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Facilitating Conflict Resolution in Union-Management Relations: A Guide for Neutrals

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Facilitating Conflict Resolution in Union-Management Relations: A Guide for Neutrals

Abstract

Over fifty years ago George Taylor, one of the most highly respected labor-management neutrals of his time, called for third parties to take on what he termed "a mantle of responsibility for labor-management relations." Today, wide ranges of practitioners are assuming this responsibility. They are playing a variety of internal and external roles, as labor arbitrators, mediators, consultants, facilitators, dispute system designers, leaders serving on joint committees, and countless others. These individuals strive to rise above the partisan pressures that are found in any union-management relationship by helping to resolve disputes, foster problem solving, and build new institutional relations. In doing so, they are helping the institution of collective bargaining adapt in ways necessary for it to continue to be a key societal element into the next century.

As dispute resolution professionals, we need to understand the range of practices now found in different relationships, the types of roles neutrals might play, and the principles that should guide neutrals as they carry out these roles. The purpose of this report, therefore, is to outline principles for SPIDR members, other neutrals, and the parties who utilize the services of third party neutrals in contemporary labor-management relations. Specifically, we have three target audiences in mind: labor relations neutrals, steeped in the institutional nuances of industrial relations (primarily arbitrators and mediators), who are being challenged to help parties adapt to new circumstances; third-party neutrals experienced in settings outside of labor relations who are or will be working with parties in unionized settings; internal facilitator and change agents (from labor or management) who are helping to solve problems and resolve disputes in the workplace.

Some points in this report may be completely obvious to one part of the target audience but an essential caution to another. Some of the recommendations will be controversial since they reflect an activist view of third-party roles. Importantly, this is not an overall guide to best practice for labor-management relations; instead, it is a guide to the role of dispute resolution professionals in the labor-management context. We hope that it stimulates further constructive dialogue in the profession.

Keywords

ICR, dispute, resolution, SPIDR, conflict, management, practitioners, guidelines, union, neutral, guide, management

Comments

A Report Prepared for the ADR in the Organized Workforce task force of the Society of Professionals in Dispute Resolution.

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Facilitating Conflict Resolution *in* Union- Management Relations

A Guide for Neutrals

Richard Chaykowski, Joel Cutcher-Gershenfeld,
Thomas A. Kochan, *and* Christina Sickles Merchant

for the
ADR in the Organized Workforce
task force of the
Society of Professionals in Dispute Resolution

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Facilitating Conflict Resolution in Union-Management Relations

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Preface

ADR in the Workplace is an initiative of the Committee on Law and Public Policy of the Society of Professionals in Dispute Resolution (SPIDR). The purpose of the initiative is to describe the processes, practices, and outcomes of existing and emerging dispute resolution activities in the workplace. Begun in 1996 under the leadership of SPIDR presidents Christina Sickles Merchant and S. Glenn Sigurdson, the work of the initiative has been organized into three tracks: Track I, ADR in the Employment Sector; Track II, ADR in the Organized Workforce; and Track III, International Structures and the Role of Workplace ADR Globally. The goal of the initiative, overall and within each track, is to foster better-informed consumers and more skilled providers of workplace ADR services.

Track I, co-chaired by Ann A. Gosline of Gosline, Reitman, & Ainsworth Dispute Resolution and Lamont Stallworth of the Institute of Industrial Relations, Loyola University, focused initially on the work of agencies charged with enforcing workplace rights. Working through a series of drafts that were circulated and commented on by a broad cross-section of the dispute resolution community, including representatives of the United States Equal Employment Opportunity Commission and other U.S. and Canadian enforcement agencies, the Track I committee completed its final report in late 1997. Entitled *Guidelines for Voluntary Mediation Programs Instituted by Agencies Charged with Enforcing Workplace Rights*, the report was formally adopted by the SPIDR Board of Directors on January 24, 1998. At this same meeting, the board also approved a motion supporting the National Academy of Arbitrators' opposition to agreements imposing arbitration of statutory rights as a condition of employment. Track I is presently at work on guidelines and principles of good practice for internal employer dispute resolution systems for statutory employment disputes. That report will be completed sometime in the year 2000.

The first draft of Track II's *Facilitating Conflict Resolution in Union-Management Relations: A Guide for Neutrals* was produced by a small working group consisting of Thomas A. Kochan, MIT Sloan School of Management; Christina Sickles Merchant, dispute resolution consultant; Joel Cutcher-Gershenfeld, MIT and Babson College; and Richard Chaykowski, Queen's University School of Industrial Relations. As with the Track I report, the Track II report has been broadly circulated and revised, based on feedback from interested parties, including sessions at the SPIDR annual meeting in Portland, Oregon, in October 1998.

The work of Tracks II and III has been conducted in collaboration with other institutions. The Hewlett Foundation, the Massachusetts Institute of Technology, and Cornell University's Institute on Conflict Resolution provided funding for the work of Track II. The Program on Negotiation at Harvard Law School provided financial support for Track III's study of the role of North American dispute resolvers in conflict resolution and dispute systems design throughout the world. As of this writing, Track III's study is not yet complete.

All those who have worked on this project are grateful to Cornell University and Queen's University for supporting the publication of this report. Because the theory and practice of interest-based processes in union-management negotiations and problem solving are evolving at a rapid rate, the authors consider this a preliminary report. It is our hope that publishing the report will make it more widely available and useful to those who are working in this challenging area of practice. It is also our hope that the report will spark further debate and continued refinement of the ideas and principles we have attempted to describe.

To encourage a continuing dialogue, SPIDR has established a threaded conversation on the internet. Those wishing to participate in this conversation or simply to read what others are saying can tune in at <http://www.spidr.org>.

Homer C. La Rue, President, SPIDR
Nancy E. Peace, Initiative Co-Chair
Gerald W. Cormick, Initiative Co-Chair

Introduction

Over fifty years ago George Taylor, one of the most highly respected labor-management neutrals of his time, called for third parties to take on what he termed “a mantle of responsibility for labor-management relations.” Today, wide ranges of practitioners are assuming this responsibility. They are playing a variety of internal and external roles, as labor arbitrators, mediators, consultants, facilitators, dispute system designers, leaders serving on joint committees, and countless others. These individuals strive to rise above the partisan pressures that are found in any union-management relationship by helping to resolve disputes, foster problem solving, and build new institutional relations. In doing so, they are helping the institution of collective bargaining adapt in ways necessary for it to continue to be a key societal element into the next century.

As dispute resolution professionals, we need to understand the range of practices now found in different relationships, the types of roles neutrals might play, and the principles that should guide neutrals as they carry out these roles. The purpose of this report, therefore, is to outline principles for SPIDR members, other neutrals, and the parties who utilize the services of third-

party neutrals in contemporary labor-management relations.

Specifically, we have three target audiences in mind:

- labor relations neutrals, steeped in the institutional nuances of industrial relations (primarily arbitrators and mediators), who are being challenged to help parties adapt to new circumstances;

- third-party neutrals experienced in settings outside of labor relations who are or will be working with parties in unionized settings;

- internal facilitators and change agents (from labor or management) who are helping to solve problems and resolve disputes in the workplace.

Some points in this report may be completely obvious to one part of the target audience but an essential caution to another. Some of the recommendations will be controversial since they reflect an activist view of third-party roles. Importantly, this is not an overall guide to best practice for labor-management relations; instead, it is a guide to the role of dispute resolution professionals in the labor-management context. We hope that it stimulates further constructive dialogue in the profession.

1

Starting Premises: The Role of Collective Bargaining in Society

Work is fundamental to the development of our individual and social identities, our psychological well-being, and our economic welfare. Since work serves multiple objectives and interests in society, conflict is an expected part of workplace relationships and experiences. How we manage competing workplace interests and change, and the resulting conflict, is therefore essential to the development of a progressive, civil society and a strong economy. Over most of the

course of this century, collective bargaining has served as an important institution for resolving conflicts and promoting problem solving in employment relationships. By giving voice to worker and employer concerns and improving workplace democracy, collective bargaining also serves an important democratic function in our communities and, increasingly, in transnational institutions and forums.

Traditionally, collective bargaining ad-

dressed worker and employer concerns in periodic negotiations in which the parties were motivated to reach an agreement by the threat of a strike or lockout. Agreements were then implemented and administered with the help of a grievance procedure culminating in arbitration before mutually acceptable neutrals. Labor-management committees and other cooperative forums were encouraged and arose in various industries and companies in response to specific problems or wartime crises.

But the laws passed decades ago to regulate collective bargaining viewed labor-management relations as essentially an arm's-length adversarial relationship. Management retained the right to make strategic decisions about the direction of the enterprise and to manage the business. In return, the union gained the right to negotiate the terms and conditions of employ-

ment (e.g., wages, hours) and the effects of managerial decisions on conditions of employment, as well as the option to file a grievance if individual or collective rights covered in the contract were violated by a managerial action.

But, in the context of the emerging new economy, this traditional model is no longer adequate for meeting the needs of today's workforce or maintaining a competitive enterprise and economy at high standards of living. Indeed, as the traditional model declines throughout the U.S. economy and in several key Canadian sectors, it is at risk of losing its economic and political power in our societies. Increasingly, parties choose alternative forms of dispute resolution, including mediation, adjudication, and a variety of hybrid processes (mediation/arbitration or early neutral evaluation, fact-finding, ombudsmen). In addition, the perceived value

Box 1

ADR in the U.S. Federal Workplace

U.S. federal labor relations from 1962 to 1993 tended to be highly adversarial and litigious. This state of labor relations was illustrated most dramatically by the PATCO strike (1981), in which over 10,000 air traffic controllers were fired by President Reagan for engaging in a work stoppage over failed contract negotiations.

The U.S. federal service's labor relations program has multiple third-party policies and structures for resolving different disputes. These include the Federal Labor Relations Authority (FLRA) for representation questions, unfair labor practices, negotiability disputes, and review of arbitration awards; the Federal Service Impasses Panel (FSIP) for settlement of negotiation impasses; the Merit Systems Protection Board (MSPB) for appeal of adverse actions; the Equal Employment Opportunity Commission (EEOC) for discrimination complaints; and the Office of Special Counsel (OSC) for investigation and resolution of whistleblower complaints.

Against this backdrop, the National Performance Review, led

by Vice President Gore, identified the area of human resource management, and labor relations in particular, as needing a variety of interventions to play its part in "creating a government that works better and costs less." As one of the products of the National Performance Review, President Clinton signed Executive Order 12871, entitled "Labor-Management Partnerships," in October 1993. The order mandated all executive agency leadership to achieve a "true" partnership with their counterpart labor organizations as a precondition for "reinventing" the federal workplace. Moreover, the parties were instructed to use "alternative dispute resolution processes such as consensual decision making and Interest-Based Negotiations" as the preferred methods for arriving at redesigned and restructured workplaces. These efforts are now producing:

- extensive training of supervisors and employees in the nature and use of alternative dispute resolution (ADR) processes to prevent and resolve

disputes;

- high levels of experimentation with ADR processes for resolving outstanding disputes between parties, from simple unfair labor practices to complex, mature litigation;
- joint leadership and support by top labor and management in facilitating the change toward more constructive dispute resolution dealings at the local level;
- multiple efforts by the parties to redesign dispute resolution systems—process, capability, and structure—within whole agencies in order to achieve greater institutionalization of ADR; and
- extensive measurement initiatives to track the results of ADR with respect to direct and indirect costs, impact on relationships, durability of resolutions achieved, and satisfaction with outcomes.

