

THE FEDERAL MEDIATOR
FEDERAL MEDIATION AND CONCILIATION SERVICE
REGION VII
FEBRUARY 24, 1953

CONFIDENTIAL USE OF THE
FEDERAL MEDIATION AND
CONCILIATION SERVICE
STAFF EXCLUSIVELY

FEDERAL MEDIATION AND CONCILIATION SERVICE

1023 FEDERAL BUILDING
DETROIT 26, MICHIGAN

FEBRUARY 24, 1953

TO: HENRY F. TUCKER, REGIONAL DIRECTOR

FROM: COMMITTEE ON THE FEDERAL MEDIATOR, HIS RESPONSIBILITIES,
FUNCTIONS, AND TECHNIQUES,

SUBJECT: REPORT ON "THE FEDERAL MEDIATOR--HIS RESPONSIBILITIES,
FUNCTIONS, AND TECHNIQUES," FEBRUARY 24, 1953

HEREWITH IS THE REPORT ON THIS SUBJECT. IT IS SUBMITTED AS AN UNFINISHED DOCUMENT. PERHAPS IT WILL ALWAYS BE AN UNFINISHED DOCUMENT. ONLY THE SURFACE HAS BEEN SCRATCHED. THE PROJECT SEEMS TO BE A CONTINUING OR PERPETUAL ONE.

WHAT HAS BEEN DONE IS THIS: THE MEDIATION PROCESS AS IT IS CARRIED OUT BY THE MEDIATORS IN REGION 7 HAS BEEN EXAMINED. THEIR EXPERIENCE HAS BEEN ANALYZED SO THAT A STATEMENT COULD BE WRITTEN REGARDING MEDIATION AS IT IS PRACTICED IN REGION 7.

THE RESULTS ARE THESE: A GENERAL STATEMENT OF THE RESPONSIBILITIES AND FUNCTIONS OF THE MEDIATORS, A MORE CONCENTRATED EXAMINATION OF THE TECHNIQUES USED IN CONTRACT NEGOTIATIONS, AND A FAIRLY LIGHT REVIEW OF THE TECHNIQUES USED IN CARRYING OUT THE OTHER FEDERAL MEDIATION RESPONSIBILITIES.

THERE REMAIN MANY, MANY UNEXPLORED PHASES OF THE MEDIATION PROCESS. THEY HAVE BEEN LISTED AS TOPICS OR AREAS IN WHICH FURTHER RESEARCH WOULD BE FRUITFUL. THEY PRESENT A REAL CHALLENGE TO FUTURE RESEARCH COMMITTEES.

IN PRESENTING THIS REPORT, ONE POINT SHOULD BE EMPHASIZED. THE READER OF THIS REPORT WILL FIND THERE NUMEROUS TECHNIQUES. THESE ARE THE MEDIATOR'S "BAG OF TRICKS." THEIR USE BY MEDIATORS MUST BE TEMPERED WITH CONSIDERABLE JUDGMENT FOR, AS HAS BEEN SAID ELSEWHERE IN THIS REPORT, "SINCE SITUATIONS, PERSONALITIES, AND MEDIATORS ALL DIFFER, ANY TECHNIQUE MAY OR MAY NOT BE INDICATED DEPENDING ON WHEN AND HOW AND BY WHOM IT IS USED."

C O N T E N T S

INTRODUCTION

- A. THE NEED FOR A STUDY
- B. THE APPROACH

THE FINDINGS

A. RESPONSIBILITIES

1. TO THE FMCS

- A. TO CARRY OUT HIS ASSIGNMENTS
- B. TO PREPARE WRITTEN REPORTS ON HIS ACTIVITIES
- C. TO KEEP INFORMED ON FMCS POLICIES AND PROCEDURES
- D. TO UTILIZE EFFECTIVELY FMCS FACILITIES
- E. TO IMPROVE THE OPERATIONS OF THE SERVICE
- F. TO CONDUCT HIMSELF IN A MANNER SO AS TO REFLECT CREDIT TO THE SERVICE

2. TO THE PARTIES

- A. TO HELP THEM SETTLE THEIR DISPUTES
- B. TO INFORM THEM REGARDING THE FMCS
- C. TO HELP THEM IN THEIR EFFORTS TO DETERMINE THE CAUSES OF POOR LABOR RELATIONS AND TO ASSIST THEM IN THEIR ELIMINATION
- D. TO INFORM THEM REGARDING FMCS POLICIES AND PROCEDURES ON ARBITRATION
- E. TO GIVE INFORMATION AND ADVICE ON A VARIETY OF INDUSTRIAL RELATIONS PROBLEMS

3. TO THE OTHER LEGALLY CONSTITUTED MEDIATION AGENCIES

4. TO OTHER GOVERNMENTAL AGENCIES

5. TO HIMSELF

- A. BY DEVELOPING HIS PROFESSIONAL BACKGROUND
- B. BY MAINTAINING HIS PROFESSIONAL STANDARDS
- C. BY LIVING A WELL-BALANCED LIFE

6. TO THE PUBLIC

B. FUNCTIONS

- 1. THE SERVICE'S FUNCTION UNDER THE LMRA
- 2. THE MEDIATOR'S FUNCTIONS UNDER THE LMRA

- A. PUBLIC RELATIONS AND RELATED ACTIVITIES
- B. CONTRACT NEGOTIATIONS
- C. GRIEVANCES
- D. RECOGNITION AND UNFAIR LABOR PRACTICES
- E. ARBITRATION
- F. PREVENTION

C. TECHNIQUES

- 1. PUBLIC RELATIONS AND RELATED ACTIVITIES
- 2. INVESTIGATIONS

- A. SECURING INFORMATION
- B. DEVELOPING FRIENDLY RELATIONSHIP
- C. INFORMING AND ADVISING GENERALLY
- D. INFORMING REGARDING THE SERVICE

3. NEGOTIATIONS---STANDBY

4. NEGOTIATIONS---CONSULTATION

5. NEGOTIATIONS---ACTIVE

- A. PREPARATION

- (i) DETERMINATION OF DATE, PLACE, AND TIME OF JOINT CONFERENCE

- (2) COMMITTING PARTIES TO THE
ARRANGEMENTS

B. PRELIMINARIES--THE INITIAL SEPARATE
CONFERENCE

- (1) DEFINING THE ISSUES
- (2) DISCOURAGING THE INTRODUCTION
OF NEW ISSUES
- (3) DETERMINING ISSUE VALUES
- (4) ESTABLISHING AN AGENDA

C. THE JOINT CONFERENCE

- (1) EFFECTING A FRIENDLY ATMOSPHERE
- (2) STATING THE ISSUES
- (3) AGREEING ON THE APPROACH
- (4) RELEASING TENSIONS
- (5) THE MEDIATOR IN THE JOINT
CONFERENCE

D. THE SEPARATE CONFERENCE

- (1) TIMING
- (2) THE ROLE OF THE MEDIATOR IN
THE SEPARATE CONFERENCE
- (3) DETERMINING THE REAL ISSUES

E. TECHNIQUES

1. BUYING FRINGE BENEFITS
2. IGNORING DROPPED ISSUES
3. INFLUENCING THE RESULT OF A
UNION RATIFICATION MEETING
4. ASSUMPTION
5. REDUCTION OF ISSUES AND
POSITIONS TO WRITING BY THE
PARTIES
6. EXPLORATION
7. THE PACKAGE
8. TRADING ISSUES
9. REARRANGEMENT OF ISSUES
10. THE AGREEMENT WHICH IS NOT IN
THE CONTRACT

11. BREAKING A PROBLEM DOWN INTO ITS ELEMENTS
12. FINALITY
13. CROSSING THE TABLE
14. TWO MAJOR ISSUES
15. SMOKING THEM OUT
16. THE MEDIATOR'S CONCEPT OF THE ISSUES
17. CONDITIONAL CALL TO THE MEETING
18. PREPARATION OF A PARTY FOR A PROPOSAL
19. EXTENSION OF AN ISSUE
20. REALITY
21. INTEGRATING THE PARTS
22. REDUCTION OF AGREEMENT TO WRITING
23. RECORDING OF ISSUES BY MEDIATOR
24. HANDLING TWO REMAINING ISSUES
25. ENTHUSIASM AND APATHY
26. ASSUMPTION OF DEFEAT
27. THE CONCILIATORY AS CONTRASTED TO THE LEGALISTIC APPROACH
28. TIMING
29. BLOW-UP
30. SYMPATHY AND SEVERITY
31. THE ILLUSTRATION
32. LISTENING
33. PRIDE OF AUTHORSHIP
34. ACCUSATION
35. PREPARATION OF A PARTY FOR CAPITULATION
36. EMBARRASSMENT
37. REASSURANCE
38. USE OF HYPOTHETICAL SITUATIONS
39. IGNORANCE
40. INTELLIGENCE
41. INTERROGATION
42. REPETITION
43. ANALYSIS OF ARGUMENTS
44. COST-OF-PRINCIPLE APPROACH
45. PROVING THE POINT
46. HIGHLIGHTING THE AREA OF DISAGREEMENT
47. IDENTIFICATION
48. STANDARD PRACTICE
49. SUPPLEMENTING A PARTY'S ARGUMENT
50. MEDIATOR TREATMENT OF FAULTY REASONING
51. NEUTRALITY
52. POINTING THE ARROWS
53. EMPHASIZING THE IMPORTANCE OF THE SITUATION

54. HUMORING A PERSON
55. THE REFUSAL-TO-MEET SITUATION
56. LETTING THE PARTY CHOOSE
57. THE EXTENSION
58. COMMITTING A PARTY TO A CONFERENCE
59. USE OF SIGNIFICANT PERSONS
60. CREATING DOUBT
61. THE TIRED OR BUSY CHIEF NEGOTIATOR
62. USE OF THE COMMITTEE MEMBERS
63. THE SUGGESTION OF ARBITRATION
64. BEHIND-THE-SCENES NEGOTIATIONS
65. CONSIDERING THE SOURCE
66. REMOVING THE PARTIES FROM THE BARGAINING TABLE
67. SUBSTITUTING AND SUPPLEMENTATION
68. WITHDRAWAL OF THE PARTIES FROM THE SCENE OF ACTION
69. CHALLENGE
70. CALLING THE BLUFF
71. SUBSTITUTE NEGOTIATORS
72. RESPONSIBILITY AND IRRESPONSIBILITY
73. HIGHLIGHTING THE BEST POSSIBLE ALTERNATIVE
74. THE WARNING
75. SAVING FACE
76. THE TANGENT
77. AVOID PRINCIPLES, WELCOME FACTS
78. THE ROUND ROBIN
79. VISUAL ARTS
80. CONVEYING THE MESSAGE
81. THE MEDIATOR AS A PIPE LINE
82. MAINTAINING THE STATUS OF THE MEDIATOR
83. THE BULLDOG
84. THE CHAT
85. THE MEDIATORS ASSUMPTION OF THE PROFESSIONAL OR OTHER APPROACH TO THE PARTIES
86. KEEP THEM TALKING
87. KEEP THEM FROM TALKING
88. THE RECALCITRANT
89. MEDIATOR ATTENDANCE AT MEMBERSHIP MEETINGS
90. RIDICULING A PROPOSAL
91. THINKING OUT LOUD
92. THE DEADLINE
93. PERSONAL APPROACH
94. THE "YES" AND "NO" MAN
95. THE PRINCIPLE OF FAIRNESS OR EQUITY

96. MEDIATOR STATEMENT OF PARTY'S POSITION
97. DEMONSTRATION OF COMPETENCE
98. THE IMPRACTICAL SUGGESTION
99. ADJUSTMENT OF SERVICE REPRESENTATION
100. THE TELEGRAM
101. PLANTING THE SEED
102. PAYING THE PIPER
103. THE CONSULTANT
104. LAST-MINUTE PROPOSALS
105. MEDIATOR WITHDRAWAL
106. LETTING THE PARTY MAKE HIS OWN PROPOSAL
107. SUGGESTIONS AND RECOMMENDATIONS
108. CONTROLLING THE SPEED OF PROPOSALS
109. THE MEDIATOR'S PROPOSAL
110. INVESTIGATING A SITUATION
111. PREPARATION OF THE WRITTEN PROPOSAL
112. THE HABIT OF AGREEMENT
113. THE USE OF THE PARTY'S OR THE MEDIATOR'S COMMITMENTS
114. DELIBERATE ADJOURNMENT
115. USE OF OUTSIDE UNION
116. ALL-NIGHT SESSIONS
117. SUBCOMMITTEES
118. ASSERTION
119. VARYING THE PICTURE IN EXCHANGING INFORMATION
120. PUBLICITY

6. RECOGNITION AND UNFAIR LABOR PRACTICES

- A. WHERE THE EMPLOYER CHALLENGES THE MAJORITY STATUS OF THE UNION
- B. WHERE THE EMPLOYER BELIEVES THAT THE NLRB HAS ERRED IN ITS DETERMINATION OF THE BARGAINING REPRESENTATIVE
- C. WHERE A COMPETING UNION ASSERTS JURISDICTION
- D. IF AN UNFAIR LABOR PRACTICE IS CHARGED

7. GRIEVANCES

8. ARBITRATION

9. PREVENTION

SOME UNEXPLORED QUESTIONS
CONCLUSIONS

THE FEDERAL MEDIATOR, HIS RESPONSIBILITIES, FUNCTIONS, AND TECHNIQUES

INTRODUCTION

A. THE NEED FOR A STUDY

THE NEED FOR A STUDY OF THE MEDIATOR AND HIS PROFESSION HAS LONG BEEN FELT BY LABOR AND MANAGEMENT REPRESENTATIVES AND BY THE MEDIATORS THEMSELVES. THERE EXIST, OF COURSE, NUMEROUS EXAMINATIONS OF THE ART OF MEDIATION BY PERSONS WHO HAVE SUCCESSFULLY COMBINED TEACHING WITH LABOR RELATIONS ACTIVITIES. HOWEVER, THE ABSENCE OF WRITTEN MATERIAL BY PROFESSIONAL MEDIATORS IS CONSPICUOUS. THERE IS A CRYING NEED FOR A FURTHER EXAMINATION OF THE MEDIATION PROCESS BY THOSE WHO MAKE MEDIATION THEIR LIFE WORK.

THIS NEED HAS BEEN ACCENTUATED BY THE LACK OF WRITTEN MATERIAL ON MEDIATION FOR USE BY THE FMCS AND OTHER MEDIATION AGENCIES IN CONNECTION WITH THE TRAINING AND DEVELOPMENT OF MEDIATORS AND THE REORIENTATION OF THEIR THINKING. THE ASSUMPTION HAS BEEN THAT EXPERIENCE AS A LABOR OR MANAGEMENT REPRESENTATIVE ENGAGED IN COLLECTIVE BARGAINING AUTOMATICALLY PREPARES ONE FOR THE ROLE OF MEDIATOR IN LABOR-MANAGEMENT DISPUTES. THIS ASSUMPTION HAS BEEN QUESTIONED MORE AND MORE AS THERE HAS COME RECOGNITION OF THE FACT THAT THE MEDIATOR MUST PRESENT TO THOSE WITH WHOM HE DEALS CONSIDERABLY MORE THAN A MERE KNOWLEDGE OF COLLECTIVE BARGAINING PROCEDURES.

IN THE SERVICE THE QUESTION OF WHAT THE BEST APPROACH IS TOWARD THE SOLUTION OF LABOR-MANAGEMENT PROBLEMS HAS TOO FREQUENTLY BEEN MET WITH THE COMMENT THAT, MEDIATION BEING AN ART, IT IS AN INTANGIBLE TYPE OF ACTIVITY AND ITS TECHNIQUES CANNOT BE REDUCED TO WRITING. HOWEVER, IT HAS BECOME APPARENT THAT NOT ONLY ARE THERE TANGIBLE, CONCRETE, AND DEFINITE APPROACHES, BUT THAT THESE APPROACHES CAN BE SPECIFICALLY DEFINED FOR USE BY MEDIATORS IN CONNECTION WITH THEIR TRAINING AND ADVANCEMENT.

B. THE APPROACH

RESPONSIBILITY FOR CARRYING OUT THE STUDY WAS PLACED IN THE HANDS OF A COMMITTEE OF SIX MEDIATORS BY THE DIRECTOR OF REGION 7. THE MEMBERS OF THE COMMITTEE WERE SELECTED ON THE BASIS THAT THEY COULD DRAW FROM THE BACKGROUND OF EXPERIENCE AND TRAINING OF THE MEDIATORS OF REGION 7 IDEAS, TECHNIQUES, AND METHODS WHICH COULD BE INTEGRATED AND FASHIONED INTO AN ANALYSIS OF THE MEDIATION PROCESS.

MEMBERS OF THE COMMITTEE MET WITH PERSONNEL OF THE NATIONAL OFFICE STAFF OF THE FMCS TO DISCUSS THE PROPOSED STUDY AND SECURE THEIR REACTIONS TO IT. THE COMMITTEE THEN MET WITH ALL OF THE MEDIATORS OF REGION 7 IN A SERIES OF CONFERENCES AND ELICITED FROM THEM THEIR WRITTEN AND ORAL COMMENTS ON VARIOUS PHASES OF THE STUDY. THE SUGGESTIONS OF THE MEDIATORS AND THE IDEAS OF THE COMMITTEE MEMBERS WERE REVIEWED AT A NUMBER OF COMMITTEE MEETINGS AND CONFERENCES OF ALL THE MEDIATORS IN THE REGION. FROM THIS THERE GRADUALLY EVOLVED THE ANALYSIS WHICH FOLLOWS. THUS, IT CAN BE SAID THAT THE REPORT IS WHOLLY A DOCUMENT WHICH IS BASED ON THE THOUGHTS, OPINIONS, AND EXPERIENCES OF THE MEDIATORS OF LABOR-MANAGEMENT DISPUTES IN REGION 7.

THE FINDINGS

A. RESPONSIBILITIES

FIRST OF ALL, THERE SHOULD BE NO QUESTION ON THE PART OF ANY MEDIATOR IN THE SERVICE AS TO JUST WHAT HIS RESPONSIBILITIES ARE. TO BE SURE, HIS TASKS HAVE BEEN DETAILED IN HIS JOB DESCRIPTION BUT THIS ANSWERS ONLY IN PART HIS QUESTIONS AS TO WHAT HIS RESPONSIBILITIES ARE TO THE FMCS, THE PARTIES TO LABOR DISPUTE, OTHER MEDIATION AGENCIES WITH WHICH HE COOPERATES, OTHER GOVERNMENTAL AGENCIES WHICH HAVE AN INTEREST IN THE MAINTAINANCE OF INDUSTRIAL PEACE, HIMSELF AS A PERSON, AND THE PUBLIC WHOSE WELFARE IS AFFECTED. THESE ARE VITAL QUESTIONS AND MOST MEDIATORS HAVE SPENT MANY, MANY HOURS WONDERING ABOUT THE ANSWERS. LET US CONSIDER FIRST THE RESPONSIBILITIES OF THE FEDERAL MEDIATOR TO THE FMCS.

I. TO THE FMCS

A. TO CARRY OUT HIS ASSIGNMENTS

CERTAINLY, THE MOST IMPORTANT RESPONSIBILITY A MEDIATOR HAS TO THE FMCS IS TO CARRY OUT HIS ASSIGNMENTS. AND, OF HIS ASSIGNMENTS, THE MAJOR ONE IS TO MEDIATE. BUT MEDIATION IS A BROAD TERM AND IT EMBRACES A WIDE VARIETY OF SUBSIDIARY ACTIVITIES WHICH A MEDIATOR MUST PERFORM TO BE EFFECTIVE. THUS, A CHALLENGE FACES THE MEDIATOR TO ENTER INTO FIELDS OF LABOR-MANAGEMENT RELATIONS WHICH ARE A FAR CRY FROM JUST THE JOB OF BEING THE NEUTRAL PARTY IN THE MIDST OF A SERIES OF NEGOTIATIONS COVERING A NEW OR RENEWED CONTRACT. THE EFFECTIVE MEDIATOR IS THE CONSULTANT, THE ADVISOR, THE EXPERT TO WHOM THE PARTIES SHOULD BE ABLE TO TURN AT ANY TIME FOR INFORMATION AND ADVICE--AND SUCH INFORMATION AND ADVICE IS NOT NECESSARILY CONFINED TO CONTRACTUAL PROBLEMS. HE CARRIES OUT THE ROLE WHICH HE HAS ALWAYS ASSUMED AND WHICH THE PARTIES ARE INCREASINGLY RECOGNIZING: A FRIEND OF THE PARTIES WHO

BECAUSE OF HIS SKILLS IN HUMAN RELATIONS, HIS BROAD EXPERIENCE IN INDUSTRIAL RELATIONS PROBLEMS, AND BECAUSE OF HIS OBJECTIVITY, CAN HELP THEM TO DISCOVER AND REDUCE, IF NOT ELIMINATE, BASIC CAUSES OF INDUSTRIAL STRIFE.

B. TO PREPARE WRITTEN REPORTS ON HIS ACTIVITIES

IT IS A FUNDAMENTAL REQUIREMENT OF ANY JOB TO RECORD THE ACTIVITIES OF THE PERSON CARRYING OUT THE JOB. THIS BASIC REQUIREMENT IS EVEN MORE ESSENTIAL IN THE CASE OF THE MEDIATOR.

IT IS LARGELY BY MEANS OF WRITTEN RECORDS THAT THE REGIONAL DIRECTOR IS KEPT INFORMED OF THE STATUS OF THE CASES FOR WHICH HE IS RESPONSIBLE. THEY PROVIDE THE BASIS FOR LIAISON BETWEEN THE REGIONAL AND NATIONAL OFFICES. BY MEANS OF THEM FEDERAL MEDIATORS AND REGIONAL DIRECTORS ALL OVER THE COUNTRY ARE INFORMED QUICKLY AND EASILY OF THE PROGRESS OF CASES IN WHICH THEY HAVE AN INTEREST. THEY ALSO ARE THE KEYSTONE ON WHICH A RESEARCH PROGRAM IS BUILT.

C. TO KEEP INFORMED ON FMCS POLICIES AND PROCEDURES

IT IS INCUMBENT ON THE PART OF EVERY MEDIATOR TO KEEP HIMSELF INFORMED ON FMCS POLICIES AND PROCEDURES AND ANY CHANGES IN THEM, BOTH ON A NATIONAL AND REGIONAL LEVEL. SUCH AN AWARENESS IS AN ESSENTIAL PREREQUISITE TO EFFECTIVE REPRESENTATION OF THE SERVICE.

D. TO UTILIZE EFFECTIVELY FMCS FACILITIES

IN VERY FEW ORGANIZATIONS IS THE USE OF FACILITIES-- THE MEDIATOR'S TIME, HIS TRAVEL ALLOTMENT, TELEPHONE AND OFFICE SERVICES, AND SO FORTH--LEFT AS MUCH TO THE EMPLOYEE'S JUDGMENT AS IN THE CASE OF THE MEDIATOR ATTACHED TO THE FMCS.

SUCH FREE AND INDEPENDENT OPERATION IS PREDICATED ON THE PREMISE THAT THE MEDIATOR IS A MATURE PERSON OF UNQUESTIONED INTEGRITY. THIS IS AN ASSUMPTION MADE BY THE NATIONAL AND REGIONAL OFFICES AND IT IS THE MEDIATOR'S RESPONSIBILITY TO MAKE CERTAIN THAT THE ASSUMPTION IS NEVER QUESTIONED.

E. TO IMPROVE THE OPERATIONS OF THE SERVICE

MUCH HAS BEEN SAID AND MUCH HAS BEEN WRITTEN ABOUT THE "BOTTOM-UP" APPROACH TO MANAGEMENT. THE IDEA THAT SUGGESTIONS FOR THE IMPROVEMENT OF MANAGEMENT OPERATIONS SHOULD COME FROM THE RANK AND FILE UP AS WELL AS FROM TOP MANAGEMENT DOWN HAS BEEN GIVEN WHOLE-HEARTED ACCEPTANCE IN THE FMCS.

MEDIATORS AND ADMINISTRATIVE EMPLOYEES ARE INVITED BY THEIR SUPERVISORS TO MAKE WHATEVER SUGGESTIONS OCCUR TO THEM FOR THE IMPROVEMENT OF THE SERVICE. THOSE WHO HAVE THE INTERESTS OF THE SERVICE AT HEART TAKE THIS INVITATION SERIOUSLY AND REGARD THEIR RESPONSIBILITIES BROADLY--SO BROADLY AS TO INCLUDE THE AREA OF IMPROVEMENT OF OPERATIONS WITHIN THEIR SCOPE. WHEN THEY SEE SOMETHING IN THE SERVICE WHICH THEY BELIEVE SHOULD BE IMPROVED, THEY MAY COMPLAIN ABOUT IT, BUT THEY ALSO SUGGEST THE WAY TO IMPROVEMENT.

- F. TO CONDUCT HIMSELF IN A MANNER SO AS TO REFLECT CREDIT TO THE SERVICE

THE MEDIATOR'S CONDUCT IS UNDER PUBLIC SCRUTINY AND SUBJECT TO CRITICISM NOT ONLY WHEN HE IS ENGAGED IN HIS PROFESSIONAL WORK BUT AT ALL TIMES. THE MEDIATOR, THEREFORE WHOSE PERSONAL CONDUCT ALWAYS COMMANDS THE RESPECT OF THE COMMUNITY REFLECTS CREDIT TO THE SERVICE. SUCH A MEDIATOR USES MATURE JUDGMENT, HAS A HIGH SENSE OF ETHICAL AND MORAL VALUES, AND, IN GENERAL, HAS DEVELOPED INTO THE SORT OF PERSONALITY THAT LABOR AND MANAGEMENT REPRESENTATIVES AND THEIR FRIENDS RESPECT.

THE MEDIATOR DOES NOT WEAR HIS RESPONSIBILITIES LIGHTLY. HIS JUDGMENTS IN LABOR-MANAGEMENT MATTERS BEAR THE STAMP OF CAREFUL, OBJECTIVE, AND REFLECTIVE CONSIDERATION. HIS SENSE OF ETHICS AND MORAL VALUES ARE SUCH THAT HIS ACTIONS ARE ALWAYS DETERMINED BY HIS KNOWLEDGE THAT MEDIATION IS A PROFESSION WITH HIGH, THOUGH UNWRITTEN, STANDARDS OF CONDUCT.

2. TO THE PARTIES

MUCH COULD BE SAID CONCERNING THE RESPONSIBILITIES A MEDIATOR HAS TO THE PERSONS WITH WHOM HE DEALS MOST FREQUENTLY: THE PARTIES TO THE COLLECTIVE BARGAINING AGREEMENT. THE HIGHLIGHTS OF THIS RELATIONSHIP ARE SKETCHED BRIEFLY BELOW. THE MANNER IN WHICH THE MEDIATOR CARRIES OUT HIS WORK SO THAT HIS RESPONSIBILITIES TO THE PARTIES ARE ACHIEVED WILL BE DEALT WITH IN A SUBSEQUENT SECTION.

- A. TO HELP THEM SETTLE THEIR DISPUTES

(1) THE MEDIATOR DETERMINES WHETHER THE PARTIES HAVE EXPLORED ALL APPROACHES TO THE SOLUTION OF THEIR PROBLEM. HE TRIES TO GET THE PARTIES TO EXHAUST ALL AVENUES OF DIRECT NEGOTIATIONS. HE SUGGESTS NEW APPROACHES FOR THEM TO CONSIDER BEFORE MAKING A DECISION AS TO WHETHER THEY NEED HIS ASSISTANCE.

