An Interview with Professor T Zane Reeves

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T Zane Reeves is a long-time professor and practitioner of human resources management. He is member of the National Academy of Arbitrators. He was recognized for his excellence at the University of New Mexico (UNM) with the prestigious designation of Regents' Professor. Today, he holds the distinction of being Regents' Professor Emeritus. At UNM, he was the director of the school of public administration program for many years. Prior to his association with UNM, he was professor and chair of public administration at California State University at Dominguez Hills and Pepperdine University.

Zane has an extensive background as a practitioner. For over 25 years, he has served as arbitrator, mediator, fact finder, and hearing officer in public and private settings. Zane's expertise is utilized by a number of not-for-profit and public labor boards. Over the past 30 years, Zane has provided consultation services to public, private, tribal, and not-for-profit organizations in areas such as organizational development, supervision, team building, and human resources management.

Cases in Public Human Resource Management, 2nd ed., which Zane wrote, is widely used in university courses. It is one of six books he has written or co-authored. Zane's articles have also been published in leading journals and periodicals such as the Public Administration Review and Personnel Management.

This interview was recorded in November 2011 in Albuquerque, New Mexico, where I've spent four months as the scholar of UNM. The scholarship was granted by the Julius Rezler Foundation, which has only one American member in its Board of Directors, an American ambassador of Hungarian culture – T Zane Reeves.

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- Professor Reeves, you became a well-known expert in the field of ADR practices. What is the meaning of the term Alternative Dispute Resolution?

- Well, it's an alternative to two things: litigation, when in the court the union, the management, the employees can sue and it's an alternative to the job action strike by the union. So what the parties say, is "we will not go court", "we will not engage in job actions or work stoppages", instead "we will try an alternative". Alternative is to bring in a third party neutral. A third party neutral can be an arbitrator, a mediator, a fact-finder, ombudsman. It's a person, that both parties agree to select and both parties have trust in. What they say, is "we will try alternative to the usual way of settling disputes". That's what ADR means.

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- Alternative is clear. The next word is Dispute.

- What I'd like to differentiate between is the word dispute and conflict. Conflicts are differences that we all have. These really have no emotions, they're just differences of opinion. But if a conflict escalates, and we attach emotions to it, then we see as a dispute. A dispute means that if you win, I lose. If I win, you lose. That's a dispute, like among countries. If Serbia wins, Hungary loses, in an international dispute. Same thing is true in a workplace. If I lose pay, I lose status, whatever, something at stake, it's win-lose. The conflict can be good. Even in a marriage relationship, conflict can be good, because that's how you understand your differences. In a team, it's good to have people, who have differences in opinion, cause that makes a strong team. That's conflict, but it's good, because that makes us stronger overall, but not a dispute. What you want to do, is take a win-lose dispute and make it into a win-win conflict or difference, but you want to resolve it. That's what the word dispute means. Not just an any kind of conflict, but a conflict that has become polarized between the two parties. And the resolution is of course, that you want to resolve it. And the main goal in resolving it, if I'm an arbitrator or mediator, is that I want the parties to resolve it, so at the next time they have a dispute, they know how to resolve it. They learn, how to negotiate, so they don't need to call an arbitrator or mediator. That's your goal in resolution. It's not just to resolve the immediate dispute, but to teach them long-range, long-term dispute resolution techniques.

- You mentioned different types of ADR techniques: mediation, arbitration, fact-finding and the ombudsman system. What are these methods, what is the difference among them?