The challenge for third-party neutrals is to keep up with this rapid pace of change and to add value to it as it evolves.

Source: Christina S. Merchant

of collective bargaining as a public good has continued to erode, and many employers continue to view collective bargaining with considerable hostility.

Yet, collective bargaining and union-management relations are as important today as ever to a healthy economy and a strong democracy. The need to achieve more competitive workplaces together with an increasing standard of living merely increases the importance of innovative, cooperative labor-management relations and effective conflict resolution. Collective bargaining, therefore, needs to be adapted and improved, not abandoned.

The challenges facing this institution vary across sectors of the economy. In the private sector, there are deeply embedded collective bargaining relationships and traditional approaches to conflict resolution. These are being challenged by organizational restructuring, the entrance of new firms in existing markets, and new work systems. Beyond the structural changes, deep cultural changes are taking place, driven by shifting demographics and changing assumptions about work, employment, and change itself. In this context, conflict resolution and problem-solving processes are highly valued by some as a necessary part of the solution and feared by others as a threat to established institutions.

In the public sector, the pressures for privatization, accountability, and reorganization create similar dynamics, with additional political overtones. Here, as well as in the service sector, the changing role of service delivery processes adds a further dynamic to dispute resolution systems. Expectations are high, and those to whom the service is provided are more assertive about expressing them. This pressure, added to the high visibility of government and some other service providers, puts an additional burden on

dispute resolution systems. Regardless of the sector or context, the public is increasingly concerned over the costs of conflict and the quality of relationships.

In traditional collective bargaining, interests are negotiated periodically and codified in a written agreement. Disputes are legitimate only when posed as questions of individual or group rights specified in the contract. Formal procedures with well-defined steps and roles for participants are established to resolve these disputes. The resulting system is a culture of rights and obligations that fosters stability and uniformity. In contrast, today many workers and employers want processes for dispute resolution and problem solving that are flexible, informal, timely, adaptable, affordable, and customized to their specific circumstances.

Many parties are responding to the dictates of the new economy and redesigning their bargaining relationships and conflict resolution processes. (See Box 1 for an example from the U.S. federal sector.) The scope, character, and role of these processes are undergoing profound change. We believe this change must not only continue but accelerate.

Effective neutrals (to paraphrase George Taylor) need to take on the mantle of encouraging, supporting, and facilitating constructive change and innovation in collective bargaining. If we are successful, we will help the parties realize a new vision for collective bargaining suited to the needs of today's workforce and economy. If we fail, the next generation may lose the economic and social benefits of this key institution.

Our task, therefore, is to identify the new conflict resolution principles that are emerging, encourage their use by dispute resolution professionals, and give them broad visibility in the labor relations community.

2

Contemporary Practices

This section describes the wide array of structures, forums, and processes that have been introduced to improve labor-management relationships and performance (see Table 1). We are not advocating these practices for all union-man-

agement relationships. Instead, we present them as innovations that have demonstrated their value for some parties and therefore are commonly being experimented with in different settings. Sometimes they are successful, sometimes not.

Table 1
Innovations in Dispute Resolution

Levels of activity	Selected innovations	Illustrative roles
Workplace operations	Employee involvement groups, workplace teams, other joint activities	Group/team facilitator
	New work system design and operations	Project facilitators, consultants, trainers
	Workplace dispute resolution systems	Arbitrators
	Grievance mediation	Mediators, design consultants
Collective bargaining	Mediation of collective bargaining disputes; labor-management committees/councils; interest-based negotiations	Mediators, facilitators, consultants, trainers
Strategic level	Union-management partnerships	Consultants, mediators, trainers, facilitators
	Employee ownership	Design consultants
Community/sectoral/societal level	Sectoral/community labor-management committees/councils; multi-party commissions/forums; private discussion forums and professional associations; policy hearings and legislative processes	Convenors/facilitators, staff experts, members, witnesses

Our task is not to endorse any of them but to summarize the conditions that, according to our research, will give these practices the best chance of succeeding. Our special focus lies in identifying principles for neutrals to consider if they are asked to participate in these activities.

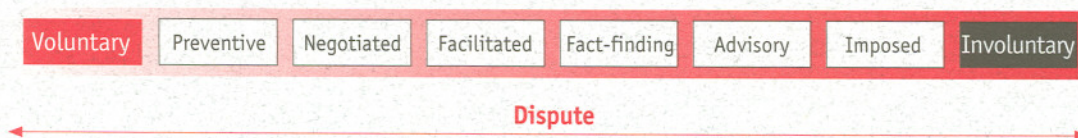
In today's workplace, different people prefer different ways to resolve problems and disputes. In recent years dispute resolution theory has reflected this development by emphasizing the importance of having a range of choices that can be tailored to the specific situation. The dispute resolution spectrum shown in Figure 1 presents a sample of approaches and methods ranging from prevention and negotiation,

through facilitation and fact-finding, to advisory and imposed approaches.

The key distinction suggested by this spectrum concerns the degree of control retained by disputants over their own dispute. A long-standing proposition in dispute resolution theory is that disputes are best resolved closest to the source. In fact, dramatic changes now taking place in systems actually do place responsibility and authority in the hands of disputants. The parties are seeking a broader range of options in matching disputes to their needs and preferences. These choices matter in that different processes will generate different substantive and relationship outcomes—all of which involve new or chang-

Figure 1

The Dispute Resolution Spectrum



Source: Adapted from Costantino and Merchant, 1996.

Table 2
Traditional and Emerging Third-Party Roles in Union-Management Relations

Role	Functions
Arbitrator	Hears and evaluates evidence in a dispute and issues a binding decision or award.
Mediator	Assists parties' negotiations, both substantively and procedurally, so that they may reach a settlement that both voluntarily accept.
Facilitator	Manages group processes in ways that help the parties interact effectively and achieve high-quality outcomes.
Consultant	Expert hired by parties to help design and implement innovations and changes.
Trainer	Expert who teaches skills and encourages learning that the parties can then apply on their own.
System designer	Expert who helps parties build and implement a comprehensive conflict resolution system with multiple options for resolving disputes.

ing third-party roles.

The roles of arbitrators and mediators are well established in labor-management relations, and these roles continue to be central to the processes of industrial jurisprudence and dispute resolution. In recent years, however, additional roles have emerged involving internal and external forms of facilitation, implementation, training, and informal mediation. Our focus is primarily on these newer roles, though we will also address some of the ways that arbitrators and mediators are being asked to step outside their traditional roles with respect to labor-management relations. Some of the traditional and emerging roles are defined in Table 2. It should

be recognized, however, that these roles are often combined in creative and new ways, and thus few professionals adhere strictly to the generic definitions listed here. Indeed, as Dunlop and Zack (1997) note, some neutrals have always seen their role as that of an "impartial chairman" in the George Taylor mold and therefore have mixed arbitration, mediation, and other processes as the situation required. What these experts stress is that neutrals need to understand how their roles change as they move across or combine different processes (see Box 2). They must avoid confusing the parties or creating additional conflicts by inappropriately "transporting assumptions" from one role into another.

In the sections that follow we outline the changing nature, scope, and domains of contemporary labor-management relations and some of the new roles third parties are being called upon to play as labor and management adapt within and across these domains. We begin at the workplace and move upward through the negotiations process to strategic-level interactions. Then we look beyond individual bargaining relationships to community, sectoral, and national-level interactions needed to support workplace changes and innovations.

In each section, we first place the developments and processes in their historical context, then outline principles or guides for action. A summary of all guiding principles is included at the end of this report.

Box 2

Mixing Multiple Roles/Functions as a Neutral

Managing the changes in our roles as we move across or combine different dispute resolution processes is a major professional challenge we face as neutrals today. This becomes particularly sensitive and subtle where there is a commingling of roles such as mediation and arbitration that involves a change in the neutral's responsibility for outcomes.

As a neutral moves closer to ownership or a stake in the ownership of the outcome (as is the case in moving from mediation to arbitration) or is perceived to be moving in that direction, it becomes more

likely that the parties will start negotiating with the neutral as opposed to each other. If this happens, it compromises the neutral's ability to assist the parties in negotiating with each other. The parties must therefore be careful to assess what they need from a neutral in a given setting, and neutrals should be careful to understand and communicate their role and the expectations and responsibilities of each party as they move across these boundaries.

Source: Correspondence to the Task Force from Glenn Sigurdson, SPIDR past president

3

Workplace Operations

Facilitating Employee Involvement and Workplace Innovations

Employee involvement (EI) or quality of working life (QWL) programs were among the earliest forms of direct employee participation to gain widespread attention in the late 1970s and early 1980s. The 1973 national agreements between the United Auto Workers (UAW) and each of the big three U.S. automobile companies contained language encouraging limited use of “off-line” problem-solving groups in plants on a voluntary basis as long as they did not in any way change the language or rights covered in the collective bargaining agreement. A national committee was to be established at each company to oversee and monitor the evolution of these QWL or EI groups. Later, in the 1980s and 1990s, well-known examples of various employee involvement and joint union-management initiatives were introduced, either informally or through collective bargaining, across a variety of industries such as textiles, mining, autos, steel, and telecommunications (including Xerox, AT&T, and Bell Canada). In unionized settings, some programs have involved employees and not the union, while others have been joint union-management committees (e.g., labor-management participation teams in the U.S. steel industry; process reengineering teams at Sask-Tel in telecommunications).

Early on, failure rates were high as the parties recognized that these efforts could not be completely separated from collective bargaining issues or institutional arrangements. Programs that succeeded in addressing this issue when it arose, such as at Xerox, expanded their scope and experienced greater success and longevity. Those that didn't atrophy or were abandoned because of conflicts with existing collective bargaining, union, or employer structures or oppositional forces.

One problem with these early efforts was that they were often viewed by union leaders as anti-union. They were seen as union avoidance tactics or as instruments for driving a wedge be-

tween members and elected officers and slowly undermining the authority of the union. This view was understandable since many non-union companies had been innovators in the use of employee involvement, particularly in greenfield (new) operations that companies were determined to open and maintain on a non-union basis. This legacy has haunted efforts to introduce many workplace innovations in labor-management relations.

In addition to employee involvement problem-solving groups, other joint workplace innovations have focused on issues of health and safety, training, and apprenticeships. Safety and health committees both have a long history and are the most common form of joint labor-management committee found in industry today. More recently, joint activities have been established around issues of quality, employment security, employee benefits, and other matters of mutual interest. As well, various forms of “on-line” employee involvement have emerged in the form of production teams, cross-functional teams, service delivery teams, and other jointly governed group activities. These joint initiatives evolve and change over time, with third-party roles changing as well.

