CHAPTER IV

NEUTRAL CONSULTANTS IN COLLECTIVE BARGAINING

NEIL W. CHAMBERLAIN *

The forces of social change, of which collective bargaining itself not long ago constituted a spearhead, have now caught up with that maturing institution. Social obsolescence, like the technological variety, comes early these days. As a result, the winds of change have blown in, along with a fair amount of dissatisfaction with the slowness with which the union-management relationship has adjusted to new needs, a few discernible efforts to do something about those needs.

The efforts I refer to are well known to us all. If I mention the names of the Committee to Develop a Long-Range Plan for the Equitable Sharing of the Fruits of Economic Progress in the Kaiser Co., the Armour Automation Committee, and perhaps the Presidential Study Commission on the railroads, all tripartite undertakings, I will have named the principal industrial stages on which the new look has put in an appearance. A talked-about continuing study group in American Motors, as part of its progress-sharing agreement with the UAW, may conceivably add another. I am sure there are other undertakings elsewhere which deserve mention, but these have been the ones which have caught the public eye. They are the ones to which George Hildebrand devoted his attention in the excellent analysis which he offered before this Academy last year.[1]

These efforts to write a new script—or what might more accurately be termed a new prologue or epilogue to the old script—have, to be sure, aroused a certain amount of skepticism and scorn. Among many of the practitioners the line seems to be that

* Professor of Economics, Yale University.

[1] George Hildebrand, "The Use of Neutrals in Collective Bargaining," *Arbitration and Public Policy* (Washington: BNA Incorporated, 1961), p. 135.

if only the other side would be a little more reasonable, good old collective bargaining will still meet all our real needs, and never mind all this fancy stuff about long-range plans and study commissions. To many of our leaders, to whom change constitutes primarily a threat, the status quo never looked so good.

I have no intention of arguing the case for Kaiser, or Armour, or the railroads—our panel can do that far more effectively than I. But I am prepared to take the position that the status quo is no answer to the problems pressing in on us, that change is not necessarily an evil, and that in any event some change will be thrust upon us and I would prefer to participate in designing it rather than have the force of circumstance design it for me.

The knottiest part of this problem is that collective bargaining is only one ingredient in the stew, and no matter how much we may tinker with it, the other constituent elements may offset our efforts. It is not part of my job today to catalogue or discuss all these concomitant factors, but let me simply mention a few. Major technological developments, coming faster and faster, coupled with new organizational developments within the corporation, are making the old concept of union jurisdiction obsolete. Occupational skills and work experience are no longer a stable currency in the labor market, so that union organizations founded on those lines are founded on shifting sands.

Although governmental statisticians in the Census Bureau still identify industries, the correlation between a company's operations and some particular industry has become more and more attenuated. The conglomerate firm today has become more like an investment trust, a manager of a bundle of corporate assets which may be invested in an assortment of industries today and a different assortment tomorrow. Improved techniques of budgeting and planning, coupled now with greater understanding of the process of decentralization and later perhaps with increased application of computers to managerial decision making, have removed the limits to corporate growth we once thought that inefficiencies of scale would impose, adding to the potential conglomerateness of our enormous corporations. The concept of industrial unionism is thus becoming as obsolete as the concept of craft unionism. If the labor movement is to integrate itself with the economic society which is now taking shape, it will have to undergo some major reorganization in the years immediately

ahead. I mention these matters only to suggest that attempts to update the institution of collective bargaining, however rational they may seem, may be frustrated by institutional developments and lagging adaptations to them elsewhere.

Add to this the likelihood that many of our most urgent economic problems today are moving from the level of the firm and industry to the level of the national and even world economy, and you have further reason for questioning whether collective bargaining, however changed and improved, will meet today's needs as well as it did yesterday's. If automation and more intensive technological progress—if we are to benefit from them—pose problems which require major social revisions, as I think is probably the case, this is a problem which cannot be solved by union-management collaboration in a single company, however beneficent the intent, however persistent the will, and however fertile the imagination. Similarly, the conjoined problems of balance of payments, overseas investment, foreign military assistance, and aid to underdeveloped areas raise thorny questions concerning the relationship of private decision making (as in collective bargaining) and national policy.

To be candid, I am more concerned about the significance of this range of problems touching on the very *role* of collective bargaining than I am about improved *procedures* in the union-management sphere. But having warned against the evil of exaggerating the importance of the institution with which most of us are more directly involved, I freely admit the equal danger of denigrating its significance. Moreover, it is in this sphere that most of us are likely to have our greatest influence. On the economic ground of comparative advantage, this is where we should logically bend our efforts. So with this attempt at putting the matter in perspective, prompted by strong belief rather than mere academic nicety, I turn to the subject of the use of neutrals in collective bargaining.

Without giving a formal definition at the outset, let me try to build up a conception of the neutral and his role by a process of exclusion and inclusion. Of course neutrals have been employed in the bargaining relationship for a good many years, as long as we have known conciliation, mediation, and arbitration. I take it we are not now talking about this kind of third-party activity, which has been chiefly concerned with the stalemate

and crisis stages of bargaining, when the parties have been unable to reach agreement on their own and an outsider has been called in to help them compose their differences. Today we are exploring a more generalized type of third-party role, not confined to crises but applicable also to the resolution of problems prior to that stage.

