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*Federal Mediation and Conciliation Service*

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## MINIMIZING LABOR DISPUTES: PROCESSING GRIEVANCES, CONCILIATION AND MEDIATION

WILLIAM F. WHITE†

The service that I represent, namely the Federal Mediation & Conciliation Service, is very much interested in Minimizing Labor Disputes, Processing Grievances and Conciliation and Mediation. I think you will agree with me that this is a rather broad subject. Minimizing labor disputes involves procedures and problems that arise in the negotiating of contracts, handling of grievances and establishing effective labor-management relations, and can include anything from an economic issue to a petty grievance. I can cite to you as examples: cost items and economic issues in a situation where the relationship between the parties is very good but the parties find themselves apart on a strictly impersonal business basis; non-cost issues such as seniority, union security or grievance procedure where the parties find themselves apart on company or union policy to the extent of endangering their relationship; or possibly grievances, including discharges. For instance, there have been times when stoppages have occurred over the discharge of one or just a few people, or when there has been a grievance over individual job rates. The attitudes assumed in each instance reflect considerably on the final outcome. Coming into a conference where either or both parties have a chip on their shoulders hinders good thinking in bargaining across the conference table and causes a waste of valuable time. There are times when labor comes into a conference and immediately threatens a strike, or, when management takes the immediate position that they will lock up the plant and throw the key away. These, as a rule, are only idle threats and only result in antagonistic attitudes being established. Bluffing in labor disputes is somewhat like bluffing in a poker game, for sooner or later someone will call your bluff and then it might become not only embarrassing, but also expensive. Too often personalities are injected into the conference. This does not help, but rather delays the finding of a solution to the problem at hand.

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Contract negotiations should be limited to the immediate problem at hand. In a majority of instances labor contracts are negotiated for a period of one year, so why not discuss only what has occurred during the previous contract period rather than dig into the deep dark past of several years and waste time arguing about something that has already been adjusted. If the matter had not been adjusted, it was undoubtedly due to someone being lax in his duties; or, possibly, the matter lacked enough importance for either party to make an issue.

I have jotted down a few habits that I am afraid labor and management negotiators sometimes are found guilty of which do not make for good relationships in negotiations, nor result in a good practical contract:—

1. Sitting in a joint conference and saying “No,” just arbitrarily, to every request or demand that is presented by the other party without regard to the logic of the request or demand.

That demand or request must have had considerable human interest or it wouldn't have been presented and it might be important to both parties.

2. Wasting useful minutes and hours in joint conference needling each other about situations or difficulties that may have occurred years before. In other words, unnecessary oratory.

That is water over the dam, so why not forget about it.

3. Drafting clauses of the contract with a hidden meaning in order to leave a loop-hole to jump through at a later date, if later it is found that the clause is not too beneficial to one party or the other.

That is evidence of bad faith in bargaining and two can always play at that game; so nobody benefits.

4. Drafting clauses and conditions of the contract that result in personal gain rather than in benefit to the people being represented.

After all, management representatives act for their stockholders and union representatives act for their members. Therefore, personal desires should be forgotten.

5. Lack of the use of good, everyday, common-sense English in writing contracts so that everyone can understand the meaning of the contract.

Each party should have a clear understanding of his duties under the contract, which will eliminate possible grievances or the necessity of calling in a third person to interpret your own wording.

There are many others, but these are the most common of the ones that we, as conciliators, come in contact with. Do not strive too hard to write a perfect contract, but spend more time and energy in writing a practical, workable contract. If you are under the impression that you are going to draft a contract that will completely cure all the ills, past, present and future, you had better lower your sights somewhat and try for something that you can actually accomplish. Too often parties make the mistake when writing a first contract if they try to cover everything that might occur during the contract period. This attitude is due to a certain newness of the negotiators in writing a contract for the first time, and perhaps to a certain element of suspicion of each other. It might be better if the first contract is not too rigid, but more flexible. Use the first contract period for the purpose of getting acquainted and showing each other how well you can get along. The relationship experienced by labor and management during the first contract period will mean considerable in later negotiations. Just use a little salesmanship on each other and keep your "product" above par.

