FEDERAL MEDIATION AND CONCILIATION SERVICE

"The Role of Collective Bargaining in a Free Society"

Address by

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of the

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FOXHOWE ASSOCIATION

Buck Hill Falls, Pennsylvania

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The Foxhowe letterhead lists the Association's "object" as follows:

> "To present and discuss, largely from the point of view of the Religious Society of Friends, some of the many problems arising from Human relationships."

For as long as a record of human life has existed, one of the fundamental relationships has been that of men working for or under the direction of other men. Owner and slave, lord and serf, master and servant, craftsman and apprentice, farmer and hired hand--these have been or are some of the simpler relationships, characterized primarily by all the virtues and defects of direct and frequent personal contact between individuals at the two ends of the equation. Quakers had a reasonably clear, consistently expressed and activated conviction about the owner and slave relationship. Without being unduly critical, it is not unfair to conclude that the Quaker witness has not been as outspoken where direct ownership of a human life is not involved. For example, can we say even today that there is a consistent Quaker philosophy or practice as respects the farmer and hired hand or the housewife and cleaning woman relationships?

The purpose of this talk is to take a look at the infinitely more complex relationships in modern industrial society. The owner of a few shares of General Motors stock is insulated totally

from the one man among almost 300,000 employees who attaches wheels on a Chevrolet assembly line. The remoteness of the relationship makes it easy to ignore the fact that a two-way responsibility does exist. Even if the man on the assembly line and the stock owner should happen to be members of the same Monthly Meeting, it is not at all sure that they would recognize the connection between them.

As our technology has advanced and companies have increased in size, industry has operated on the premise that it is both necessary and proper for ownership to employ a management hierarchy for the purpose of efficient operation of a business. This management group has primary responsibility to stockholders, even though that responsibility is far removed when we get down to the Foreman level. Nor is this management hierarchy essentially different in a non-capitalistic society. The form of ownership of the enterprise does not change the need for management, including successive tiers of authority and responsibility.

For a great many years in most industrial plants in this country, it was not considered either necessary or proper for workers to organize or to associate for purposes of protecting or improving their real or alleged interests. Each individual employee sold his personal services at the existing market wage. Wages were determined unilaterally by the several management

hierarchies operating in the neighborhood and as might be influenced by the supply of labor and the demand for it. The notion was that wage rates, conditions of work, as well as relative returns to ownership, to management and to labor were somehow self-regulating by inherent economic laws. Each worker was expected to make his own provisions for himself and his family as respects the hazards and costs of illness, old age, unemployment and other emergencies. Job security was non-existent except as the individual secured it by the character of his work, his personal relationship with his Foreman and the fortuitous chance of working for a successful employer. In other respects, the individual employee could exercise his freedom and champion his interests primarily by his right to quit a job and seek a better one.

After experimentation under the National Recovery Act at the depth of the depression, the Wagner Act signalled a significant change of national policy. Speaking through Congress, the American people concluded that the individual worker was at an unfair disadvantage against the concentrated power of ownership and management, and that what has sometimes been characterized as "stewardship" had not been exercised justly by too many employers. The right to organize unions to bargain collectively was recognized. Recognition of the right to organize was

buttressed by National Labor Relations Board procedures, designed to permit and enforce effectuation of those rights. Moreover, Congress went even further. The Wagner Act stated that it was the national policy to encourage collective bargaining. One generally expressed notion was that workers were entitled to a grant of power,achievable through organization, sufficient to balance the accumulated power of ownership and management.

Long pent-up desires and aspirations of working men, the emergence of labor leadership and the stimulus afforded by the Wagner Act and related governmental policy resulted in rapid growth of unionism, as is well known to all of us. Within a very short span of years, most of our mass production industries became organized. For all non-agricultural establishments, union membership increased from 11.5% of the working forces in 1933 to 35.8% in 1945. Labor union hierarchies developed necessarily since no sizeable organization of any type can function as an anarchy.

