

FEDERAL MEDIATION AND CONCILIATION SERVICE

Speech by

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Negotiation in the Public Sector

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### NEGOTIATION IN THE PUBLIC SECTOR

whenever adversity they face.

Last week I gave a talk before the Buffalo  
 IRRA Chapter on collective bargaining in the 70s. The  
 thrust of my talk was that the collective bargaining  
 process, which for years has been a successful forum in  
 the solving of private sector problems regarding wages,  
 hours, and working conditions, is being besieged by issues  
 that heretofore have been reserved for politicians, academe-  
 micians and civil rights leaders. These issues -- arising  
 from racial and minority group efforts, the environment,  
 pollution and all of the problems attendant to it, a  
 general dissatisfaction with older institutions, a wide-  
 ranging unrest among many people, and a current of open  
 mindedness -- have fallen upon the bargaining table as  
 one arena of expression and hopeful solution. These new  
 issues cannot and have not been ignored by the bargainers  
 at the private sector table.

The private sector negotiators have their work  
 cut out for them. Their task will be a difficult one;

but they will succeed -- they always have and, I am sure, that with diligence and imagination they will overcome whatever adversity they face.

Enter the public sector -- municipal employees, teachers, firemen and police, and hospital employees. How do they fit into the scheme of things in the 1970s. It puts them right on center stage as we enter the biggest decade of collective bargaining we have ever experienced. Probably the safest bet one could make today is that there will be change and more change in the area of public sector bargaining. Public employees are joining unions at an accelerated pace. There are 8½ million employees in the public sector workforce, and already 16 percent of them have been organized. At their present rate, they will quickly pass the private sector's 21 percent organized.

At the moment, there is a tremendous amount of legislative and collective bargaining activity throughout most of the United States. Many states are passing their first laws concerning public employee bargaining.

I bring this up because there is no segment of

U. S. citizens which are covered by a more diverse grouping of labor laws (or lack of them). There are public employee relations boards (PERBs); there are offices of collective bargaining; there are police and fire laws. In many states, the parties can only meet and confer. In many states, there are no laws granting collective bargaining rights, but to the contrary, many laws declare that public employees shall not be allowed to join unions or bargain collectively with their agencies of government.

In the United States Government alone, there are seven collective bargaining statutes. My guess is that there are probably 1140 different laws in the public sector. Two states, Hawaii and Pennsylvania, have granted certain of their employees a limited right to strike. None of these laws compare with the freedom and voluntarism espoused in the Taft-Hartley law.

What does all this mean? Simply stated, it means that the Taft-Hartley Act, as amended, is a better deal than most public employees have, and until parity is reached or the bridge between private and public sector laws is shortened, public sector employees will no doubt

remain dissatisfied.

A public sector labor leader was heard to wonder last week, "Why should we be treated differently than the workers at Ford, General Electric, or United States Steel." The answer, of course, is written in the history of the labor movement, and the big question now is not, "Will the public sector employees attain parity, but when." I feel that until most U. S. workers are treated more equally, we will have built-in troubles in all public sector bargaining, particularly with the huge segment of workers who are not covered by any law.

During the next ten years, the workforce in the United States will be approaching 100 million workers with a large component of young people among them. The educational level of the workforce will have gone up significantly from its present high levels. Working hours will decline, and employment in the trades services and government will accelerate upwards.

All of this reflects a fundamental change in our society. Whether or not we are aware of it, we are

no longer in an industrial society. A major era, which opened with the industrial revolution and which has pervaded every level and value and activity of our lives, has just come to a close. We are now in a post-industrial society. And, while it is entirely too soon to know exactly what it is all about, we are too close and too recently into it to discern its characteristics. The fact of the matter is that society has arrived at a new plateau of development.

This is not the sort of thing we can discern easily at the level of individual experience. The only way we can know something like this is going on is to look at what might be called macro-indicators. This requires us to stand back from our immediate concerns and look at the big picture. One of these macro-indicators that I have just discussed is the shift in the workforce. An increasing number of our people are working in entirely new areas.

One result of all this is that many of our institutions are becoming obsolete. It's almost as though Parkinson's law was being lived out in our midst. Just as we began to successfully design social mechanisms --

like private sector collective bargaining -- which were finally adequate to meet our needs, the whole game changed.

