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Dialogical power negotiations in conflict mediation

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In this study, mediator – party power dynamics in workplace disputes mediation dialogues are examined. Adopting Gramsci's concept of hegemony (e.g. 2005) and Foucault's notion that power is not fixed in dialogues, but constantly negotiated by participants (e.g. Foucault 1980), the analyses show that the power dynamics shift in the mediation setting when mediators subordinate dominant parties and enforce their own formalized power as procedural guides to design (Aakhus 2003, 2007) a favorable context for conflict resolution. When their procedural power is threatened, mediators may use specific devices in their interventions that correlate with the four devices – interruption, enforcing explicitness, topic control, and formulation – Fairclough (1989, 135–137) states can be used by dominant participants to control weaker parties in dialogues.

Keywords: conflict mediation, power asymmetry, power negotiation, context design, workplace disputes, four devices

1. Introduction

When people are in a conflict at deadlock, there are a couple of things that they may turn to for the resolution of their dispute. Although court based settlements are still the norm, there has been a steady growth of interest in *Alternative Dispute Resolution* (ADR) practices. One of the popular ADR options is *conflict mediation*, which can be defined as *a confidential practice in which a (theoretically) neutral third party without decisive power intervenes and attempts to procedurally guide two or more parties in a conflict at deadlock to a win-win resolution*. In general, this type of conflict resolution is said to empower conflict parties to find their own mutually beneficial solution(s), in which the interests of all parties are incorporated. With disputants having *decisive power* and mediators holding the *procedural power*, questions concerning the power dynamic between mediators and parties naturally arise.

Both communication sciences and dialogical approaches in linguistics are generally in agreement when it comes to the idea that contexts influence discourse, whether these contexts are social, political, economic or historical. Contexts, however, are also influenced by discourse. This influence can be particularly determining in dialogues with an apparent *power asymmetry*, or power ‘imbalance’, between participants involved in a discourse. Discourse influences context, especially, when the context allows for the contributions of the more powerful interlocutor to affect the *design* of the interaction in a way that is preferred by this dominant participant. This influence can be exercised, for example, by limiting the contributions of the subordinate party in terms of length and the topics that can be discussed, or possible solutions that can be proposed, in the mediation session. Aakhus describes his concept of “communication as design” as the “activity of transforming something given into something preferred through intervention and invention” (Aakhus 2007, 112), with mediators as the *designers* of mediation sessions (Aakhus 2003). Studies on the relation between power and language use are, of course, nothing new (e.g. Wodak 1989; van Dijk 2008). However, hitherto, power negotiation strategies have not been studied with the power dynamic between mediators and parties as a point of departure.

In mediation, power asymmetries between the participants at conflict are a tremendous obstacle, since the constructive argumentative discussion necessary for finding a sustainable win-win resolution of the conflict can only take place if, and only if, all parties are able to voice their interests, and are able to equally suggest, and freely argue for, possible solutions (van Eemeren et al. 1993, 117–118). Therefore, mediators’ interventions should level out the parties’ initial power asymmetry by *designing* a preferable context for conflict resolution, in which the mediator is arguably the dominant interlocutor, instead of the party that has the most power outside of the mediation context.

In this study, the focus lies on workplace dispute mediations. In workplace disputes, the power asymmetry between parties (i.e. between managers or directors and their subordinates) is directly relevant because the disputes typically concern issues in the workplace. Additionally, the formalized power asymmetry related to organizational hierarchy is arguably less sensitive and less controversial than asymmetries resulting from differences in, for example, gender, age, or ethnicity. It can be expected that the most dominant party in the workplace is able to negotiate the most powerful role as procedural guide in the mediation session, as this is closer to the role of the dominant party than the subordinate party in the context outside mediation. However, this possible power negotiation by the most dominant party in the conflict is problematic, because the role of procedural guide belongs to the mediator, whose procedural guidance is aimed at leading the parties in a conflict at deadlock to a resolution-oriented discussion. A procedural

power takeover by one or more of the parties is thus counterproductive, and needs to be strategically squashed by the mediator. In this paper, different communicative devices are explored that may be used by mediators (i.e. formal designers of the mediation session in terms of procedure) to create a preferred power asymmetry between them and the parties in conflict, rather than generalize what they do.

Mediation is a highly complex discourse phenomenon in which mediators' interventions are highly dependent on a variety of contextual variables that are different in every case, with every participant, every mediator, and at every stage of conflict and session. Thus, the intent of this study is to show what mediators *can* do when they are confronted with a power asymmetry that negatively affects the resolution process.

In Section (2), the concept of power (2.1) and power asymmetries in institutionalized discourse (2.2) will be explained. The specificity of power dynamics in workplace disputes and the appropriateness of this mediation type for this study, as briefly touched upon in this introduction, will be explored in Section (2.3). Fairclough's (1989) *four devices* to control an interaction will be explained as the study's analytical framework in Section (3). In Section (4), the data collection and treatment of the corpora of mediation discourse will be described, whilst the context of the examples presented in this study will be provided in Section (5). The analyses of the negotiation interventions designed by mediators are presented in Section (6). In Section (7), the conclusion, the main findings, some final remarks, and suggestions for further research will be presented.

2. Power, institutionalized discourse, and power asymmetries

Power, mediation as *institutionalized discourse*, and *power asymmetry* are all complex concepts studied across a variety of disciplines. As each concept has multiple interpretations and definitions throughout the literature, the definitions used in the present study should be established from the outset.

