

ORGANIZATIONAL CONFLICT MANAGEMENT BY OUT-OF-COURT MEANS

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This article examines different aspects of organizational conflict management by non-judicial means. The authors begin by highlighting the growing importance of and interest in non-judicial means of conflict resolution at a European level. After moving on to an overview of the development of mediation in the Spanish context, they present a proven model of mediation in labour relations settings: The Extrajudicial System for Labour Conflict Resolution in Andalusia (SERCLA). The authors also stress the importance of the mediation interventions, sometimes informal, that take place within organizations themselves, emphasizing the role of mediation as a preventive tool. Another aspect considered in this article is the importance of the types of strategy used in mediation (contextual, substantive and reflexive), as well as their effectiveness. Finally, the authors discuss some of the benefits of mediation.

Key words: conflict management, mediation, non-judicial resolution.

En este artículo los autores analizan diferentes aspectos de la solución de conflictos organizacionales a través de medios extrajudiciales. Así, comienzan destacando la importancia y el interés creciente de los medios de solución extrajudicial de conflictos a nivel europeo; a continuación se centran en la evolución desarrollada en España, presentando un modelo contrastado de mediación en el ámbito de las relaciones laborales: el Sistema Extrajudicial de Resolución de Conflictos Laborales de Andalucía (SERCLA). Los autores también destacan la importancia de las intervenciones de mediación, a veces informales, que se realizan dentro de las propias organizaciones, enfatizando la mediación como herramienta de carácter preventivo. Otros aspecto que se considera es la importancia de las estrategias empleadas en la mediación (estrategias reflexivas, substantivas y contextuales) y su efectividad. Por último, los autores plantean algunos de los beneficios derivados de la mediación.

Palabras clave: gestión de conflictos, mediación, solución extrajudicial.

Conflict is an inevitable part of life in organizations, and which can have negative consequences if not adequately managed (Giebels & Janssen, 2005; Munduate & Martínez, 2004). Historically, organizations have used approaches based on rights and power to deal with labour conflict; however, many public and private-sector organizations have begun to become aware of the high costs, both financial and human, incurred in processes of conflict resolution. Therefore, organizations are starting to use alternative conflict-resolution processes – and especially mediation – for managing disputes and improving labour relations (Nabatchi, Bingham, & Good, 2006). Conflict management and mediation, then, are becoming increasingly important in the field of labour relations.

GROWING INTEREST IN MEDIATION IN EUROPE

As emphasized in the Green Paper on alternative dispute resolution, conflict management – and especially alternative procedures for resolving conflict – is a political priority in Europe (European Commission, 2002a). In this regard, the Report on Industrial Relations and Change in the European Union

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(European Commission, 2002b) considers the improvement of non-judicial procedures for the prevention and/or solution of conflict – such as mediation, conciliation and arbitration – to be one of the criteria for measuring the quality of labour relations.

The proposal for the Directive of the European Parliament and the Council (European Commission, 2004) promotes mediation as a conflict-resolution mechanism that is quick, simple and cost-effective. This mechanism allows the consideration of a larger range of interests of the parties involved, providing, at the same time, the opportunity to reach an agreement that is voluntarily respected, and which conserves amicable relations. Indeed, the implication of this proposal is that mediation has great unfulfilled potential as a procedure for conflict resolution. Rodríguez-Piñero (2005) highlights the advantages of conflict-resolution systems that permit good interpersonal relations to be preserved, as well as promoting the search for integrative solutions through consensus – and solutions that are adapted to the peculiarities of the case. At the 2392nd European Council Meeting on Employment and Social Policy in Brussels (European Council, 2001), the Council acknowledged that, in the majority of Member States, non-judicial mechanisms contribute to the successful resolution of conflicts and play an important role in relations between employers and employees.

Changes in concerns and priorities throughout Europe today and the considerable social demands of our cultural context have required considerable collective effort from the scientific community in the exploration and improvement of practices of non-judicial intervention by third parties. Indicators of the research-based orientation of this field of study are the Invited Lectures at two recent conferences organized by the International Association for Conflict Management, and given respectively by Larry Susskind (2004) – Mediation as a Public Good: Overcoming the Weaknesses of Democratic Discourse through Consensus Building – and Miguel Rodríguez-Piñero (2005) – Law and Conflict.

