

CONFLICT AND RESOLUTION IN THE CONSTRUCTION INDUSTRY: AN OVERVIEW

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Conflict is the incompatibility between two or more opinions, principles or interests and manifests through team situations as well as at the organisational and inter-organisational level, often having serious financial implications on projects if not managed adequately. The purpose of this paper is to highlight the drivers of conflict within the construction forum, as well as investigate the tools available for its management. These range from the more passive approaches of conflict avoidance and pre-contract negotiation techniques, through damage limitation models, including arbitration and mediation, to the hard line ultimatum of litigation. It is concluded that collaboration techniques such as partnering, which have become popular in recent times, are seen as having a huge benefit for reducing conflict and dispute within project organisations. These collaborations are especially beneficial in relieving the need for the more hardline measures such as litigation, which often cause resentment within organisations.

Keywords: arbitration, conflict, construction, dispute avoidance, litigation, mediation, negotiation, partnering, resolution

INTRODUCTION

Conflict is a basic human activity. It can be found in all aspects of life, ranging from domestic arguments over which television channel to watch through to full scale military war between two or more opposing nations. The causes of conflict are equally as diverse, as are the means by which resolutions can be achieved and their probability managed.

The Oxford dictionary offers the definition of conflict to be “a serious incompatibility between two or more opinions, principles, or interests”, whereas its definition of dispute is “a disagreement between management and employees that leads to industrial action” (Waite & Hawker, 2009, p. 113) but what are the determining factors that bring about this type of attribute to construction programmes, and how can their negative connotations be minimised?

There are distinct differences between conflict and dispute. Conflicts are pandemic incompatibilities of interest which, if not managed effectively, can lead to disputes. These (disputes) are justiciable situations which need resolution, usually through third party intervention or else they may cause affliction to those concerned (Fenn et al. 1997).

Both conflict and dispute can occur within teams, groups or collections of two or more individuals, though disputes could be perceived as purely tangible, negative aspects, with possible outcomes including compensation or other punishment. Not all research points to a clear difference between conflict and dispute, concerning themselves only with cause and effect of disagreements so for the purpose of this paper, the two will be

regarded as the same, in so far as dispute will be considered an exaggeration of the negative effect of conflict.

The aim of this paper is to highlight the drivers of conflict within the construction forum and investigate the tools which are available for its management. From these finding it should be possible to assess the best methods for reducing conflict in the organisational environment.

What is conflict?

In his book 'Group dynamics for teams', Levi (2007) highlights positive as well as negative aspects of conflict within teams. Capozzoli (1995) supports this theory, viewing conflicts as being constructive or destructive. It can be seen as a normal behavioural aspect of a healthy team. So whilst it is important to understand that some level of conflict within the team environment can be both healthy as well as inevitable (Bowditch & Buono, 2004; Gardiner & Simmons, 1992; Rahim, 2002), the lack of conflict, according to Levi (2007), can be an indication of underlying problems within the team such as dominant individuals, lack of interest or unhealthy agreement, for example dominant members overpowering others and stifling their input, or the lack of development through despondency (Levi, 2007). Schelling (1980) further supports this concept, identifying his 'Theory of games' to include conflict as well as bargaining and strategy, supported by Fenn et al. (1997). He adds that the most important governing aspects include 'causation and treatment of conflict' as well as 'associated behaviour' (conflict being taken for granted).

CONFLICT IN TEAMS

Amason (2010) states that conflict within teams manifests itself in two forms; cognitive and affective. Cognitive would be based on issues, ideas, processes and activities (task/process), and affective being based on personalities, emotions and values (relationship). This view is supported by Lingard et al. (2010) in their research into work-family conflict. Amason (2010) also recognises that the ability to manage both of these is the key to effective decision making.

Reasons for conflict

Whilst Levi (2007) offers the concept of conflict being positive (healthy) or negative (unhealthy), he also highlights that both varieties have similar roots, relationship based or those that materialise through task based activities, with Jehn & Chatman (2000) introducing a third aspect, process based conflict. Similarly, Kassab et al. (2006) cite (Williamson, 1979) as identifying three root causes to be behavioural, contractual and Technical problems. These can be the product of uncertainty or low experience. Individual factors which promote conflict in teams include influence, resources, differing values, opinions and goals (Gardiner & Simmons, 1992; Handy, 1976).