Some companies give each employee a copy of the company's annual report showing sales, expenses, costs of labor, materials, repairs, profits or loses, dividends, if any, etc., written in a way that anyone can understand. In this way, the employee has a fairly good idea of the financial condition of the company long before contract negotiations begin. When contract time finally arrives, everyone has some idea as to whether there are any more "apples in the barrel" to talk about. As a rule, financial statements are not too confidential and are available through some source or another, so why not release one to the employee that is drafted in simplified, understandable arithmetic? Both companies and unions might be surprised to know just how much each knows about the other's business and daily affairs, so you had just as well quit playing at "blind man's bluff," and put your cards on the table in the form of accurate information.

After you have completed your contract, make every effort to abide by it. After all, it is a contract and imposes certain duties and responsibilities. It might not be the best contract in the world, and you may not have secured everything that you desired; but you did accept it, thereby making you a party to it. So be man enough to abide by it. A contract, in one sense, can

be just a piece of paper. You can engrave it, emboss it, sign it or place it in a gold frame and hang it over your bed, but if it is not entered into in good faith with a definite desire to abide by it, it is not worth the paper it is written upon.

A contract should contain a good, practical grievance procedure. Too many steps in a grievance procedure only delay the actual settling of the grievance instead of expediting it. Grievances should be handled as quickly as possible to avoid endangering a good relationship or seriously affecting production. They have to be settled in some way, so why try to by-pass them by continuous delays. Of course, before a grievance is presented by either party it should already have been properly analyzed by the person selected to present it, to determine whether it is actually a grievance or just a misunderstanding that could be handled without resorting to the grievance procedure. A large majority of contracts provide for arbitration as the final step in the grievance procedure. This is undoubtedly a good practice, if not abused. There are times when it is misused. Sometimes it is used as a source of finding an easy way out to avoid assuming a certain amount of responsibility. Maybe a union representative is reluctant to tell a member that his grievance is not justified, or an employer is reluctant to tell a foreman that he is wrong, so they let an arbitrator do the job for them. That is just a case of "buck-passing" and is neither practical nor good business. Every effort should be made to settle a grievance in direct negotiation. Only after all efforts have been exhausted in direct negotiations and a definite impasse has been reached, has the proper time arrived to submit the matter to arbitration. If it finally becomes necessary to submit the matter to arbitration, and the arbitrator renders his decision, you must be big enough to accept it and work under it regardless of how you feel regarding it.

You can undoubtedly reduce the number of grievances if you make every effort to get better acquainted with each other. You cannot become acquainted with each other's problems if you remain aloof from each other until such time as a dispute develops. Why not become better acquainted before a dispute develops? Too often a situation arises that might later develop into a grievance, but either one or the other party treats it as trivial and says to himself that he will let it ride until contract

time and then take care of it. Or he might think he will wait to see whether it will finally develop into something serious before he bothers with it. That attitude is too much like trying to "cover the well after the child has drowned" and is the lazy man's approach to a problem. Please do not feel that I am endeavoring to imply that every little situation should require a formal conference, but, as a rule, it should at least warrant some investigation. I do not believe the average person waits until he is down sick in bed before he consults his physician about his health. If that were the case there would be more seriously ill people and the death rate would be considerably higher than it is. If management finds that a certain situation is developing in the plant that might later result in something serious, it is management's duty to contact the union representative and talk it over with him before it really becomes a grievance. Also, if a union representative finds that the union has a troublesome member in the plant who is making it difficult to maintain harmonious relations, I think it is his duty to take the matter up with management in order to avoid later serious difficulty. Or a case might arise where a machine is not operating properly and is affecting an employee's earnings. It should be the duty of the union representative to take such a matter up immediately with the proper parties so that the difficulty does not spread throughout the department. However, do not resort to petty gripes just for the sake of trying to impress one another.