2.1 Power

Although Foucault famously dedicated several lectures and written works to the characterization of *power* (e.g. 1977, 1980), we mainly follow conflict resolution studies and the characterization of power as one's ability to control others or put constraint on the actions of others (e.g. Davis and Salem 1984, 18; Gerami 2009, 439). This definition of power is similar to the definition of power in discourse given by Fairclough (1989), who defined it as the ability of the more powerful participant in an interaction to control and constrain the contributions of the

less powerful participants (Fairclough 1989, 46), in what he calls *unequal encounters* (Fairclough 1989, 44). Since this study uses Fairclough as the theoretical basis for analysis (see Section 3), this is the definition of power that will be used.

Even though mediation can be court ordered and court-connected,¹ mediation should *in principle* be voluntary even under the most institutionalized and formalized circumstances. When we consider *power*, we refer to *hegemony* (e.g. Gramsci 2005), in which dominant persons, rather than through coercion, persuade subordinate groups to accept their values, and consequently to abide by their preferred conduct. Mediators have the power to design the procedure but do not have the authority to determine the outcome or the power to coerce parties to take part in mediation. For that reason, when they feel the parties' commitment to mediation wavering, mediators often attempt to persuade the parties of the value of mediated agreements by asking or stating what the BATNA (Best Alternative to a Negotiated Agreement) is and what the WATNA (Worst Alternative to a Negotiated Agreement) (e.g. Carneiro, Gomes, Novais, and Neves 2011).

2.2 Institutionalized discourse and power asymmetries

Some communication scholars have included the institutionalized character of ADR mediation in their characterization of the mediation context (e.g. Aakhus 2003, 269; Greco Morasso 2011, 97–98). The most functional definition of mediation as institutional discourse has been provided by Vasilyeva, who states that the goal of mediation, as an institutional discourse type, is “to help disputants manage their conflict through deliberation” (2015, 359). In short, professional mediation – when a certified external (and theoretically neutral) third party is the procedural guide in the conflict resolution process – is institutional because of its specific goal orientation: to guide parties to and through a deliberation. *Goal orientation* is one of the key characteristics of institutional talk mentioned in Drew and Heritage's (1992) *Talk at Work*. Although the authors state that they do not intend to offer a set definition of institutional discourse (Drew and Heritage 1992, 21), they do provide us with a characterization; they name (a) *goal orientation* of a relatively restricted form of at least one participant, (b) *special and particular* constraints on at least one of the participants, and (c) *inferential frameworks* particular to the institutional context, as some of the main features of institutional discourse (Drew and Heritage 1992, 22). These features apply to interactions within the workplace context as well as the mediation context. Thus, although they differ in terms of the nature of their goals, constraints, and frameworks, institutional talk takes place in both contexts.

1. For more on court ordered and court-connected mediation see e.g. Adrian and Mykland 2014; Silberman and Schepard 1986.

Power asymmetry is one of the most prevalent issues discussed amongst mediators and of great interest to the researchers who study mediators and their practices (e.g. Davis and Salem 1984; Kelly 1995). There are numerous varieties of power dynamics, depending on the respective source of an individual's power. Throughout the literature on conflict resolution, a variety of sources for different power dynamics are listed (e.g. Neumann 1992, 228; Gewurz 2001, 147–150). Although this study is not concerned with the different sources of power asymmetry and the interplay between these sources, it is valuable to establish the main source of power imbalance in workplace dispute mediation. Because of the institutionalized nature of the power in the workplace, the power asymmetries in workplace dispute mediation, as discussed here, are specific to this mediation type. Institutes such as businesses and organizations are commonly hierarchical systems, with CEOs and subordinates, and/or managers and the employees they lead. This naturally results in different sorts of power asymmetries between those that are part of the same institute. Because the workplace includes formalized hierarchical structures that are explicit, analyses of power negotiations in workplace disputes are often clearer than those in conflicts between divorcing couples or quarreling neighbors. Thus, although more than one type of power asymmetry between parties can be in effect during a workplace dispute mediation interaction, it is the institutionalized, or formalized, workplace based source of power imbalances that we are interested in. The reason for this is the assumed typicality of the issues in workplace conflicts and the explicit consequences that the power imbalance has on the related external context, i.e. context outside the mediation session. For example, because of the issues at the center of workplace disputes, such as a negative evaluation of an employee's functioning within the team or a disagreement about someone's management style, the workplace power relation can be said to have more obvious and immediate effects than a power asymmetry that is gender or age based within the same workplace conflict.² Within the workplace the more dominant party has *coercive* or *reward power*, meaning that the party with more power has the ability to "subject the other to reward or punishment" (Gewurz 2001, 148–149), and usually in more than one way. This power, which may be implicitly or explicitly present in the mediation context, could restrict subordinates from speaking up, thus, limiting the chance of finding truly mutually beneficial solutions to the conflict.

2. It should be acknowledged that the presence of the negative effects that power may have is context dependent. Different power asymmetries are conflict dependent and can work parallel to each other, and/or together, meaning that in certain workplace disputes the gender or age power relations have a greater effect than the formalized workplace hierarchy does. However, assuming a standard, in workplace dispute mediation, the institutionalized workplace power relations should be taken as more relevant for the power negotiation analyses in this study.