The primary third-party role associated with off-line participation activities is that of the group and/or project facilitator.

1. *The facilitator must be acceptable to both union and management leaders and to other key stakeholders.*

It is union and management leaders who select and sanction individuals in these roles. Facilitators may be internal to the union or management organization or they may be selected as external facilitators. It is critical that facilitators develop and maintain the trust, respect, and support of both labor and management representatives and their constituents/superiors. Sometimes a facilitator must be ready to step aside if the necessary trust and confidence cannot be achieved or are lost with one or more of the parties.

In one case, the initial consultant brought in by the company was unable to develop the

necessary rapport with the union leaders while his younger assistant was able to do so. The result: the company and union hired the younger consultant who subsequently helped them develop and sustain a successful partnership for nearly twenty years. In turn, the more senior consultant went on to facilitate many other joint union-management change efforts. Thus, as in traditional mediation, a facilitator in these cases must recognize that personal relationships matter a great deal; matches are situation-specific and sometimes require one to step aside if the match is not developing for one reason or another.

2. The facilitator must ensure that the joint activities have appropriate, formal sanction via the collective bargaining agreement or other joint policy documents.

Most successful union-management efforts have language in their collective agreements or in letters/memoranda of agreement that provide an initial degree of sanction and support for group participation activities. Often, the experience with employee involvement and related joint activities will lead to periodic adjustments and expansion of the sanctioning language. A facilitator, then, not only works within a contractual mandate but also identifies areas where that mandate needs to be adjusted. This, in turn, requires sensitivity and understanding of how the bargaining process operates within both labor and management organizations.

One of the clearest implications of the early EI experiences is that these processes cannot, over time, stay limited to issues not covered by collective agreements. Workers and line managers naturally want to discuss the issues that are most important to them and to their operations. Otherwise, problems cannot be solved and root cause analyses are stymied. Therefore, the parties need to work out ways to address these issues with respect to the procedures for modifying collective agreements. Box 3 contains excerpts from contract language sanctioning one of the better-known examples of how this can be done: the joint-study procedures governing the potential outsourcing of work in the Xerox-ACTWU (now Xerox-UNITE) bargaining unit.

3. Facilitators need to ensure active joint "ownership" of the process.

A facilitator should not be working with participation groups in a setting where either the union or management leadership is in an inactive or secondary role. Where only one of these parties is driving the process, there is a great risk

that constructive group efforts will be undercut by the lack of checks and balances at higher levels, or that necessary political support and/or financial resources will be cut off the first time the program experiences a crisis of one form or another.

More specifically, unions can take, or be viewed by management as taking, one of three roles in employee involvement: (1) active opposition, (2) neutrality—not directly involved but allowing it to happen, or (3) joint partnership. We believe it is not only inappropriate but unworkable for neutrals to attempt to facilitate employee involvement efforts in unionized settings without the active involvement of the union. Where the union is opposed we urge professionals to work with labor and employer representatives to overcome the opposition. Failure to do so implies that the employee participation process will become or is already embroiled in a larger labor-management conflict that must be resolved before it is feasible for a neutral third party to facilitate the employee involvement effort. If the conflict is not resolved, the third party should not serve as a facilitator. Where the union takes a neutral but uninvolved role, the process is also at risk. While this may not be grounds for withdrawing or declining to serve, it is a warning sign that the process is unstable and efforts need to be made to include the union leadership more fully in the process. Joint oversight is essential to ensure that the process has joint ownership and commitments to see it through pivotal events and challenges.

4. Facilitators need to ensure that mechanisms for dispute resolution and other forms of due process are built into any participative initiative.

Inevitably, worker participation efforts encounter barriers or internal conflicts that cannot be resolved at the level of daily operations. Many can be resolved within the group. In some cases, a form of appeal is required—up a management or union hierarchy, or to various joint steering committees or other forums. A facilitator who works with groups in the absence of such a procedure must create the process ad hoc when such difficulties are encountered, which is substantially more difficult than doing so in advance.

Facilitating the Design and Operations of New Work Systems

Team-based work systems and other workplace redesign initiatives are increasingly com-

Sanctioning Language in a Collective Bargaining Agreement

A Case Example on Subcontracting: Agreement between Xerox Corporation and Local 14a, The Xerographic Division, ACTWU 1994-2001. Excerpts from Article II, Section B: Subcontracting

When the Company determines through [cost] analyses that work of satisfactory quality cannot be produced cost-competitively by the bargaining unit, the Company shall:

- a. Notify the Union accordingly and share the results of such analysis with the Union.
- b. Establish, in conjunction with the Union, appropriate Employee Involvement Study Teams.

Within a reasonable period of time, the appropriate Employee Involvement Study Team shall:

- a. Review the relevant cost-comparison analysis.
- b. Investigate alternative production methods, processes, equipment, materials, and any other factors which affect internal production costs.
- c. Advise the Company and the Union that the Team is unable to formulate proposals which will render the product studied cost-competitive with external sources, or
- d. Recommend to the Company and the Union those methods and processes, changes in the terms and conditions of employment, and capital investments, which could render the production studied competitive with the

cost of obtaining such work from external sources.

When the Company and the Union agree that the Team's recommendations will make the production studied cost-competitive with external sources, the Company and the Union shall have the authority to negotiate, within a reasonable period of time, an agreement that effectuates such recommendations.

The Company may subcontract work when:

- a. An Employee Involvement Study Team advises the Company and the Union that it is unable to formulate proposals which will render the production studied cost-competitive with external sources, or
- b. The Company and the Union are unable to negotiate an agreement that effectuates the recommendations of a Team, or
- c. An Employee Involvement Study Team's advice or recommendations have not been submitted, or the Company-Union negotiations have not been concluded, within a reasonable period of time.

Source: 1994-2001 Collective Bargaining Agreement between Xerox Corporation and Local 14A Amalgamated Clothing and Textile Workers Union

mon in workplaces today. They represent a direct contrast to the traditional work systems with individual job descriptions, clearly defined responsibilities and boundaries, seniority rules governing promotion and transfer, and pay rates associated with individual jobs. The movement to new work systems touches the heart of collective agreements and must be sanctioned in the agreement. All the principles listed above therefore apply to these systems, along with an additional set of considerations. We distinguish between introduction of team systems into greenfield (new) and brownfield (existing) sites.

5. *It is inappropriate for third-party neutrals to assist employers in setting up greenfield sites intended in part or primarily to avoid unionization. Doing so destroys the facilitator's neutrality and acceptability in labor-management relations.*

The design of a new or greenfield opera-

tion offers important opportunities to consider new, state-of-the-art approaches to organization design and employment relations. Because such decisions involve sizable investments, some employers tend to keep plans for new facilities confidential. Some employers have also used these opportunities to create and maintain the new sites as non-union facilities. This, however, furthers worker and union distrust of new work systems and undermines constructive labor-management relations. External consultants often play an important role in exploring and benchmarking the range of options. Therefore, neutral dispute resolution professionals should not participate in the designing of new facilities so as to avoid unionization.

Yet experience shows that joint exploration of options for organizing work and employment relations systems can lead to significant innovation and broad buy-in to new approaches.

A key task of neutrals in this activity is to ensure that all the critical stakeholders are informed and participate in the design effort.

6. *Facilitators need to assist the parties in reaching agreements governing the process for deciding whether or not workers in a new facility will be represented by the union.*

The process for deciding whether or not a union will represent workers in a new facility is a necessary and critical component of the plan for the new facility. The facilitator should ensure that the parties address this issue as part of the plan and reach agreement on how representational issues are to be decided.

In some cases recognition is done voluntarily as part of the joint study process. In others union and employer representatives agree on rules of conduct for allowing workers in the new facility to decide whether or not to be represented if an organizing effort is begun. While the approach may vary, it is critical for agreement on this issue to be reached as part of the design process. One of the best-known examples of this type of joint study process, the "Committee of 99" that designed the partnership between the Saturn Corporation and the United Auto Workers (UAW), is described in Box 4.

Introducing team-based or other alternative work systems into an existing facility is a more incremental process, requiring attention to

the norms and equities that the incumbent workforce has built up over the years while allowing new arrangements to emerge and flourish. These norms and equities need to be addressed as part of the change process.

7. *To effectively facilitate the implementation of new work systems in an existing operation, a facilitator must legitimize and help address the formal and informal rights and expectations among stakeholders who benefit and who are at risk as a result of proposed changes.*

A third-party professional has a duty to ensure dialogue regarding stakeholder interests that might not be represented "at the table." Third parties also have a duty to integrate new activities with existing institutional arrangements, including the industrial relations culture and climate, the nature of the union-management relationship itself, and the nature of the collective bargaining/agreement.

Workplace Dispute Resolution

There are well-established principles and guidelines for individuals serving in dispute resolution roles. There are also lively and important debates under way about how third parties are managing boundaries with respect to statutory employment rights. Our focus here is not on these matters; they are being addressed in other forums. Instead, we seek to provide guidance to third parties who are involved in efforts to change traditional dispute resolution processes, such as arbitration, or who work at the boundary between interest- and rights-based dispute resolution procedures. These include, but are not limited to, experiments with grievance mediation, attempts to shift "in the moment" between contractual grievance procedures and alternative dispute resolution procedures, and acting in the capacity of a dispute resolution systems designer.

For example, arbitrators have long debated the degree to which their role should be narrowly defined around the judicial interpretation and application of the collective bargaining agreement or broadly defined around problem solving with parties in order to better apply contractual language (Cox and Dunlop, 1950). In recent years the judicial view has dominated the profession. But the result is that arbitration serves a limited role, enforcing the status quo in labor-management relations. While this role is important for ensuring equity and uniformity of treatment under a bargaining agreement, it does little to help identify the root causes of problems in the workplace or to help adapt collective

Box 4

Saturn's "Committee of 99"

In early 1982, General Motors concluded that it could not manufacture a small car competitively in the U.S. under the existing GM/UAW contract and so in 1983 approached the UAW International with the idea of exploring a new approach. This led to the formation of a joint union-management committee (the Committee of 99 because eventually 99 hourly workers, engineers, managers, and union representatives participated) charged with evaluating the key success factors of world-class manufacturing. This joint study team started with a clean-sheet approach as it explored and evaluated practices throughout the world. The Committee proposed adoption of a set of new organization principles for Saturn that embody partnership arrangements from the shop floor to the strategic levels of the organization. One of these principles was that the UAW would be recognized voluntarily at Saturn.

Source: Adapted from Rubinstein, Bennett, and Kochan 1993.

bargaining to its changing circumstances. In the same fashion, mediators of collective bargaining disputes were challenged in recent times to perform mediation tasks related to grievances, which they viewed initially as outside the scope of their work and expertise.

