

**BUILDING A BETTER FUTURE THROUGH
MEDIATION: INSIGHTS FROM A SURVEY
OF FMCS MEDIATORS**

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ABSTRACT

Mediation in the labor-management/employment contexts is somewhat unique in that the parties have an ongoing relationship. Labor mediators strive not only to help the parties solve their immediate conflict, but also to create an environment in which labor and management can improve their relationship. Thus, relationship improvement is an important part of the mediation process. The analysis presented here is based on quantitative data collected from a survey completed by seventy-eight FMCS mediators. The following variables led to more optimistic predictions by mediators of the parties' future relationship: mediator acceptability, mediator gender, and mediation outcome. Conclusions and suggestions for future research are provided.

In recent years, mediation has become increasingly popular as a means to resolve conflict. Academics and practitioners are increasingly advocating mediation as a form of alternative dispute resolution [1]. Existing research indicates that mediation is capable of resolving a wide range of disputes [2-5]. Additionally, mediation has been shown to be less expensive, quicker, and more satisfactory than other forms of dispute resolution [4]. Furthermore, mediation provides participants with voice, control over the outcome, and fair treatment by a third party [5-9].

Today, mediation is the most commonly used type of third-party intervention in labor disputes and collective bargaining [10]. In the labor-management relations context, mediation has spread beyond contract negotiations to noncontractual disputes [11-13]. In the employment context in general, mediation has expanded to nonunion settings [14] and to public sector employment (both union and nonunion) [15].

The phenomenal rise in the popularity of mediation as a form of alternative dispute resolution (ADR) has created a situation in which mediation practice and research has outstripped theory building [16]. Wall and Lynn suggested that researchers should put more effort into conducting data-based research to develop context-specific theories [16]. Similarly, Peterson and Peterson encouraged researchers to construct models of the mediation process and test those models in the field [17]. Dibble noted that research efforts should focus on determining the overall impact that dispute resolution systems have on the organization [18].

Mediation in the labor-management/employment context is unique in that the parties have an ongoing relationship. Indeed, the primary mission of the Federal Mediation and Conciliation Service (FMCS) includes promoting sound and stable labor-management relationships, minimizing work stoppages through the use of mediation, and helping disputing parties develop processes to improve both their relationships and organizational effectiveness [19]. Various authors have demonstrated the importance of maintaining positive labor-management relationships. For example, Rubin and Rubin found that the quality of the collective bargaining relationship affects attempts by the parties to cooperate on other issues, such as strategic planning, productivity, and service delivery [20]. Similarly, Masters and Albright found that labor-management "harmony" is positively correlated with improvements in productivity, quality, and waste indicators [21]. More directly, Sulzner found that the use of mediation to resolve disputes resulted in improved communication between parties [22].

Thus, relationship improvement is an important part of the mediation process. Toward this end, this research examines the mediation process in the labor relations context to identify the determinants of improved future relationships between the parties. The analysis is based on quantitative data collected from a survey completed by nearly half of the labor mediators employed by the FMCS who attended the agency's annual meeting. The primary goal of this research is to understand reality by exploring the experiences and subjective perceptions of real actors (i.e., mediators), as advocated by Eaton and Keefe [11]. As Kearney and Carnevale noted, the mediation process is informal, private, and highly individualistic [23]. Moreover, records of what transpires during mediation are not kept. Thus, the experiences and perceptions of participants provide unique insights on the mediation process.

RESEARCH DESIGN

This research explores mediators' perspectives on mediation. The model presented and tested here is derived from a case study of the FMCS. The entire case study was based on data collected from secondary sources [24], as well as participant observation of the FMCS' new-mediator training program [25], qualitative interviews with mediators [26], and a written survey completed by mediators [27]. The end result is a triangulated research design that makes use of both qualitative and quantitative data. The procedure of using quantitative data to validate qualitative analysis in industrial relations research was advocated by Strauss & Whitfield [28].