DEVELOPMENTS IN LABOUR MEDIATION IN SPAIN

Until very recently, Spain has lacked any kind of tradition in the use of alternative conflict-resolution systems. Del Rey (1992) points out that the application of non-judicial procedures for the resolution of labour conflict has been permanently pending in Spain, and proposes the following reasons for the lack of such a tradition: a) the generalized lack of confidence in third parties, except for the judicial authorities, for the resolution of collective labour disputes; b) an inaccurate conception of the connection between such measures and others based on collective rights, which has led to a negative reaction since they are considered as an alternative that excludes strikes, when in the vast majority of cases they are complementary to them; c) the high level of specialization of courts in the labour context, and d) an overrating of strikes as a means of resolving an impasse in the negotiation process, coupled with an overestimation of the role of judicial decisions in the resolution of rights conflicts.

Given this lack of tradition in non-judicial means of conflict solution, the procedures customarily employed were far removed from those of current approaches. Thus, until democracy was established and the Constitution approved (1978), there was no full acceptance of freedom of negotiation between unions and companies or the right to carry out industrial action (Munduata, Ganaza, Alcaide, & Peiró, 1994). Since then there has been progressive development toward situations of greater autonomy for unions and employers to manage employment relations, and greater respect for collective autonomy. In consequence, the 1990s saw an increase in the establishment of alternative methods of conflict solution. Notable among these was the Agreement for Extrajudicial Labour Conflict Resolution (*Acuerdo sobre Solución Extrajudicial de Conflictos Laborales*, ASEC, 1996), developed in a gradual way between employers and unions in Spain's different Autonomous Regions, and whose most relevant feature resided in the transfer of matters previously regulated by the law to collective bargaining, company agreements and, to a lesser extent, employment contracts. The goal of this agreement is to assign to economic and social agents a leading role in the system of labour

relations, reducing administrative intervention to a minimum.

Agreements such as the ASEC imply that social agents have the right not only to become involved in collective conflicts, but also to develop procedures based in their autonomy and capacity for resolving them. The majority of the Autonomous Regions in Spain have developed inter-professional accords endorsed by their most representative employers' associations and unions. These systems provide mediation and arbitration procedures for both rights conflicts and conflicts of interests.

A proven model of Labour Mediation: the Andalusian Extrajudicial System for Labour Conflict Resolution (SERCLA)

One of the mediation models currently proving useful in the context of labour relations is that developed by the Andalusian Council for Labour Relations (*Consejo Andaluz de Relaciones Laborales*, CARL) called the Andalusian Extrajudicial System for Labour Conflict Resolution (*Sistema Extrajudicial de Resolución de Conflictos Laborales de Andalucía*, SERCLA). This system, which has been functioning since 1999, was developed through an inter-professional agreement endorsed by the most representative unions and employers' associations in the Autonomous Region of Andalusia (southern Spain). The mediation service is generally provided by a commission made up of two people designated by the employers' association, two designated by the unions, and a fifth person assigned by the CARL, who acts as secretary.

The development of the mediation is flexible, and the mediation team organizes the sessions in the way it considers most appropriate to the circumstances of the case. The Andalusian Council for Labour Relations has developed a Mediation Reference Model (Butts, Munduate, Barón & Medina, 2005), with the participation of both mediators themselves and the professionals who design training tasks for the mediators.

During the first seven years of functioning of the SERCLA system it was applied to over 3500 labour conflicts, affecting more than 350,000 companies and 3,000,000 employees. Mediation is without doubt the service most called for; indeed, of the 624 conflicts dealt with by the System in 2005, only in 8 cases was arbitration applied for, representing just 2% of the total. As can be seen in Figure 1, the proportion of agreements reached in mediations finally processed is, though with some exceptions during the first two years of operation, over 50%.