While we finally developed the means of leveling our problems, the late 1950s saw the maturing of these processes, and it was right after this that our economy and our society passed through a historical threshold. And, we should have gone back to the drawing boards for (among other things) a variation on the industrial relations process to cope with changing jobs and changing people and a changing environment.

And that's what we must be about now. We are responsible to design a new system which will simultaneously satisfy the requirement of the workers in all sections of our workforce, while meeting the needs of the other institutions, such as, government, industry and education.

Further, we are in a period of high speed change; so it is incumbent on people, such as yourselves, to be more aware than ever of the secondary and tertiary effects of what we are doing at the bargaining table.

While it is necessary that everyone keep his eye on the ball during any negotiations, we must be mindful

of the long range effect of what we are doing. In a sense, the collective bargaining process now must be adapted to meet the demands of a new type of economic organization and at the same time, the collective bargaining process must begin to assume a responsibility for the larger immediate problems brought to the table and concurrently negotiate with long range as well as immediate goals in mind.

Let's stop and think for a moment about the particular implications of this massive shift in the labor force. First of all, the unions have already begun to move into the so-called non-industrial areas because they know this is where the workers of the future will be. Blue-collar unions will continue to exist, of course, but they and other unions have begun organizing the non-industrial workers. As the strength of unions rises with the growth of this new sector of the labor force, union leaders will begin to recognize several things about the new workers. They will have no ties with past union history which private sector unions have always cherished. Many of them, at the lower echelons, will be from minority



and impoverished groups.

With the growing unification and militance of these groups, employers in the non-industrial sector will find they are bargaining about a variety of issues, but, as compared to the private sector, the scope of bargaining is limited. They will find negotiations more difficult and because of a newness and lack of experience with collective bargaining on both sides of the table, the expectations, the impatience, and the pressures of the workers will translate quickly to militance and, possibly, impasses.

It seems that many minority groups -- having tried other means, including protests, and found them sometimes wanting -- are now turning to the collective bargaining process and have found it to be productive (examples -- hospital workers, sanitation workers, Memphis strike, etc.). Many so-called civil rights crises in the past six years really were recognition disputes as we know them in the private sector.

On a very limited basis, the FMCS has been faced with some of these new problems. I am speaking of

our mini-involvement in the public sector. After 300 negotiations in federal and nonfederal public sector work, we have experienced more than just a marked change in our traditional role at the bargaining table. Some of the new problems we have been faced with are:

Coping with collective bargaining situations that are clearly a violation of state or local laws, but because there is no other forum available to the parties, the FMCS has agreed to participate.

Conducting negotiations --

where there is no right to organize or meet with the employer for the purpose of drafting some form of labor agreement,

where this is no appropriate machinery to resolve recognition and representation disputes,

where there is no method of ensuring adherence by all parties to the law,

where this is no forum available for adjudicating grievances, and,

where there is no means provided for settling disputes or impasses by mediation, factfinding or arbitration.

Lack of deadline date, and, therefore, Brinks-manship and crisis bargaining are eliminated from most public sector bargaining tables.

Parties cannot legally strike, except in a few states and on a very limited basis.

Lack of bargaining knowledge and skills on the part of both parties.

Constant change of faces at bargaining table in both union and agency teams.

Lack of funds to grant increases, as money is derived from taxes rather than the free enterprise system.

Faced with the problems just mentioned, where do we go from here? One answer is more of the same. States and municipalities will continue to pass some form of legislation and at a pace usually determined by the amount of difficulty they have had with public employees in their respective areas. In the past two years, 27 bills dealing with collective bargaining were passed. Not all of these new laws were of the liberal Hawaii-Pennsylvania variety which set up employee relations boards and granted employees a limited right to strike. Some laws (such as the Oklahoma police and fire law) state that compulsory arbitration will be the point of final resolution for all impasses, but no law was passed regarding collective bargaining laws for

teachers, municipal employees, or hospital workers.

The unfortunate thing about most state laws is the lack of uniformity in the treatment for all employees.