Time does not permit discussion here of the Taft-Hartley Act of 1947 and the more recent Landrum-Griffin Act except to say that these have been expressions of the American people, again acting through Congress, to the effect that Union power, in turn, had become too great in some particulars or had been exercised badly by some union leaders and that certain curbs

and restrictions on that power were considered necessary.

What has been gained and what has been lost during the years since the early 1930's? Where do we stand today? Any attempt to answer these questions must necessarily be to paint with a broad brush. American industry is very diverse. Extent of unionization varies widely. Company and union policies and practices differ between and within industries. Subject to these limitations, the over-all picture can be summarized:

For the American worker, the plus factors are many. Standards of living have improved very substantially. New voluntary leisure time has been obtained by paid vacations and holidays. Substantial protection against the hazards and costs of illness, old age and unemployment have been secured. These are economic gains. Of perhaps greater importance, is the fact that fear of arbitrary and unfair acts by the employer has been reduced sharply. A worker can still be discharged or laid off but only for proper cause or in correct seniority order. Most of all, the organized worker has reason to feel that he has a voice in determination of working conditions and practices in the shop where he works. This distinguishes him from a machine and helps offset some of the loss of pride of craftsmanship and work accomplishment that has accompanied technological advance. As Quakers, we have a fundamental belief in the dignity of the human soul and the values of responsible

freedom. These last worker gains are in accord with our convictions.

The plus factors have not been all on the side of labor. Where union-management relationships are sound, and they are sound in a very large segment of American industry, management has found that there are many distinct advantages in dealing with organized workers. Simple "fear of the boss" and "fear of the future" are not sound stimuli to efficiency. Worker morale in an unorganized plant can be much worse than in a properly organized plant. In some industries, unions have been a major factor towards economic stability. In some of the more mature relationships, labor-management cooperation exists to a high degree. There is nothing in the record to suggest that shareholders as a group have not fared even better than workers in the years since 1933. It would be interesting to take a secret ballot poll among all management representatives in this country who have had close personal contact with the labor picture on a "before and after" basis on the question:

"Would you prefer to revert back to the worker-management relationships in existence prior to unionization?"

I venture the prediction that experienced management's own vote might be close but that a majority would not favor such a reversion.

Despite these very substantial accomplishments on both sides

of the fence, the losses and current problems are numerous.

For the worker, job security in the form of seniority rights is a double-edged sword. If an older worker loses his job due to automation or to the moving of a plant or for other reasons beyond his control, seniority arrangements at other plants and a new company's costs for insurance and pensions make it increasingly difficult for him to find another job. At the other end of the age scale, young and ambitious employees now find that securing the first job, advancement and promotion are not so readily attainable. For all except the youngest employees, accumulated seniority and pension rights are a practical obstacle to a voluntary change of jobs. Some employees find themselves frozen in jobs they do not like. Some pioneering spirit has been lost. Candor also compels the conclusion that some workers have simply exchanged "fear of the boss" for "fear of the union boss." Despite the generally good record of American unions as respects democratic procedures, there are far too many undemocratic unions, either at the local union or at the international union level, or both. Some unions have exercised economic power so blindly and irresponsibly that uneconomic wages or ill-advised work restrictions have produced short-term gains followed by complete loss of jobs.

For ownership and management, the losses are not insignificant.

As just noted, some plants have been forced out of business by sheer union power. In some instances, unions have promoted and enforced inefficiency or have encroached too far into the necessary day-to-day responsibilities of management in operating a business.

Any attempt to appraise the over-all results of the last 30 years of unionization and collective bargaining by weighing the plus factors against the minus factors is a matter of opinion. The typical industrial worker has a clear "yes" answer in favor of organization. As I have indicated earlier, the typical experienced management representative will also probably conclude that the plus side weighs heaviest but the balance for him may be close. The typical well-informed citizen, not identified closely either with management or labor, has a judgment somewhere between these two positions. Net collective bargaining achievements of the past 30 years have been significant.

