chapter
ELEVEN

Public Policy Decision Making and Collaboration

Learning Objectives

- Describe the common characteristics of public disputes compared to other venues for conflict (workplace, courts, and so forth).
- Describe the differences among various types of commonly used public dispute resolution processes.
- Analyze the characteristics of a public dispute or large-group decision-making process in order to match the problem with the most appropriate process for resolution.
- Demonstrate an understanding of the evolution and trends in public dispute resolution and collaborative governance.
- Demonstrate an understanding of the common steps in the process of making administrative rules and regulations.

ELISE AT MAIN STREET BAKERIES

In an effort to deal with the obesity epidemic plaguing the country, the US Food and Drug Administration (FDA) has implemented a new rule that requires restaurants and sellers of prepared food items to include nutrition information on their menus or on the packaging of the food items. This new requirement also requires all items to be labeled as to their content of gluten, nuts, dairy, and other common allergens. This rule applies to any chain restaurant or retail food supplier with more than five locations. Small mom-and-pop chains are exempt from

these regulations. Elise knows that her clientele tends to be more health conscious than the average consumer, which is why her stores specialize in locally grown, organic and healthy foods. In fact, she has often wished that nutritional information were required on all baked goods because a donut or cookie from her shop is likely to be healthier than one from the large bakery chains. This requirement is a potential marketing and sales opportunity for her company yet because her chain uses locally grown and baked products, there is significant variation in stock from one region to another and from season to season. She likes the idea of including nutritional information on all prepared foods but is not quite sure how to make this work because the bread baked in Kansas is slightly different from the bread baked in Boston. To make matters worse, some of her kitchens prepare items with nuts, so all items would need to have a nut warning, even if they do not contain nuts as an ingredient. She might need to bake nut-containing items in one central location and ship them nationwide to allow local kitchens to be labeled *nut free*. It may take months for her bakeries to make the changes necessary to comply with the new regulations—closing down in the meantime would mean financial disaster for her company and for her thousands of employees nationwide.

Last year Elise called the FDA to find out more about the process for decision making. She learned that they were in the process of convening a group of stakeholders to discuss this new initiative, share information with the agency, and engage in negotiated rule making. Elise had never heard of this before but agreed to participate in a teleconference call with other potential stakeholders to hear more about this process.

Managers from public, private, and nonprofit sectors often interact in ways that indicate adversarial rather than collaborative relationships. This is not necessary to protect the public good or to keep businesses profitable. In fact, adversarial relationships between regulators and those they regulate frequently reduce the efficiency of both. There are many shared interests that can mitigate these previously hostile relationships. Corporations seek to keep their brand name clean

and bright and government agencies do not want to get the reputation for stifling job creation or encouraging companies to relocate to "pollution havens" or other low-regulatory environments. Civic and nonprofit groups may accomplish more change by nurturing collaborative partnerships with regulators than by being thorns in their sides. Managers from the private, public, and nonprofit sectors are increasingly coming together through the use of collaborative processes to create or change policies in ways that further the missions of their organizations. By being proactive in these efforts, managers can enhance the ability of their organization to work successfully on these issues as well as make themselves indispensable to their organizations. The ability of regulators and regulated communities to proactively avoid problems and to jointly address any problems that cannot be avoided are core managerial skills that are central to the mission of most organizations. Poor relationships between regulators and those they regulate can be costly to both types of organizations and to the public interest. The application of ADR methods to public policy issues is referred to as *environment and public policy conflict resolution (E/PP)*.

From negotiated rule making to policy dialogues or case evaluations, this chapter will examine innovative efforts to transform regulatory relationships with the goal of creating policy that is more effective, implementable, and subject to fewer legal challenges. From zoning disputes to new health care regulations, case studies will be used to show how leaders in regulatory and regulated communities have successfully reached out to one another in order to protect and promote public and private interests. These two need not be mutually exclusive. If you work for a nonprofit or a corporation, do not jump to the false conclusion that this chapter and the one that follows do not involve you or your organization. Nothing could be further from the truth. Public disputes occur at the nexus of the private, public, and nonprofit sectors. Every regulatory dispute affects those who are regulated, not just those creating and implementing the regulations. Developing positive working relationships and collaborative processes to use for the resolution of public disputes involves managers in every sector and can result in greater mission accomplishment, an untarnished brand, and career advancement (not to mention better policy outcomes). This chapter will introduce the menu of processes related to managing public disputes as well as other stakeholder gatherings, such as shareholder meetings and other forms of large-group decision-making processes.

CHARACTERISTICS OF PUBLIC DISPUTES

The state wants to build a juvenile detention facility near a middle-class suburban neighborhood. Local residents have staged protests, moved to block the rezoning effort, and groups have lined up on both sides of the facility.

A young African American man was found guilty of murdering an off-duty police officer but he maintained his innocence up until his execution last week. Immediately after his execution riots ensued at the state capitol with hundreds of thousands of dollars of damage to vehicles, shops, and buildings. More than one hundred arrests have been made and the city's simmering racial tensions have boiled over.

The EPA has been sued by a civic group claiming it has not adequately protected the safety of America's drinking water by failing to create standards for many common forms of prescription drugs that find their way into the water supply. The judge agreed with the civic group and now the EPA is tasked with creating a host of new water-quality regulations. Local governments, the US Association of Mayors, pharmaceutical companies, and hundreds of water utilities across the country are concerned about the costs of any proposed new regulations. The EPA is entangled in its mission, a court mandate, and with stakeholders on all sides of the issue.

Each of these scenarios depicts a dispute, or more broadly, a decision-making process that involves managers of public, private, and nonprofit organizations. Increasingly, managers are called on to use their skills and the visibility of their positions to speak as representatives for their organizations at public meetings or within some type of decision-making processes that affect their products, services, or missions. By working together to find workable solutions to complex problems, both public and private interests can be protected, and prolonged, unproductive conflicts may be avoided or at least shortened.

Public disputes are different from the labor-management and employment conflicts previously discussed in this book in many ways. We must begin with a broad definition of **public disputes** as complex, multiparty, decision-making, or consensus-building processes on issues affecting the public interest or policy that involve complicated networks of interests, unequal accountability among stakeholders, strongly held values, and that are highly influenced by governmental rules and regulations.

In the EPA scenario, stakeholder groups include the FDA, state and local government representatives, local water utilities (some of which are publicly operated

and some of which are privately operated), potentially dozens of pharmaceutical manufacturers, drug retailers such as CVS, civic groups representing public health or the environment, and technology manufacturers that wish to sell water-quality equipment or services involved in the purification of drinking water or the detection of impurities. Each of these stakeholder groups would want one or more representatives at the negotiating table if talks were to occur related to new regulations. These negotiations would likely occur over a long period of time, perhaps over months or even years. Each stakeholder would need to commit to keeping his or her constituency updated of the status of the negotiations and any proposals under discussion. The stakeholder representative (we'll call this person an *advocate*) will need to funnel the concerns of his constituency back to the larger group as well as serve as an intragroup negotiator to help his own constituents gain a realistic understanding about the nature of the compromises likely to be necessary to reach an agreement that is superior to litigation. Some of these advocates are bureaucrats working for governmental agencies. As such, they can be officially reprimanded or even fired as a way of holding them accountable. Sometimes elected officials take part in these efforts, and they are held accountable at election time. Still others, citizens who represent themselves or a civic group, may have no accountability at all. The same goes for corporate advocates, who are not necessarily expected to uphold the public good. These varying levels of accountability make collaborative processes more complex than the other processes discussed in this book.

To complicate matters, it is not uncommon for new groups to emerge even late in the negotiation process. Perhaps a local or national environmental nonprofit learned about the negotiations months after they began. Or once the group has crafted a specific proposal and this proposal was released to the press, a group that was not previously interested now believes their interests are threatened. Because of the nature of public meetings and public policy processes, it is usually difficult, unwise, or even impossible to exclude individuals or groups who wish to be included in these negotiations, even if they come late in the game.

