

Consensus-Building Case Focuses on Used-Oil Changers

John Fischer

Government agencies at the federal, state, and local level are called upon to make decisions that serve a wide mix of interests—decisions that are in the public interest. Yet, for anyone who has had to make decisions on behalf of a diverse community, it is clear that there is no distinct public interest. Rather, the public interest is composed of subsets of interests that cannot be adequately represented by any one party. Consensus building tries to reach thoughtful and creative trade-offs that will improve outcomes across these sets of individual interests.

Consensus-building processes focus on breaking down disputes into each particular interest and issue, then building a resolution among these distinct interests, rather than on working down from a broad conception of the public welfare. Such resolutions are more attainable than the elusive ideal of the public welfare. And, in effect, by addressing all sets of stakeholder interests and building a reso-

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lution combining all of these interests, one is addressing the greater public interest that is composed of all of these stakeholders' interests.

Some trade-offs lead to better decisions than others, and some processes for making decisions are better than others. Consensus-building approaches are a set of tools that managers can use to improve planning and policy decisions by improving the way they are made. A consensus-based process is a deliberative process that requires time and effort to gather in everyone affected by an issue, to identify his or her interests, and to develop a policy solution that all parties can agree to.

Consensus building is based on the premise that a decision will be more effective if it is made with the input and support of those affected by it. This is true for two reasons. First, people will be more likely to go along with a decision if they have helped to make it than if it is forced upon them. (I have learned this principle from my wife, who applies it in teaching preschool subjects to four-year-old children, and I believe it applies equally well to adults.) Second, decisions made with the input of those affected by them and involved in implementing them tend to be better decisions than if these people were left out. This is true simply because decisionmakers will have more knowledge and experience to draw on in making their decisions.

Keep in mind that the fact that a decision is made by consensus does not change the responsibility and accountability that elected and appointed government officials have in making decisions. It does not involve giving up authority or losing control over outcomes. Instead, it is a way to improve the quality and effectiveness of the decisions made by these officials, both in terms of the ways these decisions are made and the ways they work in practice.

Types and Categories

Consensus building, or alternative dispute resolution, can mean a number of

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different types of processes, including facilitation, mediation, and hybrids of these approaches, with characteristics of multiple processes. A facilitator helps parties to reach an agreement by setting up a sound consensus-building process. A facilitator is mainly concerned with running the process, rather than necessarily with reaching an agreement. Facilitators do not typically become actively involved in developing a solution; rather, they focus on setting and maintaining ground rules and meeting agendas and on deciding other procedural issues.

A mediator also is concerned with developing and maintaining a sound process, though mediators tend to become more involved in the issues of a dispute and may play a more active role in moving parties toward agreement. They may caucus individually with parties, develop options, and negotiate agreements. A mediator typically remains neutral on any one party's interests, although he or she may favor one agreement if it seems to be fairer and likelier to bring consensus.

Case Study: Managing Used-Oil in Massachusetts

The Massachusetts Executive Office of Environmental Affairs (EOEA) managed a consensus-building process aimed at developing a proposal for managing the used oil collected from do-it-yourself oil changers (DIYers). (A 1973 Massachusetts law requires

businesses that sell motor oil to accept used oil back from DIYers who have kept their purchase receipts.)

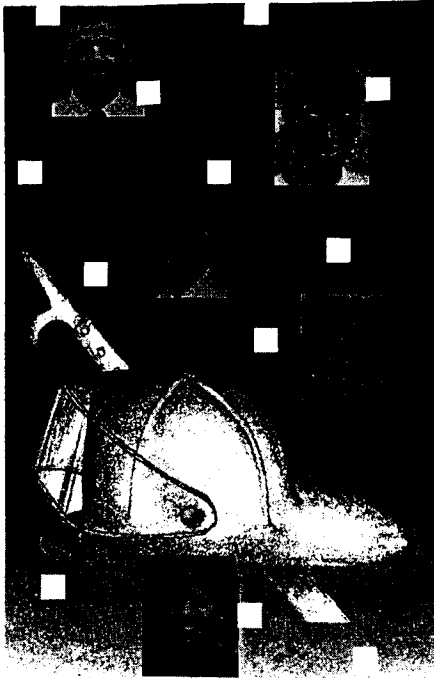
All stakeholders agreed that the current law was ineffective for several reasons. First, no resources were provided to enforce the mandate of the law; nor was any guidance, or even any specific authorization, provided on enforcement. No funding was provided for public education and information programs; no mention was made of public education in the law.

Second, little thought had been given to how the bill's provisions would affect those who changed their own oil or who were required to collect under the law.

