

These structural changes, which will produce huge power shifts from providers to payers to consumers, will continue until the shakeout is over. When that will occur is unknown, but I can assure you that it will continue and it will be difficult, particularly for physicians.

In the 21st century, dispute resolution in the health care environment will present a particularly compelling challenge for your profession, given the new structures that are developing almost on a daily basis, and the new complexities that arise from them. Your challenge is to seize these opportunities and to strive for innovative dispute resolution techniques and structures to keep pace with the change. Alternative dispute resolution mechanisms must do more than reduce costs, and its viability will also rest on its ability to produce creative, yet permanent and effective outcomes.

IV. CONCURRENT SESSIONS

SESSION I—EDUCATION

ROBERTA L. GOLICK*

RICHARD N. FISHER

LEO GEFFNER

PAUL STAUDOHAR

Roberta Golick: It's my pleasure to introduce our panelists. You'll recognize Clark Kerr. In the last hour we were fortunate to have him share with us some of his insights, as well as some of his foresights, into the field of education. A prolific author, nationally renowned authority on industrial relations in education, Dr. Kerr is President Emeritus at the University of California and Professor Emeritus of Economics and Industrial Relations at the University of California, Berkeley. Dr. Kerr has graciously agreed to join us for this informal session where we will be hearing from practitioners who will respond to his remarks this morning and offer some comments of their own.

To Dr. Kerr's left, to bring us the management perspective on the issue, is Richard Fisher. Richard joins us from the Los Angeles law firm of O'Melveny & Myers where he represents employers in labor relations and employment matters. Dick has for many years

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served as chief negotiator for the Los Angeles city school district in its teacher contract negotiations.

Which is why Leo Geffner, to Richard's left at the table, is no stranger to him. Leo is the senior partner at the Los Angeles firm of Taylor, Roth, Bush & Geffner, where he represents an assortment of well-known labor unions, including the United Teachers in Los Angeles (UTLA). Dick and Leo have probably spent more nights together than they care to admit. They will be giving us a glimpse into their experience in California, which we all know is generally reflective of changes that are either already underway or on their way in other parts of the country.

We're also joined this hour by one of our own Academy members. To my immediate left is Paul Staudohar. In addition to being a successful arbitrator, Paul is a Professor of Business Administration at California State University at Hayward. Paul Staudohar and Clark Kerr co-authored the paper entitled "Structural and Context Changes in Education," from which Dr. Kerr drew many of his remarks this morning.

For our format we thought that we would invite Paul to begin by giving us a brief recap of some of the highlights from his paper, as well as any observations and comments he would like to give. Then we'll turn to our guest panelists for the union and management perspectives and then open the discussion to the entire panel and the group at large. So let me start by giving you Paul Staudohar.

Paul Staudohar: My points are four—merit pay versus seniority, affirmative action, the conflict between faculty and administrators, and the empowerment issue where parents, administrators, and teachers are all seeking a bigger share of the power. These issues are all at the essence of the conflict that we perceive as existing in all levels of education today.

Now, as far as the merit versus seniority issues goes, beginning about 1980 or so, merit pay came to the forefront, particularly in primary and secondary education. It was thought that as a way of bringing out the best in teachers, they should be offered at least some portion of their compensation in pay based on some kind of student, faculty, or administrative evaluation. About 15 percent or so of the primary and secondary school teachers today have all or part of their compensation based on merit. It's not a popular thing among all teachers. It's controversial; some like it and some don't. It seems that private school teachers are more amenable to merit pay than public school teachers are. The unions are against it. They think that teachers should be compensated all the same and that

there shouldn't be this differentiation based on merit, which after all is very hard to assess when you look at teachers. Who is doing the assessing? Is it an administrator who is sitting in on one or two classes? It's subjective. What teachers object to most is that they don't feel they're being evaluated fairly. Interestingly, my own school system, the California State University system, a few years ago, experimented with a form of merit pay whereby at the end of the year a bonus of anywhere from about \$1,000 to \$2,000 would be given to professors based on the work that they did. Probably only about 5–10 percent of the faculty was eligible for this. This seems to have worked out okay if you were fortunate enough to receive such a bonus. It was certainly welcomed. I don't think that it had much to do with one's motivation; however, I think that whatever you did during the school year was based on things other than the bonus that you might receive at the end of it. There's been a lot of research in the human behavior area on money as a motivator. And I think we all work for money, but it's pretty far down on the list in terms of things that really bring out motivation in people. Recognition and growth on the job are crucial, and there's lots of other things that are more important.

