



School of Business and Public Management
Institute of Brazilian Business and Public Management Issues
XV – Minerva Program – Fall 2002

Developing a Culture of Negotiation

Rinaldo Almeida

Developing A Culture Of Negotiation

A lot has been discussed regarding the term negotiator. For many it characterizes an ambitious and opportunist person that likes to take advantage of all situations. That is why some other people quickly affirm that they do not know how to negotiate, that they usually lose whenever they wrap up a negotiation. The fact is that negotiation is usually something difficult because we are dealing with differences. For this reason lots of people prefer to avoid conflict, many times denying their own desires. Taking another glance on this issue affirms that the conflict is something inherent to human nature, that we negotiate even when we do not notice that the process is happening. We negotiate with ourselves since the moment that we wake up. We negotiate with our children and companions in our residence, with our bosses in the work place and even with strangers in the subway for us to determine who passes first in the roulette.

If we transport this analysis to a Brazilian context, we could affirm that negotiation is something that has been evolving. Historically discriminated women, black and handicap minorities today have a much louder voice and a much stronger power than 30 years ago. During our authoritarian political years, conflicts were not allowed to surface.

The transition of society to a democratic order requires citizens' to gain the ability to cope with new decision making mechanisms. In this perspective, conflict is viewed as something positive, being negotiation a process for which the parties try to find a solution that caters to different interests. The conflict becomes an opportunity for people to find creative solutions for the problems of the negotiation, exploring their disagreement as a form of mutual learning. The priority of the negotiators becomes an effective agreement, to maintain a relationship for a long term.

We will begin this discussion by demonstrating the fragility of the negotiation culture in the Brazilian labor market, characterized by

paternalistic relationships among its agents, unions and companies, and its external institutions, the government, the judiciary power, and the legislative power. From here we will discuss forms of facing the conflict as a productive process, making reference to the concept of Win/Win solutions developed by Harvard Law School. Then we will argue that the government has an important role to play in order to develop a new culture of negotiating. We will also discuss how mediation expertise can be a useful tool during a policy making process such as the negotiation of the FTAA – Free Trade Agreement of the Americas.

Understanding that developing a culture of negotiation is an ambitious and long term process, we will analyze the way public schools can make use of mediation as a process of conflict resolution among their students, beginning at age nine. In the final part of our discussion, we will analyze an American institution with wide experience in using the mediation expertise to develop a culture of negotiation, the Federal Mediation and Conciliation Service

Culture Of Negotiation In The Brazilian Labor Market

A sign that Brazil does not possess a strong culture of negotiation can be seen in the Brazilian labor market, and in the way that employers and workers solve their conflicts of interests in general. Our labor culture is not habituated to the direct negotiation, giving preference to the appeal to external instances, such as the Judiciary Power, the Legislative Power and the Executive Power.

The basic group of laws that regulates the labor conflict is the Consolidation of Labor Laws - CLT, published in 1943, and drawn with the objective of protecting the workers from exploitation of the employers. It was developed in an authoritarian time and it is very detailed in its individual rights, but it inhibited the collective bargaining. The result of this is a rigid group of minimum rules that reduce the flexibility of the labor

market and its capacity of adapting to the changes of the economical environment.

The Judiciary power has a specialized branch dealing with the enforcement of the labor laws. In the past years, it has had a strong participation in the judgement of collective bargaining, which helped to inhibit the direct negotiation between unions and companies. In recent years, this participation has reduced a lot, but the practice of searching the conflict resolution from outside still remains.

The labor law does not generate incentives to both employees and employers to solve their conflicts through direct negotiation. The workers tend not to complain while they have jobs for fear of being dismissed. As soon as they stand back from their employment, their old boss is processed because the risk is null, even when their boss wins the case. Historically these decisions tend to be more favorable to worker, than to the companies.

On the other hand, the employer knows that to appeal judicial decisions immediately can prolong a decision for a long time. Taking into account the worker's natural urgency in receiving some resource, employers frequently obtain a satisfactory agreement during the initial process. If not, the employer postpones the agreement and keeps it in the courts. The result is a slow justice, which is many times harmful to the workers' rights.

Another obstacle to the effectiveness of the collective negotiation in Brazil is the distance between union's leaders and the workers' groups that they represent. This problem is a consequence of an anachronic model for union organization. The unions are organized by economic sectors. All the employees have to pay a contribution for its union, and it is not allowed to be in more than one union in the same territorial base.

The system was severely controlled by the Government since its origin in 1943. In spite of the countless conquests achieved, the model started to show problems when the democratic process moved forward in the country. As a form of adapting to the contemporary reality, the

Constitution of 1988 determined: “ it is prohibited to the public power to interfere and to intervene in the union’s organization...”

From that point on, the labor unions had exchanged an extremely rigid model for another, where almost anything is allowed and nobody is controlled. Eventual controversies between two unions claiming the representation of the same workers in a specific territorial base became very frequent. These cases were sent to the judiciary power and they usually took many years to be resolved. In the current context, quite a few unions have been spending most of their energy negotiating with companies’ controversies on union framing, and which unions should receive contributions collected from the workers. These disputes not only remove the main focus of labor negotiation, the worker's conditions, but they also can instigate spurious relationships between bosses and union leaders.

When the unemployment rate grows larger, more demands are addressed to the unions, and the directors' responsibility to lead with competence collective bargaining is bigger. It is very important to pass a bill in congress that deals with this situation.