As Martínez-Pecino, Munduate and Euwema (2006) point out, a System such as that developed by the CARL presents a series of benefits which it is worth highlighting:

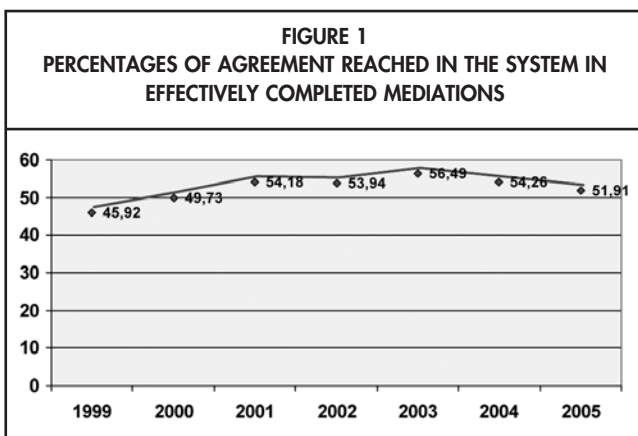
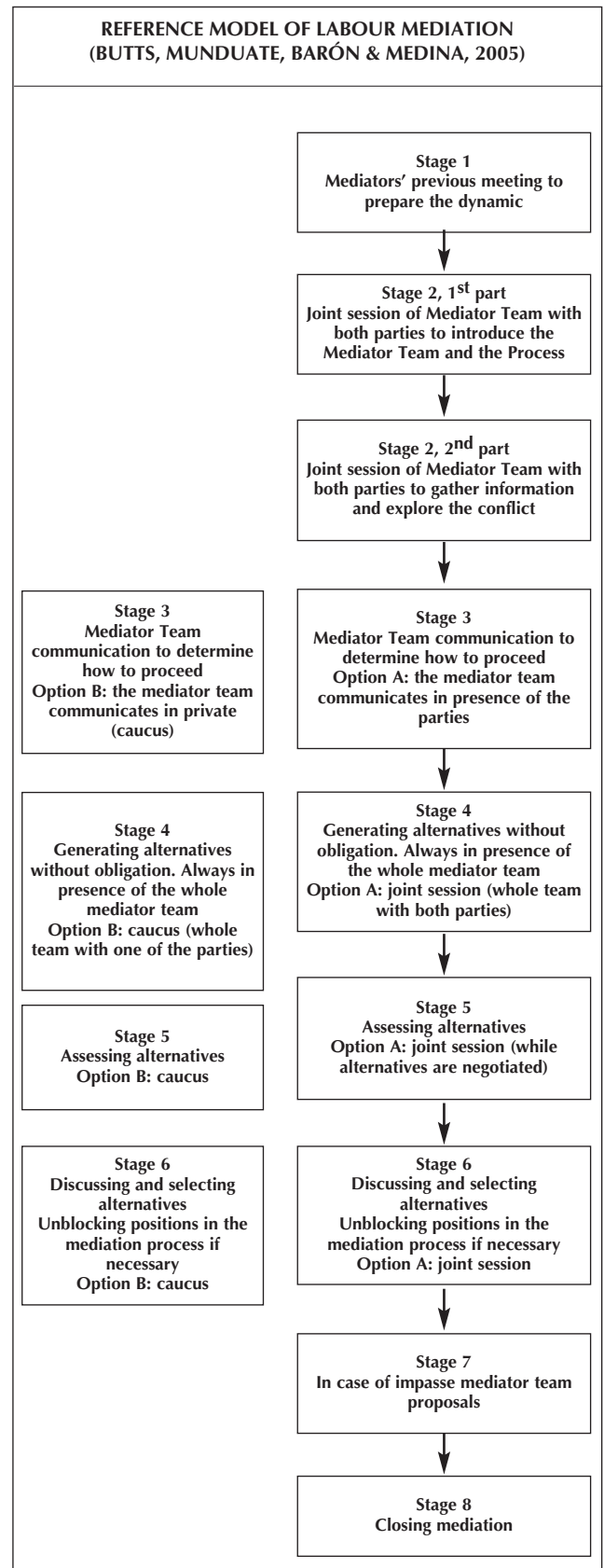
- a) The development of a System through a joint agreement between economic and social agents can be highly advantageous in contexts in which there is scarce tradition of the use of mediation, given the greater confidence it can generate between the parties.