We hear views expressed from time to time that the government will of necessity be a more frequent intervenor in the bargaining process insofar as this is necessary to effectuate public policy in the national interest. This refers not simply to preventive mediation but to governmental involvement in the actual decision-making process. It is assumed that, in such a role, the government will be neutral as between union and management, concerned only with public welfare. Does this imply, assuming the correctness of this prediction, that governmental representatives will perform the neutral's function of facilitating an improved bargaining relationship? I would suppose not. To the extent this prediction is borne out, it would seem to me that whether or not government is neutral as between union and management, it would itself perform a representative rather than a neutral role—representative of public interest—converting a bilateral relationship into a three-cornered affair. There would presumably remain the possibility of enlisting neutral persons to assist in composing differences that run in three directions, or in resolving problems involving three sets of interests.

The neutral's role, it seems to me, involves at least three aspects. First, the neutral is the servant equally of all the parties directly involved in a bargaining relationship. In this capacity he follows their lead, carrying out their instructions. If he is asked to make a survey of the grievance procedure to find out why it is not working satisfactorily, he does not decide, independently, that it is more important to appraise the organization of the personnel office. He follows the guidelines laid down by the parties whom he serves. He is responsive to their instructions.

But something more is involved. Because conflicts of interests and values are almost inescapably present in the union-management relationship, the neutral also functions as the conscience of all those involved, providing an objective reaction to partisan pressures and persuasions. He offers those whose interests are in issue the really vital and otherwise missing service of permitting

them to see how an impartial person responds to both their single and joint objectives and tactics.

Third, the neutral is not simply a responsive servant and a vicarious conscience; he is also guide and adviser. Standing outside the clash of partisan opinions and preferences, and their sometimes opposed ends and means, he can devise new ways of approaching puzzling problems. He can suggest alternatives to partisan proposals, he can identify troublesome matters which have escaped the attention of the parties, he can recommend reformulation, innovation, and experimentation in programs. In none of these activities does he wrest discretion or authority from the parties. He remains their servant, he continues as a kind of external conscience; he is free only to offer advice. He cannot himself take action unless he has been specifically delegated a task to carry out, under instructions from the parties jointly.

Is the function of the neutral one which suggests the desirability of a continuing relationship between him and the parties, so that they come to trust him and put confidence in his judgment, so that over time he builds up an intimate knowledge of the parties' idiosyncrasies and operations? Certainly this kind of a lasting relationship is a desideratum, but I would hesitate before placing great stress on it. Obviously, in almost any form of human relationship personalities play a factor, and in labor relations perhaps more than in most. But there is a danger of the functional relationship becoming excessively dependent on a personal relationship, so that a single person becomes crucial to continuity.

I would raise a question, for example, as to whether that might not indeed be particularly true of the members of our panel today, each of whom has impressed his own personality on particular situations to a degree which may make difficult the entry of another person into those same situations, if circumstances should require. This is a peculiarly difficult problem, since the success of the neutral probably depends to a considerable extent on his personality. But to the extent he stamps it with his own impress, he deemphasizes the functional performance and emphasizes the personal contribution. It is the function itself which I choose to stress today. I would hold that, as desirable as a continuing relationship may be, the intimate knowledge it brings and the smoother gearing of personalities are not essen-

tial to the function. The neutral person could presumably change with the calendar, and the function of the neutral could still be adequately discharged.

If we reflect on these functions of the neutral, can we not say that he in effect performs the job of a consultant, with perhaps two important specifications not always attending the consultant's role? First, he is a consultant not to a single party, but to at least two; he is responsible to a joint authority rather than a single one. This adds a special dimension to his task. Second, the customary consultant relationship eventuates in a report and recommendation deposited on the desk of the principal, who is then left with the decision as to whether to act on it or file it with other dead-ended consultant reports. The neutral in the collective bargaining relationship, in contrast, considers it an integral part of his task to frame his recommendations to insure their acceptability to his joint employers. It is not an adequate discharge of his responsibility to deposit a report embodying his own best judgment and then retire; the report must represent his own best judgment tempered by—let me say compromised by—its acceptability both to union and management.

The specifications for the job of neutral consultant thus include a substantive knowledge in the problem area or access to such knowledge through staff assistants. They also include a tactical and strategical skill in accommodating and adjusting the viewpoints of his principals so that these accord with his findings, and vice versa. He must frame his recommendations with an eye not only to some objective criterion of efficiency but to the subjective factor of acceptability.

This means that the neutral, to be effective, must be part specialist and part negotiator, part expert and part mediator. He must probe for prejudices as well as facts, he must tactfully sell the need for mutual accommodation as well as propose the mechanics for it. He remains the servant of the parties, even though he pricks their consciences and seeks to guide their behavior. At any time he may go too far and have to pull back. The neatly devised scheme for transfers and retraining runs into an intrenched seniority system or a cost factor, and the problem has to be restructured somehow to take account of these elements whose importance had not wholly been appreciated. A carefully devised plan for using production workers on deferrable main-

tenance jobs during periods of slack runs into threats of retaliatory action from craft unions in other plants of the same company, which management cannot ignore even though its production union can. Again, however logical the original plan, the neutral must reopen the question.