The interview data were particularly informative in developing a model of the contributors to improved future relationships. For example, the mediators agreed that the outcome of individual mediation cases feeds back into the mediation process to influence the parties' future interactions, negotiations, and mediations. In fact, one mediator summed it up this way, "The outcome of bargaining is the relationship. A tentative agreement helps improve the relationship. The key thing is improvement." Another commented, "the whole thing revolves around relationships."

Modeling Relationship Improvement

The model derived from the qualitative data suggests the following constructs have an impact on the parties' future relationships: mediator characteristics, mediation outcome, and the parties to the dispute (see Figure 1). The model is tested here using survey data. The key components of the model are discussed below.

Mediator Characteristics

A rich body of literature argues that mediator characteristics are related to the mediation process. For example, Kochan and Katz [29] identified trustworthiness, helpfulness, friendliness, humor, intelligence, and knowledge of the substantive issues as desirable mediator characteristics. The following mediator characteristics also have been shown to influence the outcome of mediation: self-awareness, presence, and authenticity [30], power and authority [31, 32], authority and experience [33], experience and tenacity [34], status [35], and gender [36].

The expansion of mediation to all forms of public policy disputes necessitates an increased demand for mediators. This has led to a divergent array of standards for mediator certification [37]. The implicit presumption is that not everyone can successfully mediate and that certain learned and/or innate mediator characteristics influence the quality of the mediator's services.

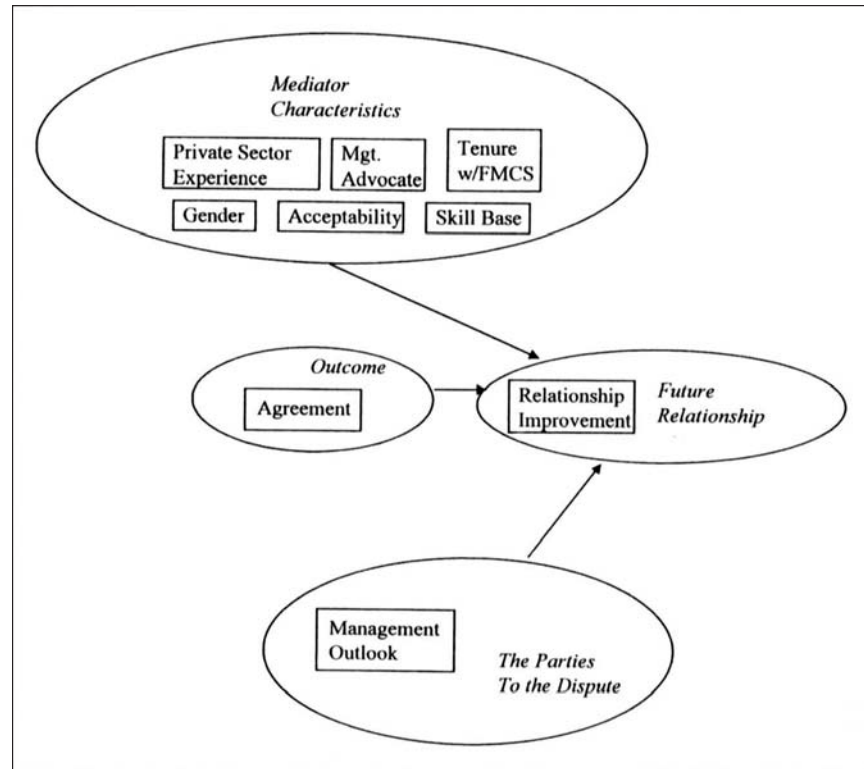


Figure 1. Determinants of future relationship.

Mediation Outcome

Mediation success may be viewed as a continuum. At the one end of the spectrum success means that the parties gain a better understanding of the bargaining process. Toward the other end of the spectrum is a negotiated agreement that satisfied the parties' interests and that both sides can live with for the duration of the contract. Indeed, a variety of measures of success in mediation have been identified, including reaching agreement, narrowing the number of issues in dispute, getting the parties to make tacit movement from their original positions, and getting the parties to avoid holding back concessions in anticipation of moving to the next level of the dispute resolution process [38].

