outweighs the fear of loss at the heart of the conflict.

Resolution Resistance

Many things can contribute to a party's resistance or hesitancy to resolve a conflict. One of the most common causes of resistance is ignorance of the process of mediation to empower them to make an informed decision in their own best interest. They come to the table assuming this process is a time to present evidence for themselves and against their opponent in an effort to convince me, the mediator, to rebalance their scales.

Many parties are also ignorant of their role in mediation. Parties are unaware of their responsibility to resolve their own dispute. They look to me as the mediator to advise them and make decisions for them. Parties do not understand their role in mediation, nor the power of the mediation process. Until mediation gains greater popularity among the general population there is not much more I can do to enlighten participants, than a mediation letter and my mediator's opening statement.

However, I can deal with some resolution resistance I encounter during the mediation. Three things I commonly notice when I mediate that can cause resolution resistance are: fear, discomfort, and a single solution mindset.

Fear

Fear freezes many combatants into indecision. Fear of what others might think. What will the other employees say if I let management "off the hook?" What will the union steward say? What will my friends think if I settle for anything less than 100% gain? Will they criticize my loss? We go into conflict with the moral support of those to whom we "vent" our frustrations: friends, neighbors, relatives, and parents, people whose opinion we value and depend on. Will they understand my settlement choice?

A second fear is that of making a choice one might regret later. What if I overlook something and end up settling for less than I could get, less than I deserve? Can I trust myself not to miss something? What if I really do not understand all that I have coming to me? What if I pass something up? I have to live with my decision the rest of my life.

Fear can take many forms and expressions. Fear can stand in the way of resolution. A mediator can effectively address spoken and unspoken fears and facilitate resolutions beneficial to both parties.

Comfort Zones and Process Choices

Discomfort is another common cause of resolution resistance. Discomfort results when someone finds himself or herself outside of their “comfort zone.” Each of us has different boundaries defining our personal comfort zone. No two parties will have identical comfort zones. What makes one party uncomfortable may not even cause a flinch in another party. A mediator must be aware of parties’ comfort zones if discomfort could lead to resolution resistance.

A comfort zone is a compilation of one’s self image, habits, expectations, and familiarities. (See presentation: Comfort Zones at the Mediation Table.) Outside the comfort zone, a powerful gravitational force pulls us back into our area of comfort. The farther outside our comfort zone, the greater the gravitational pull toward the familiar, the safe, the secure, and the comfortable.

At the mediation table, parties have three process choices:

- They can choose to let someone else craft the resolution to their conflict, e.g. a judge.
- They can drop the conflict or case.
- They can choose to design a resolution at the table together.

Many people expect the legal system or complaint process to be fair and just. Therefore, it is within their comfort zone to let someone else decide their case for them, or expect that they may need to drop their case as damaging evidence or an unyielding party comes to bear. Many times, parties are unaware of the opportunity to craft their own resolution. They are unaccustomed to the right and responsibility of resolving their own disputes. This means there will be a natural gravitational pull to the first two process choices: someone else decides the outcome, or dropping the case. Add anxiety, frustration, confusion to the dynamics at the mediation table and a desire to let someone else decide (e.g. a judge, or a mediator) becomes almost irresistible.

Comfort Zone and Outcome Choices

There are three resolution outcomes available to the parties: win/lose, compromise, win/win.

In conflict, people often expect the other person to take advantage of them (given the chance). Therefore, it is within their comfort zone to fear loss. The expectation becomes, “If they win, I lose.” “Their benefit is my loss.” The possibility of lessening the loss, or compromise is also a familiar practice, even a reasonable expectation for most people. “I’ll give something up, if you give something up (of equal or greater value).”

The last outcome choice, mutual benefit out of the conflict, is counter-intuitive for parties and therefore outside their comfort zone. Most parties, with fear of loss weighing heavy

on them, do not stop to think about benefit for the person on the other side of the table. “We can both benefit from this conflict,” is not natural and is not comfortable.