These examples may raise in some minds the question propounded last year by Ben Fischer, Director of the Steelworkers' Arbitration Department, in commenting on Professor Hildebrand's paper[2]: Why should a neutral be involved in these matters at all? Why cannot the parties settle their own problems without third-party intervention? If officials are too busy with other matters or if experts are needed, let the individual parties each hire his own additional skilled assistance, but confine the matter to members of the family.

Considering this point of view gives us further opportunity to flesh out the concept of the neutral consultant. If we are concerned now not with crisis bargaining but with the anticipation of identifiable, developing problem areas, the really important consideration is that such issues be raised less in a negotiating manner than in a problem-solving manner, or if not less, at least no more the one attitude than the other. The neutral consultant can help to create that climate since he can more readily think outside the relatively narrower grooves of partisan positions, even though he must treat partisan viewpoints as constraints. Thus while it is certainly not impossible for two-party negotiations to come up with acceptable solutions to developing problems, it is probably a good deal more difficult than if they were aided by the services of a neutral expert whom they both trusted. Certainly use of a neutral consultant implies no deficiency in the capabilities of the parties to handle their own affairs, any more than does the use of business consultants by management imply weakness on the latter's part.

Moreover, it is easy to say that if the parties need more staff assistance to deal with developing problems they should add them, but the temptation at higher levels in both union and management hierarchies is simply to add these additional responsibilities to existing staff functionaries, thus insuring inadequate attention. Admittedly there should not be a constant resort to neutrals in the union-management relationship, since that could undermine

[2] *Arbitration and Public Policy*, pp. 160-167.

their capacity for self-reliance; but there is strategic use to be made of such a person or persons in connection with really important and usually ad hoc problem areas.

I suspect that by now I have succeeded in implanting a certain amount of irritation or frustration in many of you by having talked this long without yet fully defining the job of the neutral consultant, except by implication. I hope you will bear with me a little longer, for this procedure is deliberate. I am trying to arrive at an acceptable conception of the function by a process of exclusion and inclusion, of building up to the job specifications rather than starting with a formal job description.

I began by distinguishing the job of the neutral consultant from the task of the neutral intervenor at time of bargaining stalemate or crisis. The neutral consultant performs his function at times other than those when a collective agreement is being hammered out. Preferably he is brought in when problems are anticipated, rather than after they have arisen. At times, however, as presently on the railroads, the problem area has been around for a long time, but the parties agree to remove it from current bargaining pending recommendations for separate settlement. Again, the problem area is divorced from immediate contract pressures.

The point which emerges from these considerations is that use of the neutral consultant probably has its greatest influence in reshaping the bargaining process when it applies to problems of the long-term relationship between the parties, rather than to those of a pending bargaining conference or imminent negotiations. By shifting emphasis from the present agreement and all its immediate problems to the longer term in which the parties can exercise foresight, imagination, and constructive administrative talent, the whole process of collective bargaining is transferred to a higher level.

The neutral consultant is an efficient instrument in achieving this result. Of course the parties can do it on their own, but the likelihood of success is, I would venture, substantially increased by the presence of an impartial expert who acts both as catalyst and contributor. The neutral third party during actual negotiations is almost surely to be embroiled in the immediate problems of package deals and strike-avoidance. The neutral consultant who works with union and management representatives on particular issues, before their thinking has hardened into partisan

stands and when they are free of deadlines, enables the parties to explore alternative avenues and fresh approaches on their own merits. The difference is as great as between the business management which simply reacts to economic circumstances as they materialize, and the management which seeks a measure of control over circumstances by long-run planning. In sophisticated business circles opportunism has already given way to anticipation. It is perhaps time for the same transition to occur in collective bargaining.

But that desirable event faces obstacles—familiar obstacles in the form of attitudes which I'm sure all of you have encountered in your own relations with the parties. Long-term planning of the union-management relationship can take place only within the framework of long-term business planning by the company. The first type of planning should address itself to all significant respects in which the use of its manpower is affected by the second. But this would require the company to admit to its confidence both the union and the neutral consultant, a step which a great many managements would refuse to take. In many instances they would justify their refusal on the ground that the union was not responsible enough to warrant that trust, and, unfortunately, at least in some instances they would be right.

In other cases managerial reluctance to make the union privy to aspects of company planning would be bottomed on its traditional jealousy of its so-called prerogatives, and a fear that by inviting the union to join with it in trying to forestall trouble it would be conceding the right of the union to bargain before management was entitled to act.

The neutral only adds to this worry. If a third-party consultant is brought into the picture and he makes recommendations concerning the way to meet a developing problem situation, will not this provide the union with the basis for insisting on carrying out those recommendations even when they are unacceptable to management? At the same time the union could disregard, in the name of its membership, any recommendation of which it disapproved, however acceptable to management. Thus the use of neutrals would hand to the union a bargaining weapon of considerable value.

