



The Art of Negotiations: *Strategizing for Mediation and Conflict Resolution*

Presented by:

Darren C. Kameya and Angela A. Riggs

ACHRO/EEO Fall Training Institute
October 17, 2023

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Presenter

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Darren C. Kameya is the Assistant Office Managing Partner of Lozano Smith's Los Angeles office. For many years, Mr. Kameya has advised school district clients in both the northern and southern California regions. Mr. Kameya's legal experience includes labor and employment matters and extends to issues of board governance, public meetings laws, charter schools, facilities use agreements, student rights and discipline, tort liability, insurance coverage issues, public records and privacy rights. Mr. Kameya's background covers other public agencies as well, including cities and special districts. As a litigator, Mr. Kameya has represented clients in federal and state courts, including representation of the City of Carson during trial and on appeal in a published case involving public financing issues.



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Presenter

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Angela A. Riggs serves as the Assistant Superintendent/Vice President (AS/VP) of Human Resources at Southwestern College. She brings a distinguished career spanning over two decades in the field of Human Resources, with the majority of her experience rooted in California's public higher education sector. Her extensive expertise encompasses program oversight, talent acquisition, classification and compensation, benefits administration, labor relations, and employee relations. Ms. Riggs is deeply committed to advancing diversity, equity, inclusion, and facilitating student access within the institution. In her capacity as AS/VP, Human Resources, she also fulfills the pivotal role of the College District's Chief Negotiating Officer.



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More Than Numbers.

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Common Settings for Employment Disputes

Litigation Settings

- Lawsuits
- Administrative Hearings
- Disciplinary Hearings

Operational Settings

- Grievance Meetings
- Interpersonal Conflicts
- Strong Professional Differences
- Union Relations, Bargaining



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Do Lawyers Make Great H.R. Professionals?



Adversarial positions

- Demands
- Concessions

Interests driving positions

- Perspectives
- Values
- Interpretation of events



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Application of Conflict Resolution Principles

- Interpersonal Conflicts
- Collective Bargaining/Impasse
- Grievance Meetings



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Why Is This Valuable To My College District?

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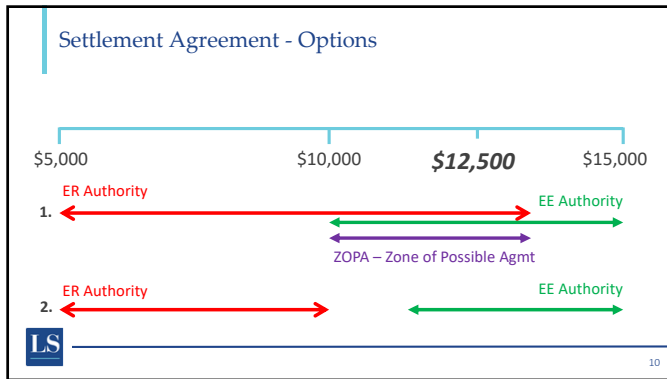
What's Wrong With A Simple Settlement Agreement?

Settlement Agreement	Durable Facilitated Resolution
▪ Retrospective & remedial	▪ Prospective & intentional
▪ Passive compliance	▪ Active compliance
▪ No plan for future resolution	▪ Anticipates resolution of future conflicts
▪ Future conflicts exacerbate the existing discord	▪ Future resolutions successively build on mutual understanding

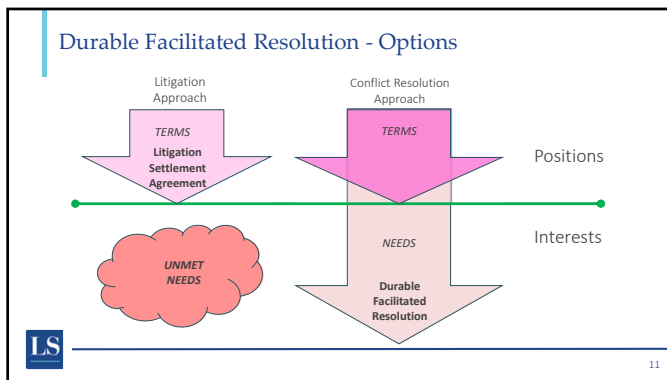
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What Are The Skills Of A Successful Conflict Resolution Facilitator?