A second issue that is quite controversial here in California has to do with affirmative action. As members of the Academy, you're all familiar with this topic. You saw it being born back in the mid-1960s when the executive orders were signed by President Johnson, and you saw it evolve over the years. The controversy in this state and nationally, too, of course, has to do with mainly three arguments. One is the justice argument—that it doesn't seem fair to show preference on the basis of race or sex in the hiring, promotion, or training of individuals. Just as it's not fair to discriminate against somebody on the basis of their skin color, it's not fair, in the eyes of opponents of affirmative action, to show preference either. The second argument is that choosing the less than best person for an employment opportunity or a promotion is a disservice to society in the sense that it doesn't put the best people in key positions. In the global marketplace we need to have the best foot forward as it were, and I realize, of course, that a lot of jobs are subjective and we don't really know in all cases what the determinants of success are going to be. But preference is being shown, and better people are being shunted aside or not given the opportunities they might otherwise get if there were a level playing field. This is not something that is going to serve us well in competing with other nations.

The third point is that women and racial minorities themselves, in many cases, are against the idea of affirmative action. They feel that their legitimate achievements are tainted by the supposition that they may have gotten their job, or their promotion, or their opportunity because of preference. And it's showing up in the polls too. Many poll results in the *Wall Street Journal* and *Los Angeles Times* deal with this issue. It's clear that a great many women and minorities themselves are against this idea. It's a hot button issue currently in Congress, and the President has been responding to it. Now, in California, recent developments seem to indicate also the volatile nature of this issue. Last year Proposition 187 was passed, which denies educational opportunities to illegal immigrants. We have a lot of illegal immigrants coming into California, especially from Mexico and Latin America and to some extent Asia as well. This is a response by the electorate. We have a system in California, as I think you do in other states too, where if enough signatures are achieved on a particular initiative, it can be put on the ballot. This initiative did get on the ballot, and it passed rather convincingly. The problem for people who favor it is that it is now tied up in the courts, and it probably will be for a while. We should be getting a decision as early as perhaps mid to late summer from what I understand. If the courts do approve it, on constitutional grounds or whatever, then this would presumably do a lot to stem the flow of illegal immigrants into the state because a lot of them are coming here for the social services that California generously offers. If the services are not available, they may not come. Of course, they're also coming for job opportunities, and they're making a significant contribution in the labor market too. So, this is not an easy issue.

The other issue that's more prospective is the California Civil Rights initiatives. Now this is another one of these initiatives that needs 600,000 signatures to get on the ballot. They're collecting those signatures now, and it looks like it's a cinch to get on the ballot. According to the polls that are being taken, it's going to win pretty convincingly. Now this initiative would eliminate the concept of affirmative action in all state services, basically including education, contracting, and employment.

Faculty versus administrators. This is a long-time problem and depends on which side of the fence you happen to be sitting on. If you're an administrator, you think that you're doing an important job in helping the school district or university or community college function more smoothly, and you're utilizing the human

resources in the best possible way. If you're a teacher, you probably look at this as something that is more of an interference than a help. You may resent intrusion by administrators into what you're doing in a classroom or your choices of textbooks. The long-term trend has been to increase the number of administrators compared with teaching staff, as the proportion of administrators to teaching staff has been increasing. But very recently, it seems that this is being reversed, and more emphasis is being placed on teaching and somewhat less on the administrative functions.

The empowerment issue. These days, everybody seems to be into power or wanting to get into power. In education, given the nature and the importance of its function, it's natural to expect that there are many concerned groups. The current battle is mainly between unions, district managers, and boards of education. The legislative body may come into play depending on the level of education. This is not a new issue. You may recall the Ocean Hill Brownsville incident back in the 1968 New York teachers' strike. Some of you may remember that the parent groups were prominent in the conflict. The basic change effect was to give more power to the parents over decision making, and that did not seem to work out very well at that time. It is an issue again today.

Richard Fisher: In order to illustrate some of the points that Dr. Kerr and Paul have made, Leo Geffner and I will focus on what might be considered a test case or principle and will discuss some of the issues involving the restructuring of public education. We're talking about the Los Angeles Unified School District, the K-12 district, a major part of the southern California employment sector and infrastructure. Just a quick snapshot of the organization: It's in excess of 600,000 students in some 500 locations with approximately 33,000 teachers and about an equal number of other employees. It has about a \$4 billion budget, very labor intensive—about 85 percent plus of the budget is allocated to employment. They've been engaged in collective bargaining since the early 1970s, at which time the local American Federation of Teachers (AFT) and the local National Education Association (NEA) units merged. It's one of the few merged locals in the country affiliated with both major education organizations. The District serves a very large immigrant population, legal and illegal. It's estimated that the majority of the students come from homes where English is not the primary language spoken. The District, generally, is struggling with a very tough mission, and by all objective measures and some not-so-objective measures, it is not doing that well. There are a few

bright spots. They tend to win the national academic decathlon, or whatever it's called, but they're not doing a good job for the run-of-the-mill student who also brings many problems to the institutions. Like a lot of states, the District is fiscally dependent on the state and heavily regulated by the state.

I'm going to quickly identify at least seven forms of restructuring that have occurred, are occurring, or might be occurring in the near future. Most of these heavily involve the teacher unit, although they affect everyone else as well. Leo will also comment on these and try to draw some conclusions for the role of neutrals in dealing with some of these issues. The seven issues are reduction in services, shared decision making, school-based management, LEARN—I'll explain what that is—charter schools, the voucher movement, and the breakup of the District. So we're talking about some reforms, some significant restructuring, and in some cases, drastic changes in the organization. And when I say "breakup of the District," in current political parlance in California that also means breakup of the union as the union has become as big a target as the District for the primarily suburban-based legislature.

