

# TECHNIQUES OF MEDIATION

By  
WALTER A. MAGGIOLO

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*To my late brother*  
**COMMISSIONER HENRY L. MAGGIOLO**  
*an outstanding mediator  
and a constant source  
of inspiration and encouragement.  
His unselfish sacrifices  
made all things possible.*

## FOREWORD

Walter Maggiolo's excellent book warrants a wide audience, both lay and professional.

The author is a veteran mediator and an acknowledged authority on conflict resolution. While his prior book Techniques of Mediation in Labor Disputes was, as its title indicates, confined to mediation of labor disputes, the present volume has a broader sweep, demonstrating the value of mediation in many areas.

This is not a mere academic treatise. It reflects both the experience and the techniques which the author has gained and employed during his distinguished career of 35 years as a professional mediator.

It is almost conventional wisdom that the art of mediation cannot be taught; that it is an art--not a science.

Mr. Maggiolo convincingly argues a contrary view that there are techniques and guidelines which can be taught and learned in conflict resolution.

His book, therefore, is an important text for an age which has come to recognize that conflict resolution by mediation is preferable to imposed solutions.

It is must reading for those who are committed to the view that "jaw, jaw, jaw" is far more preferable than "war, war, war" in both foreign and domestic conflicts.

Arthur J. Goldberg  
Former Justice of the Supreme  
Court of the United States,  
Secretary of Labor,  
and Ambassador

## PREFACE

Since the publication of the author's book, Techniques of Mediation in Labor Disputes, in 1971, there has been an ever increasing acceptance of the concept of mediation as the most desirable method of resolving conflicts. This acceptance has engendered experimentation in and expansion of the role of mediation far beyond its traditional use in labor-management disputes. Disputants in controversies involving other social, economic, and legal fields have turned to mediation. Mediation is being utilized in disputes involving divorce, family, consumers, housing, age discrimination, environment, civil rights, prison, and landlord-tenant situations.

The recognition of the right of public employees to bargain collectively has had the effect of opening new horizons on the uses of mediation not only in its pure form but also in combination with other recognized dispute resolution procedures.

In view of these developments, readers of the prior volume have urged that it be revised not only by expanding on some of the suggested mediation techniques but also updating it in the light of the current developments in the field.

In this volume, we have attempted to meet both objectives, and in doing so have tried to continue to place the major emphasis on the practical rather than the theoretical.

This volume is a distillation of the experiences and techniques which the author has used in his cases spanning over 33 years as a full-time professional mediator.

It is an attempt to assist not only those who contemplate entering this most challenging and dynamic field but also to articulate some of the approaches and techniques used by many practitioners.

For a long time, many mediators have insisted that mediation was a pure art and, hence, could not be the subject matter of analysis or definition. While mediation in many senses is an art, nevertheless, the techniques used can be described and discussed. The correct application of these techniques to a given situation is the true art.

No guide or set of techniques can be a substitute for the mediator's judgment. His judgment must be based on the then status of negotiations, the personalities involved, and the issues in dispute. After carefully weighing all these factors, he--and he alone--should decide what of the suggested approaches and techniques, if any, may be applicable in a given situation.

#### ACKNOWLEDGMENTS

The author wishes to express his appreciation to Professor Jerome T. Barrett of the Northern Kentucky University and former Director of Technical Services of the Federal Mediation and Conciliation Service, who is the author of Chapters III, IV, V, XXVII, XXVIII, XXIX, and XXX, and compiled the Bibliography. Doctor Barrett also assisted in the editing of the manuscript and gave generously of his time in making suggestions for improvement.

We are also indebted to Mr. Joseph Swire, nationally recognized insurance and pension consultant, for his contribution of much of the material found in Chapter XXXII; and to Miss A. Lauretta Whitney who so patiently deciphered our handwriting and typed the manuscript.

Walter A. Maggiolo

1985

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## CHAPTER I

### THE NATIONAL LABOR-MANAGEMENT DISPUTE POLICY

#### Philosophical Basis

In order to evaluate properly our national labor-management dispute policy and the relationship of the mediation process to it, the policy should be assessed in the light of some of the basic concepts upon which our democratic society has been founded.

Our society is fundamentally a "meeting-of-minds" civilization. Our whole way of life is predicated on the principle that while the individual members of our society may have varying economic, political, and social backgrounds and consequently divergent viewpoints, when occasion demands, they can and must subordinate and accommodate their self-interest to the common good. As members of a democratic society, each individual group, although starting from apparently widely divergent positions, can by the process of reasoning, utilization of the normal avenues of communication, discussion, judicious use of constructive compromise and recognition of human ideas, arrive at a "meeting of minds" and go down the road together toward a common objective--the overriding public welfare. Conflict is thus supplanted by co-operation.

To many, the word "compromise" conjures up the concept of "splitting the difference," regardless of the reason for doing so. Constructive compromise is based on the recognition that others may have ideas which are equally valid and which call for a modification of our ideas to accommodate theirs.

The notion that differences and difficulties between individuals and groups in our society are reconcilable is basic to our democratic society. Our whole legislative process is one of constructive compromise. Legislators seek out the possible rather than insisting on the perfect which is unattainable.

Our society is also predicated on the principles of voluntarism as opposed to compulsion. Duties as well as rights flow out of the social relationship. The primary burden of