I suspect that the prerogative issue is not one to which those of us here today would grant much validity, but that the neutral

can be a tool in the hands of a shrewd union representative is an argument entitled to more sympathetic consideration. Indeed, it is an argument which I suspect requires, for an answer, a more explicit outlining of a form of consultation which now is practiced intuitively, when it is practiced at all. It comes close to the mediator's art, and the fact that it is an art has surrounded it with a kind of mystique which has inhibited its transmission to apprentices and learners. As I have already suggested, in this consultative procedure the outsider does not issue a report or make recommendations following his own inquiries. In the first place, it is a collaborative process, in which he works with as well as for the parties. In the second place, and again I repeat myself for emphasis, a recommendation is not wanted until he feels reasonably sure it has the approval of his partisan collaborators, thus avoiding the danger feared by management that a neutral may simply feed arguments to the union for actions contrary to its own desires.

The initial step is a thorough three-way discussion of the problem area until there is agreement on its definition. In this the neutral can play the vital moderator's role. Few can appreciate better than an arbitrator how difficult it can sometimes be to get union and management to agree on what the issue is, even when they have been fighting about it.

Next, the consultant can assist the parties in defining research procedures for approaching the problem as formulated—what data are needed if answers are to be found, and how they can best be obtained. This involves more than fact-finding—it is analysis based on facts, often when the "facts" are themselves sketchy, incomplete, and not wholly reliable, since they will almost always relate to the future rather than to past or present. It may involve such things as estimating turnover rates and transfer possibilities for the next three years as a basis for ascertaining the probable displacement effect of a new process which will be ready to go at that time. It may raise questions concerning the size and composition of the labor force which will be needed by some target date if the company is to achieve the growth it is planning for. It may relate to planning a gradual, orderly, and specific improvement in productivity rates to make the firm more competitive, but in ways which avoid hardships or threats to security, where the effects of identifiable actions on workers

and productivity both must be estimated. It may, as in the present railroad studies, involve the first scientific sampling of payrolls in the industry to ascertain who gets paid for doing what, thus laying a factual basis for finally resolving the perennially troublesome problem of payment by such multiple and alternative criteria as mileage and hours. In all these instances it is the function of the neutral to keep the parties focused on the problem and alternative means for its resolution, from among which choice can (indeed, must) be made.

Movement towards problem solution will almost necessarily be slow, one step methodically following on another, so that either party has time for reflection and room for retreat before being confronted with a completed but unacceptable conclusion.

The difference here from third-party intervention in crisis bargaining is readily apparent. Then it is often the case that what is wanted is a decision, almost any decision, and the neutral may exert pressure to force one. Here, in anticipatory decision-making, it is consensus which is wanted, and third-party pressure to force agreement would normally defeat the purpose of the process.

This kind of consultative expertise is today a rarity, and that in itself is a major limitation to the spread of such a process. How many Dave Coles and George Taylors are there; how many John Dunlops and Bob Flemings? Unfortunately, only one of each. I cannot take seriously the suspicions voiced in a recent speech by Vice-President Heath Larry of U.S. Steel that so-called neutrals are trying to promote themselves into positions of influence.[3] I am sure that every one of our panel members today is busier than he would like to be, and in more cases than not accepts an additional assignment out of a sense of social responsibility rather than for any personal satisfaction. If the improbable were to occur, and as many as a dozen major companies and unions were to undertake joint long-term planning with the aid of a neutral chairman, I suspect they would have a hard time finding a dozen men who could offer the exacting qualifications for this very special kind of job.

And yet this is a skill which, I am sure, can be taught. It involves learnable techniques, procedures, and attitudes. Moreover, it is a skill which would be of value in more than collective bargaining relationships. All the way from business and community

[3] BNA, *Daily Labor Report*, No. 208 (1961): pp. A-2, D-1 (Oct. 26).

to international relations, one encounters again and again the basic situation of the need for a neutral to identify the nature of a long-run problem and to assist in achieving consensus in its solution. It seems to me that there is an opportunity here for a kind of professional training which would be of great value to its possessor and that some pioneering institution of learning might well explore the kind of training which would provide it. I can imagine a law school, for example, concluding that a semester's course in the procedures of a neutral consultant might be quite as worthwhile as a semester of trial procedure or, in those schools offering it, a course in arbitration. Or a school of industrial administration might consider making a place for it in its curriculum.

But if the supply of neutral consultants constitutes a restraint on the spread of joint anticipatory decision making, probably the demand (or lack of it) constitutes an even more serious limitation. In its very nature this procedure can work only if it is wanted by both principals. I have already suggested several reasons why most managements may be expected to shy from the practice, and I would also question how many unions would enter into such an arrangement in a good-faith effort to solve long-run problems rather than improve their short-run bargaining position. In short, I do not anticipate any stampede by unions and managements to sign up the few obvious candidates for the role of neutral chairman.

Is there any reason to expect even a gradual spread of the practice? One can always hope that good example will have its influence. If the Kaiser and Armour and railroad undertakings meet with success, they may by precedent induce others to make the attempt. One is entitled to treat this possibility with a certain amount of skepticism, however. Most of us can recall when there was some similar hope for the effective spread of the Scanlon plan, by virtue of example. Is there any reason to expect a more favorable result in this instance?