The first category of reductions in public services is twofold. First, there is the severe reduction in nonclassroom support, such as administrative and nonclassroom support—classified and custodial personnel. Historically and through the present time, the District has enjoyed economies of scale that permit it to devote about half of its budget to administrative overhead, which is significantly less than any other district in the state. Central administration costs about 3 percent instead of 5 to 6 percent. Despite this, 10 or 12 years ago the teachers' union began a very consistent and effective attack on the issue of bureaucracy in the administration and nonclassroom support, including a lot of people in their own bargaining unit. They did a good job of persuading the public that the support staff was too large and, in fact, an obstacle to education—part of the problem, if not *the* problem. This issue came to factfinding in four or five separate factfindings involving several people who are National Academy members. Invariably when they looked at the facts, they ruled as I have just summarized it, in terms of the statistics and the relative comparisons. Those decisions did not resonate; they were hardly covered in the press, but the press picked up the attacks. It had really become a pretty effective tool for UTLA to use against the board, to embarrass the board into bigger salary increases, and to eliminate the other jobs. Of course, the two are related. As a result of some significant

downsizing that resulted from that long series of negotiations and budget trimming, there is now no longer any teacher training to speak of. There are no curriculum experts or specialists in the field to support the classroom teachers. By all accounts, the administrative staff is skeletal, and there's virtually no planning taking place. There's also been severe reduction in other support services, including custodial and maintenance services, although the fiscal condition of the schools is much better than most people think it is.

The second kind of reduction in services dealt with duties expected of classroom teachers toward students. This issue for restructuring had its origins in the late 1980s where for two full years in 1987–1988, and again in 1988–1989, UTLA boycotted what they defined as extra duties, including meetings with parents, faculty meetings, open houses, teacher training programs, and after school availability for any purpose. The stated purpose of the boycott was to affect salaries, of course, like a slowdown. But, in fact, many teachers found that, from their perspective, the reduced duties made for a better job, and many habits were adopted that have become built into the system. So today, there is, by comparison to the time before, a much lower level of availability at school sites and so-called additional services (those services additional to students).

The next form of significant restructuring or attempt to reform the District involved two issues. The two issues came out of a two-week long strike in 1989 that started off as a strike over money but was not productive financially to the union. The two issues were shared decision making and school-based management. These are both attempts to restructure governance in the schools. Shared decision making has to do with how decisions are made. For example, at the local site level, should decisions be made by the principal, by the principal *after* consultation, or by the union steward, or by a council? Those kinds of issues fall under the rubric of shared decision making. The other aspect is school-based management, which changes the vertical distribution of authority between the school and the central office, with the intent being to delegate more authority to the local schools. The idea is that they could do a better job if they did not have their hands tied by the District structure. As applied at the District level, the shared decision making agreement meant giving control to local councils, half of which are composed of teachers at the site. The councils would then supplant the principal. The principal has one vote out

of maybe 15 or so members, including a small number of parents, some classified employees, and the predominant group of teachers. They assumed authority over the local budget, student discipline, staff development (to the extent they had any staff development and scheduling), determination of school activities, and the schedule.

School-based management, on the other hand, was designed to permit wide latitude for local schools to change their programs and do a better job of delivery. After about three years, the consensus in all quarters was that the package failed for several reasons. It arose out of the hostile origins of a strike. It led to a lot of “chest thumping” by the teachers’ union—they were now empowered and in charge. It did not sit very well with the other unions or with many parent and community groups, who were, therefore, suspicious of it. One of the problems in dealing with these kinds of issues in collective bargaining is that there aren’t enough players at the table. It was a bilateral deal, but it did disadvantage the others in comparison to the teachers’ union. Neither the parents nor administrators nor classified unions were included in the design. One of the consequences of that was that site administrators soon formed their own bargaining unit, which you can do under the California state law. They allied themselves with the other unions. All the other unions except UTLA formed an alliance that, to this day, is a major counterpoint to the teachers’ union on a lot of issues. Another reason it failed was that there was no training. It was just announced and imposed without any buildup. And finally, it was found that in practice, the councils, in particular, took too much time. In fact, their major effort had been to cut down on their duties. They found that it’s very time-consuming to work under a committee governance system. It’s one thing if you’re a faculty member at the university and you’re getting paid to be on committees and have committee governance, and it’s something else if that’s an add-on to your regular job, particularly if you’re trying to trim the duties in your job.

