

**FEDERAL MEDIATION AND CONCILIATION SERVICE**

**"Preventive Mediation Revisited"**

**Address by**

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This is my third appearance at the Labor-Management Conference of the University of California; first in 1962, again in 1964, and now in 1966. So while the Conferences are annual with you, they have been biennial with me. You are "brutes for punishment" to have me participate in your programs so often. But it's a very real privilege to me.

Your conference subject is an appropriate one. Collective bargaining is changing. All of us in this business sense it. But we tend to be too close to the daily scene. We have some difficulty in backing away far enough to gain perspective.

We in the Federal Mediation and Conciliation Service are in a good position to piece together these changing trends. Our staff of some 260 field mediators is constantly on the firing line. A composite of mediator experiences in thousands of bargaining situations provides an opportunity to gauge the changing character of the labor relations picture.

Let me enumerate a few of the changes as I perceive them and then discuss each separately.

First, there is a steadily growing maturity and sense of responsibility on the part of both employers and labor organizations in their dealings.

Second, we are making progress at the bargaining table in accommodating to technological change.

Third, the bargaining issues are more difficult.

And fourth, increasing evidence of independence and unrest has developed within local union memberships, and among local union leaders as respects their internationals.

It is apparent that the first two trends lead in one direction--towards labor peace--and the last two point in the opposite direction--towards conflict.

The list could run a great deal longer. Not included, for example, is the renewed emphasis recently on larger wage increases coincident with greater prosperity, declining unemployment, advancing cost of living and rapidly rising profits.

I am sure that many in this audience will challenge my first point--that there is a steadily advancing maturity

and sense of responsibility on the part of both management and labor. Let me hasten to say that I do not equate maturity with senility as some critics have been prone to do. To use a chronological human scale, I am thinking of the maturity of man in the late 20's or early 30's.

It is easy to argue the negative. All of us have evidence of immaturity in some case or other and of excesses by both unions and employers. Yet I believe my impression of developing statesmanship and consideration of the public interest is a correct over-all appraisal.

We have minimized the grievance strike in favor of grievance procedures and grievance arbitration. The representation election has substantially displaced the recognition strike. Even in the continuing arena of contract renewal disputes, the strike record of the 60's--up to now--is impressive. Lost time due to strikes over the last six years has been consistently low. These last six years have been a period during which lost time has averaged only about one-half the comparable figures for any other six-year, post-war period.

It is quite possible that we are now entering a period of greater strike incidence. 1966 has been forecast by

some people as another year of labor peace. That type of forecast was based in large part on the fact that relatively few of the largest labor agreements expire this year. Our own privately expressed forecasts were not so optimistic. We in the FMCS maintain our own strike statistics--confined to cases in which our mediators are involved. Undoubtedly they are not quite as accurate as the Bureau of Labor Statistics data, but they are more current and they do represent some 80% of the total U. S. picture. With the effect of May 1 expirations now known, I can tell you that the number of strikes in effect at any one moment of time reached a new peak for the 1960's earlier this month. FMCS mediators were working in 254 different strikes. But, the total number of employees directly involved was about 100,000--far below the peak for the 1960's. I would now predict that the number of 1966 strikes will far exceed the numbers of any year in the first half of the decade. But because they will involve smaller average numbers of workers, I would guess that we will close out 1966 at about the same level of total effect on the economy (lost time in contrast with time worked) as in other recent years.

In any event, strike statistics are only one measure of maturity and responsibility. At any point in time, the strike incidence needs to be compared with the other causal factors that produce strikes--or the absence of strikes.

There is increasingly real acceptance of the bargaining process. Relatively few companies now seriously retain any fond notion that they can dispense with unions. The parties are learning to live and deal more effectively with each other all the time. This is evidenced in part in our experiences with non-crisis discussion procedures, about which I will have more to say later.

We are making really significant progress at the bargaining table in negotiating adjustments in manpower usage and work practices, frequently associated with automation and changing technology.

These are potentially explosive issues. On the one hand we have the understandable union desire and need to protect workers with job security safeguards. Countering this on the management side there is the equally understandable goal of employers to obtain the greatest possible measure of efficiency.

These problems are never easy. In a multitude of plants and in some entire industries, even a sincere attempt to negotiate solutions was long deferred. But in recent years, many unions and employers have been developing solutions that provide for substantial improvements in efficiency along with recognition of worker rights and interests.

Let me mention a few illustrations.

Less than a month ago, Boeing Company and the Machinists completed negotiation of an entirely new manpower control system. It replaced performance analysis which had been a major and increasingly virulent irritant to company-union relations for almost twenty years. The new system combines increased seniority rights for workers with adequate safeguards to preserve efficiency. This was a monumental task. It required months of concentrated work of many people on both sides of the table and no little amount of mediation effort.

Longshoremen and management here on the West Coast have negotiated meaningful arrangements that have encouraged mechanization and automation with compensating benefits to workers. Some progress in this direction has also been made on the docks in the East and Gulf Coasts.