There has been an effort on the part of many states and urban areas to get laws on the books which will hopefully bring stability to the public sector, but is this really enough? Will the public, the labor unions, and our Congress stand still until all 50 states pass viable legislation? Will the Congress ultimately have to pass on all-encompassing federal public sector law as they did for the private sector? So far there have been several federal bills introduced regarding public employees. Senator Metcalf and Congressman Gilbert introduced an AFSCME-AFL-CIO bill which would set up minimum standards under which each state would have to operate. Pennsylvania and Hawaii would not be affected as they already meet the minimum standards of this bill, but the remaining 48 states would be affected; that is, until they pass their own laws. If this bill were passed and a state did not have a law which met it's minimum standards, the following conditions would have to be met:

- 1) Employees would have the right to organize and join the labor union of their choice.
- 2) A labor relations board would be established which would hold elections and hear unfair labor practices.
- 3) The scope of bargaining would be similar to the Taft-Hartley law and would make check-off, binding arbitration, and grievances mandatory subjects of bargaining.
- 4) FMCS mediation and factfinding with recommendations would be made available to the parties for resolution of their impasses.

There have been other bills regarding teachers, nurses, and the administration is about to introduce a bill regarding agriculture employees.

What are the chances for passage of all of these bills? So far there has not been a huge outcry of public sentiment for or against the aforementioned bills, although many Senators and Congressmen have given the AFSCME bill their endorsement. My guess is that unless there is an upsurge of interest in federal legislation, the chances of such legislation passing are not good. As you are no doubt aware, practices in the Federal

Government have always had a great influence on both the public and private sectors of our economy, and with the advent of strikes against the Federal Government, i.e., postal, air controllers, etc., the influence of government in industrial relations can be expected to increase.

As you are aware, the growth rate of employment and unionization in the Federal Government is on the upsurge. There are 3,000,000 federal employees and approximately 48 percent of them belong to labor unions. In the quasi-federal Postal Service, 85 percent of those employees belong to labor unions.

Bargaining is now an accepted way of life for federal employees. Binding arbitration of grievances is now a mandatory subject of bargaining, and methods to settle impasses are spelled out in Executive Order 11491. Postal employees can now bargain over wages, hours and conditions. Since government settlements are highly visible, you can expect that innovations and patterns of terms of settlement will affect all other negotiations in the public and private sector as well.

The experience of the past has been that government regulations applicable to government employees and those working under government contracts regarding wages, hours, etc., were copied in the private sector almost immediately; for example, the forty-hour work week, child labor laws, equality of opportunity, etc. I am frankly hopeful that Executive Order 11491, which now oversees federal employees' labor relations, will have a like effect on those states, counties, and municipalities that are not now covered by even minimal collective bargaining laws or legislation.

To bring several of the points I have made here today closer to home, I want to say just a word about the State of Ohio and public sector bargaining. Ohio is the second largest area of our public sector involvement. Twenty-five percent of all our cases take place in Ohio. In the private sector, the FMCS becomes involved in more cases in Ohio than in any other state. I feel sure that our private sector activity has influenced our high incidence of involvement in the public sector, and until Ohio passes a viable public employee bargaining law, the

Service will continue to assist in their labor disputes. It is my understanding that there is a good possibility for the passage of legislation during this session of the State Legislature.

In closing, I believe that states and municipalities will continue to pass more liberal legislation, moving closer to provisions of the Taft-Hartley law. The FMCS role will diminish in the non-federal area as more states legislate PERB-type structures and impasse resolution devices. A diminution will also be noted in the FMCS role of training third-party neutrals. To simply predict change in the entire public sector field requires no particular expertise or boldness.

However, I offer the suggestion that public sector bargaining will be innovative and expansive. This prediction is based upon my belief that public sector bargainers will learn from the 30-year history of private sector negotiations. If public sector people will pause a moment and seriously examine the pitfalls and advances of the private sector, they can ingest all that experience



and begin their bargaining relationship at an advanced, more mature, and more responsible level. That many people in the public sector are not always performing now as I predict they will is attributable to the early stage of their bargaining experience.

Public sector bargaining can -- and it must -- begin further along the line of industrial relations development. It must begin with mature managers and mature unionists who are responsible administrators of their labor contract and who expect responsible actions from their counterparts. Then, having learned some basic lessons from the private sector, I think public sector people will move energetically in pathways that select less and less from the experience of their private sector counterparts -- for their challenges and opportunities will be dramatically different.

Not only will the subjects at the table approach the traditional bargainable issues from a different angle, they will be grappling with all of the new issues which will inevitably arise from the environment of public sector

negotiations. Indeed, I submit, it may well be the two sectors will find themselves engaging in a mutual exchange of newly discovered ideas and issues. This presages a collective bargaining environment that will continue to be a major contributor to the larger community's growth and improvement.

It will be the sign of things to come -- the new mode of cooperation and responsible activity -- in our emerging post-industrial society.