- b) The make-up of the mediation team, with mediators designated by both employers and unions, can make it more likely that the parties will take recourse to mediation, and can facilitate the influence of mediators on the parties. Likewise, benefits accrue from the neutrality of a situation in which there are equal numbers of mediators designated by each party; moreover, if the mediators act as a genuine team and cooperate with one another, impartiality is guaranteed throughout the process.
- c) Cooperation between mediators designated by associations with different and sometimes opposing interests can serve as a model that stimulates and shapes collaboration between them.
- d) Furthermore, when the mediators come from the parties in conflict their effectiveness may even be greater, as they have extensive knowledge of the situation and its protagonists, as well as having high legitimacy (Ury, 2005).

The recent developments in labour mediation in Spain analyzed so far are characterized by generating formal models of mediation articulated through the commitment of economic and social agents. In the next section we shall consider mediation intervention developed in a more informal way in the context of organizations, and which represents a more preventive orientation of such intervention.

PREVENTIVE APPROACH TO MEDIATION

The examples mentioned up to now refer to situations that could be called of *external mediation*, in which third parties do not form part of the organization in which the conflict emerged, but are mediators from outside of the organization, unconnected with it. However, it is also quite common for conflict management to take its course within the organizations themselves, in many cases with recourse to the intervention of superiors, colleagues or other third parties who intervene in a more or less informal fashion (Ross & Wieland, 1996). In fact, as organizations move more and more towards team-based work and in the direction of flatter staff structures, greater



interaction and international diversity, the more likely it is that managers will have to turn to mediation (Arunachalam, Lytle & Wall, 2001).

As stressed by Rodriguez-Piñero, Del Rey and Munduate (1993), well applied mediation can have effects that go beyond merely resolving the current situation and help to prevent future conflict. We consider this preventive perspective to be particularly relevant when the mediation is carried out by managers, or other third parties such as unions, since in internal mediation the mediator maintains an ongoing relationship with the parties after the conflict (Conlon, Carnevale & Murnighan, 1994; Pinkley, Neale, Brittain & Northcraft, 1995). As we said, then, mediation can serve not only to resolve the matter in hand, but also as a tool for moderating relations and preventing future tension. An important incentive for the use of internal mediation is that it can have a highly positive impact on the work context, helping to create a more cooperative environment (Rojot, Le Flanchec & Landrieux-Kartochian, 2005). As Serrano (1996)

points out, mediation can offer long-term results that reflect an improvement in relations between the opposing parties. The intervention of managers in disputes arising from labour relations provides the parties with a framework that helps them to understand the interests involved and to generate creative options for solving the conflict.

But while mediation is the form of intervention by managers with the greatest potential for reducing the causes of discrepancies, improving the relations between parties and preventing future tension, it is nevertheless not the only viable alternative. Other options available to managers observing a conflict between two or more parties are (Dana Mediation Institute, 2006): avoiding dealing with the situation, threatening the parties involved, separating them, terminating the employment relation, advising or coaching one of the parties involved or all the parties separately, and finally, mediation. Each option can be appropriate in a given set of circumstances, but not all have the same preventive potential. *Avoidance* – waiting to see what happens – has the advantage that the conflict may “resolve itself” (especially in cases in which the discrepancy between the parties is not very great), but it may also occur that the problem worsens, and that the unease or anxiety produced by the situation are expressed in a destructive way both for the parties and for the team or department involved. *Threatening* one or both of the parties, demanding a change in their behaviour, may be a good solution in the short term, in crisis situations or when there is time pressure for the tasks to be done, but it is not a long-term solution, since the conflict has not really been dealt with, so that hostilities are likely to continue and flare up in the future. *Separating* the parties or reducing their interdependence has the advantage of resolving the conflict when it is structurally viable, but it is also true that the flow of work and efficiency can be affected. *Terminating* the employment relation or firing some of the parties involved may resolve the conflict permanently, but it can do serious personal and professional harm, as well as raising the problem of substitution, which, where necessary, can prove costly. *Advising or coaching* one of the parties separately, so that they resolve the situation by themselves, may temporarily reduce tensions, and even permits them some face-saving, but the manager may become strongly involved with one of the parties, calling into question his or her neutrality in the future; furthermore, if the strategy fails to achieve its objective, it can lead to entrenchment of the parties in their initial positions. *Mediation* with the parties permits reduction or elimination of anxiety, involvement of the parties in the implementation of the agreement they themselves have achieved, and maintenance of output of the team or department in question, given the voluntary cooperation that results from the achievement of an agreement between the parties; however, mediation requires substantial initial investment of time. The advantage of mediation by managers