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Guiding Principles for CR Facilitator

1. Promote respect for humanity in all parties
2. Create and maintain a safe space for parties
3. Exercise curiosity and interest in people
4. Use your Emotional Intelligence
5. No absolutes or ultimatums, just perspectives, meanings, and impacts
6. Reach mutual understandings to fall back on in future conflicts



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Emotional Intelligence (EQ)

1. **Self-Management:** Manage your emotions, adapt to changes
2. **Self-Awareness:** Know your strengths and weaknesses, how emotions affect thoughts and behavior
3. **Social Awareness:** Have empathy, read social cues, see group dynamics
4. **Relationship Management:** Good relationships, communication, and conflict resolution skills



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Facilitating Techniques

- **Mirroring.** Repeat what you heard to ensure that you got it, and to signal to them that they've been heard.
- **Contrasting.** Set apart what they think and what's actually going on.
- **Addressing silence and violence.** If they are shutting down (silence) or responding aggressively (violence), they aren't comfortable with the process. Bookmark the discussion point and go back to building the foundation.
- **Open up their curiosity.** Ask questions like, "Why do you think a rational, reasonable person would do/conclude/think what [the other person] is thinking?"



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How Do I Facilitate A Conflict Resolution Meeting?

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Convening the Meeting

1. Disclose the Process

- a. What is the agenda for the meeting?
- b. Why are we meeting?
- c. What are we discussing?
- d. What is the desired outcome?

2. Lay the Foundation

- a. Safe space for disclosure
- b. Safe space to challenge the process
- c. Respect for humanity of all parties
- d. Two stories arising from common facts
- e. Binary thinking is off the table, keep an open mind



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Telling Their Stories

3. Complainant/grievant tells their story

- What are the facts of what happened?
- What meaning did you assigned to those facts?
- Why did you assigned that meaning to those facts?
- What impact did that meaning have on you?
- What do you want from this [lawsuit/grievance/ meeting]?

4. Respondent/employer tells its story

- Same as above.



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Discussing Stories – The “Rational, Reasonable” Question

5. One Side’s Reflection.

- Ask one side to consider the other side’s story and to explain **how a rational, reasonable person could hold those beliefs.**
Have them put themselves in the other person’s shoes.

6. Other Side’s Reflection.

- Ask one side to consider the other side’s story and to explain **how a rational, reasonable person could hold those beliefs.**
Have them put themselves in the other person’s shoes.



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Developing a Durable Facilitated Resolution

7. Steps to Draft a DFR:

- Take notes when each party’s interests emerge from the discussion.
- Key in on their answers to “what do you really want to come from this dispute?”
- Build in trust milestones (check ins) and convince each party to extend faith to the process
- Draft, review, revise, finalize the agreement

What if a DFR is unreachable?

- This occurs when a party refuses good faith participation in the process; or has a genuine inability to understand the other.
- May require referral to professional mediator (JAMS, CSMCS, etc.)

Goal is to find a path to success for the complainant/grievant:

- Success in position
- Success in promotion
- Success in transfer
- Success in another environment



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Can You Facilitate A Conflict Resolution Meeting?

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Quick Exercises in Conflict Resolution

1. Hypothetical Settings

1. Interpersonal Conflict
2. Collective Bargaining or Grievance Meeting

2. Group Discussion

1. Challenges?
2. Surprises?



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Takeaways

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Bibliography

Suggested reading by the presenters

1. Grenny, Joseph and Patterson, Kerry. *Crucial Conversations (Third Edition): Tools for Talking When Stakes Are High*, 2002.
2. The Arbinger Institute. *Leadership and Self-Deception: Getting Out of the Box*, 2000.
3. Winfrey, Oprah and Perry, Bruce D. *What Happened to You?: Conversations on Trauma, Resilience, and Healing*, 2021.



