

# What Makes Mediation Work? Mediators' Perspectives on Resolving Disputes\*

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This research explores federal mediators' perspectives on successful conflict resolution in contract disputes. The results indicate that mediator skill base and a collaborative orientation on the part of the disputants are positively related to the likelihood of reaching agreement, while relationship hostility is negatively related to the likelihood of reaching agreement. Other independent variables, such as management outlook and mediator acceptability, were indirectly related to the likelihood of reaching agreement. Consistent with most previous research, mediator tactics were unrelated to the likelihood of reaching agreement. Limitations and suggestions for future research are discussed.

THIS RESEARCH EXPLORES FEDERAL MEDIATORS' INTERPRETATIONS OF THEIR EXPERIENCES WITH THE MEDIATION PROCESS. Although numerous studies of the mediation process have been conducted, very few have collected data directly from practicing mediators. Indeed, the emphasis on confidentiality of mediation processes limits researchers' access to data.

The research presented here is derived from a comprehensive study of the Federal Mediation and Conciliation Service (FMCS). In the comprehensive study, data were collected from secondary sources, participant observation of the new mediator training program, interviews with mediators, and a written survey completed by mediators. The analysis that follows is based on the survey data, and identifies several determinants of mediation outcome. Space limitations prohibit a full discussion of the entire study.<sup>1</sup>

## Methods

### *Data Collection and Analysis*

**Survey Distribution.** The surveys were distributed at the Federal Mediation and Conciliation Service (FMCS) national professional development meeting

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<sup>1</sup> A longer working paper is available from the author on request.

in Las Vegas, Nevada, November 30 to December 3, 1998. Of the 205 mediators then employed by the FMCS, approximately 185 attended this conference. A total of 78 usable surveys were received, for a response rate of 42 percent. The mediators were asked to provide information about two cases (their most recent case in which the parties reached agreement, and their most recent case in which the parties failed to reach agreement). Thus, there were 156 observations on which to base the data analysis.

**Data Reduction.** For each of the two cases, the written survey contained 83 questions that used four- and five-point Likert scales. Following common practice, missing values, for questions that were not answered by an individual respondent were replaced by the mean value of that variable. Principal components factor analysis with varimax rotation was used to reduce these 83 Likert-scale questions to underlying factors. Following the guidelines recommended by Kim and Mueller (1978), an 11-factor solution was obtained. Eight of the 11 factors pertained directly to mediation outcome, and were used in this analysis. Factor-based scales were created by summing those variables that loaded highly on each factor (Kim and Mueller 1978, p. 70).

**Dependent Variable.** A variety of measures of success in mediation have been identified including: reaching agreement, narrowing the number of issues in dispute, and getting the parties to avoid holding back concessions in anticipation of moving to the next level of the dispute resolution process. For purposes of analysis, a precise definition of success was desired. Thus, in this study, success was defined as mediation cases in which the parties reached agreement. The dependent variable, agreement, is a dummy variable. It was coded as 1 for the cases in which the parties reached agreement, and 0 if otherwise.

## Hypotheses

*Mediator Acceptability.* The questions that loaded highly on this factor pertain to the role that various mediator skills and characteristics such as flexibility, credibility, trustworthiness, active listening skills, and facilitation skills played in bringing the parties closer to agreement. In addition, this factor included a measure of the mediators' assessment that the parties would use the services of the FMCS again for dispute resolution.

As part of the FMCS' new mediator training program, the trainees were presented with a code of conduct. The code of conduct emphasized maintaining standards of honesty, integrity, and principle. In addition,

throughout the training program, the instructors stressed the importance of mediator confidentiality. All of these characteristics help make the mediator acceptable to the parties.

*Hypothesis 1: Mediator acceptability will be positively related to the likelihood that the parties reach agreement.*

*Mediator Skill Base.* The questions that loaded highly on this factor pertained specifically to mediator skills and characteristics that brought the parties closer to agreement. These included: “ability to be a quick study,” “labor relations skills/experience,” and “process skills.” Kochan and Jick (1978) propose that mediator quality, an index composed of several dimensions including knowledge/expertise as a mediator, process skills, and understanding of the issues and underlying problems in the dispute, influences the success of mediation.