In some public disputes the parties will come together for a few meetings and never see each other again, as may be the case with the juvenile detention facility vignette. More commonly, in cases such as the race riots or water-quality issues, the stakeholders will have repeated contact with each other either as neighbors or colleagues throughout their careers. Whether they come together in the future on the same issue or on other issues of mutual concern, these groups

are interdependent and their paths likely will cross repeatedly over many years. Therefore, these collaborative processes represent an important opportunity for building social capital and networks that will enhance current and future communications and problem-solving abilities. By getting to know one another as people, neighbors, and colleagues, these collaborative processes can serve as springboards for other joint efforts and as mechanisms that can be called on throughout the process of decision implementation. When problems arise during the implementation phase, which they often do, parties can call on one another to again work together collaboratively in order to efficiently and fairly discuss and solve those problems. They have built relationships as people, not just as representatives of their particular interests.

Each governmental agency has developed different protocols for decision making that must be followed. In many federal government agencies this means that a draft rule or regulation is created and published in the *Federal Register*, a daily publication of the US government. Public comments are accepted for a specified period of time, after which the final rule or regulation is issued. In some cases, especially at the state and local level, public meetings must be held to gather comments or announce planned changes before they can take effect. Yet the specifics of these processes are unique to each government agency and sometimes one issue crosscuts the jurisdictional boundaries of multiple federal, state, and local governmental agencies. In the public sector, corporations have clear hierarchies through which decisions are made and implemented. Civic groups may have less hierarchical and more consensus-based or democratic decision-making processes. When a decision must be made quickly, and the decision affects government, industry, and civic groups, these varying processes for decision making can lead to delay and confusion. The complexity of these decision-making structures and the necessity of getting them to converge when necessary means that public disputes are much more complex than intraorganizational disputes. These disputes occur at the nexus between organizations rather than within them. As you will see from the variety of collaborative processes described in this chapter, most governmental agencies and corporations do not have formal guidelines for participating in collaborative processes. This means that each opportunity for collaborative decision making or problem solving is handled differently by each agency and even dispute by dispute. This is not necessarily a negative, considering that each dispute may be unique enough to justify an individualized approach. But it also means that some

agencies are leaders in the use of dispute resolution processes and others are laggards who rarely entertain collaborative processes.

The public nature of these negotiations can also be a complicating factor. In 1976, in the wake of the Watergate scandal and heightened levels of public distrust of government leaders, the Government in the Sunshine Act was passed. This act requires all agencies of the federal government, except the Executive Office of the President, to conduct meetings publicly and allow citizens to testify and present concerns about past, present, and future agency actions (Harrison, Harris, & Tolchin, 2009). State and local governments have generally followed this example. The term ***sunshine laws*** refers to federal, state, and local laws that require regulatory meetings, decisions, and records to be open to the public. This means that the media are often present during the negotiations and mediations that occur on public issues, making frank discussions difficult. Elected or appointed leaders may be afraid to engage in creative brainstorming, knowing that any idea they suggest or anything they say may end up on YouTube or the five o'clock news. Advocates know they can often use the media to pressure fellow negotiators or to sabotage proposals before they are fully discussed. The open nature of public disputes makes them more complex and difficult to navigate. Dealing with the media, and turning them into a process ally rather than a process scuttler is a skill we will cover a bit later.

Public decision-making processes involve deeply held values tied closely to personal and community identities. The choices we make about methods to care for our sick or elderly, provide education for our children, punish or deter wrongdoing, protect our environmental resources, or regulate economic activity reveal our underlying values as people. When something appears to threaten these values, people react strongly, sometimes even violently. Discussions on these issues bring out passionate pleas to do the right thing from the advocates involved. Yet, the dilemma is that we are often faced with the need to prioritize or choose between these values and therefore different people will weigh them differently. Do we take away the right to drive from elderly people who may pose a risk to public safety? Do we save an endangered species at a cost of millions of tax dollars? The moral and often personal implications of public decisions make these negotiations quite difficult and exhausting yet terribly important to society as a whole.

Managing these complex issues increasingly calls for the skills of **collaborative public management**, "the process of facilitating and operating in

multi-organizational arrangements to solve problems that cannot be solved or easily solved by single organizations. Collaborative means to co-labor, to achieve common goals, often working across boundaries and in multi-sector-actor relationships. Collaborative public management may include participatory governance: the active involvement of citizens in government decision-making" (O'Leary & Blomgren Bingham, 2011, p. 3).

THE SPIRAL OF UNMANAGED CONFLICT

In the field of conflict management, experts frequently refer to a concept called *ripeness*. A conflict is ripe for intervention once it is clear who the major players or stakeholders are, once the issue is of significant urgency to demand action but has not yet reached crisis style, and before the relationships between stakeholders are characterized by demonization and disrespect and the dispute becomes intractable. Yet intervene too early and it is difficult to sustain energetic participation by stakeholders or there may be a lack of data on which to base ideas for resolution. Although it is never too late to attempt collaboration, the odds of success are greatest if the intervention occurs when the dispute is ripe for intervention.

Carpenter and Kennedy (2001) have outlined the common phases that public disputes experience on their way to becoming intractable, what they call "the spiral of unmanaged conflict" (p. 12). Each individual dispute may go through these phases faster or slower or may skip a step only to circle back to an earlier one. Progress through the phases may be linear for some disputes and circular for others. Recall Figure 2.2, which graphically depicts these phases. In the first phase, the problem emerges. Generally, a private or public organization announces some planned change—a new building, a widened road, a new regulation, a change to products or services, and so forth. There is mild concern that grows slowly at first, starting with those most directly affected by the planned changes. Stakeholders seek to get more information about the planned changes and are often frustrated by the response they receive. Organizations do not like to share information about plans until that information is relatively finalized. This lack of information and uncertainty feeds fear among stakeholders who begin to contact their elected officials or others in power to help them get the information they need.

The apparent unwillingness or inability to share information leads to negative attributions by stakeholders, who may say things like, "they are being sneaky!" or "they are withholding information until it will be too late for us to do anything

about this!" Groups of stakeholders start to form on all sides of the issue; rarely do these issues have only two sides, even though the media often find it simpler to portray issues in this manner. These groups start to get organized, gather resources to support their future activities, and make their game plans. As the sides form, the media begin to cover the issue more and more, thereby increasing the rate at which the sides form. Individuals begin to talk only about the issue with those who have similar views. They tune out the opinions of those who disagree with them and as a result, their positions harden. They may develop ideas about the dispute that favor their position as the morally right, prudent, or obvious course of action. This only serves to further alienate those who hold differing opinions on the matter at hand. As a result, communication and any attempt to negotiate between the two groups comes to a standstill. The less communication that occurs, the smaller the likelihood of a collaborative resolution to the problem.

Because it has become clear to the stakeholders that the other side(s) are unwilling to capitulate, they begin to commit resources to promote adversarial paths to resolution. They may spend money to hire lawyers and file a lawsuit or injunction. They may seek the services of a media consultant to make their case in the press and garner further support for their cause. They may hire expert witnesses or hire consultants to gather data that support their cause. Once these resources are committed, no one in the group will settle for less than what has been spent so far, including an outcome that is worthy of the time and energy they have committed to the cause.

As the conflict grows, it leaves the confines of the original parties and comes to the attention of regional, national, or international groups who may join the fray. At some point along this path, perceptions of the other get distorted as attribution biases and other forms of cognitive bias take hold. Nothing they say can be trusted, even proposals for resolution or new data that could undermine your group's position. As time passes and the problem grows unchecked, a sense of crisis emerges. Clearly something needs to be done. As the crisis grows to a fever pitch, actions that would have initially been seen as over the top are now on the table. Each side is willing to spend more than originally planned and compromise becomes unthinkable.