Although not all power asymmetries necessarily have a negative effect on every stage of the mediation process, the effects that power asymmetries may have on mediation should not be neglected. Whilst we could identify many instances that could allude to a power imbalance in mediation discourse, the focus in this paper lies solely on instances in which the power imbalance seems to negatively influence the resolution process that is procedurally guided by the mediator and his or her interventions in these instances.

2.3 Types of power asymmetries in workplace disputes

Unequal power statuses and the resulting power asymmetries between parties should not matter in dispute mediation, meaning that mediators should ensure that mediation appropriate power dynamics become predominant in the interaction (Greco Morasso 2011, 88). Often labeled in the literature as *power balancing*, mediators may attempt to redistribute power in order to design reasonable win-win oriented discussions (Yarn 1999; Wiseman and Poitras 2002), and usually do so in situations where disputants continually attempt to coerce each other (Rifkin, Millen and Cobb 1991, 43). The basic principle that underlies power balancing is that, rather than static, power is in fact dynamic. This notion that power is dynamic and not fixed in interaction (e.g. Foucault 1980), and “exercised rather than possessed” (Foucault 1977, 26) is taken as a given in conflict resolution research when analyzing dispute mediation (e.g. Neumann 1992, Gewurz 2001; Gerami 2009). Some go even further by stating that addressing power imbalances is central to the theory and practice of mediation (e.g. Davis and Salem 1984; Wiseman and Poitras 2002), and explain that “every time a mediator sits down to help two parties resolve a dispute, the issue of a potential power imbalance emerges” (1984, 17). Whilst the references to a mediator’s ability to address power imbalances seem to refer to the power asymmetry between the parties, the latter statement could be taken to refer to a possible power struggle between a mediator and a party as well. Although it is less popular in academic research than party-party power dynamics, it is important to study mediator-party power dynamics as well, as it is considered a genuine struggle by mediators themselves.³ In short, data of mediation interactions may show two types of power asymmetries (i.e. party-party and mediator-party asymmetries). However, unwelcome power imbalances between mediators and parties during mediation sessions take precedence in this study.

3. ‘How to deal with dominant parties’ is part of mediation trainings. For example at the *ADR Instituut* in Amsterdam it is part of their *specialisatieopleiding arbeidsmediation*. Additionally, it is a topic that has been included in articles in professional mediation journals (e.g. Wiersma 2011).

Since it is important to cover the power balancing between the parties with an initial power asymmetry, as well as the power dynamics between parties and the mediator, the label 'negotiation' seems more appropriate than 'balancing'. The word *negotiation* has a more assertive connotation and is inclusive of situations in which a party actively, whether explicitly or implicitly, challenges a mediator's effort, making it a label that is appropriate for both power relations.

2.3.1 *Party versus party negotiation*

In disputes where there is an apparent power asymmetry and win-win solutions are desirable, mediation is considered particularly effective, since the presence of a neutral third party is widely regarded as a viable instrument for decreasing the negative impact of power imbalances on the conflict resolution process. The reason for this assumption is best described by Hughes (1995):

The assumption behind the mediator's intervention 'is that a third party will be able to alter the power and social dynamics of the conflict relationship' (Moore 1986, 14) presented so that an agreement may be reached. Because the parties accept the mediator – that is, they are willing to allow this third party to assist them and are willing to seriously consider suggested options – the mediator can alter these dynamics and accomplish numerous tasks associated with the mediation process. (Hughes 1995, 567)

Thus, the fact that parties accept a neutral third party to take procedural charge is an indicator of a mediator's ability to alter the power and social dynamics between the parties.⁴

When we speak of power negotiation in workplace dispute mediation, we must consider the workplace context in which the formalized power asymmetry between parties is rooted as the *initial* context. This context is different from the mediation context in which the mediator is the procedural guide. The mediation process should be regarded as a unique and highly specific context. Most importantly, the mediation context is temporary. In this context, the formalized power imbalance of the workplace context is temporarily suspended in order for it not to influence the mediation process. After the mediation process is concluded the power dynamic generally changes back into that of the initial context. In other words, instead of replacing the institutional rules and relations of the world outside of the mediation session, which is the world to which the parties belong, this

4. There has been debate on whether mediators are able to effectively influence power imbalances in mediation contexts and the context outside mediation, and even whether they *should* attempt to do so (e.g. Davis and Salem 1984; Hughes 1995). Although this debate is acknowledged in this study, here, the interest lies on the mediator's interventions to negotiate power imbalances rather than the empirical effectiveness or acceptability of their interventions.

external context is temporarily suspended in favor of one that is more suitable for the resolution of the respective conflict, i.e. where there is a seeming interactional power balance between parties and a favorable power imbalance between mediators and parties. The mediator is in charge of suspending the initial context and designing the mediation context.

2.3.2 *Party versus mediator (re)negotiation*

Mediators control the process but not the outcome of the mediation; the power to decide on solutions lies on the disputants. Mediators use their procedural power to design a context in which the parties can be empowered to find a mutually beneficial resolution, and are expected to be impartial and to encourage self-determination. Yet, in order to carry out their tasks, for instance to empower parties in cooperative decision making, and do so properly, mediators exercise considerable power (Gerami 2009, 433). A power imbalance between a mediator and the parties is not negative per se. In fact, for a successful conclusion of mediation such an asymmetry is assumed (Riffkin, Millen and Cobb 1991). It is thus important to state that we are concerned with how mediators intervene in situations with a *dispreferred* power asymmetry, since a power asymmetry in which the mediator is procedurally dominant is *preferred* and formally accepted by parties upon signing a pre-agreement before the mediation session commences. In doing so, parties delegate part of their power – their power to control the resolution procedure – to the mediator, whilst maintaining the power to control its outcome. In order for a mediator to perform his or her role as the procedurally dominant interlocutor, this preferred mediator-party power asymmetry should not be challenged by the parties. In order to aid any resolution, mediators need to combat situations in which their specific procedural power is challenged.

