

WHAT IS MEDIATION?



The FEDERAL MEDIATION and CONCILIATION SERVICE...



presents

MEDIATION -

Assisted Negotiations

About your workshop presenters...

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About the *Federal Mediation and Conciliation Service*



- Created in 1947 as an independent agency by the Taft-Hartley or Labor-Management Relations Act.
- Primary responsibilities are to work with labor and management parties who engage in collective bargaining in order to prevent job actions and limit interference with interstate commerce.
- Work internationally in coordination with the US. Department of State and several other agencies involved with global affairs.
- Provide ADR services to federal agencies in their rule, regulatory and policy-making responsibilities.
- Provide facilitation, mediation and other ADR services to various community groups caught in conflict and desirous of normalizing relations.

***FMCS* Training Programs**

1. Interest-Based Problem-Solving and Decision-Making
2. L-M Relationships-by-Objective
3. Mediation Techniques
4. Steward/Supervisor Roles, Rights, Responsibilities and Relationships
5. Team Building
6. Partners-in-Change
7. Workplace Violence
8. Crisis Communications
9. L-M Partnerships and Committees
10. Interpersonal Communications
11. High Performance Work Systems
12. Cultural Diversity
13. Facilitation Techniques

Overview and Objectives

- To acquaint participants with fundamental skills of mediation
- To define and understand mediation
- To discuss mediation skills and tools for resolving conflict

An exercise in sharing, listening and learning

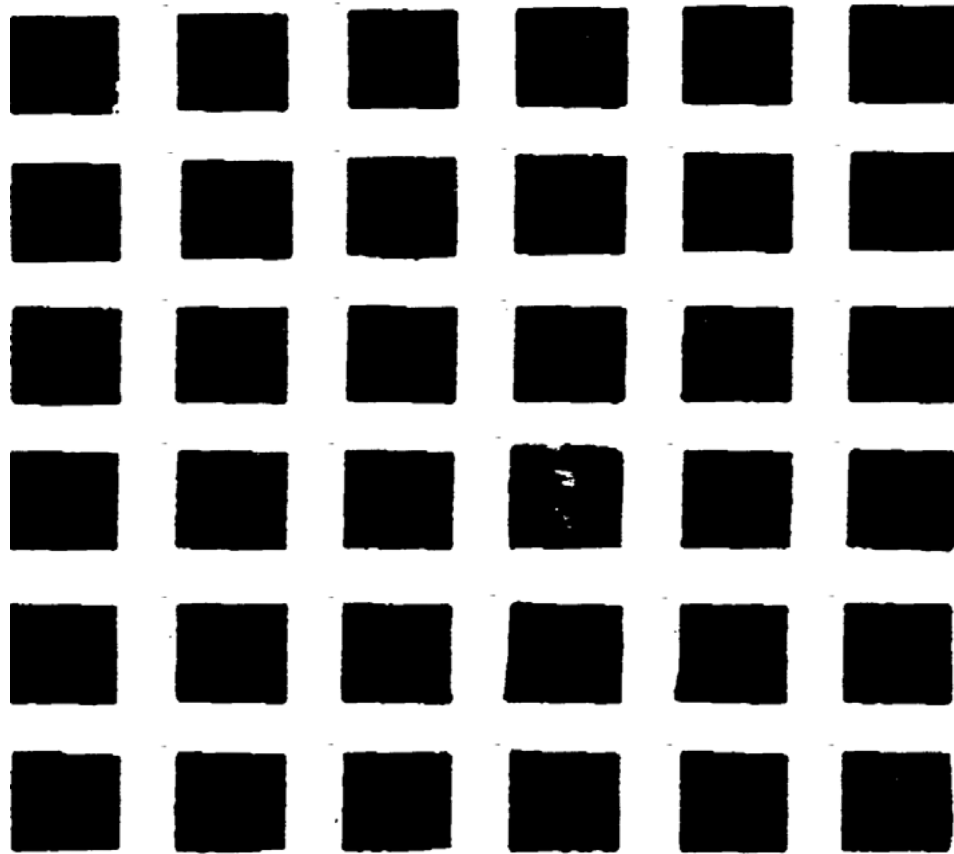
- Pair up and interview each other to find out the following:
 - Name, position and length of service;
 - Expectations for the Conference;
 - How long each has been dealing with conflict; and
 - What kind of animal each would be if they had to chose.