We believe there is a need for dispute resolution professionals to emphasize a more clinical and flexible approach to dispute resolution if they are to fully serve the diverse needs of the parties. Absent experimentation and innovation along these lines, it is likely that arbitration and mediation caseloads will continue to shrink and an important resource will be less available to the parties.

8. *Dispute resolution professionals have a larger responsibility to work with the parties in redesigning their procedures and dispute resolution systems to better accommodate the types of issues and conflicts that arise in today's workplaces.*

Mediation of grievances has a long and rich history in labor-management relations. As early as the 1950s International Harvester and the UAW used mediation to rehabilitate what they referred to as a "distressed" grievance system with large backlogs (McKersie and Skrapshire, 1962). David Cole, another highly respected neutral of an earlier generation, discussed the role of grievance mediation in his classic treatise on industrial justice (Cole, 1963). In the 1970s, grievance mediation was introduced into the coal mining industry to address the problems of wildcat strikes (Ury, Brett, and Goldberg, 1988). There is also evidence that grievance mediation was somewhat successful in the Ontario construction industry in the early 1980s (Whitehead, Aim, and Whitehead, 1988). Out of these experiments has evolved grievance mediation as it is applied today in many settings.

Guidelines for labor mediators and arbitrators are well established and should be consulted by third-party neutrals taking on these roles. (See, for example, the guidelines published by the National Academy of Arbitrators and the Association of Labor Relations Agencies.) While the specific features of the process vary to fit different circumstances, one generic principle should apply:

9. *Mediation of grievances should be done either (1) as part of a negotiated agreement that outlines how mediation fits into the existing grievance and arbitration process or (2) by joint agreement of the parties.*

Box 5

Balancing Multiple Goals in Grievance Mediation

The mediator (or in my case the director of the mediation program) must decide whether the primary goal of grievance mediation is to settle grievances or whether it is to teach the parties to resolve disputes on their own as an important element of a collaborative labor-management relationship.

As you might expect, I have sought a middle ground. Initially, I conclude that the primary task of the grievance mediator is to settle grievances. Improving the parties' own grievance resolution skills is important, but it is rarely the central reason why parties engage in grievance mediation. Rather, the parties' central goal is typically to resolve grievances more quickly, inexpensively, and satisfactorily than is typically done in arbitration. Hence, I instruct my mediators to use caucuses (and other settlement-oriented tactics) as extensively as they think necessary to achieve settlement.

On the other hand, I also instruct my mediators to model the best elements of collaborative decision making in working with the parties. The primary focus is on interests, the search is for a solution that satisfies the central interests of all, and solutions are sought in the ideas and suggestions of the parties. My hope is that the parties, by participating in what is essentially a collaborative process, guided by an expert in collaborative decision making, will learn the skills necessary for an effective collaborative process, and will need to call on the mediator less and less.

Source: Stephen B. Goldberg, correspondence to the Task Force

Arbitrators and mediators should ensure that mediation processes are appropriately defined. In cases where grievance mediation is built into the parties' grievance procedure, it is important to have clear rules governing the process and the role of neutrals. The parties also need to be clear on their goals for including mediation as a step in the process. Box 5 illustrates how Stephen Goldberg, the director of a highly respected grievance mediation program, seeks a balance between the goals of helping parties to reach a settlement and building a collaborative relationship. Whether the parties or the neutral introduces the possibility of using mediation, the parties must both agree to engage in mediation for it to be successful.

Box 6 illustrates how one neutral explored the option of mediating a grievance she was initially chosen to arbitrate. If the mediation is not successful, the arbitrator, in particular, must attend to the parties' wishes regarding the resumption of the arbitration process and whether or not the arbitrator should withdraw from the case.

10. *Third parties must be aware of the boundaries between statutory rights, collective bargaining, and dispute resolution procedures. Third parties who help resolve issues that cross this boundary need to have deep substantive knowledge of the relevant law, as well as expertise in collective bargaining procedures and workplace practices.*

The matter of substantive knowledge of the laws involved in a dispute is an ongoing subject of debate in our field. SPIDR's Track I report, *Guidelines for Voluntary Mediation Programs*, contains a fuller discussion of this issue. How-

ever, it is critical to caution third parties here once more that resolving disputes on issues where statutory and collective bargaining-based rights and procedures intersect requires substantive and procedural expertise in the relevant matters of law, as well as of rights and procedures flowing from the collective bargaining contract and workplace practices.

11. *Third parties involved in workplace alternative dispute procedures in unionized settings need to manage the boundary between the ADR and informal and formal contractual processes.*

The grievance procedure was designed to resolve issues covered under the collective bargaining agreement. Today many workplace issues and conflicts arise out of issues not covered by the agreement (e.g., a dispute between a manager and an employee over product or service quality) and/or among co-workers whose em-

Box 6

The Choice to Mediate During Arbitration

I was serving as arbitrator on a grievance involving the question of whether supervisors were performing bargaining unit work. I knew the parties had tried to settle the grievance themselves. After hearing some of the evidence, I asked if they wanted to give settlement another try or have me attempt to mediate it. Over a lunch break, the parties tried again to resolve the matter themselves, but were not successful. They then asked me to mediate. It was agreed that if the mediation was unsuccessful and either party was uncomfortable with my returning to the role of arbitrator, I would withdraw.

The Company had recently introduced computers into its manufacturing processes and neither Union nor Management was able to define what constituted Union work in these changed circumstances. The outcome of the mediation was a set of protocols for mutually deciding what was Union work.

I do not know what my decision would have been had I heard the entire case and rendered an award. It seems to me, however, that had I ruled in favor of the Union, the Company's efforts to modernize might have been sufficiently constrained that both the Company and the employees would have been adversely impacted. Had I rendered a decision in favor of the Company, it seems likely that the Union would have continued to file grievances. In so dynamic a situation, there would have been enough variations that new grievance opportunities would have presented themselves.

In offering to mediate, the arbitrator must exercise considerable caution. Some parties may be uncomfortable with mediation in general; others may be open to mediation, but not with respect to a particular case. There are grievances for which the parties simply need a decision. In most cases, if a gentle inquiry regarding mediation does not receive an

immediate and reasonably positive response, the arbitrator should cease to pursue the idea and continue in his or her arbitration role. If the parties indicate that they might be interested in mediation, the arbitrator should first negotiate ground rules, including what will occur if the mediation fails. Will the parties seek to have a new arbitrator appointed, for example?

It should not be expected that all arbitrators are willing or able to take on the role of mediator. Not all labor arbitrators are comfortable with the idea of mixing the two processes and not all have mediation experience. Where both the arbitrator and the parties are comfortable, however, mediation may offer parties the ability to fashion a remedy that is more forward-looking and creative than that which would be available through arbitration.

Source: Nancy E. Peace, correspondence to the Task Force

ployment rights may be covered by an agreement but are in conflict over noncontractual matters (e.g., an interpersonal conflict). Therefore, alternative forms of dispute resolution (ADR) are being used to address these issues in unionized settings side by side with existing grievance procedures. An example of one such case is summarized in Box 7. One of the challenges that arises in these settings is managing the boundaries between these two processes.

These boundaries can be ambiguous and, if not managed effectively, can serve as an additional source of conflict and mistrust at the workplace. But if managed well, they provide disputants with additional options for effective conflict resolution.

12. To facilitate effective dispute systems designs utilizing ADR processes in the organized workplace, third parties must identify and involve key workplace participants (supervisors, union stewards, past disputants, representative employee constituencies) in the full scope of the design effort.

In unorganized workplaces, most ADR systems are designed from the top down—without sufficient involvement of employees as active stakeholders. While this may be problematic in any workplace, it is inappropriate and untenable in an organized workplace. Trust in and ownership of ADR processes should be achieved by involving all the stakeholders in the design, administration, and ongoing evaluation of workplace ADR systems.

Box 7

Dispute Resolution Design

Some time ago, while exploring the details of a memorandum of agreement covering the use of interest-based negotiations to resolve two significant contract clauses, I was surprised to learn that the parties insisted on the need to agree on what the dispute resolution process would be if the effort failed. In that particular instance, the parties agreed to submit the issues to binding arbitration if a reasonable effort over a specified time period failed to produce a comprehensive consensus on both clauses. After years of only sometimes encouraging the parties to think through and decide in advance the dispute resolution procedure to be used if voluntary methods failed, I have arrived at the conclusion that such anticipatory dispute systems design is crucial. First, I have found that the participants in the often voluntary alternative process engage more wholeheartedly when they know what will happen if they don't agree. Second, the participants often leverage key decision making "in the room" by openly calling to everyone's attention that control of the outcome will be ceded to an outsider if they don't work harder to find a solution that all stakeholders can live with and support. A third benefit of working out the "what ifs" for a dispute at hand seems to be that the parties often begin to manage the boundary between their rights and interest-based procedures more affirmatively from that point on. And, lastly, having a plan for the possibility of an unsuccessful ADR application makes the exit from an interest-based process and entrance into a more rights-based one much smoother for everyone involved, including the neutral.

Source: Christina S. Merchant

4

Collective Bargaining

Collective bargaining remains the central forum where labor and management address the issues most important to each party. However, practitioners are increasingly raising questions around the degree to which the traditional bargaining process is sufficient to handle the complex and challenging issues that confront both parties. Increasingly, management and unions have multiple points of contact to address issues such as employment security, product or process quality, and business strategy, which may have both collective bargaining and non-collective bargaining dimensions. In this context, traditional third-party roles are more complex and new roles are emerging.

We focus here on three critical roles neutrals play in contemporary collective bargaining: mediating negotiations, training for and facilitating interest-based negotiations (IBN), and designing and facilitating labor-management committees that sometimes precede and help prepare for negotiations and sometimes follow and help implement negotiated agreements.

Mediation of Contract Negotiations

So much has been written on basic principles for mediating collective bargaining negotiations that little needs to be said here. Basic references include Simkin (1971) and the Code of Professional Conduct for Labor Mediators, jointly adopted by the Association of Labor Relations Agencies (ALRA) and the U.S. Federal Mediation and Conciliation Service (1964). The present context, however, challenges mediators to reconsider a number of traditional principles of labor mediation.

13. Labor mediators need to hold themselves and the process accountable for achieving outcomes that address the parties' underlying interests and enhance their relationship.

Within the labor mediation profession, there is a long-standing debate over whether mediators should focus solely or primarily on immediate process objectives (i.e., getting a settle-

ment) or also try to achieve particular outcomes (i.e., ones that are mutually beneficial and/or address the parties' deeper underlying interests and improve their relationship). While the traditional view of labor mediators favors the settlement focus, the successful adaptation of collective bargaining as an institution increasingly requires all the parties, including neutrals, to design and manage the process in a manner that maximizes the likelihood of achieving innovative and effective solutions.

Therefore, we believe that mediators today need to develop the technical knowledge and expertise, as well as the process skills, to help the parties achieve the best outcomes possible and hold themselves and the profession to this standard. Quality should be measured both in terms of the substantive outcomes (i.e., the extent to which the parties' underlying interests are served) and the quality of the ongoing relationship among the parties. The comments reported in Box 8 from several "customers" of the U.S. Federal Mediation and Conciliation Service (FMCS) illustrate the importance of taking this approach. Box 9 illustrates the need to probe underneath the traditional issues brought to the bargaining table to address the deeper and less easily formulated concerns of the parties, in this case nurses and hospital administrators.