3. The four devices

In *Language and Power* (1989), Norman Fairclough introduces four *devices* that can be used by powerful interlocutors to control an interaction and the participants of an interaction: *interruption*, *enforcing explicitness*, *topic control*, and *formulation*. These four devices can be used as tools for the analyses of power negotiations in workplace dispute mediation.⁵

5. As pointed out by one of the anonymous reviewers of this paper, more in-depth analyses of the strategic design of the mediator's interventions to negotiate a preferred power imbalance, such as the different rhetorical strategies that are used and their effectiveness, should be conducted. However, as the first study into the link between the four devices and power negotiation in mediation, these studies are reserved for the future.

Fairclough explains that the device *interruption* can be used by the more powerful interlocutor as a device to control the contributions of less powerful participants in an interaction, either because their contributions are deemed irrelevant by the dominant person, or to prevent the less powerful person from repeating information that stalls the conversation (1989, 136). Mediators' attempts to control contributions could be considered part of their formal power. As procedural guides, mediators are able to control the allocation of conversational turns, as long as their neutrality is maintained. Whilst parties may add to, elaborate on, and interrupt at will, if mediators judge a contribution to negatively affect the process, for example if a party employs negotiation tactics that could be conceived as intimidating (Davis and Salem 1984, 21), they have the procedural power to interrupt and restore the power balance, for example by redistributing speaking rights.

Mediators often regard the *exploration phase*⁶ as one of the most important phases of the mediation procedure. In this phase, mediators are charged with the difficult task of explicitly defining the premises to which they can hold parties (Jacobs 2002, 1414), the issues to be discussed during a session (van Bijnen and Greco 2018), and the interests to be included in the solution (e.g. Jacobs and Aakhus 2002). *Enforcing explicitness* is a device used by the more powerful interlocutor to exercise dominance over the subordinate party, making the device particularly functional in this exploration phase. By using this device, the less powerful participant is forced out of silence and prompted to make their meaning unambiguous (Fairclough 1989, 136).

Since studying *topics* of interactions is popular in communication research, it is hardly surprising that *topic control* has received the most attention from communication scholars (e.g. Greco Morasso 2011; Vasilyeva 2012a, 2012b, 2015, 2017). In conflict resolution research, topic control as a means for agenda setting and process management, is also considered a powerful tool in the mediator's toolbox (e.g. Gerami 2009, 441). When employing this device, the dominant person determines the topics, and does so to control "the nature and purposes of an interaction at its beginning, and to disallow contributions which are not (in their view) relevant thereto" (Fairclough 1989, 136).

Often characterized merely as the act of glossing or summarizing previous contributions, *formulation* is defined by Fairclough (1989) as "either rewording what has been said, by oneself or others [...] or it is the wording of what may be assumed to follow from what has been said, what is implied by what has been said" (136). With this device, mediators can reshape participants' perceptions of their conflict (Gerami 2009, 443), give specific directions to participant claims

6. The *exploration phase* is a specific stage at the beginning of the mediation procedure in which mediators primarily try to uncover the issues that are relevant to conflict (see van Bijnen and Greco 2018) and interests relevant to the parties.

(van Eemeren et al. 1993, 120; Jacobs 2002, 1414), and introduce a specific characterization by means of (re)wording (Fairclough 1989, 136).

There are studies on power imbalances in mediation in which some of the aforementioned devices are identified as possible tools for power negotiation. In addition, interesting studies from a discourse analytical perspective have been conducted before, such as the study of parties' resistance to mediators' empowerment interventions (Garcia 2000). However, in general, mediator-party power dynamics are seriously understudied, especially in discourse studies. Moreover, the devices illustrated in some dialogical approaches, such as formulation, have not yet been analyzed in terms of mediator power negotiations. Fairclough's (1989) devices may be the theoretical basis that is necessary for linguistics and communication science to further the understanding of power relations and negotiations in dispute mediation.

4. Data: Collection and treatment

Confidentiality is of vital importance to the practice of professional mediation (e.g. Freedman and Prigoff 1986; Deason 2001; Burr 2002), and it is often enforced by means of the pre-mediation agreement.⁷ The more mediation becomes an established profession ruled by formalities and regulations, the more confidentiality can pose a threat to the accessibility of mediation data. Due to the confidentiality issue, access to mediation is limited. To circumvent the confidentiality issue, corpora of mediation simulations were compiled, which are acknowledged as representative of the practice (e.g. Greco Morasso 2011; Janier and Reed 2017). The corpus used for this study consists of recorded, transcribed, and translated dialogues between two to five participants, of which at least one mediated the interaction. The role plays are performed by multiple mediators. Some cases are co-mediated, meaning that more than one mediator procedurally guides the session. All of the participants are registered professional mediators working in the Netherlands. The corpus was constructed in collaboration with *ADR Instituut* in Amsterdam, a vocational education institute for professional and aspirant mediators. *ADR Instituut* has granted exclusive access to their courses where audio-recordings are made of their mediation simulations.⁸ This particular corpus

7. Depending on the country in which the mediator is active, mediators may be liable and can receive a fine if the confidentiality agreement is violated. In the United States and many European countries in which mediation is widely practiced, the fines allocated may run into the thousands of US Dollars or Euros.

