

How U.S. Unions Negotiate and Resolve Labor Disputes 美国工会在劳工纠纷中的 谈判与解决

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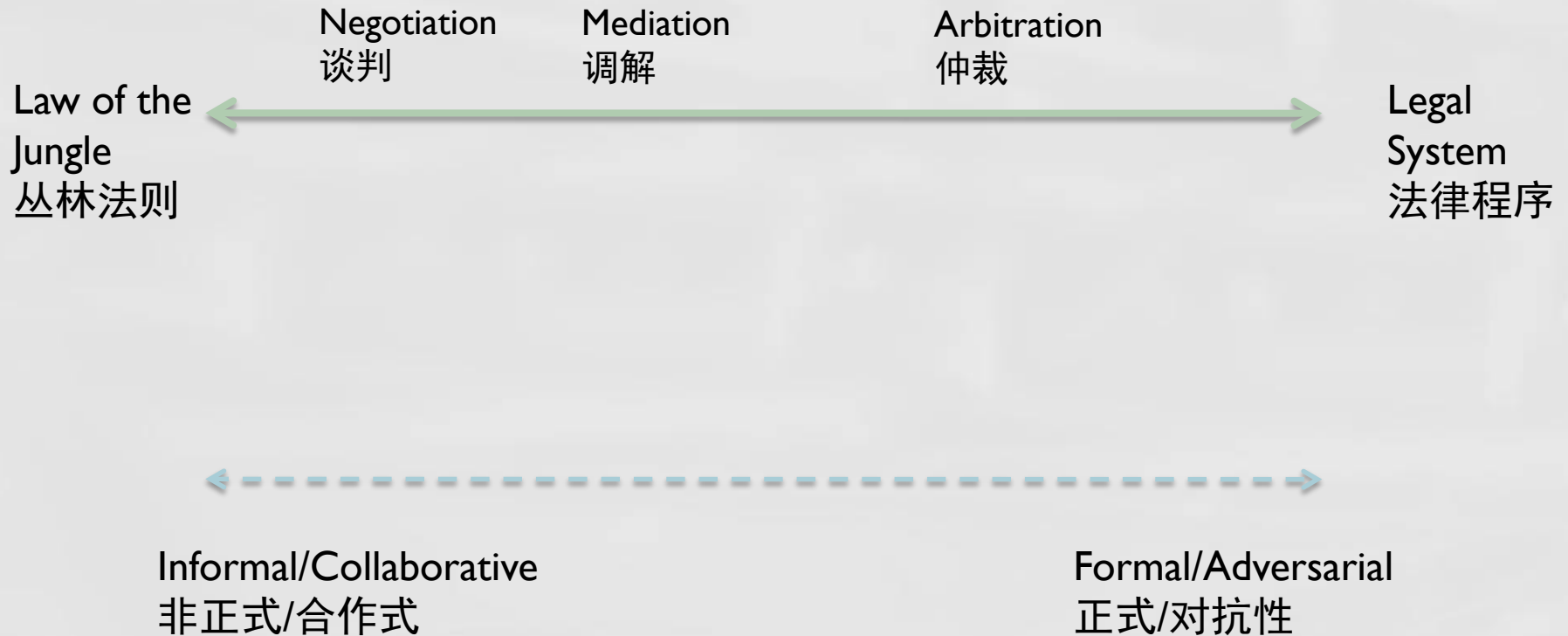
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The Dispute Resolution Spectrum

纠纷解决方案的范围



Conflict Resolution Techniques Defined

纠纷解决技巧的定义

- A. **Negotiation**: A private, voluntary dispute resolution process in which the parties confer with each other to seek an agreement.
谈判：一种私下的、自愿性的纠纷解决过程，谈判各方积极商谈寻求协议。
- B. **Mediation**: A private, voluntary dispute resolution process in which a third party assists the disputants to identify issues of mutual concern, developing options for resolving those issues, and seek resolutions acceptable to all parties.
调解：一种私下的、自愿性的纠纷解决过程，在第三方协助下找到利益争点，并设计寻求各方能够达成一致的可选方案。
- C. **Arbitration**: A dispute resolution process where the parties to a dispute agree to submit the dispute for binding resolution to a third party.
仲裁：争议各方将纠纷联合提交至第三方，并形成具有约束力的纠纷解决方案。
- D. **Litigation**: An formal, public process for dispute resolution, in which a government-appointed or elected judge and/or jury determines facts and decrees an outcome based on adversarial presentations by each party.
诉讼：一种正式、公开的纠纷解决过程，由政府任命或选举产生的法官或陪审团判定事实，经听取争议双方对抗式抗辩后，发布具有法律约束力的法令。