The goal of effective conflict management is to increase and improve communication across opposing groups, seek data jointly to avoid a battle of the experts from occurring, and bring in a facilitator or other process neutral early on, as necessary, to disrupt the cycle of escalation common in public disputes.

PUBLIC POLICY PROCESS AND BASIC CONCEPTS

Before we examine public dispute resolution processes in greater detail it is important to develop a shared understanding of the traditional process for public decision making. The first set of key concepts deals with laws, statutes, ordinances, rules, and regulations. Laws, statutes, and ordinances are passed by the legislative branches of government at the federal, state, and local levels that assign rights and responsibilities to various members and groups in society. The legislative branch creates these laws but it is up to the executive branch to see to the details of their implementation, which is accomplished via the bureaucracy through their administrative law powers. "**Administrative law** is the name given to agencies' rule making and resolution of conflicts regarding their rules" (Harrison, Harris, & Tolchin, 2009, p. 479). **Administrative rule making** is the "process by which upper-level bureaucrats use their administrative discretion and their expertise in the policy area to create rules, regulations, and standards that the bureaucracy will then enforce" (p. 480). In the United States, federal administrative law is codified as the Code of Federal Regulations. In essence, Congress passes laws and administrative agencies pass rules that allow them to put the laws into practice. For example, Congress may pass a law that requires workers to be safe from known and avoidable hazards in the workplace. But this is too vague for practical enforcement. Therefore, it would be the duty of the Occupational Safety and Health Administration (OSHA) to determine what specific actions employers would need to do (or refrain from doing) to ensure a safe workplace. For example, what safeguards need to be in place to ensure employees' safety within industrial chemical plants? Can restaurants allow smoking and create a safe environment for their food servers? OSHA would need to make specific regulations as necessary to meet the requirements of the law as set out by Congress. Additionally, agencies involved in administrative rule making have the authority to impose fines or criminal penalties on those individuals or groups who violate administrative rules. **Administrative adjudication** refers to the process by which agencies determine whether an individual or group is guilty of violating administrative rules (Harrison, Harris, & Tolchin, 2009). Citizens who believe an agency has not acted correctly in its application of the laws passed by Congress can file suit to force the agency to change its behavior and enforce its rules more or less stringently, depending on the court's ruling. For example, in 2007 several states successfully sued the EPA for its failure to fully implement the Clean Air Act.

The process for drafting new rules for executive agencies is laid out in various federal statutes, including the Administrative Procedure Act of 1946. This act requires nearly all federal agencies to publicize proposed rules in the *Federal Register*. State and local governments have generally adopted this practice as well, with more regional or local newspapers serving the same function as the *Federal Register*. This is the first official step to creating a new rule. Although variations among agencies exist, it is most common for the agency's staff to study the issue and issue a draft rule. Interested citizens, corporations, and civic groups have a specified period of time in which to respond with their comments, objections, or preferred alternatives. The agency is required to consider these comments and then issue a final rule that reflects the public interest. In general, there tends to be little change in the rule between the first issuance of the draft and the final rule. The most important time to influence the content of a rule is before the first draft is issued. Once a rule is finalized, the stakeholders who are negatively affected by the rule may seek to halt its implementation through the courts. For example, when the EPA considers regulating greenhouse gases or requiring increased fuel efficiency in cars, agency leaders know that powerful industries and civic groups on all sides of the issue are ready to challenge their action in the courts to argue they are overreaching the authority granted by Congress or they are not doing enough to protect the environment and public health. Proposed rule changes that affect the strongest interests may spend literally a decade or more in the courts, costing the parties tens or even hundreds of millions of dollars to fight. In the meantime, the public interest waits.

This expensive, slow, adversarial process of regulation is complicated by a couple of other important challenges that often work against the public interest. First, there is a revolving door between government agencies and many of the industries they regulate. The **revolving door** refers to the fact that government bureaucrats often leave their government careers behind and go to work for the agencies they used to regulate. Similarly, members of Congress often become lobbyists when they leave elected office. The powerful ties among industry, Congress, and government regulatory agencies mean that a relatively small, tight-knit group of powerful decision makers are usually involved in rule making within each agency's issue area. This reduces the number and variety of voices heard when important decisions are being made and increases the public's distrust of many decision-making processes. The revolving door can also lead to a concept called **agency capture**, which occurs when governmental regulatory agencies

begin to advocate for the industries or interests they are supposed to regulate rather than objectively ensuring they adhere to all applicable laws and rules.

HISTORY OF ANTAGONISTIC RELATIONSHIPS BETWEEN REGULATORY AND REGULATED COMMUNITIES

The history of relationships between regulatory agencies and regulated communities swings wildly from periods of agency capture in which working relationships are too close and clear conflicts of interest are not publicly acknowledged to the other end of the spectrum in which there is an absence of trust and antagonistic relationships between both groups. Most commonly, members of industry view regulators warily, worried they are there to impede progress and profits by heavy-handed enforcement. Regulators are often viewed as traffic cops waiting to give fines for everyday behaviors. Civic groups representing workers, the environment, immigrants' rights, and other issues view agencies as unsympathetic and largely captured by the powerful interests they regulate. Among regulators and the regulated, there is often a cultural norm that assumes a distributive bargaining, zero-sum situation in which gains for one side can only come at the expense of the other. This mind-set is outdated and fails to adequately serve the interests of either side. Don't corporations and the EPA have a shared interest in avoiding unnecessary pollution and cleaning up any accidental spills quickly? Is it in the interest of OSHA to make US industries noncompetitive? To a large extent, regulators and those they regulate have many legitimately shared interests on which they can focus as a starting point for collaboration.

The beginning of public policy collaboration can be traced to various sources, with an interesting example coming from the Quincy Library Group. For fifteen years local environmentalists and loggers engaged in heated, often violent actions designed to thwart each other, which came to be known as the *timber wars*. When tree spiking, blockades, and other tactics led to a mutually hurting stalemate, a group of diverse stakeholders began meeting at the library in Quincy, California. The library proved to be a good place for these meetings because the parties could not raise their voices without facing ejection. In the early 1990s this group created a joint plan for logging the Lassen, Plumas, and parts of the Tahoe National Forests. Unfortunately, government officials had not been involved in the negotiations and decided not to abide by the group's agreement. In a show of unity, none of the timber companies put in bids to log the forests

until the Department of Interior agreed to implement the plan created by the Quincy Library Group (Varettoni, 2005). Although the negotiations among the environmentalists, logging companies, and local and federal government agencies are an ongoing effort, with the expected ups and downs, this group is seen as one of the most notable early efforts to reach collaborative decisions that address the interests of all major stakeholders.

On a nationwide level, the EPA instituted mediation for Superfund disputes in the late 1980s. Superfund refers to cases occurring under the Comprehensive Environmental Response, Compensation, and Liability Act. Under this act, toxic and hazardous waste sites are cleaned up by the EPA and then those who contributed waste to that site are sent the bill. The EPA will usually send the bill to the company with the deepest pockets even if there are many other companies that also contributed waste to the site. Under the legal concept of joint and severable liability, the EPA can send the entire bill to any polluter as long as it can show that the polluter contributed some of the waste to the site. This led to waterfall litigation in which the company receiving the bill from EPA would, in turn, file suit against any and all additional companies potentially responsible for contributing waste to the site. In many cases, the litigation costs were equal to, double, or even triple the costs of the actual cleanup. This costly process led to the creation of a mediation program designed to negotiate settlement terms among as many of the potentially responsible parties as possible. By 1995, mediation was the most common process for dealing with these scientifically and economically complex cases (Raines & O'Leary, 2000). Successes in these tough cases led to the expansion of mediation, case evaluation, and other forms of ADR within the EPA and other federal agencies.