- Here is what they have in common. They all involve a person, who is a third party, and who is neutral. You could have a third party, that wouldn't be neutral: if you and your wife have a conflict, and she asked your mother-in-law to help to resolve the dispute, that's not a neutral person, though it's a third party, someone outside of the dispute. So what all of these ADR techniques have in common is that they use a third party neutral person, and I would add, a person that both parties trust. There's no conflict of interest – that's what neutral means, they both trust this person. So that's what they all have in common. What they have in differences? Well, I like to say, think of it as if there are three main types of dispute resolution, and we can break it down any type in each of these three. The first type is I call mediation. Mediation is, where the third party neutral really helps the parties to resolve their dispute – by the way, that's the best for them. So the mediator doesn't impose, doesn't dictate, just helps the parties. And within mediation, I would say, there are two main forms: one is mediation, where you do not impose your will at all. The other is conciliation. In conciliation is a technique used at victim-defender programs, where actually the conciliator would have suggestions of ways to resolve the problem. The conciliator might meet with one party behind closed doors, and then would meet the other party behind closed doors. It's a much more directive form of mediation. The major government agency in this country to help resolve disputes is called the Federal Mediation and Conciliation Service - FMCS. So that's why you see that two words, because it's a slightly different technique. The second major type is fact-finding, which is a little bit misleading, because it assumes that there are facts out there and everybody can agree on them, but the fact-finder gathers the facts, considers the evidence, looks at the facts and makes a recommendation. He or she does not impose, does not dictate, but makes a recommendation. A recommendation can be to the parties, it can be to city manager, etc., but they make a recommendation. They can do it in two ways, one is they can hold a hearing, that's what a hearing-officer does. The other way that a fact-finder can gather information is to do an investigation. But either way they make a

recommendation. They may not tell the mayor, the head officer or the police chief, what kind of discipline to impose, but they can do an investigation, they can fact-find, and say, were there violations, and they can make a presence of facts. Police departments do this a lot, they call it internal affairs. That's a fact-finding. It still has a chance for the police chief to make the final decision, but you have officers to do the investigation. The third major form is arbitration. We arbitrators like to say that King Solomon was the first arbitrator, because, you know the story about the baby. Arbitration is final and binding. You conduct a hearing, an investigation, and the arbitrator makes a decision. The parties have agreed, that they will not appeal the arbitrators decision to court. Unless the arbitrator wasn't paid under the table or something, which I have never seen to happen. Unless there's something like that happened, a crime might be committed, you have to accept the arbitrators decision. That's a win-lose situation. One side wins, the other loses. One side will be happy, the other won't be so happy. I won't have any contact with people after I made the decision. It really goes on a continuum from mediation to arbitration, fact-finding in the middle, a continuum of how much power does the third party neutral have to enforce his/her will on the parties. The ombudsman is more like a cross between a mediator and a fact-finder. They can't make a final decision, but they can use all kind of techniques to help the parties to resolve their dispute.

- I think this ombudsman system is different from the one used in Hungary, where there are only four ombudsmen, all of them working at state level. How is this system working in the United States?

- Well, the term ombudsman was started in Scandinavia. An ombudsman was someone, who was hired by the legislature to go out and investigate grievances or complaints that people would have, and then bring them back to the legislature to say, you need to do this, people are upset, this is going on. We still use that form of ombudsman here in certain situations, for example, long-term caring facilities, nursing homes, many times state agencies that take care the ageing or the physically or mentally challenged will hire ombudsman to investigate complaints of abuse. In dispute resolution it is more widely used, for example Sandia Laboratories has ombudsman, Los Alamos Lab uses ombudsman. They, which is more typical, they are an employee, usually someone, who had a long service and maybe is retired, someone that everybody respects. Somebody, who can go the president, to the CEO. He or she can go anywhere; he can make an appointment to see anybody. That process is totally confidential. If you see the ombudsman, you can say: "hey, my boss is abusing me, is mistreating me, and I can't get help, what can you do?" And then that person will investigate. That is the way, the ombudsman is used here. They are paid employees, employees paid by the organization to investigate complaints. Many universities in the United States have ombudsman. The New York Times has an ombudsman: if somebody thinks the newspaper stories inaccurate or untrue, they can go to the ombudsman and he will investigate. Sometimes they find that reporters lied about the facts.

- What are the main types of problems in ADR situations?

