CHAPTER VI

MAJOR LABOR DISPUTES— REEXAMINATION AND RECOMMENDATIONS *

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I intend tonight to reflect with you on the handling of labor-management relations in the major industries. Disputes in these cases unavoidably influence public and legislative reactions, and the pattern of behavior adopted tends to be followed generally. I shall outline recommendations I have left in Washington for the handling of such disputes and shall tell you briefly my reasons for each recommendation.

It would have been intriguing and, I dare say enlightening as well, to take an excursion into the Never-Never Land of labor relations. This would have taken the form of pointing out the large number of inconsistencies we find in the asserted principles and positions of both sides from case to case and from time to time and to try to determine by analysis why such things are done. The examples that could be cited are striking and confusing. It is sufficient for the purposes of this paper to say that in general they reflect an overpowering desire to win the current battle, with little regard for the future of the institution of collective bargaining or of industrial relations as a whole. In a discouraging sense it is not unlike the international situation. I heard James Shotwell say recently that peace has different meanings to us and to the Russians. They

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consider peace as possible only after their revolution for justice as they see it has been successfully completed.

The real question is in which direction we should now move. I believe that our primary effort should be to give meaning to our declared national labor policy of relying on collective bargaining to stabilize our industrial relations. I do not delude myself by thinking that disagreements between employers and their workers can be avoided. For that matter, we should not even want them to be avoided. Nor do I hold that strikes can or should be outlawed. They should be used sparingly, but the threat of a shut-down is a moving factor in negotiations. It is not a one-way influence, either, as some have been inclined to think. The stronger impact in most strikes is necessarily on the employees. My principal objection to the strike threat is its substitution for reasoning and persuasion at the bargaining table, and I believe that the course I recommend will tend as time passes to play down its relative importance. Force in itself does not demonstrate fairness or justice. It demonstrates merely who can stand misery longer at a given time. The loss of earnings and disruption of business suffered in a strike are the most persuasive reasons for not plunging needlessly into another one. I believe that in our eager search for remedies we have been inclined to overlook the self-immunizing effects of strikes.

In passing, let me say I subscribe to the considered views of the unbiased authorities that the emergency provisions of the present Labor Management Relations Act are undesirable. Sumner Slichter has written: "It is difficult to imagine a more inappropriate set of arrangements for handling serious disputes." William H. Davis has a quaint way of expressing his disapproval, substantially in this language, "After the erudite judges have found an emergency to exist they issue an injunction which protects the public for a limited period, at the end of which, when the threat to our welfare would appear to be all the more serious, they wrap their judicial robes about them and depart from the scene carrying their injunction with them."

My own observation is that the statutory emergency approach to critical disputes has resulted in postponing the time when the parties are prepared to reach an agreement. The critical nature of the dispute has been enhanced rather than minimized by resorting or threatening to resort to the law. If time permitted, I think I could establish this by detailed reference to our experiences in a number of cases in the past six or eight years. In four cases out of eleven the settlement was not reached until the injunction was ineffective. In addition there are definitely several cases in which settlement was delayed because of the likelihood that the law would be invoked. All told, the picture is not complimentary to the law; nor is it compatible with our doctrine of freedom of action.

My recommendations for the handling of major disputes have six purposes. The first three, are:

1. To reaffirm and implement our declared national industrial relations policy of relying principally on collective bargaining.
2. To emphasize that Government's function is essentially only to assist the parties through effective mediation in coming to voluntary agreements.
3. To make it clear that the President will intervene only in rare cases of genuine threat to the national welfare, and then not prematurely nor automatically nor to promote the strategic advantage of either party.

I propose that the program be initiated by a formal public statement by the President in which he will make it perfectly clear that the outlined course will be his policy and will have his full support. His prestige is called for to impress upon everybody the earnest desire to alter the existing approach. To aid toward the accomplishment of the first three purposes, he could point out the following considerations:

> It is our basic national policy to secure sound and stable industrial peace and to advance the general welfare of the Nation by means of free and voluntary collective

bargaining. This policy has been declared and re-declared by the Congress, and it has the President's full support. It will be his purpose in all ways possible to effectuate this policy. To this end the responsibility will be left with management and labor, and alternatives which would relieve them of their responsibilities will be avoided.