Workplace conflict as social phenomena

- Wherever you have social life you will have conflict; including the workplace.
- Most disputes are between parties with both cooperative and competitive interests.
- Conflict can be both constructive and destructive; depending on whether or how it is managed.

How many squares do you see?



Alternative Dispute Resolution



ADR Overview and Objectives

- Understand how ADR developed
- Understand types of ADR
- Know benefits of using ADR
- Know and distinguish key ADR techniques
- Understand appropriateness of using ADR

What exactly is ADR?

According to the Administrative Dispute Resolution Act of 1990, as amended in 1996, ADR is defined as:

- “Any procedure that is used to resolve issues in controversy, including, but not limited to, conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, use of ombudspersons, or any combination thereof.”

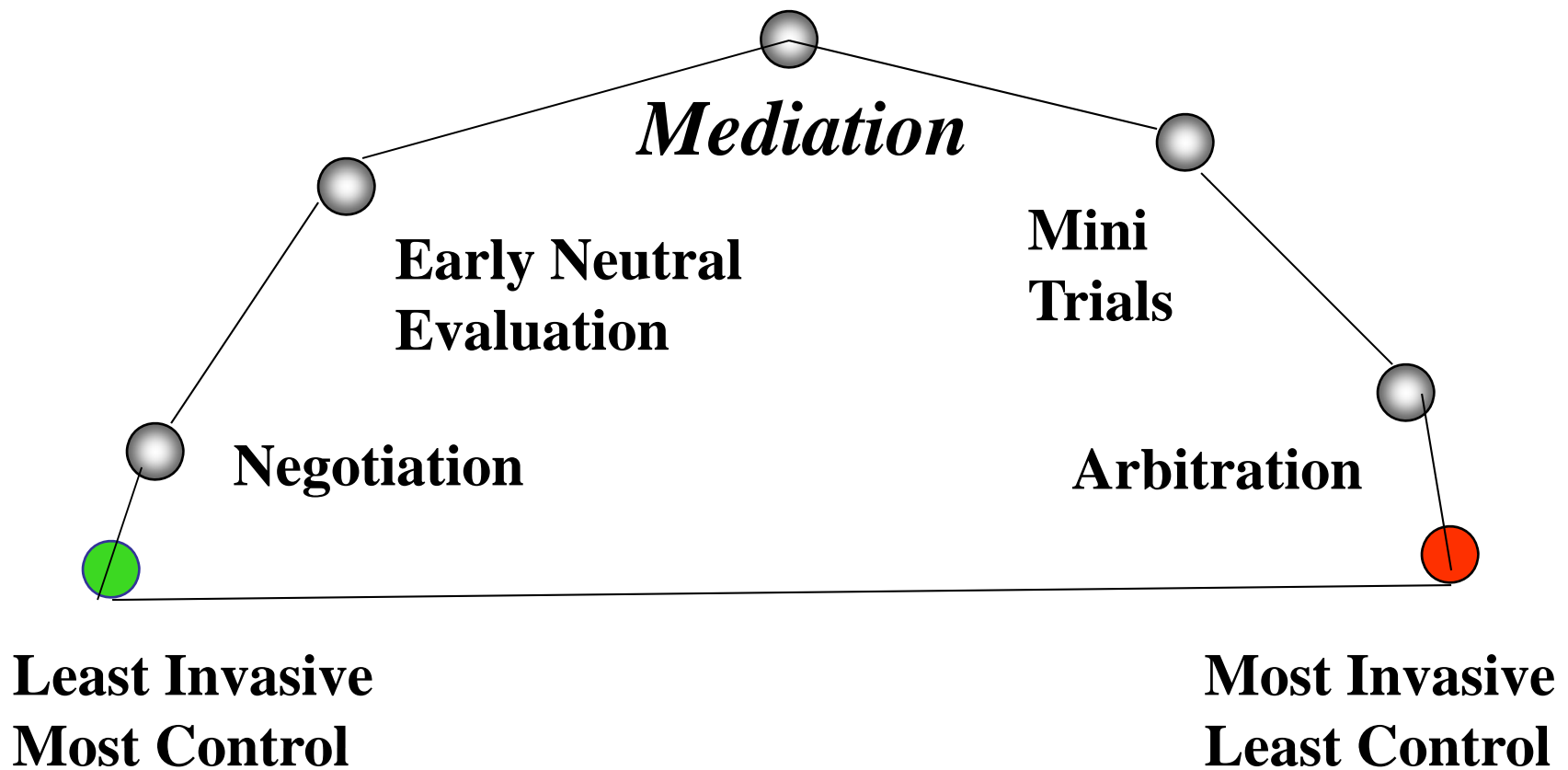
ALTERNATIVE DISPUTE RESOLUTION (ADR)