This is not to say that the next 30 years or even the next five years will follow the same trend. Serious questions are being raised about the future of collective bargaining and the source of these questions is not limited to those persons who would vote "no" about the past. Two paramount questions will be discussed here. They are:

1. What is to be done about strikes and lockouts?

2. Does collective bargaining, as it is practiced, give adequate recognition to the public interest?

In appraising the strike question, it is important to look first at accomplishments. Prior to the Wagner Act, many of the most bitter and costly strikes were so-called recognition strikes, fought solely over an employer's refusal to even recognize a union and to bargain with it. National Labor Relations Board procedures have now substantially eliminated such strikes. The ballot box has been substituted.

A second major form of strike is a strike about a grievance. An employee has been discharged. A new and better machine has been installed and employees are dissatisfied with the new and lower piece rate. A seniority rule is alleged to have been violated by the company. Only a few years ago, strikes over such issues were commonplace. For some 22 years, I was privileged to work full-time as a labor arbitrator under private and voluntary arrangements designed to substitute arbitration for strikes on such issues. In more than 90% of existing labor agreements, unions and companies have concluded that a strike or a lockout should not occur over a grievance. From the date when an agreement is signed until its expiration (usually one, two or three years later), these economic weapons have been buried at the price of willingness to agree in advance to the decision of an arbitrator

on most such issues that are not resolved directly without arbitration.

The type of strike or lockout remaining is the one that can occur at the expiration of an agreement. The current automobile situation is illustrative. In 1958, the three major companies signed agreements with the United Automobile Workers. These agreements expire on August 31 of this year. Representatives of the parties have been meeting in negotiations almost daily for several weeks. No agreements have been concluded. During the next 18 days, agreements can be reached or strikes or lockouts can occur after midnight on August 31, without violation of any laws or agreements between the parties.

For many years, the automobile companies have steadfastly refused to agree voluntarily to arbitrate the terms of a new contract, and the United Automobile Workers have most frequently taken the same position. It is quite certain that there will be no mutual agreement to arbitrate this year. Nor is there any expressed or implied power of government that could force the parties to the arbitration table. This automobile situation is not unusual. Arbitration of grievances is generally accepted; arbitration of new contract disputes is generally unacceptable.

Time does not permit extensive exploration of the reasons for this differential appraisal of arbitration by companies and

unions. A somewhat apt analogy is the distinction between the judicial and legislative functions of government. The parties are willing to let arbitrators interpret and apply the rules but are unwilling to let arbitrators legislate for them.

What powers and responsibilities does government have in the event of an automobile strike? At the risk of over-simplification, governmental action or inaction can be expressed in the following ways:

1. The government can do nothing and simply let a strike continue until settled.
2. Governmental mediation activities can occur.
3. At some point during a strike, the President might invoke the emergency disputes procedures of the Taft-Hartley Act, or he might conceivably initiate related executive action.

The first alternative is unlikely if a strike should be prolonged.

Governmental mediation may involve the Federal Mediation and Conciliation Service, the independent agency of which I happen to be the current Director. It's organization and functions should be summarized briefly.

The Federal Mediation and Conciliation Service includes

some 210 Mediators, scattered all across the country at strategic points and directed from seven regional offices and from the Washington office. We have responsibility for mediation of disputes in all industries except railroads and airlines. At any given moment of time during a peak load period, it is not unusual for one Mediator to have assigned to him some 20-odd separate cases where companies and unions are negotiating a contract or will be negotiating one, with strike deadlines up to 30 or more days ahead. Contrary to some popular opinion, a high percentage of negotiations are successful without outside help. In many of the 20-odd cases that may be on a Mediator's current docket, he will need to do nothing beyond a few telephone calls to ascertain that negotiations are proceeding normally. However, in those instances where trouble is expected or where a strike is in progress, it is the Mediator's responsibility to assist in every way possible.

Mediation differs from arbitration in that the Mediator has limited powers. He has no right or authority to make a decision that the parties must accept. His primary reliance is on the powers of persuasion. Persuasion is the principal ingredient even on the point of convincing the parties that the Mediator should intervene in an active manner.