The Negotiation As A Form Of Obtaining Win/Win Solutions (Harvard Law School)

In 1981, Roger Fisher and Willian Ury wrote a book called Getting to Yes – Negotiating Agreement Without Giving In. This was the beginning of research related to the productive potential of negotiation, known as PON (Project on Negotiation). Their concepts are not exclusively related to collective bargaining, but I think that they may help us to understand the advantages of exploring mutual benefits, or negotiation based on interests, over the traditional adversarial behavior, or negotiation based on positions.

If we think generically about NEGOTIATION, we can say that it is the process that settles a conflict of interests. The conflict is the starting

point for the negotiation to begin, or its origin. But regarding the nature of these conflicts, what would be their different forms of manifestation?

We can speak about a conflict of values, like if I believe in a Christian God and someone else is atheistic. We can speak about a conflict of needs, like I need to increase my wage to pay my son's tuition and my boss is committed to reducing the costs of his department. We can even speak about a conflict of desires, like when my daughter wants to take a second ice cream, and I think she should eat less sugar: we can also speak about a conflict of fears. For example, I am in the American immigration service fearing to be impeded of entering into the USA, and the service official fears that I will not leave when my visa is expired).

Although this generic definition of the term " negotiation " is neutral, most societies, including Brazilian society, gives a negative connotation to the process of negotiation. Is the conflict necessarily something negative? A great number of people would say that yes, it is the accomplishment of my interests that gives me pleasure. Facing the conflict I will probably be forced to give up part of these interests to obtain agreements, and this tends to reduce my pleasure.

Furthermore, the conflict elapses the existence of DIFFERENCES. All of us know that is much easier to the deal with similar people, ones that possess values, faiths, desires and interests similar to our own. We could say that DIFFERENCES generate CONFLICT because differences generate tension, and for some people this tension generates great discomfort.

The Win/Lose Negotiator

For most of the people, negotiation causes discomfort because they feel as if they are in a battlefield, facing the other side as an opponent that should be defeated. With this approach, I should take an aggressive posture. I should be authoritarian and inflexible to obtain the best results.

The aggressive negotiator faces any situation as a dispute of wills, and his strategy pattern is to begin the process with extreme positions, signaling little or any chance of giving up his desires. The objective is to win the dispute, but the consequence is usually that the other side assumes the same aggressive position, which a lot of times makes the agreement unfeasible. It also often hopelessly harms any possibility of a future relationship.

The idea that the negotiators are always opponents in competition can be illustrated as a cake whose size is fixed. The larger my slice is, the smaller the slice of the other side will be. It is obvious that a different perspective could show the negotiation process as a cake whose size can become bigger, offering better benefits for both parts. On the other hand, the Win/Lose negotiator prefers a model that is like playing chess, where one's movement always means an attack to the opponent, and victory is only possible for one of the sides.

Another form of reinforcing the negative conflict is to be exclusively interested in money. Of course financial interest is fundamental and at most times the most important, but certainly it is not the only one.

Recently I contacted a phone company to purchase a plan for international calls, and after a lot of negotiation we decided on a special plan that pleased me a lot. It was not until the first invoice that I noticed hidden fees which I was not informed about at the moment of negotiation. After a long complaint process, I got to cancel the improper fees, but since the beginning a decision had already been made. In this case the competitor had a similar price, so I changed to this new company, because of the bad faith used in the negotiation with the first one.

In contemporary capitalism, the relationship not only with the customer, but also with partners and suppliers is fundamental for the development of the business. More and more citizens are conscious of their rights, and negative propaganda created by an unsatisfied customer possesses a considerable multiplier effect.

A characteristic of the Win/Lose Negotiator is that the negotiator acts based exclusively on their own desires, their internal pulse, believing that their will should prevail at any cost. This action is like a child's behavior in his daily disputes, instead of a more reasonable attitude based on neither emotion nor reason.

The aggressive negotiator acts on the short run, and usually demands concessions as a relationship condition. To understand the terminology Win/Lose, the word WIN placed to the left side of the bar means that the person under analyzes acts in the aggressive way of negotiation, looking for unilateral victories. But this is not everything. The negotiator is usually not satisfied only with the pleasure to accomplish his desires, but also needs to feel that his opponent is losing something. This is why the other part of the negotiation is related with the word LOSE placed at the right side of the bar. It is easy to understand why the W/L attitude harms relationships so deeply. Hate and resentment are frequent feelings when one of the sides notices themselves curving to the rigid will of the other, while their legitimate interests are not mischievous in aim.

The Lose/Win Negotiator

Facing the negotiation process, several people notice a dilemma. They disagree with the Win/Lose attitude, so they search an alternative behavior, placing themselves at the extreme opposite position. They adopt a gentle and affable attitude in order to avoid the conflict. They recognize the consequences of bargaining with roughness, the way this terribly harms their relationships. Instead of facing their counter parts as opponents, they prefer to see them as friends.

The Lose/Win Negotiator's basic strategy is to offer concessions to avoid confrontation. This negotiator is usually a timid person, having difficulty expressing themselves. By these reasons, they tend to change their position easily to reach an agreement.

To give in is part of the bargaining game, but for the affable negotiator this procedure is habit. An agreement is something that will happen naturally if mutual benefits solutions come through. Although, if the process is started with the thought that we need to agree, it's possible that we accept agreements that we should reject. A lot of times it is our refuse in accepting an agreement in the short term that determines the conditions for an agreement in more advantageous and fair bases in a subsequent moment.

This Lose/Win negotiation posture is also known as a passive posture, one in which the individual hopes that the other part will understand what they want. The negotiator is usually concerned about the opinion that the others have about them. They have characteristic corporal expressions, such as difficulty of maintaining visual contact, a hesitant voice, confused speech and a defensive attitude to avoid direct approaches.