(2) HE ARRANGES FOR AND CONDUCTS CONFERENCES WHERE EFFORTS ON THE PART OF THE PARTIES TO RESOLVE THEIR DIFFERENCES ARE NO LONGER PRODUCTIVE.

(3) WHERE A MEDIATION CONFERENCE HAS BEEN SCHEDULED, HE ASSISTS THE PARTIES IN ARRIVING AT A SOLUTION OF THEIR PROBLEMS BY MAKING SUGGESTIONS AND PROPOSING COMPROMISES IN AN EFFORT TO RESOLVE THE CONFLICT.

B. TO INFORM THEM REGARDING THE FMCS

THE USEFULNESS OF THE SERVICE IS IN DIRECT RATIO TO THE NUMBER OF PERSONS IN THE LABOR-MANAGEMENT COMMUNITY WHO ARE AWARE OF THE FACT THAT THE SERVICE EXISTS AND IS AVAILABLE. THE RELATED ACTIVITY PROGRAM IS THE VEHICLE WHEREBY THE FUNCTION OF INFORMING REPRESENTATIVES OF LABOR AND MANAGEMENT REGARDING THE JURISDICTION, COVERAGE, AND ASSISTANCE PROVIDED BY THE SERVICE IS CARRIED OUT.

C. TO HELP THEM IN THEIR EFFORTS TO DETERMINE THE CAUSES OF POOR LABOR RELATIONS AND TO ASSIST IN THEIR ELIMINATION

THE PREVENTIVE MEDIATION PROGRAM FILLS THE NEED OF EMPLOYERS AND UNIONS FOR AN OBJECTIVE PERSON SKILLED IN INDUSTRIAL RELATIONS PROBLEMS, ABLE TO BRING TO LIGHT FACTORS DISRUPTING GOOD RELATIONSHIPS IN PARTICULAR PLANTS AND WILLING TO HELP THE PARTIES RESPONSIBLE FOR LABOR RELATIONS IN THEIR EFFORTS TO REDUCE AND ELIMINATE THEM.

D. TO INFORM THEM REGARDING THE FMCS POLICIES AND PROCEDURES ON ARBITRATION

FEDERAL MEDIATORS DO NOT ARBITRATE BUT THEY CAN HELP THE PARTIES BY ADVISING THEM REGARDING ARBITRATION PROCEDURES AND POLICIES. THEY CAN INFORM THEM OF THE FMCS ARBITRATION PROGRAM AND THE PROGRAMS OF OTHER AGENCIES AND ORGANIZATIONS WHEREBY THERE IS MADE AVAILABLE TO THEM ARBITRATORS QUALIFIED TO HELP THEM.

E. TO GIVE INFORMATION AND ADVICE ON A VARIETY OF INDUSTRIAL RELATIONS PROBLEMS.

MEDIATORS MAKE THEMSELVES AVAILABLE TO THE PARTIES IN CONNECTION WITH REQUESTS FOR INFORMATION AND ADVICE. IF THE QUESTION AT ISSUE IS ONE WHICH SHOULD PROPERLY BE REFERRED TO ANOTHER AGENCY, THE MEDIATOR'S STATEMENT IS ACCOMPANIED BY THE COMMENT THAT HIS COUNSEL IS UNOFFICIAL AND THAT CONFIRMATION SHOULD BE SECURED FROM THE APPROPRIATE GOVERNMENTAL OR OTHER AGENCY. FOR EXAMPLE, IF THE QUESTION IS ONE CONCERNING THE FAIR LABOR STANDARDS ACT, THE PARTY IS REFERRED TO THE WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS FOR AN OFFICIAL INTERPRETATION TO SUPPLEMENT THE MEDIATOR'S STATEMENT. IF THE QUESTION IS ONE OF UNION RECOGNITION, THE PARTY IS REFERRED TO THE NATIONAL LABOR RELATIONS BOARD FOR THE SAME REASON.

3. TO THE OTHER LEGALLY CONSTITUTED MEDIATION AGENCIES:

STATE AND OTHER MEDIATORS, AS WELL AS FEDERAL, HAVE ONE COMMON OBJECTIVE: INDUSTRIAL PEACE. IT IS INCUMBENT UPON THE FEDERAL MEDIATOR TO COOPERATE WITH THE OTHER MEDIATORS IN THE PURSUIT OF THEIR COMMON GOAL.

4. TO OTHER GOVERNMENTAL AGENCIES

THE MEDIATOR DEVELOPS A CLOSE WORKING RELATIONSHIP WITH OTHER GOVERNMENTAL AGENCIES INTERESTED IN THE PROBLEMS OF LABOR AND MANAGEMENT. AMONG THESE ARE FEDERAL AGENCIES SUCH AS THE U.S. DEPARTMENT OF COMMERCE, THE VARIOUS DIVISIONS OF THE U.S. DEPARTMENT OF LABOR, AND THE ARMY, NAVY, AND AIR FORCE PROCUREMENT AGENCIES. IN ADDITION, HE DEVELOPS SOME FAMILIARITY WITH STATE AGENCIES HANDLING LABOR-MANAGEMENT PROBLEMS OTHER THAN THOSE CONCERNED WITH MEDIATION.

5. TO HIMSELF

THE MEDIATOR SHOULD REALIZE HIS CAPABILITIES TO THEIR FULLEST EXTENT.

A. BY DEVELOPING HIS PROFESSIONAL BACKGROUND

LABOR-MANAGEMENT RELATIONS ARE DYNAMIC RATHER THAN STATIC. CONCEPTS OF COLLECTIVE BARGAINING ARE CONTINUALLY CHANGING. THE ISSUES OF TODAY ARE NOT THE ISSUES OF YESTERDAY NOR WILL THEY BE THE ISSUES OF TOMORROW. THE MEDIATOR MUST GROW WITH HIS PROFESSION OR FIND THAT HIS PROFESSION HAS OUTGROWN HIM. ALL OF WHICH IMPLIES A FLEXIBLE MEDIATOR AND ONE WHO KNOWS WHAT IS GOING ON IN THE BROAD FIELD OF INDUSTRIAL RELATIONS.

B. BY MAINTAINING HIS PROFESSIONAL STANDARDS

THROUGHOUT HIS CAREER THE MEDIATOR WILL CONSTANTLY FACE SITUATIONS IN WHICH ONE PARTY OR BOTH WILL TRY TO USE HIM TO FURTHER THEIR OWN ENDS. TRUE, THE MEDIATOR EXISTS TO SERVE THE PARTIES. BUT HE MUST ALWAYS BEAR IN MIND THAT THE LIMITS OF SERVICE ARE REACHED WHEN THERE ARE ATTEMPTS MADE TO HAVE HIM DEPART FROM HIS BASIC STANDARDS OF HONESTY, INTEGRITY, AND PRINCIPLE.

C. BY LIVING A WELL-BALANCED LIFE.

THE EFFECTIVE MEDIATOR IS NOT THE NARROW SPECIALIST, CONCERNED ONLY WITH MEDIATION, UNAWARE OF THE LARGER ISSUES WHICH CONFRONT THE WORLD TODAY. HE IS A MAN WITH BROAD CULTURAL, RECREATIONAL, AND FAMILIAL INTERESTS.

6. TO THE PUBLIC

THE MEDIATOR IS THE FMCS SO FAR AS THE PUBLIC IS CONCERNED WHEREEVER HE MAY BE. HE INFORMS THE PUBLIC OF THE ACTIVITIES, THE OBJECTIVES, AND THE REASONS FOR THE EXISTENCE OF THE SERVICE. THE SERVICE, THEREFORE, EXPECTS HIM TO MINGLE WITH THE MEMBERS OF THE LABOR-MANAGEMENT COMMUNITY. HE MUST KNOW THEM WELL AND THEY MUST KNOW HIM. HE REGARDS AS A PART OF HIS DUTIES ATTENDANCE AT FORUMS, LABOR AND MANAGEMENT GROUP MEETINGS. HE PARTICIPATES IN AND JOINS CIVIC GROUPS OF VARIOUS KINDS. HE GETS TO KNOW THE REPRESENTATIVES OF THE PRESS AND DEVELOPS A WORKING RELATIONSHIP WITH THEM.

IT IS IN THESE CONTACTS THAT HE DEVELOPS THE CONFIDENCE OF THE PUBLIC IN HIM AND THE AGENCY AND TO THAT EXTENT IS ABLE TO BE OF GREATER SERVICE.

B. FUNCTIONS

1. THE SERVICE'S FUNCTION UNDER THE LMRA

THE FUNCTIONS OF THE SERVICE ARE STATED IN THE LABOR MANAGEMENT RELATIONS ACT OF 1947:

IT SHALL BE THE DUTY OF THE SERVICE, IN ORDER TO PREVENT OR MINIMIZE INTERRUPTIONS OF THE FREE FLOW OF COMMERCE GROWING OUT OF LABOR DISPUTES, TO ASSIST PARTIES TO LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE TO SETTLE SUCH DISPUTES THROUGH CONCILIATION AND MEDIATION.

UNDER THE ACT, THE MEDIATOR'S SERVICES ARE OFFERED ON THE REQUEST OF ONE OR BOTH PARTIES, NOTICE FROM EITHER OF THEM, OR ON ITS OWN INITIATIVE. HOWEVER, THE JURISDICTION OF THE SERVICE IS LIMITED TO DISPUTES WHERE A SUBSTANTIAL INTERRUPTION OF COMMERCE MIGHT RESULT. THE ACT PROVIDES FURTHER THAT DISPUTES HAVING A MINOR EFFECT ON COMMERCE BE REFERRED TO STATE OR OTHER MEDIATION SERVICES IF THEY ARE AVAILABLE. AN ADDITIONAL LIMITATION IS PROVIDED FOR IN THE CASE OF GRIEVANCES. THE SERVICE ACTS IN THESE CASES ONLY AS A LAST RESORT AND IN EXCEPTIONAL CASES. FINALLY, THE ACT PRECIPITATES THE MEDIATOR ON THE LABOR-MANAGEMENT SCENE BY DIRECTING THE PARTIES TO LABOR-MANAGEMENT DISPUTES, WHERE THE DISPUTES HAVE NOT BEEN SETTLED, TO "PARTICIPATE FULLY AND PROMPTLY IN SUCH MEETINGS AS MAY BE UNDERTAKEN BY THE SERVICE....FOR THE PURPOSE OF AIDING IN A SETTLEMENT OF THE DISPUTE." IT IS THE FEDERAL MEDIATOR WHO CALLS THESE MEETINGS AND ASSISTS THE PARTIES ON THEIR ROAD TO AGREEMENT.

2. THE MEDIATOR'S FUNCTION UNDER THE LMRA

THE MEDIATOR'S FUNCTION UNDER THE LMRA MAY BE BROKEN DOWN INTO SIX DISTINCT PHASES:

A. PUBLIC RELATIONS AND RELATED ACTIVITIES

HE OUTLINES THE PURPOSE, SCOPE, AVAILABILITY, AND LIMITATIONS OF THE FEDERAL MEDIATION AND CONCILIATION SERVICE UNDER THE ACT TO ALL INTERESTED PERSONS.

B. CONTRACT NEGOTIATIONS

HE ASSISTS PARTIES ENGAGED IN CONTRACT NEGOTIATIONS SO THAT THEY CAN ARRIVE AT AN AGREEMENT WITHOUT AN INTERRUPTION IN PRODUCTION AND IN THE DIRECTION OF AN IMPROVED RELATIONSHIP.

C. GRIEVANCES

HE ASSISTS PARTIES ENGAGED IN RESOLVING A GRIEVANCE WHERE THE CASE IS EXCEPTIONAL, SUPPLYING SUCH ASSISTANCE ONLY AS A LAST RESORT.

D. RECOGNITION

HE ENCOURAGES PARTIES TO CONTINUE OR RESUME WORK DURING THE PERIOD IN WHICH QUESTIONS OF RECOGNITION EXIST.

E. ARBITRATION

HE ENCOURAGES PARTIES TO UTILIZE ARBITRATION AS A FINAL STEP IN THE GRIEVANCE PROCEDURE WHERE IT IS MANDATORY UNDER THE CONTRACT. WHERE ARBITRATION IS NOT MANDATORY, HE ENCOURAGES ITS USE AS A PEACEFUL MEANS OF SETTLING DISPUTES.

F. PREVENTION

HE ASSISTS LABOR-MANAGEMENT REPRESENTATIVES IN PARTICULAR PLANTS IN THEIR EFFORTS TO ELIMINATE CAUSES OF POOR LABOR RELATIONS AND HELPS THEM TO ACHIEVE A BETTER RELATIONSHIP.

THE MANNER IN WHICH THE MEDIATOR CARRIES OUT THESE FUNCTIONS IS DETAILED IN THE "TECHNIQUES" SECTION WHICH FOLLOWS:

C. TECHNIQUES

THE TECHNIQUES WHICH ARE DESCRIBED BELOW HAVE BEEN GATHERED AND RECORDED WITH NO THOUGHT OF PRESCRIBING THEIR APPLICATION. THEY ARE TECHNIQUES USED AT ONE TIME OR ANOTHER BY MEDIATORS. SINCE SITUATIONS, PERSONALITIES AND MEDIATORS ALL DIFFER, ANY TECHNIQUE MAY OR MAY NOT BE INDICATED DEPENDING ON WHEN, HOW, AND BY WHOM IT IS USED. WE HAVE MADE NO ATTEMPT TO DESCRIBE THE CIRCUMSTANCES UNDER WHICH THEY SHOULD BE USED. THAT IS UP TO THE MEDIATOR

TO DETERMINE. FOR MANY OF THE TECHNIQUES CITED THERE IS AN OPPOSITE TECHNIQUE. FOR MANY OF THE APPROACHES WHICH A MEDIATOR HAS FOUND HELPFUL IN THE PAST, UNDER OTHER CIRCUMSTANCES EXACTLY THE OPPOSITE APPROACH MAY BE EFFECTIVE. WHICH METHOD THE MEDIATOR SHOULD USE, AND WHAT APPROACH HE SHOULD TAKE, IS A MATTER FOR HIS OWN JUDGMENT.

1. PUBLIC RELATIONS AND RELATED ACTIVITIES

THERE IS A DEFINITE LINE OF DISTINCTION BETWEEN THE PUBLIC RELATIONS AND RELATED ACTIVITIES PROGRAM. THE PUBLIC RELATIONS PROGRAM MAKES KNOWN TO THE GENERAL PUBLIC THE EXISTENCE, FUNCTIONS, AND AVAILABILITY OF THE FEDERAL MEDIATION AND CONCILIATION SERVICE TO THE PARTIES WHO NEED HELP IN THEIR LABOR RELATIONS. THE RELATED ACTIVITIES PROGRAM IS MORE RESTRICTIVE IN THAT THIS INFORMATION IS EXTENDED TO THE PARTIES THEMSELVES, THE REPRESENTATIVES OF LABOR AND MANAGEMENT; AND THESE PERSONS ARE, OF COURSE, MEMBERS OF THE PUBLIC. THUS, WHAT THE MEDIATOR DOES IN THESE TWO PROGRAMS CAN BE DESCRIBED AS FOLLOWS: IN THE PUBLIC RELATIONS PROGRAM HE INFORMS THE PUBLIC REGARDING THE ASSISTANCE GIVEN BY THE SERVICE TO LABOR AND MANAGEMENT REPRESENTATIVES. IN THE RELATED ACTIVITIES PROGRAM HE NOT ONLY INFORMS THE PARTIES REGARDING THE ASSISTANCE OF THE SERVICE WHICH IS AVAILABLE TO THEM, HE ALSO UTILIZES THE CONTACTS IN THESE PROGRAMS TO DEVELOP A CLOSE RELATIONSHIP BETWEEN HIMSELF AND THE PARTIES AND TO KEEP ABREAST OF THE DEVELOPMENT OF LABOR-MANAGEMENT AFFAIRS AND EVENTS IN THE AREA IN WHICH HE OPERATES.

WHAT METHODS DOES THE MEDIATOR EMPLOY IN CARRYING OUT THESE TWO RELATED FUNCTIONS? THE METHODS, TECHNIQUES, AND APPROACHES USED BY MEDIATORS IN THIS CONNECTION ARE NUMEROUS AND THEY VARY WITH THE MEDIATORS WHO EMPLOY THEM. A DISCUSSION OF THEM WOULD CONSTITUTE A PROJECT IN ITSELF. HOWEVER, A FEW EXAMPLES MAY BE CITED.

IN CARRYING OUT THE PUBLIC RELATIONS ASPECT OF HIS WORK THE MEDIATOR IS ACTIVE IN VARIOUS SPHERES OF ACTIVITY. WE FIND HIM FREQUENTLY MAKING SPEECHES AT ALL KINDS OF ORGANIZATIONS AND INSTITUTIONS DESCRIBING THE OPERATIONS, FUNCTIONS, AND AVAILABILITY OF THE SERVICE. HE ATTENDS BANQUETS, DINNERS, AND GET-TOGETHERS SPONSORED BY LABOR AND MANAGEMENT GROUPS. HE MAY BE ACTIVE IN THE LABOR-MANAGEMENT COMMITTEES OF THE BAR ASSOCIATIONS OR IS PROMINENT IN ASSOCIATIONS OF LAWYERS OF VARIOUS KINDS WHERE HE MAY BE ASKED FOR AND GIVE HIS OPINIONS ON LABOR-MANAGEMENT PROBLEMS. HE LECTURES IN THE FIELD OF PERSONNEL, LABOR PROBLEMS, OR MORE SPECIFICALLY ON THE SUBJECT OF MEDIATION. HE IS ACTIVE IN PERSONNEL MANAGEMENT, INDUSTRIAL RELATIONS, AND SIMILAR ORGANIZATIONS. THE LONGER THE MEDIATOR IS ENGAGED IN THE FIELD OF MEDIATION, THE WIDER IS THE RANGE OF HIS PUBLIC RELATIONS ACTIVITIES SO THAT EVENTUALLY WE FIND HIM ACTIVE IN ALL AREAS REGARDLESS OF HIS BACKGROUND. HE AVOIDS BECOMING IDENTIFIED WITH ONE GROUP.

THE METHODS WHICH MEDIATORS USE IN CARRYING OUT THE RELATED ACTIVITIES ASPECT⁹² OF THEIR WORK VARY WITH THE

INDIVIDUAL MEDIATORS. THE MEDIATOR FREQUENTLY MAKES HIS LUNCH "PRODUCTIVE." THAT IS, HE FREQUENTLY HAS AS HIS GUEST OR IS THE GUEST OF A MEMBER OF THE LABOR-MANAGEMENT COMMUNITY. AT EVERY OPPORTUNITY HE VISITS WITH THE INDUSTRIAL RELATIONS OR PERSONNEL DIRECTORS OF PLANTS LOCATED IN THE AREA HE SERVES. HE VISITS WITH THESE OFFICIALS WHETHER OR NOT HE HAS HAD CONTACT WITH THEM BEFORE. WHEN HIS VISIT IS CONCLUDED, HE ADDS TO HIS CIRCLE OF ACQUAINTANCES THE NAME OF A MANAGEMENT OFFICIAL WHO NOT ONLY KNOWS ABOUT THE SERVICE BUT ALSO HAS BECOME FAMILIAR WITH A REPRESENTATIVE OF THE SERVICE. HE FOLLOWS THIS SAME PROCEDURE IN CONNECTION WITH THE LABOR UNION OFFICIALS HE VISITS AS HE GOES ABOUT HIS BUSINESS. THE MEDIATOR MAKES IT A POINT TO KEEP FULLY INFORMED OF ALL THAT IS GOING ON IN HIS AREA WHICH WOULD BE OF INTEREST TO HIS LABOR-MANAGEMENT FRIENDS. WHEN SOMETHING OF INTEREST, SUCH AS FOR EXAMPLE A CONFERENCE ON LABOR ARBITRATION, IS TO TAKE PLACE, HE MAY CALL ON HIS UNION AND MANAGEMENT FRIENDS AND ACQUAINTANCES AND USE THIS COMING EVENT AS A BASIS FOR A FRIENDLY VISIT. THERE ARE HUNDREDS OF OTHER APPROACHES. AND AS THE MEDIATOR GROWS OLDER IN HIS PROFESSION HE ADDS TO AND VARIES THE METHODS HE USES TO ACHIEVE A CLOSE RELATIONSHIP WITH THE PEOPLE WHO AT ONE TIME OR ANOTHER CROSS HIS PATH IN LABOR-MANAGEMENT AFFAIRS.

2. INVESTIGATIONS

THERE ARE FOUR OBJECTIVES WHICH A MEDIATOR BEARS IN MIND IN CARRYING OUT AN INVESTIGATION. LET US EXAMINE EACH OF THESE IN TURN.

A. SECURING INFORMATION

THE MEDIATOR DOES NOT ACTUALLY ENGAGE IN MEDIATION UNTIL HE HAS FIRST CONDUCTED AN INVESTIGATION WHICH GIVES HIM ALL OF THE INFORMATION HE NEEDS TO HANDLE HIS CASE INTELLIGENTLY AND, IN ADDITION, WHICH GIVES HIM THE INFORMATION WHICH THE REGIONAL DIRECTOR NEEDS TO DETERMINE WHETHER THE FMCS SHOULD PROFFER ITS SERVICES.

(1) HE REVIEWS PREVIOUS PERTINENT CASE FILES, IF ANY, SO THAT HE AVOIDS QUIZZING THE PARTIES REGARDING USABLE INFORMATION ALREADY IN THE FILES AND SO THAT HE OBTAINS A BACKGROUND OF INFORMATION REGARDING THE PREVIOUS NEGOTIATIONS OF THE PARTIES.

(2) HE CONTACTS BOTH PARTIES. THE CONTACTS ARE PREFERABLY PERSONAL SINCE IT IS HIS INTENTION TO DEVELOP A SATISFACTORY RELATIONSHIP WITH THEM--A RELATIONSHIP WHICH CANNOT BE DEVELOPED OVER THE TELEPHONE. HE CONTACTS BOTH PARTIES SO AS TO GIVE EACH OF THEM AN OPPORTUNITY TO PRESENT THEIR POSITIONS TO HIM AND SO THAT HE WILL HAVE INFORMATION FROM BOTH SIDES. HE ORDINARILY SEES THE FILING PARTY FIRST AS A MATTER OF COURTESY AND, INCIDENTALLY, IN ORDER TO GET THE NAME AND TITLE OF THE SPOKESMAN FOR THE OTHER GROUP.

(3) IN HIS CONTACTS HE UTILIZES THE "FOCUSED INTERVIEW" TECHNIQUE: AN INTERVIEW IN WHICH THE CONVERSATION IS OF AN INFORMAL, NON-DIRECTIVE TYPE WITH THE MEDIATOR PERMITTING THE PARTY TO TALK AT LENGTH BUT NEVERTHELESS GUIDING THE CONVERSATION TOWARD LINES WHICH PROVIDE THE ANSWERS HE SEEKS. NO NOTES ARE TAKEN DURING THE INTERVIEW, AND WHEN IT IS OVER, THE PARTY IS NOT LEFT WITH THE FEELING THAT HE HAS BEEN QUIZZED AND HIS ANSWERS RECORDED FOREVER IN THE FILES OF THE UNITED STATES GOVERNMENT.

(4) DURING THE INTERVIEW WITH THE PARTIES, HE SECURES ALL OF THE ROUTINE DATA WHICH IS NECESSARY FOR THE INTELLIGENT HANDLING OF THE CASE, I.E., HE BECOMES INFORMED REGARDING THE NATURE AND SIZE OF THE COMPANY, THE REPRESENTATIVES OF THE COMPANY AND THE UNION, THE STATUS OF THE CONTRACT, THE EFFECT ON COMMERCE, AND THE PLACE OF THE COMPANY IN THE DEFENSE EFFORT. IN ADDITION, HE DETERMINES THE CURRENT STATUS OF THE NEGOTIATIONS. WHERE APPLICABLE, HE SECURES INFORMATION REGARDING THE ISSUES WHICH REMAIN BEFORE THE PARTIES, THE MEETINGS WHICH HAVE BEEN HELD AND WHICH ARE CONTEMPLATED, WHETHER THE SITUATION IS GEARED WITH MATTERS INVOLVED IN OTHER NEGOTIATIONS, AND WHAT THE NEXT MOVE IS THAT IS DESIRED BY THE PARTIES. IN SECURING THIS INFORMATION, HE IS RECEPTIVE TO ALL INFORMATION THAT IS OFFERED. UNDER NO CIRCUMSTANCES DOES HE ASK FOR INFORMATION WHICH HE CAN OBTAIN FROM THE CASE FILES WHICH HE HAS IN HIS OFFICE.

B. DEVELOPING A FRIENDLY RELATIONSHIP

THE INVESTIGATION PROVIDES THE MEDIATOR WITH AN OPPORTUNITY TO CREATE A FAVORABLE IMPRESSION. THIS IS THE MOST IMPORTANT RESULT OF THE INTERVIEW. HE ACHIEVES A CLOSER RELATIONSHIP WITH A PARTY BY LISTENING INTELLIGENTLY, BY ASKING QUESTIONS WHICH DEMONSTRATE THAT HE IS INTERESTED IN WHAT THE PARTY IS SAYING, BY SHOWING THAT HE IS ABLE TO DISCUSS THE FACTORS INVOLVED IN THE SITUATION--IN SHORT, BY DEMONSTRATING THAT HE IS COMPETENT IN THE FIELD OF LABOR RELATIONS.

C. INFORMING AND ADVISING GENERALLY

SOMETIMES, A PARTY MAY WISH TO USE THE MEDIATOR AS A SOUNDING BOX, AS A LISTENER, AS AN INFORMANT, OR CONSULTANT. IN SUCH CASES, THE MEDIATOR MAY INVITE THE PARTY TO CONFIDE IN HIM, TO GET HIS LABOR RELATIONS PROBLEMS "OFF HIS CHEST." AFTER LISTENING TO THE PARTY'S PROBLEMS HE MAY DISCUSS THEM WITH HIM IN SUCH A WAY THAT WHEN THE DISCUSSION IS COMPLETED THE PARTY KNOWS THAT THE MEDIATOR HAS THE FACTS AND UNDERSTANDS THEM. IT IS UNDERSTOOD, OF COURSE, THAT ANY INFORMATION OR ADVICE WHICH A MEDIATOR GIVES UNDER THESE CIRCUMSTANCES WILL NOT INDICATE ANY BIAS IN FAVOR OF ONE PARTY OR ANOTHER.

D. INFORMING REGARDING THE SERVICE

DURING THE INVESTIGATION CONTACTS, THE MEDIATOR NOT ONLY TRIES TO OBTAIN INFORMATION TACTFULLY AND TO IMPRESS THE PARTIES AS TO HIS ADEQUACY, HE ALSO CLEARLY DEFINES THE RELATIONSHIP OF THE SERVICE AND HIS POSITION AS A REPRESENTATIVE OF THE SERVICE. HE PRESENTS HIS POSITION SOMEWHAT AS FOLLOWS: HE IS AVAILABLE TO THE PARTIES AS A PERSON WHO REPRESENTS THE PUBLIC'S INTEREST IN INDUSTRIAL PEACE. HE HELPS BOTH PARTIES ACHIEVE PEACEFUL LABOR RELATIONS. THE WAYS IN WHICH HE DOES THIS ARE LEGION. A FEW EXAMPLES MAY BE CITED: HE MAY SUGGEST PROPOSALS WHICH ARE COMPROMISES BETWEEN THE POSITIONS OF THE PARTIES AND WHICH ARE ACCEPTABLE TO BOTH. HE MAY ACQUAINT THE PARTIES WITH ACCEPTED INDUSTRIAL RELATIONS PRACTICES SO THAT THEY MAY PROCEED ON THE BASIS OF THE EXPERIENCE OF OTHERS IN THE FIELD. HE ASSISTS THE PARTIES IN COMMUNICATING WITH EACH OTHER IF SUCH COMMUNICATION HAS BROKEN DOWN AS THE RESULT OF EMOTIONAL BARRIERS.