In keeping with our declared policy, Government's function will be essentially only to assist the parties in reaching agreement through effective mediation. The Federal Mediation and Conciliation Service will perform this function, although its Director will be free to enlist the assistance of other officials in such efforts.

The White House will intervene in such disputes only in rare cases of genuine threat to the national health or safety. Our economy is sufficiently resilient to absorb a shutdown in most industries for a moderate period of time. Intervention by the White House will not occur until it is clear that continuation of the shutdown will have a serious adverse effect on our national welfare. Advice as to whether and when we should intervene will be sought from the Director of the Federal Mediation and Conciliation Service and the Secretaries of Labor and of Commerce.

As they conduct their bargaining, therefore, the parties will have to face the possibility of a shutdown of unknown duration, and they are hereby put on notice that intervention will not be premature or automatic, nor will it be available for strategic purposes to either side. This should serve as an added incentive to them to find their own solution.

A statement of this kind would go a long way toward clearing away the uncertainties which have tended to cloud the thinking of the parties in interest. They have maneuvered with one another with an eye on the White House and have not entered into negotiations with the open-mindedness in the absence of which collective bargaining simply cannot work.

They have hoped for and sought favored treatment. When it has suited their purposes they have insisted or have denied that a given dispute would be a threat to national health or safety. We are becoming more sophisticated on this subject. There is now a great deal of doubt whether a dispute constitutes an emergency merely because it is important or because somebody yells emergency. After observing a series of cases, it has been found that a highly discriminating look must be taken before we are ready to say that in fact a dispute is one which threatens the national health or safety. There are many examples which lend support to this critical view. Within the past few months we have seen strikes which were first feared to be emergencies but which turned out not even to be serious inconveniences. This has happened both at the national level and in states which have anti-strike laws for public utilities. It is for this reason that the expression "major disputes" is preferable to the term "emergency disputes."

The use of a roadblock in the form of the unanimous advice of the two cabinet officers and the Director of the Mediation Service will certainly minimize the possibility of such cases getting to the President. In any event this will assure the country that if the parties are making or can make satisfactory progress through their own efforts no artificial or unnecessary hindrances will be imposed.

The fourth purpose is:

> 4. To strengthen the Federal Mediation and Conciliation Service and improve its effectiveness and standing by employing labor-management panels at the national and regional levels, with two cabinet officers serving as advisers on the national panel.

The President could emphasize the following considerations:

> The National Labor-Management Advisory Panel of the Federal Mediation and Conciliation Service provided for in the Labor-Management Relations Act, 1947, will be re-established as soon as possible. The Secretary of

> Commerce and the Secretary of Labor will be included in its membership. It is expected that this Panel will help improve the effectiveness of the Mediation Service by providing advice and assistance in the handling of major disputes and, in appropriate cases, by directing the force of public opinion at either or both parties to the dispute. The Panel can also be of service in generally improving labor-management relations. The Director of the Federal Mediation and Conciliation Service will also establish labor-management panels in each region of the Service, which will function in a similar manner with respect to labor disputes of concern to the various communities.

Obviously the inclusion on the panel of the Secretary of Labor and the Secretary of Commerce will raise the prestige of the Mediation Service and reassure industry as well as labor that its viewpoint will be represented at the policy-making level. There are still some interests which carry over a prejudice against the Service because it was until 1947 a part of the Labor Department, a prejudice which in my humble judgment has scant basis in fact. It is now broadly agreed that great reliance must be placed on effective mediation. This is more easily said than done. Steps must be taken to improve the acceptability of the Service. It must be remembered always that mediation is only an aid to collective bargaining, and if the parties are not receptive to the idea of a voluntary agreement which must reflect the essential needs of both, mediation has little chance of functioning effectively. Mediation is nothing by itself. It is in a sense the voice of the public, but it has no coercive powers other than the force of logic and reason. It is a part of collective bargaining, but the spirit of collective bargaining is also the moving force in mediation.

The fifth and sixth purposes are:

5. To provide a fair trial period for this program by avoiding hasty legislative changes or fruitless, antagonizing hearings.