Perhaps there is. The Scanlon plan placed an enormous burden on union and management representatives directly, which few are capable of measuring up to. As individuals they were called on to change attitudes drastically and adapt themselves to unfamiliar roles. Much less of that sort of personal conversion and retraining is called for under the new procedure. The neutral

consultant is the catalyst who effects the transformation. A good faith undertaking is all—but how much freight that word carries —all that is called for. The techniques, the procedures, the expertise come from the consultant whom the parties have jointly called to serve them.

It is evident that such union-management long-term planning cannot be wasted on trivial matters. It is too expensive in time, money, effort, and interest. It would be called into play only for major problems involving the disposition and use of the workforce, or for significant issues affecting the union-management relation itself. Its infrequency of application would endow it with some importance.

I have no expectation that simple resort to a neutral consultant will somehow transform and upgrade the bargaining relationship. That sort of foolhardy optimism could only lead to deeper disappointment. I do believe, however, that despite its admitted accomplishments in the past, collective bargaining as now practiced is not good enough for the future. The excessive emphasis on conflict, particularly in the major corporations; the self-indulgence and preoccupation with local advantage, in abstraction from the larger society from which the parties and their relationship derive their only true significance; the confusion of willful conduct with democratic liberties; the concentration upon immediate advantage at the expense of future welfare—these are flaws which mar an institution which, despite them, we would all defend. They are flaws which the parties, with outside encouragement, would do well to remedy.

It is no answer to say that they exist in other institutions as well. The positions of influence and real power which officials of the major corporations and unions occupy expose them to a public scrutiny from which they cannot hide. An attempted defense of the status quo—or even of something preceding it—will meet with an increasingly resentful public, I am convinced. Unions and managements would be well advised to consider means by which they may discharge their joint responsibilities to society more effectively.

If the function of neutral consultant in long-term joint planning is no panacea, at least it is one which looks to the future and carries some hope for an improved relationship. If not it, then

something like it needs to be attempted. The pioneers deserve our respect, our approval, and our assistance.

Discussion——

DAVID L. COLE*

I wish we could all speak in unison and save time. I am very grateful to Neil Chamberlain for telling us what we are doing. I never quite understood it, but I do now.

Let me run briefly through the various forms of third-party roles and functions, starting with a recital of these various forms:

Of course, I need not tell you there are arbitrators and, at the other end of the spectrum, mediators—those associated with the well-established mediation agencies. Then there are combinations of these two. I suppose I should name next a special mediation function, that created by Executive Order usually by the President, the Governor, the Secretary of Labor, the Mayor, or what-not. These are usually not full-time professional mediators; they are people called in *ad hoc* for a special reason.

The fourth type is the mediator who has power to make recommendations. Here, we are beginning to approach the creature Neil has been talking about. One finds this in the Mediation Service special panels. We have seen this in the citizen's panels created by the Mayor of New York occasionally in transit and milk disputes.

We had one example of this in the City of New York when Dr. Taylor, along with Walter Gellhorn and others, was called in to advise the Board of Education on the organizing rights of teachers, and how the Board should conduct itself in dealing with them. This was the first time serious consideration was given to the institution of collective bargaining among teachers in the City of New York.

The fifth category is the category of fact-finders who have no power to recommend. This is the most impotent and useless group of all—the Taft-Hartley Board of Inquiry. I have served on one many times. To the extent that these boards have ever accomplished anything, I think it has been done by ignoring the

* Attorney and Arbitrator, Paterson, N.J.; Past president (1951), National Academy of Arbitrators; Public member, President's Labor-Management Advisory Committee.

law. To some extent, the War Labor Board panels were in this category.

The sixth category is composed of fact-finders who have the power to make some recommendations:

(a) There are those that are created by legal authority: emergency board orders under the Railway Labor Act; boards created by the President with authority specifically to make recommendations; the old type of steel boards; and those that have been used in other major or critical industries. There have been a number of such boards created by State and local executives, as well.

In this category would fall the Labor-Management Relations Panel in the atomic energy industry, created by Executive Order.

(b) The second subhead in this sixth category of fact-finders with power to recommend are those established and authorized to make recommendations by the parties themselves.

As you see, we are getting very close to the creatures we are talking about this afternoon. In the airlines this category has been set up a number of times when, in lieu of emergency boards, the airlines and the pilots have agreed upon some neutral to find the facts and to make recommendations of a procedural or substantive kind. On the whole it has worked very well, until the current case.

Another of this type was the board in the New York City transit dispute which recently concluded its stint. The board members, all neutrals, were privately selected by the two labor organizations and the Transit Authority, the employer. Later, the private lines joined in this endeavor. This transit dispute board had broad powers to mediate, find facts, and make recommendations.

Then there is the Kaiser Steel project which I hope Dr. Taylor will discuss in detail, since he is Chairman of the Kaiser Long-Range Committee. Part of the task of the public members is to prevent the building up of strike sentiment, and, as contract negotiations progress, to prevent the strike itself. Here again the neutral board members have the right to make recommendations.

