# "Have Strikes Outlived Their Usefulness?"

Address by

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For someone in Government to address an industrial relations group on the subject of "Have Strikes Outlived Their Usefulness?" seems almost the height of folly. The expression "Fools rush in where angels fear to tread" may well describe my position. Parenthetically, I might add that in my years in labor relations, I have never been called an angel.

The industrial relations community has come to regard the right to strike as one of the most cherished freedoms in an economic democracy. For labor it was a right not easily won. The doctrine of "illegal conspiracy" had to be overturned; indiscriminate use of injunctions had to be eliminated. Finally, the right to organize and bargain collectively had to be firmly recognized. Progress on these issues was slow. It was not until 1935, with the passage of the Wagner Act, that collective bargaining, including the possibility of strikes and lockouts, was fully sanctioned by Government as national labor policy.

It seems ironic that in the short period of time since 1935 some thoughtful students of industrial relations are raising doubts about collective bargaining with particular reference to the use of the strike.

Since collective bargaining is still the cornerstone of our national labor policy, those of us who work in the area of industrial relations--as negotiators, as mediators, and as arbitrators--should appraise the importance of our work, not merely as resolvers of disputes, but as practitioners of democracy. The critics cannot be dismissed lightly. Collective bargaining is still on trial.

As we assess our experiences over the past twenty-five years, one question persistently recurs. Will the economic wastes engendered by long work stoppages, especially in major industries, create a public climate that could destroy or seriously weaken free collective bargaining? This question was asked by many during and after the 1959 steel strike. The tragedy of that strike is that almost nothing was really settled. The economic

settlement was not substantially different from what could have been achieved by reasonably effective collective bargaining without a strike, or at least after a short strike. The major issue of work rules was not resolved in any effective way. The issues in that strike became lost in a naked power struggle between approximate equals. The conflict was terminated mercifully before joint exhaustion reached the point of mutual collapse.

Our recent experience with the maritime industry has cast further doubt on whether the strike can operate effectively to achieve equitable solutions in that complex situation.

In an increasing number of instances, small and medium sized companies are experiencing long and costly strikes that become "lost strikes" for the union even to the extent of loss of representation rights. But in few of these cases does the company really "win" on any long-run basis.

The simple fact is that many labor-management problems of the present are not susceptible to "trial by combat." Such problems as dividing the fruits of our

increased productivity, minimizing the difficulties encountered in declining industries, and mitigating the hardships of general unemployment are frequently intensified rather than solved by prolonged strike action. Some of these problems cannot even be resolved fully within the framework of collective bargaining as we now know it. For these reasons, then, I think it is not unfitting that we should ask the question, "Have strikes outlived their usefulness?"

A considered analysis of this problem must recognize at the very outset that--

1. In the vast majority of cases parties have negotiated their agreements without the necessity of a strike.

2. Strikes and lockouts of limited duration continue to be very useful "tools of persuasion" in many cases. We are not yet sufficiently mature and sophisticated in collective bargaining to be able to assure the absence of strikes over new contracts in all cases if free collective bargaining is to persist.

3. In many areas of labor-management disputes we have already developed a workable set of alternatives to the strike as a mechanism for the resolution of labor disputes.

It is indeed unfortunate and perhaps a bit unfair that the problems between labor and management which are resolved through peaceful accommodation do not meet public attention. Thus, the public becomes acquainted not with our successes, but only with our failures. This naturally results in a biased point of view among those who get their information from the newspapers.

Recent studies, however, have indicated that there has been a pronounced decline in strike activity throughout the world, and that those strikes which do occur have been growing shorter in duration. In Northern Europe, for example, strikes occur so infrequently that they no longer play a major role in the conduct of industrial relations. The right to strike survives, but the parties seldom utilize this right in practice. Only in the United States and Canada can the strike be still regarded as an important element in collective bargaining.

If these facts be true, we might well ask ourselves some questions: Are we leading the world in labor-management freedom or lagging the world in labor-management responsibility? Or does the record indicate that we have been less fortunate than our friends in other democratic nations in developing satisfactory alternatives to the strike in the settlement of labor-management disputes?

It is becoming increasingly clear that the right to strike must be matched by responsible exercise of that right. Moreover, it seems to me that responsible exercise of the right to strike includes a continuing search for peaceful alternatives to strike action in the resolution of industrial disputes.

The heartening fact is that in many areas of dispute settlement we have developed highly satisfactory substitutes for strike action. Let us look for a moment at our accomplishments. Strikes over union recognition have been substantially eliminated through the certification procedures of the National Labor Relations Board.