8. Participants sign an informed consent form.

includes data from *ADR Instituut*'s classes on workplace dispute mediation in 2016. The content (e.g. the cases selected for the mediation simulations) and the procedure are determined and controlled by *ADR Instituut* and the participating mediators, not the researcher.

All audio recordings are transcribed using a simplified version of the Jefferson system for transcribing (2004). Data transcription is transcribing whilst the data is pseudo-anonymized, meaning that any information that could lead to the identification of the participants, such as names of persons, organizations, institutes, businesses, and addresses, is altered (i.e. names were replaced with a random letter of the alphabet, and in case of co-mediations mediators are numbered starting at 1). The data is translated from Dutch into English.

5. Case context

The analyzed excerpts that will be presented in Section 6 are from two cases that were mediated by several different mediators in 2016, during the "Workplace Dispute Mediation" course organized by the *ADR Instituut* in Amsterdam. In Sections 5.1 and 5.2 the relevant case contexts are detailed.

5.1 New board and old church

Excerpts 1, 2, and 4 are taken from the transcripts of a 'church board versus sexton' case involving a conflict between the newly assigned church board (C) and the sexton of the same church community (B). The church is located in a small town in the Netherlands. B has been the sexton of the church for the last twenty years. As a sexton, she is in charge of the maintenance of the cathedral and other church properties, such as the town's community center. B does not receive a large salary, but the previous church board has allowed her to earn some extra money by organizing events such as weddings and funerals at the community center. For three months there has been a new church board, including a new chair: C. In the Netherlands, church attendance and memberships have been dwindling for years, and the instatement of the new board is a result of the church's ongoing financial problems. The new board has been tasked with financial restructuring. C says he needs to have insight in B's expenses and earnings and thinks that the previous church board's arrangement with the sexton is not transparent. C wants the proceeds of event organization to go to the church's funds, which can then be used to restore church buildings and so on, and pay B a fixed monthly salary only. B is outraged by this proposal and refuses to provide access to her books, saying that she needs the money to complement her meager salary. In addition, she says that

she deserves to keep the little money she makes at the community center because she invests a lot of money and time in the organization of the events. The case is mediated by five mediators who alternate, of which one male and four female.

5.2 New laws and old habits

Excerpt 3 is taken from the transcript of a ‘manager versus employee’ case involving a conflict between a manager (D) and one of the employees (E) who works in her department. The conflict takes place at an organization for the care of the disabled. The department organizes events for people with mental disabilities. During the events, products are made that are subsequently sold. The proceeds of the sales benefit the organization. E has been working in the same department for almost two decades. A few years ago, D was transferred to the department after the organization decided to modernize. During this time new laws and regulations were introduced and implemented. E, who is nearing the retirement age, is unable to adapt to the changes that were made. D has offered E coaches, as well as trainings, to get E up to the required level of digital proficiency, but according to D this has been without any success. She wants to terminate E’s contract, stating that it is impossible to continue working as long as E is employed at the organization, meaning that from the outset the resolution most likely will include major changes to the current employment arrangement of E. If these changes cannot be made, it is likely that the mediator will need to commence an *exit mediation*.⁹ E refuses to go, and says that he will never be able to find another job at his age and that his colleagues are like family to him. E says he is putting in effort, but that D is not providing him with any realistic opportunities for improvement. The case is mediated by one mediator, who is female.

6. Power device analyses

The analyses in the sections below will show how the four devices – *topic control*, *interruption*, *formulation*, and *enforcing explicitness* – may be used by mediators to negotiate a dispreferred mediator-party power asymmetry into one that is preferred (i.e. where the mediator has the procedural power to design a mediation

9. In workplace disputes, when it becomes clear that a sustainable employment relation is not in the cards, mediators sometimes change the regular mediation session into *exit mediation*, in which the goal is to aid the parties in constructing a *win-win termination agreement as the solution*.

context that allows for a win-win solution oriented discussion, and the parties have the decisive power).

6.1 Power negotiations

In Excerpt 1, from the ‘church board versus sexton’ case, the topic of the conversation is how B (sexton) and C (chair) got acquainted. The exchange takes place at the beginning of the first mediation session. Preceding Excerpt 1, the parties introduced themselves and the mediator explained the mediation procedure.

Excerpt 1. Church board versus sexton: make your acquaintance

- 18 M How did you make B’s acquaintance↑
 19 C E:hm (1.0) well she was one of the first I encountered when I eh (.) yes came by came by the church for the first time and eh (2.0) one one of the member of the church board introduced us to each other (.) but that was right in the beginning (.) Then then we were not yet really (.) busy shaking things up which we did do after and after that eh had not that much contact because it it
 20 M How did you experience the initial [contact] ↑
 21 B [what what what<] do you THINK (2.0) shake up (2.0) comes from the outside and you (1.0) you pff
 22 M B how did you experience the initial () ↑
 23 B Yes comes from the outside (1.0) and eh people from the city are eh (.) >in a rush<
 24 M That is how you experienced that↑ Rush↑
 25 B Yes he shook my hand and said his name and eh