6. To have a thorough non-partisan study made by a presidential commission before recommending to Congress revisions that should be made in the Labor-Management Relations Act, 1947.

The President's statement might well explain these purposes along these lines:

> To evaluate properly the effectiveness of this program, it is recommended that, except in the particulars in which the President has previously stated revisions should be made, the Labor-Management Relations Act, 1947, should remain unchanged for a period of one year. It is apparent that at this time there is no consensus, either among the interested parties or the public generally, on changes that should be made in the Act. In these circumstances, we should avoid any action that would tend further to inflame and antagonize the representatives of management and labor and make it harder to work out legislative changes that will be effective in the public interest.
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> In the meantime, the President should announce, he intends to set up a commission of qualified experts to observe and study the subject. The members of this commission will all be representatives of the public, although people of various backgrounds will be included. The commission will report to him at the end of one year, with recommendations, and he will then transmit to the Congress such recommendations for legislation as shall seem appropriate in the light of our experience and of the results of the study made by this commission.

This statement, in my opinion, accurately recognizes the futility of current attempts to compose the differences over what should be in the law. Our concern is not only with the statutory changes as such but with the adverse effects of the search for changes on the sensitive process of collective bargaining. As we know, the possibilities of this process depend directly on the attitudes of the parties who engage in it, and I can see nothing but harm in pursuing our present course any

further. The intensity of feelings and the inflexibility of positions were dramatically exhibited in the recent experience of Secretary Durkin's advisory committee, which fell apart over a procedural question. To continue such efforts in the present atmosphere would definitely be to drive the wedge more deeply and to do serious harm to other vital features of a constructive labor relations program. I believe there would be a strong sense of relief if the struggle over the law were suspended at this time.

This is not to say that changes are not needed. I have already expressed my opinion of the emergency provisions. I believe, however, that if these provisions are administered in line with the recommended program we can live with them for a year or two. This would be especially so if we knew that a high-level group of experts is dispassionately studying the subject and will make constructive suggestions for improvements within a reasonable time.

You will note that the presidential commission would be composed entirely of public members although it would include people of various backgrounds. Experience has shown that bi-partite or tri-partite bodies of this kind partake strongly of the nature of debating societies, with minds firmly made up in advance. In my short term with the Mediation Service I have experimented with the idea of separate discussions with representatives of industry and of labor on controversial matters, and the results have been far more satisfactory than with joint meetings. When the traditional reason for quarreling or disagreeing is removed, as when there is not present the opponent to whom, as a matter of principle, concessions are not customarily to be made, we find a gratifying amount of reasonableness. In such meetings, by way of illustration, I have found that most of the features of this program seem to be acceptable as worthy of trial.

The heart of the recommended program is genuine collective bargaining, and a vital part of that, so far as intervention goes, is effective mediation. It is routine in Washington and

elsewhere nowadays to suggest that the answer to the problem of labor disputes lies in better mediation, but little thought seems to have been given to what this means in terms of reality. It is not sufficient merely to express the general wish that disputes be kept out of the White House or that there should be a stronger Mediation Service. Laws like the Railway Labor Act and the Taft-Hartley Act require under certain circumstances that the President take action. To this extent criticisms of White House intervention have been unfair. Moreover, the pressures for intervention are very strong on a case-by-case basis, and to resist these pressures it will take strong determination and the availability of other effective and acceptable channels.

The appropriate agency to which to funnel labor disputes is obviously the Mediation Service. As indicated, the President can do much to improve its standing and its favorable reception. The Service, on the other hand, can step up its activities with the full support of the administration and with the help of its augmented national labor-management panel and its regional panels. The cooperation of other officials in individual cases can also be helpful, as we recently saw in one or two cases.

It must not be assumed, however, that there is some magic formula for use in any specific dispute. Mediation can function only to the extent that the parties assent to the theory that they must find an area mutually agreeable to them, which obviously will be ultimately expressed in the form of a voluntary agreement. If they have no faith in the possibilities of negotiations or adopt rigid, unchangeable positions from which no amount of reasoning or persuasion can move them, then neither collective bargaining nor its adjunct, mediation, can do much good. If they are disposed to reach agreement then even if they cannot fully agree upon the details, mediation can be helpful by suggesting alternative techniques like voluntary arbitration or fact-finding with recommendations.