- Dates back to the Labor Movement in the early 1900's and has evolved over time
 - Wide spread use of ADR has been experienced in the private sector since 1980
 - It was adopted by the Federal Government in 1996 with the passing of the ***Administrative Dispute Resolution Act***

ISSUE - *CONCERNS* - *CONFLICT* - *CRISIS*...

1. An ***ISSUE*** exists when a matter in dispute between two or more parties remains unsettled and ready for or in need of a reconciling decision.
2. ***ISSUES*** become ***CONCERNS*** when they hold personal ties to or relationships with someone in an uneasy state of blended interests, uncertainties and apprehensions.
3. ***CONCERNS*** become ***CONFLICT*** when tensions produce perceptions of antagonism, incompatibility, and/or irreconcilability.
4. ***CONFLICT*** becomes ***CRISIS*** when it reaches a turning point perceived for the worse bringing prospects of pain, distress, or disordered function to a critical state with distinct possibility of a highly undesirable outcome.

Approaches under the ADR umbrella...



Conflict Defined...

- A state of open, prolonged fighting
- State of disharmony; clash
- To be in or come into opposition
- The opposition or simultaneous functioning of mutually exclusive impulses, desires, or tendencies

Who Engages in Conflict?



Continuum of Conflict *Personal Styles*

- From **AVOIDANCE** to **WAR**



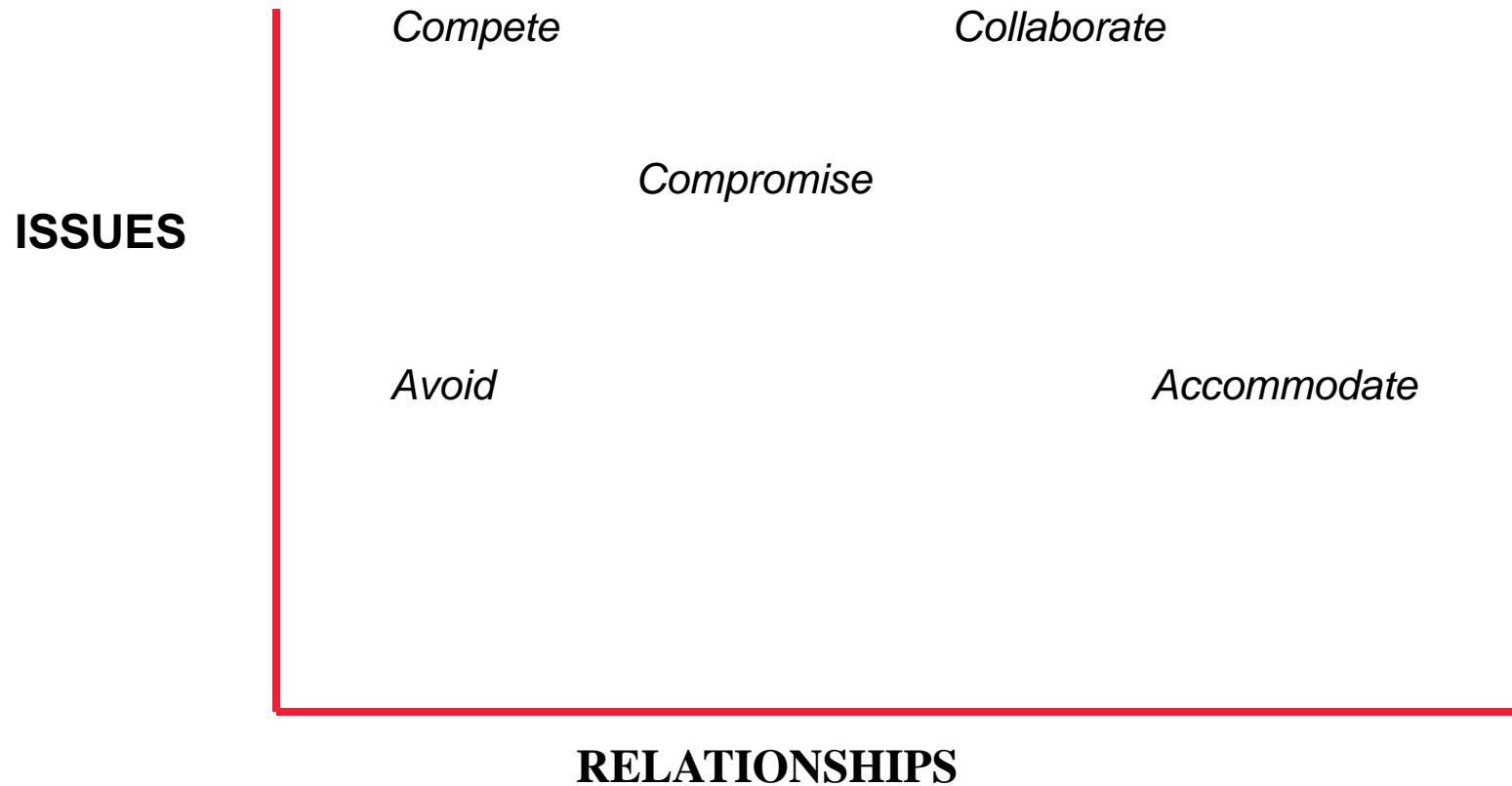
Levels of Conflict...