President Clinton passed the Administrative Dispute Resolution Act of 1996, which required each federal agency to create some sort of ADR program and track progress in the encouragement of ADR over litigation. This act allowed agencies to hire external neutrals such as mediators, arbitrators, and facilitators as well as training employees to conduct these services internally or in a shared neutrals program between agencies. Most agencies chose to implement workplace mediation programs and hire ombudsmen to deal with internal workplace disputes. The EPA created a variety of ADR programs to address disputes against potentially responsible parties (also known as *polluters*) who have been accused of violating agency regulations. A few other agencies also began experimenting with the use of ADR processes internally with employees, externally with regulated

communities, or both. Once agency personnel and managers became familiar with the concepts and practices of ADR, the use of these processes slowly spread.

The state of ADR in US federal agencies continues to evolve. On November 28, 2005, Joshua Bolten, director of the Office of Management and Budget, and James Connaughton, chairman of the president's Council on Environmental Quality, issued a policy memorandum on environmental conflict resolution. "This joint policy statement directs agencies to increase the effective use of ECR and their institutional capacity for collaborative problem solving. It includes a definition of ECR and sets forth 'basic principles for agency engagement in environmental conflict resolution and collaborative problem solving'" (USIECR, nd-a). It also includes a compilation of mechanisms and strategies that may be used to achieve the stated policy objectives.

ENVIRONMENTAL AND PUBLIC POLICY CONFLICT RESOLUTION

Environmental conflict resolution (ECR) refers to people with differing views and interests working together in a systematic and organized way to find workable solutions to shared problems about environmental issues, usually with the assistance of a neutral third party. These same procedures and processes can be used for environmental and nonenvironmental cases of decision making but environmental agencies have led the way in designing, evaluating, and promoting the use of these processes so the most common term used to describe them has become ***environment and public policy conflict resolution (E/PP)***. A government agency has been created to promote the use of these processes, called the US Institute for Environmental Conflict Resolution (USIECR), in Tucson, Arizona. Their website includes a host of examples for which ECR processes have been used:

- Managing public lands for people to use and enjoy in different ways, such as planning how a national forest can serve future needs for watershed protection, timber harvesting, and recreation
- Natural resources disputes, for instance, fairly allocating rights to use water, timber, or mineral resources
- Conflicts over facilities siting, such as where to locate highways, dams, power lines, or wind farms
- Protected area disagreements, for example, managing recreational uses while still protecting a sensitive natural area in a park

- Endangered species issues, for instance, how to implement protective actions that are required to prevent the extinction of a species
- Federal and tribal government relations, such as how to respect tribal sovereignty and protect sacred sites when planning or implementing projects
- Disputes related to pollution, for instance, how to best implement air, water, or soil contamination cleanup activities.

In addition to these examples from the environmental arena, similar processes have been used to draft new statewide policies: for dealing with mentally ill people who come into contact with the criminal justice system, to make decisions about the allocation of tax dollars on educational infrastructure spending, for the design and construction of megaprojects such as bridges and airports, to design a new rule related to interstate highway access management (such as where to place on- and off-ramps), and to make decisions about which schools to close because of a shrinking youth population. When decisions must be made on scientifically and economically complicated matters, having more experts at the table can increase the quality of the outcome—especially when viewpoints from the public, private, and nonprofit sectors are all represented. Decisions made through consensus and collaboration are also likely to encounter fewer snags on implementation (Raines, 2002). When problems occur during the implementation stage, which they nearly always do, the relationships built between the parties makes it easier for them to work together to solve problems rather than focusing on accusations and blame (Anderson & Polkinghorn, 2008). In fact, research has shown that parties have increased their negotiation and collaboration skills as a result of participation in these collaborative processes as well as building trust among private stakeholders, government regulators, and civic groups (Raines & Kubala, 2011).

E/PP processes are a good choice when no single stakeholder group can resolve the problem on its own, when the outcome is genuinely in doubt, when all major parties are willing and able to participate, and when the issue is considered important to all major stakeholders (www.ecr.gov). ECR processes are not likely to work when one or more parties believe they have a quicker, more surefire method for accomplishing their goals, such as a public relations campaign in the media or a court case. It also is unlikely to work if one or more of the major stakeholders will not acknowledge the existence of the problem or participate in the process. It is crucial for all major stakeholders to be represented at the negotiating table because the absence of any major group means that one or

more types of interest will not be heard or considered during the discussions. For example, what if new regulations were made to address pollution and safety concerns on offshore oil rigs but only the oil companies and the EPA were present? In the absence of input from environmental groups or worker safety organizations, it might appear as if an inappropriate amount of influence had been exerted by the oil company interests. Such a decision would be more likely to be challenged in court and might not adequately reflect the needs of all the groups affected by the regulations. Getting all stakeholder groups to the table is crucial to the perception of legitimacy and the efficacy of the outcome.

Politicians are some of the most enthusiastic supporters of collaborative processes for complicated public decisions for this reason: when groups are aligned on all sides of an issue, then politicians risk alienating a significant proportion of their constituency no matter what decision they make. By delegating decision-making authority to a group of representative stakeholders, including government agencies, politicians can claim that the outcome was reached democratically, transparently, and that everyone had an equal chance to influence that outcome. In fact, decisions reached through collaborative processes nearly always produce more support from the participating stakeholders than decisions reached unilaterally by regulatory agencies, thereby being a politically safer route in many cases.

Other stakeholders, including government agencies and civic groups, typically voice more satisfaction with decisions made through collaboration as well (Raines & Kubala, 2011). Studies of more than forty-eight environmental conflict resolution efforts in the western United States found that 87 percent would recommend a collaborative process to others and only 7 percent would not, 77 percent indicated the collaborative process resulted in more effective and durable outcomes compared with a traditional decision-making process, 96 percent of participants understood the terms of the agreement reached, 100 percent felt the agreements addressed parties' interests more than the traditional process, 100 percent felt all legal requirements were addressed in the agreement, and 100 percent felt that the agreement took advantage of all available information relevant to the issues under discussion (Raines & Kubala, 2011). In a study of water collaboration efforts in metro Atlanta and north Georgia, 100 percent of participants agreed that their knowledge of the water resource was increased through the collaborative process. About 71 percent of the participants agreed that relationships between regulators and regulated organizations had improved

as a result of collaboration. Beierle and Cayford (2002) examined 239 cases of environmental decision making, taking into account the five goals typically exhibited by these processes: (1) addressing public values, (2) improving decision quality, (3) incorporating conflict resolution tools, (4) building trust between institutions and groups, and (5) addressing public education on the issues under negotiation. The authors found that these five goals were better addressed through collaborative processes but that more progress could be achieved by spreading the outreach and trust building beyond the core group of participants. Getting all stakeholder groups involved is key. Even more so, it is critical to help stakeholder groups inform and educate their individual members across the community. Only then will these processes fully achieve their potential to transform public consciousness on policy matters as well as increasingly empower members of a democratic society.

Yet these processes are not universally popular. They are time consuming and occasionally frustrating. Sipe and Stiftel (1995) found that the median cost savings for mediation compared to court action for the respondents (the parties accused of polluting) was approximately $150,000 per case. Multiple studies show that collaboration may take more time up front than traditional decision-making processes. Collaborative processes require parties to listen to the ideas and opinions of those with whom they disagree, and to seek out common ground. In the study by Raines and Kubala (2011), only 12 percent of the water managers studied felt that they were not fully heard during the process. Although further study is required, initial findings indicate that those with more extreme views on either side of the issue are given less attention in collaborative processes out of a desire to find common ground and the evolution of shared norms and values that tend to emerge over time. In some ways, this is an understudied and underacknowledged benefit of these processes; they force parties to become more moderate and those who refuse to "play nice" cannot grandstand the way they can during traditional public meetings. According to the USIECR, "Sometimes there is resistance simply because of a lack of familiarity with ECR and how it works. The time and costs associated with ECR can also cause resistance. Other factors include fear of losing control over a process. For example, when one party has responsibility for a situation or issue, the party may not be willing to allow others to influence its decision making" (www.ecr.gov/Basics/FAQs.aspx). Sponsoring an ECR or other public policy collaborative process takes time and resources for the sponsoring agency. Even if these resources may be less than the

regular process, they tend to be more up front and require one person to take a lead role to manage the agency's participation. When no one comes forward to take the lead on these initiatives, they often founder.