In any event, in 1992, the next wave of reform was called “LEARN.” It’s an acronym probably constructed around the word rather than vice versa. The last two words are “Restructuring Now.” And it’s broader based; it has business people involved, funding from the private sector, the participation of all constituents—the classified units, the administrator units, the administrators, some board members, and the teacher’s union. So they tried to broaden the scope. They removed it from the collective bargaining arena

and after careful study discovered that the principal needs to be the primary educational leader at a site. They essentially rejected the committee form of site leadership. But LEARN, very much like the so-called school-based management that preceded it, does stress reform through local school governance by giving authority to the local school—empowering the local school, taking authority away from the central office. It's very active now, and the jury's out on whether it will improve. It's been in effect now for about three or four years. Some people are starting to ask, "What has this done for students?" LEARN recently commissioned a study whose conclusion was that the effort was faltering because of inadequate administrative support.

Let's turn now from reform to the attempts to inject competition and more drastic reform into this system. The first of those is charter schools. It's a creature of the state that is being piloted statewide, and it's very popular. It cuts the local school loose not only from the central office, which just gives them the money, but also cuts them loose from state regulation, including collective bargaining and the union. Unless they want to voluntarily recognize, there's no obligation to. It basically treats the school like a private school. I have to observe for you what I consider to be a major anomaly here, and that is all of this localizing of authority has been very much supported in the press and adopted by UTLA. I think the reason for that is clear; it has an ideology that's antibureaucratic, antiadministrative, and so this seems to fit. "Let the schools do their thing." Yet I don't think the organizations have figured out yet that they are the major centralizing influence on the District and have been for at least the past 10 years. Their contract, which is now about 300 pages, is the most comprehensive set of handcuffs on the schools. At the same time the UTLA is publicly and avidly embracing the LEARN local governance system that requires that all assignments at the school sites be made on a uniform Districtwide system based on the seniority of the teacher and what they want to do. The most senior teachers get their preference—what grade they're going to teach, what course they're going to teach within their department, that sort of thing. The shift to local school control, if it's successful, would seem necessarily to lead to some reduction in the central power of the union. Again, I'm not saying that that's been recognized yet.

There are two more forms of restructuring that are looming large on the near horizon for public schools, including this District. The first is the voucher movement. This is clearly a radical

restructuring to inject competition into the umbrella by offering parents the financial ability to take their state funding on some formula basis and spend it either on their neighborhood school, some other school, or a private school. This was defeated in the first round. Most people think it's going to come back in a revised form, though. And you would think that it probably is the most threatening to the organization of the District and the union. So far, there has not been too much indication that that's changing behavior, but it may.

The last of the structural changes is the breakup of the District and of UTLA, as I mentioned. Historically, it's been there for 10 or 15 years as an attempt by some of the suburban areas within the District to have more locally controlled schools, in some cases to insulate certain areas of the community, particularly the valley, from the perceived problems of the inner city. Presently, there appears to be fairly widespread support in many quarters, including the minority communities, who were very unhappy with the service that they were receiving from the school district, thinking they could do better on their own. As indicated before, the perceived excesses of the teachers' union have led to a fairly widespread effort within the legislature to trim their sails as well. So this is on the horizon and is a very real threat to the existing structure. We're talking about some fairly radical restructuring.

One last thing, in Dr. Kerr's remarks about political bargaining and economic bargaining, in 1988 and again in 1989, we have a very interesting application of both at once that I have not seen before or since. But it was clearly a combined collective bargaining year-long boycott tied to the spring elections to bring everything to a head with a threatened strike in the spring. They demanded that board members be replaced, they mobilized the work force to get involved, not just on the picket line, but in the neighborhoods, and campaign for the designated candidates. The success of that can be measured by the fact that some months after the settlement, when the new board came in and no negotiations were occurring, the board by unilateral motion granted full union security for the first time to the union, outside of the collective bargaining process. In summation, those are the hot buttons in current reform issues on the firing lines in Los Angeles.

Roberta Golick: Thank you.

Leo Geffner: I cannot shift the blame for all the problems of public education in Los Angeles to the administrators and the bureaucracy of the District rather than place the blame on teachers

and teacher unions, as indicated by Dick. There is a crisis obviously going on in the Los Angeles Unified School District as there is in virtually every urban district in the country. Los Angeles is not unique. The same problems are being faced throughout the country, and Los Angeles, being Los Angeles, has more of everything and gets more attention than other districts do. But we should go back and trace the subject at hand, that is, the role of collective bargaining and unions in relation to neutrals. What started collective bargaining in a serious manner in Los Angeles, as Dick pointed out, was the merger of the NEA local and the AFT local in 1970, which then formed a very strong, potent force of almost 30,000–35,000 teachers. They were not unified and were quite militant and idealistic coming out of the 1960 period of education. The first year of the merger, there was a 3½-week strike in Los Angeles, which was one of the longest strikes in any urban district. Many of you may remember that, if you are from Los Angeles. The objectives of the union at that time were really threefold.

