FEDERAL MEDIATION AND CONCILIATION SERVICE

"Conflict and Resolution"

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CONFLICT AND RESOLUTION

Conflict and controversy are most frequently thought of as destructive elements in our society. Certainly they are negative, at best, in many situations. However, it requires no extensive elaboration to show that controversy and conflict have often been almost necessary ingredients of discovery and creation. Many great scientific advances have been accompanied by bitter debate. The heretic was often the source of a new religious truth. Some of the political heroes of history have been hated in their own time. An audience walked out at the first playing of a Beethoven masterpiece. Hopefully, the current explosive civil rights revolution is a portent of great advances towards racial equality.

In a free society, we cherish the possibility of change. We know that any specific change is not necessarily good. But, we can be certain that some changes are desirable and necessary, even at the price of diversity and controversy. Perhaps our major task in a democracy is to keep open the channels and mechanisms

essential to change and at the same time to contain and limit controversy and conflict so that the net effects are on the plus side.

The labor relations arena is commonly considered to be one of our most prolific sources of domestic strife and controversy. Strikes and threats of strikes are sufficiently frequent and well publicized to provide that impression. The principal purpose of this paper is not to hide the fact of conflict where it exists, but it is to attempt to put this conflict into proper perspective and to portray the significant achievements that have been made towards peaceful resolution.

At the risk of over-simplification, important differences between employees and management in industry can be grouped under three major headings:

1) Questions as to whether a union of employees at particular plants or companies must be recognized by management for purposes of collective bargaining.

2) Differences of opinion about the terms and provisions of basic agreements once the right

of employees to bargain through a union has been established.

3) Day-by-day problems that develop at plants during the life of a collective agreement.

It is easy to forget that many long, bitter, and bloody strikes early in this century were not the kind of strikes we have now. They had nothing to do directly with wages or working conditions. They were caused by the fact that many employers simply refused to have anything to do with unions. The strikes were so-called recognition strikes designed almost solely to force an employer to deal with a union of his employees. The Wagner Act, passed in 1935--only 28 years ago, had two principal effects on the union recognition problem. It did not say that an employer must recognize a union regardless of the circumstances, but it did say that, if a majority of employees desired that a union represent them, the employer must bargain. And, a secret ballot, administered by the National Labor Relations Board, was established as a device to test the majority principle.

Despite some shift of public sentiment in 1947, when the Taft-Hartley Act amendments were passed, no important changes were made in these provisions, and there is no likelihood of alterations in the near future. The ballot box has been substituted for the recognition strike.

The second area of potential controversy is negotiation of a labor agreement after a union has been recognized and renegotiation of subsequent contracts at periodic intervals. More will be said about this later. It suffices at this point to note only that basic labor agreements have tended to become longer. Only a few years ago, a typical agreement was for one year. Today, a typical agreement is for three years. Thus, the occasions for major controversy have become less frequent.

The third likely source of conflict arises out of the fact that no labor agreement can be sufficiently detailed and complete to provide specific answers for the multitude of day-by-day problems that arise in every plant. An employee is discharged. He and his fellow workers believe that there was insufficient cause. Management fills a

job vacancy by selecting an individual who is not entitled to the job according to the union's opinion as to how the contract should be interpreted. A new and better machine is installed, and the workers believe that the new and lower piece rate established by the company will not yield the proper earnings. It was very frequent for a strike to occur over such disputes. Today such strikes are infrequent. Grievance procedure, an orderly method for joint discussion of such problems, resolves most of these controversies. And, in well over ninety percent of all labor agreements, unions have agreed not to strike during the agreement in return for the right to submit such unresolved disputes to arbitration.

In short, within a span of time not much more than a quarter of a century, appropriate methods have been devised for resolution of two very large areas of potential industrial conflict. The ballot box has been substituted for the recognition strike. Grievance procedure and grievance arbitration have produced a very high level of industrial peace during the life of labor agreements.

Returning now to the major remaining area of likely conflict, what is being done and what can be done to minimize or eliminate open conflict between management and labor when labor agreements are negotiated?

It may be instructive first to take a quick look at the nature of the problem. Employees and the union representatives who are selected by them formulate a series of so-called demands--improvements in wages, working conditions and job security provision. Almost inevitably these demands are substantially more costly than management is prepared to grant. The company may also be convinced that some of the union demands will promote inefficient operations. Moreover, especially in recent years, management will often formulate its own demands. These company demands are usually intended to take away or change some employee benefits or unwritten plant practices that have been granted or that have developed informally in the past and that, in management's view, have proved to be unsatisfactory.

The process of labor negotiation includes: (1) mutual recognition of the very many areas of superficial

discussion and ultimate resolution of these union and company demands.

conflict where, in reality, the interests of both parties lie in the same direction, (2) creative discussion of areas of real conflict leading to discovery of answers that are truly satisfactory to both parties, and (3) development of compromise answers to some disputed issues that may not be truly satisfactory to one party or even to both parties but that are more palatable than a strike or a lockout. (4) capitulation

The ever-present backdrop to each negotiation is the fact that a strike or a lockout can occur at a deadline date. Even if a strike or a lockout does occur, the dispute must be settled somehow, sometime.

It is obvious that collective bargaining involves "mind changing," one of the most difficult accomplishments of the human animal. In bargaining, it is most infrequent that anybody secures precisely what he originally sought to obtain.

