"Early Deadlines: An Emerging Strategy in Collective Bargaining"

An Address

by

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I'M DELIGHTED TO BE WITH YOU TODAY FOR A NUMBER OF REASONS. LAWYERS HAVE ALWAYS BEEN SOMETHING SPECIAL TO ME. I'M ALWAYS AMAZED AT THE ABILITY OF ATTORNEYS TO FIND AND DECIPHER THE APPROPRIATE STATUTE IN A CRISP AND ORDERLY MANNER.

I'M HOPING SOME OF YOUR ABILITY WILL RUB OFF ON ME. BECAUSE WE SHARE A COMMON GROUND. FOR ANY OF US TO BE EFFECTIVE, WE MUST BE ABLE TO FIND, KNOW AND UNDERSTAND THE ISSUES.

WE ARE DUTY BOUND--IN YOUR CASE TO YOUR CLIENT, IN MY CASE TO OUR GOVERNMENT--TO BRING DIFFERING PARTIES TO AN AGREEMENT THAT WILL BE SATISFACTORY TO BOTH. WHEN WE ARE EFFECTIVE, WE DO THIS IN A CLIMATE OF PEACE.

WE WORK HARD TO FIND PEACEFUL SOLUTIONS BECAUSE WE KNOW THAT FAILURE CAN BRING SEVERE DAMAGE NOT ONLY TO THE PARTIES INVOLVED, BUT TO INNOCENT BYSTANDERS AS WELL.

I'LL HAVE TO CONFESS THAT--HAVING BEEN NURTURED IN THE TRADE UNION FIELD AND IN THE SOUTH--THE GENERAL ATTITUDE I HEARD TOWARD LAWYERS YEARS AGO WAS NOT TOO FAR FROM THAT EXPRESSED BY SHAKESPEARE'S HENRY THE SIXTH WHEN HE SAID:

"THE FIRST THING WE DO, LET'S KILL ALL THE LAWYERS."

FORTUNATELY, TIMES AND ATTITUDES CHANGE.

I STILL REMEMBER A COUNTRY LAWYER FRIEND OF MINE IN GEORGIA WHO SOME YEARS BACK GOT A LETTER FROM AN ATTORNEY UP HERE IN THE NORTH.

"WHAT ARE THE CHANCES THERE FOR AN HONEST YOUNG LAWYER WHO IS A REPUBLICAN?" THE YANKEE WANTED TO KNOW.

"IF YOU'RE AN HONEST LAWYER," MY FRIEND REPLIED, "Y-U'LL HAVE ABSOLUTELY NO COMPETITION. AND IF YOU'RE A REPUBLICAN, THE GAME LAWS WILL PROTECT YOU."

YES, TIMES HAVE CHANGED. HONEST LAWYERS HAVE COMPETITION IN THE SOUTH TODAY--AND SOME OF THEM ARE EVEN REPUBLICANS.

IF WORKERS HAD THEIR SUSPICIONS ABOUT THE LAW AND LAWYERS IN THE FIRST 150 YEARS OF OUR REPUBLIC, THEY WERE JUSTIFIED. THE LAWS, AND THE BRUTAL METHODS OF ENFORCING THEM, WERE UNFAIR, UNJUST AND IN CONFLICT WITH THE GUIDING PRINCIPLES OF OUR DEMOCRACY.

BUT THAT TOO HAS CHANGED. IT BEGAN TO CHANGE ABOUT 50 YEARS AGO WHEN MANAGEMENT AND LABOR IN THE RAILROAD INDUSTRY--WITH THE HELP AND GUIDANCE OF THEIR LEGAL FORCES--COOPERATED IN THE DEVELOPMENT OF THE RAILWAY LABOR ACT.

THE RAILWAY LABOR ACT IS THE GRANDDADDY OF LEGITIMATE LABOR LAW IN AMERICA. IT PLOWED NEW GROUND IN DEALING WITH LABOR DISPUTES.

--IT ESTABLISHED MEDIATION AS A METHOD OF RESOLVING DISPUTES.

--IT SPECIFIED ARBITRATION AS THE MEANS OF SETTLING GRIEVANCES.