The question was not whether to maintain the current law but how it should be changed. Legislation was repeatedly introduced to reform the law throughout the 1980s and 1990s, but little progress had been made. This failure, at least in the past five years, seemed at least partly due to the fact that two competing bills espousing two different program funding approaches (a fee versus a deposit), have repeatedly been introduced, with little attempt being made to bridge the differences between these two bills.¹ Furthermore, none of these bills had comprehensively addressed the used-oil problem. When attempts had been made to implement and improve the existing law, they had been undertaken without high-level support and had thus floundered.

So there we were in 1996 with the same law, the same programmatic shortcomings, and, for the most part, the same underlying problem. Recognizing past difficulties and the importance of improved management of used motor oil from DIYers, EOEA undertook a year-long consensus-building process to attempt to bridge the differences and change the law. In this process, EOEA took on some elements of the roles of mediator and facilitator, although the agency was not a neutral party and did not pretend to be so.

This process resulted in a draft pro-



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posal that all major stakeholder groups agreed on, mixing elements of existing proposals, borrowing ideas from other states, and developing new provisions to address specific issues in Massachusetts. This proposal, however, has not yet been translated into legislation and still is being debated at EOE.

Several lessons can be drawn from both the successes and the failures of this process, including when and how a decisionmaker can help to build consensus if involved in a dispute, and how a consensus-building process can help leaders make improved policy decisions.

Building Agreement From Within

While the assistance of a neutral outside party often helps in reaching agreement and resolving disputes, in certain circumstances consensus-building processes also can be undertaken by a nonneutral party such as a local government manager if the following conditions are met:

- Non-neutral parties must be open about their roles and their interests with regard to the process. If they maintain a pretense of neutrality that is later exposed, the process will break down, as parties will lose trust in both the mediator and the process. If the facilitators and mediators are clear about their interests, however, parties will be likelier to trust them in developing solutions.
- They must be able to motivate parties to participate in and become invested in the process. If the facilitator/mediator is clearly biased against one party, it will be difficult to involve that party, who will have little trust in the process.
- The person must be familiar with and have some skill in conducting consensus-building processes.
- The non-neutral party must be committed to the process. If they easily lose faith in the process, so will the other participants. On the other

hand, if they demonstrate a commitment, other parties will be likelier to do the same.

The main advantages of an external, neutral facilitator or mediator are (1) that they will be more likely to be seen as neutral by parties to a dispute, and (2) that they will be particularly focused on maintaining a fair and well-designed process. It is a mistake, however, to limit a consideration of consensus-building processes only to those managed by a "neutral" party external to a dispute.

Discourse and Learning

Two of the reasons why consensus-building processes often succeed are discourse and learning. By promoting discourse and argument over different policy approaches or programs, local managers can establish an open exchange of ideas and information. In this setting, arguments based on correct information, persuasive evidence, and rational conclusions will prevail over other arguments that are not as well supported and argued, ultimately leading to improved solutions.² Open discourse on issues helps parties to see beyond their stated positions and to understand that there are a number of different ways to meet the interests that lie behind these positions.

For example, in developing the used-oil legislative proposal in Massachusetts, retailers supported a funding mechanism based on a fee because it avoided the administrative complexity of a deposit funding scheme. But as discussions progressed, it became clear that there were other options besides a fee system that could achieve these same goals. A hybrid funding scheme called a "recycling incentive system" was developed that avoided the pitfalls of a deposit (such as administrative complexity) while providing some of the key advantages of a deposit system, such as incentives for proper management of used oil and funding for public education programs.

What happens in the course of such a process is that parties learn and are able to move beyond a narrow, original position to consider other alternatives that can meet the same ends. This learning, built upon a foundation of discourse, is central to the success of consensus building and is key to developing improved programs and policies that better serve the diverse interests within a community.

Lessons for Local Managers

The Massachusetts process was successful in building dialogue and agreement among environmental groups, retailers, the petroleum industry, local governments, and the automotive service industry when these groups had rarely even been in the same room together, let alone on the same side of the table. So this process holds considerable promise. There are, however, several lessons that

can be learned about how to improve the process, lessons that may prove helpful for local government managers.

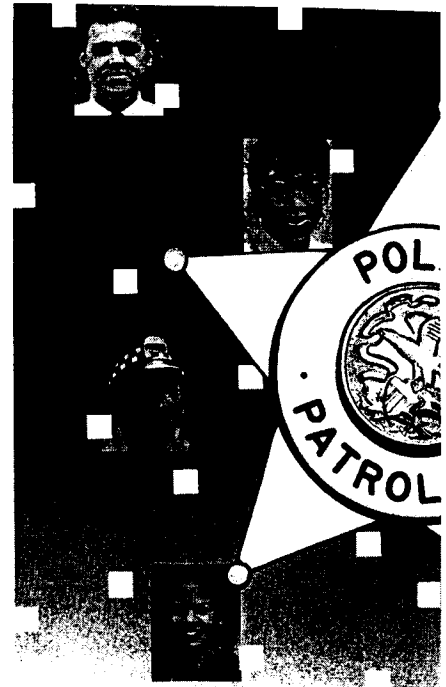
A government agency charged with making policy must address two broad goals: (1) it must develop policies to accomplish its mandates, and (2) it must develop and enact these policies only after learning and trying to address the concerns of the parties that will be affected by those policies. One difficulty is that it is not possible to make everyone happy all of the time. Therefore, decisionmakers are forced to make trade-offs, and each set of trade-offs will have a different set of impacts for the parties involved.