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Questions



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GUIDING PRINCIPLES, TECHNIQUES, PROCESS

- **Guiding Principles:**

- Promote respect for humanity of parties
- Create and maintain a safe space
- Exercise curiosity and interest in people
- Use your emotional intelligence
- No absolutes or ultimatums, just perspectives
- Seek mutual understandings to build bridges in the future

- **Techniques:**

- Mirroring. Repeat what was said to confirm it.
- Contrasting. Set apart what is actually happening from their negative fears and perceptions.
- Addressing silence and violence. If shutting down, go back to reinforce safety of process; then return to substance of dispute.
- Open up their curiosity. Ask “Why do you think a rational, reasonable person would . . . ?”

- **Process:**

- Disclose the process, Lay the foundation.
- Tell their stories; listen to the other’s story
- Discuss their stories; reflect on the other’s story
- Ask and discover what each party really wants
- Craft points of agreement and steps forward
- Finalize Resolution document

BACKGROUND

- You passed probation and are finishing your 2nd year in your public agency's Accounting Department, where they seem to recognize your tech skills and innovative thinking.
- Secretary is a Boomer who has been here forever. She's always talking about how things were before iPhones and Siri and ChatGPT did everything for you. Who cares about Twohey Decimals or whatever she was muttering about.
- Secretary seems to think that you "don't know your place" and lets you know this with lots of microaggressions. You've learned over four years in college that you can't just let her walk all over you and that you have a right to be heard and respected.
- Last week, the copy machine ran out of paper right after went on a lunch break at 11:30 a.m. Technically it's your job to refill the copy paper, but everyone (including Secretary) constantly talk about working as a team and supporting each other with things that aren't our official job duties. Since you've been here, someone has always been able to refill the paper if you're busy or unavailable when it runs out.
- After you returned from lunch at 12:30 p.m., your supervisor asked you to review the status of the Department's record digitization project, and so you went to the file room which is in another building on site. It's great that your supervisor trusts you with projects like this, and you don't want to let him down.
- When you got back, you checked the copy room for uncollected print jobs and everything was normal. But you could tell that Secretary was silently fuming at you. It seems like there's always a new problem with her every week. Last week, you had to file a complaint to the new HR Director that her desk fan was distractingly loud and you think that she deliberately pointed it at your neighboring desk to make you cold. This week, she sent an email to the new HR Director and she wants to meet about it.

YOUR ROLE

- Be emotionally invested in the hypothetical situation. Feel free to embellish slightly and within reason to fill out the factual information needed for the meeting. But remember that this isn't acting class and we don't have a lot of time in this exercise for theatrics.
- Take cues from the Facilitator and the Secretary. If the Facilitator makes you feel safe and opens your mind to new thinking, go with it. If the Secretary is a jerk and triggers your defenses, play it out.
- Your group has 14 more minutes to complete the entire exercise, so don't dawdle or monopolize the discussion.

HYPO #1 – INTERPERSONAL CONFLICT

SECRETARY

BACKGROUND

- You are in your 15th year as a Secretary III in your public agency's Accounting Department.
- You work next to a Clerk who is in his 2nd year with the agency. Clerk is a Millennial and gives you the impression that he hasn't had a real challenge in his life, that his doting parents always gave him what he wanted, and that he's looking to do the bare minimum in this permanent government job.
- Clerk seems to be super sensitive regarding a lot of things, and he isn't afraid to complain. He's just like your little brother who was born 10 years after you. What a lazy bum!
- Last week, the copy machine ran out of paper at 12:00 p.m., right before you went on a lunch break. It is Clerk's job to refill the copy paper, but Clerk left for his lunch break at 11:30 a.m. and wouldn't return until 12:30 p.m.
- After you returned from lunch at 1:00 p.m., the copy paper still hadn't been refilled! You couldn't find Clerk and ended up refilling the copy paper so that you could complete a large print job.
- This is just the latest issue you've had with Clerk. It seems like there's always a new problem with the Clerk every week. Last week, Clerk complained to the new HR Director that your desk fan was too loud and it made him cold during the day. This week, you sent an email to the new HR Director about the copy paper issue.
- Under the agency's complaint procedure, the HR Director has called you to a meeting with Clerk to hear both sides of the story.