--IT BROUGHT TO US FACT FINDING AND THE USE OF EMERGENCY BOARD PROCEDURES.

--AND IT BROUGHT BOTH THE LEGISLATIVE AND THE EXECUTIVE BRANCHES OF THE FEDERAL GOVERNMENT INTO PLAY IN EFFORTS TO SIDETRACK CONFLICTS THAT COULD CAUSE EMERGENCIES.

FOR 20 YEARS THE RAILWAY LABOR ACT WORKED TO NEAR PERFECTION. IT WORKED BECAUSE THE PARTIES WANTED IT TO WORK.

AND EVEN TODAY, IT REMAINS A GOOD STARTING POINT IN ANY DISCUSSION OF LEGAL TECHNIQUES AVAILABLE TO REDUCE LABOR-MANAGEMENT TENSIONS.

FROM THIS FOUNDATION, WE HAVE SEEN THE DEVELOPMENT OF A BODY OF LABOR LAW THAT, I BELIEVE, PROVIDES US WITH THE OPPORTUNITY TO BRING A NEAR-PERMANENT STATE OF PEACE WITH JUSTICE IN LABOR-MANAGEMENT RELATIONS.

WE HAVE, OVER THE DECADES, SEEN AN END TO THE USE OF GOVERNMENT FORCE IN STRIKE SITUATIONS.

WE HAVE, MORE RECENTLY, SEEN A GRADUAL REDUCTION OF VIOLENT ACTIONS ON THE PICKET LINE, due to the no-strike, [illegible] grievance arbitration provisions common to most current contracts.

AND I AM FIRMLY CONVINCED THAT WE ARE TODAY WITNESSING A DEDICATED AND DETERMINED CAMPAIGN TO WITHHOLD THE STRIKE AND THE LOCKOUT AS ECONOMIC WEAPONS.

NOT THROUGH COMPULSION. BUT THROUGH PERSUASION.

BOTH LABOR AND MANAGEMENT ARE FINDING THAT THE PRICE THAT MUST BE PAID THROUGH AN INTERRUPTION OF SERVICE IS FAR TOO HIGH IN TODAY'S WORLD.

THEY ARE LEARNING THAT LOST AMERICAN PRODUCTION OPENS NEW MARKETS--AND EXPANDS OLD ONES--FOR FOREIGN-MADE GOODS IN THE UNITED STATES.

THIS REALITY HAS JARRED OUR INDUSTRIAL NEGOTIATORS ON BOTH SIDES OF THE TABLE. THEY ARE FIGHTING BACK BY REACHING MUTUALLY BENEFICIAL CONTRACTS WITHOUT RESORTING TO STRIKES AND LOCKOUTS.

HUNDREDS OF NEW CONTRACTS--MANY OF THEM AFFECTING THOUSANDS OF WORKERS--HAVE BEEN SETTLED IN PEACE THIS YEAR IN THE TEXTILE INDUSTRY.

OUR MARITIME INDUSTRY IS ON THE VERGE OF A COLLECTIVE BARGAINING STABILITY IT HAS NEVER BEFORE KNOWN. FOREIGN COMPETITION HAS PLAYED A MAJOR ROLE IN THIS NEWLY EMERGING LABOR-MANAGEMENT COOPERATION.

THE TENOR OF THE NEW ERA OF BROTHERHOOD AMONG THE SEAFARING UNIONS IS SUMMED UP IN THESE WORDS ISSUED BY THE PRESIDENT OF THE SEAFARERS INTERNATIONAL UNION, PAUL HALL.

"WE IN THE MARITIME UNIONS," HE SAID, "KNOW WE HAVE THE GUTS AND MUSCLE TO FIGHT IF WE HAVE TO. BUT MARITIME STRIKES HAVE OUTLIVED THEIR PURPOSES. ONE MARITIME STRIKE IS TOO MANY, FOR WHATEVER THE STATED REASON.