The democratic process of the ballot box has been substituted for industrial warfare.

The use of a formal grievance procedure with arbitration as a terminal point has gained increasing favor as a substitute for strikes over contract interpretation. As you well know, the Federal Mediation and Conciliation Service maintains a roster of experienced arbitrators and furnishes panels of arbitrators from which the parties may choose. Requests for arbitration panels during fiscal year 1961 were 12% higher than in the previous year. Requests since July of this year are 16% above those for the corresponding months of 1960. We understand that the experience of the American Arbitration Association has been similar. The increase in requests for arbitration panels for ad hoc arbitrators, the increased use of the so-called permanent arbitrator and increasing selection of ad hoc arbitrators without the assistance of an appointing agency are encouraging indications that we are experiencing an even greater reliance on arbitration as a device for the resolution of grievance disputes.

Jurisdictional disputes--one of the thorniest problems in labor-management relations--have shown themselves susceptible to peaceful resolution through voluntary settlement machinery within the union organization itself. Within the scope of its authority, such agencies as the National Joint Board of the Building and Construction Trades Department of the AFL-CIO have done an outstanding job in this field. The AFL-CIO is continuing to study the feasibility of extending jurisdictional dispute machinery beyond its existing scope.

Notwithstanding these very real achievements in developing substitutes for strike action in the resolution of labor disputes, the critical area lies in disputes over contract negotiation or renegotiation. It is here that our efforts should be focused if we are to reduce the major impact of work stoppages.

Some unions and companies have given support to voluntary arbitration of contract disputes. However, the extension of this policy to all major industries at this time or in the near future is highly doubtful. New contract arbitration for other industries less directly

affected by the public interest can develop only gradually and voluntarily and, in particular, only after arbitration as a profession has exhibited even greater competence than has been shown to date.

In certain industries, such as the garment trades, a practice has developed of union bargaining with manufacturers' associations. Sometimes, this becomes a forum for the discussion of joint problems extending beyond agreement on labor contract terms. It has resulted in a relatively high degree of industrial peace. This type of relationship, however, is less likely to be utilized in our major mass production industries.

A few large enterprises, such as Kaiser in steel and Armour in meatpacking, are currectly experimenting with private mediation machinery for the reduction of industrial disputes. Conceivably private mediation could expand as private arbitration has increased since World War II. At its current stage of development and with its rather limited use at the present time, private mediation provides no general solution to the problem of disputes over contract negotiation.

Without denying the very real achievements by the parties--in voluntary arbitration, in association bargaining, and in private mediation--the primary agencies for the resolution of contract disputes are the Federal Mediation and Conciliation Service and related state and local agencies. During fiscal 1961 the Federal Mediation and Conciliation Service was actively involved in over 6200 cases involving more than 5-3/4 million employees. This workload was carried out by a staff of approximately 200 mediators scattered across the country and directed from seven regional offices and from the Washington office.

Although I am proud of the efforts of our Service, sober reflection forces me to ask the question, "Is collective bargaining plus mediation adequate to solve the strike problem?" If not, what form should our national labor policy take? The answers to these questions are critical--not only from the standpoint of labor-management relations, but from the broader aspects of our democratic processes.

Perhaps a brief review of our national policy on labor disputes might help to put the problem in a proper perspective. The philosophy underlying the Wagner Act was essentially that the right to organize and bargain collectively was the key to labor peace. Most industrial disputes at that time were expressions of non-union employees for the right to be heard through authorized representatives in matters of wages and working conditions.

The fact that little attention was paid to the so-called "national emergency" dispute in 1935 is understandable. Business was operating at reduced capacity. Unions were small and relatively weak. Unemployment was greater than it is today. Therefore, few companies, few unions, or few combinations of a company and a union were in so strong a position that substantial disservice to the public interest could occur before a strike would be terminated. The market effectively policed the collective bargaining process within the limits of reasonable restraint.

The development of an increasing interest in labor peace was precipitated by our defense build-up and military requirements during World War II. Work stoppages were a luxury we could not afford. We relied in large measure upon the patriotic motives of our workers under a "no-strike, no-lockout pledge." Such reliance was not misplaced. Patriotism alone, however, does not solve industrial disputes, and machinery was developed to aid in their resolution. At that time we relied upon mediation and War Labor Board directives as the principal means of effectuating a policy of labor peace. Some of the normal ingredients of free collective bargaining were given up voluntarily as a requirement of the war effort.