- You can have all kinds of mediation. In fact-finding you can have marriage, family, divorce, you can have barking dogs problem, a landlord-tenant dispute. The two I deal with are labor and employment arbitration, mediation and fact-finding. When we say labor we mean that unions are involved. In union arbitrations a union is representing the employee as a labor dispute. The basis is the collective bargaining agreement. The other form, called employment arbitration, is becoming very popular. That means there is no union involved. It means that the employee has been given the right to go to arbitration. The employee and the

company both choose the arbitrator and the arbitrator hears the case, usually about employee termination. Not whether he/she should get the job back, but about back pay. At labor arbitration, where I have the authority as an arbitrator, it is actually to put the employee back in his former job, give him back pay, that's called making him whole. In employment arbitration arbitrators don't have that kind of power.

- Why is it better for the parties to go to an arbitrator, instead of going to court?

- First of all, it's much quicker. If I'd get a call today, that they want to have an arbitration, I could do it within six weeks. Just have to find a date, it's really easy. Once they contact me, and I contact them and we set it up, it's a lot less expensive. At the court there are all kinds of costs involved, for one thing if you go to court there are pretty court cost called discovery, where you pay the depositions. We don't do that in arbitration. Many times there is no court reporter. I think that the biggest advantage is that the parties choose the arbitrator. If you go to court, you are going to take whatever judges assign to you. You may win, you may lose, but you don't have a choice of what judge you get.

- How is this choosing process done?

- It can be in two ways. One, it can be most typically ad hoc. It means that each time you take a new arbitrator. Where are they going to get an arbitrator? Most of time they get one from the Federal Mediation and Conciliation Service. They maintain a list of arbitrators, who are federally approved, trained, certified. So if they contact FMCS in Washington D. C., they'll send them a list of seven arbitrators, with their biography, how much they charge, and then they go through, just like they choose of the jury, in the same way. You strike this, I strike that, and they end up with one that is the best, or the one that is the least offensive. They come up with a person. If you are known to be very pro-management, the union's not going to choose you, if you are known very pro-union, the management is going to try to choose you, so they play that game. So most of the time they get the arbitrator from FMCS. The second way. I was in Amarillo, because I'm on, what's called a permanent panel of Pantex, which is a nuclear facility there. The employer and the union about five years ago agreed on ten arbitrators, and now they automatically rotate the cases among us. With the Postal Services the same thing. I just received a contract, a notice that I am one of the Postal Service and Postal Workers Union arbitrators for the next five years in Arizona, New Mexico, Colorado, Wyoming and Utah. They all say at the beginning of the year: "give us six dates a month from January to June, and we'll tell you, if we'll use those days and where it would be." So these are, what are called permanent panels.

- In the creation of these panels both management and union participate with the same power?

- Yes, they are co-equal, which is an interesting dynamic, they have to get people they both agree. What I understand is that in those meetings management is saying "we absolutely have not use Joe Smith", and union will say "well, okay, we'll not using Joe Smith, but we'll not using Charlie Wilson either".

- You mentioned two important issues. The firs one is the training of arbitrators. What kind of background is needed to be a licensed arbitrator?

- Well, if I'm trying to be funny, I'd say talent, good-looks and intelligence.

- Okay, you own these attributes. What else is needed?

- Most arbitrators, I'd say over half, are lawyers. The others, like Julius or me, are college professors, who taught in areas of industrial relations, labor relations, economics, related areas. That is their educational background. Their direct experience is from the American Arbitration Association and from the Federal Mediation and Conciliation Service that offer courses to help you prepare to be an arbitrator. The way I did it was, that I worked as a hearing officer in the city of Albuquerque, so I got a lot of experience in conducting hearings. Then I wrote a book about labor relations. Then to be nominated to the panel, you have to have five recommendations from the management, five from the unions and five from other arbitrators. There is another organization, the National Academy of Arbitrators. They don't supply names like FMCS, but they have very high standards, they ask for fifty arbitration cases in the last five years, and then will they ask for recommendations. It's a national association. There are currently three of us in New Mexico, who are members. Julius was a member for a long time, and he always kept telling me, that I should get into the Academy. Since it's an honor, I did not apply until about five years ago, and then I was accepted.