There are several methods that may be utilized to create a better relationship. One that is used to good advantage is the establishment of Joint Plant Committee meetings. This is an excellent means of developing good intra-plant relations through the inauguration of regular meetings between the management committee and the union committee. Such meetings will give each a better understanding of the contract and of the other's problems, aims and plans. Full explanation and understanding may head off many potential grievances. Also, Foremen-Shop Steward meetings are often extremely helpful. Meetings of these kinds, held during peaceful periods, assist greatly in eliminating any element of suspicion that each may have of the other. A few years ago a large manufacturing company found that it was having considerable difficulty due to reduced production,

and the quality of its product was becoming inferior, resulting in "come-backs" from its customers. After giving the matter some consideration and investigation, the company decided that it had better lay the matter before its supervisors and the shop stewards. A meeting of the supervisors was called first and the difficulty explained. After the situation was explained, the company gave each supervisor a pad of paper and a pencil and assigned ihm to a separate room. Each was told to write down what he thought was wrong with the plant operations and methods and also to write down his ideas for correcting the difficulties. The following night the shop stewards were called in and put through the same procedure. Both groups had been instructed to turn in their reports upon completion, and were cautioned against comparing notes with each other. These reports were in turn given to a disinterested committee to analyze, who, in turn, submitted a formal report of its findings to the company. When the final report had been returned to the company by the disinterested committee, it was found that in a majority of instances both the supervisors' and shop stewards' answers were very much the same. The company used this report as a basis for making certain corrections and changes in the plant's methods, and found later that it was very much to its advantage in eliminating considerable of its difficulties. That is just one piece of evidence of what can be accomplished through good labor-management relations and cooperation.

Now I would like to speak briefly about mediation and conciliation. Mediation is not a kind of law-enforcement, but is a supplement to free collective bargaining. The role of a mediator or conciliator is not to snatch anybody's chestnuts from the fire, nor to give aid or comfort to one party to a labor dispute, nor to relieve anybody of responsibility. His function is, rather, to grease the wheels of collective bargaining, to help the parties settle their own differences. He is only an honest broker who gives the parties to a dispute the aid of a more objective and disinterested point of view than they themselves might have, in the heat of discussion. He carries no bag of tricks, nor pulls any rabbits out of a hat; but he might pull a rabbit out of your hat that you originally placed in there and were too stubborn, or reluctant, or unable for some reason, to pull out yourself. The confidence of both parties is the mediator's stock in trade. If

he loses the confidence of one party, he is of no use to either of them. When he is suspected of being unduly friendly to management, labor representatives will not listen to him; when he is suspected of being unduly favorable to unions, management representatives will not listen to him. In short, he must be a professional; like a doctor or a clergyman. He can only be of value to the parties when he serves the public exclusively and with unswerving devotion.

These basic principles are founded on our years of practical experience in mediation and conciliation. It may be of interest to you, therefore, to know something of our background and history, and our present methods of operation.

The Federal Mediation & Conciliation Service was established on August 22, 1947, in accordance with the Labor-Management Relations Act of 1947, to replace the U. S. Conciliation Service which was originally established under the Organic Act, which founded the U. S. Department of Labor, in the year 1913. All of the functions of the U. S. Conciliation Service, as well as its personnel, were transferred to this new independent agency. The Service consists of a National Office and a Director located in Washington, D. C. Regional Offices are located in Boston, New York City, Philadelphia, Washington, D. C., Atlanta, Detroit, Cleveland, Chicago, St. Louis, Houston, San Francisco and Seattle. There are also a number of Field Offices located in some of the larger cities of the United States. There are approximately 200 Commissioners working in the field.

It is the duty of the Service, in order to prevent or minimize interruptions of the free flow of substantial commerce growing out of labor disputes, to assist parties in labor disputes, in industries affecting commerce, to settle such disputes through conciliation and mediation. While its activities are confined to industries affecting interstate commerce it further avoids mediating disputes which have only a minor effect on interstate commerce, if state or other conciliation services are available to the parties.