I suppose you could place in the same category the new jurisdictional disputes committees of the AFL-CIO. The umpire no longer makes binding decisions. He makes recommendations to the Executive Council. This is by delegated authority from the

members of the AFL-CIO through the convention to the Executive Council. Again, it is a situation where the parties have fashioned something of their own choice to meet their own needs; and it is noteworthy that the umpire does not make final and binding decisions.

The seventh category is an odd one into which we do not run too often. I fear I will step on some toes when I mention this one—the arbitrator who has power to mediate. Not too long ago we were told this is the cardinal sin, but it is becoming a little more common. I have been engaged in such endeavors and I have not felt very sinful in doing it; as a matter of fact, I thought it was a useful combination of functions. It turned out well. I believe that for a generation or so Dr. Taylor did this in the clothing industry and in the full-fashioned hosiery industry. I saw no signs of world collapse because of the combining of arbitration and mediation.

The eighth category is the fact-finder-consultant-recommender, by invitation of the parties. That is the type of consultant that I think Professor Chamberlain was talking about. This is the Kaiser Long-Range Committee, the Armour project, the Pacific longshoremen type of thing, and that created a couple of days ago in the New York City electrical industry with Ted Kheel conducting the study. The Board of Transportation has such a long range study; the teachers' study is another one.

I would put in the same category the several programs that are now under way at various places, in which the purpose is to streamline or attack the problem of the bogged-down grievance procedure. The bogged-down grievance procedure is a contradiction in terms: it does not placate the parties, and does not impart the sense of justice which the grievance procedure is intended to give. This type of program is becoming important, I am happy to say. It can hardly be called a trend as yet, but I see greater and broader interest being displayed in it.

One facet of the Kaiser program includes this, and it has worked well. Then, of course, you have the very important project of this kind at International Harvester. There are a couple of steel corporations and steel union locals now interested in similar programs, at least in the early stages. I understand one of the major canning companies is about to embark on a similar project. This is all very encouraging, and perhaps

Neil should have known all about this before he read his last paragraph. This may become the trend. I think it is encouraging that it has come so far in so short a time.

The ninth category is that of the compulsory arbitration neutral. We have two situations in which we have compulsory arbitration in this country: one is the National Railroad Adjustment Board set up on grievances; the other, the State laws which provide for compulsory arbitration in public utility disputes.

These nine headings are merely descriptive. There is one important point I should like to make. I think the differences among them are not too important. One can start in one capacity and find very quickly that these various forms overlap and merge from one into the other as the parties develop an ability to make adjustments, and as they develop a confidence and respect for the neutral who happens to be functioning.

I think, basically, the main distinction I would make among all these is the distinction between the neutral who was sent in and the neutral who was called in. I think there is an essential difference between these two, although I must say that there have been plenty of neutrals who have been sent in who have been treated, after a period of time, with the same respect and regard as those who were initially called in in other situations.

I think the form, on the whole, itself, is secondary. I think the functions the parties are willing to let the third party perform are the primary consideration.

There is a term of derision that is used in connection with neutrals of any form. They are often labelled "outsiders."

That is the word, and serious criticism is intended. Dr. Taylor and I were called "outsiders" by an expert once in a long telegram that ran three or four pages, as I recall. It was in the Westinghouse strike. When that strike was four and a half months old, we came in wearing two hats. We entered the picture as fact-finders for a group of Governors, and we ended up as special mediators for the Federal Mediation Service. Actually, however, the parties soon converted us into recommenders, and the same gentleman who first rejected us as outsiders without responsibility to the stockholders or to the employees later welcomed us in this other capacity.

Three weeks later, after our recommendations were helpful in terminating that long drawn-out strike, we got a telegram of

equal length from the same man, telling us what a great public service we had rendered in making these recommendations.

I never have done what I promised to do, namely, frame these two telegrams side by side and exhibit them in some prominent place. They are indicative of the capacity to change attitudes and to make proper use of so-called "outsiders."

We have been called outsiders, intervenors, interlopers, but, actually, we do not intervene, we do not interlope; we are invited in. We are invited in either by the parties directly, or by their agent, the President of the United States, the Secretary of Labor, or somebody who is really acting for the parties. They are actually not too outraged when we appear on the scene. In fact, they are rather relieved. On the whole, I cannot complain of any discourtesy I have ever suffered in any of these situations.

But why do they object, why do they oppose or criticize the idea of calling in designated people of this kind? It is hard to understand. It is not peculiarly a management characteristic or peculiarly a labor one. It changes, I think, with the one who thinks he has the greater strength at the moment. The steel industry, through its spokesman, referred to by Neil Chamberlain, recently thought it was an outrageous and dangerous practice, but I find it very hard to envisage Mr. Hoffa agreeing to calling in a neutral in his negotiations. I rather think the steel industry at the moment may think it is discriminatory, and Mr. Hoffa may also think so, because they feel they can get along very well without it. It is a matter of their willingness to test their strength.