A large number of plants in the oil refining and chemical industries have negotiated work practice changes that permit more efficient use of operating and maintenance employees-- again with recognition of the human equation.

Another example of adjusting work practices occurred at the Schenectady, New York, plant of the General Electric Company. A substantial revision of an outmoded incentive system was effectuated with transitional compensation to employees involved and a company commitment to modernize plant and maintain employment in a one-industry town.

A more recent example was the quietly negotiated agreement between Alcoa and the Steelworkers to save a large installation that is vital to the economic life of the New Kensington Pennsylvania area.

In many--but not all--of these examples cited, FMCS mediators were involved actively. There are many others not mentioned here only because of time limitations of this quick review. We can speak with authority and objectivity when we say that truly great accomplishments have been made in situations that almost defied solution.



These comments about the success of bargaining in meeting changing production methods and techniques lead to my third point--that the issues have become more complex. John Dunlop has developed this area earlier in this program. I will not belabor it here.

It is pertinent to note, however, that all three of the trends discussed up to this point emphasize the need for increased mediator knowledge, skill and courage.

The Service has adopted a somewhat more aggressive or assertive brand of mediation activity. We have found it is no longer enough, in some cases, for the mediator to act as the catalyst to generate a meeting of the minds unless the word catalyst is used in a broad way. The mediator must now be ready to provide valid and constructive suggestions, or even formal recommendations in exceptional cases, to stimulate a settlement. With the rising demand for military production, the Service has been required to give special attention and priority to disputes affecting defense plants.

These factors require extreme care and effort in selection and training of new mediators. Moreover, older mediators find that experience and skills that may have

sufficed ten or fifteen years ago must now be supplemented. Sincere efforts are needed to keep pace with and, in fact, to keep ahead of developments of the changing scene. Orientation and training programs for new men; seminars, workshops and other methods for revitalization of experienced men are important parts of our program. We are especially grateful for the fact that large numbers of the most competent labor and management practitioners are willing to devote substantial amounts of time and effort assisting us in these training devices.

As a very important aside, I want to take this opportunity to express publicly our great indebtedness to the twelve members of the National Labor-Management Panel. These are not "yes men"; they are not individuals who are generally favorable to Government participation in labor relations. They are realistic, hard-bitten, capable practitioners who are giving us most valuable advice as to the proper role of Government.

Another notable change on the bargaining scene in recent years has been the mounting incidence of rank-and-file rejections of tentative contract settlements. This is an

outgrowth of the rising feeling of democracy or unrest in union ranks referred to earlier.

There are probably many factors contributing to membership rejections of negotiated agreements. No doubt the so-called "Bill of Rights" of the Landrum-Griffin Act has stimulated more self-expression and activity on the part of union members. Often the membership has been misled as to the results that may realistically be expected to emerge from negotiations.

We also find that ratification meetings are frequently called too quickly after a tentative agreement is reached--without sufficient time to explain the terms or to explain why the settlement may have been the best obtainable. Also, union negotiators usually are too busy at the bargaining table to discover fully or to counter the disruptive work of dissident elements within their organization.

The lesson that rejection experiences have brought to many employers and unions is they must negotiate terms which they can reasonably expect will win ratification.

In my talk two years ago to this Conference I spoke of the preventive work of the Service and of our hopes that

we could encourage labor-management problem solution in an atmosphere substantially free of the tensions associated with deadline or crisis bargaining.

Consequently in inviting me to make this appearance, Lloyd Ulman suggested that some evaluation be made of the experience of the Service with non-crisis bargaining during the past two years. This explains the "Revisited" label attached to this speech.

We are making encouraging progress in this field. It is logical that parties adopt the preventive approach in view of the developing trends previously noted. If there is growing maturity in relations between employers and unions, if there is a disposition to negotiate viable arrangements to meet automation problems, if the bargaining issues have become increasingly difficult of solution, and if union members are displaying more concern with the content of contract agreements, then more calm and logical bargaining methods certainly seem to be the more intelligent course.

Our preventive caseload figures indicate the developing interest in non-crises bargaining. In fiscal 1962 we

counted 202 such cases. In fiscal 1964 the figure more than doubled to 478 cases. By May 1, 1966 the caseload figure was already up to 781 with two months remaining in the fiscal year.

Numbers alone do not measure progress. Other data indicate that more and more of our mediators are engaged in preventive work. They are devoting more time to each case. Whereas two years ago the mediator averaged four meetings with the parties on a preventive case, the meetings now average six per case.

These figures indicate a growing interest and acceptance of the idea of experimentation in non-crisis bargaining. Not all the efforts are successful. Some fail to get off the ground. Some succeed for a while, then are abandoned, only to be tried again another day. But we experience enough success to convince us in the Service that a new era of collective bargaining is emerging--an era that will place primary emphasis on careful and deliberate factual joint exploration of existing problems to supplement decision-making at deadline dates.

