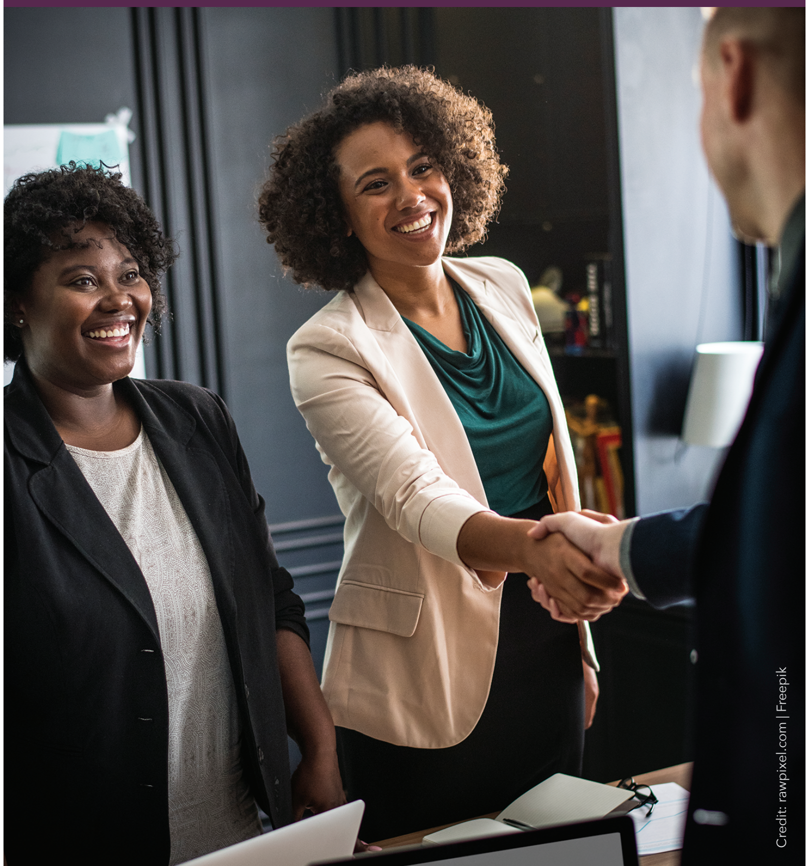
OP-ED: MEDIATION

by April Madison-Ramsey and Robin Gise

Beyond arbitration

Adding mediation to the labor–management toolkit



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The default tool for dispute resolution in unionized environments has long been binding arbitration. Detailed processes and timelines are typically spelled out in collective bargaining agreements, and employers and unions are familiar with the process.

But as labor–management dynamics grow more complex and workplace relationships require greater nuance, mediation can help parties save time and money, preserve working relationships, and create solutions that improve operational continuity. As in-house and outside counsel evolve into strategic partners rather than just legal fixers, mediation should become part of the broader labor–management toolkit.

The limitations of arbitration

Arbitration plays a vital role in resolving specific types of workplace disputes, especially those involving legal rights or contract interpretation. But it has limitations:

- **Cost and delay:** While arbitration is typically less formal than litigation, it still involves legal fees and often involves scheduling delays that can stretch resolution timelines.

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- **Lack of flexibility:** Arbitration is constrained by the collective bargaining agreement. Once a dispute enters arbitration, the parties cede control over the outcome. The process does not always allow for creative or tailored solutions aligned with operational realities.
- **Fractured relationships:** A win for one side can result in a loss of trust or cooperation for the other. In environments reliant on collaboration and continuity, this can have lasting costs.

For those charged with managing labor risk, mediation presents a strategic opportunity to bridge divides and maintain essential relationships.

Mediation offers interest-based resolution

Mediation centers on facilitated dialogue aimed at mutually beneficial outcomes. It is a voluntary, confidential process involving a neutral third party who helps guide the negotiation between disputing parties to reach a mutually agreed-upon resolution.

In the labor context, this means management and the union engaging in a structured conversation with mediator support to resolve their disagreement. It requires collaboration and a commitment to addressing underlying interests before disputes escalate.

Mediation is most effective when disputes are operational or relational rather than strictly legal — when both parties share an interest in resolution and preserving their relationship and where party-driven solutions are preferable.

Legal advisors to employers and unions often assess the risks of a grievance, including whether either party is likely to prevail. But they also evaluate whether a win is worth pursuing.

Mediation offers a path to a win–win solution: The employer can protect its values and operations, and the union can work to have its members' concerns addressed. Most important, it preserves the labor–management relationship.

When is mediation appropriate?

Mediation is not a fit for every scenario, but it is useful in several contexts:

- **At the early stages of the grievance process:** Some collective bargaining agreements already require mediation before arbitration. Consider it a "Step 3A" — after the employer has responded to the grievance, but before arbitration is invoked. Even when not required, voluntary mediation at this stage offers a chance to resolve issues before positions harden.
- **During bargaining stalemates:** Mediation can help move past roadblocks during contract negotiations, avoiding work stoppages or disruption. A skilled mediator familiar with bargaining dynamics can help parties explore creative options.
- **After workplace investigations or audits:** Investigations can reveal systemic problems, strained relationships, or supervisory gaps. Mediation allows the parties to address the root causes constructively.
- **For sensitive or high-stakes grievances:** Disputes involving discrimination, harassment, or retaliation — especially when paired with legal action — are often suitable for confidential resolution through mediation.
- **To encourage settlement:** It's never too late. Even if an arbitration has been scheduled, mediation can be used concurrently to explore early resolution and reduce costs.

Why counsel should consider mediation

In-house legal teams and outside counsel are increasingly expected to deliver more than legal wins — they must align with the organization's strategy and risk profile. Mediation supports these objectives by offering:

- **Operational efficiency:** By encouraging collaboration and interest-based solutions, mediation helps reduce grievances, avoid stoppages, and improve workplace morale.
- **Risk reduction:** Mediation can bring underlying causes of disengagement or attrition to the surface, such as poor management or unclear expectations.
- **Cost containment:** Resolving disputes through mediation limits outside counsel fees, employee downtime, and internal disruption.

Next steps for legal advisors

To introduce mediation into your client's labor–management strategy:

- **Review collective bargaining agreements and internal dispute processes:** Explore whether mediation can be added as an early step, even for nonrepresented employees. For union settings, propose mediation in future contract negotiations.
- **Establish a process for mediator selection:** Agree in advance on panels or selection methods to avoid delays. Search your networks and develop a list of mediators with deep experience in labor–management relations.
- **Train collaboratively:** Work with labor relations, HR. and union partners to develop joint training on mediation techniques and interest-based bargaining.

For those supporting unionized workplaces — whether advising management or representing employee interests — there is value in looking beyond grievance wins. Strategic use of mediation can prevent unnecessary escalation and reduce workplace disruption. Saving time and reducing costs are meaningful outcomes, but preserving the labor–management relationship is often the most significant result.

While arbitration remains an essential tool for certain disputes, mediation offers a flexible, collaborative way to craft tailored solutions. Encouraging its use as part of a comprehensive labor–management strategy allows employers to better navigate risk while giving unions an opportunity to ensure their members' concerns are addressed meaningfully. ■