There are some important ways in which environmental and public policy conflict resolution differ from employment disputes or customer conflicts discussed already in this book. First and foremost, these processes involve more people than a typical workplace mediation or resolution process. Depending on the issue, there can be anywhere from five to literally hundreds of stakeholders who seek to participate in meetings and negotiations. Second, because of the numbers of stakeholders affected by the issue, most stakeholder groups appoint one or more representatives to attend meetings and funnel back the issues raised and generate or review proposals. In other words, the negotiators are representatives of much larger constituencies. This means negotiations are occurring on at least two levels: within each stakeholder group the individual parties must seek to reach consensus as to the positions and interests of the group itself and then the representative of that group will negotiate with the other representatives within the E/PP process itself. It is not uncommon for stakeholder groups to bicker internally or even fracture into multiple groups when they cannot reach an internal consensus. Stakeholder representatives must work hard throughout the process to keep their constituencies informed of the ongoing negotiations. They must clarify the limits of their settlement authority so as not to commit their group to a position that the membership will not support. Facilitators, mediators, or other neutral third parties may need to visit with these stakeholder groups to assist them with their intragroup negotiations before convening the broader group of stakeholders for negotiations. Because some of the participants will be volunteers, it may be a struggle to find the resources necessary to secure their full participation. The EPA has recognized this as a challenge and developed some funds to assist civic and tribal groups to participate in collaborative processes.

Third, these negotiations can literally last years. For some of these initiatives, the goal is to negotiate an agreement and then disband. For others, the mission involves permanent ongoing negotiations and decision making surrounding a shared resource, such as shared waters from a common river. A representative for a governmental agency may retire only to go to work for one of the agencies that she previously regulated or join a civic group working on the same issue. Because relationships between stakeholders may span years or entire careers, it is helpful to build in time for relationship building, recognition of individual and

shared milestones, and other traditions that help to bond the group together and build camaraderie.

Fourth, unlike most types of disputes, public decisions typically involve highly complex and technical matters, yet the stakeholders vary widely in their educational backgrounds and levels of knowledge. In a meeting on climate change you might see a citizen with a high-school education sitting next to a PhD in meteorology, who sits next to someone from the Department of Defense. Each organization has its own jargon and subject-matter-specific knowledge. It is the role of the neutral to help create a shared level of knowledge in the room and ask all participants to define terms, avoid jargon, and share information.

Fifth, the diversity in stakeholder roles means that some representatives are accountable to voters directly through election (the politicians) or indirectly as employees of a government agency who can be dismissed for overstepping their authority or inadequately safeguarding the public interest. However, some stakeholders represent small civic groups or their own interests as farmers, business owners, parents, residents, and so on. Corporations send lawyers, managers, scientists, or professional negotiators to the collaborative process to further their organization's interests. Many of the advocates are experts on the issue at hand, having advanced degrees in science, policy making, or other related specialized knowledge. However, you will encounter regular citizens with no specialized expertise who participate as representatives of a neighborhood or nonprofit group. The use of jargon, acronyms, and incorrect assumptions about shared knowledge makes these meeting unwieldy. Discussions on technical matters may engage only 20 percent of the attendees and others are baffled and unable to follow the discussions. Sometimes this happens even to the facilitator! Therefore, it becomes important to consider the utility of beginning this kind of collaborative process with some sharing of basic information that will be foundational to the productivity of subsequent discussions. Some of this presentation will focus on the technical terms and issues under debate, and basic skills or concepts related to collaborative decision making may also be covered. The facilitator or lead government agencies may decide to create a list of definitions and acronyms that parties can refer to throughout the process as well as an organizational chart or other tool that clarifies the roles for each public organization represented at the table. Unequal levels of accountability raise thorny issues about the democratic nature of these processes. Some believe them to be more democratic due to the fact that citizens can participate and directly represent

their interests and others find the lack of accountability counter to the goals of representative democracy. For these reasons, environmental and public policy decision-making processes are significantly different and likely more complex than the conflicts experienced by managers within their own organizations or between their organizations and customers or vendors.

PROCESS MENU OPTIONS

Since the 1980s a plethora of processes have sprung up to meet the demand for greater stakeholder participation in public policy decision making. Ideally, the process chosen should be tailored to the needs of the parties and the issue under discussion. Indeed, some governmental agencies have become adept at matching the process to the dispute. In others, one or two processes have become the default methods for managing collaboration out of a belief that these processes are well-suited to the types of decisions made by a particular agency and the desire to avoid the transaction costs inherent in designing new processes with each dispute. Reinventing the wheel is not something agencies have time for, so they rely on practices and procedures previously used by their agency or similar agencies. It is helpful to provide the general outline of some of the most commonly used processes for environmental and public policy decision making. When these processes are applied to individual cases, they are likely to vary a bit in the details of their application. In some E/PP cases, the process of collaboration is broken down into phases, with the first phase consisting of an assessment of the conflict to determine which process, if any, is best suited to the dispute as well as to better understand who the parties are, learn more about their interests, and gauge their willingness to take part in a collaborative process.

Conflict assessment helps to identify the issues in controversy in a given situation, the affected interests, and the appropriate form(s) of conflict resolution. The assessment process typically involves conferring with potentially interested persons regarding a situation involving conflict in order to assess the causes of the conflict, identify the entities and individuals who would be substantively affected by the conflict's outcome, assess those persons' interests and identify a preliminary set of issues that they believe are relevant, evaluate the feasibility of using a consensus-building or other collaborative process to address these issues, educate interested parties on consensus and collaborative processes to help them think through whether they would wish to participate, and design the structure

and membership of a negotiating committee or other collaborative process (if any) to address the conflict (USIECR, nd-b).

Case evaluation and neutral evaluation is a process in which a neutral expert is hired to evaluate the strengths and weaknesses of each side's case and predict for the parties what would happen in court. If the parties are unable to reach agreement during the evaluation session, the neutral evaluator may offer an impartial nonbinding opinion as to the settlement value of the case. If both parties agree, the evaluator's opinion may become binding.

Collaborative monitoring seeks to engage interested and affected stakeholders, public agencies, and scientific and technical experts in a more direct fashion to jointly gather data and information in an ongoing manner. This helps avoid the tendency for each group to gather information on its own that supports its own preferred outcomes. Participants in collaborative monitoring may play a variety of roles: determining target outcomes, defining criteria and indicators to monitor those outcomes, determining the appropriate system for monitoring, participating in the data gathering and analysis, and interpreting the data over time. Collaborative monitoring is being implemented in a variety of program contexts and it has been conducted within many different structural settings.

Consensus building describes a number of collaborative decision-making techniques in which a facilitator or mediator is used to assist diverse or competing interest groups to reach agreement on policy matters, environmental conflicts, or other issues of controversy affecting a large number of people. Consensus building processes are typically used to foster dialogue, clarify areas of agreement and disagreement, improve the information on which a decision may be based, and resolve controversial issues in ways that all interests find acceptable. Consensus building typically involves structured (yet relatively informal), face-to-face interaction among representatives of stakeholder groups with a goal of gaining early participation from affected interests with differing viewpoints, producing sound policies with a wide range of support, and reducing the likelihood of subsequent disagreements or legal challenges.

Dispute systems design (DSD) is a process for assisting an organization to develop a structure for handling a series of similar recurring or anticipated disputes (such as environmental enforcement cases or EEOC complaints within a federal agency) more effectively. A dispute systems designer typically proceeds by interviewing representatives of interested or affected groups (including people in the agency) about their perceptions and interests; analyzing the

organization's existing system for handling these conflicts; designing and implementing conflict management or dispute resolution procedures that encourage early, informal resolution of conflicts; and perhaps evaluating the impact of these new dispute resolution procedures to ensure their effectiveness.