In Excerpt 1, turn 21, B negotiates a dispreferred mediator-party power dynamic by means of the device *interruption*.¹⁰ The mediator’s question in turn 20 is directed at C, and is a follow-up question to the one she asked C in turn 18. B interrupts the mediator and ignores the content that is introduced in the question posed by the mediator in turn 20. Ignoring the mediator, and thereby undermining the mediator’s procedural power, B directs an attack at C, which is a response to C’s contribution in turn 19. Although the contribution is directed at C, B tries to negotiate a different power dynamic with the mediator, by taking procedural control of the mediation interaction. In doing so, B takes over the role of the procedural guide, which is a role that is reserved for the mediator. After B’s negotiation in turn 21, the mediator changes tack and tries to negotiate the power dynamic to one that is preferred by means of the device *topic control*. Sensing that B wants to have the floor and possibly fearing that any prolonged attention to C would allow the situation to deteriorate, the mediator ignores B’s contribution in terms of content, and instead strategically redirects the question she initially asked C in turn 20, ‘how did you experience the initial contact’, to B in turn 22. Using *topic control*, the mediator limits the contributions of the parties to those that are related to the

10. [indicates the beginning of overlapping speech, whilst] indicates the end of overlapping speech.

topics introduced in the mediator's interventions, namely contributions that concern information on, and evaluations of, the initial meeting between the two parties. By sticking only to the topic that is deemed relevant by the mediator, she tries to regain control of the interaction. In order to ensure that the power dynamic remains one that is preferred, the mediator needs to keep B engaged and on topic. The mediator does so by employing the device *enforcing explicitness* in turn 24 with 'that's how you experienced that? Rush?', when she asks for an explication of the initial meeting with C, whom, being from the city, B describes as being 'in a rush' (turn 23). Not only does the mediator try to keep B positively engaged and on topic, the mediator also exercises her power by willing B to disambiguate her contribution 'in a rush'.

By means of the power devices *topic control* and *enforcing explicitness*, the mediator tries to negotiate a preferred mediator-party power asymmetry, which was jeopardized by B's dispreferred power negotiation in turn 21: 'Who do you think. Shake up. Comes from the outside. You.' More broadly speaking, by means of the power device interventions, the negotiations help design a context with a preferred power asymmetry. By maintaining control of the process, the mediator can continue her attempts to further design a context in which a mutually beneficial resolution is possible.

In Excerpt 2 below, which takes place somewhat later on in the first mediation session of the same case as Excerpt 1, B tries to negotiate a dispreferred mediator-party power dynamic again. Knowing more now about the parties, their attitudes, and their stance in the interaction, the mediator uses a different strategy. The initial topic of the conversation at the start of this excerpt is the manner in which B and C communicate with each other outside the mediation session.

Excerpt 2. Church board versus sexton (outsiders demanding)

- 72 M [can] you imagine that this isn't for a board not a nice situation[†]
 73 B Bh:ut there aren't any secrets[†]. The board can just the the door is OPEN
 it is [a]
 74 M [yes]
 75 B COMMUNITY.
 76 M Yes yes
 77 B I am seven days per week I am or I am in church or I am
 [in the community center].
 78 M [so for you] it would not be a problem to now and then write something down[†]
 79 B No it has never been asked of me and all of a sudden I need the numbers from
 last [year off the top of my head]
 80 M [you were never asked] but if you were to be asked then (1.0) then [would]
 81 B [YES]
 but
 not in an e-mail from three OUTSIDERS who suddenly are DEMANDING all
 [kinds of in[formation].
 82 C [we are [not]
 83 M [yes] you would have rather had a personal conversation in
 which it was
 explained decently (.) perhaps[†]
 84 B Th:at would be the least

Instead of answering the questions asked by the mediator directly, B either completely changes or slightly alters the topic in her responses. This attempt at *topic control* is most salient in turn 73, when B responds to the question posed in the previous turn by introducing a new topic, namely her accessibility, instead of the topic introduced by the mediator in the intervention in turn 72, namely an evaluation of the board's situation. This intervention by the mediator could be seen as an attempt at establishing more common ground by eliciting acknowledgement of the board's difficult situation.¹¹ B's response to this attempt by the mediator can be regarded as hostile towards C; firstly, B neglects to acknowledge C's feelings by brushing aside the mediator's common ground design attempt in turn 72; secondly, she marginalizes the possible concerns of the board, framing them as illegitimate by creating the notion that the board has simply failed to approach her, either properly or at all. The mediator tries to negotiate the dispreferred power dynamic negotiated by B using *topic control*. The mediator redirects the topic to one that is preferred in turn 78: 'so for you it is not a problem to now and then write something down', because it is solution oriented rather than problem oriented. B's response thus emphasizes the divide between the parties instead of broadening the common ground, as intended by the mediator. By means of topic control, B attempts to establish a power asymmetry in which she holds the power. This attempt to gain interactional dominance is given force by B's raised voice in turns 73, 75, and 81. To reestablish procedural dominance and prevent the interaction from deteriorating to a point where reasonable discussions beneficial to the resolution process become impossible, or at the least more difficult, the mediator needs to negotiate a preferred power dynamic. From the overlapping speech in turns 74, 78, and 83 it becomes clear that the mediator tries to negotiate and regain control by using the device of *interruption*.