Contrasts Between Negotiation/ Mediation and Arbitration/Litigation

谈判/调解与仲裁/诉讼之间的不同

Negotiation/ Mediation

谈判/调解

- less formal 没那么正式
- less costly 没那么费钱
- less time consuming 没那么费时间
- relationships preserved 保留关系
- parties retain ownership of the issues 参与者保留对于事情的控制权
- parties persuade each other 参与者彼此游说
- parties decide 参与者决定
- parties select the neutral in mediation 参与者在调解中选择中立者
- predictable resolutions 可预计的解决方案
- win-win resolutions 双赢的解决方案
- customized resolutions 定制的结果
- parties control outcome 参与者控制结果
- confidentiality preserved 保持秘密
- compliance more likely 更可能是妥协
- resolution is more enduring 解决方案更持久

Arbitration/ Litigation

仲裁/诉讼

- more formal 更正式
- more costly 更费钱
- time intensive 更耗时间
- relationships are threatened 关系受到破坏
- parties abdicate control over their outcome 参与者放弃了对于结果的控制权
- parties persuade a neutral 参与者游说中立者
- neutral decides 中立者决定
- In litigation neutral is appointed 在诉讼中中立者是被指定的
- outcome is uncertain 结果是不确定的
- win-lose resolutions 零和的结果
- law/rule based outcomes 以法律/规则为基础的结果
- no control over neutrals decision 没人能控制中立者的决策
- open to public scrutiny 接受公开审查
- compliance less likely 更少可能妥协
- Resolution is more precarious 解决方案更不稳定

The Golden Rule of Workplace Dispute Resolution 解决工作争议的黄金法则

- If any employee has a disagreement with their employer they must respect and obey the employers order first....
- 如何任何雇员与他们的雇主有不同意见，他们应首先尊重和遵守雇主的命令。
-And resolve the disagreement later
- 之后再解决意见的不同
- Except.... When the employer gives an order which exposes an employee to an immanent hazardous or unhealthy situation.
- 除非.....雇主给出指令，让雇员处于内在危险或不健康的境况。

Categories of Workplace Disputes (Grievances)

工作纠纷的类型（委屈）

- Disciplinary matters (negotiation mediation and arbitration) 纪律问题（谈判、调解、仲裁）
- Contract Interpretation (negotiation mediation and arbitration) 合同解释（谈判、调解、仲裁）
- Arbitrary and capricious conduct by employer (negotiation mediation and arbitration) 雇主独断、反复无常的命令（谈判、调解、仲裁）
- Violation of the Law? (Government Agencies) 违反法律？（政府机构）

Types of Grievances 不满的类型

- Individual 个人
- Group 群体
- Policy 政策

Ten Most Common Workplace Disputes (Grievances) 最常见的工作纠纷（不满）

- Discipline/Discharge 惩罚/解雇
- Plant closing 工厂关闭
- Layoff/Recall 裁员/罢免
- Failure to pay proper wages/benefits 没能提供适当的工资/利益
- Overtime entitlement 超时工作
- Promotion 晋升
- Work assignments 工作安排
- Union activity 工会活动
- Illness/disability 疾病/残疾
- Harassment 骚扰

Reasons Unions Do Not Pursue Disputes (Grievances) to Arbitration 工会不将纠纷（不满）推向仲裁的原因

- Employer has not violated the contract 雇主没有违反合同
- The union cannot prove their case. 工会无法证实情况
- The employee refuses to cooperate 雇员拒绝合作
- The contract violation is minor (verbal warning) 只是轻微违反了法律（口头警告）
- The cost of the arbitration proceeding outweighs the benefits of arbitration 仲裁的成本超过其收益

How Mediators and Arbitrators Interpret Contract Language 调解 人与仲裁者如何解释合同语言？

Standards Mediators and Arbitrators Use in Contract Interpretation Cases 调解人与仲裁者在解释合同时用到的标准

In order to interpret contract language mediators and arbitrators will consider the following factors:

为了解释合同语言，调解人与仲裁者需要考虑以下因素：

- Is the language clear and unambiguous? 语言是否清晰、没有歧义？
- Is the language specific? 语言是否具体？
- If the parties expresses certain words did they intend to exclude others not specified? 当一方强调特定词语时，他们是不是想排除其它不太具体的内容？
- Contract should be construed by the entire document 合同应置于整个文件中进行阐释
- But, words will be construed in their context within the agreement 但是，词句应在协议的上下文中进行阐释
- Normal dictionary and technical language interpretations should be used. 应使用正常的词典和技术语言解释。

Standards Mediators and Arbitrators Use in Contract Interpretation Cases 调解人与仲裁者在解释合同时用到的标准

When the language is ambiguous or unclear Mediators and Arbitrators look to: 当语言模棱两可或不清晰时，调解人与仲裁者会寻求：