In public policy decision-making processes, facilitation is a collaborative process in which a neutral seeks to assist a group of individuals or other parties to constructively discuss a number of complex, potentially controversial issues. The facilitator typically works with participants before and during these discussions to ensure that appropriate persons are at the table, help the parties set ground rules and agendas, enforce both, assist parties to communicate effectively, and help the participants keep on track in working toward their goals. Although facilitation bears many similarities to mediation, the neutral in a facilitation process (the facilitator) usually plays a less active role than a mediator and, unlike a mediator, often does not see resolution as a goal of his or her work. Facilitation may be used in any number of situations where parties of diverse interests or experiences participate in discussions ranging from scientific seminars, board meetings, and management meetings to public forums.

Joint fact finding is a process by which interested parties commit to building a mutual understanding of disputed scientific or technical information. Interested parties can select their own experts who presumably reflect differing interpretations of available information. Alternatively, they can also jointly decide on an unassociated third-party expert or a panel of experts. This process is similar to case evaluation yet different in that the fact finder does not make recommendations as to how the facts should be used as a settlement tool by the parties. A facilitator or mediator works to clarify and define areas of agreement, disagreement, and uncertainty. The facilitator or mediator can coach the experts to translate technical information into a form that is understandable to all interested parties. The goal is to avoid adversarial or partisan science in which competing experts magnify small differences rather than focusing on points of agreement and creating a strategy to provide for a joint conclusion.

Mediation has been defined and discussed at length previously. When applied to environmental and public policy processes, mediation refers to facilitated negotiation in which a skilled, impartial third party seeks to enhance negotiations between parties in a conflict or their representatives by improving communication, identifying interests, and exploring possibilities for a mutually agreeable

resolution. The disputants remain responsible for negotiating a settlement and the mediator lacks power to impose any solution; the mediator's role is to assist the process in ways acceptable to the parties.

Negotiated rule making (also called *regulatory negotiation* or *reg-neg*) is a multiparty consensus process in which a balanced negotiating committee seeks to reach agreement on the substance of a proposed agency rule, policy, or standard. The negotiating committee is composed of representatives of those groups that will be affected by or have an interest in the rule, including the rule-making agency itself. Affected interests that are represented in the negotiations are expected to abide by any resulting agreement and implement its terms. This agreement-seeking process usually occurs only after a thorough conflict assessment has been conducted and is generally undertaken with the assistance of a skilled, neutral mediator or facilitator.

Policy dialogues are processes that bring together representatives of groups with divergent views or interests to tap the collective views of participants in the process. The goals include opening up discussion, improving communication and mutual understanding, exploring the issues of controversy to see if participants' different viewpoints can be distilled into general recommendations, and trying to reach agreement on a proposed policy standard or guidelines to be recommended by government. They are often used to address complex environmental conflicts or public policy disputes constructively. Unlike processes that explicitly seek to obtain consensus (such as negotiated rule making or mediation), policy dialogues usually do not seek to achieve a full, specific agreement that would bind all participating interests. Rather, participants in a policy dialogue may seek to assess the potential for developing a full consensus resolution at some later time or may put forward general, nonbinding recommendations or broad policy preferences for an agency (or other governmental entity) to consider in its subsequent decision making. Policy dialogues can take the form of town hall meetings or many other forms and can include relatively small groups of five to ten key stakeholders or can grow to include hundreds of participants.

Advances in technology have led to new efforts to reinvigorate public debate on complex policy issues through the use of deliberative democracy and related processes. Public deliberation is central to legitimate lawmaking in democracies. Deliberative democracy refers to a process of public decision making that uses consensus decision making as well as elements of majority rule, particularly

when a full consensus cannot be achieved. Although deliberative democracy processes vary, they generally include groups of citizens coming together to learn more about a particular public policy issue or problem and to discuss or create options for addressing the problem at hand. Through the use of instant voting via iPads, laptops, and handheld devices, small discussion groups can share their ideas or votes with larger groups as they work toward consensus. AmericaSpeaks (www.americaspeaks.org) has used these techniques to hold deliberative democracy gatherings on topics ranging from what to do with Ground Zero to municipal budgetary decisions, health care reform, disaster recovery planning, and climate change.

PUBLIC-PRIVATE PARTNERING: BEST PRACTICES

Multimillion or billion dollar construction projects have historically been a cash cow for litigators. When one subcontractor makes a mistake or runs behind, it causes challenges for all the other subcontractors whose own work was dependent on the successful completion of the phase coming before their own. In 1987, the Construction Industry Institute at Texas A&M University created a task force focused on finding new ways to prevent and effectively manage construction disputes in the hope of breaking the increasing cycle of litigation and counterlitigation that was plaguing the industry and driving up the costs of construction. The process created by the task force came to be known as *partnering*, which is defined as a long-term commitment between two or more organizations for the purpose of achieving specific business objectives by maximizing the effectiveness of each participant's resources (Anderson & Polkinghorn, 2008). Partnering relationships must be based on trust, a focus on common goals, and an understanding of each party's expectations and values. The task force subsequently issued guidelines for the implementation of partnering in construction projects, which included provisions for the management of disputes. Successful partnering requires frequent communication, relationship building between individuals and organizations, a focus on problem solving rather than blame casting, and proactive collaborative processes that involve stakeholders at every step of the process, from planning to construction and evaluation. The following box lists the key leadership insights that help to ensure successful partnering projects. Nearly all of these insights apply to collaboration between large stakeholder groups outside as well as inside the construction industry.

Key Leadership Insights for Partnering

1. Establish and maintain public trust.
2. Prevent counterproductive behaviors.
3. Keep senior management informed.
4. Make decisions to increase bid competition.
5. Make friends with key stakeholders.
6. The manager is not the smartest about everything.
7. Recognize showstoppers early and take action.
8. Step outside the box.
9. There will be technical problems.
10. We all succeed together.

Source: Anderson and Polkinghorn (2008, p. 176).

These insights warrant further elaboration. Although insight one may appear obvious, it is a relatively common industry practice to lowball bids on public contracts. Once the contract is awarded, contractors may come up with a host of reasons for asking for increases in the original bid price (such as bad weather, price increases for needed commodities, and so on). They typically also provide reasons for failures to meet targeted completion dates. Therefore, to build and keep trust, partners need to create reasonable expectations and be completely honest in the original contracted promises so as to avoid later losses of trust. Transparency is key to building and maintaining trust. The lowest bid should not always be awarded the contract. Firm reputation and realism within the bid must be taken into consideration. With the public, those who will be affected by a decision need to have their concerns heard early and often. When possible, accommodations should be made to make the construction process less inconvenient to neighbors.

Insight two refers to problematic behaviors sometimes exhibited by individuals that make the team's success harder to achieve: insisting on having the last word, inability to admit mistakes and seek help, desires to settle scores or seek retaliation when another stakeholder makes a mistake, and taking things personally rather than remembering that this is business. This would be close to the principle

espoused in *Getting to Yes* (Fisher & Ury, 1981), which advises parties to attack the problem, not the person. The third lesson requires that all parties be clear as to which decisions can be made at the lowest level and which require input and authority from higher up the chain of command. When peers in collaboration cannot reach agreement on a decision, then in a short period of time the decision gets elevated to the next highest level of decision making. They agree to abide by any decision made higher up the chain, with no hard feelings. When decisions are made higher up the chain, it is crucial that those decisions be communicated and explained to those lower on the chain, thereby closing the loop. Anderson and Polkinghorn's (2008) work shows that a common failure in partnering lies in the communication up and down the chain of command, with distrust resulting.