STUDY 1
DYNAMIC OF LABOUR MEDIATION INTERVENTIONS

Munduate et al. (2004) made an observational study on 25 mediation interventions carried out by SERCLA mediation teams. Such interventions took place in different provinces of Andalusia, with different teams in each case, and dealing with a wide range of conflicts, both rights conflicts and conflicts of interests. The study highlighted some relevant aspects with regard to the dynamic of mediation interventions:

- a) *It was observed that the fact of the team members having worked together on mediation previously and developed a rapport facilitated their activity.*
- b) *Planning and coordination were evident in many of the interventions developed by the team members.*
- c) *What emerged strongly was a dynamic of cooperation and collaboration among mediators, who worked as a genuine team, helping the parties to reach their own agreement, their interventions in no way reflecting the roles of mere representatives of the opposing parties in the conflicts.*
- d) *It was observed that the team strove to transmit an image of unity and coordinated activity. Team members tended to stick together, both during the joint sessions and during the sessions with each one of the opposing parties – avoiding, in general, situations of the type whereby the mediators assigned by the employers’ associations remained with the employers’ side and those assigned by the unions with the employees’ side.*
- e) *It was noted at times that remarks unplanned or not previously agreed upon by the team, where one or more of the members acted more as a representative than as a mediator, provoked rejection from the rest of the team.*

It was concluded from this observational study that cooperation, the planning of teamwork and an image of unity are relevant aspects in the implementation of the SERCLA model of mediation.

over other alternatives, resides, therefore, in that it is geared to transforming the relations between the opposing sides, so that they are capable of resolving any disputes that might arise in the future.

Intervention by managers or other third parties, as a preventive measure, aims to facilitate the process and dialogue in which the parties are involved, offering them the possibility of expressing their emotions and feeling they are being heard in a secure environment. In contrast to procedures of a more adversarial nature, mediation allows the dispute to be approached with more information about all the issues the parties want to tackle, and this makes it easier, in many cases, to get to the bottom of the problem and deal with the more tacit aspects involved in

disputes. Such contact with implicit aspects leads to a focusing of the situation, and, in general, to helping the two sides move away from the positions they adopted initially with regard to the dispute.

THE EFFECTIVENESS OF MEDIATION STRATEGIES

It is no easy task to determine the elements that guarantee the effectiveness of the mediation, since it can depend on, among other aspects, personal characteristics, the behaviour of mediators, the type of conflict in question, or the positions of the parties. However, as Rodríguez-Piñero, Del Rey and Munduate (1993) stress, whatever the situation and the problems underlying the conflict, the strategies employed by the mediator

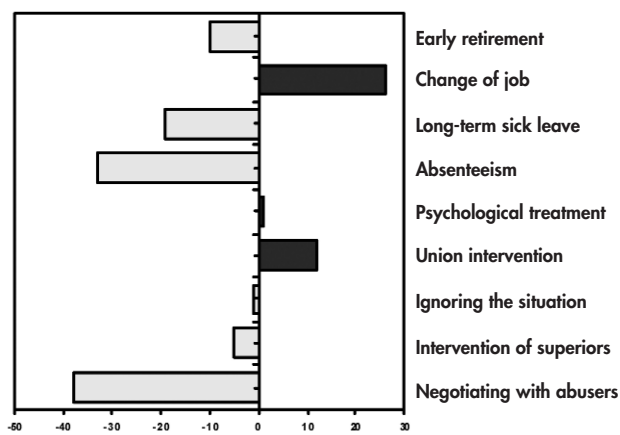
**STUDY 2
MEDIATION INTERVENTIONS FOR THE PREVENTION OF ESCALATION OF THE CONFLICT**