HE ALSO INFORMS THE PARTIES AS TO WHAT HE, AS A MEDIATOR, DOES NOT DO: HE DOES NOT FURTHER THE INTERESTS OF ONE PARTY AT THE EXPENSE OF THE OTHER. HE DOES NOT IMPOSE ANY DECISIONS ON THEM. THE DECISIONS ARE THEIR OWN.

SUCH ASSISTANCE COMPRISES THE USE OF THE MEDIATOR'S TIME, HIS OFFICE FACILITIES, AND WHATEVER ABILITIES, SKILLS, AND ENERGIES OF THE MEDIATOR THE PARTIES CARE TO EMPLOY. THIS ASSISTANCE IS AVAILABLE TO THEM NOT ONLY DURING THE PERIOD OF CONTRACT NEGOTIATIONS BUT THROUGHOUT THE YEAR.

FINALLY, IF THERE IS A POSSIBILITY THAT THE CASE MAY BE SCREENED OUT, THE PARTIES ARE PREPARED FOR THIS BY A BRIEF DISCUSSION OF THE JURISDICTIONAL LIMITATIONS OF THE SERVICE AND OF THE AVAILABILITY OF THE APPROPRIATE STATE AGENCY.

3. NEGOTIATIONS--STANDBY

IN THE STANDBY CASES, THE MEDIATOR IS REQUIRED TO FILE WRITTEN REPORTS SEVEN DAYS PRIOR TO AND TEN DAYS AFTER THE CONTRACT TERMINATION DATE; HE IS ALSO REQUIRED TO "MAINTAIN CONTACT WITH THE PARTIES AS THE NEEDS OF THE SITUATION DEMAND." THIS MEANS THAT REGARDLESS OF REPORTING REQUIREMENTS, HE KEEPS IN TOUCH WITH THE PARTIES, PREFERABLY BY PERSONAL CONTACT, FREQUENTLY ENOUGH SO THAT THERE CAN BE NO SIGNIFICANT CHANGE IN THE STATUS OF THE CASE WITHOUT HIS BEING AWARE OF IT. IN THESE CONTACTS, HE SECURES INFORMATION: HE DETERMINES WHETHER THE PARTIES ARE HAVING DIFFICULTIES OR MAKING PROGRESS, HOW FREQUENTLY MEETINGS ARE HELD, WHAT ISSUES HAVE BEEN RESOLVED, AND WHAT ISSUES REMAIN IN DISPUTE.

HE NOT ONLY RECEIVES INFORMATION DURING THIS PERIOD, HE ALSO IMPROVES HIS RELATIONSHIP WITH THE PARTIES. THEY ORDINARILY APPRECIATE HIS INTEREST AND GROW MORE APPRECIATIVE OF HIS TALENTS AS HE DISCUSSES THEIR PROBLEMS WITH THEM.

IF THE PARTIES ARE ABLE TO RESOLVE THEIR DIFFICULTIES WITHOUT THE ASSISTANCE OF THE MEDIATOR, THERE IS NO FURTHER PROBLEM. HOWEVER, THERE ARE TIMES WHEN THE MEDIATOR MUST DECIDE WHETHER IT IS ADVISABLE TO ENTER INTO A SITUATION AND ASSIST THE PARTIES IN SEPARATE OR JOINT SESSIONS OR BOTH. THIS IS A DECISION OF THE MEDIATOR, NOT ONE OF THE PARTIES. THE MEDIATOR CONSIDERS ALL OF THE FACTORS: THE ISSUES WHICH REMAIN, THE AMOUNT OF WORK THE PARTIES HAVE DONE ON THEM, THE TEMPERAMENTS OF THE PARTIES, THE DEADLINE DATE. A LARGE NUMBER OF ISSUES REMAINING TO BE RESOLVED MAY INDICATE A LACK OF WORK ON THE PART OF THE PARTIES. IF ONE PARTY FEELS THAT THERE IS STILL ROOM FOR PROGRESS IN DIRECT NEGOTIATIONS, HE MAY SEND THEM BACK TO TRY AGAIN.

IN HIS DISCUSSIONS WITH THE PARTIES HE KEEPS HIS EYES AND EARS OPEN FOR THE IMMINENCE OF A DEADLOCK. THE DEADLOCK OF NEGOTIATIONS HAS MUCH SIGNIFICANCE TO THE MEDIATOR. SOME MEDIATORS PREFER TO ENTER THE SITUATION BEFORE THE DEADLOCK OCCURS. THEY FEEL THAT TO ENTER AFTER IT HAS OCCURED WILL FIND THEM FACING PARTIES WHOSE POSITIONS ARE FIXED AND RIGID. TO ENTER BEFORE WILL MEAN THAT THEY WILL MEET WITH PARTIES WHO ARE STILL FLEXIBLE. OTHER MEDIATORS, HOWEVER, PREFER TO ENTER AFTER THE NEGOTIATIONS HAVE BECOME DEADLOCKED. THEY FEEL THAT IT IS BEST FOR THE PARTIES TO NEGOTIATE WITHOUT A MEDIATOR UNTIL THE PARTIES HAVE EXPLORED AND EXHAUSTED ALL OF THEIR OWN RESOURCES. THEY FEEL THAT THE PRACTICE OF ENTERING BEFORE THE DEADLOCK LEADS THE PARTIES TO DEPEND TOO MUCH ON THE MEDIATOR. IN ADDITION, THEY DO NOT WISH THE PARTIES TO GET THE IMPRESSION THAT THE MEDIATOR IS OVEREAGER TO ENTER THE SITUATION. EACH MEDIATOR DECIDES THIS QUESTION FOR HIMSELF.

OCCASIONALLY THE MEDIATOR FINDS IT NECESSARY TO INTERVENE IN A SITUATION WHERE THERE HAVE BEEN NO PRELIMINARY INVESTIGATION OR STANDBY ACTIVITIES. THIS WOULD BE A CASE OF AN IMMINENT OR ACTUAL STRIKE IN A VITAL DEFENSE PLANT OR ONE IN WHICH THE PUBLIC HEALTH OR WELFARE ARE BEING THREATENED. HERE, AS ALWAYS, CONSIDERABLE TACT IS CALLED FOR AND HIS ENTRANCE IS ACCOMPANIED BY AN EXPLANATION, IF ADVISABLE, THAT THERE ARE IMPELLING FACTORS INVOLVED SUCH AS THE NECESSITY OF THE CONTINUATION OF VITAL DEFENSE PRODUCTION OR OF PREVENTING DAMAGE TO KEY ELEMENTS IN THE COUNTRY'S ECONOMIC STRUCTURE. THE IMPRESSION IS GIVEN TO THE PARTIES THAT THE ENTRANCE OF THE MEDIATOR IS THE DIRECT AND UNAVOIDABLE CONSEQUENCE OF THE CARRYING OUT OF THE SERVICE'S RESPONSIBILITY UNDER THE LMRA.

4. NEGOTIATIONS--CONSULTATION

SOMETIMES, WHEN THE PARTIES HAVE EXHAUSTED THEIR OWN RESOURCES, THE MEDIATOR FINDS IT ADVISABLE TO MEET SEPARATELY WITH THE PARTIES TO GIVE THEM WHATEVER HELP IS INDICATED. IN SUCH CASES, THE HELP IS GIVEN TACTFULLY, NEVER THRUST ON THE PARTIES, AND THE NATURE OF THE ASSISTANCE GIVEN RECORDED ON THE APPROPRIATE REPORT FORMS.

5. NEGOTIATIONS--ACTIVE

WE TURN NOW TO A DISCUSSION OF THE MEDIATOR IN HIS ROLE AS AN ACTIVE PARTICIPANT IN THE NEGOTIATIONS OF THE PARTIES, THE PERSON WHO ASSUMES THE ROLE OF LEADER, CHAIRMAN, GENERAL ADVISOR, AND CONSULTANT TO THE PARTIES WHEN THEIR OWN RESOURCES ARE NO LONGER PRODUCTIVE.

A. PREPARATION

(1) DETERMINATION OF DATE, PLACE, AND TIME OF JOINT CONFERENCE

HERE, AS IN THE DECISION FOR THE SETTING OF CONFERENCES, IT IS THE MEDIATOR WHO MAKES THE DETERMINATION. HE DECIDES WHETHER IT IS INDICATED THAT THE PARTIES MEET AT HIS OR THEIR OFFICES AND WHETHER THE MEETING SHOULD BE HELD EARLY OR LATE IN THE DAY OR WEEK. FOR EVEN IN THE DETERMINATION OF SUCH PROCEDURAL ARRANGEMENTS, PRESSURES CAN BE EXERTED ON THE PARTIES, CONTROL OF THE MEDIATION PROCESS BY THE MEDIATOR EMPHASIZED, AND HIS STATUS MAINTAINED.

(2) COMMITTING PARTIES TO THE ARRANGEMENTS

IN MAKING ARRANGEMENTS, THE MEDIATOR'S ATTITUDE AND MANNER ARE STRONG FACTORS IN DETERMINING WHETHER THE PARTIES GRACEFULLY ACCEDE TO THE ARRANGEMENTS FOR THE MEETING.

B. PRELIMINARIES--THE INITIAL SEPARATE CONFERENCE

SOME MEDIATORS, PARTICULARLY WHERE THEY KNOW THE PARTIES WELL, PREFER TO MEET SEPARATELY WITH EACH OF THE PARTIES PRIOR TO THE FORMAL JOINT CONFERENCE. OTHERS FEEL THAT THE FIRST CONFERENCE AS A RULE SHOULD BE JOINT. THOSE MEDIATORS WHO MEET SEPARATELY WITH THE PARTIES BEFORE THE JOINT CONFERENCE PROCEED SOMEWHAT AS FOLLOWS:

(1) DEFINING THE ISSUES

THE MEDIATOR MAKES CERTAIN THAT HE SECURES FROM EACH PARTY A CLEAR STATEMENT OF WHAT ISSUES REMAIN TO BE RESOLVED. SOMETIMES THE PARTIES ARE AGREED ON WHAT THE ISSUES ARE. SOMETIMES THEY DISAGREE. HOWEVER, SO FAR

AS THE MEDIATOR IS CONCERNED, HE FINDS OUT WHAT EACH PARTY CONCEIVES THE ISSUES TO BE.

(2) DISCOURAGING INTRODUCTION OF
NEW ISSUES

HAVING DETERMINED THE NATURE AND NUMBER OF ISSUES WHICH REMAIN, HE WARNS THE PARTIES OF THE DANGERS OF INTRODUCING NEW ISSUES ONCE THE NEGOTIATIONS HAVE STARTED. HE POINTS OUT NOT ONLY THAT SUCH A PRACTICE MAY NOT ONLY LEAD TO DELAY IN PROGRESS TOWARDS A SETTLEMENT, BUT ALSO THAT IT IS NOT RECOGNIZED AS GOOD COLLECTIVE BARGAINING.

(3) DETERMINING ISSUE VALUES

HE ASKS THE PARTIES TO WEIGH FOR HIM THE VALUES OF THE VARIOUS ISSUES TO THEM. HE FINDS OUT WHAT THE "MUST" ISSUES ARE AND WHAT ISSUES HAVE RELATIVELY LITTLE VALUE TO THEM--THOSE WHICH ARE MERELY SMOKESCREENS OR WINDOW DRESSING WHICH HIDE THE REAL NEEDS AND DESIRES OF THE PARTIES.

(4) ESTABLISHING AN AGENDA

THE MEDIATOR TENTATIVELY ARRIVES AT WHAT HE CONCEIVES WILL BE HIS BEST APPROACH TOWARD THE RESOLUTION OF THE ISSUES. HE DETERMINES WHETHER THE ISSUES WHICH ARE OF LITTLE CONCERN TO THE PARTIES ARE TO BE HANDLED FIRST OR WHETHER TO TACKLE THE REAL MEAT OF THE CONFERENCE, THE ISSUES WHICH ARE THE BASIS OF THE DISPUTE. HE DECIDES WHETHER IT IS BEST TO LET THE PARTIES TALK WITH LITTLE OR NO GUIDANCE FROM THE MEDIATOR WHATEVER OR WHETHER TO DEFINITELY CONTROL THE DEVELOPMENT OF THE DISCUSSION. HE MAKES THESE DECISIONS ALMOST INTUITIVELY AS A RESULT OF HIS IMPRESSION OF THE TEMPERAMENTS, SKILLS, AND EXPERIENCE OF THE PARTIES, THE NATURE AND NUMBER OF ISSUES INVOLVED, AND THE STAGE OF NEGOTIATIONS WHICH THEY HAVE REACHED.

C. THE JOINT CONFERENCE

(1) OPENING THE CONFERENCE

THE MEDIATOR SETS THE STAGE FOR THE JOINT CONFERENCE WITH SEVERAL OBJECTIVES IN MIND. HE MAKES CERTAIN THAT ALL MEMBERS OF THE CONFERENCE KNOW ONE ANOTHER AND WHERE THIS IS NOT THE CASE HE MAKES THE INTRODUCTION IN SUCH A MANNER THAT RESPECT OF THE PARTIES FOR ONE ANOTHER AND FOR THE MEDIATOR IS INCREASED. HE CONVEYS TO THE PARTIES HIS OWN FEELINGS AND INDUCES IN THEM SIMILAR ATTITUDES: THAT THE FACT THAT THE PARTIES ARE NOT IN AGREEMENT IS A SERIOUS MATTER; THAT THE WELFARE OF THE COMPANY, THE UNION, AND THE COMMUNITY DEPENDS ON THEIR AGREEMENT; AND THAT THE POSSIBILITIES OF AGREEMENT LIE IN THEIR HANDS. IF THE PARTIES ARE IN A STATE OF EMOTIONAL TENSION, A FEW WELL CHOSEN WORDS ON ANY MUTUAL, UNCONTROVERSIAL SUBJECT MAY SERVE TO BRING ABOUT A BETTER ATMOSPHERE.

(2) STATING THE ISSUES

THE USUAL APPROACH AT THIS POINT IS FOR THE MEDIATOR TO ASK THE SPOKESMAN FOR THE MOVING PARTY TO STATE THE ISSUES AS HE SEES THEM. AT THE END OF THIS STATEMENT, THE OTHER PARTY PRESENTS ITS POSITION. OCCASIONALLY, THE MEDIATOR MAY HAVE TO INSIST ON THESE STATEMENTS SINCE THE PARTIES HAVE PROBABLY ALREADY MADE THEM TO EACH OTHER MANY TIMES DURING THE COURSE OF THEIR DIRECT NEGOTIATIONS. HOWEVER, HE POINTS OUT THAT ON THE BASIS OF MEDIATION EXPERIENCE THERE IS NO HARM IN THE REPETITION AND THAT CONSIDERABLE GOOD MAY BE DERIVED FROM IT.

ON SOME OCCASIONS THE PARTIES WILL ADDRESS THEIR STATEMENTS TO EACH OTHER. ON OTHERS THEY WILL ADDRESS THEM TO THE MEDIATOR. WHATEVER APPROACH THEY TAKE IS UP TO THE MEDIATOR SINCE THERE ARE VALID ARGUMENTS FAVORING EITHER APPROACH. THOSE WHO FAVOR HAVING THE PARTIES ADDRESS EACH OTHER ARGUE THAT THE PARTIES HAVE TO CONVINCE EACH OTHER AND NOT THE MEDIATOR AND, THEREFORE, THEIR STATEMENTS SHOULD BE ADDRESSED TO EACH OTHER. THOSE WHO FAVOR HAVING THE PARTIES ADDRESS THE MEDIATOR ARGUE THAT THE PARTIES WILL DO A BETTER PRESENTATION JOB IF THEY FEEL THAT THEY ARE ADDRESSING AN OBJECTIVE PERSON. THEY FEEL, TOO, THAT THE PARTIES WILL THUS BE ABLE TO USE THE MEDIATOR AS A MEANS OF EXPRESSING THEIR EMOTIONS.

(3) AGREEING ON THE APPROACH

THE MEDIATOR MAKES CERTAIN THAT THE PARTIES UNDERSTAND THAT THERE ARE SEVERAL PROCEDURES POSSIBLE AT THIS POINT. THAT IS, THEY MAY AGREE ON VARIOUS ISSUES CONDITIONAL ON A FINAL AGREEMENT, OR THEY CAN AGREE TO DISPOSE OF EACH ISSUE AT A TIME, OR THEY CAN DISCUSS ALL THE ISSUES AND AGREE ON THE ENTIRE GROUP AS A PACKAGE. THE PARTIES USUALLY DESIRE THE CONDITIONAL AGREEMENT APPROACH.

(4) RELEASING TENSIONS

AS THE PARTIES DISCUSS THE ISSUES THE MEDIATOR OBSERVES THE NATURE OF THE EMOTIONAL AURA IN THE CONFERENCE. IF A GREAT DEAL OF TENSION IS EVIDENT AND EMOTIONAL OUTBURSTS ARE FREQUENT, HE MAY DECIDE TO PERMIT SUCH OUTBURSTS WITHIN LIMITS AS A DEVICE FOR RELEASING TENSION. HOWEVER, HE CONTROLS SUCH EXPRESSION AND DOES NOT PERMIT IT TO REACH THE POINT WHERE IT MAY DISRUPT PERMANENTLY ANY BASIS FOR PROGRESS BETWEEN THE PARTIES.

(5) THE MEDIATOR IN THE JOINT CONFERENCE

AT THE BEGINNING OF THE CONFERENCE THE MEDIATOR ORDINARILY REMAINS QUIETLY IN THE BACKGROUND PARTICIPATING RELATIVELY LITTLE IN THE DISCUSSION, ASKING A QUESTION NOW AND THEN TO STIMULATE DISCUSSION OR PERHAPS TO CLARIFY A

POINT OF INFORMATION. IN GENERAL, HIS ROLE AT FIRST IS A PASSIVE ONE, CHANGING TO AN INCREASINGLY AGGRESSIVE CHARACTER AS HE BECOMES MORE FAMILIAR WITH THE NEGOTIATORS AND THE ISSUES.

D. THE SEPARATE CONFERENCE

(1) TIMING

AS THE MEDIATOR OBSERVES THE PARTIES AND THEIR DISCUSSIONS, HE WATCHES FOR THE POINT AT WHICH HE FEELS THAT THE POSITIONS OF THE PARTIES ARE BECOMING TOO FIXED, OR WHEN THE DISCUSSIONS OF THE PARTIES ARE SUCH THAT NEITHER SIDE IS ABLE TO OFFER ANYTHING MORE IN THE WAY OF FACTS, OPINIONS, OR IDEAS. ONCE THAT DETERMINATION HAS BEEN MADE, HE MAY EITHER STIMULATE FURTHER DISCUSSION, IF THAT IS INDICATED, OR SEPARATE THE PARTIES.

(2) THE ROLE OF THE MEDIATOR IN THE SEPARATE CONFERENCE

THE MEDIATOR IN THE SEPARATE CONFERENCE IS AN ENTIRELY DIFFERENT PERSON FROM THE MEDIATOR IN THE JOINT CONFERENCE. THIS IS NECESSARILY SO SINCE IN THE SEPARATE CONFERENCE HE CAN COMMUNICATE WITH THE PARTIES ON THE BASIS THAT WHAT THE PARTIES GIVE HIM IN THE WAY OF INFORMATION REGARDING THEIR STRATEGY OR THEIR HOPES OR OBJECTIVES IS FOR HIM ONLY AND THAT WHAT THE MEDIATOR SAYS TO THE PARTIES IS NOT INTENDED NECESSARILY FOR THEIR OPPONENTS. THUS, HIS INFORMATIONAL AND ADVISORY ACTIVITIES ARE LESS INHIBITED THAN IS THE CASE IN THE JOINT CONFERENCE. HE IS ABLE TO ARGUE A POINT WITHOUT THE RESTRICTING FACTOR THAT THE OTHER PARTY IS LISTENING. HE IS ABLE TO ADMONISH A PARTY WITH THE KNOWLEDGE THAT HE IS NOT EMBARRASSING HIM IN FRONT OF THE OTHER PARTY. HE IS ABLE TO MAKE SUGGESTIONS WITH THE KNOWLEDGE THAT THEY MAY BE REJECTED WITH NO EMBARRASSMENT TO THE MEDIATOR OR THE PARTIES. HE MAY UTILIZE TECHNIQUES WHICH MAY NOT BE INDICATED IN THE JOINT CONFERENCE.

(3) DETERMINING THE REAL ISSUES

THE SEPARATE CONFERENCE PROVIDES THE MEDIATOR WITH AN OPPORTUNITY TO PROCEED FURTHER ALONG THE ROAD TOWARD THE DISCOVERY OF JUST WHAT IT IS THAT THE PARTIES REALLY WANT FOR HE NOW HAS HAD AN OPPORTUNITY TO WATCH THE PARTIES AS THEY FACE EACH OTHER. THEY HAVE SAID MUCH THAT THEY HAVE FAILED TO TELL HIM DURING THE INITIAL SEPARATE CONFERENCE AND HAVE WITHDRAWN IN THE JOINT CONFERENCE SOME OF THE STATEMENTS WHICH THEY HAVE PREVIOUSLY MADE TO HIM. HE NOW SEEKS TO BRING ABOUT A DEGREE OF AGREEMENT BETWEEN THE PARTIES SO THAT AT LEAST SOME OF THE MISUNDERSTANDINGS THAT USUALLY EXIST BETWEEN THEM ARE ELIMINATED. THIS IS THE OPPORTUNITY, TOO, FOR HIM TO DISCUSS WITH THE PARTIES THEIR PROBLEMS, TO EITHER DRAW OUT OR HIMSELF PROPOSE ALTERNATE SOLUTIONS OR COMPROMISES.

E. TECHNIQUES

BELOW IS A DESCRIPTION OF SOME OF THE VARIOUS TECHNIQUE USED BY MEDIATORS TO NARROW THE AREA OF DISAGREEMENT BETWEEN THE PARTIES. SOME OF THOSE DESCRIBED ARE ESSENTAILLY COMBINATIONS OF TWO OR MORE DIFFERENT BASIC TECHNIQUES. NO ATTEMPT HAS BEEN MADE TO CLASSIFY THEM. THE PROBLEM OF CLASSIFICATION IS ONE WHICH SHOULD BE MORE FULLY EXPLORED BY OTHER RESEARCHERS.

(1) BUYING FRINGE BENEFITS

IF THE COMPANY RESISTS AGREEMENT TO FRINGE BENEFITS THAT ARE THE PATTERN IN THE INDUSTRY, THE MEDIATOR MAY ASK THE COMPANY, "HOW OFTEN HAVE YOU BOUGHT THIS IN THE PAST, THEREBY ADDING TO YOUR HOURLY RATE? YOU ARE GOING TO COME TO IT SOMETIME. HOW MANY MORE TIMES ARE YOU GOING TO BUY IT IN THE FUTURE?"

(2) IGNORING DROPPED ISSUES

IF THE PARTIES HAVE OBVIOUSLY CONCLUDED THEIR AGREEMENT, AND THE CONFERENCE IS COMING TO A CLOSE, THE MEDIATOR ORDINARILY WILL NOT BRING TO THEIR ATTENTION ISSUES WHICH WERE RAISED DURING THE BEGINNING OF THE CONFERENCE SESSIONS AND WHICH THEY HAVE CONVENIENTLY FORGOTTEN ABOUT FOR REASONS BEST KNOWN TO THEM.

(3) INFLUENCING THE RESULT OF A UNION RATIFICATION MEETING

AFTER THE AGREEMENT HAS BEEN SIGNED THE MEDIATOR MAY TAKE THE POSITION THAT THERE IS NO QUESTION BUT THAT NEGOTIATIONS HAVE BEEN COMPLETED AND THAT IF THE MEMBERSHIP REJECTS THE AGREEMENT, THE MEDIATOR WILL CALL NO FURTHER MEETINGS. IN ADDITION, HE SEEKS TO HAVE THE RATIFICATION MEETING HELD BEFORE THE STRIKE DEADLINE. IF THE COMMITTEE INFORMS THE MEMBERSHIP OF THE MEDIATOR'S POSITION, THE MEMBERSHIP MAY HESITATE TO REJECT THE AGREEMENT.

(4) ASSUMPTION

WHEN THE PARTIES FAIL TO MAKE ANY PROGRESS, THE MEDIATOR MAY SELECT THE ISSUE WHICH IS THE STUMBLING BLOCK AND ASK THE PARTIES TO AGREE TO ASSUME THAT THE ISSUE HAS BEEN RESOLVED. HE THEN TURNS THEIR ATTENTION TO THE REMAINING ISSUES. ONCE THESE HAVE BEEN RESOLVED, IT MAY BE POSSIBLE TO ATTACK THE REAL BONE OF CONTENTION WITH SOMEWHAT BETTER SUCCESS.

A VARIATION: THE MEDIATOR MAY FEEL THAT THE PARTIES ARE IN VIRTUAL AGREEMENT ON A MAJOR ISSUE IN DISPUTE BUT FIND THEM REFUSING TO PUT THEIR CARDS ON THE TABLE. IN SUCH A CASE, THE MEDIATOR MAY ASK THE PARTIES TO ASSUME

AGREEMENT ON THE ISSUE ON THE BASIS OF A "MEDIATOR'S PROPOSAL."

(5) REDUCTION OF ISSUES AND POSITIONS
TO WRITING BY THE PARTIES

A MEDIATOR MAY ASK THE PARTIES TO LIST IN WRITING THE ISSUES AND THE VALUES WHICH THEY ATTACH TO THE ISSUES FOR THE MEDIATOR'S USE. THIS HAS A TWOFOLD EFFECT: IT HELPS THE PARTIES TO CLARIFY THEIR THINKING, SINCE THEY MUST PUT THEIR THOUGHTS IN WRITING; AND IT PROVIDES THE MEDIATOR WITH KNOWLEDGE AS TO THE GOALS AND OBJECTIVES OF THE PARTIES.

A VARIATION: THE MEDIATOR MAY ASK THE PARTIES TO REDUCE THEIR POSITIONS TO WRITING USING AS MUCH OF THE POINT OF VIEW OF THE OTHER PARTY AS IS ACCEPTABLE TO THEM. THESE STATEMENTS ARE THEN TURNED OVER TO THE MEDIATOR WHO EXAMINES THEM. IF THERE HAS BEEN MOVEMENT, HE EXCHANGES THEIR PROPOSALS. IF ONLY ONE PARTY OR NEITHER HAS MOVED, HE FILES THEM.

YET THERE ARE CIRCUMSTANCES IN WHICH THE MEDIATOR WILL DISCOURAGE THE REDUCTION OF ISSUES TO WRITING. HE MAY RECOGNIZE INTERNAL DISSENSIONS ON ONE OR BOTH SIDES OF THE BARGAINING TABLE WHICH MAY MAKE IT VERY DIFFICULT FOR THE ISSUES TO BE PUT IN WRITING. HE MAY REALIZE THAT MOST OF THE ISSUES ARE NOT REAL ISSUES BUT WINDOW-DRESSING AND THEIR RECORDING MAY ACT AS A BAR RATHER THAN AS AN AID TO PROGRESS. IT MAY BE THAT THE PARTIES DO NOT HAVE THE ISSUES SUFFICIENTLY CLEARLY IN MIND SO AS TO MAKE IT POSSIBLE FOR THEM TO RECORD THEM.