They say it is dangerous to the institution or the tradition of collective bargaining. This word "tradition" often amuses me. It makes me think of the story of the young college boy who took the young coed for a walk over the swinging bridge at Ithaca. He made romantic advances. When repulsed, he told her it was a tradition at Cornell that if a girl refuses to kiss a student on the swinging bridge, someone will jump off the bridge before the next dawn. She asked how long this had been the tradition and he declared, "Oh, I just started it this afternoon."

There is a sort of vested interest on the part of certain people in periodically engaging in mortal combat—they have become accustomed to it. Some of them rather like it. Nevertheless, I

believe there are two main functions that the third parties of the type we are talking about should perform:

First, to guide or help the parties move along more rational lines toward a solution of their own difficulties, with less emphasis on the shut-down technique or measures kindred to the shut-down technique.

Second, to help impart a stronger sense of responsibility to the processes of collective bargaining. Both are important.

The first, I think, was adequately covered by Neil Chamberlain. I merely want to say this: I find that the parties who are embattled, and who are quite unresponsive to one another and have often been discourteous and irritating to one another, seem to behave better when a qualified neutral shows up on the scene. And if he performs no other function than to make them behave more rationally, more courteously, this is worthwhile, too.

The people who are so concerned about the intrusion of the third parties might take some comfort out of the fact that they can very easily frustrate the third parties. All they have to do is to continue to be obnoxious and the third parties cannot accomplish anything, anyhow. These third parties will then be unable to destroy this great institution of collective bargaining, which the critics of intervention say they worship.

I think the public is very impatient now with collective bargaining as it has been practiced, although not with collective bargaining as an institution. The public is irritated with needless, avoidable strikes, and the constant threat to strike. These strikes, of course, result in inconvenience, interference with people's daily affairs, and their mode of living, but this is not the only reason why the public is irritated and impatient. I think the public is becoming much more alert and aware of the national interests and the national concerns that are very grave to us. Neil Chamberlain mentioned some. Let me, by way of emphasis, merely repeat them:

I think there is a growing awareness of specific dangers to our communities, our economy, and our nation that grow out of the misuse of collective bargaining: the dangers of inflation, our deficit in the flow of money, and the unfavorable image we are creating for other peoples. Everybody is beginning to understand these things. The greater and more keen competition for our domestic as well as world markets with people in other countries,

the vital need of economic growth to absorb the present roster of unemployed and to make places for the growing work force—all this is a very important matter to a great many people. People generally, who may not be experts in the field of labor relations, recognize that these are matters of major consequence to our nation as a whole.

If we cannot keep our own house in order in the eyes of the people of so-called underdeveloped countries, how can we undertake to preach to others as to how they should conduct their affairs? What has happened to this democratic process of which we have all been so proud?

Even in the matter of national defense, when labor disputes impose needless stoppages and impair our ability to complete missile sites, I think the people have a right to be irritated with the maladministration of labor relations. The public does express itself and I think will express itself more forcefully, unless the parties who are practicing this art recognize that free collective bargaining must be coupled with concern for the national interest.

I think, moreover, that to some extent the concern over the strike itself is becoming secondary to the quality of the settlement. Mediators in my earlier days were considered very successful and accomplished people if they could just terminate a strike. Now they are beginning to look more carefully into the nature of the settlements. There is a tendency to expect this of the mediator or the neutral.

People, like the sophisticated New York Times, were very critical of the Maritime Board on which I served last summer. Although it was called a national emergency and our main concern was to terminate the strike which involved all shipping on three coasts, and even though we were operating under Title II of the Taft-Hartley Act, when the strike was settled we were nevertheless taken to task for permitting the parties to settle on terms which The New York Times regarded as uneconomic.

Just how we could have stopped it, I am not sure. By what authority we could have stopped it, I don't know. The parties could have gone into the back room and come out and merely announced to us that they had a settlement. As a matter of fact, to some extent they did just that. Nevertheless, The New York Times did not hesitate to criticize us for permitting them to do so.

Dr. Taylor and I were involved in the transit situation. The

great concern was that the City of New York's vital transit system would be shut down on New Year's Eve. We were permitted by the parties to make recommendations, but our primary function was to help them in their collective bargaining to arrive at an agreement. We did prepare recommendations, and did wave them over their heads like a club as an inducement to get them to settle the dispute before the New Year's Eve deadline. It worked; they did settle. Nevertheless, we were criticized by The New York Times again for permitting the parties to settle, for not issuing recommendations and encouraging the parties to arrive at their own agreements.

Yet, in the same breath, I must remind you that one of the criticisms of the neutral is that we are endangering the institution of free collective bargaining. I will say this, parenthetically, that the function or the value of the third party was well demonstrated in the transit dispute in New York City. There was the great issue of the four-day work week. This was the great threat to the New York Transit System. At first, it was a very frustrating experience, but as time went on, we conducted what amounted, I would say, to a seminar. It worked very well. We asked Mr. Quill to justify his four-day demand. We were able, by the process of reasoning with him, to point out that the policy of the Transit Authority of New York of never laying off anybody, but curtailing its work force solely through the process of attrition over the years, gave him probably greater protection than any other union in the country against the impact of automation; and he and the Union finally acknowledged and accepted this.