Let me illustrate with a somewhat random sampling of recent cases.

As a necessary part of the settlement of a serious strike at a key gunpowder plant operated by the Olin-Mathieson Chemical Corporation at East Alton, Illinois, the Service agreed to sponsor a four-week training program for 400 company supervisors. The need was to establish better in-plant labor relations during the life of the new contract. We received a letter the other day from the plant labor relations supervisor saying the training course was so well-received and worthwhile that the company followed up with another three-week course for the supervisors discussing plant rules, discipline policies, and contract interpretation.

In the Detroit area, a mediator introduced a new pre-negotiations technique aimed at avoiding negotiations down to the deadline. He simply set a fictitious target date for completing a new contract, giving the parties something to shoot at short of the crisis area. The plan worked, with the result an agreement was reached two full months ahead of the real contract expiration.

We are working with a few segments of the Electric Power Industry to help facilitate manpower requirements and to anticipate jurisdictional problems on hugh construction

projects at remote sites. In this connection a mediator established a joint committee at the site of a giant power plant in the Steubenville, Ohio, area, with the result that the committee has been able to substantially iron out difficulties as they arise.

In Central Iowa, a preventive mediation effort succeeded in the negotiation of a new contract between the Associated Sheet Metal Contractors and the Sheet Metal Workers International Union. The agreement was completed three months ahead of expiration of the prior contract, and it was the first five-year contract negotiated in the building trades in that area.

Two of our mediators at Buffalo, New York, have helped improve labor-management communications and understanding over a wide area of Western New York state. They established what has become probably the most active Industrial Relations Research Association Chapter in the country. The regular monthly meetings are well-attended, and draw leading union and management speakers. These same two mediators have just finished working with two Buffalo area universities in connection with successful seminars.

Provision for a preventive mediation program by the Service was a factor leading to settlement of an important recent aerospace settlement. This was a dispute between the Convair Division of the General Dynamics Corporation and the Machinists at Fort Worth, Texas. The plant is producing the variable wing jet fighter-bomber for the Armed Forces. What looked like a certain strike resulted instead in the successful negotiation of a five-year contract. The enthusiastic support of both sides for a preventive program to improve company-union relations during the life of the agreement is buttressed by specific contract language embracing the program.

We hope to expand our preventive activity into the newspaper field. Following assistance in settling a strike on Boston newspapers we have been invited to initiate a preventive program aimed at improving future relations.

After a strike last year at a major shipyard on the Gulf Coast, a joint committee was established to clear the air and establish future harmony. We had a letter a few weeks ago from the industrial relations manager of the shipyard, which said in part:



"We feel that these (monthly) meetings are having a very desirable effect in our over-all industrial relations program. Discussions are held, as far as possible, to general items affecting employees, working conditions, and the Company's operation rather than craft or individual grievances. As a result, several specific items have been resolved in a more constructive atmosphere than if allowed to develop to the grievance stage.

"Principally, we feel that the major effect has been in helping to establish a better working relationship with the unions. This has benefited us in our day-to-day dealings with their representatives."

This listing could go on for some time. Let me say only that the Service is very much encouraged with the increasing acceptance and usefulness of our preventive program. As of the first of this year we reorganized our National Office staff to concentrate responsibility and place further emphasis on preventive work. The Deputy Director of the Service, Bob Moore, now is in personal charge of this activity. We hope to stimulate thinking and experimentation with better and more effective ways of handling labor relations problems.

While seeking to expand our preventive activity we have not neglected our crisis or "firefighting" mediation job. The mission that Congress has given the Service is two-fold-- that is to "prevent or minimize interruptions of the free flow of commerce growing out of labor disputes." We still have plenty of crisis mediation in which we are "fighting the calendar" ahead of strike deadlines. This traditional role of the Service continues to be our major activity.

While I believe sincerely that there is a trend away from crisis bargaining toward a wide variety of forms of continuous or semi-continuous dialogue, there should be no impression left from this speech that crisis bargaining is likely to be eliminated. For all time into the foreseeable future, most bargaining will include important crisis or deadline aspects.

What can be and will be achieved is some substantial mitigation of the crisis element. Issues that are appropriate for deadline treatment will be handled that way in most instances. But issues that are not suited to crisis treatment can be met in better ways.

As a matter of fact, the two notions frequently coexist. For example, the earlier reference to the Boeing-IAM manpower control agreement was an instance of special continuous dialogue over a period of months but with a deadline to facilitate a conclusion.

As we look ahead, we in the Service welcome the opportunity to learn from you who represent unions and management as you experiment. When wanted and needed, we expect to assist, and hope to provide some leadership. Perhaps the most important aspects of the collective bargaining institution are its flexibility, its diversity, and the opportunity and need to innovate. It is an institution that is very much alive. Very substantial stakes are riding on the ability of all of us to keep the process viable.