"IF THE MARITIME INDUSTRY IS TO BE REJUVENATED, THERE MUST BE NO STRIKES, NO WORK STOPPAGES, NO INTERFERENCE WITH THE FLOW OF SHIPS AND THEIR CARGO." (end quote)

THESE ARE STRONG WORDS. THEY HAVE AN ADDED SIGNIFICANCE BECAUSE THEY COME FROM A COLUMN WRITTEN BY MR. HALL FOR THE CONSUMPTION OF HIS MEMBERSHIP.

STRONG WORDS ARE BEING MATCHED BY STRONG ACTION.

THE WEST COAST LONGSHOREMEN--WHO ARE NOT DIRECTLY AFFECTED BY FOREIGN COMPETITION SINCE THEY UNLOAD AMERICAN AND FOREIGN-FLAG SHIPS ALIKE--THIS MONTH REACHED A NEW TWO-YEAR AGREEMENT WITH THE PACIFIC MARITIME ASSOCIATION. AND THEY REACHED IT THREE WEEKS BEFORE THEIR CONTRACT EXPIRED.

IN THE ELECTRICAL GOODS INDUSTRY, WHICH HAS BEEN HARD PRESSED BY FOREIGN IMPORTS, WE HAVE SEEN ~~ALL~~ SETTLEMENTS AT GENERAL ELECTRIC and Westinghouse.

THAT SETTLEMENT CAME NOT ONLY WITHOUT THE HISTORIC SABRE RATTLING AND DISASTEROUS STRIKE ACTION, IT CAME IN AN ATMOSPHERE OF HARMONY.

IT NOW APPEARS THAT WITH THE EXCEPTION OF A BRIEF WORK STOPPAGE AT GOODRICH--THE RUBBER INDUSTRY, TOO, WILL SETTLE ITS DISPUTES AND GUARANTEE THREE YEARS OF UNINTERRUPTED PRODUCTION.

THESE ARE MONUMENTAL ACHIEVEMENTS FOR US WHO ARE DEVOTED TO THE FREE COLLECTIVE BARGAINING SYSTEM. THIS IS ESPECIALLY TRUE WHEN CONSIDERED IN THE UNCERTAIN ECONOMIC CONDITIONS THAT PREVAILED WITH THE ENDING OF THE RATHER STRINGENT PHASE II CONTROLS.

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BUT WE CAN'T AFFORD TO FEEL THAT THE JOB IS DONE--THAT LABOR AND MANAGEMENT HAVE JOINED TOGETHER IN A UNIVERSAL LOVE FEAST.

NO ONE THAT I KNOW CAN ACCURATELY PREDICT WHAT WILL HAPPEN IN THE MAJOR BOUTS THAT REMAIN IN THE HEAVYWEIGHT DIVISION OF COLLECTIVE BARGAINING.

STILL ON THE DOCKET ARE NEGOTIATIONS IN THE AUTOMOBILE AND TRUCKING INDUSTRY, AND IN THE POSTAL SERVICE AND THE AIRLINES.

MILLIONS OF PEOPLE AND BILLIONS OF DOLLARS ARE ON THE LINE.

BUT I CAN SAY THAT IT IS FAR BETTER THAT THESE NEGOTIATIONS OPEN IN THE CURRENT CLIMATE OF MUTUAL RESPECT AND UNDERSTANDING BETWEEN THE PARTIES.

THAT HEALTHY CLIMATE IS DUE IN NO SMALL PART TO AN UNDERSTANDING REACHED BETWEEN TWO LABOR-MANAGEMENT GOLIATHS WHO WILL NOT EVEN BE AT THE BARGAINING TABLE THIS YEAR.

I'M REFERRING, OF COURSE, TO THE TRULY HISTORIC MOVES MADE BY THE UNITED STEELWORKERS OF AMERICA AND TEN OF OUR TOP STEEL-PRODUCING COMPANIES.

THEY HAVE AGREED THAT THEY WILL MAKE EVERY EFFORT TO RESOLVE THEIR DIFFERENCES THROUGH NEGOTIATIONS. BUT SHOULD THEY FALL SHORT, THEY WILL ACCEPT THE DECISION OF AN ARBITRATION PANEL.