Interest-Based Negotiations Training and Facilitation

The conceptual roots of IBN can be traced to Walton and McKersie's (1965) distinction between distributive and integrative bargaining. Distributive bargaining was described as negotiations over issues where the parties have interests in conflict. Integrative bargaining was characterized as problem-solving activities on issues where the parties' interests partly or completely overlapped or where multiple issues allowed for maximizing the joint utility of the agreement. Since collective bargaining was seen as involving both types of issues, Walton and

Box 8

Mediation of Collective Bargaining Disputes

Two examples that arose in recent "customer" feedback briefings held by the FMCS illustrate the pressures mediators are under to attend to the quality of the substantive and relationship outcomes of collective bargaining disputes.

At one briefing a utility industry executive said, "If you are going to be helpful in our industry, you have to understand the consequences of deregulation." At the same briefing a health care union official commented, "If you are going to mediate health care disputes, you had better understand the restructuring that is going

on in our industry and the way it affects our bargaining units." At another briefing a manager from a small firm that had recently been organized and negotiated its first union contract commented, "We are a small start-up enterprise that is still losing money. We don't project a profit for another two years. The last thing we wanted was a union or a union contract, but now that we have one we will fail if we don't have a good working relationship right from the start. Mediation has to help us with this now or we won't be here in two years."

Source: Participant comments made to Thomas Kochan and Joel Cutcher-Gershenfeld, Customer Feedback Briefing, Federal Mediation and Conciliation Service, Boston, April 2, 1997; San Francisco, April 7, 1998.

McKersie described it as a "mixed motive" relationship.

Later Fisher and Ury (1981) applied and popularized the Walton and McKersie model and extended it by arguing that "principled negotiations" (later called IBN) could be applied to any issues, settings, or processes, including collective bargaining. Since the publication of their influential book, IBN has gained widespread attention and considerable experimentation. For example, a 1996 national survey of labor and management negotiators in the U.S. reported that 69% were aware of IBN and 41% had experience with it (Cutcher-Gershenfeld, Kochan, and Wells, 1998).

Rapid growth in awareness and support for IBN is creating opportunities for dispute resolution professionals. Care must be taken, however, to nurture this relatively new approach to negotiations to avoid applying its principles and tools in ways that lead to disillusionment and/or actual harm to the interests of one or both parties.

As Gerald McCormick has written to the Task Force, "I have been aware of or involved in perhaps half a dozen situations lately where someone has gotten "Getting to Yes" as a religious experience and converted labor and management. The result has been a loss of the perception of creative tension between the parties and the overthrow of the leadership of the union that is seen as being in bed with management. The new leadership is elected on a platform that is strongly opposed to such stuff. This is the type of misuse of IBN we need to avoid."

Box 9

Surfacing Deep Issues of Interest in Health Care Bargaining

Collective bargaining between bargaining units of nurses and health care institutions in the U.S. often richly illustrates the tension between subjects of bargaining regarded as traditional to labor-management relations (wages, hours, and working conditions) and issues that stretch toward the typically managerial responsibility of operating the enterprise. Based on scores of negotiations with units of registered nurses, my experience has been that the toughest issues are rarely economic, but rather have been "best practice" ones such as "working safe" with respect to mandatory shifts, overtime, or patient load. Such quality-of-service issues, often non-mandatory subjects of bargaining, are typically embedded in what the public hears is an economic impasse. One of the challenges for neutrals working in this arena is to accept the depth with which these issues are of concern to nurses as a profession and to assist the health care institution's representatives in sharing some of their inherent power and control over such matters. The best negotiations have occurred where the institution and the nurse bargaining unit have engaged in a "partnership" approach to such issues, utilizing joint committees and interest-based problem solving as tools for dispute identification and resolution well before the pressure of a looming contract expiration date.

Source: Christina S. Merchant

14. *Facilitators of interest-based negotiations processes should ensure that both parties are adequately trained in appropriate skills and methods.*

Experience shows that successful use of IBN requires training and active facilitation of negotiations (see Box 10), and a wide variety of

Box 10

IBN: Avoiding Simplistic “Win-Win” Formulations

We are encountering a growing number of horror stories where parties are given what might be termed one-dimensional or overly simplistic training around interest-based bargaining skills. Essentially, problem-solving tools are imported along with promises that all issues can be resolving in a “win-win” way. Inevitably, difficult issues surface and the process doesn’t fully anticipate the use of power or outside pressure from constituents. Sometimes, information is shared and then used against negotiators. In the end, parties feel that they are worse off than if they had stayed with a traditional, arm’s-length process.

While we deeply believe in the value of joint problem-solving and have often seen the enormous potential associated with a search for mutual gains, this only works in a context where there is full attention to the complicated institutional and power realities of collective bargaining. As such, parties should make sure that prospective trainers or facilitators understand how bargaining teams are selected within unions and by employers, how ratification is conducted and all of the important details along the way. A basic issue, for example, involves an appreciation for the democratic structure of unions and the hierarchical structure of employers. This means that a new bargaining process has to take into account the concerns of many union leaders about being re-elected and the concerns of many managers about accountability to higher executives. Experienced third parties who understand these institutional realities can help to educate constituents on the nature and legitimacy of new approaches to collective bargaining. In fact, we have each been asked to make such presentations. For example, in a school setting, an orientation to interest-based principles was provided to the full faculty and community officials in advance of applying these principles at the bargaining table. Such presentations are only credible if they are realistic about the deep disagreements that can surface in collective bargaining and attentive to institutional realities. With such cautions, however, professional third parties can help facilitate innovation in the bargaining process—with informed sanction and support from constituents.

Source: Nancy Peace and Joel Cutcher-Gershenfeld, correspondence to the Task Force

training programs is available. Although one party or the other may be trained on their own, field research clearly shows that joint training has the highest likelihood of producing outcomes valued by both parties. Also, recall that the key source of distrust toward QWL efforts was that they were seen as vehicles to advance only management’s interests. In the absence of joint training, these suspicions will carry over to attempts to introduce interest-based negotiations. Another reason for encouraging joint training is that it provides a common experience on which to build a joint relationship. The examples described in Boxes 11, 12, and 13 illustrate the benefits of this careful approach.

15. *Interest-based negotiation facilitators need to address the roles of constituents in the process.*

The single most common source of failure in interest-based processes lies in moves by union or management constituents that undercut the problem-solving efforts of parties at the bargaining table. Facilitators, trainers, and parties need to educate constituents about how interest-based bargaining works and the ways constituents contribute to the success of the process. Failure to address these issues ensures they will arise at some point as the process is carried out.

16. *Facilitators need to ensure that interest-based processes are adequate to handle issues on which there are deep conflicts of interest and in which the exercise of power is central.*

Some proponents of interest-based negotiations have been zealous in urging the universal applicability of a single set of problem-solving methods. Parties are not well served if they are given the impression that all issues can be resolved with “win-win” outcomes or through the use of any one method. Too often, parties have been disillusioned when these methods were abandoned in the face of strong uses of power and other levers or when parties were left worse off than might otherwise have been the case.

While strong advocacy of new methods is required to support experimentation and diffusion, it must be tempered by recognition that collective bargaining involves deep economic conflicts of interest and the use of power as a motivational force. Thus, a third party needs to assess when interest-based approaches are appropriate and work with the parties to mix this approach with others (as illustrated earlier in the Dispute Resolution Spectrum).

Box 11

Encouraging Interest-Based Negotiation in Canada

In 1994, the Canadian Federal Mediation and Conciliation Service invited various unions and firms from across Canadian jurisdictions to Ottawa to share their experiences regarding mutual gains bargaining in the format of a Roundtable. The union and management practitioners came from a broad cross-section of Canadian organizations and industries (e.g., Alcan, Bell Canada, Ontario Hydro, and Saskatoon Chemicals; the Brotherhood of Local Engineers, the International Brotherhood of Electrical Workers, the United Steel Workers of America and the United Transportation Union).

Almost all of the parties had had long-term, traditional adversarial bargaining relationships, but they had experienced some

form of a catalyst for change that led them to attempt mutual gains bargaining. In general, the parties had come to realize that, in an increasingly competitive environment, the costs associated with traditional bargaining tactics may be too costly for firms (e.g., strikes). In addition, the reliance on third-party settlements, while resolving overt conflict, often resulted in solutions which did not match well either party's most preferred solutions. While not all of these attempts at introducing mutual gains bargaining worked well, the discussion at the Roundtable revealed a number of joint organizational conditions which tended to lead to the success of the mutual gains bargaining, including the benefit of:

- establishing joint union and management training,
- training at all levels of the organization,
- developing a role for a facilitator or a consultant in the training process,
- using an outside facilitator in the mutual gains bargaining process itself,
- choosing a facilitator jointly,
- realizing that training in mutual gains bargaining may require considerable financial resources,
- recognizing that the time required to develop a process can be lengthy, and
- establishing good communications between management and union organizations.

Source: Chaykowski and Grant, 1995

Box 12

Interest-Based Negotiation in San Francisco Hotels

The San Francisco Hotels Partnership Project was created in 1994, involving twelve unionized first-class hotels and two of the city's largest union locals. The project's primary goals included increased market share for participating hotels, retention and improvement of jobs and job security, and new programs for employee involvement, training and career development. Labor and management agreed that they had a common interest in raising the quality of service in the hotels through joint problem-solving, increased on-the-job training, and the creation of opportunities for advancement within and across participating hotels. A joint steering committee controls funds from state training agencies and employer contributions.

Problem solving groups have been created in each hotel, comprised of two-thirds workers and one-third managers, with facilitation by a neutral third party. The teams deal with issues of job design, workload training, job security, and hotel

operations. A training program for 1,600 workers in ten hotels has provided a common foundation in communications skills, critical thinking, problem solving, and teamwork. A recent pilot effort trained 160 workers, many of whom work in non-food service positions, for certification as basic banquet servers. These workers are available through the union's hiring hall to any of the participating hotels to help alleviate the heavy workload demands during the end-of-year holidays. Future study teams will explore additional ways to increase job stability through referrals of part-time workers across participating hotels, increased training and promotion opportunities, and work redesign to accommodate older workers.

These innovations were the product of an IBN following training and with the facilitation of the Federal Mediation and Conciliation Service.

Source: Kazis, 1998

Box 13

Interest-Based Negotiations among Multiple Parties:

The Department of Energy's Nevada Test Site

In early 1994 Bechtel National Inc. began assembling a team to respond to the Department of Energy's (DOE) Request for Proposal for a single source manager of the Nevada Test Site (NTS). Ultimately, the Bechtel Nevada team would involve a partnership of Bechtel National, Inc., Lockheed Martin Corporation, and Johnson Controls, Inc. . . .