The different stages of relationships within teams have an effect on the type and character of conflict (Levi, 2007). On an organisational level, groups as well as individuals will compete for influence, power and resources. Opposition will be driven by differences of opinion, priority, goals and values (Gardiner & Simmons, 1992; Handy, 1976). Conflict may peak in the early to middle part of a project and then subside once the team has established a routine. This early stage can be seen as 'honeymoon' period and usually takes place when new teams are formed or when new members join existing teams. According to Tuckman's model ("Stages of Team

Development (Tuckman)," 2012), the peak will come during the 'storming' phase and will subside as the team begins 'norming'.

Differing goals from different functional corners of the organization can also have the effect of expanding teams to include the whole organization (Franz & Jin, 1995; Levi, 2007). This behaviour adds weight to the idea that team dynamics concerning conflict may have similar connotations when applied to inter organizational partnerships.

Disputes in the construction industry often arise as a result of the scale of the work, poor coordination amongst participating players, badly prepared contract documents, inadequate planning, financial problems, and conflicting opinions concerning resolution methods and site orientated problems (Yousefi et al. 2010; Klinger, 2009).

CONFLICT WITHIN THE CONSTRUCTION INDUSTRY

Cherns and Bryant (1984) state that conflict arising from design change, delays and other problems occurring during the construction phase can often be traced back to unresolved issues within the client organisation, which have manifested during the period when the decision to build was made, and have become 'exacerbated' through diminished client representation at the early stages of the project.

According to Harmon (2003b), conflict can occur as a result of many factors including:

- scale and complexity of projects
- lack of coordination amongst sub-parties, including contractors and suppliers
- badly prepared contract documents
- inadequate planning and pre-requisites
- financial troubles
- site-related problems and their management

The most common causes for conflict in projects relate to scope changes, restricted access and inclement weather (Semple et al., 1994; Kassab, et al., 2006). Other strong factors include documentation clarity, supply deadlines for materials and equipment, and low profit margins (Jergeas & Hartman, 1994; Kassab, et al., 2006; Kumaraswamy, 1997).

Kassab (2006) identifies that the number of claims in the construction industry are continuing to rise despite the business environment moving towards partnering arrangements in recent years. He adds that new decision making techniques are needed for resolving conflict.

It is possible for a project to incur a breakdown of relations, and therefore conflict, through any one of these factors. This can ultimately lead to arbitration or litigation, increasing costs (Harmon, 2003a).

Fenn et al. (1997) acknowledge that primary stakeholders connected to construction projects should be greatly concerned with disputes and conflict; nevertheless, they admit that the subject is dominated by 'anecdote and hearsay' and is greatly in need of further research. They also indicate that the type of contract adopted can directly relate to the frequency of disputes within the construction industry.

CONFLICT MANAGEMENT

Early styles of management distinguished the three key methods of handling conflict to be domination, compromise and integration (Follett, 1924).

According to Ma (2007), one of the dominant models for management of conflict is the dual-concern model. He explains that the model is based on parties having two main concerns, those of the 'self' and those for 'others'.

The model (Fig.1 below) uses two defining dimensions: assertiveness (concern for self) and co-operation (concern for others). The five resulting categories are given as competing, collaborating, compromising, accommodating and avoiding.