(6) EXPLORATION

THE MEDIATOR, USUALLY IN SEPARATE CONFERENCES, MAY PROPOSE TO THE PARTIES A VARIETY OF POSSIBLE SOLUTIONS. THESE PROPOSALS ARE NOT BASED ON ANY ASSURANCE THAT THE PARTIES WILL ACCEPT THEM. HE SUBMITS THEM WITH THE HOPE THAT ONE PARTY OR THE OTHER MAY FIND ONE OF THEM ACCEPTABLE. WHEN HE DOES THIS, HE MAKES CERTAIN THAT THE PARTIES UNDERSTAND THAT THE PROPOSALS ARE STRICTLY HIS OWN.

(7) THE PACKAGE

THE PACKAGE INVOLVES A SERIES OF HORSE TRADES GROUPED TOGETHER UNDER A SINGLE PROPOSAL. IT MAY BE PROPOSED BY ONE OF THE PARTIES OR BY THE MEDIATOR. USUALLY IT IS FORMED IN SEPARATE SESSIONS AND PROPOSED AND AGREED UPON IN JOINT SESSIONS. IT IS ADJUSTED BY THE MEDIATOR AS HE MOVES BETWEEN THE PARTIES. IT HIGHLIGHTS THE ADVANTAGES OF VARIOUS CLAUSES WHICH ACCRUE TO BOTH PARTIES IF IT IS ACCEPTED BY THEM. IT INDUCES AN EXCHANGE OF ADVANTAGES BY BOTH SIDES. IT HAS AN AIR OF FINALITY ABOUT IT. IT MAY OR MAY NOT INCLUDE ALL THAT HAS BEEN AGREED UPON PRIOR TO THE

ENTRANCE OF THE MEDIATOR DEPENDING ON THE CIRCUMSTANCES.

(8) TRADING ISSUES

A MEDIATOR MAY MANIPULATE ISSUES SO AS TO BRING ABOUT AGREEMENT. FOR EXAMPLE, THE PARTIES MAY BE FACING A SITUATION WHERE THE UNION REQUESTS BOTH A WAGE INCREASE AND RETROACTIVITY. THE MEDIATOR MAY SUGGEST THAT RETROACTIVITY BE DROPPED IN FAVOR OF AN EQUIVALENT ARRANGEMENT IN THE WAY OF A WAGE INCREASE OR THAT PART OF THE WAGE DEMAND BE DROPPED IN FAVOR OF THE SATISFACTORY SETTLEMENT OF THE RETROACTIVITY ISSUE.

(9) REARRANGEMENT OF ISSUES

A MEDIATOR ON EXAMINING A SITUATION MAY FIND THAT ANY IMMEDIATE SOLUTION, COMPROMISE, OR ACTION WILL NOT SOLVE THE PROBLEM. HE MAY SUGGEST THAT THE ISSUE BE DROPPED FOR A PERIOD OF TIME AND THE PROBLEM BE TAKEN UP LATER (IF IT IS STILL A PROBLEM BY THAT TIME). OR, HE MAY SUGGEST A NEW APPROACH OR THE CONSIDERATION OF OTHER ISSUES WHICH MAY OVERSHADOW THE ISSUE BEING CONSIDERED, BY THE PARTIES AND PERHAPS ACTUALLY ELIMINATE IT.

(10) THE AGREEMENT WHICH IS NOT IN THE CONTRACT

WHERE THE PARTIES ARE ADAMANT IN CONNECTION WITH AN ISSUE, IT MAY BE POSSIBLE TO GET AGREEMENT IF THE PARTICULAR ISSUE IS NOT MENTIONED IN THE WRITTEN CONTRACT BUT IS COVERED EITHER BY AN ORAL AGREEMENT OR BY A LETTER OF INTENT. THE SETTLEMENT OF A GRIEVANCE MAY BE USED AS THE BASIS FOR THE ESTABLISHMENT OF A PRACTICE NOT SANCTIONED BY THE AGREEMENT.

THIS APPROACH IS FREQUENTLY USED WHERE POLICY PROBLEMS ARE INVOLVED. LOCAL PLANT PRACTICE MAY DIFFER FROM HOME OFFICE PRACTICE. THE INTERNATIONAL UNION MIGHT HAVE A POLICY ON THE ISSUE INVOLVED AND A DEVIATION FROM IT MIGHT NOT BE PERMITTED IN THE LOCAL AGREEMENT.

(11) BREAKING A PROBLEM DOWN INTO ITS ELEMENTS

WHEN A PARTICULARLY KNOTTY ISSUE DIVIDES THE PARTIES AND NO PROGRESS IS BEING MADE, IT MAY BE HELPFUL FOR THE MEDIATOR TO EXAMINE THE PROBLEM OR ISSUE, BREAK IT DOWN INTO ITS ELEMENTS OF ADVANTAGE OR DISADVANTAGE AND WORK SEPARATELY WITH BOTH PARTIES ON THE BASIS OF THIS ANALYSIS IN ORDER TO BRING THEM CLOSER TO AGREEMENT.

(12) FINALITY

WHERE THE NEGOTIATIONS HAVE PROCEEDED FOR A REASONABLE LENGTH OF TIME AND THE PARTIES ARE IN FAIRLY CLOSE AGREEMENT, IT MAY BE HELPFUL FOR ONE PARTY OR THE OTHER, AT THE

SUGGESTION OF THE MEDIATOR, TO PRESENT A BONAFIDE FINAL PACKAGE TO THE OTHER PARTY WITH THE STATEMENT--AN HONEST ONE--THAT THE PACKAGE IS ALL THERE IS AND THERE ISN'T ANY MORE. THE TECHNIQUE MUST BE TIMED SO THAT THERE IS AGREEMENT RATHER THAN A DISRUPTION OF NEGOTIATIONS AS A RESULT OF ITS USE. MUCH DEPENDS ON THE COMPANY'S PRACTICE: WILL THE UNION REGARD THE STATEMENT THAT THE FINAL DECISION HAS BEEN MADE AS AN HONEST ONE? WILL THE COMPANY BE HONEST WITH THE MEDIATOR AND ACTUALLY MAKE NO FURTHER OFFERS AFTER THE OSTENSIBLY FINAL LAST OFFER HAS BEEN MADE?

(13) CROSSING THE TABLE

ONE OF THE MOST COMMON OF THE MEDIATOR'S TECHNIQUES IS THAT OF GETTING A PARTY TO MOVE BY APPROACHING HIM WITH THE STATEMENT, "I WILL TRY TO GET THE UNION (OR COMPANY) TO DO SO AND SO IF YOU WILL DO THUS AND THUS," OR VARIOUS OTHER SIMILAR EXPRESSIONS.

(14) TWO MAJOR ISSUES

A MEDIATOR HAVING TWO MAJOR ISSUES IN A SITUATION MAY APPROACH HIS PROBLEM IN THIS WAY: IF THE TWO ISSUES ARE BOTH "COMPANY" OR "UNION" ISSUES, HE MAY DEVELOP THEM CONSECUTIVELY UNLESS THE TANGENTS OF THE ISSUES DOVETAIL IN WHICH CASE HE WILL DEVELOP THEM SIMULTANEOUSLY. IF ONE OF THE ISSUES IS A "COMPANY" ISSUE AND THE OTHER A "UNION" ISSUE, HE MAY DEVELOP THEM SIMULTANEOUSLY IN ORDER TO TAKE ADVANTAGE OF ANY TRADING POSSIBILITIES THAT LIE IN THE SITUATION.

(15) SMOKING THEM OUT

WHEN THE STRINGS ARE BEING PULLED AT PLACES OTHER THAN AT THE CONFERENCE TABLE, THE MEDIATOR MAY MAKE A DETERMINATION AS TO WHETHER TO REMAIN PASSIVE AND PERMIT THE PARTIES TO CONTINUE NEGOTIATING WITH THE DECISIONS BEING MADE ELSEWHERE OR TO SMOKE OUT THE MANIPULATORS BEHIND THE SCENES.

IF HE DECIDES TO SMOKE THEM OUT, HE MAY ASK FOR THE APPEARANCE OF THE HIGHER AUTHORITY AT THE CONFERENCE TABLE. HE MAY DO THIS DIRECTLY, THAT IS, HIMSELF MAKE THE REQUEST, OR HE MAY SUGGEST THAT ONE OF THE PARTIES ASK ITS OPPONENT TO PRODUCE THE GHOST AT THE TABLE. IF THE PARTY WHO REPRESENTS THE GHOST IS RELUCTANT TO PRODUCE HIM AT THE BARGAINING TABLE, THE MEDIATOR MAY OFFER TO GET IN TOUCH WITH THE GHOST AND ASK HIM TO APPEAR AT THE TABLE. STRANGELY ENOUGH, THERE ARE CASES WHERE THE COMMITTEE AT THE BARGAINING TABLE ON ITS OWN INITIATIVE WILL ASK THE MEDIATOR TO GET IN TOUCH WITH THE GHOST.

GHOSTS ARE NOT ALWAYS PEOPLE, HOWEVER, THEY MAY BE CIRCUMSTANCES SUCH AS ABSENTEE OWNERSHIP, NATIONAL UNION POLICY, HOME OFFICE POLICY, ETC. THESE, TOO, MAY OR MAY NOT HAVE TO BE SMOKED OUT.

(16) THE MEDIATOR'S CONCEPT OF THE ISSUES

THE MEDIATOR'S CONCEPT OF THE ISSUES AND THEIR VALUES MAY BE CONSIDERABLY DIFFERENT FROM THOSE OF THE PARTIES. HE MAY CHANGE THE VIEWS OF THE PARTIES WHICH THEY ORIGINALLY HELD REGARDING THE ISSUES BY DISCUSSING THEM WITH THE PARTIES AND POINTING OUT APPROACHES, VALUES, AND ASPECTS WHICH THEY HAD NOT CONSIDERED.

(17) CONDITIONAL CALL TO THE MEETING

WHEN A MEDIATOR IS ASKED BY ONE PARTY TO SET UP A JOINT MEDIATION MEETING, AND THE OTHER PARTY INDICATES THAT THERE IS STILL ROOM FOR BARGAINING WITHOUT THE MEDIATOR, THE MEDIATOR ORDINARILY REQUESTS THE PARTIES TO MEET WITH EACH OTHER ONCE MORE AND SETS A CONDITIONAL MEDIATION CONFERENCE FOLLOWING THE DIRECT NEGOTIATIONS. THE PARTIES SEEING THAT MEDIATION IS IMMINENT MAY WISH TO DISPOSE OF THEIR PROBLEMS WITHOUT THE ASSISTANCE OF MEDIATION AND MAY SETTLE BEFORE THE SCHEDULED MEDIATION MEETING.

THE MEDIATOR IS ALWAYS CAREFUL NOT TO BE DRAWN INTO NEGOTIATIONS WHERE THE PARTIES HAVE NOT YET EXHAUSTED THEIR NEGOTIATION RESOURCES OR WHERE ONE PARTY HOPES TO INVITE THE MEDIATOR, NOT TO BRING ABOUT AN AGREEMENT, BUT TO USE THE MEDIATOR TO FURTHER HIS OWN ENDS AT THE EXPENSE OF THE OTHER PARTY.

(18) PREPARATION OF A PARTY FOR A PROPOSAL

A MEDIATOR MAY MITIGATE THE SHOCK OF A SERIES OF ISSUES ON A COMPANY IF HE MEETS WITH THE COMPANY REPRESENTATIVES AND DISCUSSES WITH THEM THE VARIOUS ASPECTS OF THE ISSUES TO BE DISCUSSED IN SUBSEQUENT JOINT CONFERENCES. HE INITIATES THE DISCUSSION BY QUESTIONS SUCH AS: "DOES THE COMPANY THINK THAT THE UNION WILL AGAIN BRING UP THE QUESTION OF THE UNION SHOP?" OR "WHAT IS THE COMPANY'S PRACTICE WITH REFERENCE TO HOLIDAY PAY?" ETC. THIS APPROACH, OF COURSE, IS ALSO USED WHERE IT IS NECESSARY TO PREPARE A UNION FOR A SERIES OF ISSUES TO BE PRESENTED BY A COMPANY TO A UNION.

(19) EXTENSION OF AN ISSUE

WHEN THE PARTIES HAVE AGREED ON EVERYTHING BUT ONE ISSUE, THE MEDIATOR MAY SUGGEST THAT THE PARTIES CONSUMMATE THEIR AGREEMENT ON THE ITEMS ON WHICH TENTATIVE AGREEMENT HAS BEEN REACHED AND GIVE FURTHER CONSIDERATION TO THE REMAINING ISSUE WITHIN A STATED PERIOD IN THE FUTURE. IF THE PARTIES HAVE NOT RESOLVED THEIR PROBLEM AT THE END OF THAT PERIOD, THEN THE MEDIATOR MIGHT ENTER INTO THE PICTURE

AND OFFER TO MAKE HIMSELF AVAILABLE. THIS IS AN ESPECIALLY USEFUL TECHNIQUE WHERE THE REMAINING ISSUE IS A PART OF A MORE SERIOUS PROBLEM. IN THAT CASE, THE MEDIATOR MAY THEN SAY TO THE PARTIES THAT THEY ARE "CONCERNED WITH A LOLLY-POP WHILE A BOX OF CANDY REMAINS UNTOUCHED." THE MEDIATOR THEN OFFERS HIS ASSISTANCE TO BE AVAILABLE AFTER THE CONCLUSION OF THE NEGOTIATIONS IN CONNECTION WITH THE MAJOR PROBLEM WHILE THE PARTIES DISCARD THE COMPARATIVELY MINOR ISSUE.

(20) REALITY

WHERE THE MEDIATOR IS WELL KNOWN TO THE PARTIES, HE MAY APPROACH THEM EARLY IN THE NEGOTIATIONS AND ASK: "WHERE IS THE RUBBER IN YOUR DEMANDS?" "LET'S WORK THE RINGER," "YOUR REQUESTS ARE PIE IN THE SKY," OR "WHAT IS IT YOU REALLY WANT." WITH THE PROPER APPROACH AND WHERE THERE IS THE RIGHT KIND OF RELATIONSHIP, THE MEDIATOR MAY BE ABLE TO HAVE HIS FEET PLACED FIRMLY ON THE GROUND BY THE PARTIES AT THE BEGINNING OF THE MEDIATION CONFERENCE.

(21) INTEGRATING THE PARTS

THE MEDIATOR, IN SEPARATE CONFERENCE, LISTENS CAREFULLY TO THE ARGUMENTS MADE BY THE PARTIES AND SAYS LITTLE. AT THE CLOSE OF THE CONFERENCE, HE TURNS TO THE PARTICIPANTS AND PRESENTS WHAT HE REGARDS AS THE SUMMARY OF THE POINTS MADE BY THE MEMBERS IN THEIR DISCUSSION. ASSUMING THE MEMBERS HAVE MADE FIVE POINTS, HE RAISES HIS RIGHT HAND, EXTENDS HIS FINGERS, AND CHECKS OFF EACH OF THE POINTS CONTAINED IN HIS SUMMARY. SINCE THE POINTS WHICH HE EMPHASIZES ARE THE POINTS MADE BY THE MEMBERS OF THE CONFERENCE, THEY MAY BE QUITE READY TO AGREE WITH HIS SUMMARY. THIS SUMMARY MAY BE WHAT THE GROUP WILL DO IN ORDER TO EFFECT AN AGREEMENT--IT IS THEIR PROPOSAL.

THE MEDIATOR MAY CARRY THIS TECHNIQUE A STEP FURTHER AND INCLUDE IN THE SUMMARY THE POINTS MADE BY THE OPPOSING GROUP. SINCE THE PROPOSAL WILL THEN CONTAIN ELEMENTS FROM BOTH SIDES, IT MAY BE ACCEPTABLE TO BOTH SIDES.

(22) REDUCTION OF AGREEMENT TO WRITING

WHEN AGREEMENT HAS BEEN REACHED, THE MEDIATOR MAY REQUEST THE PARTIES TO REDUCE THEIR AGREEMENT TO WRITING BEFORE HE DEPARTS. YET THE EXPERIENCED MEDIATOR KNOWS THAT THERE ARE CASES WHEN THIS POINT SHOULD NOT BE RAISED. THE ORAL AGREEMENT MAY HAVE BEEN REACHED WITH GREAT DIFFICULTY.. IT MAY BE WISER IN SOME CASES BECAUSE OF THE NATURE OF THE TEMPERAMENT OF THE PARTIES FOR THE MEDIATOR TO FOLD HIS TENT LIKE THE ARABS AND SILENTLY STEAL AWAY BEFORE THE AGREEMENT IS DISRUPTED BY A DISCUSSION OF THE WORDS AND PHRASES WHICH GO INTO THE WRITTEN AGREEMENT.

(23) RECORDING OF ISSUES BY MEDIATOR

THE PARTIES MAY BE RELUCTANT TO WRITE DOWN THE ISSUES AND THEIR POSITIONS ON THEM. THE MEDIATOR MAY FEEL THAT THE CIRCUMSTANCES INDICATE THE REDUCTION TO WRITING OF AT LEAST THE ISSUES WHICH FACE THE PARTIES, IF NOT THEIR POSITIONS ON THESE ISSUES. IF THE PARTIES PERSIST IN THEIR RELUCTANCE, THE MEDIATOR MAY ACHIEVE HIS OBJECTIVE OF OBTAINING A WRITTEN RECORD BY ASKING THE PARTIES WHAT THE ISSUES ARE AND THEN HIMSELF RECORDING THEIR ORAL STATEMENTS IN WRITING. IF HE ASKS THEM TO GIVE HIM THE ISSUES SLOWLY SO THAT HE CAN WRITE THEM DOWN, IT MAY FORCE THE PARTIES TO THINK ABOUT THEM AS THEY DETAIL THEM.

(24) HANDLING TWO REMAINING ISSUES

THE MEDIATOR MAY USE THE FOLLOWING TECHNIQUE DURING THE FINAL STAGES OF NEGOTIATIONS WHEN TWO ISSUES REMAIN UNRESOLVED. IN A SEPARATE CONFERENCE WITH THE UNION OR THE COMPANY, HE REQUESTS THE PARTY TO INFORM HIM AS TO WHICH OF THE TWO ISSUES IS OF GREATER IMPORTANCE. IF HE RECEIVES THIS INFORMATION, HE THEN GOES TO THE OTHER PARTY AND TRIES TO SECURE HIS ASSENT TO GRANTING CONCESSIONS ON THE ISSUE OF GREATER IMPORTANCE. IF HE RECEIVES A PROMISE OF CONCESSIONS ON THE MAJOR ISSUE ON THE ASSUMPTION THAT THE OTHER ISSUE WILL BE DROPPED, HE CAN THEN RETURN TO THE FIRST PARTY AND INFORM HIM THAT IF HE WILL DROP THE RELATIVELY LESS IMPORTANT ISSUE, IT MIGHT BE POSSIBLE TO PERSUADE THE OTHER PARTY TO GRANT THE REQUEST IN CONNECTION WITH THE MAJOR ISSUE.

(25) ENTHUSIASM AND APATHY

IN SEPARATE CONFERENCES THE MEDIATOR MAY HELP A PARTY ALONG THE ROAD TO AGREEMENT BY ENTHUSIASTICALLY ENDORSING A PROPOSAL WHICH IS UNDER CONSIDERATION AND WHICH THE MEDIATOR BELIEVES HAS SOME CHANCE OF ACCEPTANCE. OR, HE MAY RAISE DOUBTS IN THE MIND OF A PARTY BY POINTING OUT THE DISADVANTAGES WHICH WILL ACCRUE TO HIM IF HE IS SUCCESSFUL IN GETTING THE OTHER PARTY TO AGREE WITH HIM ON SOME OF HIS REQUESTS--REQUESTS WHICH THE MEDIATOR DOES NOT BELIEVE WILL BE ACCEPTED AND WHICH ACT AS BARS TO PROGRESS TOWARD AGREEMENT. THE MEDIATOR MAY COMBINE BOTH APPROACHES IN HIS WORK WITH A PARTY SO AS TO PRESENT A PICTURE OF UNRESTRAINED ENTHUSIASM FOR SOME POSITIONS OF A PARTY AND DEEP PESSIMISM WITH REFERENCE TO OTHERS.

(26) ASSUMPTION OF DEFEAT

AT THE DEADLINE, IN ORDER TO SHOCK THE PARTIES INTO MOVING IN THE DIRECTION OF AGREEMENT, THE MEDIATOR MAY INFORM THE PARTIES THAT IN HIS OPINION THE SITUATION IS HOPELESS, THAT THE STRIKE IS PRACTICALLY IN EFFECT, THAT THE PARTIES SHOULD START CONSIDERING TURNING OFF THE POWER,

SWITCHING OFF THE LIGHTS, AND GETTING THE STRIKE PROCEDURE ORGANIZED. THE TECHNIQUE MAY BE USED IN EITHER JOINT OR SEPARATE SESSIONS. IT IS USED IN SEPARATE SESSIONS WHERE THE MEDIATOR BELIEVES THAT THE SITUATION IS VERY SERIOUS AND THAT THE PARTIES SHOULD BE IMPRESSED BY THE IMMINENCE OF THE STRIKE. IT IS USED IN JOINT CONFERENCES WHEN THE POSSIBILITIES OF THE STRIKE ARE NOT AS STRONG AND WHERE GENERAL STATEMENTS OF THE MEDIATOR CONCERNING A POSSIBLE STRIKE ARE DESIGNED TO ACCELERATE THE PARTIES' EFFORTS TOWARD AN AGREEMENT WHICH ACTUALLY SEEMS TO BE IN THE MAKING.

A VARIATION: THE MEDIATOR MAY ASSUME A DESPONDENT AIR AND, AS HE MOVES BETWEEN THE PARTIES, HE COMMENTS, "YOU'LL HAVE TO STRIKE THEM," OR "THEY ARE GOING TO STRIKE," WHICHEVER IS SUITABLE TO THE CASE.

ANOTHER VARIATION: THE MEDIATOR MAY TAKE A MORE AGGRESSIVE ATTITUDE TOWARD THE PARTIES WHEN HIS ANALYSIS HAS INDICATED THAT THE TIME FOR THE PARTIES TO DECIDE THEIR ISSUES HAS COME. HE MAY DISCUSS THE ANALYSIS WITH THE PARTIES AND SUGGEST THAT THEY STRIKE OR PERMIT THE STRIKE TO TAKE PLACE, WHICHEVER IS SUITABLE. THE SUGGESTION, OF COURSE, IS NOT MADE FOR THE PURPOSE OF EFFECTUATING A STRIKE BUT RATHER FOR THE PURPOSE OF ACCELERATING THE DECISION OF THE PARTIES IN THE DIRECTION OF AGREEMENT.

ANOTHER VARIATION: AS THE MEDIATOR WORKS WITH THE PARTIES IN JOINT AND SEPARATE CONFERENCES, HIS ACTIONS AND DEemeanOR MAY INDICATE THAT HE REGARDS THE THREATS OF THE UNION TO STRIKE, OR THE COMPANY'S INDIFFERENCE TO THE THREAT, AS SINCERE, BONAFIDE, AND HONEST STATEMENTS OF THE INTENTIONS OF THE UNION OR COMPANY.

(27) THE CONCILIATORY AS CONTRASTED TO THE LEGALISTIC APPROACH

THERE ARE TIMES WHEN ONE PARTY OR THE OTHER FACES A BAD SITUATION IN WHICH IT IS LEGALLY OBLIGATED. THE CONSEQUENCES TO THE PARTY MAY BE INEQUITABLE THOUGH LEGAL. IN SUCH CASES, PROGRESS MAY BE MADE WHEN THE MEDIATOR ADVISES THE LEGALLY COMMITTED PARTY TO ABANDON ITS LEGAL ARGUMENTS--ON THE BASIS OF WHICH THERE IS NO HOPE ANYWAY--AND TO THROW ITS CARDS ON THE TABLE AND ASK FOR JUSTICE AND A HUMANISTIC HANDLING OF THE SITUATION. OCCASIONALLY, RATHER THAN HAVE ONE OF THE PARTIES ADOPT THIS APPROACH, IT MAY BE THE MEDIATOR WHO MAKES THE PLEA.

(28) TIMING

THERE ARE VARIOUS ELEMENTS IN A MEDIATION CONFERENCE WHICH MAY BE DELAYED OR ACCELERATED BY THE MEDIATOR OR THE PARTIES IN ORDER TO ACHIEVE OBJECTIVES IN CONNECTION WITH THE AGREEMENT. THE WAYS IN WHICH THE MEMBERS OF THE CON-

REFERENCE USE "TIMING" ARE NUMEROUS BUT A FEW EXAMPLES MAY INDICATE ITS USEFULNESS:

A PARTY MAY WISH TO GIVE A NEGATIVE REPLY TO A UNION'S OR COMPANY'S REQUEST. THE MEDIATOR MAY REQUEST THE PARTY TO DELAY GIVING THIS ANSWER FOR A PERIOD. AT THE END OF THE PERIOD THE SITUATION MAY HAVE CHANGED TO THE EXTENT THAT THE PARTY MAY WISH TO GIVE AN AFFIRMATIVE REPLY TO THE REQUEST.

A PARTY MAY ASK A MEDIATOR TO CONVEY A PROPOSAL TO THE OTHER PARTY. THE MEDIATOR MAY ADVISE THE PROPOSING PARTY NOT TO MAKE THE PROPOSAL AT THAT PARTICULAR TIME SINCE ^{IT} MIGHT BE MORE CONDUCTIVE TO BRINGING ABOUT AN AGREEMENT IF IT WERE PROPOSED CLOSER TO THE DEADLINE DATE.

A MEDIATOR MAY TABLE AN ISSUE IN ORDER TO HAVE IT BROUGHT UP FOR CONSIDERATION AT A LATER DATE WHEN ITS ACCEPTANCE BY THE PARTIES WILL BE MORE LIKELY.

A UNION MAY DELAY SETTLEMENT SO THAT IF A STRIKE TAKES PLACE, IT TAKES PLACE AFTER THE PAYMENT OF HOLIDAY PAY TO THE EMPLOYEES IS ASSURED.

A MEDIATOR MAY SPEND A CONSIDERABLE AMOUNT OF TIME WITH A PARTY WHICH IS MAKING A PROPOSAL IN ORDER TO GIVE THE RECEIVING PARTY THE IMPRESSION THAT THE PROPOSAL WAS ELICITED BY THE MEDIATOR WITH GREAT DIFFICULTY AND THAT IT WAS MADE VERY RELUCTANTLY BY THE PROPOSING PARTY.

(29) BLOW-UP

WHEN NO PROGRESS IS BEING MADE, WHEN THE PARTIES SEEM TO BE SIMPLY MARKING TIME, OR WHEN THE PARTIES SEEM TO BE UNAWARE THAT A DEADLINE IS APPROACHING, THE MEDIATOR MAY ALLOW A DISCUSSION TO BLOW UP OR WILL HIMSELF INTERJECT FACTORS WHICH CAUSE THE DISCUSSION TO BLOW UP SO THAT THERE FOLLOWS A RELEASE OF TENSION AND AN ACCELERATED EXCHANGE OF IDEAS, OPINION, AND THOUGHTS. AS THE DISCUSSION BECOMES MORE ACTIVE, ISSUES MAY BECOME CLEARER, AND THERE MAY RESULT SOME PROGRESS TOWARD AGREEMENT.