The labor relations plan for the NTS had to address coordinating the administration of 31 labor agreements. Bechtel reached out to the Southern Nevada Building and Construction Trades Council and to other AFL-CIO unions representing employees at the NTS to secure support [and] the building trades and the other unions signed a letter pre-committing to negotiate a Southern Nevada Labor Alliance (SNLA) if Bechtel Nevada was awarded the DOE contract.

[After Bechtel won the contract] . . . several joint committees were established. The Federal Mediation and Conciliation Service was chosen by the parties to provide neutral, third party assistance in the training and facilitation of three of these committees: the Work Rules, Work Assignment Dispute Resolution Process, and Communications Committees.

Buoyed by the successes of the initial year of the Alliance . . . labor and management committed to move into the next phase of their cooperative relationship, using interest-based bargaining to negotiate the labor agreements that were to expire October 1, 1997.

In March of 1997, representatives from all of the craft unions and the BNC management attended a two-day, interest-based bargaining workshop conducted by FMCS. In early April, the leadership of the craft unions and the BNC met with FMCS to formulate a mission statement and the ground rules for interest-based negotiations.

Negotiations began in April, with bargaining committees for maintenance and construction meeting on established schedules every two weeks for four to five hours. Facilitated by the FMCS throughout the process, the parties addressed each and every contract article and section, discussing their interests and concerns, striving to make changes necessary to assure the goals outlined in their mission statement . . . During these negotiations on boilerplate language, BNC labor relations and individual craft unions were meeting and reaching agreement on craft-specific issues. The parties all agree that these items were completed in record time and attribute that rapid progress (as compared to past negotiating history) to the relationship and trust the parties were continuing to build through the Southern Nevada Labor Alliance . . . [O]n September 23, 1997, [the parties] reached consensus on the final outstanding articles and sections, and the crafts agreed to recommend the contracts to their bargaining units.

Source: Ritter and Mansolillo, 1998, pp. 39-42.

17. *Third parties have to strike an appropriate balance between abandonment and dependency.*

In many instances, parties are experiencing interest-based negotiation for the first time. A third party who provides training in IBN principles should advise the parties that a small amount of training will not be sufficient in the absence of additional facilitation support. Assessing how much additional facilitation may be needed is an important part of the third-party role in building the parties' capabilities with IBN. At the same time, it is important to help the parties become self-sufficient. It is professionally irresponsible to remain in a third-party role longer than needed.

Labor-Management Committees

Workplace-level labor-management committees established to resolve particular problems or to consult on a general basis have existed since the turn of the century. Principles for governing them are likewise well established.

Committees are often used to supplement formal contract negotiations in two ways. One way is to establish a special-issue study committee long before the start of negotiations. The committee's role is to analyze a complex issue in depth and explore options for addressing it, perhaps through considerable data collection and information gathering. In this way, problems that

would be difficult to resolve solely in a deadline-constrained negotiation process can be resolved satisfactorily. A second way committees are often used is to implement one or more provisions of a negotiated agreement. Many provisions are not self-implementing, such as a joint safety process or a productivity improvement process. Both types of committees can be extremely useful. On the other hand, all too frequently, committees have been misused.

18. *Labor-management committees, like workplace participation processes, should be linked to the collective bargaining agreement and other labor-management forums so as to support (and not undermine) the bargaining relationship and negotiations process.*

The scope of the committee's jurisdiction (issues) and authority to consult or decide issues should be clarified. Neutrals often serve in different capacities—chair, executive director, facilitator, designer, advisor, or arbitrator of unresolved issues. These roles must be clear and,

as noted earlier, the facilitator must be mutually acceptable to the parties.

19. *Neutrals need to ensure that labor-management committees have clear goals, adequate resources, and shared commitment in order to achieve their assigned mandate.*

Too often labor-management committees are established as a convenient way to take a complicated issue off the bargaining table. Used in this way, labor-management committees contribute to cynicism and are a poor use of scarce leadership resources. However, many of the complicated issues facing parties today cannot be adequately addressed without prior joint analysis or ongoing joint oversight and administration. As a result, facilitators and other neutrals must hold parties accountable for the appropriate use of this tool. Box 14 describes an example of the redesign of several labor-management committees that had been created or used for the wrong reasons.

Box 14

Redesigning Labor-Management Committees

I recently worked with a police department and union on improving their labor-management relationship. Management told me that the union was trying to usurp management rights through a very extensive system of joint committees. The union told me management was trying to use all of the committees to slough off management responsibilities, especially on difficult problems. We ended up defining three types of committees:

- collective bargaining committees (i.e., grievance committees) where there was joint decision making.
- partnership committees where the decision was a management prerogative but there

was an explicit desire to seek union support or concurrence.

- advisory committees where the purpose was purely to exchange information and ideas.

These operated on a consensus basis with the assumption that, if a consensus was reached, it would be implemented (since the chief was directly represented on the committee).

We then jointly created a template based on these principles which was applied to all existing committees (well over half were eliminated). It was then agreed that the template would be used for all future proposed committees.

Source: Gerald Cormick, correspondence to the Task Force

5

Strategic Level

In 1945, U.S. President Harry Truman's National Labor-Management Conference broke down in part because employers wanted labor to agree that certain managerial issues would always remain outside the scope of bargaining while union leaders were unwilling to agree on such a limit. (The parties also reached a deadlock over union security issues.) Since then, subject to legal limits on the scope of bargaining and the general reluctance of either management or labor to venture too far into managerial rights, the boundary of collective bargaining has gradually expanded.

In recent years the boundary has been blurred in most labor-management relations and crossed explicitly in others. This is because of increasing recognition that critical decisions shaping labor-management relations and the outcomes of employment relationships are made at high or "strategic" levels of organizations, traditionally off-limits for labor-management relations. At the same time, neither labor nor management is comfortable operating in this domain.

Most managers and their constituents still want to preserve their autonomy and discretion over strategic issues. They are also uncomfortable with bringing a political organization into the highest levels of a hierarchical structure. At the same time, the political nature of unions makes it very difficult for leaders to be part of decision-making processes, which sometimes may produce decisions that are unpopular with their constituents. Yet, increasingly, parties find it necessary to overcome these tensions.

Addressing these issues is a critical challenge for third parties working with labor and management leaders in strategic-level forums or structures. We will discuss briefly two emerging types of strategic interactions that neutrals are being called on to design, facilitate, or in some cases serve directly: union-management partnerships and employee stock ownership plans (ESOPs).

Union-Management Partnerships

John Stepp and Thomas Schneider define union-management partnerships and some starting principles for guiding them as follows: "Although a wide range of possible relationships can be called partnerships, some minimal criteria should be met before either party employs the term. The scope should embrace more than one issue jointly selected and deemed worthy by both labor and management. The nature of the interaction should be other than traditional, adversarial contract negotiations or right-based contract administration. The interaction should be of an on-going nature, and the relationship should be based on the principle of reciprocity, with both sides benefiting. This entails parties sharing relevant information and utilizing problem-solving methods. The arrangement must be freely/voluntarily entered into—with good faith and honorable intentions" (Stepp and Schneider, 1997, 55).

Richard Walton, Joel Cutcher-Gershenfeld, and Robert McKersie (1994) describe partnerships as a mixture of collaborative problem solving (fostering) and hard or power bargaining (forcing). Again, the mixed-motive nature of these interactions requires skillful handling if these processes are to be robust and useful. A major role for third-party facilitators and designers of partnerships is to assist the parties in managing these mixed-motive relationships.

Partnerships such as those discussed above are in some ways the equivalent of labor-management committees that function at other levels of the relationship—they are indirect forms of involvement. So, the same principles apply here, as well as several additional ones. However, partnerships go further because by definition they address deep issues that go to the heart of power and control in the organization—issues that affect the long-term livelihood of all stakeholders. As such, this represents a clear expansion of the domain of traditional labor relations.

20. *It is a third party's responsibility to make partnership norms as transparent as possible regarding tough issues such as violations of confidentiality, information sharing, or controversial unilateral decisions—and then to help resolve conflicts when these norms are violated.*

Box 15

**Dealing with Violation of
Partnership Norms**

A strategic-level partnership council of several years' standing ran into a viability-threatening series of issues as the result of unilateral action by the management representatives in proposing dispute resolution language for passage by Congress without advance notice or discussion with the union. Outrage was palpable during the first meeting after the event as the effect of embarrassment of union leaders to members was mentioned, abrogation of the existing labor contract was assumed given the congressional proposal's language, and betrayal of assumed norms for notice and participation of union leaders in strategic interaction with Congress was noted. After several hours of diatribe, the facilitator encouraged the parties to explore the underlying causes leading to the calamitous event.

As is so often the case, a string of more minor violations of norms had not been fed back to the responsible individuals as a regular course of meetings. Further, disputes had been left to fester at local levels without intervention by the strategic partnership. As a result, the management held the view that there was no possibility that the union would be willing to "partner" on these issues—and so the management partnered with the funding sources instead. With thorough discussion of respective interests, needs and concerns, the parties developed and agreed to a plan of action, which addressed both the need to design joint interventions in long-standing disputes as well as for the establishment of norms for regular council meeting feedback, communication, and conflict management.

Source: Confidential

This is a domain where norms are still being established. Inevitably, strategic choices will be made that will directly undermine the spirit or substance of partnership activity. Hard choices must be made in helping the parties to properly balance decisions to abandon the process, hold the process hostage, or confront the issue. A case example is provided in Box 15.

Managers must share with their union partners information that in the past would have remained within managerial ranks; they must also be open to union influence over issue agenda and resource allocation decisions, which traditionally have been largely within management's control. Union representatives, in turn, must accept greater responsibility and be willing to be held accountable for decisions made jointly and for appropriate treatment of confidential information. Box 16 describes the features of one of the leading examples of a current partnership in Canada.

Employee Ownership

Employee ownership has grown in recent years. Some estimate that in the United States alone there are over 12,000 firms, covering perhaps as many as 11 million workers, in which employees own 30 percent or more of the stock (National Center for Employee Ownership, 1997). Only a small fraction of these, however, extend any meaningful role in governance to the workforce. The majority are managed in a traditional fashion. Experience with employee ownership suggests, however, that the motivational (as opposed to the tax or wage reduction) benefits of ESOPs require employee and union participation at all levels of the firm. Box 17 describes the ESOP in place at Algoma Steel.

21. *Neutrals assisting in the design or implementation of an ESOP should encourage creation of appropriate means of employee and union participation in governance processes at the workplace up through to the strategic levels of the organization.*

Third parties increasingly find themselves "at the table" when fundamental changes take place in organizations, such as the establishment of an ESOP. Our recommendation is based on the underlying principle that a third party has an affirmative duty to attend to the interest of all relevant stakeholders—including those not part of the intended structure.

Box 16

Developing a Partnership at Bell Canada

Facilitation was an important aspect of the management of mixed-motive interactions and the evolution of a move toward partnership in industrial relations and restructuring in the case of Bell Canada.