The Win/Win Negotiator

A fundamental notion for developing a culture of negotiation is the perception that in spite of causing certain tensions, conflict is also a great opportunity for people to understand each other, to deal with their differences, and to solve their problems in a creative way. If people do not comfortable in an aggressive posture of negotiating, but they also do not want to give up their interests, they should look for a third option, an intermediate alternative.

The negotiation process usually happens in two parts, the first concerning the substantial part of the conflict, the interests. The other part has to do with the way the negotiator intends to deal with this conflict, seeking to accomplish their interests. If I am discussing with my wife where we will spend our vacation, this is the substantial part of the negotiation.

The second subject has to do with the way I intend to discuss the theme, in an authoritarian way, in a passive way, or in a third way. Many times this second part does pass unperceived in the negotiation process, but

it is fundamental because it informs the kind of relationship a negotiator intends to have with their counterpart, even after the decision is reached.

Returning to the example about the location of my vacations, I can begin by saying that I want to go to New York because I love the city and I miss its atmosphere. I may continue to enumerate reasons to support my desire. To the contrary, I can bring to the debate the subject of our last trips, explaining that I would like to travel to a big cosmopolitan city, with lots of nightlife and interesting shops for electronic products. Just after listening to the preferences of my wife we will start to talk about places to go. The city is an important issue, but the most important part is the idea that both of us should have a good time during our vacation.

This is the road to be followed by the Win/Win Negotiator. Instead of beginning the discussion with a closed position, the negotiator tries to bring the problem from the bottom, the fact that motivates the negotiation, disclosing the conflict of different interests. For this negotiator, the participants of a conflict are neither opponents nor people that must always have the same desires, they are individuals willing to solve problems related to their different interests. Instead of obtaining victory or an agreement, the negotiator is interested in reaching a result that assists both sides, and that strengthens the relationship.

This road is applicable to very close people like a couple, but can be used as well for most of the other situations. What I am saying is that it is possible to get effective agreements even when we don't sympathize with our counterparts, even when we think they are not trustful people. Once we get to separate the personal relationship clearly from the subject to be discussed, we can go on with the process, taking the necessary precautions. We will be ready to refuse pressure or bad agreements, but open to discuss options that attend to both interests.

In the search of solutions that are mutually satisfactory, we neither trust nor distrust others, but we act independently of trust. Instead we talk based on a deep analysis of the problem on surface, looking for objective

criteria whenever possible, choosing fair standard patrons for both parts to serve as references for the decision.

Instead of entrenching in positions previously defined, we concentrate on interests located behind the positions, looking for creative options that contemplate benefits for the two sides. From one side we refuse to threaten, from the other we also avoid to offer concessions in the beginning of the process. Our objective in this initial phase of the process is to explore the maximum interests in game, staying open to rational and wise arguments.

The Government Can Help to Develop a Culture of Negotiation

Once we admit that conflict can be positive, the government has an important role to play. It should assist society to use the WIN/WIN approach instead of the traditional aggressive way to address the conflict of interests. The government should begin by looking inside for opportunities to transform policy making a process as open as possible.

How is the typical way to decide in policy making? The government officers face a new problem, they acknowledge it, they make their analyses, they discuss internally and they make the decision. When everything is decided, they then communicate to the public. The society usually does not participate during the process, although they are the ones who will feel the consequences of the policy making.

The government officers have the power to decide. They have many important decisions to make, they don't have much time available. They also do not have as much resources to make research as they would like. They know the interests of the country. They decide unilaterally and that is a very WIN/LOSE approach.

The officers think that they know the interests of the country, which are the interests of the population, but they don't test their perceptions. To

have a WIN/WIN approach they have to listen to the society and to understand that the interest of the country is a mixture of different interests related to different sectors of the economy.

To understand the interests of the population we must have special frameworks where the affected sectors can express their interests, not only the rich ones that usually have a direct channel to the officers, but even the ones that usually do not reach the policy making offices. We already have the congress, which continues to be the most important discussion place of the country, but it is not enough. To develop this culture of negotiation, we should think about additional channels between the government and the society when specific issues are about to be decided.

We also must be aware that in negotiation between government and society, the interests are not only related to the country and to the economic sectors. In the middle of the process we have the private interests of the government officers. These particular interests can be very different from the others. The most democratic and transparent is the policy making process, the most difficult is that some kind of distortion occurs.

The great challenge is to decide how to do it in an efficient and effective way. We say efficient because we have to build a procedure for the process, in a way that it has to be organized. It should give voice to all the sectors involved, not only to the rich ones, and it has to offer to the government useful tools for the decision process. It is important to say that the democratization of the policy making does not mean that the government becomes weaker than before. Instead, the idea is that with the assistance of the entire society, the government becomes much stronger. The responsibility of the government officers is the same, the difference is that they now have much more information than before.

It is also important to talk about efficacy to assure that this framework will provide the necessary information in a time that does not muddle the decision- making. We must think about a permanent forum of social participation, where the affected parties are always discussing the

relevant issues of the moment, and that they can even anticipate some of the problems. Once the government makes a request for public comment, it has to be done promptly.

The use of Mediation Expertise to Build a Policy Making Framework

The Brazilian Government has some expertise that might be useful to implement this framework. Although it is not the same environment, the Labor Department has been traditionally searching to build a WIN/WIN approach in the collective bargaining through a procedure called Mediation.

Mediation is an intervention done by a third neutral part in a dispute with the purpose of helping the parties in conflict to reach the agreement. The Mediator can make suggestions, and even procedural or substantive recommendations. The Mediation is a voluntary process and it only happens with the consent of both parties.