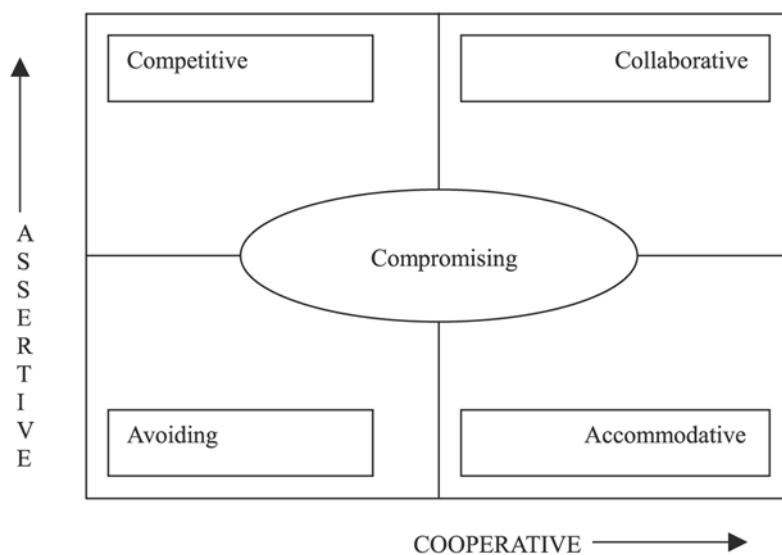


Fig. 1. Dual-concern model (Thomas, 1976, pp. 96)

Thomas (1992) proposes that the common roles of process and structural intervention are key to identifying targets and should be implemented side by side. Conflict management attempts between contractors and owners usually remains that any tough position taken will lead eventually to worst case scenario outcomes, including extra cost and time wasted in a legal confrontation (Kassab et al., 2006). Accommodation, however, can lead to lower individual profits and satisfaction (Ma, 2007).

"Team members are more likely to act co-operatively if they believe that others are likely to co-operate" (Dawes & Hastie, 2009).

Peldschus (2008) also advocates the possible use of game theory applications in the resolution of conflict within the construction project environment. Though they admit that many conflict situations are highly complex and difficult to analyse, successful use of matrix game tools have the potential to greatly increase objectiveness in the project. It is this complexity of the process which contributes to the value of game theory tools in decision-making processes (Peldschus et al., 2010). By locking both parties in win-win directed resolution negotiations, and eliminating the chance of loss by either party, successful mediation can be nurtured. In order to achieve this level of decision making it is essential that the situation has full transparency and all players have all information.

Resolution

“The resolution of differences or potential differences takes up the largest single chunk of managerial time and energy” (Gardiner & Simmons, 1992, pp. 459).

Mary Parker Follett, the American social worker turned management theorist, pioneered theories of domination, compromise and integration in organisational environments. She explains that the notion of “adjustment” has been transformed into a system of ‘integration’ where concerned parties avoid domination and compromise, and where one or both parties lose out, in favour of a mutually beneficial outcome. By integrating loss and gain, she claims, it is possible to reduce loss and increase the gain (Follett, 1924).

“This theory rests on recognition of the fact that opposed interests are not necessarily incompatible interests” (Follett, 1924, p. 43).

Negotiation

Negotiation is the exchange of offers and counteroffers between disputing parties in order to reach a compromise regarding settlement of a dispute (Goltsman et al., 2009, Levi, 2007).

Project leaders in the construction industry are notorious for developing their negotiation skills through observations and experiences in the field (Smith, 1992; Yousefi, et al., 2010).

Copozzoli (1995) views this idea of team conflict resolution as laying in a process of amicable discussion and exploration of the problem through offering alternative solutions, one of which must eventually be agreed upon through consensus, and then implemented. The follow up would be to evaluate the situation for future encounters.

Another dominant negotiation theory is the win-win or win-lose perspective described by Walton and McKersie (1965). Here they argue the case for integrative bargaining by means of small concessions which build up to an amicable settlement where both parties walk away with wins and losses, the win-win outcome. The alternative being that one party must walk away a loser. This route will often end up in stalemate where no settlement can be made.

Negotiation plays a similar role to mediation, though it is only as effective when the stakes are particularly high or low (Goltsman et al., 2009).

Mediation

This method of resolution is similar to the arbitration process where two conflicting parties are advised by a third party upon amicable solutions to dispute. The outcomes are non-binding and neither party are obliged to conform to the decisions of the mediator (Goltsman, et al., 2009; Harmon, 2003b).

Harmon (2003b) describes mediation as distributive justice which is entered into voluntarily, though in some countries may be forced upon by the courts. The appeal of mediation over arbitration may also be heightened by the potentially lower financial cost (Madden, 2001) and the privacy factor which comes with keeping the proceedings out of the courts (Harmon, 2003b).