(30) SYMPATHY AND SEVERITY

A PARTY, EITHER BECAUSE OF THE CIRCUMSTANCES OR BECAUSE OF HIS EMOTIONAL MAKEUP OR BOTH, MAY HAVE AN ACUTE NEED FOR SYMPATHY. IF THE MEDIATOR SUPPLIES IT, THE PARTY MAY BE MORE WILLING TO LISTEN TO THE MEDIATOR'S SUGGESTIONS FOR THE RESOLUTION OF THE ISSUES. ON THE OTHER HAND, WHERE A PARTY HAS TAKEN A RIGID, UNCOMPRISING POSITION, HE MAY BE MOVED FROM THAT POSITION BY THE MEDIATOR WHO TAKES A STERN, STIFF, SEVERE ATTITUDE TOWARD THE PARTY.

THIS APPROACH MAY BE USED BY A THREE-MAN PANEL. IN THIS SITUATION, ONE MEDIATOR MAY SEEM PARTICULARLY

SYMPATHETIC WITH THE UNION AND WORK VERY CLOSELY WITH IT. THE SECOND MEDIATOR MAY SEEM PARTICULARLY SYMPATHETIC WITH THE COMPANY AND WORK VERY CLOSELY WITH^{IT}. THE THIRD MEDIATOR MAY PRESENT HIMSELF AS A COLD, OBJECTIVE, RESERVED TYPE OF PERSON IN HIS RELATIONSHIPS NOT ONLY WITH THE PARTIES BUT ALSO WITH THE OTHER TWO MEDIATORS. HIS ATTITUDE MAY GIVE THE IMPRESSION TO THE PARTIES THAT HE REGARDS THE OTHER TWO MEDIATORS AS BEING ALMOST ADVOCATES OF THE POSITIONS OF THE PARTIES WITH WHOM THEY SEEM TO HAVE ALIGNED THEMSELVES. THUS, THE MEDIATORS MAY BE ABLE TO OBTAIN AN INSIGHT INTO THE PROBLEMS AND OBJECTIVES OF THE PARTIES WHICH THEY MIGHT NOT BE ABLE TO OBTAIN IN ANY OTHER WAY. IN ADDITION, THERE WILL BE AT LEAST ONE MEDIATOR WHO WILL HAVE CONSIDERABLE INFLUENCE WITH EACH OF THE PARTIES.

(31) THE ILLUSTRATION

A MEDIATOR MAY CLARIFY AN OBSCURE SITUATION BY TELLING A STORY, BY DRAWING A DIAGRAM ON A BLACKBOARD, BY REFERRING TO AN ACTUAL CASE WITH WHICH HE IS FAMILIAR, OR BY OUTLINING A FICTITIOUS CASE WHICH HIGHLIGHTS THE VARIOUS POINTS IN THE PROBLEM UNDER DISCUSSION.

A PARTY MAY BE SOLD ON AN APPROACH IF THE MEDIATOR TELLS HIM A STORY OF HOW THE APPROACH, SOLUTION, OR DEVICE WAS SUCCESSFULLY USED IN A SIMILAR SITUATION BY ANOTHER COMPANY OR UNION. THE EXAMPLE MAY BE MORE EFFECTIVE IF THE COMPANY OR UNION WHICH USED THE APPROACH SUCCESSFULLY IS ONE FOR WHOM THE PARTY GIVING CONSIDERATION TO THE APPROACH HAS A FEELING OF RESPECT OR ADMIRATION.

(32) LISTENING

A MEDIATOR MAY BRING THE PARTIES CLOSER TOGETHER BY SIMPLY LISTENING TO THEM COMPLAIN ABOUT EACH OTHER. HE LETS THE PARTIES GET WHAT BOTHERS THEM OFF THEIR CHESTS. WHEN THEY HAVE RID THEMSELVES OF WHAT IS ON THEIR MINDS, THEY MAY BE MORE READY TO SIT DOWN AND FIGURE A WAY OUT OF THEIR DISPUTE.

(33) PRIDE OF AUTHORSHIP

A PROPOSAL MADE BY A PARTY MAY BE UNACCEPTABLE TO THE OPPOSING PARTY MERELY BECAUSE IT WAS MADE BY THE OTHER PARTY AND NOT BECAUSE IT IS BASICALLY DEFICIENT. IN SUCH CASES, THE MEDIATOR MAY ASK THE PARTY TO WHOM THE PROPOSAL IS MADE TO EXAMINE IT, REVISE, AMEND, OR REPHRASE IT IN HIS OWN LANGUAGE. THE RESULT MAY BE AN AMENDED PROPOSAL WHICH MAY ACTUALLY BE NO DIFFERENT THAN THE ORIGINAL PROPOSAL AND, THEREFORE, STILL BE ACCEPTABLE TO THE PROPOSING PARTY.

(34) ACCUSATION

A MEDIATOR MAY GET THINGS MOVING BY PUTTING THE PARTIES ON THE DEFENSIVE. HE MAY APPROACH PARTIES WHO HAVE BEEN SPARRING AN INORDINATELY LONG TIME WITH THE STATEMENT THAT, "IT APPEARS THAT YOU PEOPLE DON'T WANT TO SETTLE," OR WORDS TO THAT EFFECT. IN THEIR EFFORTS TO SHOW THE MEDIATOR THAT HE IS ALL WRONG, THE PARTIES MAY GET DOWN TO BUSINESS AND START MOVING.

(35) PREPARATION OF A PARTY FOR CAPITULATION

WHEN IT IS OBVIOUS THAT ONE OF THE PARTIES IS NOT GOING TO GET AN AGREEMENT WITH WHICH HE WILL BE HAPPY, THERE MAY BE NO ALTERNATIVE FOR THE MEDIATOR BUT TO CONFRONT THE PARTY WITH THE REALITIES OF THE SITUATION, THAT THE FACTS BEING WHAT THEY ARE, THERE IS NOTHING ELSE THAT CAN BE DONE BUT TO ACCEPT THE UNPALATABLE AGREEMENT GRACEFULLY. THE MEDIATOR MAY POINT OUT THAT THE OTHER PARTY KNOWS THAT ITS OPPONENT HAS NO WAY OUT OF THE SITUATION AND THAT, THEREFORE, THE BEST POSSIBLE APPROACH MIGHT BE TO TRY TO SETTLE FOR THE BEST DEAL THAT THE OPPONENT WILL GIVE.

(36) EMBARRASSMENT

A MEDIATOR, ON RARE OCCASIONS, MAY MAKE STATEMENTS OR TAKE ACTION WHICH MAY EMBARRASS A PARTY IN THE PRESENCE OF ITS OPPONENT, THE OBJECTIVE BEING TO GET THE EMBARRASSED PARTY TO MOVE. OR, BOTH PARTIES MAY BE EMBARRASSED BY THE MEDIATOR IN ORDER TO EFFECT SOME MOVEMENT OF ONE OR BOTH. THIS IS A DANGEROUS TECHNIQUE AND SHOULD BE USED RARELY.

(37) REASSURANCE

MANY OF THE ACTIONS TAKEN BY THE PARTIES WHICH MOVE THEM ALONG THE ROAD TO AGREEMENT ARE COMPROMISES OR INVOLVE GIVING UP SOMETHING WHICH THEY DO NOT WANT TO GIVE UP. IT IS HELPFUL TO THE PARTIES FOR THE MEDIATOR TO REASSURE THAT AS THEY ACT (OR REFRAIN FROM ACTING) THEY ARE NOT "BEING SOLD DOWN THE RIVER" AND THAT WHAT THEY ARE DOING OR NOT DOING IS, IN THE OPINION OF THE MEDIATOR, IN THEIR BEST INTERESTS.

(38) USE OF HYPOTHETICAL SITUATIONS

THE MEDIATOR IN CONSIDERING A PARTICULAR PROPOSAL WITH A PARTY MAY BRING ABOUT A BETTER UNDERSTANDING OF THE PROPOSAL BY THE PARTY BY WORKING OUT WITH HIM A HYPOTHETICAL CASE IN WHICH THE PROPOSAL IS CARRIED OUT. THIS SORT OF ANALYSIS MAY RESULT IN HAVING THE PROPOSING PARTY SEE AND AMEND THE FAULTS IN THE PROPOSAL AND THE RECEIVING

PARTY GET A CLEARER CONCEPTION OF WHAT IS BEING CONSIDERED. IN ADDITION THE RECEIVING PARTY MAY BECOME CONVINCED THAT THE PROPOSAL WHICH AT FIRST SEEMED UNREALISTIC ACTUALLY HAS MERIT..

(39) IGNORANCE

THE MEDIATOR, EVEN THOUGH HE SEES A PROBLEM CLEARLY, MAY PRETEND THAT HE DOES NOT UNDERSTAND THE NATURE OF THE DIFFICULTY WHICH FACES THE PARTIES. HE REQUESTS EACH PARTY TO EXPLAIN THE PROBLEM TO HIM. IN THIS WAY HE GETS THE PARTIES THEMSELVES TO SEE THE PROBLEM MORE CLEARLY. IT PROVIDES A WAY IN WHICH EACH PARTY LISTENS TO AN EXPLANATION OF THE PROBLEM TO THE MEDIATOR BY THE OTHER PARTY. THIS MAY BE QUITE A CONTRAST TO THE EXPLANATION WHICH THE PARTIES PRESENT TO EACH OTHER. THE TECHNIQUE PROVIDES A FRAMEWORK WITHIN WHICH THE MEDIATOR MAY LEGITIMATELY ASK QUESTIONS WHICH MIGHT NOT OTHERWISE BE APPROPRIATE. THE REPETITION OF THE PARTIES' POSITIONS MAY PROVIDE FOR THE BRINGING OUT OF ADDITIONAL FACTS, THE EXPOSURE OF FALLACIES OF THE POSITION OF ONE OR BOTH PARTIES, AND BRINGING TO LIGHT OF "SLEEPERS" IN CLAUSES. IT IS ALSO ONE WAY IN WHICH THE MEDIATOR CAN TEST THE SINCERITY OF THE PARTIES--BY NOTING WHETHER THEY TRY TO TAKE ADVANTAGE OF HIS PRETENDED IGNORANCE.

(40) INTELLIGENCE

THIS IS SOMETIMES REFERRED TO BY MEDIATORS AS THE "DON'T KID ME" APPROACH. THE MEDIATOR DEMONSTRATES THAT HE IS AT HOME IN THE SITUATION AND, USING THIS APPROACH, ACCOMPLISHES A NUMBER OF OBJECTIVES: IF THE PARTIES ARE CONFUSED, HE BRINGS LIGHT TO THEM. IF THE PARTIES HAVE CLEARLY IN MIND WHAT THEIR PROBLEMS ARE, AND ARE NEVERTHELESS BEFOGGING THE ISSUE FOR THE BENEFIT OF THE MEDIATOR, HE PLACES HIS CARDS ON THE TABLE AND CALLS THEIR BLUFF, TELLING THEM THAT HE KNOWS WHAT IS GOING ON.

A VARIATION: THE MEDIATOR MAY ACTUALLY BE IGNORANT OF THE SITUATION AND MAY PRETEND UNDERSTANDING UNTIL THE PIECES OF THE PUZZLE FALL IN LINE.

(41) INTERROGATION

THE MEDIATOR MAY BRING OUT THE REAL FACTS IN A SITUATION BY ASKING QUESTIONS CAREFULLY POSED AND TIMED. HE MAY SUGGEST AN ALTERNATE SOLUTION OR COMPROMISE, PROVIDE INFORMATION IN AN INDIRECT WAY, OR EFFECT A CHANGE IN ATTITUDES, FEELINGS, OR EMOTIONS BY ASKING QUESTIONS. HE MAY THUS EVEN INDUCE THE PARTIES TO MAKE PROPOSALS WHICH LEAD TO AGREEMENT.

(42) REPETITION

A MEDIATOR MAY, DURING JOINT SESSIONS, AFTER HEARING THE ARGUMENTS OF A PARTY, REPEAT THEM, CAREFULLY REPHRASING THEM IN HIS OWN WORDS, AND THEN ASK THE PARTY WHETHER HE HAS CLEARLY STATED THE ARGUMENT. WHENEVER HE DOES THIS, HE WARNS THE PARTIES THAT HE IS DOING IT ONLY FOR THE PURPOSE OF MAKING CERTAIN THAT HE UNDERSTANDS THE ARGUMENTS OF THE PARTY, NOT THAT HE NECESSARILY AGREES WITH THEM. THIS PROVIDES FOR SEVERAL BENEFITS: THE RECORD IS MADE CLEARER. AMBIGUITIES ARE ELIMINATED. DURING THE PROCESS OF REPHRASING A COMPROMISE OR ALTERNATIVE PROPOSAL MAY COME UP. DOUBT MAY DEVELOP IN THE MINDS OF THE PARTY AS HE HEARS HIS ARGUMENT CLEARLY AND LUCIDLY STATED. ON THE OTHER HAND, THE PARTY MAY BE THEREBY REASSURED OF HIS POSITION. AS THE ARGUMENT BECOMES CLEARER, POSSIBLE SOLUTIONS MAY ARISE IN THE MINDS OF THE PARTIES WHICH MAY LEAD TOWARD MOVEMENT IN THE DIRECTION OF AGREEMENT.

(43) ANALYSIS OF ARGUMENTS

IN SEPARATE CONFERENCES, THE MEDIATOR MAY RAISE DOUBTS IN THE MINDS OF THE PARTIES BY QUESTIONING THEM ON HOW THEY MEET THE STRONG POINTS OF THE OTHER PARTY'S ARGUMENTS OR HE MAY ASK EACH PARTY TO REANALYZE HIS OWN ARGUMENTS ON THE BASIS OF THE FACTS, OPINIONS, AND ARGUMENTS RAISED BY THE OTHER PARTY DURING THE JOINT CONFERENCE.

(44) COST-OF-PRINCIPLE APPROACH

WHEN ONE PARTY OR THE OTHER CONTINUALLY KEEPS REFERRING TO PRINCIPLE, THE MEDIATOR MAY INDICATE TO HIM IN SOME MANNER THE APPROXIMATE COST PER HOUR, DAY, OR WEEK THE PRINCIPLE COSTS HIM.

(45) PROVING THE POINT

WHEN THE MEDIATOR WISHES TO SELL AN IDEA TO A PARTY OR PARTIES HE IS VERY CAREFUL NOT TO STATE HIS IDEA IN AN ARBITRARY WAY. THIS MIGHT AROUSE RESENTMENT IN THE PARTIES. RATHER, HE MAKES HIS STATEMENT AND THEN TURNS TO EITHER THE COMPANY OR THE UNION AND ASKS WHETHER THEIR EXPERIENCE BACKS UP HIS STATEMENT OR HE BRINGS FORTH FROM HIS OWN EXPERIENCE AN ILLUSTRATION WHICH SUPPORTS HIS VIEW.

(46) HIGHLIGHTING THE AREA OF DISAGREEMENT

WHERE THE PARTIES ARE CONFUSED AS TO WHAT THE AREA OF DISAGREEMENT IS, THE MEDIATOR MAY CLARIFY THE SITUATION AS FOLLOWS: HE MAY OUTLINE THE AREA OF DISAGREEMENT AND THEN ASK THE PARTIES IF THEY AGREE WITH HIM THAT HE HAS CLEARLY OUTLINED THE PROBLEM THEY FACE. OR HE MAY TURN TO ONE OF THE PARTIES AND DELIBERATELY MISSTATE THE OTHER PARTY'S

POSITION, IN ORDER TO GET THEM BOTH TO EXAMINE THEIR POSITION MORE CLOSELY AND THEREBY ARRIVE AT A MORE ACCURATE CONCEPTION OF THE POSITION.

(47) IDENTIFICATION

A MEDIATOR IN DISCUSSING A SERIES OF ALTERNATIVES WITH A PARTY MAY BRING OUT ALL OF THE ADVANTAGES AND DISADVANTAGES PERTAINING TO ALL OF THE ALTERNATIVES. HE, IN EFFECT, MAY PLACE HIMSELF IN THE POSITION OF THE PARTY AND EXAMINE THE VARIOUS PROPOSALS WITH HIM. WHEN THE REVIEW OF THE ALTERNATIVES IS COMPLETED, THE PARTY MAY BE SO IMPRESSED WITH THE MEDIATOR'S FRANKNESS THAT HE MAY LEND A READY EAR TO WHAT THE MEDIATOR MAY HAVE TO SAY REGARDING THE PARTY'S CHOICE OF THE ALTERNATIVES.

(48) STANDARD PRACTICE

A CONSERVATIVE MANAGEMENT REPRESENTATIVE WHO BALKS AT A PROPOSAL OF THE UNION TO TAKE CERTAIN ACTION MAY BE ASSISTED ON HIS WAY TO AGREEMENT BY THE MEDIATOR POINTING OUT THAT THE PROPOSAL IS NOT UNUSUAL, THAT IT HAS BEEN ACCEPTED BY THE OTHER REPRESENTATIVES IN HIS INDUSTRY AND AREA, AND THAT THE PRACTICE REQUESTED BY THE UNION HAS ASSUMED THE STATUS OF AN "AUTHORITATIVE TRADITION." THE SAME APPROACH CAN, OF COURSE, BE USED BY THE MEDIATOR IN HIS DEALINGS WITH THE UNION. THIS PRESUMES THAT THE MEDIATOR KNOWS VERY WELL WHAT IS GOING ON IN THE UNION AND INDUSTRY WITH WHICH HE IS DEALING.

(49) SUPPLEMENTING A PARTY'S ARGUMENT

A PARTY MAY ARGUE WITH THE OTHER PARTY FOR THE ADOPTION OF A PROPOSAL, PRESENTING A VARIETY OF ARGUMENTS SUPPORTING HIS POINT OF VIEW. IN ORDER TO BRING THEM INTO CLOSER AGREEMENT, THE MEDIATOR MAY SIMPLY REPEAT THE ARGUMENTS OF THE PARTY PROPOSING THE SOLUTION. HOWEVER, HE MAY BE MORE EFFECTIVE IF HE SUPPLEMENTS THE ARGUMENTS. THAT IS, IF THE ARGUMENTS USED BY THE PARTY ARE ARGUMENTS BASED ON EXPEDIENCE, THE MEDIATOR WILL ARGUE FROM THE POINT OF VIEW THAT THE ADOPTION OF THE PROPOSAL IS NOT ONLY EXPEDIENT BUT WOULD ALSO BE PROFITABLE, OR EQUITABLE, OR MORE EFFICIENT. OR, IF THE PARTY USED THE ARGUMENT THAT THE PROPOSAL WOULD LEAD TO GREATER EFFICIENCY, THE MEDIATOR WOULD ADD THE ARGUMENT THAT IT ALSO IS EXPEDIENT. OF COURSE, THE MEDIATOR MAY USE THIS TECHNIQUE IN SUPPORTING THE REBUTTAL TO THE PROPOSAL.

(50) MEDIATOR TREATMENT OF FAULTY REASONING

THE MEDIATOR KEEPS AN EAR OPEN FOR STATEMENTS MADE BY THE PARTIES WHICH ARE MERELY ASSERTIONS--NOT FACTS BASED ON EVIDENCE. WHERE INDICATED, HE MAY LABEL A PARTY'S

POSITION AS UNSTABLE, UNTENABLE, OR UNJUSTIFIABLE SINCE IT IS BASED ONLY ON ASSUMPTION. HE TAKES THE SAME ACTION WHERE INFERENCE IS BASED ON INADEQUATE OR INACCURATE INFORMATION, OR WHERE GENERALIZATIONS ARE MADE WHICH CANNOT LOGICALLY BE APPLIED TO THE SITUATION UNDER DISCUSSION.

(51) NEUTRALITY

DURING THE COURSE OF A HEATED ARGUMENT, A PARTY MAY TURN TO THE MEDIATOR AND ASK, "WHAT DO YOU THINK, MR. MEDIATOR?" THERE ARE A NUMBER OF APPROACHES WHICH THE MEDIATOR CAN TAKE AT THIS POINT: HE CAN INFORM BOTH PARTIES FRANKLY THAT HE IS A MEDIATOR AND NOT AN ARBITRATOR. OR, HE CAN SAY, FOR EXAMPLE: "YOU FOLKS ARE DOING O.K. AND DON'T NEED ANY HELP FROM ME. JUST CONTINUE WITH THE DISCUSSION." OR, "THE COMPANY HAS TAKEN THE FOLLOWING POSITION. WHAT IS THE UNION'S ANSWER TO IT?" OR, "THIS POINT DOESN'T NECESSARILY HAVE TO BE SETTLED RIGHT NOW. LETS TAKE UP SOMETHING ELSE AND RETURN TO THE POINT NOW UNDER DISCUSSION LATER." OR, "MY THOUGHTS ON THIS ISSUE ARE OF NO IMPORTANCE AT THIS TIME. YOU PEOPLE ARE DOING THE NEGOTIATING."

(52) POINTING THE ARROWS

WHEN THERE IS MORE THAN ONE GIVEN PERSON ON THE COMMITTEE, AS, FOR EXAMPLE, TWO INTERNATIONAL REPRESENTATIVES OR A COMPANY PRESIDENT AND HIS ATTORNEY, WHO ARE DOING MOST OF THE TALKING, THE MEDIATOR MAY DETERMINE WHICH OF THE TWO PERSONS HAS THE MORE REALISTIC APPROACH AND DIRECT THE DISCUSSION TO THAT PARTICULAR PERSON. THE MEDIATOR MAY IMPLEMENT THIS TECHNIQUE BY INFLUENCING THE COMMITTEE MEMBERS TO RECOGNIZE THIS REALISTIC PERSON AS THE PERSON WHO SHOULD CARRY THE BALL AND WHO WILL EVENTUALLY DECIDE THE PARTY'S COURSE OF ACTION. SUCH A TECHNIQUE MUST BE USED WITH A GREAT DEAL OF DISCRETION.

(53) EMPHASIZING THE IMPORTANCE OF THE SITUATION

IT IS FREQUENTLY USEFUL IN OPENING A JOINT CONFERENCE AND AT OTHER APPROPRIATE TIMES DURING THE CONFERENCES TO IMPRESS THE PARTIES WITH THE IMPORTANCE OF THE SITUATION, ITS SERIOUSNESS, THE EFFECT A STOPPAGE WOULD HAVE ON THE DEFENSE EFFORT, ON INTERSTATE COMMERCE, THE WELFARE OF THE COMMUNITY, ON THE INDIVIDUAL WORKERS, ON THEIR FAMILIES, ETC. THUS, THERE IS CONVEYED TO THE PARTIES THE IMPORTANCE OF HAVING A DEFINITE, CONFIRMED INTENT TO AGREE AND THAT THEY SHOULD LEND ALL THEIR EFFORTS IN THAT DIRECTION.

(54) HUMORING A PERSON

THE MEDIATOR MAY ENCOUNTER THAT TYPE OF NEGOTIATOR WHO HAS A LARGE NUMBER OF IDIOSYNCRASIES TO WHICH HE MUST

CATER IN ORDER TO ULTIMATELY ACHIEVE AGREEMENT. IN OTHER WORDS, THE MEDIATOR REGARDS EACH NEGOTIATOR AS AN INDIVIDUAL AND TRIES TO MOVE THE INDIVIDUAL ON THE BASIS OF HIS BACKGROUND, PERSONAL LIKES AND DISLIKES, AND PREJUDICES.

(55) THE REFUSAL-TO-MEET SITUATION

WHEN ONE PARTY REQUESTS THAT THE MEDIATOR ARRANGE A JOINT CONFERENCE AND THE OTHER PARTY IS ADVERSE TO MEETING ON THE BASIS THAT IT IS TOO EARLY IN NEGOTIATIONS OR THAT ADDITIONAL DIRECT MEETINGS MIGHT RESOLVE THE PROBLEMS, THE MEDIATOR MAY TAKE THE FOLLOWING APPROACH: HE CONTACTS THE ADVERSE PARTY IN PERSON AND DISCUSSES WITH HIM THE CURRENT STATUS OF NEGOTIATIONS. HE INDICATES HIS AGREEMENT THAT IT IS PERHAPS TOO EARLY FOR MEDIATION. HE DEVELOPS THE THOUGHT THAT PERHAPS THE RELUCTANT PARTY MIGHT MAKE A GREATER EFFORT AND OFFER SOME CONCESSIONS IN ORDER TO DEMONSTRATE TO THE OTHER PARTY THAT PROGRESS IS BEING MADE. CONVERSELY, HE MAY PERSONALLY CONTACT THE PARTY REQUESTING MEDIATION AND DISCUSS THE STATUS OF THE NEGOTIATIONS WITH HIM AND GUIDE AND INFLUENCE THE PARTY SO THAT HE BECOMES MORE COMPROMISING IN HIS APPROACH TO THE PROBLEM.

(56) LETTING THE PARTY CHOOSE

IN BOTH JOINT AND SEPARATE CONFERENCES THE MEDIATOR MAY SUGGEST LANGUAGE WHICH, ALTHOUGH IT FOLLOWS A MAIN THEME, MAY HAVE THREE OR MORE WRITTEN VARIATIONS. THUS, THE PARTY OR PARTIES MAY NOT CONSIDER THE SUGGESTIONS AS AN ARBITRARY APPROACH ON THE PART OF THE MEDIATOR, AND WILL HAVE A CHOICE AS TO WHAT VARIATION IS ACCEPTABLE TO THEM. WHEN THE FINAL DECISION HAS BEEN MADE, THEY MAY FEEL THAT IT WAS THEIR DECISION AND NOT THAT OF THE MEDIATOR WHO PROPOSED THE LANGUAGE.

(57) THE EXTENSION

SOMETIMES THE STRIKE DEADLINE CAN BE EXTENDED BY THE MEDIATOR COMMITTING THE PARTIES TO A MEETING ON THE DAY OF THE PROPOSED STRIKE WITH THE PROVISION THAT THERE BE NO STRIKE UNTIL THE CONCLUSION OF THE MEETING. HE THEN HOLDS THE PARTIES IN THE MEETING FOR AN INDEFINITE PERIOD.

(58) COMMITTING A PARTY TO A CONFERENCE

IF ONE PARTY OR THE OTHER IS RELUCTANT TO MEET IN A JOINT CONFERENCE, THE MEDIATOR MAY COMMIT THE WILLING PARTY TO A TENTATIVE MEETING DATE AND TIME. HE THEN CONTACTS THE OTHER PARTY TO CONFIRM THE CONFERENCE DATE. IF THE RELUCTANT PARTY STILL REFUSES TO MEET IN JOINT CONFERENCE, THE MEDIATOR MAY ASK THE PARTY WHAT HE SHOULD TELL THE PARTY ALREADY COMMITTED. HE MAY ALSO INFORM THE UNWILLING PARTIES OF THE POSSIBLE USES THE WILLING PARTY MIGHT MAKE OF THE SITUATION, SUCH AS NEWSPAPER PUBLICITY, HAND BILLS, LETTERS TO THE EMPLOYEES, OR LETTERS TO PUBLIC OFFICIALS IN THE COMMUNITY.

(59) USE OF SIGNIFICANT PERSONS

WHERE A PARTY REFUSES TO JOIN IN A MEDIATION CONFERENCE, OR WHERE THE PARTY REFUSES TO MOVE IN THE DIRECTION OF AGREEMENT, THE MEDIATOR MAY ENLIST THE INFLUENCE OF GOVERNMENT AGENCIES, SUCH AS THE ARMY OR THE NAVY, IMPORTANT MANUFACTURERS, SUCH AS PRIME CONTRACTORS, IMPORTANT OFFICIALS SUCH AS THE MAYOR OF THE CITY OR GOVERNOR OF THE STATE, WHERE SUCH AGENCIES OR PERSONS HAVE SUBSTANTIAL INFLUENCE ON ONE OR BOTH PARTIES.