The Service is available in the settlement of grievance disputes only as a last resort and in exceptional cases. It is not the desire of the Service to intervene in situations where the parties are making progress through direct negotiations, but only in situations where an impasse has been reached, and the



parties have exhausted all their own efforts. Neither do we desire to participate in situations where the parties do not want our assistance for some reason or other.

There are several ways by which the Service enters a situation:—

1. Through the filing of an LMRA notice. The Labor-Management Relations Act requires that in the event one of the parties to a contract desires to reopen or negotiate a new contract, he must notify the other party in writing at least 60 days prior to the expiration of the existing contract. At least 30 days prior to such expiration the parties must notify the Federal Mediation & Conciliation Service if they have not already completed such negotiations.
2. Through a direct request from either party to a dispute, or possibly from a public official.
3. Through its own motion, due to the dispute having a direct effect on the welfare of the community as a whole.

A commissioner is assigned in each instance to make an initial investigation after which a determination is made as to whether the Service enters the situation. If the Service enters the case, the commissioner contacts the parties and offers his assistance. If his assistance is desired, he will work with the parties through joint and separate conferences until such time as a conclusion of the dispute has been reached.

The over-all philosophy of the Service is the belief that labor and management should learn to work and live together in peace; that they should undertake to develop procedures that will result in the prevention of serious disputes; that when differences do arise they should make every reasonable effort to adjust them without the necessity of Government intervention; that the Service should intervene only when it appears that the parties have exhausted all means of settlement and that assistance is required. The Service stands ready at all times to assist labor and management in bringing about closer cooperation and the establishment of harmonious relationships between them.

A commissioner's job is not just limited to assisting in the settlement of strikes and disputes. He is also available for consultation. Quite often, labor and management representatives call upon commissioners for advice with regard to establishing a better labor-management relationship within a plant. In some

instances he is contacted with regard to future contract negotiations, such as the proper wording of certain clauses, etc. There are many other reasons why he might be contacted. Sometimes he is able to give advice that helps to eliminate possible friction when the parties finally get into contract or grievance discussions. If you need him, call him. That is part of his job.

That, gentlemen, is briefly the organization and function of the Federal Mediation and Conciliation Service—your Service.

I believe the record will show that there are not a large number of stoppages in effect in the nation as a whole, and that we, in this area, have had comparatively few in the past several months. True, there has been considerable publicity regarding a certain few stoppages that causes the average layman to think the entire nation is in a state of turmoil. However, those of us that delve into such matters usually find that, as a whole, they are not as numerous nor as serious as indicated. I have heard several reasons given as to why there are now less stoppages and disputes. Frankly, I think the reason is that labor and industry representatives are gradually getting a better understanding of each other's problems, and are showing more of a desire to work together to reach such an understanding. After all, labor and industry need each other, and without the one there would be little need for the other.

I believe that there is no basic conflict between workers and employer. Both seek continued prosperity and a continuously high standard of living for all Americans. I do not wish to imply that real differences do not exist between them. These differences are not, however, fundamental. They merely represent different paths to the same common goal of all Americans. If this is so, we have but to find the means of resolving these differences in a mutually satisfactory manner. The key to the satisfactory resolution of differences between the worker and employer lies in practicing free collective bargaining. To practice free collective bargaining requires two important things from labor and management. First, it requires that they have an understanding of each other's problems and attitudes. Secondly, there must be the determination to find the mutually satisfactory agreement to all differences without recourse to open conflict.

Now, gentlemen, I have tried to give you a few suggestions as to how I believe labor disputes could be minimized. I hope

you do not feel that I am attempting to imitate Polyanna and lead you to believe that a few magic words will settle all your troubles. That is definitely not my purpose. I certainly do not want you to feel that my suggestions will establish a Utopia as far as labor-management disputes are concerned, as such a condition is remote. However, I do say that the establishment of better human relations between labor and management will go far toward reducing labor disputes in the industrial world.