For purposes of analysis, a decision was made to use a precise definition of success. Successful mediation cases were defined as those in which the parties reached agreement. Support for this decision was provided by Carnevale & Pruitt [39], who noted that most researchers measure mediation effectiveness based on whether agreements have been reached. Whatever the definition, successful mediation should generate a snowball effect, in which the parties continuously improve their relationships and become less likely to bargain to the point of impasse in future negotiations.

The Parties to the Dispute

Naturally, the parties' level of mutual trust and comfort should be related to the quality of their future relationship. As Kelleher noted, various models of collaborative collective bargaining include an emphasis on positive communication, mutual trust, and respect [40]. However, information sharing can be a risky proposition for the parties involved in labor negotiations. The interview data strongly supported this notion. For example, one mediator noted that "when you have inexperienced parties you have to slog through an awful lot of trust-building before you get them to reveal information that will help both sides resolve the dispute." Wissler found that when disputants had a competitive, nonintegrative orientation mediation tended to be unsuccessful [41]. Likewise, Dilts, Rassuli, and Karim found that successful mediation depends on building positive attitudes in the parties [42]. If mediators can help the parties develop positive attitudes during the mediation process, it is likely that the quality of their future relationship will be improved.

Data Collection and Analysis

Survey Distribution

The surveys were distributed at an FMCS national professional development meeting. Of the 195 mediators then employed by the FMCS, approximately 185 attended this conference. A total of seventy-eight 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 had reached agreement and their most recent case in which the parties had failed to reach agreement). Thus, there were 156 observations on which to base the data analysis.

The written survey contained eighty-three questions that used 4- and 5-point Likert scales, as well as questions about the demographic characteristics of the mediators and the cases. Since the goal of this research was to more formally model the mediation process and develop empirical testing in this area, factor analysis was used to reduce these eighty-three Likert-scale questions to underlying

factors. In other words, factor analysis was used to confirm and extend the variable identification derived from the literature review and qualitative analysis. An eleven-factor solution was obtained [27]. Factor-based scales were created by summing those variables that loaded highly on each factor [43, p. 70]. Five of the demographic variables and four of the factor-based scales were used in this analysis.

Variables

The predicted future relationship serves as the dependent variable in this analysis. The variable that matches with this construct is “relationship improvement.” Relationship improvement is a factor-based scale. Questions that loaded highly on this factor included: “During this mediation case the parties learned techniques they can use to solve problems in their continuing relationship”; “The parties are likely to use the services of the FMCS again in the future for preventive mediation”; and “The parties are likely to use the services of the FMCS again in the future for alternative dispute resolution.”

The independent variables used are described here. The outcome of mediation was measured as Agreement. Agreement was a dummy variable that was set to one in cases where the parties succeeded in reaching agreement with the mediator’s help. Additional dummy variables were used to measure the following mediator characteristics: gender, previous experience in the private sector, and previous experience as a management advocate. A continuous variable measured the mediator’s tenure with the FMCS. Factor-based scales were used to measure mediator skill base, mediator acceptability, and management outlook.

HYPOTHESES

Eight hypotheses were developed to relate independent variables in the model to the dependent variable. The hypotheses are summarized in Table 1. A more detailed discussion of the individual hypotheses is provided below.

Mediator Characteristics

The interviewees indicated that they often provide continuing services to the parties after the contract has been negotiated. Therefore, mediator characteristics were expected to have a direct effect on the quality of the ongoing relationship between the parties. The first independent variable in this category was 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.

Table 1

Hypotheses
Construct: Mediator Characteristics

- 1: Mediator acceptability will be positively related to the future relationship between the parties.
- 2: Mediator skill base will be positively related to the future relationship between the parties.
- 3: Female mediators will be more likely to anticipate an improved relationship between the parties.
- 4: Mediator tenure will be positively related to the future relationship between the parties.
- 5: Private sector experience will be positively related to the future relationship between the parties.
- 6: Previous experience as an advocate for management will be negatively related to the future relationship between the parties.