An effective mediator uses knowledge of the parties and of the issues to guide the negotiators in the search of a situation which both sides can live with. For this role, the Mediator becomes an educator, providing help in the construction of a more collaborating relationship.

Mediation is an efficient procedure in specific situations of the labor collective bargaining, for instance when there is a will of the parties in sharing information, or when there exists some level of collaboration. It is also necessary that the parties understand and accept the process. It is a different situation from the policy making process, but nevertheless it can be adapted.

The idea of a democratic policy making framework argues that we should involve the affected parties, but the coordination and the responsibility for the decision will be naturally with the government. The role of the mediator would be to facilitate this process of negotiation, based in it's expertise of Alternative Dispute Resolutions (ADR).

The term ADR is used to describe a variety of alternative ways to obtain a solution for the problems of the negotiation, instead of more traditional ways frequently related to the judicial courts. These alternatives usually involve the use of a third neutral party to help the litigants to find mutually-acceptable solutions. They can be used in any type of relationship that involves the conflict of interests.

The branch of Labor Department in the State of Rio de Janeiro, Delegacia Regional do Trabalho – DRT/RJ has had a very successful experience using the mediation skills to articulate a social project called CIPRO – Center of Computer Science and Cultural Production for Minorities. The Mission of the project is to contribute so that poor people could obtain better jobs through internet courses, so they can rescue their citizenship.

In this initiative, the role of the government is at one side to articulate the interests of companies and Non Governmental Institutions with expertise in professional training. On the other side, the goal is to put together a big number of very poor community groups and teach them how to develop a computer science center in their own neighborhood, how to raise funds for their social project and how to manage it on their own.

The project teaches computer science to the very poor that do not have a job. They have classes but they also have free laboratory time to practice whatever they learn and to look for a new job through the Internet. It happens not only during the course but also when it finishes. The best students that have teaching skills receive new courses and they become teachers of the project. The students with a management profile are taught administrative issues. The best ones become coordinators of the project, they take care of the Lab and after some more courses they learn how to raise funds for the project.

The main goal is to teach, discuss and practice empowerment, self-development and solidarity. The government, through mediation, just articulates the process. The companies lend the computers, the permanent

training of the teachers and coordinators are offered by the non-governmental organizations, the administration and the regular classes are offered by the former students.

The project occurs inside the governmental buildings. The government provides the internet connections and the general coordination. Once in a week a governmental mediator helps the parties to solve their problems and to deal with their conflicts of interests.

It is important to say that in this democratization process we think that it is important to bring the society inside of the government buildings. It gives to the very poor the opportunity to get in touch with a different environment, what probably will offer them a new perspective for the future. It also contributes for the governmental principles of transparency and accountability. The CIPRO project, created in July 1999, has received in 2000 the Helio Beltrão Award, a national prize for creative initiatives in the Brazilian public sector.

The underlined idea is to practice this new way to negotiate, called Interest-Based Bargaining – IBB. Traditional negotiating is often about relative power and the willingness to use it against each other, sometimes at the expense of a better agreement or even the relationship, in order to win. In the right situation, IBB can be an alternative, replacing traditional positional bargaining with a process of joint problem solving.

The question now is: In which specific situations might we use this mediation expertise, in other words this WIN/WIN approach, in order to improve policy making, as well as developing a culture of negotiation?

FTAA – Free Trade Agreement Of Americas: An Opportunity To Negotiate With The Support Of The Brazilian Society

At the Summit Meeting of American Governments, which took place in Miami, Florida on 10th December, 1994, Heads of State of 34 countries of the American Continent decided to begin an ambitious project for

hemispherical integration. Cuba is the only country, which is not taking part in the negotiations. When FTAA is set up, it will represent a population of 800 million, generating a Gross National Product of US\$ 1.2 trillion. The last chapter of this story happened on November 1 in Quito, Ecuador, when Brazil assumed, along with the United States, the chairmanship of the FTAA. The process of the multilateral negotiations should be concluded in January 2005.

The Quito Ministerial Meeting confirmed the detailed schedule for the exchange of offers in services, investment, agriculture, government procurement, and non-agricultural market access. Initial market access offers will be submitted between December 15, 2002 and February 15, 2003, with revised offers due by July 15, 2003. The results of the negotiations have tremendous implications over the Brazilian economy. We are not talking only about the consequences that will be felt by the Brazilian companies, we are talking about the implications for all the population, including the small factories located in distant states of the country that provide jobs for all the Brazilian population.

In some ways, the FTAA can be a very positive opportunity for the country to increase our exports. Let's think only about the relationship between Brazil and the United States, the biggest and the most dynamic market in the world. A study conducted by the Brazilian Embassy in Washington – based on 1999 data – found that the average tariff-equivalent levied by the United States on the 15 main Brazilian Global export products is 45.6 %, whereas the average tariff or tariff-equivalent levied by Brazil on the 15 main U.S. global export products is only 14.3%.

Although the American government usually says that the U.S. has one of the lowest average import rates in the world, there are important barriers impeding competitive Brazilian products to access the American market.

In the industrial sector, there are significant barriers and the steel sector is an example. During 2001, the U.S. government initiated safeguard

investigations to protect domestic industries, which were particularly harmful to Brazilian exports. The Byrd Amendment signed in that year permits the U.S. government to provide the proceeds of antidumping and countervailing duties collected on imports to the petitioning companies in the proceedings that led to the collection of these duties. These provisions are completely contrary to the U.S. obligations under the GATT 1994, the Anti-dumping Agreement and the Agreement on Safeguards and Countervailing measures applicable to all members of the World Trade Organization.