A benefit/benefit resolution can also be outside the mediator’s comfort zone. This is why it is easy for some mediators to overlook need exploration with the respondent. Finding out what the complainant wants and negotiating to satisfy the complainant enough to settle the case is more familiar and more comfortable.

This means there will be a natural gravitational pull to the first two outcome choices: a win/lose, or a compromise outcome. Add anxiety, frustration, confusion to the dynamics at the mediation table and a desire for mutual benefit becomes almost impossible.

Therefore, a party’s comfort zone typically has you fighting up-stream for settlement benefits.

- 1) Letting a judge decide, tends to be a process more familiar, more comfortable, and easier for most people.
- 2) Having a winner and a loser, or compromising are more familiar, more comfortable outcomes, and easier for most people.

A Single Solution Mindset

The third common cause for resolution resistance I will address here is a single solution mindset. Each party has a just and fair resolution in mind before they ever sit down at the mediation. The parties come to the table with an optimal outcome in mind. The reason they are at the mediation table is they cannot agree on whose solution is best. The complainant believes a financial settlement would be fair and just, making an offer to resolve the conflict. The respondent believes that dropping the case would be fair and just, making an offer to resolve the conflict. The reason the parties are at the mediation is not because they cannot find a solution. The reason they are at the mediation table is because they have too many solutions. They each come with a single solution mindset, their solution being the only right and just one.

Characteristic of a single solution mindset is the intention to convince the other party of the veracity, fairness, justness, and worthiness of his or her solution as the appropriate solution to this conflict. This disagreement lies at the heart of their stalemate. If they could only agree upon one of the offers, then there would be no more conflict. It is natural, at this point, for new mediators to feel a strong urge to offer an alternative solution. This creates three possible solutions to decide between. This is also exactly why mediators offering solutions at this point is often not helpful to the process or to the parties.

Parties’ single solutions are characteristically positional. By design, positional solutions balance the scale in the mind of the party. Positional solutions represent 100% gain and

0% loss. The complainant's positional solution represents 100% gain with 0% loss for him or her and therefore 100% loss and 0% gain for the respondent. The respondent's positional solution represents the opposite: 100% gain with 0% loss for him or her and therefore 100% loss and 0% gain for the complainant. Therefore, they are stuck and consequently at the mediation table. The mediator can discover benefit(s), and interest(s), for the parties by doing need exploration around their positional solutions. A critical question, then is, "How to shift the weight of the balance away from fear of loss, beyond the positional solution that has them stuck, and onto key benefit(s) and best interest(s), for each party?"

Conclusion

A resolution solution needs to do at least three things: it must address any loss, it must create comfortable decisions, and it must provide for their interest(s).

When the benefit of gain outweighs the fear of loss and the identified interests are clear enough to understand their overall value, then settlement at the mediation table will be of greater benefit than going forward with the conflict.

As the mediator, solving their problem (and upping my settlement stats) diminishes any empowerment for them to resolve their own conflict. My ability to solve their problem reinforces their irresponsibility for the conflict, its dynamics, consequences and outcome(s).

If my ability to re-solve their conflict becomes a benefit outweighing the fear of loss then I fulfill the comfortable process choice #1: let someone else craft the resolution to their conflict. In this case, a mediator, a third party neutral. Did I slip into the gravitational pull of a comfort zone? Did I reinforce their ir-response-ability? Did I teach them their behavior is 'ok' because someone will come along and fix it for them?

You have to discover benefit(s) this person might choose. An informed choice will be of benefit for the party. A party will always choose a benefit within their comfort zone, within their understanding. If a mediator fails to explore options enough for a party to understand the benefit(s) within an option for his or her need and purpose, then that party will never be comfortable choosing that option. That choice will never outweigh the fear of loss.

In my next article, "Discovering Benefits" we will look at techniques for discovering key benefits and best interests.