Probably the most important one was to increase the standard of living and essentially the salary of teachers that were at that time—as most of you will remember—quite low. As Dr. Kerr pointed out, the teachers were highly frustrated because of the low salaries and the high educational requirements. They were working at exceedingly low salaries compared with the rest of the professional working force both in the private and public sector. The second objective was to obtain some sharing of power in decision making within the District. Teachers felt, and still do in many ways, that this large, highly bureaucratic District, run by administrators, gave teachers very little voice, much less power in making decisions on how they were going to provide education to the public. The third was to change the system. They felt dissatisfaction; there always has been, at that time as well as currently, dissatisfaction with the whole method of education and how well the student population was being served. The question was whether the community was being well-served by our system of public education as it was being practiced in the Los Angeles Unified School District. The third objective came out, I believe, with a 1960s mentality. Most of the union leaders, activists, and teachers were educated during that period of radicalism, idealism, and the civil rights movement. All that ferment that was happening in the 1960s spilled out into the Los Angeles Unified School District with the teachers' strike.

Now going back, I would say that in the first objective, the union has been remarkably successful. The starting salary at that time was \$9,000–\$10,000 a year; now it's closer to \$25,000. The higher rate was \$20,000 a year after the education and various certificates and advanced education were attained; now it's closer to \$50,000. Again the national objective has been for many years that teachers, as professionals with skills and education, should be earning \$70,000 a year as compared with other comparable professions. But it has been successful, no question about it.

The second, in terms of power sharing—as Dick pointed out over and over again in his statement—there's no question that UTLA, as a union, has been very successful. They gained a great deal of power in terms of strength within the District on sharing decisions, and I think there may be some regret to that because they became a partner in the system and they probably may not want to be a partner.

In changing education, that's been a dismal failure. That objective failed in the 1970s in the strike, and it's been a failure ever since. The union has never had the ability to make any real basic changes in education. This brings us up to the current situation where we are going into some new concepts and new ideas of education. Some of it's very difficult for the union to accept; much of it's very difficult for the administrators to accept because administrators have to give up what they perceive to be their God-given right to make decisions and to lead in running the schools. As most of you know, administrators and principals have a feeling that they know best. This is prevalent in education. Teachers' unions are going into a new world. Their world has been essentially—even though they shared power, even though they have increased their economic situation—a history of the collective bargaining concept that was carried over from the private sector under the National Labor Relations Act concept of bargaining, strikes to break impasse. Superimposed on that was the item that Professor Kerr spoke about—the political bargaining that was engaged in, coinciding with economic bargaining. Now that brings us up to the current time. Are the unions happy with the situation, going into a new world of restructuring, of shared management, school site-based management, charter schools, and breakup of the school district? Absolutely not. Looking back historically, if there had been a continuation of the commitment of the tax-paying electorate to subsidize and to pay for schools and for education, as it is really needed in urban districts, and to meet that commitment that

was part of our American heritage, which I think has failed in the past 15 years, there's no place to go. Because if we had a system where there's enough money being provided where you could have higher salaries, smaller class sizes, better school facilities, expert teaching for minority languages, and all the rest that goes with good education, maybe the old system, the old structures would have worked. But the reality is that the tax-paying voting electorate has not been willing to support public education in the manner that is required. And you have to face that reality and review the collective bargaining concept. There's no point in striking a school district that hasn't got any money to pay you a higher salary. Engage in a strike only if you can gain something out of it. And that has been the story certainly the past 5 to 10 years, starting with Proposition 13 in California.

We also had the very difficult problem to face up to, that is, the Los Angeles Unified School District is 80 percent minority. There's about 20 percent of students that are called the "Anglo" kids in the school district out of about 600,000–700,000 students in the Los Angeles Unified School District. The question that arose from the election results last year on Proposition 187 was: Is the voting electorate, now older, willing to continue to support and provide first-class needed education to minority kids? And it appears not; certainly coming out of that election, it would seem it is not the way we're going. So that's the reality that the union and teachers have to face. As Dick pointed out, they've gone into all these new concepts in Los Angeles because there really is no place else to go. I mean you're not going to be happy about it, but you have to buy into it because apparently there are, at the present time, no alternatives.

The concept of sharing decisions and running the schools at the school site, which is the heart of all these new concepts, is that the teachers in the school, the principal, the parents, and community groups that are involved are going to make decisions on how to run the school. They're going to decide how much salary they're going to pay. They're going to decide what kinds of books they have. They're going to start looking at curriculum. They're going to decide what kind of hours they'll teach. They're going to decide what kind of physical facility they're going to have. And this is all going to be done by a group of teachers, a group of administrators, the principal, the assistant principal, parents, and the community. Now, on paper and in theory that sounds like it might be a wonderful way to function and to operate a school and provide

needed education. But I'm sure all of you can see the practical problems of getting that mix into a school site and trying to make decisions. That's been the problem; it's all so new, no one really knows how it's going to work. Again, the beginnings, the shared decision making that was negotiated by UTLA in the District in 1989 failed. The union has a different understanding of why it failed. Dick has explained that it failed, one, because not enough money was provided due to the huge deficit in the Los Angeles Unified School District's budget that year and ever since. So it couldn't be properly funded, but even more important perhaps was that the administrators would not accept the concept that they had to share this kind of decision making at the school site, even though UTLA as a union had a great deal of power and influence. But it was hard for the administrators to get themselves involved in this kind of mutual concern and consensus that's required when you're dealing with this very difficult mix of people having highly emotional appeal, highly motivated in dealing with activists, parents active in community groups, and a very active school faculty. So there have been some real problems with that.