On the agricultural sector, the U.S. maintains huge tariffs on many important Brazilian products such as sugar, tobacco, ethanol, orange juice and textiles. Trade distorting subsidies are granted, which constitute indirect barriers against Brazilian products. In the case of sugar, for example, the U.S. minimum price policy provides payments to producers of approximately US\$ 400 per gross metric ton and U.S.\$ 500 per refined metric ton. According to OECD data, U.S. agricultural support programs received US\$ 49 billion in funds in the year 2000. These transfer payments represented 22% of total U.S. agricultural production.

Brazil has extreme debt vulnerability and the country needs to increase the exports in order to finance the debt. The FTAA is a good opportunity to have market access for most of our competitive products. The U.S. has special interest in this negotiation because if the FTAA agreement is reached, the U.S. will be much stronger for the future negotiations against the European Community at the WTO forum. Most analysts say that the success of the FTAA depends on the agreement between Brazil and the U.S. It would give to Brazil an important leverage to achieve bigger concessions now than in any other moment.

On the other hand, the FTAA agreement can have strong negative implications for the country's imports. The 90's were a fantastic decade for the U.S. The country had an excellent growth rate with very low inflation. The scenario for this moment is completely different. The growth rate has

fallen and the investments do not seem to be very high. The continued growth of the U.S. economy depends on their ability to sell goods and services to consumers, and they are very much interested in accessing the Brazilian market with lower tariffs.

The American workers are very productive, their companies have cheap capital and they can threaten very badly the Brazilian companies. The same thing we can say about the Canadians and even about the Mexicans, which became very competitive in the last years.

As important as the increase of exports, Brazil needs to keep their imports under control, not only to sustain a big trade surplus to serve the debt, but also to keep the competition of the domestic Brazilian companies. Our social problems are huge. The country needs to know which sectors need some kind of protection in this new environment that the FTAA can create.

We should not forget that all the most developed countries reached their actual position through some amount of protection for their domestic producers. That is the case with the U.S. that until the Second World War, it had a very closed economy. That is also the case of China, the country with the highest growth rate in the world for the last years. It is not a question if the government should intervene in the market or not. The key point is how we should implement this intervention on a temporary basis, so it does not become too costly for the society as a whole.

This scenario provides a good example of how mediation expertise can be useful in order to support our negotiators with useful information related to the FTAA, concerning what can be given in and which are our sensitive sectors, that must be protected during the process.

Private Sector Advisory Framework

It is very necessary that the Brazilian trade policy and trade negotiation objectives adequately reflect Brazilian commercial and

economic interests. We shall organize some kind of advisory framework to provide information with respect to bargaining positions before entering into trade agreements, on the operation of any trade agreement once entered into, and on other matters arising in connection with the development, implementation and administration of our trade policy.

We can organize a system in different levels. The first level would be the presidential level, with members that represent the key economic sectors affected by trade. In this committee there would be members from the industries, farmers, producers, unions, people related to environment issues, members from the university community, consumer representatives and so on. The second level would be related to a broad policy in issues like Mercosur, Agriculture, Labor, Environment and maybe one to discuss the impacts of trade in the state and municipal levels. We also should create a third level, related to technical and sectoral advice.

These committees can be formed by the civil society. All the recommendations for candidates would be collected from a number of sources including members of Congress, associations, publications, and other individuals who have demonstrated an interest or expertise in trade policy. Membership selection would be based on qualifications, geography, and the needs of the committee. Each committee should be coordinated by a mediator from the government, not a mediator in the traditional sense, but a person trained in Interest Based Bargaining, whose mission would be to organize the meetings, to share the information, to distribute the tasks and to focus on the relevant issues.

We can think about an example in which the Brazilian negotiators request public comment with respect to a report listing significant barriers to Brazilian exports of goods, services and overseas direct investment. Each economic sector, actually all society would have the opportunity to send comments and useful information to the Negotiators related to new barriers or even barriers that the government had not found before.

What should be done with the huge amount of comments expected? That will be the responsibility of the advisory committee. The assessment of the comments should be done not only by the government officers, but mainly by the advisors. The role of the mediator is to organize all the comments, to distribute them among the advisors and to consolidate the relevant information selected by the committee.

We are talking about empowerment and that is a typical expertise of the mediator. Through mediation, the parties are responsible for the results. In this particular case, society is responsible for the advice, not for the decision. The policy making officers always keep the power for the decision, and the responsibility for the results.

The government requests information, organizes the process, receives the results and takes the decision with autonomy. The interested parties of the society participate in the process, they are responsible for the analyses and they receive the benefits of a better agreement. Even on a financial basis, this framework is not expensive at all. The advisors should pay for their own travel and other related expenses. Only the coordination is done by the official mediator. This person will inform the negotiators about the discussions and interfere whenever some distortions are noticed

We just gave an example regarding public comments related to barriers to Brazilian exports. We can think about a similar request with respect to Brazilian sectors that feel themselves threatened by the trade liberalization. It does not mean that the government will automatically protect these sectors with tariffs, but each case should be carefully analyzed. All the Brazilian economic sectors should have voice and have the right to expose their arguments. They provide jobs in the whole country and they must participate in some way in the negotiation process of the Free Trade Agreement of Americas.

Teaching Mediation Skills To Children

Understanding that developing a culture of negotiation is an ambitious and long term process, I think that the mediation procedure can also be used with good results in schools, avoiding conflicts among students become violence. The innovative characteristic of such a program is that mediators would be students of the school, people with a conciliatory profile that voluntarily offer themselves to be qualified for the function.