Interestingly, in Excerpt 2, the mediator seems to combine devices in two out of the three power negotiation interventions. When the mediator interrupts B in turn 78 with the intervention '[so for you] it would not be a problem to now and then write something down?', she changes the topic. In doing so, the mediator does not simply take the floor and regain control; by cutting B off at a point when she may put the conversation further down a path that is filled with hostility, the mediator tries to prevent escalation, whilst redirecting the discussion in a more positive direction at the same time. The mediator's attempt to regain power and guide the parties in a direction that is solution-oriented can also be found in turn 83 'you would have rather had a personal conversation in which it was explained decently, perhaps?'. In this turn the mediator combines the device of *interruption*

11. For more information on *common ground in dispute mediation*, see e.g. van Bijnen's upcoming doctoral dissertation on the topic.

with another device, namely *formulation*. In the formulation of turn 83 the mediator does not summarize B's contribution but rephrases its implication in positive terms by presenting what she infers B may prefer instead of presenting B's disapproval, which can be found in turn 81: 'but not in an email from these outsiders who are demanding all this information'.¹²

6.2 Power device combinations

By means of combining different devices mediators' attempts at actively regaining procedural control of interactions are strengthened. This combination strategy seems appropriate when emotions are running high and impasses may become a serious threat to the resolution process. A combination of devices in a single turn can therefore be found in heated arguments. Excerpt 3 shows an example of power negotiations in hostile exchanges. The excerpt is taken from the 'manager versus employee case' (Section 5.2), in which a conflict has arisen because a manager (D) wants to terminate the work contract of one of her employees (E) after he failed to improve himself. E is unable to accept the suggested termination. Excerpt 3 starts with D, who blames E for not making use of the training opportunities she arranged for him in the past.

Excerpt 3. Manager versus employee (grab the opportunity)

18 D [How] many chances can a person get↓ THEN GRAB IT (.) GRAB THE OPPORTUNITY
 19 E That's what I'm doing [we are here right]↑
 20 D [YOU DO NO:T] THAT [YOU DO NOT (.) MAN ALL]
 21 E [And what are YOU doing now↑]
 22 D THESE COACHES COME TO ME and say well [()]
 23 E [you are simply SCOLDING] me
 24 D YES I am SO: I am really FED up (2.0) it really has to stop now
 25 E Well [()]
 26 M [D and is it important for you to] to conclude in a decent manner↑ when you say it really has to stop↑

Unlike in Excerpt (2) (see Section 6.1), in Excerpt 3, the mediator is not the direct addressee of the parties' contributions. The parties are involved in a party-party power negotiation, with both parties interrupting each other. During the power negotiation, the manager, D, tries to (audibly) overpower the other party by raising

12. In the context outside the mediation, B has less institutional power than C. Yet, it is B who negotiates interactional control. Although it could be the case that she feels strengthened by the presence of the mediator, in this excerpt it is the mediator she negotiates the power dynamic with as well. If we single out two of the words B emphasizes by raising her voice, it could be argued that although C derives more institutional power from his position as the new head of the church board, B derives her power from her position within the 'COMMUNITY' (turn 75, Excerpt 2) of which she seems to be a valued member. Unlike B, C is new to the town and church community, and thus an 'OUTSIDER' (turn 81, Excerpt 2).

her voice and undermining her employee in turn 20, when E says he is taking the opportunity, namely mediation, to solve the problem in turn 19. D thereby puts the blame for the escalation of the problem solely on E, implying that she has tried to offer E opportunities to solve the problem but that E has failed to make use of the opportunities. Whilst the interaction is a power struggle between two parties, they also negotiate a dispreferred mediator-party power asymmetry by taking procedural control of the interaction. Before the dialogue further derails, the mediator chooses to intervene and negotiate a preferred mediator-party dynamic using *interruption*, *eliciting explicitness* and *formulation* in turn 26.

In turn 26 of Excerpt 3, similar to Excerpt 2, the mediator interrupts and poses a positively phrased question to the party currently ‘dominating’ the discourse: ‘D and is it important for you to conclude in a decent manner? When you say it really has to stop?’. Sensing D’s determination to fire E, the mediator asks D if it is important to terminate the work relation in a ‘decent manner’. The mediator employs the device of *eliciting explicitness* when she takes the word ‘stop’, presented by D in turn 24, and asks her to elaborate on this contribution. Interestingly, although D indeed states ‘it really has to stop’, the mediator presents a modifier, and thereby presents the preferred interpretation of ‘stop’, namely ‘in a decent manner’. The mediator, thus, not only uses the device *enforcing explicitness* when she asks for elaboration on the manner of conclusion, she also employs the device of *formulation* when she introduces ‘conclude in a decent manner’ as a preferable explication of ‘it really has to stop’. In a decent manner could be considered a euphemistic formulation, as it mitigates D’s message ‘E is going to be fired’. D has not previously suggested ‘to conclude in a decent manner’ herself, however ‘*concluding in a decent manner*’ is something that the mediator may sense to be acceptable for both parties. As Jacobs (2002, 1418) previously showed, formulation can be used by mediators to regain control of the dispute by actively reshaping a contribution of a party. In short, by using *formulation* as a device to exercise power, the mediator reintroduces the topic of termination, implied by D in turn 24, in a manner that elicits a positive response from D. At the same time, the formulation introduces a characterization of termination that is preferred by the mediator, and more characteristic of an *exit mediation* in which mutually agreeable conditions of a termination become the basis for the solution-oriented discussion.

Excerpt 4 is taken from the ‘church board versus sexton case’. Whilst Excerpt 1 and Excerpt 2 were taken from the first part of the mediation (see Section 6.1), or rather the first mediation session, Excerpt 4 is the first turn immediately after the commencement of the second mediation session of this case.