YOUR ROLE

- Be emotionally invested in the hypothetical situation. Feel free to embellish slightly and within reason to fill out the factual information needed for the meeting. But remember that this isn't acting class and we don't have a lot of time in this exercise for theatrics.
- Take cues from the Facilitator and the Clerk. If the Facilitator makes you feel safe and opens your mind to new thinking, go with it. If the Clerk is a jerk and triggers your defenses, play it out.
- Your group has 14 more minutes to complete the entire exercise, so don't dawdle or monopolize the discussion.

BACKGROUND

- You are the new HR Director for your public agency.
- Secretary and Clerk in the Accounting Department are feuding. In the past month, either one or the other send an email to you with a new concern.
- Last week, the Secretary complained that the Clerk should be restocking paper in the copy machine, but she always ends up doing it. The week before, the Clerk said that the Secretary's desk fan is so loud that it distracts him during the day, and it is pointed at him to make him mad.
- This week, the Secretary and Clerk both sent dueling emails to you, claiming that the other person is creating a hostile work environment. Neither allege that the other's animus is due to a protected class, status, or activity.
- Your agency's "Complaints Against Employees" Procedure allows you to attempt to mediate the complaint.

YOUR ROLE

- Use the conflict resolution techniques described in this presentation to convene a conflict resolution meeting.
- Be sure to guide the process, stay neutral, maintain a safe space, and elicit curiosity and empathy from each side.
- Take notes during the conflict resolution meeting; craft possible points for a resolution document.
- Suggested time allocation:
 - 1 min. Disclose the process, Lay the foundation.
 - 5 min. Tell their stories; listen to the other's story
 - 6 min. Discuss their stories; reflect on the other's story; Ask and discover what each party really wants
 - 2 min. Craft points of agreement and steps forward; Finalize Resolution document

HYPO #2 – NEGOTIATIONS OR GRIEVANCES FACILITATOR

HYPO #2(a) BACKGROUND FOR NEGOTIATIONS

- You are the new HR Director for your District. You are also the Chief Negotiator for your bargaining team and have your 3rd bargaining session with the faculty union tomorrow.
- The parties have jointly sunshined Salary, Benefits, Leaves, and Discipline. Union has proposed a 10% increase (COLA is 8%), maintain 100% benefits coverage, revisions to bereavement leave to match new law, and eliminating the 21 disciplinary causes for suspension (borrowed from the classified CBA) and referring to the Ed. Code disciplinary causes instead. District predicts a structural deficit in 2024-2025 because of the end of COVID funding and a possible recession.
- The Union accepted COLA -3% in the last two years because the District had a bloated budget. They want their fair share now, especially when the Superintendent received a 10% increase. District wants to continue the COLA -3% for one more year to bring expenses in line with revenues for 2024-2025.

YOUR ROLE

- Use the conflict resolution techniques described in this presentation to develop a list of questions to ask the Union to open up discussion. Then develop an outline of the District's interests served by the District's proposal, and an outline of the Union's interests served by the District's proposal.

HYPO #2(b) BACKGROUND

- You are the new HR Director for your public agency. You are leading a Step 2 Grievance Meeting regarding a custodian's grievance over her transfer to the night shift after working day shifts for five years.
- Custodian is the only female on the custodial staff and sometimes is the butt of subtle sexist jokes. None of that has been documented but it is part of the rumor mill. Custodian is a single mother and cares for two young children from 5 p.m. daycare pick up to 7 a.m. daycare drop off.
- As a result of an OSHA settlement, the District has a new need to clean rooms after evening culinary classes to keep rodents at bay. Maintenance Director used the Transfer Article and determined that Custodian was the least senior and had to go.

YOUR ROLE

- Use the conflict resolution techniques described in this presentation to develop a list of questions to ask the Custodian to open up discussion. Then develop an outline of the District's interests, an outline of the Custodian's likely interests, and possible ways to resolve the conflict with the Union's assistance.

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