*Hypothesis 2: Mediator skill base will be positively related to the likelihood that the parties reach agreement.*

*Relationship Hostility.* The questions that loaded highly on this factor are related to sources of conflict that played a critical role in the outcome of the case. These sources included: internal conflicts within either party, personality conflicts between the chief bargainers, and hostility between the parties. It was expected that hostile relationships within and between the parties would make it more difficult for the mediator to help the parties reach agreement.

*Hypothesis 3: Relationship hostility will be negatively related to the likelihood that the parties reach an agreement.*

*Collaborative Orientation.* The questions that loaded highly on this factor also related to sources of conflict that played a critical role in the outcome of the case. These sources included the parties’ respect for each other’s right to bargain, and the parties’ willingness to share information. It was expected that an atmosphere of mutual respect and openness between the parties would make it easier for the mediator to help the parties reach an agreement.

*Hypothesis 4: Collaborative orientation will be positively related to the likelihood that the parties reach agreement.*

*WATNA (worst alternative to a negotiated agreement).* The questions that loaded highly on this factor pertained specifically to situational

characteristics that played a critical role in the outcome of this case. These included: “threat of a strike,” “threat of a lockout,” “threat of plant/facility closure,” and “pending NLRB (National Labor Relations Board) charges.” As the pressure to settle becomes greater, the mediator’s ability to use reward power and coercion to persuade the parties should be enhanced. The parties’ WATNAs, such as the threat of a lockout or the threat of a plant/facility closure, introduce the element of risk to the dispute, and thereby put pressure on the parties to settle.

*Hypothesis 5: The presence of WATNAs will be positively related to the likelihood that the parties will reach an agreement.*

*Private Sector.* Unlike the other independent variables, this was a dummy variable equaling to 1 if the dispute took place in the private sector. The FMCS new mediator training program materials point out that structural characteristics in the private sector typically improve the odds that settlement will be reached, because there is some pressure on the parties to settle. The contract deadline gives the parties an incentive to reach agreement. In addition, the parties tend to have experience with bargaining and the mediation process. Moreover, the nature of the relationship in the private sector is often conducive to settlement. For example, many relationships in the private sector are long-standing. In many cases, the parties perceive each other as legitimate. Finally, in the private sector there are typically a number of issues in dispute, and the issues tend to be concrete, rather than abstract. In contrast, the FMCS training program suggests that the structural characteristics in the public sector are less conducive to settlement (FMCS 1997, pp. SQ1-8-H7 and H8).

*Hypothesis 6: In private sector cases, the parties will be more likely to reach agreement than in public sector cases.*

*Management Outlook.* Management outlook is a factor-based scale variable that encompasses management’s desire for the mediation to be successful, realistic expectations of the process, and bargaining experience.<sup>2</sup> In discussing the types of settlement, the FMCS trainers noted that when handling cases, the mediator should always look for the parties’ readiness to settle.

*Hypothesis 7: A favorable management outlook will be positively related to the likelihood of reaching agreement.*

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<sup>2</sup> The survey asked a parallel set of questions about union participants in mediation. However, these questions failed to load highly in the factor solution.

*Bifocal Approach.* The data reduction process produced two factors that captured the tactics mediators used to resolve disputes. These factors were originally labeled the “broad approach” and the “narrow approach.” Correlation analysis indicates that these two factor-based scales are positively related to one another ( $r = 0.38, p < 0.01$ ). This suggests that rather than pursuing an exclusively broad or narrow approach, mediators often use both approaches simultaneously. Hence, the two factor-based scales were summed to create a single measure of mediator tactics. This measure was labeled the “bifocal approach.”