- The intent of the parties. 当事人的意图。
- Avoid harsh, absurd and nonsensical results. 避免粗糙的、荒谬的、无意义的结果。
- Avoid forfeitures. 避免没收。
- Reason and equity. 理性和公平。
- Interpretations of the contract consistent with the law. 对于合同的阐释与法律相符合

Standards Mediators and Arbitrators Use in Contract Disciplinary Cases 调解人与仲裁者在合同有关惩处方面用到的标准

Seven tests of just cause 对于合理的原因的七个检验

- Did the employees get notice that certain conduct was expected? 雇员是否意识到他们被期待做某种行为?
- Did the employer have a reasonable rule or order? 雇主是否有合理的规则或命令?
- Was there an investigation? 是否有调查?
- Was there a fair investigation? 是否有公正的调查?
- Was there proof the employee committed an offense? 能否证明雇员有过错?
- Did the employer treat all employees equally treatment? 雇主是否平等对待所有雇员?
- Did the penalty fit the offense? 惩罚是否与过错相适应?

The Aim of Negotiation

谈判的目标

Dispute Resolution Institute of New York

AIM OF NEGOTIATION 谈判的目标

- To reach a desired and durable result
达到一个合理的、持久的结果
- To reach agreement efficiently and fairly
高效、公平地达成协议
- To keep the relationship intact
不损害关系

CRITERIA FOR JUDGING NEGOTIATION METHODS

评判谈判方法的标准

- A wise agreement can be defined as one which meets the legitimate interests of each side to the extent possible, resolves conflicting interests fairly, is durable and takes community interests into account.
- 合理的协议，可定义为一个最大可能地满足各方合法利益、公平地解决利益争端，可持续的并将共同体利益考虑在内的协议。
- They should be efficient 他们应是有效的。
- They should improve or at least not damage the relationship between parties. 他们应促进或至少不损害当事人间的关系。
- Positional bargaining fails to meet the basic criteria of producing a wise agreement efficiently and amicably. It puts relationships in jeopardy and runs the risk that no agreement will be reached at all. 立场式谈判没能满足此基本要求：高效而友善地产生一个合理的协议。它将当事人的关系置于危险之中，冒着什么协议都无法达成的风险。

Principled Negotiation Techniques 原则性谈判技巧

Dispute Resolution institute of New York

REACHING A MUTUALLY ACCEPTABLE RESOLUTION 实现双方都能接受的解决方案

Follow these steps to reach a mutually acceptable resolution:
遵循以下步骤以达致双方都能接受的解决方案：

1. Separate the people from the problem. 将人们从问题中分开。
2. Focus on interests, not positions. 关注利益，而非立场。
3. Create multiple options for mutual gain. 创造双赢的多种选择。
4. Rely on objective criteria to test the effectiveness of the proposed grievance resolution. 依赖客观标准来检验所提出的解决不满的方案之有效性

(Getting to Yes, Fisher and Ury.)

Positive Steps to Conflict Resolution

解决冲突的积极步骤

- ▶ Positive view of conflict (opportunity to resolve and improve relationships) 积极地看待冲突（解决和改善关系的机会）
- ▶ Positive (partnership) attitude 积极的（合伙）态度
- ▶ Atmosphere 气氛
- ▶ Learn from the past/ look to the future 从过去中学习，展望未来
- ▶ Distinguish between wants and needs 区分“想要”与“需要”
- ▶ Clarify perceptions and identify interests vs. positions 厘清观点，识别利益与立场的不同
- ▶ Develop multiple mutual benefit options 开发多元的双赢选择
- ▶ Build on smaller issues/ work up to the more difficult Issues 从较小的问题开始打基础，再处理更难的问题
- ▶ Anger to be used only as a tool 只是将生气作为一种工具

Principled negotiations model

原则性谈判模型

Problem问题

Principled negotiations model

原则性谈判模型

Separate people from the problem
将人们从问题中分开

Focus on interests not positions
关注利益而非位置

Invent options for mutual gain
发展双赢的选择

Apply objective criteria 应用客观的标准

Reach an agreement 达成协议

PRINCIPLED NEGOTIATIONS INCLUDE 原则性谈判包括

- Participants are problem solvers 参与者是问题解决者
- The goal is a wise solution that addresses the needs of each side 目标是达成强调各方需要的合理方案
- Each side treats the other with respect focusing on the issue not the personalities 各方彼此尊重，关注问题而非个人特质
- Each side proceeds independent of trust 各方在信任的基础上独立前进
- Each side explores the interests of each other 各方探索彼此的利益
- The parties develop multiple options for mutual gain solutions 当事人开发双赢的多元选项
- The parties avoid having a bottom line, but rather remain flexible 当事人避免订立底线，而更多得保持灵活
- Each side yields to reason not pressure 各方因理性、而非因压力而改变

If You Fail to Reach an Agreement, You Must Know Your BATNA 如果你没能达成协议，你必须知道你的BATNA（谈判协议的最佳替代选择）

Best
Alternative
To a
Negotiated
Agreement

BATNA Defined: In the event you fail to reach an agreement with your negotiating partner, what are your options/alternatives that you can act on independently to address your needs?