(60) CREATING DOUBT

WHERE THE MEDIATOR FINDS THE COMPANY SAYING, IN EFFECT, "WELL, LET THEM STRIKE," OR THE UNION REPEATING, "WE'LL STRIKE THEM," THE MEDIATOR MAY BRING INTO THE DISCUSSION A NUMBER OF FACTORS PERTINENT TO THE WISDOM OF THE STRIKE FROM BOTH THE COMPANY'S AND UNION'S POINTS OF VIEW. HE MAY DISCUSS THE CONDITION OF THE LABOR MARKET IN THE AREA, ITS TIGHTNESS OR LOOSENESS, THE NUMBER OF UNFILLED ORDERS THE COMPANY HAS ON HAND, THE AMOUNT OF MATERIAL IN INVENTORY, PREVIOUS STRIKE EXPERIENCE OF THE COMPANY OR UNION, THE RELATIVE STRENGTH OF THE UNION MEMBERSHIP, THE POSSIBILITY OF THE COMPANY FAILING TO EXPLOIT A SELLING MARKET THEN IN EFFECT, AND OTHER FACTORS WHICH IMPINGE ON A STRIKE. BY USING SELECTIVE FACTS POINTED AT MANAGEMENT AND THE UNION HE MAY CREATE SUBSTANTIAL DOUBT IN THE MINDS OF THE COMPANY OFFICIALS THAT THEY CAN TAKE A STRIKE AND IN THE MINDS OF THE UNION THAT A STRIKE IS INDICATED.

(61) THE TIRED OR BUSY CHIEF NEGOTIATOR

WHEN ONE OF THE CHIEF NEGOTIATORS INFORMS THE MEDIATOR AND THE PARTIES THAT HE IS UNABLE TO CONTINUE WITH THE CONFERENCE BECAUSE A PRIOR COMMITMENT INTERFERES OR BECAUSE HE IS EXHAUSTED, THE MEDIATOR MAY SUGGEST THAT THE CONFERENCE BE CONTINUED WITHOUT THE CHIEF NEGOTIATOR. HE THEN SETS SUBSEQUENT DATE AT WHICH THE CHIEF NEGOTIATOR, HIS FIRST ASSISTANT, THE OPPOSING CHIEF NEGOTIATOR, AND THE MEDIATOR MEET AND AT WHICH THE CHIEF NEGOTIATOR WHO WAS ABSENT FROM THE REST OF THE CONFERENCE WILL BE BROUGHT UP TO DATE.

(62) USE OF THE COMMITTEE MEMBERS

WHERE THE MEDIATOR FINDS THAT EITHER THE COMPANY OR UNION SPOKESMAN IS EXTREMELY DIFFICULT TO DEAL WITH, HE MAY TURN TO THE MEMBERS OF THE COMMITTEE THEMSELVES AND DIRECT HIS DISCUSSION TO THEM RATHER THAN THE SPOKESMAN SO AS TO AROUSE DOUBTS IN THE MINDS OF THE MEMBERS OF THE COMMITTEE. LATER, IN PRIVATE SESSIONS, THE MEMBERS OF THE COMMITTEE MAY ARGUE WITH THE SPOKESMAN FROM THE MEDIATOR'S

POINT OF VIEW AND INFLUENCE HIS THINKING IN FAVOR OF THE ACCEPTANCE OF A PROPOSAL WHICH THE MEDIATOR BELIEVES TO BE A SATISFACTORY SOLUTION.

(63) THE SUGGESTION OF ARBITRATION

THE MEDIATOR MAY REGARD THE POSITION OF ONE OF THE PARTIES AS ARBITRARY, ILLOGICAL, AND UNSOUND. HE MAY GET THE PARTY TO EXAMINE THE SITUATION MORE CAREFULLY BY THE FOLLOWING TECHNIQUE: HE ASKS THE PARTY IF HE WOULD CONSENT TO HAVING THE DISPUTE ARBITRATED WITH THE LOSER PAYING THE ARBITRATOR'S FEE. IF THE PARTY REFUSES, THE MEDIATOR MIGHT ASK FOR THE REASON FOR REFUSAL. THE ENSUING DISCUSSION MIGHT BRING ABOUT A REORIENTATION OF THE PARTY'S POSITION.

A VARIATION: THE MEDIATOR MAY ASK THE PARTY WHOSE POSITION HE REGARDS AS UNTENABLE WHAT, IN HIS OPINION, WOULD BE THE RESULT IF THE ISSUE WERE TO GO TO ARBITRATION. IF THE PARTY ANSWERS THAT THE ARBITRATOR MIGHT RULE AGAINST HIM, THE MEDIATOR MAY ASSIST THE PARTY IN AN ANALYSIS OF THE SITUATION SO AS TO BRING ABOUT A CHANGE IN HIS THINKING.

(64) BEHIND-THE-SCENES NEGOTIATIONS

THE MEDIATOR MAY CALL THE CHIEF NEGOTIATOR ASIDE IN ORDER TO DETERMINE WHAT THE REAL POSITION OF HIS GROUP IS, WHAT HE WILL FINALLY SETTLE FOR, THE NATURE OF THE THINKING OF HIS COMMITTEE, OR WHAT HIS SUPERIOR OFFICER HAS ASKED HIM TO BRING HOME. HE MAY MANEUVER THE SITUATION SO THAT HE IS ABLE TO BRING ABOUT MEETINGS OF BOTH CHIEF NEGOTIATORS WITH THE COMMITTEES BEING UNAWARE THAT SUCH MEETINGS ARE TAKING PLACE. HE MAY ENLIST THE SERVICES OF PERSONS WITH INFLUENCE ON THE PARTIES TO ASSERT THEIR INFLUENCE SO AS TO ACCELERATE THE PROGRESS OF THE NEGOTIATIONS.

(65) CONSIDERING THE SOURCE

A PARTY MAY REALIZE THAT THE MERE FACT THAT HE WILL MAKE A PROPOSAL TO THE OTHER PARTY WILL RESULT IN ITS REFUSAL. THE REFUSAL MAY FOLLOW, NOT BECAUSE OF ANY OBJECTION TO THE MERITS OF THE PROPOSAL BUT BECAUSE OF THE FACT THAT THE PROPOSAL HAS BEEN MADE BY AN OPPONENT. IN SUCH A CASE, THE MEDIATOR MAKES THE PROPOSAL ON HIS OWN INITIATIVE IN JOINT CONFERENCE. DURING THIS CONFERENCE THE PROPOSING PARTY MAY TAKE EITHER A NONCOMMITTAL ATTITUDE ON THE PROPOSAL OR EVEN GO SO FAR AS TO OBJECT TO IT SO AS TO COMPLETELY DISINVOLVE HIMSELF FROM IT. THE PARTY RECEIVING THE PROPOSAL MAY BE MORE WILLING TO EXAMINE IT ON THE BASIS OF ITS MERITS SINCE HE WILL FEEL THAT IT IS COMPLETELY UNTAINTED BY SPONSORSHIP FROM HIS OPPONENT. IN FACT, THERE ARE SOME PARTIES WHOSE NATURE IS SUCH THAT, BECAUSE AN OPPONENT OBJECTS TO A PROPOSAL, THEY LEAN IN THE DIRECTION OF ITS ACCEPTANCE REGARDLESS OF ITS MERITS.

(66) REMOVING THE PARTIES FROM THE
BARGAINING TABLE

WHEN THE PARTIES ARE LARGE AND LITTLE PROGRESS IS BEING MADE, THE MEDIATOR MAY PROPOSE THAT THE CHIEF SPOKESMAN MEET ALONE OR ACCOMPANIED BY ONE OR TWO OF THEIR COMMITTEE MEMBERS WITH OR WITHOUT THE MEDIATOR. WHERE THIS IS DONE, THE MEDIATOR MAKES CERTAIN THAT THE CIRCUMSTANCES ARE SUCH THAT THE COMMITTEE WILL NOT GET THE IMPRESSION THAT THE MEDIATOR IS TRYING TO DIVIDE THE MEMBERS FOR ULTERIOR PURPOSES. MUCH DEPENDS IN SUCH CASES ON HOW MUCH CONFIDENCE THE COMMITTEES AND THE CHIEF SPOKESMEN HAVE IN THE MEDIATOR.

A MEDIATOR MAY FIND THAT A MEMBER OF ONE OF THE NEGOTIATING TEAMS CONTINUALLY DISRUPTS PROGRESS IN THE NEGOTIATIONS BY EMOTIONAL OUTBURSTS, UNCALLED-FOR REMARKS, AND PERSISTANT PURSUIT OF EXTREME ARGUMENTS. THE MEDIATOR MAY TAKE SEVERAL APPROACHES. HE MAY CALL THE MEMBER ASIDE, POINT OUT TO HIM THE ERROR OF HIS WAYS, AND ASK HIM EITHER TO TAKE A DIFFERENT ATTITUDE OR TO ABSENT HIMSELF FROM THE NEGOTIATIONS. IF THE DISTURBING PERSON IS A KEY NEGOTIATOR, HE MAY ASK THE KEY NEGOTIATORS FROM BOTH PARTIES TO REMOVE THEMSELVES FROM THE SCENE OF THE NEGOTIATIONS ON THE ASSUMPTION THAT THE COMMITTEES THEMSELVES HAVE TO LIVE WITH THE FINAL AGREEMENT AND, THEREFORE, THEY SHOULD BE THE ONES TO ARRIVE AT THE AGREEMENT. IN SUCH A CASE, THE MEDIATOR MAY ALSO LEAVE THE CONFERENCE. IF THE DISTURBING ELEMENT IS A LAWYER, HE MAY DIRECT HIS DISCUSSION TO SUCH MATTERS AS THE LANGUAGE OF THE CONTRACT CLAUSES OR THE CLAUSES INVOLVING LEGAL PROBLEMS, LEAVING THE OTHER ISSUES TO BE DISCUSSED BY OTHER NEGOTIATORS. SOMETIMES, ALL THE MEDIATOR NEEDS DO IS TO DIRECT THE DISCUSSION AWAY FROM THE DISTURBING PERSONALITY IN THE CONFERENCE.

(67) SUBSTITUTING AND SUPPLEMENTATION

WHERE IT IS OBVIOUS TO THE MEDIATOR THAT A CHIEF NEGOTIATOR IS RESPONSIBLE FOR DELAYING THE PROGRESS OF NEGOTIATIONS, HE MAY TAKE ACTION WHICH WILL RESULT IN THE REMOVAL OF THIS NEGOTIATOR AND HIS SUBSTITUTION OR SUPPLEMENTATION BY ANOTHER. THIS MAY BE MADE EFFECTIVE THROUGH THE MEDIATOR'S REGIONAL DIRECTOR OR THROUGH SIGNIFICANT PERSONS IN THE LABOR-MANAGEMENT COMMUNITY ON WHOM HE HAS INFLUENCE.

(68) WITHDRAWAL OF THE PARTIES FROM
THE SCENE OF ACTION

WHERE THE PUBLICITY AND ENVIRONMENTAL FACTORS IN CONNECTION WITH A CASE PRECLUDE ANY DISPASSIONATE REVIEW OF THE SITUATION BY THE PARTIES, IT IS SOMETIMES WISE TO REMOVE THEM PHYSICALLY TO AN AREA ENTIRELY DIVORCED FROM THE DISTURBING FACTORS.

(69) CHALLENGE

WHEN AN EMPLOYER DOES NOT BELIEVE THAT THE UNION COMMITTEE AND ITS INTERNATIONAL REPRESENTATIVE ARE BACKED BY THE MEMBERSHIP, THE MEDIATOR MAY SELL THE UNION REPRESENTATIVES ON THE ADVISABILITY OF CONDUCTING A SECRET BALLOT ON THE COMPANY'S PROPOSAL. IF THE MEMBERSHIP OVERWHELMINGLY REJECTS THE COMPANY'S PROPOSAL, THE COMPANY IS CONVINCED AS TO THE POSITION OF THE MEMBERSHIP, AND THE UNION REPRESENTATIVES RECEIVE THE BACKING NECESSARY TO EFFECT SOME MOVEMENT ON THE PART OF THE COMPANY. IF THE MEMBERSHIP ACCEPTS THE COMPANY'S PROPOSAL, THE UNION REPRESENTATIVES HAVE PLACED THE BURDEN OF THE ACCEPTANCE ON THE MEMBERSHIP.

THIS TECHNIQUE IS PARTICULARLY USEFUL WHERE AN INTERNATIONAL REPRESENTATIVE HAS TWO OR MORE COMMITTEE MEMBERS OVER WHOM HE HAS NO CONTROL AND WHERE HE NEEDS THE BACKING OF THE MEMBERSHIP IN ORDER TO CONSUMMATE AN AGREEMENT.

(70) CALLING THE BLUFF

A PARTY MAY INSIST ON CONCESSIONS FAR IN EXCESS OF WHAT IS REASONABLE BECAUSE THE OTHER PARTY MAY VALUE HIGHLY A CONCESSION WHICH IT ASKS IN RETURN. FOR EXAMPLE, A COMPANY MAY FEEL IT ALMOST IMPERATIVE THAT IT SECURE A FIVE-YEAR CONTRACT FROM THE UNION. THE UNION MAY BE AWARE OF THIS AND IN RETURN FOR GRANTING THIS CLAUSE MAY BE ASKING FOR "THE SKY." IN SUCH CASES, A WAY OF GETTING THE UNION TO BE REALISTIC IS FOR THE MEDIATOR TO SUGGEST TO THE COMPANY TO CALL THE UNION'S BLUFF AND OFFER A ONE-YEAR CONTRACT WITH JUST THE MINIMUM CONCESSIONS. THIS MOVE MAY BE FOLLOWED BY THE UNION'S ACCEPTANCE OF THE FIVE-YEAR CONTRACT TOGETHER WITH ONLY REASONABLE CONCESSIONS.

A VARIATION OF THIS APPROACH IS THE FOLLOWING: THE PARTIES MAY BE DIVIDED ON THE UNION'S REQUEST FOR A UNION SECURITY CLAUSE. IN SUCH A CASE, THE ISSUE MAY BE RESOLVED BY THE MEDIATOR SUGGESTING THAT THE COMPANY OFFER ONLY THE CHECKOFF. IF THE UNION IS REALLY SERIOUS ABOUT THE UNION SHOP, FOR EXAMPLE, IT WILL REJECT THE CHECKOFF AND HOLD OUT FOR A STRONGER FORM OF UNION SECURITY. HOWEVER, IF THE REQUEST FOR A UNION SECURITY CLAUSE WAS NOT REALLY A MAJOR ITEM AMONG THE UNION'S REQUESTS, THE PROBLEM MAY BE SETTLED BY ITS ACCEPTANCE OF THE CHECKOFF.

(71) SUBSTITUTE NEGOTIATORS

WHERE THE CHIEF NEGOTIATORS ARE DEFINITELY UNSUITED TO NEGOTIATE WITH EACH OTHER BECAUSE OF THE NATURE OF THEIR PERSONALITIES THE MEDIATOR MAY, BY DISCUSSING THIS PROBLEM WITH THEM, GET THEM TO BRING IN SUBSTITUTES FOR THEMSELVES AND THEN ABSENT THEMSELVES FROM THE NEGOTIATIONS.

GENERALLY, IT IS NOT POSSIBLE AND IT MAY BE UNWISE TO SECURE THE REMOVAL OF ONE NEGOTIATOR WITHOUT THE REMOVAL OF HIS OPPONENT. A GOOD WAY, THEREFORE, TO REMOVE NEGOTIATORS IS TO APPROACH ONE OF THEM WITH THE FOLLOWING: "I THINK I CAN GET MR. X OUT OF THE PICTURE IF YOU WILL STEP ASIDE."

(72) RESPONSIBILITY AND IRRESPONSIBILITY

A MEDIATOR MAY FIND THAT A PARTICIPANT AT THE BARGAINING TABLE IS IRRESPONSIBLE. THIS MAY BE A COMMITTEE, AN INTERNATIONAL REPRESENTATIVE, A FIELD REPRESENTATIVE, OR AN INDUSTRIAL RELATIONS DIRECTOR, ETC. IN SUCH A CASE, THE MEDIATOR ALIGNS HIMSELF DEFINITELY AND POSITIVELY WITH THE CONTROLLING AND DECISIVE ELEMENTS IN THE PICTURE, PRESENTING A COLD SHOULDER TO THOSE ELEMENTS WHICH ARE OBVIOUSLY IRRESPONSIBLE.

(73) HIGHLIGHTING THE BEST POSSIBLE ALTERNATIVE

A MEDIATOR MAY BRING ABOUT AGREEMENT IN THIS WAY: HE POINTS OUT THE DISADVANTAGES OF ALL OF THE ALTERNATIVES BUT ONE--THE ONE WHICH HE FEELS IS THE ONLY POSSIBLE ONE WHICH WILL BE ACCEPTED BY THE PARTIES UNDER THE CIRCUMSTANCES. THIS ONE HE PRESENTS IN ALL OF ITS GLORY. WHEN HE IS FINISHED WITH HIS PRESENTATION, THERE WOULD SEEM TO BE ONLY ONE LOGICAL COURSE OF ACTION TO BE TAKEN: THE ADOPTION OF THE PROPOSAL IN FAVOR OF WHICH THE MEDIATOR HAS BEEN DIRECTING HIS ARGUMENT.

(74) THE WARNING

MOST MEDIATORS FIND OUT WHAT THE COMPANY'S PAST POLICY HAS BEEN WITH REFERENCE TO STRIKES: DOES THE COMPANY HOLD ITS POSITION TO JUST ABOUT THE LAST MINUTE AND THEN GIVE IN, TAKING THE BEST AGREEMENT IT CAN GET? DOES IT HOLD OUT AND TAKE A STRIKE AND, AFTER A SHORT INTERVAL, GIVE IN TO THE UNION'S DEMANDS? DOES THE COMPANY HOLD OUT AND TAKE A STRIKE AND WIN THE STRIKE BY NOT CAPITULATING TO THE UNION, EVEN IF THE STRIKE IS LONG-DRAWN? THE UNION'S POLICY ON STRIKES IS ALSO ASCERTAINED. THE PARTIES ARE THEN WARNED BY THE MEDIATOR AS TO THE DANGERS INVOLVED, ESPECIALLY IN CAPITULATING AFTER A FEW DAYS OF STRIKING.

(75) SAVING FACE

THERE ARE MANY WAYS IN WHICH A MEDIATOR CAN SAVE FACE FOR THE NEGOTIATORS. A FEW EXAMPLES: HE MAY PERMIT THE PARTIES TO PLACE ON HIM THE BURDEN OF PROPOSING UNPALATABLE COMPROMISES. THE ONUS ATTACHED TO SUCH COMPROMISES MAY BE PLACED ON THE MEDIATOR. THIS CAN BE ACHIEVED BY THE DEVICE OF A STRONG RECOMMENDATION BY THE MEDIATOR, IN WHICH CASE ONE PARTY MAY ACCEPT THE PROPOSAL AND SAY, "I DON'T LIKE IT--BUT IF THE MEDIATOR RECOMMENDS IT, I'LL ACCEPT IT."

HE MAY WARN THE PARTIES AGAINST TAKING A FIXED POSITION FROM WHICH THEY MAY BE UNABLE TO BACK OUT GRACEFULLY LATER. HE MAY SUGGEST INSIGNIFICANT ISSUES ON WHICH BOTH PARTIES MAY AGREE AND WHICH MAY PROVIDE AN OSTENSIBLE VICTORY FOR THE LOSING PARTY. HE MAY APPROACH THE LOSING CHIEF NEGOTIATOR AT THE CONCLUSION OF THE NEGOTIATIONS AND INFORM HIM IN THE PRESENCE OF HIS COMMITTEE THAT HE FEELS THAT UNDER THE CIRCUMSTANCES NOTHING MORE COULD BE DONE AND THAT THE NEGOTIATOR HAS NEGOTIATED INTELLIGENTLY.

✓ (76) THE TANGENT

THE MEDIATOR MAY FIND THAT THE AGREEMENT IS NOT BEING REACHED BECAUSE THE CHIEF NEGOTIATOR OF ONE SIDE HAS LITTLE OR NO CONTROL OVER HIS COMMITTEE. FOR EXAMPLE, AN INTERNATIONAL REPRESENTATIVE MAY HAVE NO CONTROL OVER HIS COMMITTEE AND THE COMMITTEE MAY BE INSISTING ON AN UNREALISTIC POSITION. IN SUCH A CASE, THE MEDIATOR MAY GIVE THE INTERNATIONAL REPRESENTATIVE A GOOD DRESSING DOWN IN FRONT OF HIS COMMITTEE, MAKING THE POINT THAT HE IS SURPRISED TO SEE THE INTERNATIONAL REPRESENTATIVE TAKING SUCH AN UNREALISTIC POSITION. FOR EXAMPLE, IN FRONT OF THE COMMITTEE, THE MEDIATOR MAY SAY TO THE INTERNATIONAL REPRESENTATIVE, "FRED, IN ALL THE YEARS THAT I HAVE KNOWN YOU, I HAVE NEVER SEEN YOU GIVE SUCH POOR ADVICE TO A COMMITTEE. YOU KNOW THAT 15¢ IS "PIE IN THE SKY" AND YOU'LL NEVER GET IT." LATER, WHEN THE INTERNATIONAL REPRESENTATIVE MEETS WITH HIS COMMITTEE, HE CAN SAY, "I TOLD YOU THAT YOU WERE UNREALISTIC AND NOW YOU HAVE HEARD THE SAME THING FROM THE MEDIATOR." THE COMMITTEE MAY THEN LEND A MORE WILLING EAR TO THE INTERNATIONAL REPRESENTATIVE.

✓ (77) AVOID PRINCIPLES, WELCOME FACTS

IN THE DISCUSSIONS IN THE JOINT AND SEPARATE CONFERENCES, THE MEDIATOR TRIES TO GET THE PARTIES TO DISCUSS FACTS AND TO STEER AWAY FROM THE REPETITION OF THE PRINCIPLES WHICH THEY HOLD. AN OBSERVATION OF FACTS MAY LEAD TO AN AGREEMENT BUT A DISCUSSION OF PRINCIPLES USUALLY LEADS TO EMOTIONALISM.

(78) THE ROUND ROBIN

SOMETIMES WHEN THE PARTIES ARE STALEMATED, THE MEDIATOR MAY HOLD A SEPARATE SESSION WITH THE UNION (OR COMPANY) IN WHICH HE ASKS THE INDIVIDUAL MEMBERS OF THE COMMITTEE AND THE CHIEF NEGOTIATOR TO STATE THEIR INDIVIDUAL OPINIONS ON THE MAJOR ISSUES WHICH ARE IN DISPUTE. THEIR STATEMENTS TO THE MEDIATOR HAVE TWO FAVORABLE ASPECTS. FIRST OF ALL, EACH MEMBER WHO SPEAKS GAINS STATUS AND TO THAT EXTENT HIS RELATIONSHIP WITH THE MEDIATOR IS IMPROVED AND, SECONDLY, DURING THE COURSE OF THE STATEMENTS, THE MEDIATOR MAY BE ABLE TO FIND A WEAK LINK IN THE CHAIN OF DEFENSE WHICH THE PARTY HAS SET UP AGAINST MOVEMENT ON ITS PART.

(79) VISUAL ARTS

THE MEDIATOR MAY ENLIST THE USE OF CHARTS, DIAGRAMS, TABLES, BLACKBOARDS, MAPS, SLIDES, AND ANY OTHER DEVICES WHICH LEND THEMSELVES TO THE CLARIFICATION OF THE ISSUES WHICH FACE THE PARTIES.

(80) CONVEYING THE MESSAGE

ONE OF THE MOST COMMON WAYS IN WHICH A MEDIATOR ASSISTS THE PARTIES IS BY CARRYING MESSAGES FOR THEM. THIS RANGES FROM THE SIMPLE TASK OF CARRYING PROPOSALS FROM ONE PARTY TO ANOTHER WITHOUT THE MEDIATOR MAKING ANY OTHER CONTRIBUTION TO MORE COMPLEX OPERATIONS. THUS, WHEN A PARTY HESITATES TO PRESENT A PROPOSAL TO THE OTHER PARTY IN ITS OWN NAME, THE MEDIATOR MAY SUBMIT THE PROPOSAL ON HIS OWN BEHALF OR INITIATIVE. HE MAY OR MAY NOT REVEAL THE NATURE OF THE PROPOSAL TO THE OTHER PARTY DEPENDING ON WHETHER HE FEELS THAT WITHHOLDING IT MAY GET THE OTHER PARTY TO MOVE. OR, HE MAY HAVE NO INDICATION WHATEVER THAT A PARTY IS WILLING TO MOVE OTHER THAN A "HUNCH" AND HE MAY CONVEY THIS TO THE OTHER PARTY AS A HUNCH IN ORDER TO GET HIM TO MOVE.

A MEDIATOR WHEN HANDED A PROPOSAL FOR TRANSMISSION TO THE OTHER PARTY MAY POINT OUT TO THE RECEIVING PARTY THAT THE PROPOSAL LOOKS GOOD TO HIM (THAT IS, IF IT REALLY DOES), THAT SINCE THE UNION HAS MOVED, IT MIGHT BE LOGICAL FOR THE COMPANY TO MAKE SOME MOVEMENT, TOO, AT THIS TIME. IN ANY EVENT, SOME COMMENT OR REACTION WITH RESPECT TO THE PROPOSAL IS INDICATED.

THE MEDIATOR MAKES CERTAIN THAT THE RECEIVING PARTY DOES NOT GET THE IMPRESSION THAT HE IS BARGAINING FOR THE OTHER PARTY. HE POINTS OUT THAT WHAT HE IS DOING IS CONVEYING THE MESSAGE, TO WHICH HE MAY ADD HIS OWN OPINIONS FOR WHATEVER THEY ARE WORTH.

(81) THE MEDIATOR AS A PIPE LINE

IF THE PARTIES WILL NOT MEET WITH EACH OTHER, COMMUNICATIONS BETWEEN THE PARTIES MAY NEVERTHELESS BE FACILITATED BY THE MEDIATOR AS FOLLOWS: HE MAY HAVE THEM MEET IN THE SAME BUILDING BUT IN SEPARATE ROOMS AND WILL CARRY MESSAGES BETWEEN THE TWO IN AN EFFORT TO ARRIVE AT SOME KIND OF AGREEMENT EVEN THOUGH THEY WILL NOT TALK TO EACH OTHER. HE MAY GO A STEP FURTHER AND ACTUALLY HAVE THEM IN THE SAME ROOM WITH HIM BUT HAVE EACH PARTY ADDRESS THE MEDIATOR RATHER THAN EACH OTHER.

THE MEDIATOR MUST BE AWARE OF THE ABUSE OF THIS TECHNIQUE BY A PARTY. A PARTY MAY REFUSE TO MEET WITH ANOTHER PARTY AS A PART OF THE DEFINITE PROGRAM TO WEAR THE OPPONENT DOWN AND IF THE MEDIATOR IS NOT CAREFUL HE MAY BE DRAWN INTO THE POSITION IN WHICH HE IS ASSISTING THE "RELUCTANT" PARTY.