Historically, Bell Canada has experienced a fairly traditional relationship with its major unions, including the Communications Workers of Canada (the CWC, which merged later with two other unions to form the Communications, Energy and Paperworkers [CEP] and the Canadian Telephone Employees Association [CTEA]). Competitive pressures were minimal in a heavily regulated industry. Generally, before deregulation, telephone companies were quite profitable, which afforded the major firms the resources to undertake advanced programs such as training and employee involvement without the pressures of an immediate business crisis. However, in the 1990s competitive pressures escalated in the telecommunications industry as the process of deregulation accelerated.

During this period Bell Canada and its unions gradually tried to create a better partnership. Mutual accommodation in three areas was notable. First, the company established a separate Common Interest Forum (CIF) with each of its

major unions, the mostly blue-collar CEP and the mostly white-collar CTEA. The CIFs consist of three or more senior executives from each side. Although there are no rigid rules about membership, most CIF members have been at the president or vice president level. The CIFs provide a structure within which leaders from both sides can share information about issues of strategic importance to the business and to the relationship.

The second initiative was a joint decision to use principles of interest-based negotiations in collective bargaining. The technique was first introduced in 1990 and was used repeatedly with both unions during the 1990s.

The third initiative was to collaborate, in workplace reorganization, as a vehicle to enhance employee and union involvement in work redesign. The CEP put forth a set of far-reaching proposals for its involvement in workplace reorganization at the 1990 bargaining round. While these proposals were rejected by management at the table, the company agreed at a subsequent meeting in 1992 to form a joint task force with each union to study the subject and make recommendations. Both the CEP and the CTEA Task Forces on Workplace Reorganization recommended adoption of a plan to

introduce employee teams and the creation of a joint company-level steering committee to oversee the initiative. These recommendations were accepted with some modifications by both sides. Subsequently, employee teams were introduced in a number of work sites.

In the process of moving toward a joint approach to organizational change and adaptation at Bell Canada, both the management and union sides relied heavily on training in a wide range of aspects of human resources, especially concerning process issues, and utilized the resources of external third-party neutrals to facilitate the various stages of the process.

By the late 1990s, the intensely competitive environment in the telecommunications industry placed strong pressures on Bell Canada, and job security had become a key union-management issue. While strains have developed in the relationship and the process of work reorganization has not proceeded as originally envisaged, there remains a commitment to a joint approach to labor-management issues.

Sources: John R. Stepp, correspondence to the Task Force; Verma and Chaykowski, 1997; Chaykowski, 1996

Box 17

Employee Ownership at Algoma Steel

Collective bargaining at Algoma is governed under provincial legislation. The tone of collective bargaining at this organization has been, as it has generally been throughout the Canadian steel industry, very adversarial with low levels of trust. Algoma experienced a major 13 week strike/lockout in 1990 and was close to bankruptcy and Dofasco, its steel company parent, expressed its intention to write-off its investment.

To resolve the longer-term viability of the firm, the then Premier of Ontario, Bob Rae, struck a task force to examine possibilities for a business restructuring of Algoma. An initial plan forwarded by Dofasco to the provincial task force was rejected by the United Steelworkers of America (USWA), which then proceeded with a comprehensive restructuring and ownership transfer plan of its own; it was ultimately accepted by all parties, including Dofasco, the banks, employers, and other creditors. Under the plan, a new collective agreement was established which included details of the restructuring and workplace redesign and allowed for worker participation. Under the USWA plan, the ownership and control of the firm were transferred to the employees (Algoma Steel Inc. N.D.):

- The employees obtained 60% control over the restructured firm.

- The union obtained four of thirteen seats on the board of directors.

- The employees control (through a vote) any future sale, merger, or dilution of employee ownership to less than 50%.

The plan also included a comprehensive and far-reaching program of management and workplace change that included the establishment of the following key joint structures:

- A senior-level Joint Steering Committee with the mandate to direct the development and implementation of a workforce participation process and plans and programs to redesign the workplace.

- A Joint Training Committee with the mandate to develop a comprehensive training plan for new employees. This Committee completed its work in 1993 and was succeeded by a union-management Joint Training Board.

Other elements of the change process include extensive training, information exchanges, and increased focus on issues such as quality of worklife, human rights, the re-integration of injured workers into the workforce, and the development of pay-for-knowledge compensation systems.

Source: Chaykowski, 1996

6

Societal Level

Moving from the firm or industry level to the societal level involves opening labor-management relations to a broader set of stakeholders and societal interests. A key role of the neutral in this context is to ensure that the broader voices are involved in labor-management processes. Thus, at this level, labor-management relations become a highly visible, multi-party process.

One important institutional development at the societal level involves joint industrial or

sectoral multi-party councils or forums. In Canada and the United States, joint industrial councils have been established across such diverse industries as clothing, construction, railroads, food retailing and distribution, and communications, including some dating back as far as the end of World War I. Most sectoral councils tend to deal with issues such as training, worker dislocation, and economic development. While these efforts clearly have benefits far beyond any one indi-

vidual organization, needs tend to vary across industries (Gunderson and Sharpe, 1998).

There is also a long history of regional or community labor-management committees or councils that have served to address issues around labor-management climates, training, and the diffusion of innovation (Chaykowski, 1998). For example, in the late 1980s Wisconsin supported the formation of a regional tripartite organization (the Wisconsin Regional Training Partnership) aimed at assisting displaced workers in the Milwaukee area as well as supporting development of human resources through a Wisconsin Manufacturing Training Consortium.

At times, government agencies have created labor-management committees to solve problems within a sector. Secretary of Labor George Shultz set up one in construction in 1969–70. The Missile Sites Commission of 1961–67 was a well-known committee that dealt with the special issues of that environment.

In recent years, the Canadian federal government has supported numerous sectoral councils aimed at human resource and training issues, as well as the problem of worker dislocation. Two of the most prominent of these are the Canadian Steel Trade and Employment Congress and the Electrical/Electronics Manufacturing Industry Sectoral Council.

One of the major issues associated with broader multi-organizational forums is that the activity that is supported at the sector level often has direct or indirect linkages to results of collective bargaining at the firm level. For example, the experience of the Canadian Steel Trade and Employment Congress suggests that positive cooperative relations at the firm level are often necessary to support union-management cooperation at the broader sectoral level. Some Canadian sectoral councils have formally undertaken to establish linkages (direct and indirect) between council programs and individual workplaces by forming joint labor-management committees in the workplace (e.g., in the mining and electrical/electronics manufacturing industries).

Private Discussion Groups

Private labor-management groups in the United States have a long history, dating back to the National Civic Forum that operated in the early years of this century and included John D. Rockefeller and Samuel Gompers. And, even in these early years, neutrals such as Professor John R. Commons from the University of Wisconsin provided staff expertise and/or helped to facilitate. Throughout the 1970s and 1980s,

Box 18

Neutrals and the Work of the British Columbia Labor Relations Review Panel

In 1997, the Government of British Columbia established a Labor Relations Review Panel that was co-chaired by two leading arbitrators. The mandate of the committee was to review the B.C. Labor Relations Code and, more generally, assess the state of labor-management relations in British Columbia. The work of the committee began in 1997 and extended through to the beginning of 1998. The work of the committee proceeded through several stages: first, written submissions were widely sought and received; second, the committee undertook a range of public meetings with the various stakeholders in industrial relations; third, the committee undertook to develop a discussion paper that identified the major issues arising from the work of the committee; and fourth, after receiving and considering comments on the discussion paper, a final report was written and submitted to the government.

The recommendations of the committee were broadly divided into those that related

to specific adjustments to the labor code, and those relating to broader “innovative solutions.” Among the innovative solutions was a recommendation that joint industry advisory councils be established and that funds be allocated for facilitators to work within sectors to develop the models under which these advisory councils would operate.

In the course of its work, the committee also commissioned a major public opinion poll on various aspects of industrial relations. While the public opinion research indicated that there appeared to be increased polarization between business and labor, it also revealed that there was broad-based support for innovative employee-management relations—including such practices as employee involvement. There seems to be public support for improving the tenor of labor-management relations and neutrals are well positioned to facilitate this.

Source: Ready et al., 1998

former Secretary of Labor John T. Dunlop chaired a national-level "Labor-Management Group" of CEOs and union leaders.

Since 1986, a group of CEOs and union leaders have come together in the Collective Bargaining Forum. Malcolm Lovell, president of the National Policy Association (formerly called the National Planning Association), chairs the forum. These groups have generally proven useful in enabling labor and business leaders to interact in a private, informal setting and from time to time to develop broad statements of principles on topics of national importance, including on the future of collective bargaining and labor-management relations. The goal of these groups is to facilitate dialogue, explore areas of potential agreement, clarify areas of disagreement needing further discussion, and, when feasible, make public statements that encourage positive labor-management relations.

Neutrals can contribute to such forums by facilitating discussions, providing expertise, or drafting statements for discussion by the parties in search of areas of potential consensus. In doing so, the task is both to reflect the views of the parties and to move their discussion forward. Adding value while facilitating such a forum requires the neutral to listen actively and attentively to the discourse among the principals, to reflect the areas where agreement among them might lie, and to bring research findings and new ideas to bear on the discussion. The facilitator can be a source of ideas but in the end must seek consensus among the parties.

22. Neutrals need to encourage creation of more forums for dialogue among labor and management representatives over the future of collective bargaining as well as other issues of importance to their industries, communities, and society.

Fostering increased dialogue among the full range of stakeholders in the future of labor-management relations (a role often played by local chapters of the Industrial Relations Research Association) is especially important today given the paucity of public debate and understanding of these issues. As facilitators and as participants in these forums, neutrals need to

promote new ideas, bring expertise to bear on the discussions, search for areas of consensus, and clarify areas of disagreement that warrant further dialogue.

Public Policy Commissions or Study Committees

23. Neutrals need to assist in broadening the array of alternatives to consider ones that may have merit but are not within the range of "acceptability" to labor or management. They should also introduce the full range of stakeholders into discussions of public policy issues.

From time to time governments ask neutrals to serve on commissions or study groups to advise on changes in labor or employment laws or related policies. This is a special opportunity both to build consensus among the stakeholders in these matters and to bring new ideas into the policy-making process. Indeed, it is the special responsibility of neutrals to do two things that the parties are unlikely to do in most of these settings, namely, to consider new ideas that neither labor nor management may favor and to introduce the voice of other stakeholders who share a deep interest in workplace issues.

In Canada, several recent important governmental labor relations commissions have been co-chaired by neutrals. At the federal level, a review of Part 1 of the Canada Labor Code was recently undertaken by a task force which, after broad national consultation, submitted a report that formed the basis for new legislation passed by the Canadian House and Senate in 1988. In 1997, the British Columbia government established a Labor Relations Code Review Committee, which has formed recommendations that are currently before the government (see Box 18). In both cases, the government sought out prominent neutrals who had an established record of experience and acceptability to both labor and management, as well as a broad range of experience in progressive/cooperative approaches to labor relations.