Given these characterists of negotiation, it is important to indicate a few facts about success. There are approximately 100,000 labor contracts signed each

year in the fifty States. In about 93 percent of these instances, the bargaining is concluded quietly and successfully without strikes and even without active mediation. In another five percent, active mediation assistance by the Federal Mediation and Conciliation Service is provided and no strikes occur. Strikes or lockouts of varying duration develop in only about two percent of all these negotiations. For the three successive years of 1960, 1961, and 1962 (and 1963 should probably be comparable) days lost due to strikes have been at a nation-wide ratio of one day lost to about 700 days worked. The newspapers say very little about the peaceful settlements that constitute 98 percent of the total. Unfortunately, success is not often newsworthy.

This is not to suggest that almost 2,000 strikes each year are desirable or unimportant, even if they do constitute only two percent of all contracts bargained. Every one is important to the individuals involved and some of them can entail consequences to the Nation or to the community even more grave than to the direct participants.

Because this is so, we should examine possible alternatives.

Some say: "There ought to be a law to prohibit strikes." This alternative is not realistic. It is repugnant to our way of life to say that a man must work under conditions generally unacceptable to him. Effective outlawing of strikes would remove a principal inducement to settlement, both to workers who weigh a proposed settlement against the hardships of a strike and to management representatives who do likewise. Moreover, short of a dictatorship and all that that involves, such a law simply would not be obeyed.

To answer some of the objections just noted, some say: "Let's have a law to abolish strikes and require companies and unions to submit their disputes to compulsory arbitration." This alternative is a little more palatable. However, it would have an inevitable effect of enervating collective bargaining. The weaker party, faced with a hard decision, would be likely to refuse to settle and would gamble on arbitration. Moreover, this

alternative has not really worked where it has been tried. For example, strikes are just about as prevalent in Australia under such a law as they are in the United States.

Another suggested alternative is voluntary arbitration. If voluntary arbitration of grievances is so generally acceptable, why is it that companies and unions do not agree to arbitrate their contract disputes? There is some limited acceptance of this device, but most companies and unions will not arbitrate new contracts. There is a fundamental distinction between the legislative aspects of contract writing (making the laws and rules) and the quasi-judicial aspects of grievance arbitration (interpretation and application).

The role of Government in contract bargaining is limited almost solely to mediation. At the federal level, the Federal Mediation and Conciliation Service is the principal agency with jurisdiction over all disputes, except railroads and airlines. We have 237 mediators, located in the principal industrial cities, with a small administrative staff in Washington and at seven regional

offices. Some of the industrial States have mediation agencies. What is mediation and how does a mediator work?

A fundamental characteristic of mediation is that a mediator has no power to decide anything. Although the Federal Mediation and Conciliation Service is established by law, we do not have the enforceable authority to compel a company or union to use our services or even to meet with us. Having been admitted into a dispute situation, anything and everything that we do is conditioned by the need to secure cooperation or at least acquiescence. In this seemingly powerless role, what can a mediator do?

A few time-honored mediation functions can be noted briefly. Sometimes, the disputants would not even talk to each other in a joint meeting unless the mediator schedules it. When a mediator chairs the meeting, it is more likely to be orderly and less acrimonious. If it does become verbally explosive, the mediator can stop the meeting before displays of temper do irreparable harm. It is not uncommon that channels of communication between disputants are lacking or inadequate. The mediator can be a "message carrier."

At a next higher level of activity, a skilled mediator can be helpful in narrowing the issues and in discovering common ground where the parties do not recognize it. Meeting separately with company or union representatives, a mediator can do much to deflate extreme positions and to resolve internal disputes. A group of union negotiators is not always united, even as to a union position, and this can also be the case within a company.

One of the characteristics of negotiation is that there is usually "no retreat" from an offer made "across the table" by a company or a change of union position made similarly by a union. However, a mediator can and does "try on for size" various possible solutions without committing anybody.

Since a skilled mediator has a wider range of experience than a typical negotiator, he has a basis for making suggestions and sometimes formal recommendations that would not have been thought of by the parties. Moreover, a mediator's recommendation can have obvious "face saving" value.

It is often said that a good mediator is a catalyst. Although I haven't looked at a chemistry book in a great many years, my recollection of the definition of a catalyst is that it is a substance essential to a chemical reaction but is not itself changed in the process. The analogy is probably as good as most, but I am not sure that a mediator remains totally unchanged. Most of us like to believe that we change and grow as we acquire more experience.

Within the FMCS, we spend a great deal of time and effort selecting the relatively few men that we hire to train as mediators. I once semi-humorously noted the qualities we seek as follows:

> The patience of Job, the sincerity and bulldog characteristics of the English, the wit of the Irish, the physical endurance of the marathon runner, the broken-field dodging abilities of a half-back, the guile of Machiavelli, the personality-probing skills of a good psychiatrist, the confidence-retaining characteristic of a mute, the hide of a rhinoceros, and the wisdom of Solomon.

In a more serious vein, it should be apparent to all of us who are Quakers, as well as others who have had exposure to Quaker precepts, that the mediator's

necessity to rely on persuasion rather than external authority is an asset, not a liability. Since the essence of successful collective bargaining is a willingness to see and understand opposing points of view, to arrive at a "meeting of minds" or a "sense of the meeting" after discussion, and the capacity to "change minds" when necessary and convinced, persuasion is more powerful than authority.