IT SHOULD BE NOTED THAT THE STEEL INDUSTRY AND THE UNION THAT REPRESENTS ITS WORKERS HAVE NOT BEEN WARRING PARTIES. IT HAS BEEN 14 YEARS SINCE THERE HAS BEEN A STRIKE IN THIS BASIC INDUSTRY.

A PRESSURE EQUAL TO THAT OF A WORK STOPPAGE IS INVOLVED IN THEIR UNIQUE UNDERSTANDING.

THAT PRESSURE IS FOREIGN COMPETITION--COMPETITION SO TOUGH THAT EVEN THE ~~THREAT~~ possibility OF A STRIKE HAS CAUSED SEVERE ECONOMIC DAMAGE IN RECENT YEARS TO BOTH MANAGEMENT AND THE WORKERS.

THE LAST STRIKE IN THE STEEL INDUSTRY OCCURRED IN 1959--JUST AS FOREIGN STEEL PRODUCERS WERE BEGINNING TO MAKE INROADS IN THE AMERICAN MARKET. THAT STRIKE LASTED 116 GRUELLING DAYS. AND IT OPENED THE FLOODGATES TO A TIDAL WAVE OF FOREIGN STEEL THAT HAS GROWN SINCE.

BY 1971, STEEL IMPORTS AMOUNTED TO 18.3 MILLION TONS--A RECORD HIGH.

I. W. ABEL, PRESIDENT OF THE UNITED STEELWORKERS, HAS SAID THAT EACH MILLION TONS OF IMPORTED STEEL REPRESENTS 6,000 EXPORTED AMERICAN JOBS. AT THE 1971 RATE OF IMPORTS, HE ESTIMATES THAT 108,000 FULL-TIME JOB OPPORTUNITIES HAD BEEN LOST TO FOREIGN PRODUCERS.

BUT THAT WAS ONLY ONE OF THE PROBLEMS.

FOLLOWING THE 1959 STRIKE, THE INDUSTRY WAS DETERMINED NOT TO BE BURNED AGAIN. CONSEQUENTLY, LONG BEFORE EACH CONTRACT EXPIRED, THE INDUSTRY BUILT ENORMOUS STOCKPILES.

THIS WAS COSTLY. TO THE INDUSTRY, THE COST CAME IN OVERTIME, AND IT CAME LATER IN MAINTAINING ~~UNUSED~~ outmoded, inefficient FACILITIES--PLANTS AND MACHINERY THAT WERE FORCED INTO IDLENESS AS SUPPLIERS USED UP THE STOCKPILED STEEL.

TO THE UNION, THE COST CAME IN TENS OF THOUSANDS OF WORKERS BEING LAID OFF FOR WEEKS AND MONTHS FOLLOWING THE SETTLEMENT OF EACH NEW CONTRACT.

THE PUBLIC, TOO, SHARED IN THE LOSSES. STEEL PRICES REFLECTED THE COMPANY LOSSES. AND THE TAX COLLECTOR, THE MERCHANT, THE CHARITABLE ORGANIZATIONS AND THE UNEMPLOYMENT BENEFIT FUNDS FELT THE IMPACT OF THE IDLED WORKERS.

THESE ARE THE PRESSURES THAT CAUSED THE INDUSTRY AND THE UNION TO BEGIN, IN THE LATE 1960'S, TO WORK TOWARD THE EXPERIMENTAL NEGOTIATING AGREEMENT THAT WILL BE TESTED NEXT YEAR.

IT IS AN INTRICATE PLAN. AND I'LL NOT GO INTO ALL THE DETAILS WITH YOU NOW.

BUT A KEY FACTOR IN ITS EFFECTIVENESS INVOLVES TIME LIMITS--DEADLINES THAT MUST BE MET IF THE PARTIES ARE TO GAIN A FREELY BARGAINED SETTLEMENT WITHOUT THIRD-PARTY DICTATES.