The strategic management literature uses the term “bifocal vision” to describe “the ability to perceive accurately things on the horizon that will inevitably affect the enterprise, as well as the ability to focus on the more immediate, pressing events” (Albrecht 1994, p. 42). Mediators using the bifocal approach combine elements of both the broad and narrow approaches to mediation. In other words, mediators attend to the “big picture” issues such as emotional, interpersonal, and communication problems facing the parties, while at the same time focusing on resolving the immediate, more concrete issues in dispute such as working conditions, compensation, and benefits. To accomplish these dual objectives mediators encourage and empower the parties to make their own decisions.

*Hypothesis 8: The bifocal approach will be positively related to the likelihood of reaching agreement.*

## Results

*Respondent and Case Characteristics.* Data regarding mediator characteristics were collected. In brief, 61 respondents were male, 13 were female, and 4 did not provide gender information. The respondents’ tenure with the FMCS ranged from 1 to 47 years, with a mean of 9.13 years. Some of the data the mediators in this sample provided about themselves may be compared with the FMCS’ personnel records to determine the representativeness of the sample.<sup>3</sup> Specifically, the total number of mediators employed by the FMCS in 1998 was 205. Therefore, the sample consisted of 38 percent of the total population of FMCS mediators. Of the total population, 169 were men, and 36 were women. The proportion of males in the sample, 82 percent, was the same as in the population. The average length of service

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TABLE 1  
BIVARIATE CORRELATIONS ( $n = 156$ )

Variable	1	2	3	4	5	6	7	8
1. Agreement								
2. Mediator acceptability	0.28**							
3. Mediator skill base	0.25**	0.54**						
4. Relationship hostility	-0.20*	0.24**	0.28**					
5. Collaborative orientation	0.48**	0.25**	0.10	-0.08				
6. WATNAs	0.03	0.10	0.15	0.26**	0.07			
7. Private sector case	-0.07	-0.02	0.20*	0.09	-0.13	0.30**		
8. Management outlook	0.29**	0.28**	0.15	0.03	0.38**	0.23**	0.14	
9. Bifocal approach	0.19*	0.48**	0.35**	0.17*	0.23**	0.02	0.05	0.16*

\*Significant,  $p < 0.05$ .

\*\*Significant,  $p < 0.01$ .

TABLE 2  
LOGISTIC REGRESSION RESULTS: DEPENDENT VARIABLE = AGREEMENT ( $n = 156$ )

Independent variable	b	s.e.(b)	Wald
Mediator acceptability	0.13	0.10	1.75
Mediator skill base	0.30	0.14	4.61*
Relationship hostility	-0.20	0.06	11.28**
Collaborative orientation	0.29	0.07	18.35**
WATNAs	0.01	0.05	0.01
Private sector case	0.59	0.55	1.15
Management outlook	0.05	0.06	0.59
Bifocal approach	0.02	0.06	0.06
Constant	4.84	1.63	8.85**
Model chi-square	64.99**		

\*Significant,  $p < 0.05$ .

\*\*Significant,  $p < 0.01$ .

for FMCS mediators in 1998 was 13.7 years. The average tenure in the sample was only 9.13 years, which differed significantly from the population mean ( $t = -4.27$ ).

In addition to providing information about themselves, respondents were asked to indicate the sector in which the individual case took place. This information was provided for 154 of the mediation cases in this study. The mediators reported that 126 cases occurred in the private sector, 17 cases occurred in the public sector, and 11 cases occurred in the federal sector.

*Results of Data Analysis.* Table 1 presents bivariate correlations between the variables, and Table 2 displays the results of a logistic regression

predicting the likelihood that an agreement was reached. The following predictors of agreement were found to be statistically significant: relationship hostility ( $p < 0.01$ ), collaborative orientation ( $p < 0.01$ ), and mediator skill base ( $p < 0.05$ ). Hypothesis 2 stated that mediator skill base would be positively related to the likelihood that the parties reach agreement. Hypothesis 3 stated that relationship hostility would be negatively related to the likelihood that the parties reach agreement. Hypothesis 4 stated that collaborative orientation would be positively related to the likelihood that the parties reach agreement. All of these hypotheses were confirmed. The other five variables that were expected to influence mediation success—mediator tactics, mediator acceptability, management outlook, WATNA, and private sector—were not statistically significant.