The Taft-Hartley Act made mediation the cornerstone of our Government's policy towards the resolution of labor disputes. It created the Federal Mediation and Conciliation Service as an independent agency responsible to the President. It gave the Service primary mediation responsibility in all industries except the railroads and airlines. Mindful by this time of the impact of

critical work stoppages upon the economy, Congress provided for special procedures in "national emergency disputes." Although these provide for "boards of inquiry" and temporary injunctions, no important governmental action other than mediation is provided during the 80-day injunction period.

Recent criticism of labor-management relations and frequent work stoppages on our missile sites has resulted in a new experiment under Executive Order 10946, signed by President Kennedy on May 26, 1961. The program has four basic ingredients:

1. A no-strike, no-lockout pledge from companies and unions working on missile sites.

2. The creation of a tripartite Missile Sites Labor Commission of which I happen to serve as vice-chairman.

3. The use of stepped-up mediation activity on missile sites under the continued assignment of a Federal Mediation and Conciliation Service Mediator.

4. The creation of local Missile Site Labor Relations Committees.

This Missile Sites Labor Commission program relies primarily on the parties' own voluntary dispute machinery. Its results to date are extremely encouraging with work stoppages reduced to a fraction of previous experience. The implications are far-reaching. First, that union and management responsibility, in the last analysis, is the basic ingredient of labor peace in a democracy. Second, that when called upon to face up to their responsibilities, both labor and management have responded in gratifying fashion. Third, mediation activity, intelligently expanded in scope and intensified in degree, can effectively reduce the frequency of work stoppages. Finally, the Commission's reserve power to decide issues by directives has not yet had to be used in enough cases to impair collective bargaining seriously.

I am aware that in Canada the procedures for the so-called "national emergency dispute" go beyond those in the United States. Primarily under Provincial

auspices public recommendations can be made. Indeed, at the present time, we in the United States are examining the feasibility of utilizing similar procedures under limited circumstances.

There are many devices that can be used by the parties themselves to lessen the likelihood of a serious strike. Three such devices or policies may be noted briefly.

One can be called the "flexible strike deadline" approach. Rigidity of a prefixed strike deadline ignores the fact that it is frequently impossible to predict with accuracy the time that will be required to complete an agreement despite good faith bargaining. To engage in a strike simply because inadequate time was allowed for good faith bargaining just doesn't "make sense."

A second and closely related approach is to start serious bargaining early with a calculated sizeable margin for time error.

A third method is to deliberately utilize the grievance procedure and/or special committees throughout

the life of the contract in a sincere effort to settle most issues when and as they arise. Such an approach presents the possibility of minimizing the number and importance of issues that must be resolved in contract negotiations.

The problem ahead is not an easy one. We are engaged in a struggle for survival. We are faced with difficult economic issues at home. Meeting these tasks will put considerable strains on the collective bargaining process. If in attempting to meet these critical issues we sacrifice the very democratic processes we are struggling to preserve, we shall have gained very little. In short, the dilemma is one of integrating our national goals and objectives into an essentially private decision-making process. The dilemma must be resolved in such manner that our goals are achieved without diluting the democratic process by which we achieve them. This is the challenge for collective bargaining in the months ahead.

I, for one, believe that mediation can be effective in preventing the type of strike which endangers the

collective bargaining process. In order to accomplish this the mediation process itself is undergoing change. More inventive and aggressive mediation tactics are required with vigorous deflation of extreme positions and non-public recommendations for settlement. Mediation activities have been expanded to the diagnosis and discussion of labor problems at times other than contract expiration. Mediation efforts are being doubled and redoubled so that we are certain that all possible avenues of agreement have been carefully examined. We feel that such efforts are accomplishing much in reducing the frequency of critical strikes, and yet are carried out within the framework of voluntarism and free collective bargaining.

I think it is fair to conclude that while the right to strike is basic to a free labor economy, over the years it has become a less frequent device for the resolution of labor disputes. This has come about principally because labor and management have become mature and imaginative enough to assign the strike a subordinate role--

voluntarily. In many industries it still remains a useful tool for the resolution of disputes. In those industries, however, where the wastes engendered by a strike far outweigh its value as a tool of convincement, we must continually evaluate the possibility of alternative methods for securing agreement.

Those of us who are working in this critical area today are convinced of the importance of maintaining a maximum of freedom in the conduct of collective bargaining. We are even more convinced, however, that the preservation of this freedom, in the last analysis, shall depend on our responsible use of it.