The Third Survey on working conditions in Europe reported that 9% of workers are the object of psychological abuse in the workplace (Einarsen & Mikkelsen, 2003). These data indicate that abusive practices in the workplace are no longer a sporadic affair, but rather have reached the proportions of a plague, with enormous implications for people’s health and the effectiveness of organizations (Barón, Munduate & Blanco, 2003). One way of studying this phenomenon is to consider it as a conflict that has escalated and grown in intensity, and whose course is characteristic of an asymmetric and relational conflict, that is, a conflict in which the parties affected have great inequality of power, and where there are emotional and relational problems between them. Indeed, the results of some empirical work (Muñoz-Flores, Munduate, Medina & Guerra, 2006) show that the exercise of power based on a person’s position in the hierarchy of an organization – in contrast to the exercise of power based on personal characteristics or on knowledge –, together with the presence of serious relational conflicts – affective conflicts evolving around relations, and in which one’s personal preferences and values are questioned – are directly related to the existence of mobbing practices in this context. The preventive recommendations deriving from such studies are aimed at generating mechanisms of control that allow relation-based conflicts to be detected at an early stage and dealt with as rapidly as possible, as well as promoting a climate of support in work teams and the use of power strategies based on the abilities, skills and knowledge of group members, rather than on hierarchical position or the capacity to mete our punishment or give rewards (Muñoz-Flores, et al., 2006).

One of the challenges with regard to abusive practices concerns finding ways of approaching such situations so as to avoid harmful consequences for the people involved. Some studies (Muñoz-Flores et al., 2006; Zapf & Gross, 2001) have analyzed the effectiveness of strategies which used a series of workers diagnosed as victims of workplace abuse or bullying. These studies have focused on, among other aspects, analysis of the extent to which the strategies employed for defending oneself from abusive practices reduced or increased such practices. The data from Zapf and Gross (2001) are presented in Figure 2.

The figure shows the differences between the number of people whose situation improved and that of those for whom it worsened, a positive net result (dark bars) representing the effectiveness of the strategy. As it can be seen, change of job and the intervention of unions are the only measures that showed a positive outcome. It is detected in this context that avoidance of the conflict – through measures such as leaving the job – and intervention by a third party with power over the elements in dispute – as is the case of unions, for example – make it possible to reduce the intensity of the abusive practices. This result in relation to the effectiveness of intervention by a third party for dealing with abusive practices in the workplace (though the data were statistically marginal) is encouraging – especially bearing in mind that they are from a work context totally unregulated with regard to mobbing – and orient research and professional activity toward the development and implementation of non-judicial systems of conflict resolution in organizations, as an alternative for managing this type of problem.

**FIGURE 2
EFFECTIVENESS OF BEHAVIOURS USED BY ABUSE VICTIMS.
RE-ANALYSIS OF THE DATA FROM ZAPF & GROSS (2001)**



are profoundly relevant to the result of the mediation. In this regard, one of the best known taxonomies of mediation strategies is that of Kessel and Pruitt (1985). These authors essentially distinguish three types of strategy: reflexive, substantive and contextual.

Reflexive strategies are interventions oriented toward gaining the acceptance of the parties, establishing trust in the mediator and in the mediation process, and doing the groundwork on which later activities will be built. An example of this type of intervention is the use of humour to create a relaxed atmosphere or develop some kind of rapport with the parties. *Substantive strategies* are interventions that deal directly with the disputed issue in an attempt to move the negotiation towards an agreement. Examples of this type of intervention would be

suggesting specific agreements or trying to modify the positions of either of the parties. Contextual strategies are aimed at facilitating the conflict-resolution process by altering the circumstances in which the mediation takes place. They involve helping the parties themselves to become capable of discovering an acceptable solution to the problem. In contextual strategies, then, unlike substantive strategies, the role of the mediator is minimal in the sense that the he or she does not directly approach the issues in dispute, but rather tries to facilitate the process so that the parties find their own agreeable solution to resolve their differences. Examples of this type of intervention would be organizing the daily timetable or simplifying the agenda.