In the U.S., the most recent example of a policy task force was the Commission on the Future of Worker-Management Relations chaired by John T. Dunlop (see Box 19).

Box 19

The Commission on the Future of Worker-Management Relations (Dunlop Commission)

Shortly after the Clinton administration took office in 1993 it created the Commission on the Future of Worker-Management Relations to assess options for updating U.S. labor laws. Former Secretary of Labor John T. Dunlop chaired the commission. Its members included three other former cabinet secretaries, a CEO of a large business, a CEO of a small business, a former president of a major national union, and several academics.

The Dunlop Commission sought to break the nearly twenty-year impasse over national labor policy by holding national and regional hearings. Most of those testifying were business, labor, and government leaders; researchers and neutrals with long experience and recognized expertise in collective bargaining and labor-management relations; or front-line workers and managers chosen as spokespersons for views advocated by either business or labor. After two years of study and hearings, the commission's recommendations were issued but rejected by both business and labor; its legislative recommendations were not acted on by Congress or the administration. The commission's recommendation to expand the use of ADR has been implemented by several agencies and courts. It remains to be seen whether the commission's work will influence future policy debates.

The commission sought to find a middle ground on labor law that would be responsive to the problems it documented with current law (inadequate protections for workers seeking to organize a union and negotiate first contracts, outdated limitations on employee participation in union and non-union settings, and lack of effective means for enforcing and adapting the growing array of workplace regulations).

Three lessons were learned from the lack of support generated for the commission's work and recommendations:

- There are deeply embedded ideological and substantive disagreements separating most

American business and labor leaders over the future of collective bargaining and labor-management relations policy. Therefore, given the balance of power in the Congress and the administration, there was no acceptable compromise possible within the existing structure of the law or between these two powerful interests.

- The vast majority of the American public knew nothing about the work of the commission or how the issues being discussed affected their work or interests. Therefore, there was no political constituency outside of the well-established business and labor interest groups engaged in the policy debate or urging change.

- Ideas that were not likely to be of interest or acceptable to either business or labor were not seriously considered or aired in the commission's hearings or recommendations since the approach taken was to search for solutions to the problems that would be acceptable to the business and labor community or that could be viewed as fair trade-offs between these parties.

The key implications from this experience for the future are that breaking the impasse in labor policy will require:

- ideas that reframe the nature of the problem and terms of the debate and propose alternatives that cause all interested parties to rethink their views and that do not appear to be "compromises" from their fixed current ideologies or positions on the issues;

- involvement of new "multi-party" voices in the policy-making process, including the voice of the workforce and voting public in order to elevate these issues to a higher priority and level of visibility in national politics, and

- a solid theoretical and analytical research base to support new thinking and approaches to break the view that labor policy is merely "special-interest politics."

Source: Commission member Thomas Kochan

Conclusion: Looking Ahead

This report attempts to capture the frontier of neutral roles in labor-management relations as they are evolving today. We expect these roles will continue to change as new challenges and opportunities arise. For example, one emerging role for neutrals is serving on corporate boards of directors as employee-nominated members. This role calls for many of the same principles

and skills discussed throughout this report. Similarly, new roles are likely to emerge in the context of cross-national trade arrangements, such as NAFTA or the World Trade Organization. In this respect, these recommendations are the beginning of a much-needed dialogue among professionals in dispute resolution operating in labor-management contexts.

Guiding Principles for Dispute Resolution Professionals Working in Unionized Operations

Workplace Operations

Facilitating Employee Involvement and Workplace Innovations

1. The facilitator must be acceptable to both union and management leaders and to other key stakeholders.
2. The facilitator must ensure that the joint activities have appropriate, formal sanction via the collective bargaining agreement or other joint policy documents.
3. Facilitators need to ensure active joint “ownership” of the process.
4. Facilitators need to ensure that mechanisms for dispute resolution and other forms of due process are built into any participative initiative.

Facilitating the Design and Operations of New Work Systems

5. It is inappropriate for third-party neutrals to assist employers in setting up greenfield sites intended in part or primarily to avoid unionization. Doing so destroys the facilitator’s neutrality and acceptability in labor-management relations.
6. Facilitators need to assist the parties in reaching agreements governing the process for deciding whether or not workers in a new facility will be represented by the union.
7. To effectively facilitate the implementation of new work systems in an existing operation, a facilitator must legitimize and help address the formal and informal rights and expectations among stakeholders who benefit and who are at risk as a result of proposed changes.

Workplace Dispute Resolution

8. Dispute resolution professionals have a larger responsibility to work with the parties in redesigning their procedures and dispute resolution systems to better accommodate the types of issues and conflicts that arise in today’s workplaces.
9. Mediation of grievances should be done either (1) as part of a negotiated agreement that outlines how mediation fits into the existing grievance and arbitration process or (2) by joint agreement of the parties.
10. Third parties must be aware of the boundaries between statutory rights, collective bargaining, and dispute resolution procedures. Third parties who help resolve issues that cross this boundary need to have deep substantive knowledge of the relevant law, as well as expertise in collective bargaining procedures and workplace practices.
11. Third parties involved in workplace alternative dispute procedures in unionized settings need to manage the boundary between the ADR and informal and formal contractual processes.
12. To facilitate effective dispute systems designs utilizing ADR processes in the organized workplace, third parties must identify and involve key workplace participants (supervisors, union stewards, past disputants, representative employee constituencies) in the full scope of the design effort.

Collective Bargaining

Mediation of Contract Negotiations

13. Labor mediators need to hold themselves and the process accountable for achieving outcomes that address the parties’ underlying interests and enhance their relationship.

Interest-Based Negotiations Training and Facilitation

14. Facilitators of interest-based negotiations processes should ensure that both parties are adequately trained in appropriate skills and methods.

15. Interest-based negotiation facilitators need to address the roles of constituents in the process.

16. Facilitators need to ensure that interest-based processes are adequate to handle issues on which there are deep conflicts of interest and in which the exercise of power is central.

17. Third parties have to strike an appropriate balance between abandonment and dependency.

Labor-Management Committees

18. Labor-management committees, like workplace participation processes, should be linked to the collective bargaining agreement and other labor-management forums so as to support (and not undermine) the bargaining relationship and negotiations process.

19. Neutrals need to ensure that labor-management committees have clear goals, adequate resources, and shared commitment in order to achieve their assigned mandate.

Strategic Level

Union-Management Partnerships

20. It is a third party's responsibility to make partnership norms as transparent as possible regarding tough issues such as violations of confidentiality, information sharing, or controversial unilateral decisions—and then to help resolve conflicts when these norms are violated.

Employee Ownership

21. Neutrals assisting in the design or implementation of an ESOP should encourage creation of appropriate means of employee and union participation in governance processes at the workplace up through to the strategic levels of the organization.

Societal Level

Private Discussion Groups

22. Neutrals need to encourage creation of more forums for dialogue among labor and management representatives over the future of collective bargaining as well as other issues of importance to their industries, communities, and society.

Public Policy Commissions or Study Committees

23. Neutrals need to assist in broadening the array of alternatives to consider ones that may have merit but are not within the range of "acceptability" to labor or management. They should also introduce the full range of stakeholders into discussions of public policy issues.

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His scholarship includes five books and over sixty articles on new work systems, labor-management relations, negotiations, conflict resolution, public policy, and economic development. His most recent book, written with a cross-cultural, interdisciplinary team of fourteen scholars, is *Knowledge-Driven Work: Unexpected Lessons from Japanese and United States Work Systems* (1998). Along with Richard Walton and Robert McKersie, he is coauthor of *Strategic Negotiations: A Theory of Change in Labor-Management Relations* (1994) and *Pathways to Change: Case Studies in Strategic Negotiations* (1995). He also has extensive experience in leading large-scale systems change initiatives around the implementation of "lean" enterprise principles, team-based work systems, continuous quality improvement processes, dispute resolution systems, and other workplace innovations. He has worked with a wide range of public- and private-sector employers and unions in the United States, Canada, Poland, Japan, South Africa, New Zealand, and Bermuda.

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Thomas A. Kochan is the George M. Bunker Professor of Management at the Sloan School of Management, Massachusetts Institute of Technology. He came to MIT in 1980 as a professor of industrial relations. From 1988 to 1991 he served as head of the Behavioral and Policy Sciences Area in the Sloan School. He also served as a member of the MIT Commission on Industrial Productivity. Kochan came to MIT from Cornell University, where he was on the faculty of the School of Industrial and Labor Relations from 1973 to 1980. In 1973, he received his Ph.D. in industrial relations from the University of Wisconsin. Since then he has served as a third-party mediator, fact-finder, and arbitrator and as a consultant to a variety of government and private-sector organizations and labor-management groups.

His recent books include *After Lean Production: Evolving Employment Practices in the World Auto Industry* (1997) and *Managing for the Future: Organizational Behavior and Processes* (1996). *The Transformation of American Industrial Relations* (1986) was selected by the Academy of Management as the best scholarly book on management.

Kochan is a past president of the International Industrial Relations Association and the current president of the Industrial Relations Research Association. In 1996 he received the Heneman Career Achievement Award from the Human Resources Division of the Academy of Management. He was named the Centennial Visiting Professor from the London School of Economics in 1995. From 1993 to 1995 he served as a member of the Clinton administration's Commission on the Future of Worker/Management Relations.

Christina Sickles Merchant is most widely known for her work in fostering sustainable partnerships between labor and management throughout the private, public, and international arenas. She has recently entered private practice as a dispute resolution consultant after 26 years as a mediator, facilitator, dispute systems designer, and program manager. Her experience was acquired with several federal agencies, including the Federal Labor Relations Authority, the Federal Mediation and Conciliation Service, and the U.S. Department of Labor. Until 1996 she was the project director, labor-management cooperation, for the Department of Defense.

Merchant coauthored a popular book, *Designing Conflict Management Systems: A Guide to Creating Productive and Healthy Organizations* (1996), which won the Best Applied Book Award of 1997 from the International Association of Conflict Management. She is a fellow with the Maxwell School, Syracuse University, and a past president of the International Society of Professionals in Dispute Resolution (SPIDR). She graduated in 1971 from the New York State School of Industrial and Labor Relations at Cornell University and received her masters in human resource and organization development, with honors, in 1990 from the joint program of the American University and the NTL Institute for Applied Behavioral Science.

In her private consulting practice, Merchant offers dispute resolution and conflict management systems design services; provides training and coaching of groups and individuals in dispute prevention and resolution processes; and serves directly as an expert facilitator and mediator in negotiations, work groups, and meetings.

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The Cornell/PERC Institute on Conflict Resolution, founded in 1996, is a partnership between Cornell University's School of Industrial and Labor Relations and the Foundation for the Prevention and Early Resolution of Conflict (PERC). The mission of the institute is to educate practitioners, users, teachers, and students in the field of conflict resolution through research, collection and dissemination of information, assistance to public and private organizations, curriculum development, and training programs. The institute focuses on all areas of conflict prevention and resolution, including those relating to business, environment, communities, civil rights, and health care.

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