

Mediation Information Sheet
Provided by the UTSWC
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Introduction

Mediation has proven to be a very effective tool in helping parties reach a finished contract. Legally binding master contracts are provided for in the Public Employment Labor Relations Act (PELRA). Because of the binding nature of these contracts, it is natural that both parties to the agreements exercise extreme caution in the preliminary stages of the bargaining to be sure that the final agreement is acceptable, workable, and palatable to both sides.

Direct negotiations between the parties often go smoothly with mutual trust and accommodation being reached. Often settlements are reached through this preferred process with no need for any outside help. However, it is also very normal for "stumbling blocks" to get in the way, slowing or even preventing progress toward settlement. This is a natural and normal occurrence in the process of bargaining. It may result from several causes. Whatever the cause, the process grinds to a halt and inertia sets in. At this stage it is often very helpful for a neutral third party, a mediator, to be called in to help get the process moving.

Who provides mediation services?

The Bureau of Mediation Services (BMS) is the state of Minnesota agency that provides neutral mediation of collective bargaining disputes. The BMS will assign a mediator to work with the UTSWC and the district. The mediator convenes a meeting(s) to help the parties find a basis for resolving the dispute on terms that are acceptable to both parties.

Is there a cost to the local and the district for mediation services?

No. The services are provided through the state at no cost to either party.

What does the law say about mediation?

If negotiations do not produce agreement, either party may petition the BMS for mediation services. The conducting of the first mediation session triggers the statutory timelines for further dispute resolution mechanisms provided for in the statute (which may or may not lead to arbitration or a strike.)

Who files for mediation?

While either party may petition the BMS for the services of a mediator, the UTSWC and the district have agreed to jointly file the petition.

What is the function of mediation?

1. To seek a settlement that can be agreed to by both parties.
2. To require both parties to meet and to focus good faith efforts on the resolution of negotiations problems.
3. To provide a forum for confidentiality in which parties can creatively seek solutions.
4. To generate pressure, through the mediator, on one or both parties to modify bargaining positions.
5. To discover and reveal, through the mediator, information about the bargaining adversaries' motives, concerns and objectives.

What is the authority of the mediator?

The responsibility of the mediator is to facilitate the negotiations process, not replace it. Mediators are not decision makers. They do not control the pace and progress, even though one or both sides may want to empower them to do so.

The mediator:

1. Acts as the agent/representative of the Commissioner of the BMS.
2. Chairs the mediation sessions.
3. Establishes time, place, and frequency of sessions.
4. Has the authority to call the parties into separate or joint sessions.
5. Has the authority to close mediation sessions to the public.
6. Has the authority to subpoena.
7. Has the authority to present recommendations to the parties for their consideration.

What the mediator will not do

1. The mediator will not advocate for either party's positions.
2. The mediator will not necessarily seek ours or the district's version of equity and fairness on the issue(s) in dispute.
3. The mediator will not necessarily seek the "best" settlement from our or the district's perspective.
4. The mediator will not force the parties to negotiate. (Remember, "NO" is an answer from the other side. It is not the answer that we want, but it is an answer.)

How does mediation proceed?

1. Both parties are present under the direction of the mediator.
2. Both parties are obligated to have the necessary authority to make a tentative settlement (subject to ratification of the respective bodies).
3. All tentative agreements reached in direct negotiations and open items are discussed.
4. The mediator "explores" the areas of disagreement.
 - a. Initiates suggestions.
 - b. Provides advice and information.
 - c. Carries proposals and counter proposals.
5. Both parties have caucus rights and privileges.
6. Both parties are free to make suggestions to the mediator.
7. Both parties have the right to offer "privileged" (counter) proposals. That is, if a counterproposal is offered and rejected, the offering party is under no obligation to re-offer the counter proposal.
8. All counter proposals offered in mediation are "confidential" if no settlement is reached. All counter proposals can be withdrawn, as if they had never been offered.