- Another important issue that you mentioned previously, is the cost of arbitration. How pays the arbitrator?

- In probably ninety, or maybe ninety-nine percent of the cases both sides split the costs. Occasionally the loser pays. In these cases the winner has to guarantee me that I'm going to be paid. I remember one case as a guy was fired and I didn't put him back to work and he just left the state. I couldn't find him. I'm not going to do that anymore. So if you are the employer and he doesn't pay me, you have to make it, I put that to the record. For all practical purposes, you can say fifty-fifty.

- Is this also the same in employment arbitration?

- In both.

- Doesn't have that a negative effect for those employees, who have a worse financial background?

- I don't think, it's fair, the employment arbitration. I think, the employer should pay it all, but that's not the case.

- This could result that the employees from lower social classes doesn't ask for arbitration.

- That is why most of the time there is going to be labor arbitration. That's why they join unions. I think this is the major reason, why employees, especially government employees join unions is that they know that the union is going to be there, it is going to stand beside them, and it's free. They don't have to pay for anything, the union is going to take care of them.

- Do you see any additional advantages of involving a third party to solve workplace disputes for small and medium enterprises?

- Yes, I do. I can give you an example. There is a credit union, and there is a teller who was fired, and she went to an attorney and she wanted to sue the company, they wanted it to take

it to the court, and the attorney said to the credit union: "why don't we just get an arbitrator, and save ourselves from all of this money and damages?" So they went to arbitration, and the issue was reinstatement and back pay. So they hired me. I think, it would be great, if companies, who don't have unions, would say: "rather than firing you and then we all end up in the court, let's get an arbitrator." And they'll pay for it, cause it's much cheaper than going to court and losing a lots of money.

- How many ADR sessions do you have in a year?

- Well, I have more arbitration than anything else. I probably do thirty of that in a year. Lot of them, that are scheduled are settled. I work for the city of Albuquerque as a fact-finder 10-15 times a year. Maybe once in a year, I'm paid to be a mediator. There are people, who only do arbitration, I like to do all three.

- How many cases did you have in total?

- Thousands. I started in 1987.

- You are also an experienced trainer. Do you see that organizational development trainings are effective in preventing workplace dispute situations?

- Yes. It's interesting that I came in here today, and I received this letter. This last summer I did three trainings for the State Office of Dispute Resolution. In the letter they are thanking me for doing three training sessions. "Each time you spoke us, attendances have been great, and the responses have been overwhelmingly positive. Your most recent presentation on October 25th was rated as excellent. A number of state employees remarked that they have been your students and they've seen your name on the schedule was one of the reasons that they attended your sessions. We appreciate your thoughtful consideration, preparing a presentation, answering questions. Your presentation has broadened our understanding for ADR principles, increases awareness of ADR's effectiveness and value, and sharing your experiences you also advance the education professional growth of state employees and the development of better and more effective problem-solving approaches for state government and community." That's why I do training.

- Your current field of interest is when to give a second chance for the employee. What kind of relevant factors did you find?

- As you know, lot of ideas that I've used or developed, came from Julius Rezler. I would see his decisions and he would consider certain factors. I like that. They may sound simple, but starting with I want to know, if the employee understands that he or she was doing is wrong. Or they do blame everybody else and think they didn't do anything wrong. I want to know, what their motivation is to change. Are they going for help? I'm very impressed, if the employees go to Employee Assistance Programs, and say "I need help, I need counseling." It's the same thing that you deal with. Do you want to change your problem, your addiction, or do you want to just blame the world? To me, if someone tries to recognize the problem and wants to change, those are really important factors. If these factors are not there, okay, nothing's going to reach you, a second chance wouldn't do any good. You should learn from your discipline. If you don't learn, then what's the point for a second chance? I want to see in their behavior, if they are serious to change. If I think, they are, I'm going to give a second chance. That doesn't mean that they don't suffer from a penalty. I look for those behavioral clues, because I know, that I've made some big mistakes in my life. Some people have given

me a second chance and I've learned from mistakes. If you can learn and can make changes, that's really important.