Insight four applies to nearly all government agencies and corporations that put projects out to bid. By breaking huge projects into manageable pieces, bid competition is increased as well as the ability to choose contractors with specialized abilities. When enormous, multipart projects are put out as one bid, the contracting agency loses control over who does the work because much of the work will be accomplished through the subcontracting process. By purposefully creating interdependence among successful bidders, the sponsor is able to build in collaboration, enhance creativity, and produce better outcomes. It also means more eyes on the work being done at each phase of the project in order to catch mistakes early on, when it is still possible to address them at a reduced cost.

Insight five is not as intuitive as it seems. Rather than cultivate superficial relationships through the use of cocktail parties and meet and greets, the goal is to build strong relationships between key stakeholders before any problems or crises emerge. The rapport built between parties provides a deep well of support when problems invariably arise so that parties can focus on joint problem solving rather than blame casting and seeking cover for themselves. During multiyear collaborations, as is common in the public policy arena, it is important to recognize milestones in the project and in individual careers. Celebrating retirements, project anniversaries, and other ceremonial occasions allows parties to know each other as people rather than only as functionaries; such celebrations and milestones should not be underacknowledged. When technical problems arise, as they surely will at some stage (insight nine), it is easier to normalize them and proactively work together once trust and rapport between parties has been built.

Insight six addresses a key assumption underlying this entire book: managers who seek out employees' knowledge, expertise, and ideas will be more effective,

more respected, and responsive. In addition to reaping the knowledge of one's employee base, it is important to include the abilities of outside experts as needed: technical experts to give occasional advice, public relations specialists to help publicize success and gather public opinion, and coaches or mediators to help solve problems that arise. Asking for input and assistance when needed models the behaviors we seek in our employees as well and should be acknowledged. Otherwise, employees may act in the absence of correct information and make costly mistakes.

Insight seven has important implications for all large-group conflict resolution processes. "One essential characteristic of megaproject leadership is the combination of vigilance for trouble and propensity for action. Paying attention to potential problems by encouraging everyone to focus on 'surprises as opportunities to learn' is a hallmark of early warning systems that has been honed to a fine art through this project" (Anderson & Polkinghorn, 2008, p. 185). When problems arise, rather than taking defensive action to build a case against the others, the goal in partnering is to engage in creative problem solving in order to minimize the cost and disruption caused by the inevitable problems and rely on strong relationships and trust to avoid counterproductive behaviors. This is closely related to insight eight (step outside of the box). When problems arise or are anticipated, decision makers need to engage in joint brainstorming to consider all possible venues for proactive conflict resolution and problem solving. This may include going to influential community members in advance to discuss potential disruptions or hear their concerns. It may include experimenting with new methods or materials as makes sense to all involved. Many large organizations, whether public or private, get hamstrung by the idea that we have never done that before. This should never be a reason to avoid trying something new that seems to make sense. Do not be afraid to blaze new trails within your organization. The red tape involved in doing something new may seem daunting but if your organization is unable to consider new ways of doing things, it will stagnate as its competitors continue to evolve and adapt to rapid change.

The final insight involves sharing recognition for successes throughout the partnering organizations during the project rather than only at the end. It also requires an acknowledgment that one stakeholder's loss or gain affects all the other stakeholders involved in the partnering project. What if one of the contractors suffers a loss? For example, suppose the company's leader encounters health problems and is out of work for six months. Rather than allow the whole project

to fall behind, with cascading effects for everyone, the other parties should jointly strive to share the workload until he returns. Or, suppose the price of steel drops, leading to significantly increased profits for one of the partners. That partner may choose to share some of that unexpected gain with others whose commodity prices increased, thereby threatening their ability to continue in the project. Through collaborating in innovative ways, partners are able to take the long view and act in ways that will keep their organization's reputation and future prospects strong.

Finally, partnering and collaboration have been shown to improve significantly the communication and conflict resolution skills of the managers involved, thereby empowering them to succeed on other future endeavors (Anderson & Polkinghorn, 2008; Raines & Kubala, 2011). "Without much fanfare, conflict intervention practice has moved into highly specialized public and private arenas as industry insiders incorporate basic conflict resolution skills into their occupational skill sets" (Anderson & Polkinghorn, 2008, p. 167). The increased use of conflict management skills and processes by managers within public and private organizations is a testament to their utility in saving time, money, and angst for those seeking to simply get their jobs done.

COMMON ERRORS IN COLLABORATION: A CAUTIONARY TALE

When done well, the techniques of environmental and public policy conflict resolution can result in superior outcomes to complex problems. However, there are some key pitfalls to avoid in order to ensure that ECR techniques result in positive rather than negative outcomes.

Mistake One: Asking for Opinions and Collaboration When Your Organization Does Not Really Want Them

One of the most frequent mistakes made by organizations occurs when they invite stakeholder input on pending decisions and then disregard that input because the answer they got was not what they anticipated. Sometimes organizational leaders want to appear open to participation from the public or affected stakeholders when they really are not. A great example of this comes from the School Board of Cobb County, Georgia. The board adopted a new school calendar called a *balanced calendar*, which included one week off in September and one week off in February, in return for a shorter summer vacation. They did this for a few reasons: parents were taking their kids out of school to take advantage of low-season rates on

cruises, flights, and vacations, thereby increasing absenteeism; long summers are associated with reduced retention of learned material by students; and these breaks would allow school administrators to take their vacations when the students are out of class, making their vacation time less burdensome on the schools.

Although some parents initially found the calendar odd, after the first year of this schedule the majority of parents and school district employees seemed to like it. The board promised they would keep this schedule in place for three years and then reassess whether to make the change permanent or not. Then, an election was held and some new members were elected to the school board. These members had voiced disapproval of the new calendar during their election campaigns and promised voters they would push for a return to the traditional school calendar. Before making any final decision, the board opted to conduct an online survey of parents, teachers, and administrators in the district. Surprisingly, 71 percent voiced their preference for the balanced calendar.

Within one month, the board voted to disregard the online survey results and reinstate the traditional school calendar. This caused public outrage on the part of many parents and school staff. Groups formed for and against the balanced calendar, with many parents and teachers for it and local summertime businesses (such as the local water park and theme parks, employers of teenage summer labor) against it. Each group took their complaints to the newspapers and received local television coverage. None felt the process was fair, transparent, or met their needs. First and foremost, the majority of stakeholders felt their voices were not heard. "Why would they ask us what we think and then totally ignore it?!" Many parents and teachers had already booked fall vacations during the September break that had been promised because the balanced calendar was to be in place for three years but was actually only in place for one year. To make matters worse, members of the board were fighting among each other, with the old members supporting the balanced calendar and the new members adamantly preferring the traditional calendar. There were accusations between the old and new board members that the new members had met in secret to plan their strategy for regaining the traditional calendar, a meeting that perhaps ran afoul of the open meeting requirements for school boards in Georgia (Fowler, 2011). It did not take long before parents were complaining to the regional accreditation agency citing poor communication between the board and parents as well as a failure to follow appropriate procedures. According to the *Atlanta Journal-Constitution*, "Hundreds of parents have sent letters asking the agency [SACS, the Southern

Association of Colleges and Schools] to investigate the board's governance practices. They accused board members of making decisions with a four-person majority rather than a consensus approach" (Sarrio, 2011, para. 10). The same article explains that "SACS will review the complaints before deciding whether to launch an investigation into governance issues. An accreditation loss can impact scholarship money, federal funding, college acceptances, property values and pre-kindergarten funding." The state's attorney general has received complaints regarding alleged violations of Georgia's open meetings laws (sunshine laws), and even some of the board members are unclear as to whether secret meetings had occurred (Fowler, 2011).

