11.255
Negotiation and Dispute Resolution in the Public Sector
Spring 2021
Class #15
Nolon talks about the mediative functions that a party (as opposed to a neutral) can play. Under what circumstances does it make more sense to ask a party to mediate rather than a professional neutral?
Mediation: definition and key elements

- Dispute intervention by a trained neutral, who assists willing parties in reaching a mutually acceptable agreement

- Mediators:
  - Are neutral on the views held by the parties
  - Are impartial to the substance of the outcome
  - Have no authoritative decision making power
  - Seek to help all parties discover, express, and advocate for their interests in order to invent options and decide on mutually agreeable outcomes
  - Often help with communication among parties
What is the difference between mediation and facilitation? How are they similar and how are they different?
Tasks of the Mediator (PRE-NEGOTIATION)

- Getting started
  - Meeting with potential stakeholders to assess their interests and describe the consensus-building process
  - Handling logistics and convening initial meetings
  - Assisting groups in initial calculation of BATNAs

- Representation
  - Caucusing with stakeholders to help choose spokespeople or team leaders
  - Working with initial stakeholders to identify missing groups or strategies for representing diffuse interests

- Drafting protocols and agenda-setting
  - Preparing draft protocols based on past experience and the parties’ concerns
  - Managing the process of agenda-setting

- Joint fact finding
  - Helping to draft fact-finding protocols
  - Identifying technical consultants or advisors to the group
  - Raising and administering the funds in a resource pool
  - Serving as a repository for confidential or proprietary information
Tasks of the Mediator (NEGOTIATION)

- Inventing options
  - Managing the brainstorming process
  - Suggesting potential options for the group to consider
  - Coordinating subcommittees to draft options

- Packaging
  - Caucusing with each group to identify and test possible trades
  - Suggesting possible packages for the group to consider

- Written agreement
  - Working with a subcommittee to produce a draft agreement
  - Preparing a preliminary draft of a single text

- Binding the parties
  - Serving as the holder of the bond
  - Helping to invent new ways to bind the parties to their commitments

- Ratification
  - Helping the participants “sell” the agreement to their constituents
  - Ensuring that all representatives have been in touch with their constituents
Tasks of the Mediator (POST-NEGOTIATION)

- Linking informal agreements and formal decision-making
  - Working with the parties to invent linkages
  - Approaching elected or appointed officials on behalf of the group
  - Identifying the legal constraints on implementation

- Monitoring
  - Serving as the monitor of implementation
  - Convening a monitoring group

- Renegotiation
  - Reassembling the participants if subsequent disagreements emerge
  - Reminding the group of its earlier intentions
What do you think about the idea of “planners as mediators”?
What problems do you see with an interested party serving as a mediator?
How do you see mediation skills helping you professionally?

What mediation skills do you see as being applicable in your workplace?