- Divisible “things”
 - *Always negotiable*
- Diffusible “things”
 - *Usually non-negotiable, but can be addressed*
- Values
 - *Never negotiable, but can be clarified and/or better understood*

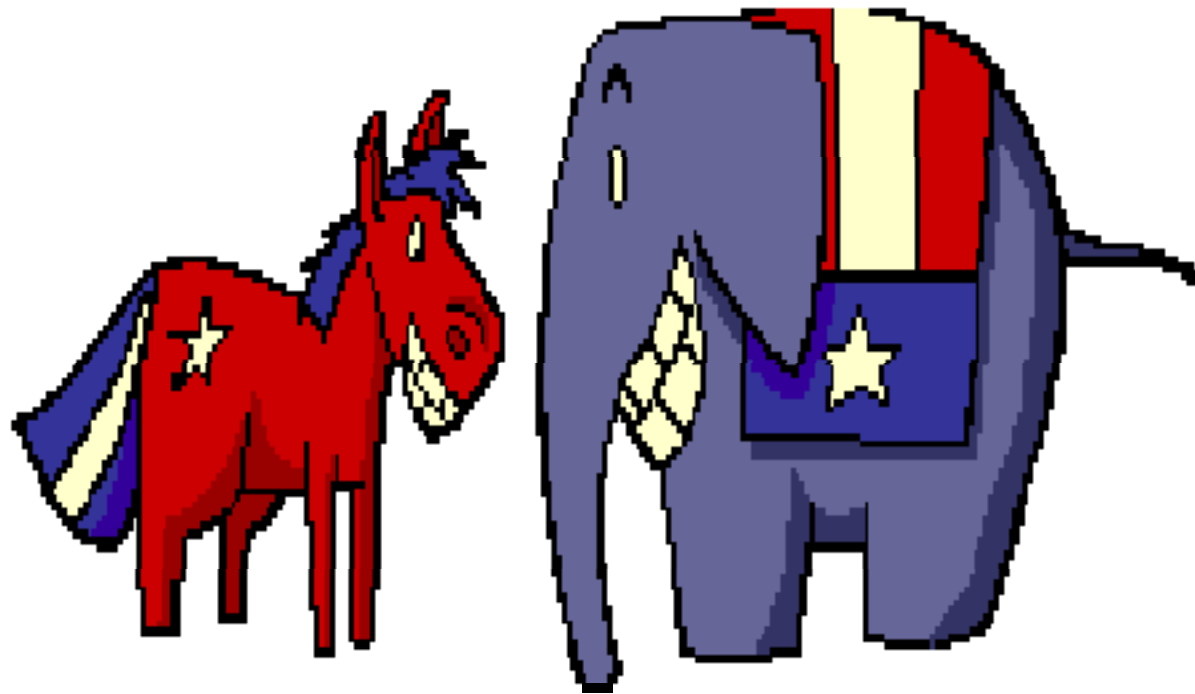
What's your style?

(*According to Thomas Killman personality styles)

- *Five Styles of Conflict Management...*



Negotiations



Mediation as “assisted” negotiations...