A peer mediator would be someone who cares about others and who talks with them about their thoughts and feelings. Rather than being an “advice giver” or a “problem solver”, a peer mediator would be a sensitive listener who uses communication skills to encourage self-exploration and decision making. The peer mediator would also promote the development of a healthy environment in the school. It should be pointed out that the Peer Mediation Program can obtain great results not only with adolescents, but also with children starting from 9 years old, when they can begin to receive information about how to express feeling like rage.

We should understand the conflict is a natural phenomenon related to the differences among human beings. That is why there is no easy formula for peace and harmony at all times in our relationships with others. We should see conflict as an opportunity, which is a way of saying that something very positive can come about as a result of dealing with a conflictual situation. If we think about conflict differently we may agree that the best place to create this culture of negotiation is in the school.

Schools are institutions shared by the many diverse members of the community in which they live, reproducing social conflicts lived by the adult society. Complex interactions of personal, social, cultural, economic and political factors shape each person involved. Like other institutions, schools can be the site of conflicts between individuals and groups which are not fundamentally about the school and its operation.

Different types and levels of conflicts can occur simultaneously within the school, creating a multifaceted and sometimes destructive environment. An atmosphere frequently characterized by extensive

unaddressed conflicts can interfere in the central mission of the school that is to educate and to socialize their students. These factors may not be as conflict producing if they are accepted and the tensions they produce are acknowledged.

Many factors interact to cause conflicts in the Brazilian schools, for instance, the enormous diversity of cultural backgrounds. The country is known by its mixture of races and colors. The assimilation and the preservation of cultural diversity influences the social conflicts lived by the different groups. The state of the economy also affects the potential for conflict in schools. Economic recession directly impacts the students and the way they behave.

All the schools do have mechanisms to control conflicts. One of the most obvious is through disciplinary procedures. Unfortunately, traditional methods usually are not appropriate for conflicts of more complex sources. Instead, they answer primarily to behaviors and how those behaviors are in conflict with the rules of the school. Because these strategies focus on the behavior of individuals, they are inadequate to answer to inter-group conflicts.

Alternative or supplementary methods of addressing conflicts are rarely institutionalized. If they are not available, these conflicts continue to fester and impact negatively on the school community until crisis demand immediate attention. These crises tend to be very expensive not only for the institution, but for all the involved people.

Schools usually see conflicts among students as a manifestation against the school. If students argue with each other, or fight each other, the school intervenes for the fact of having had a violation of its rules. The typical answer is a punitive approach, such as punishment, suspension or expulsion. But, the root of the conflict is a relationship among the students that has been violated. The school answers to the violation of a rule, but does not always treat the violation of the relationship. The conflicts usually persist and new fights happen again, only that now they are out of the

school. The Mediation deals with the relationships in the conflict which harm the quality of the work inside of the school.

But how does a Peer Mediation Program would work for the schools? In the beginning of the school year the principal would make a speech to all the students concerning the importance of participating in the resolution of the conflicts and disputes that unavoidably happen in the school environment. He would inform that the school is interested in organizing a group of mediators, students that after receiving appropriate training become ready to participate on conflict resolution procedures of the school. Then the Principal would talk about a date when the Peer Mediation Training Seminar would occur and the place where the volunteer students can fill up their applications.

To develop this culture of negotiation, it's important that the students understand the practical advantages of the day by day talking about differences. Conflicts can arise from "He/She says situations", rumor or gossip spreading. If you can put the persons involved together to dialogue about their differences, you are probably preventing future conflicts. Peer mediation meetings can also occur when there are disputes over possessions, difference of opinions and play fighting that may become serious.

Even when a real fight occurs, the students should not go back to regular classes until they meet each other in a peer mediation setting to talk about the reasons for the violence. An important characteristic of the mediation procedure is that at the end of the process the parties make a statement that they agree to follow. Once the agreement is signed, the person that does not accomplish what was compromised can be heavily punished.

The peer mediation procedure usually initiates with a referral. The referral may be made by students, teachers, administrators, support staff and by the disputants themselves. The referral goes to the Mediation Center, so that the meeting can be scheduled. The Mediation Center should be directly linked to the Principal's office and can be supervised by a Peer Mediation

Committee, which would have the participation of the whole community. Once the referral reaches the Mediation Center, a date and a time will be arranged, and the mediation will occur.

There are always two peer mediators chosen from the school roster based on a rotation plan. The peer mediators are in charge of the process, but it's necessary to have the general supervision of a trained adult, which is usually the person responsible for the Mediation Center. The supervisor can invite other people to participate in the process, if it is useful or necessary.

There are some procedures that should be followed, once they increase chances to reach an agreement. The mediators should create a safe place for the discussions. They should remember that specific details of the mediation are confidential, that disputants cannot be forced to an agreement and that they may want to meet the parties separately.

At the end of the process, the mediators should fill a report form that describes the conflict. They also should include a statement of agreement, which has to be signed by the disputants.

Federal Mediation And Conciliation Service

This broad use of mediation skills in order to develop a culture of negotiation is not new. There is an American institution with wide experience in this process called the Federal Mediation and Conciliation Service. Since its creation by Congress as an independent agency of the United States Government in 1947, the primary responsibility of the Federal Mediation and Conciliation Service has been to "promote sound and stable labor-management relations," and to "minimize the effect of strikes and lockouts on the free flow of commerce" by providing mediation assistance in contract negotiation disputes between employers and their unionized employees.

Since 1947, FMCS services have continued to expand by statute and practice. Increasingly, management and labor have sought assistance from FMCS in developing more collaborative, less adversarial relations, designed to achieve mutual benefit. The Labor-Management Cooperation Act of 1978 authorized and directed FMCS to offer services to improve economic development, job security and organizational effectiveness. A variety of education and training processes and services are available to help employees and employers break down many of the barriers that traditionally have separated them, and build better working relationships.