If mediation should fail and if a strike should occur that

qualifies as an emergency strike under Taft-Hartley Act provisions, the President can invoke the procedures of that Act. In capsule form, those procedures involve securing a court injunction that will require termination of the strike for 80 days, a vote on the company's last offer 20 days before expiration of the injunction period and possible referral of the dispute to Congress if a strike recurs at the end of the injunction period. No important governmental action other than mediation is provided during the 80-day injunction.

It is apparent from this brief review that mediation in one form or another is the basic type of governmental intervention now available in any actual or threatened strike situation. Is collective bargaining plus mediation adequate to solve the strike problem?

This is a question that has been the subject of extensive discussion ever since 1947, and that is a currently live topic. It cannot be explored here adequately in the time available.

The essential ingredients of the dilemma are the imperative need to preserve and improve free collective bargaining and at the same time to protect the public against dire consequences of strikes that transcend the interests of the parties involved. To say that any one company and union can "fight it out until doomsday" without regard to consequences on others is to ignore

the fact that democratic society necessarily places some restraints on all segments of the economy else the society and its institutions may be destroyed by the irresponsible acts of a few. On the other hand, excessive governmental intervention will certainly destroy collective bargaining. If that unhappy day should occur, one of the major bulwarks of a free society will have fallen.

Within the area of this dilemma that is my own immediate responsibility, all of us within the Federal Mediation and Conciliation Service are working to strengthen and improve mediation, a process that we consider to be fully compatible with freedom. Moreover, it is a process that can be consistent with Quaker principles.

The second major question that must be answered if collective bargaining is to fulfill its true function is even more complex and difficult.

Except during wartime when wage and price stabilization has been a paramount consideration, most governmental interest in collective bargaining has been a "peace at any price" interest. That has been generally true even of mediation efforts. The Mediator has been interested primarily in a settlement and only interested indirectly in the quality or equity of the specific terms of settlement. The general public has usually been apathetic, either because of ignorance or because the cessation

of conflict is considered more important than any possible future consequences. We have generally acted on the assumption that the parties to a dispute are the only necessary guardians of the consequences of their own agreements.

In recent years, many of us have become less sanguine about the validity of this notion. To say that there is a rapidly increasing degree of interdependence within our own economy as well as between our economy and those of almost all other countries is only to state the obvious. A truly bad labor contract settlement in a major industry without a strike could be more harmful to the public interest than a sound settlement after a strike.

If this is a valid conclusion, the parties engaged in collective bargaining must add voluntarily a new "public interest" dimension to their already difficult task or, at some point, government must step in to protect the public interest.

The ramifications of this general aspect of the problem pose the same sort of dilemma that exists as respects strikes. Should we maintain complete freedom of action in the collective bargaining arena, believing it to be more important than possible serious consequences such as substantial inflation or inability to compete in world trade? Or should we consider economic consequences to be paramount and impose governmental controls on

collective bargaining that could weaken or even destroy that important institution? Is there any middle ground?

It should be obvious by this time that I have asked more questions than I have even attempted to answer. This is due in part to a desire to be provacative, even though these questions are not new to you. The most that I could hope to do would be to put them together in a reasonably cohesive way. The larger reason is that no one of us is wise enough to answer these questions in any definitive way.

One way to answer them is by experimentation, engaged in by knowledgeable and sincere men. One of the major virtues of collective bargaining is that it is flexible. One company and one union may try one approach. Another combination, under essentially similar circumstances, may try another. Difficult though it may be, errors can usually be corrected before they become fatal to the parties involved. In any event, an error made at one place need not be copied elsewhere.

At its best, collective bargaining is not unlike a Quaker business meeting. Starting from divergent points of view, earnest discussion and exchange gradually result in a concensus. It is even possible that "the whole can be greater than the sum of its parts." I am sure that some of our Federal Mediation and Conciliation Service Mediators could learn much by watching in action

some Meeting Clerks I have known. With all due respect, I am equally sure that some Clerks I have known could learn much by watching some of our Mediators in action.

In any event, it is clear that the challenges that lie ahead in the area of collective bargaining require the best conscientious effort and thought of all interests involved directly or indirectly--shareholders, management representatives, labor representatives, government representatives and interested citizens.