Construct: Mediation Outcome

- 7: Agreement on a contract will be positively related to the future relationship between the parties.

Construct: The Parties to the Dispute

- 8: Favorable management attitudes will be positively related to the future relationship between the parties.
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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. Likewise, the interview data revealed the importance of professionalism, ethical behavior, operational neutrality, confidentiality, credibility, and sincerity. All of these characteristics help make the mediator acceptable to the parties. These data

support Wall, Stark, and Standifer's contention that confidentiality influences the outcome of mediation [44]. Specifically, confidentiality may be viewed as a mediator resource that enhances the power of the mediation process. Similarly, these data are consistent with Kochan and Katz's emphasis on mediator acceptability as a contributor to success [29]. It was expected that the parties would be more likely to request a credible, trustworthy mediator's assistance in improving their relationship throughout the life of their contract. *Hypothesis 1: Mediator acceptability will be positively related to the future relationship between the parties.*

The second independent variable in this category was 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." The data collected through participant observation and qualitative interviews indicate that mediators need both substantive knowledge (i.e., labor relations skills and experience) and process knowledge (i.e., facilitation and problem-solving skills) to be effective. A mediator's labor relations skills/experience and process skills should both facilitate reaching agreement. Indeed, Kochan and Jick proposed that mediator quality—an index composed of various 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 [38]. A mediator's labor relations skills/experience and process skills should enhance the parties' perceptions of the mediator's competence and should therefore encourage the parties to seek additional services from the FMCS. *Hypothesis 2: Mediator skill base will be positively related to the future relationship between the parties.*

The third independent variable in this category was gender. Maxwell found that female mediators were better able to help the parties reach an agreement that worked or had a long-lasting effect [36]. Moreover, studies of communication patterns have found that women tend to be more relationship-oriented than men in their communication styles [45]. Since the interviewees stressed the paramount importance of the relationship in mediation, I expected that the parties would be more interested in seeking the help of female mediators to improve their ongoing relationship. *Hypothesis 3: Female mediators will be more likely to anticipate an improved relationship between the parties.*

The fourth independent variable in this category was length of tenure with the FMCS. Briggs and Koys found that mediator experience was a key component of mediation effectiveness [34]. The data derived from interviews with mediators and observation of training sessions support this finding.

Specifically, mediators with longer tenure with the FMCS have a greater variety of experience to draw on in helping the parties improve their relationship. *Hypothesis 4:* Mediator tenure will be positively related to the future relationship between the parties.

The fifth independent variable in this category was previous experience in the private sector. Mediators with previous experience in the private sector were expected to be more successful than mediators without such experience in helping the parties improve their relationship throughout the life of their contract. The majority of cases the FMCS handles occur in the private sector. Thus, mediators with previous experience in the private sector are likely to be familiar with the issues that typically arise in the private sector. *Hypothesis 5:* Private sector experience will be positively related to the future relationship between the parties.

The sixth independent variable in this category was previous experience as an advocate for management. Management resistance has been blamed for the recent decline in union membership and in union success for representation elections [29]. Therefore, it was expected that mediators with previous experience as advocates for management would have difficulty establishing their credibility and trustworthiness with the union bargaining team. *Hypothesis 6:* Previous experience as an advocate for management will be negatively related to the future relationship between the parties.

The Outcome of Mediation

Many of the mediators interviewed indicated that a successful mediation is one in which the parties reach an agreement that they can live with for the life of the contract. A successful mediation should strengthen the bonds between labor and management. Indeed, Sulzner found that mediation agreements resulted in the parties' having a greater understanding of the other side's perspective on the dispute and improved communication between the parties [22]. *Hypothesis 7:* Agreement on a contract will be positively related to the future relationship between the parties.