As Professor Kerr pointed out, I think quite correctly, this is a tremendous source of conflict. The conflict is going to be more extreme and acute than it was when we dealt within a structure where we knew the parameters. We knew the respective roles in terms of collective bargaining, sitting across the table with the school district bargaining, going to the school board, the political bargaining, and going to impasse and all of that. That doesn't fit this new system. This new system of restructuring is going to become the way the schools are going to function. Under any one of the schemes that has been outlined by Dick, it's not going to be the old system of collective bargaining as we know it. And how is it going to work? The union, at least the UTLA, is going to have a major role because it has a great deal of strength. There's just no question about it; it's a strong organization with strong support from a very large membership that is very supportive of the concept of dealing on a collective basis, whether it's collective bargaining or some other form. But you can see the sources of conflict that will develop in terms of making decisions when you have this very strange mixture of people making decisions at the school site. How are they going to resolve these conflicts? I think that's the question that is a most difficult one to face because there will be conflicts in terms of competing ideas, competing proposals, and competing solutions. Arbitration in the traditional collective bargaining sense

as we all know it, grievance arbitration under collective bargaining agreements, has been an outstanding success in labor relations in this country; no question about it. But has it been successful only because it has been accepted by both players—the unions and the employer—and they're willing to have a fairly quick solution to a problem by an arbitrator rather than engage in litigation even though it may be the wrong decision and they're willing to accept that. If there's a wacky decision that comes out in interpreting the contract, there's always the next bargaining session when the contract terminates. Or you get a new arbitrator, of course. That has been extremely successful, but when you get away from the traditional grievance arbitration, I'm not so sure that the role of the neutral will be as successful or what the role will be in the future.

Now alternative dispute resolution (ADR), of course, is the big thing, as everybody talks about ADR; it's everywhere. It's found in the statutes, in the court systems, and now it's going outside the courts. It's in securities conflicts, it's in family conflicts, and everyone seems to say that ADR is going to be the answer to all of the conflicting problems that we have. I'm not sure whether it will apply in education or not. It's going to have a role because no one has a better solution. If someone could find a better solution, then maybe it wouldn't have a big role, but because we're used to arbitration, used to neutrals certainly, ADR is going to have a role to play. Whether it'll be successful or not, I think, is another question. I think all of you arbitrators and mediators sitting here know that there's a limitation in what you can do in this new world of decision making that doesn't involve the interpretation of the collective bargaining agreement. And there are lots of defects in the system itself that have to be straightened out before it will work in this new world of restructuring of decision making at the site of schools. The parties involved must develop confidence that the arbitrator's solutions and mediations by the arbitrator will be productive, and that means the system needs neutrals who really have an understanding of the school systems and education. And it's not just the fact that someone's a lawyer or someone's an economist that makes them an expert in dealing with these kinds of problems. I think there's a tremendous need for a pool of neutrals who really have this kind of expertise, this kind of knowledge, so that both sides would have confidence in submitting their conflicts to this neutral.

Another area that has to be of concern—the union people are always concerned about this, and I'm sure management is as well—

is that the finality of the arbitration award fits very well in the context of collective bargaining. As I said before, the parties sort of make a deal. They soon have a quick and easy resolution of a dispute, and they'll take that decision with no appeal. If it involves the contract, they can always change it in the next negotiations. But with the finality of an arbitration award, and there's no appeal as there is in the court system, stakes become much higher because if you make decisions that are going to affect education in the school, it becomes a form of interest arbitration. Ill-conceived and bad decisions cause parties to lose confidence, obviously, but the system must have the confidence of the parties to get these kinds of decisions. I don't know what the answer is, but I think these are the areas that the neutrals have to work at along with the parties if neutrals are going to play a role in this new system. Again, looking back over the past 25 years or so, the neutrals have had a very important role in the schools, but again it's been essentially in the traditional grievance arbitration. As collective bargaining took hold in California and other states, traditional collective bargaining agreements were negotiated as in the private sector, and the arbitrators were a very important factor in the resolution of grievances. They had a big role to play. But if you look back on the other part of what the original concept was in California at least, and in most states, when you got into collective bargaining for the public sector, particularly the schools, you found that it added on the requirements of mediation and factfinding. These are voluntary in the private sector, and, of course, factfinding is rarely used in the private sector. But it was made mandatory in the public sector, and before the parties could reach an impasse in the schools there had to be mediation and factfinding. The ADR neutral community has been very effective in terms of mediation depending on the situation. Of course, the most effective mediator two years ago was Willie Brown, who came to help settle the dispute in the Los Angeles Unified School District. But he's not your normal, typical mediator. I don't think that factfinding has been a tremendous success. I don't know whether that's because the parties have not accepted factfinding as being a determinative factor in settling their dispute, or because it's the nature of the neutrals themselves, or a combination of, which it probably is, all these factors. But at least in the Los Angeles Unified School District, and I think this is true of most of the big area schools, factfinding has become sort of a public relations game. I mean parties use the factfinder to try to get some points, some public relations, that is, if a respected

neutral has agreed with your position. If the neutral does not agree with your position, then you properly denounce that neutral as being incompetent and uninformed. But I think that's essentially the way the system has worked, which doesn't give us a good sign for the future in terms of how neutrals can be used in this new world of conflict. With that, I will close my comments.