Additionally, the Administrative Dispute Resolution Act and the Negotiated Rulemaking Act, both enacted in 1990, authorize FMCS to provide alternative dispute resolution services to government agencies in an effort to improve operations and reduce the expense and time spent in litigation. As we can see, the role of the agency has been increased in scope and importance during the time, helping to develop a broad culture of cooperative negotiation. We will list below some of the situations where the FMCS has been using its mediation expertise with excellent results.

PREVENTIVE MEDIATION

As U.S. companies deal with such forces as deregulation, rapidly changing technologies and international competitive pressures, more employers are realizing that a partnership with their employees can be an important asset in organizational effectiveness and in economic performance. In such a relationship, both management and union acknowledge that they share a mutual interest: the success of the business. And in such a relationship, mediators can help union and management in focusing on common ground to achieve win-win outcomes, such as profits and jobs.

In the changing workplace and economic environment, the role of mediators is evolving. They are more than the "firefighters" who arrive at the last moment to assist the parties in resolving a contract dispute. Frequently now, they become involved during the course of a contract to provide facilitation and training for both sides in more effective bargaining and communications in ways to improve the relationship.

The workplace is the basic foundation of the economy, and the ability of a business to compete worldwide relates directly to workplace performance. The workplace labor-management relationship, therefore, has major economic implications, because it affects product quality, productivity and the profits of firms, and the jobs and employment security of workers.

To assist management and labor in improving their relationship so they can learn to work together on issues of mutual interest, as a team instead of adversaries, FMCS offers a range of Preventive Mediation services, which are broadly defined as collaborative union-management processes. These services address three areas:

Improving the Labor-Management Relationship: Mediators help the parties expand and improve the work relationship, the ability to resolve grievances and management of pre- and post-negotiation problems.

Improving Organizational Effectiveness and Employment Security: Mediators work with the parties to enhance joint problem-solving and decision-making capabilities, overcome barriers to quality and productivity, manage change collaboratively, jointly address work redesign and enhance employee job satisfaction and employment security.

Improving Community Relations: This includes the effective operation of area-wide labor-management committees and can address the development of community and "schoolyard" mediation programs.

To assist the company and union in achieving these goals, FMCS mediators assess the quality and development of the parties' relationship and

identify areas that need improvement. Problems often encountered include lowered employee morale, decreased productivity, excessive numbers of grievances or unfair labor practice complaints or poor communication between union leadership and management. After analyzing the relationship and discussions with the parties, the mediator recommends appropriate training and skills processes to assist in addressing the particular problem. That recommendation may include customized skills training in such subjects as: Conflict Management, Effective Negotiation, Interpersonal Communications, Team Building, Union/Management Roles, etc...

In some cases, the mediator may recommend alternative procedures as we list below:

Labor-Management Committee (LMC)

In this particular case, mediators help to design, establish and maintain joint committees. These organizations bring representatives of employers and employees into regular communication and contact over subjects of mutual interest. A fundamental building block for an organization committed to cooperative efforts, the joint LMC provides an ongoing forum to deal with common problems, ranging from attitudes to productivity improvements. FMCS can assist the parties in designing the framework for an effective committee, and can provide training in proven consensus building and problem-solving processes to promote the successful operation of the LMC's operations.

Labor-Management Grants Program

As an adjunct to the agency's preventive mediation processes and skills training, the Labor-Management Cooperation Act of 1978 established the FMCS Grants Program, through which funding is provided to encourage innovative approaches to collaborative management-labor relations and

problem-solving. Funds are granted on a competitive basis for the creation or continuation of labor-management committees.

Eligible applicants for FMCS grants include state and local units of government, certain private, non-profit corporations, labor-management committees and labor organizations or private businesses applying jointly with each other. The grants may be used to support committees at the plant level, on an area or industry-wide basis, or in the public sector.

Grievance Mediation

Most collective bargaining agreements provide for grievance procedures, usually culminating in arbitration if the grievance is not settled beforehand. Grievance mediation is a completely voluntary step, prior to arbitration, which provides an opportunity for a third party neutral, such as an FMCS mediator, to assist the parties in reaching their own resolution of the dispute.

In grievance mediation, the parties are completely responsible for designing their own solution. The mediator does not make a binding decision for the parties, but guides them to their own mutually acceptable resolution of the grievance. Instead of creating winners and losers, the grievance mediation process develops cooperative problem solving between labor and management. Grievance mediation is NOT a substitute for a contractual grievance procedure, but rather a supplement to contractual grievance procedures in a collective bargaining agreement. Grievance mediation can be offered as part of a larger program to help labor and management focus on their joint interests.

FMCS cannot involve itself in the mediation of every routine grievance, whether disciplinary or contract interpretation. Rather, the agency's goal is to use the grievance mediation as a means to help the parties improve their workplace relationship. FMCS can agree to mediate in the context of a full-service approach, or within the framework of a larger, ongoing program, especially when grievance and arbitration mechanisms

have broken down and disputes are not being resolved expeditiously. In these situations, FMCS uses the grievance mediation process as a tool to help parties establish better methods for managing and resolving conflict themselves.

FMCS Arbitration Services

Arbitrators are private individuals, acting in a quasi-judicial capacity, who hear evidence and make decisions, or awards, on matters submitted to them. Arbitration is a system for resolving conflict that keeps collective bargaining agreements viable, workable and respected by the contracting parties. It is the generally accepted means of conflict resolution between an employer and employee organization during the term of a contract, enabling disagreements over contract interpretation or application to be settled in a less formal setting than courtroom litigation.