Arbitration

Arbitration is the means of settling disputes between two or more conflicting parties by means of a third party, and is usually supported by legislation (Goltsman, et al., 2009).

Chan and Suen (2005) regard this method as a formidable tool when both negotiation and mediation have failed. Also, according to Uff (2001), the scope of arbitration should envelope all aspects of privatised dispute resolution. He remarks that one of the drawbacks with arbitration is the un-uniformity on an international scale.

Wetter (1995) commends that arbitration is an essential tool, however the structure of the process should be updated and made uniform, with focus on how the arbitration process should be 'chaired', supporting legislation, delimitation of awards and decisions, and clarification of procedure. Uff (2001) agrees with this 'harmonisation' adding that it should also extend to restricted arbitration, and include approaches to training, qualification and promotion of all forms of dispute resolution.

Arbitration proceedings may be instigated as a result of DRB decisions, through partnering scheme guidelines or as the outcome of failed mediation, see fig.2 below.

Litigation

With the exception of violence, which lies beyond the boundary of legislative decisions, litigation is the last frontier of resolution (Fenn, et al., 1997; Moore, 2003). It is also generally accepted as the least desired means of conflict resolution mostly due to its process being costly in both finance and time (Anderson Jr & Polkinghorn, 2008; Kassab, et al., 2006; Mitropoulos & Howell, 2001). As an option for conflict management and avoidance, it is often the best policy to omit the prospect of litigation as it may have the adverse effect of stifling the situation and discouraging creative thinking as a means of managing problems (Anderson Jr & Polkinghorn, 2008).

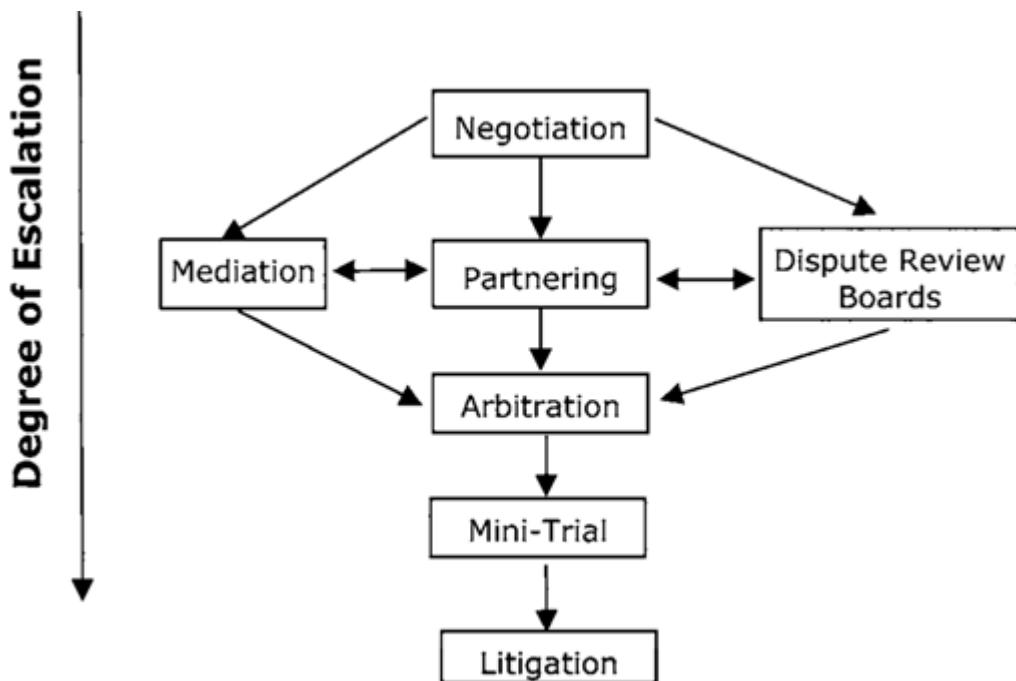


Fig. 2. Typical dispute resolution procedure in construction (Kassab et al., 2006, pp. 1044)

Other Tools

Dispute review boards are set up at the start of the project. They usually comprise of three members selected by the contracting parties (Gerber, 2000; Harmon, 2003a). It is quite normal for one member to be appointed by the contractor, another by the client and the third by these two nominees (Gerber, 2000).