(82) MAINTAINING THE STATUS OF THE
MEDIATOR

IF A MEDIATOR IS ACCUSED OF BIAS OR INADEQUACY, HE MAY HANDLE HIS PROBLEM IN SEVERAL WAYS: HE MAY REBUKE THE PARTY, HE MAY ASK THE PARTIES IF THEY ARE WILLING TO HANDLE THEIR OWN NEGOTIATIONS, OR, HE MAY ASK THE PARTY TO JUSTIFY HIS ASSERTIONS AND THUS PUT HIM ON THE DEFENSIVE. THIS LAST APPROACH IS PROBABLY THE MOST MATURE OF THE THREE AND THE SAFEST ONE, TOO.

(83) THE BULLDOG

SOMETIMES, WHEN THE MEDIATION MEETINGS HAVE PROCEEDED WITH COMPARATIVELY LITTLE PROGRESS TO THE DEADLINE DATE, IT IS HELPFUL TO OPEN THE LAST MEETING WITH AN ATTITUDE WHICH SHOWS THAT THE MEDIATOR DOES NOT REGARD THE FINAL MEETING AS A MERE FORMALITY, A MEETING HELD BECAUSE THE RULE IS TO HOLD ONE JUST BEFORE THE DEADLINE. THE MEDIATOR, RATHER FACES THE PARTIES INFORMS THEM IN NO UNCERTAIN TERMS THAT ~~THERE~~ IS WORK TO BE DONE AND THAT HE AND THE PARTIES ARE GOING TO DO IT. HE THEN PROCEEDS TO MEDIATE AND MEDIATES UNTIL THE PARTIES ARE AGREED OR UNTIL HE IS NO LONGER ABLE TO HOLD THEM TOGETHER.

(84) THE CHAT

THERE ARE VARIOUS REASONS FOR MEDIATORS VISITING WITH THE PARTIES AT DIFFERENT TIMES. A MEDIATOR MAY WISH TO DEVELOP A RELATIONSHIP WITH A PARTY, HE MAY WISH TO SECURE INFORMATION REGARDING FORTHCOMING NEGOTIATIONS, OR TO SECURE INFORMATION OF VARIOUS KINDS. ORDINARILY, THE MEDIATOR HAS SUFFICIENT STATUS SO THAT HE CAN TELEPHONE A PARTY AND TELL HIM THAT HE WISHES TO TALK WITH HIM FOR A FEW MINUTES DURING THE DAY IF IT CAN BE ARRANGED. HOWEVER, THERE ARE PARTIES WHO FEEL THAT THEIR STATUS IS IMPAIRED BY THIS INFORMAL APPROACH AND WHO EXPECT BOTH A STATEMENT AS TO THE PURPOSE OF THE PROPOSED VISIT AND A PREVIOUS APPOINTMENT. WHERE THIS IS THE CASE, THE MEDIATOR ADJUSTS HIMSELF ACCORDINGLY.

(85) THE MEDIATORS ASSUMPTION OF THE
PROFESSIONAL OR OTHER APPROACH TO
THE PARTIES

THE MEDIATOR, IN TALKING TO THE PARTIES DETERMINES WHO IS CARRYING THE BALL, FINDS OUT THE NATURE OF HIS BACKGROUND AND THEN ADJUSTS HIS APPROACH ACCORDINGLY. NOT ONLY DO HIS ARGUMENTS TAKE THEIR SHAPE WITH THE BACKGROUND OF THE PARTIES IN MIND, THE LANGUAGE IN WHICH THEY ARE COINED IS ALSO INFLUENCED BY THE TYPE OF PERSON TO WHOM THE MEDIATOR ADDRESSES HIMSELF. THUS, FOR EXAMPLE, IF THE PARTY IS AN ATTORNEY AND IF THIS ATTORNEY HAPPENS TO TALK LIKE A TRADE UNIONIST BECAUSE HE ROSE FROM THE RANKS IN THE TRADE UNIONS, THE MEDIATOR'S ARGUMENTS ARE INFLUENCED BY THE FACT THAT THE

MAN WHO IS LISTENING HAS LEGAL TRAINING. AND THE LANGUAGE WHICH THE MEDIATOR USES IS SUCH THAT IT TAKES INTO ACCOUNT THE FACT THAT THE PARTY HAS BEEN AT HOME FOR A LONG TIME WITH THOSE WHO SPEAK THE LANGUAGE CHARACTERISTIC OF THE TRADE UNIONISTS.

(86) KEEP THEM TALKING

THROUGHOUT THE NEGOTIATIONS THE MEDIATOR BEARS IN MIND THE PRINCIPLE THAT AS LONG AS THE PARTIES ARE ENGAGED IN DISCUSSING THE ISSUES PROGRESS IS BEING MADE ALTHOUGH IT MIGHT NOT BE OBVIOUS ON THE SURFACE OF THE DISCUSSION. HE REGARDS IT AS HIS RESPONSIBILITY TO KEEP THE PARTIES IN NEGOTIATIONS AS LONG AS THERE ARE DISCUSSIONS GOING ON AND TO STIMULATE SUCH DISCUSSIONS WHERE STIMULATION IS INDICATED. THIS IS A GENERAL PRINCIPLE AND THE MEDIATOR REALIZES THAT THERE ARE SITUATIONS IN WHICH EXACTLY THE OPPOSITE APPROACH-- NO MEETINGS AT ALL FOR EXAMPLE--MIGHT BE INDICATED IN A PARTICULAR SITUATION.

(87) KEEP THEM FROM TALKING

PERIODICALLY, EVERY MEDIATOR COMES ACROSS THOSE CONFERENCES IN WHICH EVERYONE TALKS AT ONCE WITHOUT RHYME OR REASON. IN SUCH CASES, HE MAY ACTIVELY ASSUME HIS DUTIES AS THE PRESIDING OFFICER OF THE MEETING AND TAKE WHATEVER ACTION HE DEEMS NECESSARY TO ESTABLISH CONTROL.

(88) THE RECALCITRANT

OCCASIONALLY, FAILURE TO AGREE MAY BE DUE TO THE ARBITRARY RESISTANCE OF ONE MEMBER OF EITHER THE UNION OR MANAGEMENT NEGOTIATING TEAM. THIS PERSON MAY BE HOLDING OUT IN SPITE OF THE FACT THAT EVERYBODY ELSE IS READY FOR AGREEMENT. IN SUCH A CASE, IF THE MEDIATOR IS ACCEPTABLE TO THE PARTIES AND IF HE KNOWS THEM VERY WELL, HE MAY IN SEPARATE SESSION POINT OUT TO THE RECALCITRANT IN VERY DIRECT FASHION THE ERROR OF HIS WAYS. HE WILL DEMONSTRATE IN NO UNCERTAIN TERMS THAT THE RECALCITRANT'S POSITION IS UNTENABLE. THIS MAY BE THE FACTOR WHICH WILL CAUSE A REVERSAL OF THE RECALCITRANT'S POSITION.

(89) MEDIATOR ATTENDANCE AT MEMBERSHIP MEETINGS

MEDIATORS USUALLY DO NOT ATTEND MEETINGS OF UNION MEMBERSHIPS WHEN THEY ARE GIVING CONSIDERATION TO THE ACCEPTANCE OR REJECTION OF A COMPANY PROPOSAL. THEY KNOW THAT IF THE PROPOSAL WORKS OUT BADLY FOR THE MEMBERSHIP THE MEDIATOR IS SMEARED WITH SOME OF THE BLAME WHICH GOES WITH ITS ILL-CONSIDERED ACCEPTANCE. EACH SITUATION MUST BE EXAMINED FROM THE POINT OF VIEW OF THE GOOD THE MEDIATOR CAN DO AS WEIGHED AGAINST THE POSSIBLE HARM TO HIM AND THE SERVICE. ON THE RARE OCCASIONS WHEN THE MEDIATOR ATTENDS

SUCH MEETINGS HE MAY LIMIT HIMSELF TO SUCH ACTIVITIES AS CONFIRMING THE UNDERSTANDING OF THE COMMITTEE AND ITS SPOKESMAN AS TO THE NATURE OF THE COMPANY'S PROPOSAL, SUBSTANTIATING THE COMMITTEE'S CONCEPT AS TO HOW THE PROPOSAL WOULD BE ADMINISTERED, OR SUBSTANTIATING THE COMMITTEE'S STATEMENT THAT THE STRIKE, IF THERE IS ONE, IS AN ILLEGAL ONE AND THE ONLY HOPE FOR PEACE IS A RETURN TO WORK BEFORE ANY FURTHER ACTION IS TAKEN.

(90) RIDICULING A PROPOSAL

WHEN ONE PARTY OR THE OTHER MAKES A TOTALLY UNREALISTIC PROPOSAL, THE MEDIATOR MAY, ON RARE OCCASIONS, RIDICULE THE PROPOSAL SO AS TO EMPHASIZE ITS ABSURDITY. THIS TECHNIQUE MAY BE EMPLOYED EVEN IN JOINT CONFERENCES. IT IS A DANGEROUS TECHNIQUE AT ANY TIME.

✓(91) THINKING OUT LOUD

THE MEDIATOR MAY HELP THE PARTIES GRASP THE INTRICACIES OF A SITUATION BY PRESENTING TO THEM HIS ANALYSIS ON THE BASIS THAT HE IS "THINKING OUT LOUD." THIS IS REALLY AN INDIRECT WAY OF TELLING THE PARTIES WHAT HE THINKS AND MAY BE MORE ACCEPTABLE THAN LAYING HIS OPINIONS "ON THE LINE." HE IS ABLE IN THIS WAY TO GET ACROSS THOUGHTS AND IDEAS WHICH MIGHT BE OFFENSIVE IF PRESENTED DIRECTLY.

(92) THE DEADLINE

WHEN A UNION SETS A STRIKE DEADLINE AND INDICATES THAT IT INTENDS TO STRIKE AT THAT TIME, THE MEDIATOR MAY GIVE THE IMPRESSION THAT HE COMPLETELY ACCEPTS THE UNION'S STATEMENT. THROUGHOUT HIS MEETINGS WITH THE COMPANY HE INDICATES THAT IT IS HIS BELIEF THAT THE UNION WILL STRIKE AT THE DEADLINE DATE UNLESS THERE IS AGREEMENT BEFORE THAT TIME. AT NO TIME DOES HE INDICATE TO THE PARTIES THAT HE HAS ANY DESIRE FOR POSTPONEMENT OR DELAY OF ANY KIND. THIS BUILDS UP PRESSURE WHICH MAY BE USED BY THE MEDIATOR IN IMPLEMENTING OR SUPPLEMENTING OTHER TECHNIQUES TO RESOLVE THE SITUATION.

(93) PERSONAL APPROACH

A MEDIATOR WHO HAS A VERY FINE RELATIONSHIP WITH EITHER OR BOTH OF THE PARTIES MAY, AS A LAST RESORT WHERE THERE IS NO MOVEMENT, SAY TO ONE OF THE PARTIES, "WELL, THEN, IF YOU CAN'T THINK OF ANY OTHER REASON, TAKE THE ACTION I AM RECOMMENDING AS A PERSONAL FAVOR TO ME. YOU OWE ME THAT MUCH," OR USE SIMILAR, SUITABLE WORDS AND PHRASES.

(94) THE "YES" AND "NO" MAN

ONLY VERY RARELY DOES THE MEDIATOR GIVE THE IMPRESSION

TO BOTH PARTIES THAT HE AGREES WITH BOTH THEIR POSITIONS. FOR THE MEDIATOR ORDINARILY TAKES A POSITION AND THAT POSITION WILL IMPLY AGREEMENT WITH ONE PARTY AND DISAGREEMENT WITH THE OTHER. IT NEED NOT NEGATE THE FACT THAT HE UNDERSTANDS THE POSITIONS OF BOTH PARTIES, HE AVOIDS BEING PLACED IN THE POSITION OF THE "YES" MAN, THE TYPE OF MEDIATOR WHO INFORMS BOTH PARTIES THAT HE NOT ONLY UNDERSTANDS THEIR POSITION, BUT AGREES WITH THEM, WITH THE RESULT THAT HE IS UNABLE TO MOVE ANYONE IN EITHER DIRECTION.

(95) THE PRINCIPLE OF FAIRNESS OR EQUITY

THE MEDIATOR MAY USE AS HIS POINT OF DEPARTURE THE EQUITIES OF THE SITUATION INVOLVED, HE MAY USE OTHER APPROACHES SUCH AS EXPEDIENCY, EFFICIENCY, PROFITABILITY, ETC., AS THE BASES FOR ARGUMENT, BUT THROUGHOUT THE ENTIRE NEGOTIATION CONFERENCE, THE THREAD OF HIS APPROACH IS HIS CONCEPT AS TO WHAT IS FAIR.

(96) MEDIATOR STATEMENT OF PARTY'S POSITION

WHEN A PARTY WILL NOT EXPRESS ITS THINKING ON AN ISSUE TO THE MEDIATOR, THE MEDIATOR MAY, IN SEPERATE CONFERENCES, MAKE THE ASSUMPTION THAT HE UNDERSTANDS THE PARTY'S POSITION AND STATE IT SPECIFICALLY FROM THE POINT OF VIEW OF WHAT HE REGARDS AS A FAIR SOLUTION OF THE PROBLEM. THIS MAY CAUSE THE PARTY TO AGREE THAT IT IS THEIR POSITION. OR IT MAY STIMULATE THE PARTY TO REVEAL ITS ACTUAL POSITION ON THE DISPUTED ISSUES.

(97) DEMONSTRATION OF COMPETENCE

THE MEDIATOR ATTEMPTS IN EVERY WAY TO ESTABLISH A FEELING OF CONFIDENCE ON THE PART OF THE PARTIES IN HIM. HE GIVES THE PARTIES THE IMPRESSION THAT HE IS COMPETENT, THAT HE UNDERSTANDS THEIR PROBLEMS, THAT HE IS SURE OF HIMSELF, THAT HE HAS THE COURAGE OF HIS CONVICTIONS, THAT HE IS ABLE TO MASTER THE INTRICACIES OF THE ISSUES WHICH THEY FACE, AND THAT IN ALL RESPECTS HE IS IN COMMAND OF THE SITUATION.

(98) THE IMPRACTICAL SUGGESTION

THE MEDIATOR MAY SUGGEST AN IMPRACTICAL SOLUTION OR DEVICE SO THAT THE PARTIES, IN THEIR EFFORTS TO SHOW THE MEDIATOR HOW RIDICULOUS HIS PROPOSAL IS, MAY COME UP WITH A PRACTICAL SOLUTION. THE MEDIATOR MAY INDICATE TO THE PARTIES THAT HE REALIZES HIS PROPOSAL IS IMPRACTICAL OR HE MAY OFFER IT AS HIS OSTENSIBLY SERIOUS CONTRIBUTION.

(99) ADJUSTMENT OF SERVICE REPRESENTATION

WHEN THE PARTIES ARE DEADLOCKED AND THE MEDIATOR IS

UNABLE TO BRING ABOUT AGREEMENT BECAUSE OF THE NATURE OF THE PERSONALITIES OF THE PARTIES, BECAUSE HIS TECHNICAL KNOWLEDGE IS INADEQUATE FOR THE SITUATION, OR BECAUSE OF HIS OWN PERSONALITY, IT MAY BE WISE FOR HIM TO BRING IN ADDITIONAL MEDIATORS OR A MEDIATOR IN PLACE OF HIMSELF. HE ARRANGES FOR SUCH CHANGES WITH HIS REGIONAL DIRECTOR.

(100) THE TELEGRAM

THE IMPORTANCE, PRESTIGE, AND STATUS OF A MEDIATOR MAY BE ENHANCED WHEN HE SUMMONS THE PARTIES BY TELEGRAM TO A CONFERENCE. THE CIRCUMSTANCES UNDER WHICH THE TELEGRAM IS SENT VARY. IT MAY BE SENT IN ORDER TO CONFIRM THE FACT THAT A MEETING IS TO TAKE PLACE. IT IS MOST USEFUL WHEN THE RESPONSE OF A PARTY TO A REQUEST FOR A MEETING IS A RELUCTANT ONE AND HE NEEDS THE IMPETUS OF THE TELEGRAM TO INSURE HIS PRESENCE TO THE MEETING. THE RELUCTANT PARTY USUALLY REALIZES THAT REFUSAL TO ATTEND MAY BE FOLLOWED BY UNFAVORABLE PUBLICITY RELEASED BY THE OTHER PARTY.

(101) PLANTING THE SEED

WHEN THE LOGICAL SOLUTION TO THE PROBLEMS WHICH FACE THE PARTIES IS STILL UNACCEPTABLE TO ONE OR BOTH OF THEM, THE MEDIATOR MAY NEVERTHELESS MENTION IT OR BRING IT UP IN AN INCIDENTAL OR CASUAL WAY. THE SEED MAY GROW AND AT THE PROPER TIME ONE OF THE PARTIES MAY SUBMIT IT, SOMEWHAT DISGUISED, AS HIS PROPOSAL.

(102) PAYING THE PIPER

THE PARTIES WHO MAKE IDLE THREATS TO TAKE THIS OR THAT ACTION MAY BE GIVEN PAUSE BY THE MEDIATOR WHO BRINGS TO THEIR ATTENTION THE COSTS INVOLVED IN THEIR PROPOSED ACTIONS. THUS, A PARTY WHO IS TALKING ABOUT ARBITRATION AS A SOLUTION TO A PROBLEM WHICH HE IS CREATING BY GETTING HIMSELF ON A HOOK, MAY START THINKING A LITTLE MORE CAREFULLY ABOUT HIS PROBLEM IF THE MEDIATOR SUGGESTS THAT PERHAPS THE LOSER TO THE ARBITRATION PAY ITS COSTS. OR, IF A UNION STARTS TALKING ABOUT A POSSIBLE SLOWDOWN, THE MEDIATOR MAY SHOW THAT THE MEMBERSHIP WILL ALSO LOSE MONEY IN ADDITION TO THE COMPANY.

(103) THE CONSULTANT

WHERE MEDIATION ASSISTANCE IS NOT DESIRED, THOUGH IT IS INDICATED, IT MAY BE OFFERED IF IT IS OFFERED ON A "BEHIND-THE-SCENES" BASIS. THAT IS, THE MEDIATOR CALLS NO JOINT SESSIONS BUT MEETS WITH THE PARTIES SEPARATELY GIVING THEM WHATEVER HELP THE SITUATION WARRANTS. IN SUCH CASES, THE LABOR RELATIONS DIRECTOR, FOR EXAMPLE, IS SPARED THE-- TO HIM--PAINFUL EXPERIENCE OF HAVING TO APPEAR AT A LABOR-MANAGEMENT CONFERENCE CHAIRED BY AN OUTSIDER.

(104) LAST-MINUTE PROPOSALS

ONE TECHNIQUE, WHICH IS USED BUT RARELY, IS APPLICABLE A FEW MINUTES BEFORE THE STRIKE DEADLINE. IN THIS CASE, THE MEDIATOR, WITHOUT CLEARING THE PROPOSALS WITH THE PARTIES FIRST, PRESENTS TO THE PARTIES IN JOINT SESSION A SERIES OF IDEAS, PROPOSALS, AND SUGGESTIONS IN THE HOPE THAT ONE OF THEM WILL BE SEIZED UPON BY THE PARTIES IN ORDER TO AVERT A STOPPAGE.

(105) MEDIATOR WITHDRAWAL

SOMETIMES AFTER LONG AND UNPRODUCTIVE SESSIONS THE MEDIATOR MAY RISE AND INFORM ONE OR BOTH PARTIES THAT HE FEELS THAT THERE IS NO LONGER ANY USE IN CONTINUING THE MEDIATION SESSION, THAT THE PARTIES ARE NOT REALLY NEGOTIATING; THAT HE FEELS THAT THE WHOLE SITUATION MUST BE BROUGHT TO A CONCLUSION EITHER BY STRIKE OR A CONTINUATION OF A STRIKE, AND THAT HE, THE MEDIATOR, IS ACCORDINGLY WITHDRAWING FROM THE SITUATION. SUCH A THREAT MAY CAUSE ONE OR BOTH PARTIES TO MOVE.

IT IS A DANGEROUS TECHNIQUE IN THAT ONE OF THE PARTIES MAY CALL THE MEDIATOR'S BLUFF AND INTERPOSE NO OPPOSITION TO THE MEDIATOR'S LEAVING. HOWEVER, THE MEDIATOR IS VERY CAREFUL TO APPLY THE TECHNIQUE TO SITUATIONS IN WHICH IT IS INDICATED. HE APPLIES IT, FOR EXAMPLE, WHERE ONE OF THE PARTIES IS WEAK AND IS FEARFUL OF BEING LEFT ALONE WITH THE OTHER PARTY WITHOUT THE MEDIATOR. OR, IF THE DIE HAS BEEN CAST AND THE CHIPS ARE DOWN, AND THE PARTIES ARE MERELY SPARRING, HE MAY THREATEN TO LEAVE KNOWING FULL WELL THAT THE PARTIES WILL NOT LET HIM GO SINCE A DECISION IS IMMINENT.

(106) LETTING THE PARTY MAKE HIS OWN PROPOSAL

IF ONE PARTY MAKES A PROPOSAL WHICH IS OBVIOUSLY UNDESIRABLE TO THE OTHER, THE MEDIATOR MAY DECIDE NOT TO CARRY THE PROPOSAL TO THE OTHER PARTY BUT INSTEAD SUGGEST THAT THE PROPOSING PARTY MAKE THE PROPOSAL ITSELF DIRECTLY TO THE OTHER PARTY SO THAT HE CAN WITNESS ITS EFFECT ON THE RECEIVING PARTY. HE THEN CONVENES THE PARTIES IN JOINT CONFERENCE AND LETS THE PROPOSING PARTY SEE FOR HIMSELF THE VIOLENT REACTION OF THE OTHER PARTY TO A PROPOSAL IT REGARDS AS UNREALISTIC, UNJUSTIFIABLE, AND RIDICULOUS. ON THE OTHER HAND, IF THE PROPOSAL IS ONE WHICH MIGHT BE ACCEPTABLE TO THE OTHER PARTY AND THE PROPOSING MAKES IT DIRECTLY, IT HAS MORE OF AN AIR OF FINALITY THAN IF IT WERE CONVEYED BY THE MEDIATOR IN SEPARATE SESSION.

(107) SUGGESTIONS AND RECOMMENDATIONS

THROUGHOUT THE VARIOUS BARGAINING STAGES, THE MEDIATOR

WILL FREQUENTLY MAKE SUGGESTIONS TO EITHER OR BOTH PARTIES IN SEPARATE CONFERENCES. AS THE DEADLINE APPROACHES, THE MEDIATOR MAY SUGGEST SOLUTIONS, COMPROMISES, ETC. IN THE JOINT CONFERENCES AS A BASIS FOR DISCUSSION. IF THE DEADLINE HAS BEEN REACHED, AS A LAST RESORT, THE MEDIATOR MAY MAKE A RECOMMENDATION IN JOINT CONFERENCE EVEN THOUGH ONE PARTY OR THE OTHER MAY NOT HAVE ACCEPTED THE RECOMMENDATION IN SEPARATE CONFERENCE. HE DOES THIS KNOWING THAT IF IT IS REJECTED, HIS USEFULNESS AS A MEDIATOR WILL BE AT AN END INsofar AS THE PARTICULAR CASE IS CONCERNED.

(108) CONTROLLING THE SPEED OF PROPOSALS

THE MEDIATOR KEEPS A CAREFUL EYE ON THE SPEED WITH WHICH THE PARTIES MAKE PROPOSALS TO EACH OTHER SO THAT THERE IS THE DIRECT RELATIONSHIP BETWEEN THE TIME OF THE PRESENTATION OF THE PROPOSAL, THE AMOUNT OF TIME THAT THE NEGOTIATIONS HAVE COVERED, THE DEADLINE DATE, AND THE TEMPERAMENTS OF THE PARTIES. THE MEDIATOR TRIES TO TIME THE PRESENTATION OF PROPOSALS SO THAT THE GREATEST AMOUNT OF PRESSURE IS BUILT UP IN THE PARTIES TO AGREE TO THEM.

(109) THE MEDIATOR'S PROPOSAL

WHEN THE MEDIATOR HAS A PROPOSAL TO MAKE, HE USUALLY CLEARS IT WITH THE PARTIES SEPARATELY. HAVING CONVINCED THEM AND SECURED A FAVORABLE REACTION OF THE PARTIES TO AN IDEA, A COMPROMISE, OR AN ALTERNATIVE SOLUTION, HE PROPOSES IT IN JOINT CONFERENCE FOR CONSIDERATION AND ACCEPTANCE OR REJECTION BY THE PARTIES. HE THUS AVOIDS REJECTION OF THE IDEA BY ONE OF THE PARTIES, IN JOINT SESSION, A REJECTION WHICH WOULD PLACE THE MEDIATOR IN AN EMBARRASSING POSITION.

(110) INVESTIGATING A SITUATION

A MEDIATOR MAY CONSENT TO MAKE AN INVESTIGATION OF A CONDITION WHICH IS THE BASIS OF A GRIEVANCE IN ORDER THAT HE MAY CONVINCE THE PARTIES THAT HE UNDERSTANDS THEIR PROBLEM. SOMETIMES HE PROCEEDS FURTHER. HE MAKES THE INVESTIGATION, ANALYZES THE SITUATION, AND PRESENTS HIS FINDINGS AND SUGGESTIONS TO THE PARTIES IN JOINT CONFERENCE AFTER HAVING FIRST CLEARED THEM SEPARATELY WITH BOTH PARTIES. IF EITHER PARTY REJECTS HIS SUGGESTIONS IN SEPARATE CONFERENCE, HE DOES NOT PRESENT THEM TO THE PARTIES IN JOINT SESSION.

(111) PREPARATION OF THE WRITTEN PROPOSAL

THE MEDIATOR MAY BE REQUESTED BY THE PARTIES TO PREPARE A WRITTEN PROPOSAL. IN SUCH A CASE, THE MEDIATOR HAS TO BE CAREFUL FOR THERE ARE TWO POSSIBILITIES IN THE

SITUATION. THE PARTIES MIGHT BE TRYING TO GET THE MEDIATOR TO HELP THEM TO AGREE. THIS IS LEGITIMATE. BUT IT MAY BE THAT ONE PARTY IS TRYING TO GET THE MEDIATOR TO DO SOMETHING FOR HIM AT THE EXPENSE OF THE OTHER PARTY'S POSITION. IN ANY CASE, THE MEDIATOR MAY PROTECT HIMSELF IN THE FOLLOWING WAY: HE WRITES THE PROPOSAL. THEN HE INSERTS IN THE WRITTEN MATERIAL TWO POINTS ONE OF WHICH IS OBJECTIONABLE TO THE UNION AND THE OTHER OBJECTIONABLE TO THE COMPANY. HE SUBMITS THE PROPOSALS TO THE PARTIES. THEY AUTOMATICALLY REMOVE THE OBJECTIONABLE POINTS AND, IF THEY ACCEPT THE REST OF THE PROPOSAL, THEY CAN NEVER SAY THAT THEY DID NOT HAVE A CHANCE TO REVIEW IT, EXAMINE IT, OR PASS ON IT.

(112) THE HABIT OF AGREEMENT

AT THE BEGINNING OF NEGOTIATIONS THE MEDIATOR MAY CHOOSE ISSUES ON WHICH THERE IS LITTLE DISAGREEMENT. THE DISCUSSION THEN PROCEEDS ALONG THE LINES OF THESE ISSUES. THIS MAY RESULT IN AGREEMENT WHICH MAY ESTABLISH A PATTERN TO BE FOLLOWED IN THE HANDLING OF MORE DIFFICULT ISSUES.