Roberta Golick: Thank you. Before I open up the session to the audience's questions, let me see if there are any comments that our neutral panelists would like to make to our guest speakers. Dr. Kerr?

Clark Kerr: I realize all of you probably have questions and comments you want to make, but I would like to comment on the question raised by Leo of the role of the neutral in this new world of conflict. I've been concerned with the question, whether or not we as neutrals—and I wonder if all of you haven't had experiences I've had—ever find ourselves in a tiny little box. For example, you may have a grievance and you may see it as part of a much, much bigger thing than you can handle. Even if you were doing interest arbitration under a new contract, you're limited to what happens to be open. It makes you wonder what would happen if you had a chance to work in a little broader atmosphere. Now let me give you an illustration of the first time I felt that.

I used to arbitrate in the Hawaiian Islands because I was the impartial chair of the west coast waterfront, where longshoremen were as important as they are in Hawaii. There was a very bloody strike out there on one of the sugar plantations where people went at each other with machetes. I thought, "This is an impossible situation. It isn't working and I'm just trying to decide: Was it the fault of management or the fault of the workers that so many people got sliced up?" Afterward, I had an opportunity to talk with the manager of the plantation. As we sat on the veranda of his big place, he said, "Why do they all hate me?" I said, "They hate you, and they're going to keep on hating you and all the plantation managers because look at the situation you're put into. You're the chief of police (it was his police that were in the fields fighting with these machetes), you're the landlord of everybody on this plantation, you run the store, and you're going to have more situations like this, more machetes in the field, unless you start thinking about your total situation." Now I'm sure other people were giving him the same advice, but I might say it wasn't too long thereafter that, under this old feudal system, the plantation became the center of all grievances. For example, if the workers' electricity didn't

work, it was the damned manager of the plantation who did it. It would have been much better to spread out the grievances by having separate grocers and separate utilities and so forth and so on.

Having been in the railroad industry with those long, long contracts and those deadly, deadly hearings, I've wondered whether the situation shouldn't be changed somehow. And I've wondered whether or not the role of neutrals in the new world, which is moving so fast, where things are interrelated, shouldn't be raised to a higher level. Now John Dunlop and I were talking about something we often have talked about—may there not be a new level of dispute settlement that goes beyond the individual grievance and goes beyond the individual contract. We've never been able to agree on what name to give it, say maybe "impartial chair." I don't know if we can get a good name for it, but it is where you would have somebody who knows the parties well and works with them. It might be actually a tripartite panel, which would be a friend to the parties. I had a little bit of experience—seeing Jim Stern here in the front row and he knows about it in the meat packing industry—where we really did become the friend of the parties. We redid the total wage structure, but we also then brought in all the changes related to retraining people and relocating them to other plants and really became a friend to the parties. And Jim knows that when I'd go through Chicago—George Shultz and Jim and Rob Fleming were involved for awhile—we'd sit down and talk things over. And until those later years when Greyhound took it over and was terribly antiunion, we rarely had to issue an opinion or make a decision. We just kind of talked it over and worked it out. John has worked that way with the garment industry. He's worked with firefighters in Boston; he's worked with canning companies and big farms in the middle west and the unions involved with them.

So I'd like to raise this question: Could not the experienced people with all they've learned inside their little boxes we've put them in, perhaps be helpful also in a kind of anticipatory mediation, with a longer connection with the parties and their problems, working with broader issues? I would raise this question not just in the field of collective bargaining but more generally in communities. We're become a terribly fractionalized nation, the level of violence is increasing, and our problems and the intensity with which they draw people's attention are arising faster than the solutions. This whole nation is losing ground with the problems intensifying, becoming more difficult, and our solutions are

lagging behind. So I'd just like to raise that question as to whether or not the National Academy of Arbitrators might give some consideration to whether there is a kind of new—it isn't mediation, it certainly isn't arbitration—level of assistance to dispute resolution that would take in the totality of the situation in the long run, rather than trying to settle general problems in a very fractionalized and specific way. I'm sorry to take your time, but it's a problem that's been on my mind for a long, long time. And these two presentations seem to be an occasion to get it off my mind.

Roberta Golick: Any questions from the audience, comments?

Herbert Berman: I'm an arbitrator from Chicago. I largely agree with what Dr. Kerr said, and I'll add my modest voice to that. But it seems to me that what we're undergoing now as a nation is a conservative populace resurgence that seems to be opposed to the very idea of experts and intellectuals taking charge of their lives. And my concern would be, and I would throw this open to anybody who can answer, particularly Dr. Kerr, that there would be a tremendous resentment against more experts being involved in such things as education where, for example, the concept is to bring more power to the people. I'd appreciate your comment on that.