- ***Negotiations*** is a process of conferring, discussing, or bargaining in order to reach agreement on a contract or another subject of common concern to parties of interest.
- ***Mediation*** is an intervention by a third party neutral that is designed to assist or facilitate the process of negotiation.

A video look at mediation...

***“Dealing With
Conflict”***



Role of the Mediator is to...

**Assist parties to resolve their dispute
have by...**

- Being an advocate of the *negotiation* and *mediation* processes
- Demonstrating empathy for the parties
- Being neutral on the issues and positions
- Posing positives and negatives

KEY CONSIDERATIONS of Mediation



- Much is common sense
- Learn skills and approaches
- No prescribed or *right* way

Considerations of Mediation

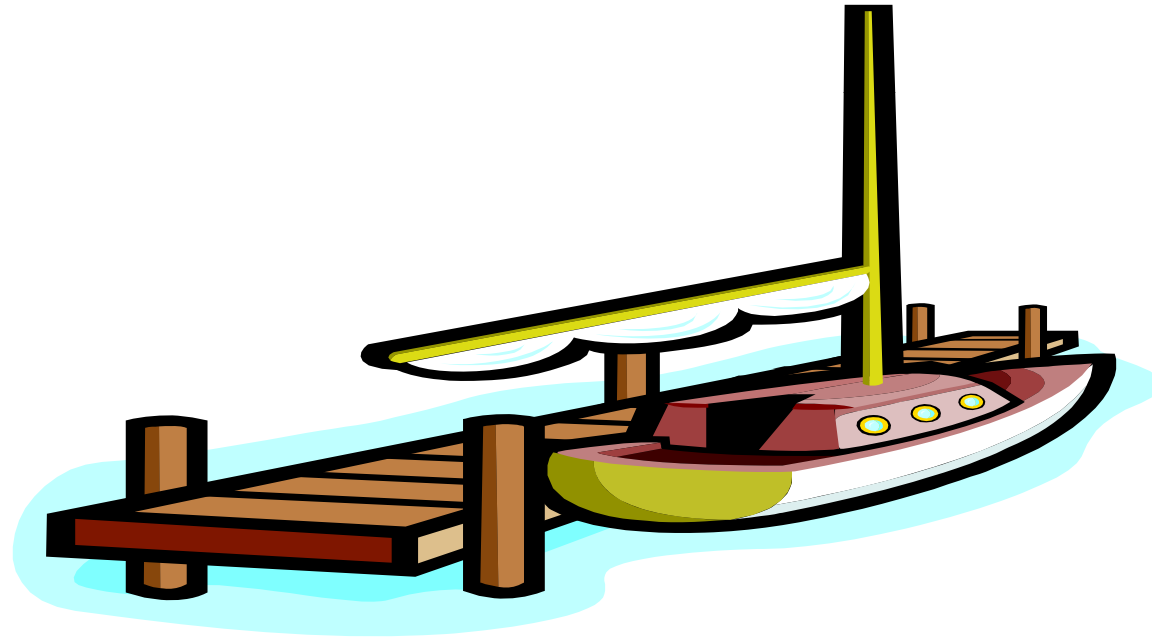
(CONTINUED)...

- Mediation is only one type of ADR
- Training does not automatically make you a mediator
- Mediators are neutral; not neutered

Understanding *Mediation*...

*...Requires an understanding of
Negotiations*

The Sailboat Saga... (an exercise)



The four OBJECTIVES of “Assisted” or “Facilitated” Negotiations:

- 1. Seek resolution based on interests**
- 2. Use Standards to arrive at decisions**
- 3. Utilize the three persuasive negotiation’s techniques**
- 4. Determine the parties’ respective BATNA and WATNA**

Negotiating or problem-solving tools...

- POWER
- RIGHTS
- INTERESTS

Mediator's *Objective #1* in assisting parties negotiate resolution...

- Seek resolution based upon the parties' ***INTERESTS***
- ***INTEREST*** (defined):
 - Why something is important to a person
- As differing from a ***POSITION*** (defined):
 - What one wants or believes is the only or best solution to the conflict

Mediator's *Objective #2* in assisting parties negotiate resolution...

- **Use Standards to arrive at decisions**
- **Use Standards rather than Power or Rights**
- **STANDARD**
(defined): An agreed to or mutually recognized authority serving as an objective measurement by which to decide an issue or argument.

Common STANDARDS for decision-making...