I should not want to be understood to be saying that the techniques of mediation cannot be improved. If we adopt and seek to give meaning to a program in which Government's primary function is mediation, then there is an obligation on Government to have as efficient a Mediation Service as possible. The Service must be willing to adopt its important role. This means, among other things, that it must actively engage in studies looking to its maximum utilization and effectiveness. This calls for intensive research projects which may lead to self-improvement.

The Mediation Service by itself and in conjunction with others is now engaged in such studies. We are cooperating in a socio-psychological study of mediation which has been in progress for a couple of years. Within the Service, study programs involving critical self-examination are going on in several regions. Conferences are being carried on with industry and labor to ascertain not only their frank opinions of the conduct of mediators but also precisely what they would like to see done that is not now being done. Studies are being made of the methods used in other industrial countries in a search for new ideas. We have made a beginning in another project in which I have a good deal of hope, and which should be broadened considerably. In the area of conflicts human behavior is a vital influence. We believe, therefore, that the application of the techniques of the psychologist and the psychoanalyst to reveal the personality mechanisms that operate in such situations can be most enlightening and productive.

This subject should not be left without a word about preventive mediation. For several years the Mediation Service has been giving some attention to this. It involves in the main the developing of closer relationships with management and labor during periods of calm, in order to develop a stronger sense of confidence and a better understanding of the problems and issues that would probably become acute if left to the normal course. It is a type of bloodstream work, designed to promote the acceptance by the parties of the process of collec-

tive bargaining by taking notice of each other's problems. It recognizes the greatest obstacle encountered by the mediator—the hostile, fixed, and defiant position, which usually carries with it impatience, obstinacy, and bad manners, all of which are in conflict with the spirit of the kind of collective bargaining which is implicit in our national labor policy.

The inevitable question will be asked: What shall we do when we have a strike which truly threatens our national health or safety? No one can seriously question our right or our duty to protect our nation. Eyebrows may be raised when I say, however, that we have no need at this moment to be concerned. For over a century and a half we have thrived without any specific law to meet such a contingency, under all sorts of circumstances. I have tried to present my view that we have tended to create or intensify crises which otherwise could have resolved themselves without serious danger to the economy.

The suggestion, by seeking to provide legislatively against them, that such situations are expected or feared in our country has hurt rather than helped. In our desire for technical perfection we depreciate the protective forces we already have. Strikes are attractive to nobody and, as I have said, have a self-immunizing effect. In industries important to the community, over the years management and labor have exhibited a clear sense of obligation to the public. In critical situations or at critical times self-restraints have been voluntarily imposed. Thus, the railroads and their labor organizations have agreed to maintain operations under the status quo for a considerable period of time when in disagreement by jointly espousing the Railway Labor Act. In atomic energy a similar arrangement was mutually agreed upon with the atomic energy labor relations panel. During World War II the no-strike pledge and submission to the disputes jurisdiction of the War Labor Board were of great assurance and comfort to our cause. Moreover, under the recommended program the ultimate right of the President to invoke the emergency provisions of the Taft-Hartley Law would remain.

And, beyond all this, if we are actually endangered as a nation there is always the ability to have Congress improvise a course to meet the threat in a regular or special session. This was what was done in Canada by an extraordinary session of its Parliament when a nation-wide railroad strike started in 1950. That strike was ended within 48 hours after the special statute was enacted, and the issues in dispute were resolved in a restricted kind of arbitration which Parliament set up. But, most important, we must not neglect, and we should certainly be most careful not to undermine, the forces for orderliness and for protection of the community which are in the hands of the parties themselves.

As you perceive, this recommended program is not a cure-all. It simply recognizes that we have no satisfactory remedy now and that we must continue to observe and to mold our thinking as we progress. It is in this sense that this program can make its most constructive contribution. It denies or at least discounts the validity of fixed positions which seem to be based largely on pride of authorship—authorship of the existing order or authorship of declared criticisms of the existing order. That approach makes for immobility, when just the contrary is needed in a society which must remain fluid. If the advocated program helps to free closed minds or to relax frozen positions then it will be distinctly worthwhile.