Dispute resolution advisers are individuals appointed by project management to assist in the prevention of dispute. First adopted in the 1990's they mediate potential dispute situations and offer alternative dispute resolutions for conflict situations. They are not allowed to arbitrate, though when agreements are made they bind these outcomes in contract (Gerber, 2000). They may be implemented as a result of the negotiation process or as part of the organisational make up of a partnering scheme, see fig.2.

Issue resolution ladder is a common tool in partnership projects. In essence the procedure allows for a layered system of measures to combat conflict and dispute. It typically starts at the bottom with face to face resolution but can go as high as the boardroom (Anderson Jr & Polkinghorn, 2008). The idea is that as many resolutions can be made quickly and with little effort at the base level. When issues cannot be resolved they are moved up to the next level for a decision.

Dispute Avoidance

Gerber (2000) offers an assumption that the construction industry has come to the conclusion that proactive as opposed to reactive measures are needed in order to reduce waste caused through conflict resolution. Another industry assumption is that the choice of procurement method itself will be the governing factor in reducing project conflict (Brewer, 2007).

Despite this and as a result of efforts to reduce conflict the construction industry is moving towards partnering. This form of team construction can be defined as the formation of a long-term commitment by two or more parties to facilitate specific business objectives by maximising the resources of each participant (Anderson Jr & Polkinghorn, 2008).

Gardiner & Simmons (1995) recommend the implementation of team building techniques from the start, and to include linking design personnel to site based members. This need for collaborative working, teamwork and partnership is echoed by Brewer (2007) as well as Kumaraswamy (1997), who identify the need for collaborative working and partnerships, as opposed to traditional adversarial relationships between project players. Evidence of this is seen in the growing usage of non-traditional procurement methods such as design and construct, and project-management led procurement methods, these being based on minimizing conflict and on facilitating teamwork (Brewer, 2007; Kumaraswamy, 1997).

Kassab, et al. (2006) point out the difficulties in completely avoiding conflict in construction projects. They insist that by implementing techniques to reduce the impact of conflict, not only will contractual problems be reduced but the ability of personnel to resolve future conflicts will be increased. They add that in construction projects, effective and cooperative project owners, contractors, and consultants can minimize the detrimental effects of large complex problems.

The use of good partnering methods for project execution can highlight the need for conflict prevention implementation as well as act as a diversion for the conflict itself.

At the same time the project team and the stakeholders can be managed on a more transparent platform (Anderson Jr & Polkinghorn, 2008).

CONCLUSION

It can be ascertained, through the collective opinions of the large amount of previous research, that conflict is a naturally occurring aspect of team situations, and not necessarily a negative thing. Positive aspects can promote innovation and a greater understanding of the project (Bowditch & Buono, 2004; Gardiner & Simmons, 1992; Rahim, 2002).

Causes of conflict include competition for influence, power and resources and may be derived through several media, for example relationship, task or process based activities.

Within the construction forum, several tools for the resolution of negative conflict and its tangible counterpart, dispute, have been developed. These available options, such as arbitrary bodies, boards and advisory delegates, all have connotations of dispute resolution; however current reasoning has erred towards partnering and the practice of dispute avoidance (Anderson Jr & Polkinghorn, 2008; Kumaraswamy, 1997).

Negotiation is a powerful tool, and one which can greatly reduce the costs of dispute, though complete avoidance through adequate conflict management planning is seen to reduce loss even further. Negotiation can be a starting point for dispute resolution and, depending how it is nurtured, the forerunner for further mechanisms like mediation or arbitration.

Hard measures such as litigation are best avoided or used as a last resort, as they more often instil resentment between concerned parties. In the modern construction environment, partnering techniques are becoming more and more popular allowing for transparency within the organisation and, with a clearer view of the situation, damage prevention measures can be adopted at an early stage. Negotiation is more often an adequate means of conflict resolution, eliminating the need for the more hardline methods (Anderson Jr & Polkinghorn, 2008).

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