Even though there are winners and losers in arbitration, the process allows for peaceful resolution without seriously damaging the labor-management relationship. Most contracts provide a series of steps in which an employer and a union may seek to reconcile contract interpretation disputes, with binding arbitration as the final step. A limited number of contracts, primarily in the public sector, provide for "advisory arbitration," with non-binding decisions.

ALTERNATIVE DISPUTE RESOLUTION – ADR

FMCS has provided to U.S. government agencies, under authority of the Administrative Dispute Resolution Act of 1990 and the Negotiated Rulemaking Act of 1990 (both permanently reauthorized in the Administrative Dispute Resolution Act of 1996) a variety of Alternative Dispute Resolution (ADR) services, outside the collective bargaining arena.

Conflict Resolution for Government

Regulatory Negotiation - When a government agency must draft a rule, regulation or public policy, FMCS is available to conduct a regulatory negotiation, or "reg neg." The process brings together the government regulators and those who will be affected by regulations to formulate the proposed rules by consensus. By formulating rules in a public negotiating process, potential or actual antagonists can be motivated to participate, and become invested in helping the agency solve a regulatory problem. The likelihood of subsequent challenges to a new regulation is greatly reduced. And the rule or policy that results is generally superior because more points of view have been considered.

Environmental Disputes

Disputes over water quality, water rights and public lands issues tend to be long-standing, contentious and emotional. They frequently involve numerous competing points of view. FMCS has been successful at moving such disputes to resolution or closer to resolution for federal, state and local agencies. The Mediators use the same kind of process used in the Regulatory Negotiations; a multi-party, consensus based, facilitated negotiation in which the participants are trained in and utilize the principles of Interest-Based Bargaining.

Private Sector Alternative Dispute Resolution

This is the value-added expansion of services the economic agents, helping them to resolve disputes and controversies not directly related to collective bargaining. This involves the application of ADR processes to conflict away from the negotiating table, such as the facilitation of disputes within a corporate or union board, patent or trademark disputes.

Conclusion

The Human Development Report 2002 published by the United Nations gave Brazil a human development index value of 0.757 for 2000, which means we are number 73 in the world. We are behind countries like Mexico (0.796) and the Russian Federation (0.781), but ahead of China (0.726) and India (0.577), if we compare ourselves with big countries. The index in which Norway is at number one with 0.942 is built based on life expectancy, education and the gross domestic production per capita. Brazil has been increasing its index since 1975 on a constant basis, but we have to go faster because our social environment has been deteriorating dramatically in the last few years.

The same report stresses the importance of establishing democratic governance systems to advance human development for all people. People have the right to express their views, to participate in the decisions that shape their lives. These capabilities are just as important for human development as being able to read or enjoy good health. Brazil has shown an impressive democratic process for the last years, but we are still a new democracy. We have to go deeper, in order to put the country together against our real priorities, the massive poverty and the social/economic tensions.

With the globalization process, Brazil has to fight this war integrated to the whole world. We have the opportunity of Free Trade Agreement of Americas, we have our particular interests on the Mercosur, and we also have the discussions with the European Community. We should play an important role in the World Trade Organization and we also need to look for bilateral agreements with important players in Asia.

To achieve reasonable results in all these challenges, we must spend energy and resources to develop a real culture of negotiation. Negotiation in the democratic sense, as a process of solving our problems openly, after discussing our different points of views. We must spread this concept all over society, wherever it is possible.

In a general sense, in Brazil, if we talk about a project and somebody else disagrees and gives the arguments, we usually receive those arguments as personal attacks, as if the other one could not have the right to think in a different way. We become defensive and we start to think about our next argument to defend our idea. When we stop listening to the other's arguments, we forget the reasonable idea that the project can become even better if we learn something about the discussion. But we usually prefer to stay closed. That is the reason why many excellent governmental programs face terrible problems during their implementation. The manager does not spend the necessary time and energy discussing the project with the people involved, so these people do not contribute as they are supposed to.

We have many opportunities to improve our culture of negotiation. Believing on the positive function of conflict, this paper only tried to give some examples where the government could give its contribution. We think that the democratization is a challenge for the whole society, but once the government gives some examples, all the others will probably follow the process.

References

Almeida, R.G.- **Propostas para a Modernização das Relações do Trabalho – O Papel do Estado Educador**. Monography selected by the Secretariat of Labor Relationships /MTE related to a national internal competition (Memo/Circ/MTb/Gab/005/98)

Barbosa, Rubens - **U.S. Barriers on Brazilian Goods and Services** – Brazilian Embassy in Washington. 2001

Bianchi, G – **Training in Skills for Coping with Democracy** – Annals of the American Academy of Political & Social Science – July/1997

Camargo, J.M. – **Contratos Espúrios: Contratos Individuais de Trabalho no Brasil** – Editora Marco Zero, 1996

Dahrendorf, R, - **The Modern Social Conflict** – Bratislava, Archa, 1991

Destler, I.M; Balint, P.J. - **The New Politics of American Trade: Trade, Labor, and the Environment**. Washington, DC: Institute for International Economics, 1999.

Federal Mediation and Conciliation Services - **Brochures**

Fisher, Roger; Ury, William ; **Getting to Yes – Negotiating Agreement Without Giving In** – Penguin Books. 1981

Fisher, Roger; Brown, Scott; **Como Chegar a um Acordo: A Construção de um Relacionamento que leva ao SIM** . Editora Imago. 1990

Hansen, M. – **Mediation – Not For Adults Only**. ABA Journal, 1997

United Nations Development Programme – **Human Development Report 2002**