The Parties to the Dispute

The only independent variable in this category was management outlook. It was expected that both union and management participants in the mediation process would influence the future relationship. Indeed, the survey asked a parallel set of questions about union participants in mediation. However, these questions failed to load highly in the factor solution.

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. It was expected that a favorable management outlook would improve the ongoing relationship between the parties. This expectation was based on the interview data. In particular, the interviewees indicated that the parties' behavior toward one another during negotiations influences the parties' future interactions, negotiations, and mediations. As one mediator put it, "the whole thing revolves around relationships." If people felt respected during the negotiations, they would have a more positive working relationship during the year. *Hypothesis 8*: Favorable management attitudes will be positively related to the future relationship between the parties.

RESULTS

Table 2 presents the results of a regression predicting the mediators' estimation of the quality of the future relationships between the parties. The following

Table 2. Regression Results:
Dependent Variable = Relationship Improvement

Independent variable	<i>b</i>	<i>s.e.(b)</i>	<i>t</i>
Mediator acceptability	.48	.12	4.05**
Mediator skill base	-.11	.18	-.65
Gender (Male = 1)	1.88	.83	2.25*
Tenure w/FMCS	-.02	.03	-.63
Private sector exp.	.18	1.04	.17
Management advocate	-.43	.63	-.69
Agreement	1.69	.63	2.68**
Management outlook	.00	.09	.04
Constant	13.81	1.84	7.49**
<i>F</i> -statistic	5.12**		
Adjusted <i>R</i> ²	.18		
<i>N</i>	156		

*Significant, $p < .05$.

**Significant, $p < .01$.

predictors of improved relationships were found to be statistically significant: mediator acceptability ($p < .01$), mediation outcome ($p < .01$), and mediator gender ($p < .05$). Two hypotheses were confirmed; however, the sign of mediator gender was the opposite of its predicted direction, as male mediators tended to expect a more positive future relationship. The other five relationships posited were not statistically significant.

DISCUSSION

Hypothesis 3 stated that female mediators would be positively associated with an improved relationship between the parties. This hypothesis was not confirmed. The failure to confirm this hypothesis was somewhat surprising in light of Maxwell's [36] finding that female mediators are more successful at helping the parties develop long-lasting agreements and Gilligan's [45] finding that women tend to be more relationship-oriented than men in their communication styles.

Two explanations for this anomaly are possible. First, although mediation has been dubbed the "second oldest profession" [46], in the labor relations context, women have only recently gained acceptance as mediators. Indeed, during participant observation of new-mediator training sessions, the director of the FMCS indicated in his presentation that the agency had only recently begun a concerted effort to actively recruit women and minorities as new mediators. Indeed, Rich Trumka, AFL-CIO Secretary Treasurer criticized the labor relations practice as being, "too pale, too male, and too stale" [47]. Thus, even though women tend to be relationship-oriented in their communication styles, they may still encounter significant resistance from the parties when they attempt to intervene in a dispute.

Second, the survey asked mediators to report the extent to which they helped the parties develop skills they could use to solve problems in their continuing relationship and the likelihood that the parties would use the services of the FMCS in the future. Since the FMCS only recently began actively recruiting female mediators, the female mediators with the FMCS may be experiencing difficulty in establishing informal mentoring relationships with experienced mediators. Indeed, previous research suggests that informal mentoring tends to occur between persons of the same gender [48]. Thus, a relative lack of social support may cause the female mediators to feel less confident when asked about their role in helping the parties develop relationship improvement skills and the likelihood that the parties will request their services in the future.

Among the unconfirmed hypotheses, it is perhaps most noteworthy that management outlook was unrelated to the parties' future relationship. In fact, a previous study by Karim and Dilts indicated that management is less trusting of

mediators and the mediation process than are union negotiators [49]. Karim and Dilts concluded that the success of mediation depends on the parties' trust in the mediator and the process [49]. Based on the interview data, it was expected that management outlook would have a significant impact on this dependent variable, with which it was correlated at $p < .10$. This variable was more highly correlated with two significant independent variables: mediator acceptability and agreement. Hence, in this case, management outlook may be acting indirectly on the parties' future relationship through the mediator acceptability and agreement variables.