FORMAL NEGOTIATIONS WILL OPEN ON FEBRUARY 1. BY APRIL 15, THE NEGOTIATORS WILL HAVE AGREED TO ALL ISSUES OR WILL HAVE DETERMINED WHICH ISSUES MUST GO TO ARBITRATION. THIS IS A CRUCIAL DATE. BECAUSE AT THIS TIME, THE PARTIES WILL BE FORCED TO DECIDE NOT ONLY WHICH ISSUES THEY CAN AGREE TO--BUT WHICH ISSUES THEY WILL EITHER ABANDON OR LEAVE TO THE DETERMINATION OF ARBITRATORS.

FIVE DAYS LATER, THE ARBITRATORS WILL RECEIVE ANY ISSUE THAT HAS NOT BEEN RESOLVED OR WITHDRAWN. THE ARBITRATORS WILL THEN HAVE 20 DAYS IN WHICH TO RENDER A DECISION.

TEN ADDITIONAL DAYS ARE ALLOWED FOR THE UNION AND MANAGEMENT TO AGREE ON CONTRACT LANGUAGE--AND IF THEY FAIL IN THIS, THE PANEL WILL MAKE THAT DECISION AS WELL.

I FIRMLY BELIEVE THAT THE PRESSURE OF BEING FORCED--BY THEIR OWN FREE WILL--TO SUBMIT ISSUES TO ARBITRATORS WILL RESULT IN A REASONABLE SETTLEMENT ARRIVED AT BY REASONABLE MEN.

THE PROSPECT OF UNCERTAIN RESULTS RENDERED BY ARBITRATORS SHOULD BECOME A COMPELLING INCENTIVE FOR THE PARTIES TO AGREE.

EARLY DEADLINES--BACKED BY TANGIBLE UNSAVORY ALTERNATIVES --IS A ROAD TO PEACEFUL BARGAINING THAT DESERVES FURTHER EXPLORATION.

IT IS IMAGINATIVE, AND IT JUST MIGHT WORK.

THE AGREEMENT REACHED EARLIER THIS MONTH BETWEEN GENERAL ELECTRIC AND THE UNIONS REPRESENTING ITS WORKERS SETS A 10-DAY STRIKE NOTICE AS A FORM OF EARLY DEADLINE STRATEGY.

I BELIEVE THAT EXPERIMENTS TOWARD THE DEVELOPMENT OF EARLY-WARNING DEVICES SUCH AS THESE PROVIDE VAST NEW OPPORTUNITIES FOR INDUSTRIAL RELATIONS PEACE.

IN LINE WITH PROMOTING EARLY BUFFERS IN COLLECTIVE BARGAINING, WE AT THE FEDERAL MEDIATION AND CONCILIATION SERVICE ARE WORKING TO BRING EARLIER UTILIZATION OF MEDIATION.

MEDIATION IS A DESIRABLE ALTERNATIVE. MEDIATORS HAVE NO ABSOLUTE POWERS. WE MUST DEPEND ON PERSUASION.

SOME CONSIDER THIS A WEAKNESS. BUT AS MANY OF YOU KNOW, IN THE INTIMATE WORLD OF COLLECTIVE BARGAINING IT IS A STRENGTH AS WELL.

THE FACT THAT WE CANNOT COMPEL . . . THAT WE MUST HONOR CONFIDENCES . . . THAT WE OFFER NO THREAT TO THE NEGOTIATING PARTIES . . . ALL OF THESE ARE ASSETS IN THE BATTLE FOR REASON OVER FORCE.

THIS YEAR ALONE, OUR FAMILY OF 250 MEDIATORS WILL BECOME INVOLVED IN ABOUT 20,000 DISPUTE CASES INVOLVING, BY CONSERVATIVE ESTIMATE, WELL OVER FIVE MILLION WORKERS IN BIG AND LITTLE SITUATIONS--IN EVERY VARIETY OF INDUSTRY AND COMMERCE.

IN 8,000 OF THESE CASES--MOSTLY THE TOUGH ONES--FEDERAL MEDIATORS WILL BE AT THE BARGAINING TABLE, MEETING PRIVATELY WITH THE PARTIES AND CARRYING OUT THEIR ROLE AS INDUSTRIAL PEACEMAKERS.