- So sometimes arbitration can be part of the learning process.

- Yes, it can. I'm observing them, I'm watching and reading all the evidence, I'm looking to find out if they learned and what they learned.

- My next question is connected to your work in the Julius Rezler Foundation that helps young Hungarian professionals to get familiar with ADR techniques. What is your opinion, how could be these techniques used in Hungary?

- That would be presumptuous for me to say, what Hungary or Hungarians should do. I can tell you, what I hear and what I observed. So far we have trained people like you in mediation and negotiation and they observe arbitration. We do this, but when they get back in Hungary, I don't see there is much opportunity for them to practice mediation or arbitration. Yet they all tell me that there is a need, but there is no opportunity for practicing mediation. It's not been translated into reality. I don't know how to change that.

- What is the benefit of these techniques for a country?

- Again, I have to say, that I'm a little bit awkward as an American to tell Hungarians, how they should do things. It's not my role. I think Hungary still has almost a hangover from the previous communist era. Things like mediation were not possible, that was not a way of thinking. What legislators understand here, is they support mediation, because the courts have so much business. It takes them so long, they have so many cases. It doesn't matter if people go out and mediate their disputes. They don't want everybody to bring it to court. Many times lawyers became mediators, so they understand how it works. I'm not sure that the Hungarian courts understand that, they might don't want to have civilians out there to resolve disputes.

- Thank you very much for the interview!

Interjú T. Zane Reeves professzorral

MOLNÁR Dániel[1]

T. Zane Reeves professzor széles körben ismert oktató és gyakorlati szakember az emberi erőforrás menedzsment területén. Szakmai tapasztalatai sokrétűek, sikeres felsőoktatási tevékenysége mellett 25 éves praxisa van az alternatív vitarendezési eljárások lebonyolításában, továbbá bő 30 éve vesz részt szervezetfejlesztési- és irányítási intervenciókban.

Számos publikációja közül kiemelkedik a szerzőként, ill. társszerzőként jegyzett hat könyv, *Cases in Public Human Resource Management* c. munkájának második kiadását széles körben használják az amerikai felsőoktatásban.

Az alábbi beszélgetésre Albuquerque városában került sor 2011 novemberében, ahol az interjú készítője az Új-Mexikói Egyetem ösztöndíjasaként töltött el egy szemesztert. Az ösztöndíjat a Rézler Gyula Alapítvány adományozta, amelynek kuratóriumában egyetlen amerikai tag van - T. Zane Reeves.

A professzor tevékenysége nem merül ki az érintett ösztöndíjasok képzésének és ellátásának biztosításában, aktív szerepet vállal Magyarország amerikai bemutatásában és népszerűsítésében is, így túlzás nélkül nevezhetjük a magyar kultúra nagykövetének.

Az interjúban Reeves professzor meghatározza az alternatív vitarendezési eljárások mibenlétét. Az eljárásokat három típusba sorolja: mediáció, tényfeltárás és arbitrálás. Mindhárom esetben egy semleges harmadik fél vesz részt a viták rendezésében, a különbséget a harmadik fél döntéshozatalban való részvételének mértéke jelenti. Az interjúban továbbá áttekintésre kerülnek az arbitrálás amerikai gyakorlatának fontosabb ismérvei is.

Kulcsszavak: human erőforrás menedzsment, alternative vitarendezés, vitarendezési eljárások, mediáció, tényfeltárás, arbitrálás

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