LIMITATIONS AND SUGGESTIONS FOR FUTURE RESEARCH

Ideally, researchers should be able to interview both the mediators and the other participants in the mediation process. Access to both mediators and the parties to a dispute would allow researchers to develop a more comprehensive picture of what transpires during mediation. Clearly, in this case it would have been better to hear the parties' own perspectives on the extent to which mediation would improve their future relationships, rather than relying on mediator perceptions.

Given the confidential nature of the mediation process, matching mediators' assessments with the parties' own assessments of their future relationship was not feasible. At the same time, FMCS mediators have established an excellent record and reputation. Indeed, in a survey of users of the FMCS services, 91.5 percent of the respondents provided favorable ratings of the mediation services they received [50, p. 11]. In addition, 96.8 percent of respondents who used a mediator indicated that, based on their experience, they would use an FMCS mediator again in the future [50, p. 11]. Moreover, FMCS mediators are highly experienced, well-trained, full-time professionals [51, 52]. In this particular case, the mediators surveyed averaged more than nine years of service with the FMCS, and this may have given them the experience they needed to make reasonably accurate predictions about the parties' future relationship. As more than one interviewee noted, labor mediation is different from other mediation contexts such as the divorce arena, because the parties must continue to cooperate with each other on a daily basis after the mediator leaves the case.

Another possible limitation of this research concerns the representativeness of cases reported. In completing the survey, mediators were asked to provide data on two cases. Specifically, mediators were asked to comment on their most recent case in which the parties had reached agreement and their most recent case in which the parties had failed to reach agreement. This approach was employed because it was believed that the most recent cases would be easy to recall. It

was anticipated that this tactic would generate a mix of “typical” and “atypical” cases. Indeed, practitioners contend that each mediation case is unique. As a result, mediators often argue that mediation is an art, not a science. Even researchers who conclude that labor mediation is a systematic process in which mediators are guided by “theory” acknowledge that these theoretical guides differ according to the mediator’s assessment of the situation, the parties involved, and the mediator’s own perception of his/her role [17]. As a result, it is difficult to precisely establish what constitutes a “representative case.”

This research could be extended in the following ways. First, within the labor relations context, the survey could also be administered to other mediation participants such as management and union negotiators in order to gain alternative perspectives on the mediation process. As Schön noted, the reflective practitioner learns from the client’s interpretation of the problem [53]. If research on mediation is to have practical value, researchers would do well to learn from both the mediators (i.e., the practitioners) and the parties (i.e., the clients).

Second, for ease of comparison a rather narrow definition of mediation success (i.e., reaching agreement) was employed here. In future research it may be helpful to broaden the definition of success. For example, Bush and Folger contended that the problem-solving framework, with its emphasis on reaching agreements, is inadequate for the study and practice of conflict resolution [54]. Instead, they advocate the use of transformative mediation, with its emphasis on process (e.g., teaching disputants new attitudes and decision-making skills) as opposed to outcome (e.g., reaching agreement). Under the transformative model, success is measured through opportunities for empowerment and recognition and in shifts toward constructive interaction [54, 55].

Indeed, in describing the FMCS’ philosophy of mediation, Wells and Liebman noted that, “mediation encourages, educates, and promotes the full engagement” of disputing parties [56, p. 135]. In this sense, the FMCS’ approach to conflict resolution may be characterized as transformative. That is, in addition to helping the parties resolve their conflicts, the FMCS mediators also teach the parties new attitudes and skills they can use in both the current and future disputes.

Third, the expected relationship between gender and improved future relationship was not confirmed. It was suggested above that this finding may be due in part to the fact that the practice of labor relations is a male-dominated field. It would be interesting to replicate this study in other contexts in which mediation is practiced. Perhaps in settings in which females are present in larger numbers, such as educational disputes or family mediation, the expected relationship between female mediators and improved relationships would be confirmed.

ENDNOTES

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