THIS IS A MASSIVE JOB. BUT I FEEL THAT WE HAVE A COMMITMENT TO DO MORE. WE HAVE A COMMITMENT TO FIND NEW AND SUPERIOR METHODS OF HARVESTING THE BENEFITS OF MEDIATION.

WE HAVE IN OUR ORGANIZATION A GREAT RESERVE FORCE OF EXPERIENCE, KNOWLEDGE AND SKILLS IN THE LABOR RELATIONS AREA.

WE INTEND TO SEE TO IT THAT THIS FORCE FOR INDUSTRIAL PEACE IS USED TO CAPACITY.

SO WE HAVE BEEN CALLING UPON UNIONS AND MANAGEMENTS TO USE MEDIATORS--TO MAKE IT A STANDARD POLICY TO "CALL THE MEDIATOR" BEFORE A STRIKE OR LOCKOUT IS SANCTIONED.

SOME INTERNATIONAL UNIONS NOW REQUIRE THAT OUR SERVICES BE USED BEFORE A STRIKE CAN BE APPROVED.

TODAY I WANT TO ENLIST YOU IN OUR CAMPAIGN TO MAKE MEDIATION THE FIRST STEP IN THE DEVELOPMENT OF EARLY WARNING SYSTEMS.

AS LABOR LAWYERS, YOU CARRY THE SAME DEEP COMMITMENT THAT WE AS MEDIATORS HAVE TOWARD MAKING THE FREE COLLECTIVE BARGAINING SYSTEM WORK. BECAUSE YOU KNOW, AS WE DO, THAT WHEN THE FREE COLLECTIVE BARGAINING SYSTEM WORKS WELL, EVERYONE PROFITS. THE INVESTOR, THE MANAGER, THE WORKER, THE COMMUNITY AND THE NATION--ALL OF US SHARE IN THE BENEFITS.

MEDIATION SERVES BEST WHEN IT IS UTILIZED EARLY . . . BEFORE THE SIDES HAVE BECOME POLARIZED . . . BEFORE ~~THE~~ BITTERNESS sets in and ~~HAS~~ BECOMES EXTREME . . . AND BEFORE THE PRESSURES HAVE MOUNTED TO THE POINT THAT ONLY A STRIKE WILL BRING RELIEF.

PERHAPS WE SHOULD REQUIRE MEDIATION PRIOR TO ANY STRIKE. THIS HAS BEEN A LEGAL REQUIREMENT FOR MANY YEARS IN THE RAILWAY LABOR ACT.

YOU ARE IN A KEY ROLE IN LABOR-MANAGEMENT RELATIONS. YOU ARE LISTENED TO. YOUR ADVICE COUNTS.

AND SO I ASK THAT YOU HELP US IN RAISING THE PRESTIGE AND RESPECT FOR THE MEDIATION FUNCTION--AT THE FEDERAL LEVEL, AT THE STATE LEVEL AND AT THE LOCAL LEVEL.

WHEN I BECAME FAMILIAR WITH THE WORKINGS OF THE MEDIATION PROCESS AND THE DELICATE BALANCE REQUIRED TO BE FAIR TO ALL SIDES, I WAS REMINDED OF THE REMARKS OF A COUNTRY JUDGE DOWN MY WAY.

HE HAD BEEN CHALLENGED BY A YOUNG LAWYER WHO FELT HIS CLIENT WAS GETTING LESS THAN AN EQUAL SHAKE AT THE BENCH.

"YOUNG MAN," SAID THE JUDGE, "I'LL HAVE YOU KNOW THAT THIS COURT IS NEITHER PARTIAL ON ONE HAND--NOR IMPARTIAL ON THE OTHER."

WELL, I CAN SAY THAT AS A MEDIATOR, I AM PARTIAL TO THE FREE COLLECTIVE BARGAINING SYSTEM--BECAUSE I KNOW IN MY OWN HEART THAT IT HAS HELPED TO MAKE AMERICA STRONG.

AND I AM IMPARTIAL IN PROMOTING ANY IDEA THAT WILL MAKE THIS UNIQUE SYSTEM--AND THIS MARVELOUS AND FREE LAND OF OURS--EVEN GREATER.