The best way to balance these trade-offs is to bring the affected stakeholders into the process of choosing among the trade-offs. In this way, the trade-offs will be more understandable to them and will seem more legitimate as they see the inside story on how each choice was

Key Steps In Building Consensus

Here are the major steps that can be used in the consensus-building process. These should be followed in the order in which they are listed, although in reality there could be some overlap. The reading resources on page 20 of this article also provide information on these steps.

1. Identify all interested and affected groups and define representatives.
2. Reach agreement on exactly what the problem or issue is and if necessary, conduct joint research to develop a common set of facts in your case.
3. Develop ground rules and meeting agendas as a group.
4. Work with representatives to look beyond their stated positions to develop additional options that address their interests and at the same time improve outcomes for other groups.
5. Consider varying combinations of these options to meet each group's fundamental interests and maximize the benefits for all groups.
6. Prepare a final written agreement or use an informal agreement as the basis for legislation or a formal policy decision.



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made. In going through such a process, while participants will maintain their core beliefs and defend their bottom-line interests, they also will gain an improved understanding of the world beyond those interests and the context in which choices are made affecting those interests. If the process is successful, stakeholders may be more open to participating in similar processes in the future.

Based on the reactions of stakeholders interviewed in Massachusetts, parties are much more likely to accept a decision if they have helped to make that decision, even if all of their interests have not been met. Of course, an industry will object to a proposal that jeopardizes its business, no matter what, and an environmental group will object to a decision to increase environmental damage, no matter what. Many decisions that do not have particularly strong effects, however, may be accepted when they would not otherwise have been. As one participant in the Massachusetts process explained, "I did not agree with everything that [the group] came up with, but I understood where they were coming from."

Several key elements of the Massachusetts process should be considered by policymakers in devising a framework for policy development. These points are based on three key principles discussed above: stakeholder involvement, discourse, and learning.

- Whenever possible, develop policy and programs in an open setting. Discourse carried out in an open forum will increase learning and understanding and will lead to improved decisions. These decisions will be more readily implementable than ones made behind closed doors.
- Structure this forum through facilitation and/or mediation to reach a clear definition of a problem and a focused search for solutions to that problem. In the Massachusetts case, an internally led consensus-building effort was effective in reaching a common understanding of the problem and an agreed-upon solution. But when

For Further Reading

Doyle, Michael, and David Strauss. *The New Interaction Method: How to Make Meetings Work*. Jove Books, New York, 1976.

Fisher, Roger, and William Ury. *Getting to Yes: Negotiating Agreement Without Giving In*. Penguin Books, New York, 1991.

Guide to Alternative Dispute Resolution for Local Government Officials in Massachusetts. Massachusetts Office of Dispute Resolution (ODR), Boston, June 1995. (The ODR telephone number is 617/727-2223.)

Moore, Christopher. How Mediation Works. In *Negotiation: Readings, Exercises, and Cases*. Roy Lewicki et al., eds. Irwin, Burr Ridge, Illinois, 1993, pp. 445-465.

Susskind, Lawrence, and Jeffrey Crutkshank. *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. Basic Books, New York, 1987.

managers are not trained in these processes or have a strong stake in a proposal, an external, neutral party will be more effective.

- Involve all stakeholders who are either necessary for successful implementation or affected by implementation. While it is important to include groups external to the local government, it also is critical to include decisionmakers from within, who must support a proposal for it to move forward.
- Be clear about your role as a government administrator. This is especially important when encouraging an open decision-making process or when playing the role of a mediator or facilitator. Stakeholders must understand your responsibilities and

know that you cannot afford to be neutral on every issue. Agreement will not always be possible, and policymakers still will have to make decisions in its absence.

- Be open to learning yourself. While it is easy to encourage others to be open to changing their minds and to admitting when they are wrong, it is hard to do this yourself. As long as you are not always wrong, though, admitting mistakes is a strength rather than a sign of weakness and will build credibility and respect over the long run. **PM**

¹A deposit bill has been introduced every year since 1987, while a fee bill has been introduced every year since 1991. Aside from the funding and financial incentive aspects of the two bills, there have been minor differences, but the strong differences over the funding aspects consistently kept either bill from ever getting close to legislative passage.

²Majone, Giandomenico, *Evidence, Argument and Persuasion in the Policy Process*, Yale University Press, New Haven, 1989, p. 145.

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