The lesson here is that decision-making processes must be transparent and adhere to the principles of procedural justice. If stakeholders are asked for their opinion, the extent to which that opinion will influence the outcome of policy should be clarified in advance. If the public's opinion will be advisory only, then those in power need to clarify their intent to retain decision-making power. In the case of the Cobb County School Board, it *appears* that public input and collaboration was sought, with the assumption that it would bolster the board's preexisting preferred outcome. When it did not, the board disregarded that opinion at great cost to its own legitimacy. It is acceptable that an elected or appointed board retain full decision-making power without seeking input from stakeholders but the intent to do so should be clear.

Mistake Two: Not Allowing Enough Time, Space, and Money to Support Collaboration

When collaborative public decision making fails, it is often because the sponsors did not adequately prepare participants for the length of time and depth of participation that would be necessary to make it work. Unilateral administrative decisions are generally quicker than those achieved through collaborative processes. When stakeholders gather to share information and perspectives on a policy issue, it takes time to hear from all the affected interests, to gather the high-quality information needed for a comprehensive solution, and to engage in negotiations with the help of a facilitator or other neutral. The meetings necessary to accomplish these tasks may take weeks, months, or even years, depending on the nature of the decision at hand and whether this is a one-time decision or an ongoing collaborative decision-making process. These efforts usually kick off with much fanfare but can run out of funds to support collaboration, such as to pay

the neutrals, gather and assess data, and write reports (Raines & Kubala, 2011). Collaboration fatigue can occur when parties sense that discussions are endless and decisions are few and far between. To counteract this tendency, collaboration efforts should include clear milestones within the project to recognize and assess progress toward deadlines. An open-ended process without timelines can indeed encourage lots of talk and little progress. Timelines and deliverables should be one of the first issues discussed and agreed on by the stakeholders and sponsors. Sponsors and neutrals need to be on the lookout for meetings with dwindling attendance as a sign that progress is not coming fast enough and efforts toward progress require invigoration. Otherwise, groups drop out in the middle of the process when the hardest work occurs, only to reappear near the end in order to voice disapproval for the consensus reached by those who stuck around for the hard work! Gathering and keeping stakeholders involved in an efficient and effectual process is key, as is cultivating reasonable expectations from the outset. Collaboration takes time, money, and energy from all involved.

Mistake Three: Proceeding in the Absence of Key Stakeholders

Imagine your organization is charged with the siting of a new municipal garbage dump. You know there will be strong opinions as to where the dump should or should not go. Your agency already has a place in mind. You decide to hold a stakeholder discussion forum so as to better understand the concerns of the community members and affected groups. You hold this meeting at 10:00 AM on a Wednesday at city hall and only two people turn out, both of whom work for the contractor that will be doing the work on site. How should you proceed? Issues such as this one typically bring NIMBY (not in my back yard) issues to the fore. Yet those most affected may be least likely to show up at 10:00 AM on a Wednesday. Making decisions in the absence of key stakeholders leads to accusation of bias in the decision-making process. In any collaborative process the stakeholders most likely to participate are those who can do so as part of their regular job duties — city planners, water treatment plant managers, and paid staff of civic or environmental groups. Local citizens, small business owners, and volunteers for civic groups are least likely to attend because they are forgoing income in order to take time off of work to attend. In these cases, meetings may need to occur in the evenings or on weekends. Sponsoring agencies may need to find grant money to help subsidize the participation of key stakeholders. In some cases, collaboration is simply not possible due to the absence of key

groups. Continuing with a process that is clearly not representative of all major interests may be worse than having no collaboration at all. A needs assessment should be done near the beginning of the process so that these issues can be fleshed out before any decisions are made about whether to proceed with collaboration.

CONCLUSION

The good news is that the use of collaborative processes is becoming more common in the public policy arena. Traditional ADR processes such as mediation and facilitation are supplemented by policy dialogues, negotiated rule making, partnering, and many others. These processes typically bring stakeholders, including regular citizens, together to share their ideas, concerns, and knowledge in the hope of reaching sound, implementable, and sustainable decisions. Governmental and nongovernmental organizations are springing up to provide support for these efforts in the hope that our increasingly complex world will be better managed through these collaborations.

ELISE AT MAIN STREET BAKERIES

During the teleconference, Elise learned that the FDA had wanted to gather opinions as to the creation of a new rule on nutritional labeling. The sponsoring administrator at the FDA said his agency needed more information on the financial impact of any new rule on businesses of various sizes and types as well as information on timelines for implementation and the details that would be included in any new rule. The agency's goal was to give consumers better information and create the least burdensome regulations possible for businesses. In the end, the agency issued a draft rule based on the input it received from this stakeholder group but it wanted to see whether or not some consensus was possible between affected stakeholders about what the rule should include or exclude. After learning more about this process, Elise agreed to participate in meetings with other stakeholders that would be held in person for one whole day each month as well as teleconference for four hours each month for six months. Each participant agreed to study the financial impact of various different rule proposals and

funnel that information back to the larger group. Professional facilitators called or met with individual stakeholders throughout the process to gather and prepare information for presentation and discussion at the monthly meetings.

At the end of the six months, the group agreed on language for the new rule as well as a twelve-month implementation timeline so that kitchens, packaging, menu, and other changes could be made by affected businesses. The group presented its recommendations to the FDA and the FDA agreed to issue these recommendations as the draft rule. Although these negotiations took Elise away from other activities, she felt less threatened by the changes and even saw them as a potential marketing advantage for her business. Of course, she was at times frustrated to listen to the views of other stakeholders whose motives were in some ways antithetical to her own, such as selling junk foods and advertising items as ''food for real men'' or '''pie crust with lard, just like grandma made it.'' In the end, customers grew to know more about the food they were consuming and Main Street Bakeries was able to comply with these changes without any significant long-term costs to the company. Elise also made some important networking contacts with other businesses and regulators. She felt more in control and less at the mercy of government dictates. If given the opportunity, she would definitely participate in this kind of process again.

KEY TERMS

Administrative adjudication
Administrative law
Administrative rule making
Agency capture
Collaborative monitoring
Collaborative public management
Conflict assessment
Consensus building
Environmental and public policy conflict resolution (E/PP)
Environmental conflict resolution (ECR)
Joint fact finding
Negotiated rule making
Partnering
Policy dialogues
Public disputes
Revolving door
Sunshine laws

SUGGESTED SUPPLEMENTAL READING

Quinn, C. (2012). Changes to licensing proposed for half-million Georgians. *Atlanta Journal-Constitution*, February 21.

INTERNET RESOURCES

AmericaSpeaks: www.americaspeaks.org

Collaborative Decision Resources: http://www.mediate.org/

Mediate.com: http://www.mediate.com/

Policy Consensus Initiative: http://www.policyconsensus.org/

US Institute for Environmental Conflict Resolution: www.ecr.gov

DISCUSSION QUESTIONS

1. Which governmental agencies regulate your company or organization? What does your organization do to work smoothly with them?
2. If you work for a regulatory agency, what steps are taken to encourage collaborative and mutually beneficial relationships with the organizations you regulate and other stakeholders?

EXERCISES

1. Scan the newspaper or Internet to find a contemporary public dispute. Who are the parties? What are their interests, positions, and BATNAs? Where does the dispute fall on the spiral of unmanaged conflict?
2. Using the story about the Cobb County School Board, explain the ways in which this conflict follows the spiral of unmanaged conflict. Analyze a local conflict in comparison with this spiral as well.
3. Attend a public meeting or other large-group decision-making process (e.g., in a religious organization, corporation, and so on). Map out the process for decision making as it was demonstrated at the meeting. Was there place for public or stakeholder participation? Were decisions made by vote, consensus, or something in between? Were all stakeholders heard or able to share their concerns? Who was the final decision maker?

GOAL SETTING

If you work for a private company or nonprofit, make a list of those regulatory agencies that have the most impact on your organization. If your organization depends on these agencies for funding, licensing, or has other repeated interactions, make a point of getting to know at least one point of contact within that (those) agencies. These connections can be useful when any problems or questions arise and will allow you to be proactive in the management of this relationship.