ANOTHER EXAMPLE OF THIS APPROACH IS WHAT IS KNOWN AS CLEARING THE CONTRACT. HERE THE MEDIATOR AT THE BEGINNING OF THE MEDIATION SESSION ASKS THE PARTIES TO TELL HIM JUST WHAT HAS BEEN AGREED UPON IN THE SESSIONS BEFORE HIS ARRIVAL. THIS NOT ONLY PUTS THEM IN A MORE AGREEABLE FRAME OF MIND, BUT ALSO SETS LIMITS TO THE ISSUES BEING DISCUSSED IN THE NEGOTIATIONS. AT THE MEDIATOR'S DISCRETION THESE AGREEMENTS MAY BE REVIEWED WITH THE PARTIES.

(113) THE USE OF THE PARTY'S OR THE MEDIATOR'S COMMITMENTS

A MEDIATOR, KNOWING THAT A PARTY OR PARTIES HAVE COMMITMENTS FOR THE EVENING OR FOR SATURDAY OR SUNDAY, MAY REFUSE TO ADJOURN A MEETING AT THE DINNER HOUR OR ON FRIDAY EVENING. THIS PRESSURES THE PARTY OR PARTIES INTO MOVEMENT IN THE DIRECTION OF AGREEMENT RATHER THAN DISTURB THE COMMITMENTS WHICH THEY HAVE MADE FOR DINNER, WEEKEND PARTY, OR FISHING TRIP.

THE MEDIATOR'S PERSONAL AND OFFICIAL COMMITMENTS ARE USED IN THE SAME MANNER. THERE IS ONE DIFFERENCE HERE. THE MEDIATOR'S COMMITMENTS MAY BE FICTITIOUS. HE MAY EVEN SHOW HIS INTENSE INTEREST IN THE CASE BY GRANDILOQUENTLY CONCELLING HIS FICTITIOUS APPOINTMENT.

(114) DELIBERATE ADJOURNMENT

THERE ARE TIMES WHEN IT IS OBVIOUS TO THE MEDIATOR THAT THE TIME TO SETTLE HAS NOT YET ARRIVED. WHERE THIS IS THE CASE, THERE WILL BE LITTLE FOR THE MEDIATOR TO DO BUT TO INFORM THE PARTIES THAT, "THIS ISN'T THE DAY TO SETTLE THIS CASE," AND TO ADJOURN THE MEETING.

(115) USE OF OUTSIDE UNION

A MEDIATOR'S, UNION'S, OR COMPANY'S DECISION MAY BE INFLUENCED BY THE ACTION TAKEN BY ANOTHER UNION IN THE SAME ESTABLISHMENT. THUS, FOR EXAMPLE, THEIR ACTIONS MAY BE DETERMINED TO A LARGE EXTENT UPON THE ACTION WHICH A UNION--NOT A PARTY TO THE NEGOTIATIONS--WILL TAKE IN CONNECTION WITH HONORING A PICKET LINE OF A UNION WHICH IS A PARTY TO THE NEGOTIATIONS AND WHICH EITHER IS STRIKING OR CONTEMPLATES STRIKING.

(116) ALL-NIGHT SESSIONS

THE MEDIATOR MAY FIND IT DESIRABLE, WHERE ONE OR BOTH PARTIES REFUSE TO MOVE TO KEEP THEM IN SESSION FOR AN INDEFINITE PERIOD SO THAT THE PARTIES GRADUALLY BEGIN TO RESOLVE THE DISPUTE.

✓ (117) SUBCOMMITTEES

OCCASIONALLY, WHERE THE COMMITTEES ARE LARGE AND THE ISSUES MANY, IT MAY BE HELPFUL FOR THE MEDIATOR TO SET UP SUBCOMMITTEES OF SPECIALISTS TO HANDLE PARTICULAR PROBLEMS. THUS, FOR EXAMPLE, THE TWO TIMESTUDY SPECIALISTS ON BOTH SIDES MAY RETIRE FROM THE JOINT SESSION TO A PRIVATE OFFICE TO CANVASS THE PROBLEM OF THE INCENTIVE RATES. WHEN THIS TECHNIQUE IS EMPLOYED, EVERY EFFORT SHOULD BE MADE BY THE MEDIATOR TO SHOW THAT IT IS NOT HIS PURPOSE TO DIVIDE A COMMITTEE FOR ULTERIOR REASONS.

(118) ASSERTION

THE MEDIATOR MAY MAKE A POSITIVE STATEMENT SHOWING WHAT MAY HAPPEN UNDER CERTAIN CIRCUMSTANCES. THIS CONSTITUTES A DIRECT APPROACH, THE OPPOSITE OF THE "INTERROGATION" TECHNIQUE.

(119) VARYING THE PICTURE IN EXCHANGING INFORMATION

SOMETIMES THE MEDIATOR FINDS THAT THE PARTIES HAVE THOROUGHLY EXHAUSTED THE EXCHANGE OF INFORMATIONAL MATERIAL BETWEEN THEM. IN SUCH CASES, SOME PROGRESS MAY BE MADE BY THE MEDIATOR SUGGESTING A DIFFERENT APPROACH SO FAR AS THE EXCHANGE OF INFORMATION IS CONCERNED. THUS, A LETTER FROM THE PRESIDENT OF A COMPANY TO EITHER THE INTERNATIONAL REPRESENTATIVE OR THE COMMITTEE MAY CARRY CONSIDERABLE WEIGHT. OR THE INTERNATIONAL REPRESENTATIVE MAY INVITE AN EXPERT TO ARGUE A DISPUTED POINT FOR HIM.

(120) PUBLICITY

THE MEDIATOR APPROACHES THE PUBLICITY PROBLEM FROM SEVERAL ANGLES. HE MAY ASK THE PARTIES TO LET HIM HANDLE

ALL SPECIFIC ITEMS OF PUBLICITY, SUBJECT TO THEIR APPROVAL, IN ORDER THAT THE PARTIES WOULD NOT BE ENGAGED IN NEGOTIATING THEIR ISSUES BY WAY OF THE NEWSPAPERS, RADIO, AND OTHER AVENUES OF PUBLICITY. HE MAY ENLIST THE NEWSPAPERS AND OTHER COMMUNICATIONS FACILITIES TO APPEAL TO THE PARTIES TO BEAR THE INTEREST OF THE COMMUNITY IN MIND AND COOPERATE IN TRYING TO REACH AN AGREEMENT, AND, WHERE THE PARTIES SEEM HOPELESSLY DEADLOCKED, TO TAKE A POSITION IN ORDER TO GET THE PARTIES TO MOVE.

VERY OCCASIONALLY, IT IS HELPFUL TO THREATEN THE PARTIES WITH PUBLICITY, THAT IS, TO STATE THAT IT MAY BE NECESSARY TO REVIEW THE NATURE OF THEIR SITUATION WITH PRESS REPRESENTATIVES. IT MAY BE THAT IN SUCH A CASE THE PARTIES MAY BE ANXIOUS TO ARRIVE AT AN AGREEMENT RATHER THAN FACE THE MUSIC WHICH FOLLOWS PUBLICATION OF THEIR POSITIONS.

6. RECOGNITION AND UNFAIR LABOR PRACTICES

(A) WHERE THE EMPLOYER CHALLENGES THE MAJORITY STATUS OF A UNION.

IN SUCH CASES THE MEDIATOR DETERMINES WHETHER A PETITION HAS BEEN FILED WITH THE NATIONAL LABOR RELATIONS BOARD OR WHETHER THE CHALLENGE IS MADE AS PART OF THE BARGAINING PROCEDURE. IF A PETITION HAS BEEN FILED FOR THE PURPOSE OF OBTAINING A RULING FROM THE NATIONAL LABOR RELATIONS BOARDS, THE MEDIATOR WITHDRAWS UNTIL SUCH TIME AS A RULING IS ISSUED. IF THE CHALLENGE IS MADE AS A PART OF THE COLLECTIVE BARGAINING STRATEGY, THE MEDIATOR CONTINUES HIS EFFORTS.

(B) WHERE THE EMPLOYER BELIEVES THAT THE NATIONAL LABOR RELATIONS BOARD HAS ERRED IN ITS DETERMINATION OF THE BARGAINING REPRESENTATIVE AND REFUSES TO BARGAIN

THE MEDIATOR IN SUCH A CASE WITHDRAWS HIS SERVICES IF THE UNION FILES AN UNFAIR LABOR PRACTICE CHARGE ALLEGING REFUSAL TO BARGAIN. AFTER THIS CHARGE HAS BEEN DISPOSED OF EITHER BY THE NLRB OR BY THE COURTS, THE MEDIATOR RE-ENTERS THE CASE.

(C) WHERE A COMPETING UNION ASSERTS JURISDICTION

IF SUCH ASSERTION IS EITHER ORAL OR BY LETTER THE MEDIATOR CONTINUES TO SERVICE THE CASE. IF THE COMPETING UNION HAS FILED A PETITION WITH THE NLRB AND IT HAS BEEN DOCKETED, THE MEDIATOR CLOSES THE CASE.

(D) IF AN UNFAIR LABOR PRACTICE IS CHARGED. .

IF THE CHARGE IS SETTLED DURING NEGOTIATIONS THE MEDIATOR REQUESTS THE PARTIES TO WITHDRAW THE CHARGE. IF THE ONLY ISSUES ARE THOSE WHICH ARE THE SUBJECT OF THE CHARGE, THE MEDIATOR WITHDRAWS FROM THE CASE UNTIL SUCH TIME AS THE ISSUES ARE RESOLVED UNLESS BOTH PARTIES INDICATE THE DESIRE TO NEGOTIATE THE ISSUES WITH THE ASSISTANCE OF THE MEDIATOR. FURTHERMORE, IF THERE ARE OTHER ISSUES THAN THOSE WHICH ARE THE SUBJECT OF THE CHARGE THE MEDIATOR CONTINUES TO HELP THE PARTIES TO RESOLVE THESE ISSUES.

7. GRIEVANCES

IN THESE SITUATIONS, THE INVESTIGATION HAS PARTICULAR IMPORTANCE. FOR, UNLIKE CONTRACT NEGOTIATIONS WHERE THE REQUESTING PARTY FILES A NOTICE AS A MATTER OF LAW, THE GRIEVANCE SITUATION HAS USUALLY REACHED AN ACUTE STAGE BY THE TIME MEDIATION IS REQUESTED. THEREFORE, THE MEDIATOR SECURES ALL OF THE DETAILS CONCERNING THE GRIEVANCE IN DISPUTE, SO THAT THE REGIONAL DIRECTOR CAN MAKE A DETERMINATION AS TO WHETHER THE CASE IS EXCEPTIONAL AND IN THE LAST RESORT CATEGORY.

IF THE MEDIATOR IS ASSIGNED THE CASE, HE USES THE SAME TECHNIQUES WHICH HAVE BEEN DESCRIBED UNDER THE "NEGOTIATIONS-ACTIVE" SECTION TO BRING ABOUT AN AGREEMENT OF THE PARTIES. IF THESE ARE INEFFECTIVE, THE MEDIATOR ENCOURAGES THE USE OF ARBITRATION.

8. ARBITRATION

SINCE THE SOLE FUNCTION OF THE FEDERAL MEDIATOR IN CONNECTION WITH ARBITRATION IS TO ENCOURAGE ARBITRATION AS A MEANS OF SETTLING DISPUTES AND TO INFORM THE PARTIES OF THE PROCEDURES TO PURSUE IN SECURING AN ARBITRATOR, THERE IS LITTLE MORE THAT COULD BE SAID HERE THAN HAS ALREADY BEEN MENTIONED ELSEWHERE UNDER THE HEADING OF TECHNIQUES. SUFFICE IT TO SAY AT THIS POINT THAT THE MEDIATOR ATTEMPTS TO GET THE PARTIES TO SETTLE AS MUCH AS WHAT IS IN DISPUTE AS POSSIBLE AND TO LIMIT THE AREA OF DECISION WHICH MUST BE HANDLED BY THE ARBITRATOR.

9. PREVENTION

WE COME NOW TO A PHASE OF THE MEDIATOR'S WORK WHICH IS AT LEAST EQUAL IN IMPORTANCE TO THAT OF MEDIATING DISPUTES AND CONTRACT NEGOTIATIONS. AS IN MEDICINE, IT IS MORE IMPORTANT TO PREVENT THAN TO CURE. IN PREVENTIVE MEDIATION, THE MEDIATOR HELPS THE PARTIES TO FIND THE CAUSES OF A BAD LABOR RELATIONS SITUATION AND TO ELIMINATE THEM.

AS THE MEDIATOR OBSERVES THE PARTIES ENGAGED IN THEIR CONTRACT NEGOTIATIONS, AS HE MEETS WITH THE PARTIES UNDER THE

CONTINUITY AND RELATED ACTIVITY PROGRAMS, AND UNDER THE VARIOUS OTHER PROGRAMS IN THE REGION, HE ASKS HIMSELF A NUMBER OF QUESTIONS. DO THE PARTIES HAVE CONFIDENCE IN ONE ANOTHER? ARE THEIR ATTITUDES TOWARD EACH OTHER MATURE? ARE THERE PERSONALITIES WHICH IRRITATE OR ANTAGONIZE? IS THE LABOR RELATIONS PHILOSOPHY OF THE PARTIES PROGRESSIVE, LIBERAL, AND DEMOCRATIC OR IS IT CONSERVATIVE AND AUTOCRATIC? AS HE RECEIVES THE ANSWERS TO THESE AND RELATED QUESTIONS, THE MEDIATOR MAKES A JUDGMENT AS TO WHETHER HE SHOULD CONSIDER THE POSSIBILITIES OF A PREVENTIVE MEDIATION ASSIGNMENT.

ALTHOUGH IT MAY BE OBVIOUS TO HIM THAT THE RELATIONSHIP BETWEEN THE PARTIES IS POOR, HE CANNOT ALWAYS IMMEDIATELY PUT HIS FINGERS ON THE BASIC CAUSE. WHERE SUCH IS THE CASE, HE MAY CONTINUE TO OBSERVE THE PARTIES AND DISCUSS THEIR PROBLEMS WITH THEM EVEN AFTER THE CONTRACT NEGOTIATIONS HAVE TERMINATED IN AN AGREEMENT. HE MAY ACT AS A LISTENER TO THEIR TROUBLES, ADVISOR, CONSULTANT, OR INFORMANT FOR SOME TIME BEFORE HE ARRIVES AT WHAT HE CONCEIVES TO BE THE REAL CAUSE OF THE DIFFICULTY BETWEEN THEM.

AFTER HE HAS DETERMINED WHAT HE CONSIDERS TO BE THE BASIC CAUSES, HE FACES THE TASK OF GETTING THE PARTIES TO SEE THEM, TOO. THIS IS AN EDUCATIONAL PROCESS AND THE MEDIATOR USES HIS SKILLS AND HIS KNOWLEDGE OF THE PARTIES TO BRING ABOUT A REALIZATION ON THEIR PART AS TO WHAT IT IS THAT DISTURBS THEM.

IN HIS DISCUSSIONS WITH THEM, HE TRIES TO INDUCE THEM TO TAKE POSITIVE ACTION WHICH WILL ELIMINATE THEIR LABOR RELATIONS DIFFICULTIES. HE OFFERS HIS ASSISTANCE, CONVINCES THEM OF HIS ABILITY TO HELP, AND REASSURES THEM OF HIS IMPARTIALITY.

FREQUENTLY, THE MEDIATOR FINDS HIMSELF TO BE MORE ACCEPTABLE TO THE PARTIES IF HIS OFFERS OF ASSISTANCE ARE ACCOMPANIED BY A TANGIBLE APPROACH TO THE SOLUTION OF THEIR PROBLEMS. IF THE PARTIES FIND HIM ACCEPTABLE AND REGARD HIS APPROACH AS A FEASIBLE ONE, THE MEDIATOR INFORMS THEM THAT HE IS AVAILABLE FOR CONFERENCES, MEETINGS, AND DISCUSSIONS. HE NOT ONLY MAKES HIMSELF AVAILABLE, HE TAKES THE INITIATIVE IN CONTACTING THE PARTIES, ARRANGING CONFERENCES, AND PROPOSING APPROACHES, IDEAS, AND POSSIBLE SOLUTIONS.

AS HE GOES ABOUT TRYING TO CARRY OUT HIS LONG-RANGE PLAN FOR HELPING THE PARTIES, HE ALSO ARRANGES FOR ASSISTANCE TO THEM TO HELP THEM OVER THE HURDLES OF THEIR DAILY PROBLEMS OF LIVING WITH EACH OTHER. SUCH ASSISTANCE CONSTITUTES THE MORE INFORMAL ASPECTS OF HIS PREVENTIVE ACTIVITY SINCE THEY ARE NOT PART OF A DEFINITE PLAN FOR THE ELIMINATION OF BASIC CAUSES OF POOR RELATIONS.. SUCH

INFORMAL ASSISTANCE IS GIVEN BY THE MEDIATOR TO ANY COMPANY OR UNION REGARDLESS, OF COURSE, OF WHETHER HE IS ENGAGED IN A LONG-RUN PLAN TO IMPROVE THEIR LABOR RELATIONS SITUATIONS.

IN ALL OF HIS ACTIVITY, THE MEDIATOR BEARS IN MIND THAT HIS WORK IS NOT TO FURTHER THE GOALS OF ONE PARTY AT THE EXPENSE OF THE OTHER PARTY BUT TO HELP THEM BOTH ACHIEVE A BETTER RELATIONSHIP.

SOME UNEXPLORED AREAS IN MEDIATION

LISTED BELOW ARE SOME PHASES OF THE MEDIATION PROCESS WHICH HAVE BEEN CONSIDERED ONLY BRIEFLY BY THE COMMITTEE DURING THE COURSE OF ITS DISCUSSION OF THE PROBLEMS OF THE MEDIATOR. THERE IS SOME REFERENCE TO THEM IN THE PRECEDING MATERIAL BUT THEY REMAIN AS POTENTIAL AREAS FOR RESEARCH.

1. SHORT-RANGE AND LONG-RANGE OBJECTIVES OF MEDIATION.
2. PREVENTIVE MEDIATION
3. PUBLIC RELATIONS AND RELATED ACTIVITIES
4. FMCS REPORTING PROGRAMS
5. FEDERAL AND STATE MEDIATOR RELATIONSHIPS
6. ELEMENTS OF TIMING
7. MEDIATION AND THE STRIKE
8. USE OF THE MEDIATOR BY THE PARTIES
9. THE CHALLENGE OF THE INVESTIGATION ASSIGNMENT
10. GRIEVANCE NEGOTIATIONS
11. NLRB AND FMCS IN LABOR-MANAGEMENT RELATIONS
12. MEDIATOR DEVELOPMENT
13. ILLUSTRATIONS OF MEDIATION TECHNIQUES
14. COMMUNICATIONS
15. CLASSIFICATION OF TECHNIQUES
16. CONDUCT OF THE MEDIATOR
17. MAINTAINING THE STATUS OF THE MEDIATOR AT THE CONFERENCE

SUMMARY AND CONCLUSION

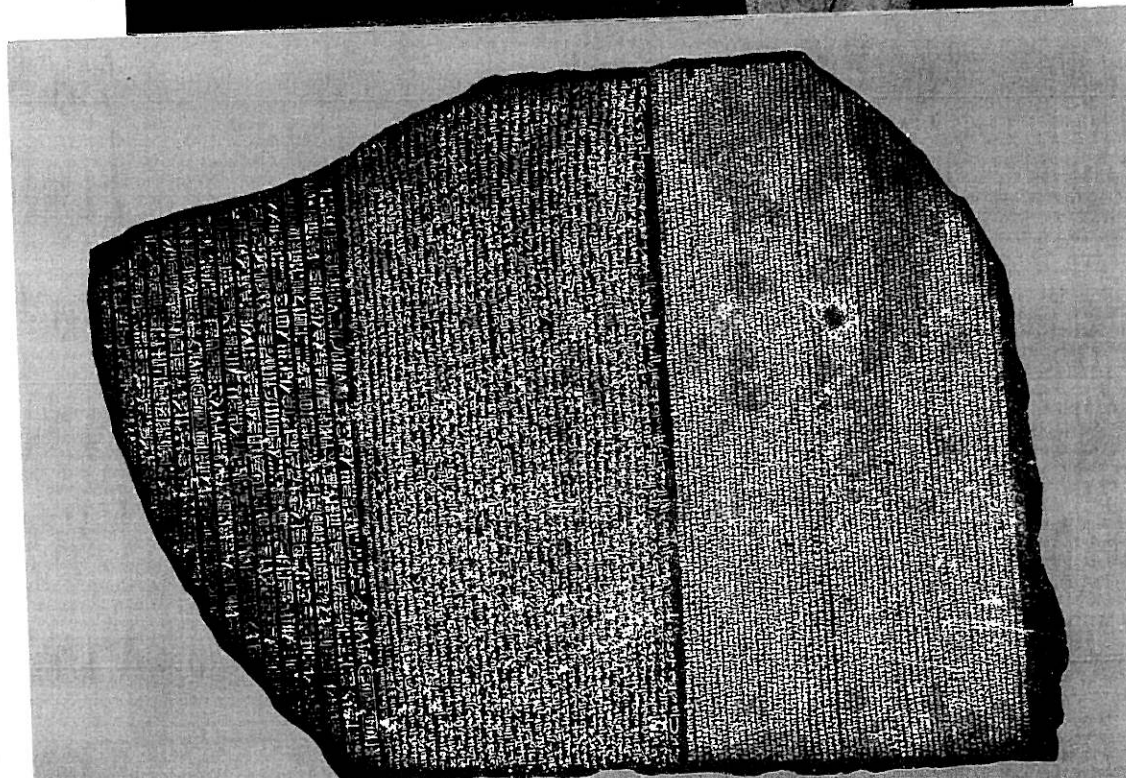
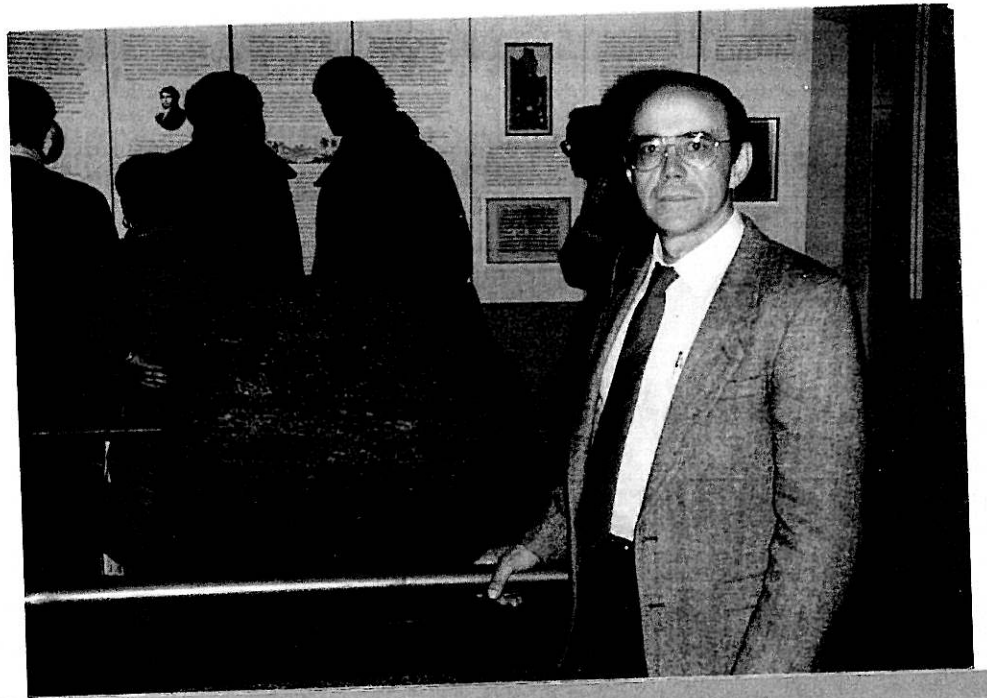
THIS PROJECT IS NOT COMPLETE. NOR IS IT EXPECTED THAT IT EVER WILL BE COMPLETED. THE AREAS OF RESEARCH ON THE SUBJECT OF MEDIATION ARE VERY WIDE AND THE FACTORS WHICH IMPINGE ON IT ARE CONSTANTLY CHANGING.

THE REPORT CONCENTRATES ON THE TECHNIQUES USED IN CONTRACT NEGOTIATIONS. IT TOUCHES LIGHTLY ON OTHER PHASES OF THE FEDERAL MEDIATOR AND THE MEDIATION PROCESS. THE READER'S ATTENTION IS CALLED TO QUESTIONS AND SUBJECTS WHICH INTRIGUED THE COMMITTEE AND WHICH SHOULD BE FURTHER STUDIED BY FUTURE RESEARCHERS.

THE DISCUSSION COVERS THE FEDERAL MEDIATOR AS HE IS AND THE MEDIATION PROCESS AS IT IS IN REGION 7. NO ATTEMPT HAS BEEN MADE TO SET OUT GENERAL RULES WHICH WILL APPLY AT ALL TIMES AND IN ALL CIRCUMSTANCES. THE PROCEDURES, TECHNIQUES, AND PROCESSES WHICH HAVE BEEN DESCRIBED HAVE BEEN APPLIED BY VARIOUS MEDIATORS IN REGION 7. NO PRESCRIPTION IS GIVEN AS TO THEIR APPLICATION IN THE FUTURE BECAUSE MEDIATORS, THE PARTIES IN LABOR-MANAGEMENT DISPUTES, ISSUES, AND THE CIRCUMSTANCES IN DISPUTES ARE NEVER THE SAME. IN FACT, IT CAN BE SAID THAT FOR MANY OF THE TECHNIQUES WHICH HAVE BEEN DESCRIBED, A DIRECTLY OPPOSITE ONE COULD BE USED DEPENDING ON THE CIRCUMSTANCES.

MEDIATION IS THE ARTISTIC APPLICATION OF SCIENTIFIC ELEMENTS SOME OF WHICH HAVE BEEN STATED IN THE FOREGOING OUTLINE OF THE MEDIATOR'S RESPONSIBILITIES AND FUNCTIONS AND IN THE DELINEATION OF SOME OF HIS TECHNIQUES. ONLY A FEW OF THESE SCIENTIFIC ELEMENTS HAVE BEEN DESCRIBED IN THIS REPORT. THE TASK OF FUTURE RESEARCHERS IS TO BRING TO LIGHT THE VAST NUMBER OF THE SCIENTIFIC ELEMENTS AND THEIR LIMITLESS COMBINATIONS WHICH STILL REMAIN BURIED IN THE ACTUAL EXPERIENCES OF THE MEDIATOR.

A FINAL WORD: IT MUST ALWAYS BE REMEMBERED THAT THE CHOICE OF THE ELEMENT OR ELEMENTS, THEIR COMBINATION, AND THEIR APPROPRIATE APPLICATION LIES IN THE JUDGMENT OF THE MEDIATOR AND NO SET OF RULES CAN PRESCRIBE HIS COURSE OF ACTION.



The Rosetta Stone
British Museum
London

THE BRITISH MUSEUM

The Rosetta Stone

Inscribed in Egyptian hieroglyphic and demotic characters and in Greek with a decree in honour of Ptolemy V. Epiphanes, passed by the priests of Egypt assembled at Memphis. It was discovered in 1799 at Rashid in the Delta, and from it was obtained the clue to the decipherment of ancient Egyptian writing.
196BC, 109 x 76cm