谈判协议的最佳替代选择，定义是：在你无法与你的谈判伙伴达成协议的情况下，你能独立采取的、满足你需要的选择/替代方案是什么？

- Compare the proposed agreement with your BATNA 把提出的协议与你的BATNA相比较
- Select your best option 选择你最佳的方案

Go with your best
alternative option

选择你最佳的替代性方案

Live with situation/avoid
同意/拒绝这一方案

Defer to the future 推到
未来

Refer to higher authority
寻求更高的权威

Mediator, arbitrator,
judge 调解、仲裁、法官

Unilateral action/power
单边行动/权力

Strike 罢工

BATNA Examples BATNA的 例子

SUCCESSFUL PRINCIPLED NEGOTIATORS

成功的原则谈判者

1. Are problem solvers. 是问题解决者。
2. An ability to negotiate effectively with members of his/her own organization and win their confidence. 有能力有效地与其组织内部的成员协商并获得他们的信心
3. An ability to tolerate conflict and ambiguity and look beyond the conflict. 有能力容忍冲突和模棱两可，超越冲突看得更远。
4. The courage to commit oneself to higher targets and take the risks that go with it. 将自己奉献于更高的目标以及承担那些伴随这一目标的危险的勇气。
5. A willingness to get involved with the opponent and the people in the organization; that is, to deal in personal and business depths with them. 愿意与反对者以及组织内部的人们打交道，也就是说，愿意与他们建立私人、公事上的深度交往。
6. A commitment to integrity and mutual satisfaction. 愿意融合、互相满足。
7. An ability to listen open-mindedly. 敞开胸怀倾听的能力
8. Self-confidence based on knowledge, planning and good intra-organization negotiation. 建立于知识、计划、好的跨组织谈判基础上的自信
9. A stable person; one who has learned to negotiate with himself; one who doesn't have too strong a need to be liked because he/she likes himself. 一个稳重的人；一个学会与自己谈判的人；一个没那么需要被喜欢的人，因为他/她喜欢他/她自己。
10. An ability to discover interests and methods to accommodate interests mutually. 发现利益和双向协调利益的方法的能力

PRINCIPLED NEGOTIATING TIPS 原则性谈判的小提示

Avoid Common Errors 避免常规错误

A good way to avoid errors when dealing with others is to be sensitive to common mistakes. Try to avoid the following:

与别人打交道时避免错误的一种好办法是保持对于常见错误的敏感性。努力避免以下错误：

- Failing nurture the relationship. 没有培养好关系
- Failing to recognize the need for face saving. 没有意识到需要给面子
- Failing to show the proper respect for the other side. 没有给予对方适当的尊重
- Wanting to be liked. 想被喜欢
- Hiding your true feelings. 隐藏自己真实的感受
- Getting angry and arguing. 生气和变得好争辩
- Failing to listen to the other party. 没能倾听另一方
- Inaccurate assumptions about the other party. 对另一方有错误的猜想

NEGOTIATION PITFALLS 谈判陷阱

- Being caught by surprise. 被惊喜俘获
- Being poorly organized. 没有组织得很好
- Unwillingness to tolerate deadlock. 不愿意忍受僵局
- Impatience. 不耐烦
- Failing to have appropriate deadlines. 没有合适的截止时间
- Reaching a very quick settlement. 过快解决
- Poor planning. 没有很好计划
- Inadequate notes and records. 不充分的记录
- Take it or leave it proposals. 偏离或固守计划
- Bluffing. 虚张声势

NEGOTIATING PITFALLS 谈判陷阱

- Win-lose beliefs. 相信只有零和博弈
- Low aspirations. 热情不高
- Wrong estimate of wants vs. needs of self and other party. 对自己和对方“想要”的和“需要”的估计错误
- Not understanding the other person's interest. 不理解其它人的利益
- Failure to concentrate on interests. 没法聚焦于利益至上
- Large concessions early. 过早作出巨大让步
- Not knowing what your BATNA is. 不知道自己谈判协议的最佳替代选择是什么

Final Thoughts 最后的想法

- Principled negotiations:

原则性谈判:

- Is the most effective and efficient form of negotiation 是最有效、高效的谈判形式
- Addresses the needs of both parties 强调双方的需要
- Preserves relationships 保持了关系
- Depends on cooperation to succeed 成功取决于合作