- Must be ***FEASIBLE***
 - Is it feasible? Practical? Workable? Affordable? Explainable? Understandable?
- Must be ***BENEFICIAL***
 - Does it satisfy the stated interest? Does it harm any other interest?
- Must be ***ACCEPTABLE***
 - Is it acceptable by the parties? Is it fair, as perceived by the parties?

Mediator's *Objective #3* in assisting parties negotiate resolution...

- The 3 Persuasive Negotiating Techniques:
 - Rational
 - Statistical or Factual
 - Emotional or Psychological



Mediator's *Objective #4* in assisting parties negotiate resolution...

- Determine each party's respective **BATNA** and **WATNA**
- **BATNA** –
 - **Best Alternative To A Negotiated Agreement**
- **WATNA** –
 - **Worst Alternative To A Negotiated Agreement**

INTER-RELATED ELEMENTS OF NEGOTIATIONS and MEDIATION...

- Relative bargaining leverage
 - *The cost of reaching agreement v. the cost of not reaching agreement*
- Information
 - *Used as tool to settlement or weapon for victory*
- Timing
 - *If not relevant to parties, then relevant to the mediator*

Traditional Dispute Model

- Parties present *ISSUES*
- Parties announce *POSITIONS*
- Parties support positions with *ARGUMENTS*
- Parties agree only with *COMPROMISE*
- Parties expect *UNEVEN OUTCOMES*

INTEREST-BASED MODEL

- Minimizes the use of power in negotiations
- Bases the negotiations on identifying mutually beneficial solutions.
- Focuses on certain *PRINCIPLES*, *ASSUMPTIONS*, *STEPS* and *TECHNIQUES*

TERMS used in Interest-Based dispute processes...

- Issue
- Position
- Interest (Mutual and Separate)
- Options
- Standards

***PRINCIPLES* of Interest-Based**

- Focuses on *issues*; not personalities
- Focuses on *interests*; not positions
- Creates *options* to satisfy both mutual and separate interests
- Evaluates options according to *standards*; not power

***ASSUMPTIONS* in Interest-Based**

- Communication enhances relationships
- All parties receive benefits
- Each party should help the other
- Open discussion expands interests and options
- Standards replace power
- Anger / frustration / anxiety is defused

***STEPS* of Interest-Based**

1. Identify the problem
2. Discuss all interests
3. Generate options
4. Select standards to evaluate options
5. Evaluate options using standards
6. Develop solution and capture in writing

TECHNIQUES of Interest-Based



* Brainstorming

* Consensus-Building



* Problem-Solving



* Idea Charting

MEDIATOR'S ROLE in Interest-Based

- Help parties communicate better by detoxifying their language with each other
- Assisting parties to identify separate and mutual interests
- Helping parties investigate what is really important behind a particular demand or position
- Probing for specific information that might help explain or otherwise analyze a demand
- Help parties determine what will be gained by reaching an agreement

He Said; She Said (detoxifying language)

- He Said
 - "She is a lazy, unmotivated, uppity woman with no sense of teamwork, no loyalty to the agency and spends most her time gossiping on the phone with her friends. She should be fired!"
- She Said
 - "He is an uncouth, ignorant, chauvinistic sexist jerk who can't manage his way out of a bathroom. He should be fired. And his family sent to..."

Conceptual Goals of Mediation...

- Assisting parties in their negotiations
- Mutually obligating parties to make their own settlement decisions
- Determining whether to simply manage or resolve conflict
- Empowering parties with more control
- Providing a less formal process than adjudication

Benefits of mediation...

- Parties are generally more satisfied with the outcome
- Parties explore a greater range of options for settlement
- Generally has a more positive and lasting affect on relationships

Mediation is appropriate...

- When the relationship is strained, but must continue
- When communication is flawed or lacking and a neutral could facilitate better dialogue
- When a third party neutral would change dynamics between the parties
- Parties are willing to settle or re-evaluate positions
- Parties are interested in retaining control of outcome
- Sufficient time to reach settlement

Mediation Summary

- Clarifying Issues – *defining the "problem"*
- Mediator Actions - *neutrality*
- Movement Towards Agreement - *supposals*
- Difficulties With Parties/Members - *agendas*
- Separate Caucuses - *confidentiality*
- Getting Parties Moving - *"last-best"*
- Changing the Focus – *"relationship building"*
- Overcoming Resistance – *"boulder vs. pebble"*
- Final Agreement – *the "end"*