Excerpt 4. Church board versus sexton (old and new inhabitants)

1 M There are a couple of things that I notice↑ eh the topic of the conversation at first seemed to be about eh how e:h the tally is accounted for and and eh how the payment is done regarding (.) e:h the revenue of the community center. But still between the lines I hear some other issues as well namely eh that eh some a sort of opposition seems to have been generated °I would like to sound you out about that° seems to have been generated between eh the older inhabitants of the village and I'll just call it the import (.) and that that also shifted the e:h the occupation of posts at the church and (.) ii:ht seemed as if you linked this together all the eh interventions concerning the finances (.) yes that there are new people °who are involved in that° (2.0) is that that that correct↑

The mediator seems set on preventing a continuation of the previous session and its hostilities. From the first session the mediator has learned that B is prone to dispreferred power negotiations and that the interaction can easily end in an impasse if the mediator does not exercise her procedural power. As the mediator traditionally opens the first mediation session with an explication of the mediation procedure, she opens the second session by taking the floor and setting the agenda. Using *topic control* she starts off the interaction by establishing herself as the participant with procedural power. In order to prevent parties from rehashing topics that the mediator deems irrelevant to the resolution process, she immediately introduces the preferred topics for the discussion and dismisses dispreferred topics, such as the 'tally'. In addition to topic control, the mediator clearly uses the power device of *formulation* by rephrasing what the parties seem to be implying 'between the lines'. From the intervention it becomes clear that the issue of the *old versus the new* that is introduced by the mediator is not the issue that the parties themselves had explicitly presented as the main issue in the first session. Nevertheless, the mediator seems to sense that this division 'between the older inhabitants of the village and I'll just call it the import' is an important underlying issue for B, which has to be addressed for the resolution of the conflict to be sustainable. By characterizing the old versus new issue as the issue that should be at the center of future discussions in the mediation session, the mediator takes control of the interaction and gives it direction, which is a use of *formulation* that is quite typical for mediation (e.g. Jacobs 2002, 1419). By giving direction using *formulation*, the mediator also uses the device of *topic control*. The mediator limits future party contributions to those that are in accordance with the mediator's specific version of the conflict situation. In order to firmly set the agenda and gain acceptance of the formulation of the conflict's main issue, as introduced in this intervention, the mediator employs yet another device when she *elicits explicitness* with the question 'is that correct?' at the end of the turn. She thereby explicitly gives the floor to the parties and invites them to show cooperation with the discursive goal of the mediator by elaborating on the issues the mediator has selected for them.

7. Conclusion

Although professional mediators consider *dispreferred mediator-party power asymmetries* – where at least one of the parties negotiates procedural dominance in the interaction – an important struggle, the negotiations by the mediator to remedy this dispreferred power asymmetries remain understudied. When parties take over the interaction and create a dispreferred mediator – party power asymmetry, the mediation interaction is likely to move away from a mutually beneficial solution, and instead head towards an impasse. Dispreferred power asymmetries are dysfunctional in the resolution process and need to be handled by the mediator. This paper has provided insight into some of the possible strategies that can be used by mediators for power dynamic negotiations and the design of mediation contexts with a mediator-party power asymmetry that is favorable for the resolution process.

One of the most interesting findings of this study is that mediators may combine two or more of Fairclough's (1989) devices – *interruption*, *topic control*, *enforcing explicitness*, and *formulation* – within the same intervention to negotiate a mediator-party power asymmetry that is constructive in the resolution process. Although the four devices by Fairclough (1989) discussed in this study are not the only ways in which mediators can negotiate power in mediation, this preliminary look may prove functional for future comprehensive studies of power and power dynamics in mediation. Moreover, in the case of conflict mediation, by using Fairclough's (1989) devices, something else becomes apparent; there seems to be a relation between *power negotiations* and the *negotiation of the mediation context*. Since the goal of mediation, and in fact that of the mediator, is to arrive at a win-win resolution of the conflict at deadlock, mediators, as procedural guides, construct their interventions to help the parties move closer to that goal. The power asymmetry between mediators and parties is preferred *because* mediators need procedural power to design a mediation specific context in which the parties are empowered to find mutually beneficial solutions to their problems. This mediation context temporarily suspends the workplace context to which the parties belong. Whilst Fairclough shows that these devices are tools used by dominant parties to gain and maintain control of the interaction and suppress the 'weaker' interlocutor, in the hands of the mediator the devices may be seen as useful tools to achieve the difficult task of designing a context that is favorable for conflict resolution (i.e. one in which the parties are empowered to decide the outcome). In order for parties to reasonably use their decisive power in a win-win solution oriented discussion, the process should be carefully designed by the procedurally powerful mediator, who may prevent or correct derailments and encourage constructive communication using his

or her procedural power to employ the devices of *interruption*, *topic control*, *enforcing explicitness*, and *formulation*.

Now that we have started exploring the link between power negotiations and the four devices (Fairclough 1989), the logical next step would be to study the link between the four devices and rhetorical strategies. Using insights from rhetoric (e.g. Perelman 1979; Perelman and Olbrechts-Tyteca 1971; Reboul 1992; Reboul and Moeschler 1996), we will be able to move one step closer to understanding how mediators handle power asymmetries by means of communication. It would be particularly interesting to study the strategic ways in which mediators employ Fairclough's (1989) four devices with the goal of being optimally effective, or persuasive, when negotiating a preferred power asymmetry.

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