As far as the effectiveness of mediation strategies is concerned, it is important to bear in mind that although some strategies can be effective in diverse types of conflict, the effectiveness of others may vary according to the kind of conflict (Carnevale & Pruitt, 1992). Thus, from a contingent approach it is considered that certain strategies can be effective in certain conflicts while in others they may be not only ineffective but actually counter-productive (Posthuma, Dworkin & Swift, 2002, Rodríguez & Serrano, 2004). In this regard, Lim and Carnevale (1990) found that the use of substantive strategies was more appropriate in situations of high hostility between the parties than in those of low hostility. Likewise, Posthuma, Dworkin and Swift (2002) found that focusing on the negotiation process –helping the parties to set the agenda, for example – produced better results when there was high hostility between the parties.

**STUDY 3
EFFECTIVENESS OF MEDIATION STRATEGIES**

According to the SERCLA report on the results of mediation processes, substantial differences are observed in the percentages of agreement reached according to whether the type of conflict is a rights conflict or a conflict of interests (SERCLA, 2005). A study carried out on this question proposes the hypothesis that mediation teams employ the same strategies in their interventions indiscriminately, regardless of whether they are dealing with a conflict of interests or a rights conflict, and that this will condition the effectiveness of the mediation (Martínez-Pecino, Munduate, Medina & Euwema, in press). In their field study they used questionnaires on which SERCLA mediators indicated the strategies employed – substantive, reflexive or contextual – in the most recent case of mediation in which they had participated, as well as the results obtained. The main conclusions of this study suggest the following:

- a) *Substantive and contextual strategies are effective for achieving an agreement, in both rights conflicts and conflicts of interests.*
- b) *Reflexive strategies are counter-productive for achieving an agreement, particularly in rights conflicts.*
- c) *It can be concluded that the effectiveness of mediation strategies may vary according to whether they are applied to rights conflicts or conflicts of interests.*

The results of this study suggest that it is more advantageous for the mediation team to focus on the use of strategies that permit facilitation and management of the mediation process, as well as helping the parties to confront the disputed issues – substantive and contextual strategies –, and to avoid, in the case of rights conflicts, trying to convince the parties of the merits of mediation or put their trust in that process – reflexive strategies. This result can be explained by the fact that recourse to formal systems of mediation – such as the SERCLA – is obligatory in this type of conflict, before referring it to the courts. The more legalistic and adversarial nature of rights conflicts, compared conflicts of interests, may make it more likely for the parties to have a preference for recourse to the judicial route, and to react negatively to attempts to convince them to trust in mediation.

THE BENEFITS OF MEDIATION

The interest aroused by mediation among diverse political, economic and social agents, as well as in the academic context, is undoubtedly a reflection of the multiple advantages and benefits this process can offer. As Rodríguez-Piñero, Del Rey and Munduate (1993) point out, mediation is based on autonomy of the parties and avoids imposition or delegation of the solution, thus increasing the likelihood of a solution more directly related to the genuine needs, problems, interests and motives of the parties involved in the dispute. Likewise, Butts et al. (2005) highlight the benefits and advantages of mediation compared to confrontational and adversarial processes: a) in mediation the parties enjoy greater freedom to design their own process than they would have in any other form of conflict resolution; b) the context provided by mediation permits the parties to present their ideas and arguments extensively, making them feel that they are being properly heard; c) the issues to be dealt with can be those that the parties choose and consider appropriate; d) the dialogue that occurs in mediation makes it easier for the parties to understand one another; and e) an important collateral benefit lies in the fact that mediation provides a basis for the parties to feel that they are playing a

significant role in both the process and its results, and for their greater participation in decision-making.

In sum, mediation emerges as a viable alternative for conflict management that allows the parties significant involvement and gives them responsibility for the results of the agreement; moreover, it provides a preventive tool that helps to preserve good relations between the parties who interact on a daily basis in the work environment.

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