Clark Kerr: Well, I agree with what you say. All over the country rationality is giving way to irrationality, persuasion is giving way to confrontation, you know, "in your face," "up against the wall." And it just seems to me that there ought to be some effort by those of us with experience in the area of persuasion and rational analysis of problems to try to exact some kind of a counterforce to the way we're going. I think the way we're going is very destructive for the nation as a whole, including the collective bargaining field. Instead of cooperation and solving problems in terms of the general welfare, it's becoming so antagonistic. So all I could say is, I agree with your point.

Barnett Goodstein: I'm an arbitrator from Dallas. I haven't heard any of you gentlemen speak about subcontracting in the K-12 grades. How is that being handled under the collective bargaining agreements, and how will it be handled in the future under those agreements?

Richard Fisher: In California education, subcontracting is essentially a nonissue. It's a heavily regulated industry, with extremely limited ability under the statutes for the employer to go outside even for nonprofessional services. It has been looked at, with the severe financial stress that a lot of these organizations have been through. But while subcontracting remains a very live topic for

cities and counties (Orange County, for example), my own experience with school districts has been that it's way down on the list. If someone asks the question once in a while, you look it up, and it's almost impossible because of the codes.

Leo Geffner: The idea of subcontracting in this political climate becomes more and more attractive in terms of privatization and the idea that it can be done better and cheaper. But I don't think that has been proven, at least in public-sector education. There's not been a tremendous amount of subcontracting. Perhaps in support services, but the idea of privatization where you have the profit element thrown into the mix with all the other problems that face education, I don't think this is going to become the formula. The voucher system—what Dick mentioned—raises an entirely different subject, and that is, of course, the ultimate in privatization. But, that was defeated very, very dramatically in California two years ago by the electorate. Now it keeps coming up because it has tremendous ideological value in terms of not only privatization but also, in fact, it has an impact on church-state relationships. The impact that the privatization vouchers have is on private religious schools. Of course, that's another big subject.

But, I'd like to make a comment on the first question that was raised to Dr. Kerr about the attitude in this country in terms of keeping intellectuals and experts out of the scheme of things so that the populace can move ahead. There's no question about it. You can't disagree with the fact that that is the current atmosphere, but I don't feel that pessimistic about it, at least from the standpoint of public education, the public, and teachers' unions. Now in the private sector, as we all know, the unions were not able to meet the onslaught of what occurred with the changed global economy. And we see what's happening in the private sector with the decline of the labor movement. I don't think that's going to happen with public education—with teachers' unions—maybe because of the nature of the educational value and the history of the teachers' unions. But I think they're going to move with the times and that they're going to be able to meet the needs of the times and its challenges. Now if that's the case, whether I'm being overly optimistic or not, the need for outside resources is indispensable, that is, the need for intellectual participation by experts whether they're academics or arbitrators. This is something that has to continue, and they have to be players in this future role. If they abdicate, then there's no basis for the process to succeed. So although it might be very discouraging and hard to meet the onslaught that comes out

of Congress and some of our politicians these days, I think that the intellectual community, the arbitrator community, has to play a role if we're going to succeed in any kind of new structure that takes shape.

Richard Fisher: I'd like to make one general comment. I would hope that the marketplace mechanisms (that I mentioned are out there) are increasingly being recognized, and those forces themselves should improve the collective bargaining relationship inside the organization, as a matter of survival, just as some other industries have tried to survive against foreign competition. I identified the complicating facts before—such as when your governance is heading in a direction contrary to collective bargaining, so that collective bargaining may not be part of the solution. It's not the primary way in which problems are being solved; it has been tried and found wanting. As indicated, we're looking at local decisions with many more variables and to uniformly imposed solutions. I think we are going to see increased localization of decision making, and I think it will eventually conflict with the traditional collective bargaining process in the District. I think there's going to be a major movement to involve parents in a bigger and more direct way. I think it's going in that direction, and I don't see the end game on this, except that since it's so clearly pointed in that direction, I think it has to go there. And then we may need to reinvent the wheel somewhat, recognizing that we may need some central administrative support services and standards to help local public schools operate effectively.

Roberta Golick: Thank you. Please join me in thanking our panelists.

SESSION 2—UTILITIES

GEORGE NICOLAU*
JACK McNALLY
BARBARA COULL WILLIAMS
DONALD VIAL

George Nicolau: I've been asked to moderate this morning's session. You heard Don Vial this morning give a penetrating

*In the order listed: G. Nicolau, Member, National Academy of Arbitrators, New York, New York; J. McNally, General Manager, IBEW Local 1245, Walnut Creek, California; B.C. Williams, Vice-President, Human Resources, Pacific Gas & Electric Co., San Francisco, California; D. Vial, Senior Advisor, California Foundation on the Environment and the Economy, San Rafael, California.