## Summary and Discussion

*Confirmed Relationships.* Because mediator skill base encompassed both substantive knowledge (labor relations skills/experience) and process knowledge (facilitation and problem-solving skills), this suggests that both types of knowledge contribute to mediation success. The significance of this independent variable supports Kochan and Jick's (1978) proposition that mediator characteristics influence the success of mediation. It also illuminates the knowledge, skills, and abilities required of mediators.

Second, the analysis established a connection between relationship hostility and agreement. This confirms the expectation that a hostile relationship between the parties severely restricts the mediator's ability to use various sources of power to persuade the parties. Third, the analysis confirmed a relationship between collaborative orientation and agreement. This result is consistent with Bush and Folger's (1994) contention that when the parties to a dispute are self-confident and responsive to others, mediators can help the parties shift their conflict toward constructive interaction.

*Relationships Expected, But Unconfirmed.* Although the statistical analysis performed supports three of the hypotheses posited here, it failed to support the other five hypotheses. Specifically, the analysis failed to establish a relationship between mediators' tactics and agreement. These results are not completely surprising in light of previous research on mediator tactics. To illustrate, Rodgers (1986) found that the tactics employed by mediators were not significantly related to dispute outcomes. Likewise, Briggs and Koys (1990) found that mediator strategies did not make a significant independent contribution to mediator effectiveness. On the other

hand, Posthuma, Dworkin, and Swift (2002) found that the interaction between the sources of disputes and mediators' tactics influences the outcome of disputes. Following the method suggested by Posthuma, Dworkin, and Swift (2002), the variables presented here were tested for interaction effects. No statistically significant results were found, as none of the interaction effects accounted for more than zero percent of the variance in the dependent variable.

Mediator acceptability, management outlook, private sector, and WATNAs were highly correlated with at least one of the independent variables that showed a significant impact in the logistic regression. Thus, it appears that each of these variables exerts an indirect effect on the probability of reaching agreement. For example, management outlook was highly correlated with collaborative orientation and with the dependent variable, yet its coefficient in the logistic regression analysis was insignificant.

### Limitations and Suggestions for Future Research

This study has several limitations. First, it was designed to provide maximum variation in the dependent variable, agreement. Specifically, each mediator was asked to provide information about one case in which the parties reached agreement, and on another case in which the parties failed to reach agreement. A survey of the FMCS' clients conducted by Kochan and Cutcher-Gershenfeld (1997) suggests that the 50-percent agreement rate that this study forced on its respondents is not too far off the mark. Specifically, in the client survey the disputing parties reported that mediation led to agreement in 46.2 percent of the cases in which an FMCS mediator was involved.

However, this case sampling procedure prohibited the inclusion of respondent characteristics in the logistic regression analysis. It would be interesting to see whether gender, type of previous experience (e.g., as a management advocate or union advocate), sector of previous experience, and tenure as a mediator influence the outcome of mediation. With a larger base of respondents, perhaps one that included federal and state mediators, researchers could collect data on one case per respondent, allowing inclusion of the variables mentioned previously in the statistical analysis.

Although the data help illuminate mediators' perspectives on dispute resolution, no information was collected from the parties whose disputes were mediated. Thus, the researcher was not able to match the mediators' perceptions with the perceptions of disputing parties. Perhaps in the future,



researchers could find a way to combine both surveys (i.e., mediators and disputing parties) without violating the confidential nature of the mediation process.

Finally, as noted previously, the mediators in the sample had fewer years of service with the FMCS than the entire population of FMCS mediators. On average, there was a roughly 4.5-year difference in length of tenure between those in the entire population, and those in the sample. As a result, the data reported here may not accurately capture the sentiments of mediators with longer tenure.

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