I remember during the days of the War Labor Board, in the 1944 Steel case, writing our report. It was an important case at that time. We were in executive session. The industry people would say, "Excuse us, we want to run down the hall." We would ask, "What for?," and they would say, "We want to discuss with our people," meaning the industry or management people, who had a room on the same floor and were watching all these proceedings very critically. Then a few minutes later the labor people would run out to see their people.

After this had been done several times I turned to Nate Feinsinger and suggested, "Why don't we go out and see our people?" Then both labor and management expostulated, "Let's cut out

this nonsense and get down to business." Apparently our people had no voice.

I mention this because, while it is amusing, it is also very significant. We talk about tripartite procedure, but, in fact, there were only two parties to such proceedings in the minds of the principal parties. They regarded it as wasting time if we suggested that we should go out and talk to our people. According to them, we had no people to consult. However, I think the public is getting a voice.

In the 1949 Steel case, Judge Rosenman wrote in a part of the report that the board appointed by President Truman was the eyes and ears of the public. I think this is being realized more and more, and I think it is good. I think the public is ready to exercise its voice in these major labor disputes. I think the public is sick of the big strike for the little objective. The great, overwhelming idea that one side or the other has to prevail, however unimportant the item itself may be, is frightening to the public, and I think the public is entitled to be frightened and to say so.

I would like to say this, merely by way of conclusion:

I think arbitrators in particular ought to realize they have a very limited function in the labor-management picture, that they are merely the last step in the grievance procedure in which the parties in the earlier stages have been unsuccessful; that the effort, time, and expense that have been involved in training arbitrators to understand industries and gaining the confidence of the parties must be put to better use. Now that we are ready for a change in outlook, I think it would be in ill grace for arbitrators to resist this change. What the parties now need is some broader use of the new skills, talents, and standards that have been developed, so that the arbitrators above all others should not become set and say, "We like the old mode of doing things and we decline to change our role."

The third-party function is by no means something to be considered as an isolated technique. It is part of the general labor-management relationship, and must be viewed only as such. Upon objective review of developments at this time—and it is very early in the game—I am convinced that in the instances in which the parties have opened their minds to so-called informed

neutrals they have on the whole been faring better than before this change in attitude and approach.

There have been changes in attitude, and problems are being approached in a more reasonable and constructive manner. Occasionally, the intelligent use of a third party helps, but the essential cause of the improvement is the change in the attitude and purpose of the parties, and this I cannot emphasize too much.

Discussion——

GEORGE W. TAYLOR*

It is intriguing to listen to some of the speeches that are being made today about third party participation in collective bargaining upon invitation of the parties. The "line" is the same as the remarks about grievance arbitration when this was a new idea thirty years ago. Then as now the air was full of "Public, go home. We can work these things out by ourselves." In some of the early days, when a number of us were beginning to arbitrate grievances, the skeptics used to say: "What does a college professor know about running this place? Who can tell us anything about making widgets? What does he know about seniority provisions?" It was a daring thing thirty years ago to support this profession of grievance arbitration which is now so comfortable and stable.

Gradually the parties began to realize that resorting to strikes to resolve grievances wasn't a very good way to meet the needs of anybody. It was too costly to the company in lost production. Nor could a stable union be built by having a strike every week to decide such questions as whether Joe Zilch or John Doe got a promotion or if Bill Smith was properly fired. Whatever a college professor's decision would be couldn't be more costly than a strike or give less desirable results.

I have often thought that the success of any arbitration procedure should not be determined wholly by arguments of the logic of the decision, but also by a comparison of the results: what would have happened if a strike occurred? This is the alternative to grievance arbitration.

* Professor of Industry, Wharton School of Finance and Commerce, University of Pennsylvania; Public member, President's Labor-Management Advisory Committee.

And one can get disturbed, when, in the heat of arguments about grievance arbitration, people tend to forget that the procedure has to be continually appraised by both parties as an acceptable substitute for a strike. The parties—or either one of them—can determine to revert to the strike as a way of resolving grievances. Indeed, I have heard recently of the results of arbitration being so poor in the judgment of one party—it doesn't have to be both—that maybe the use of the strike to settle grievances is preferable to arbitration.

This whole business, then, of third-party people participating in collective bargaining is what your profession of grievance arbitration rests upon. Third-party intervention, not just to recommend but actually to make a decision, has been stabilized and accepted to a notable degree only in grievance handling. The turnout and influence of the body which is here assembled attests to the respectability of this one form of third-party intervention. This was not always the case. The emergence of grievance arbitration is an example of changing an institution to adapt to a new problem—a need to avoid work stoppages over the settlement of grievances. The inadequacy of the strike for this purpose had become apparent and a substitute for it was therefore invented.

Before talking about the details of any of the current new developments in third party participation, it should be recognized that these new experiments can develop in quite different ways, just as bargaining has developed in different ways and just as the arbitration of grievances operates in different ways. This is the hallmark of industrial self-government. In our country, the industrial relationship is characterized by diversity, not by uniformity. This diversity contributes to our strength as a nation and should be preserved.

Now there is a new change in environment to which industrial relations, including collective bargaining, has to adjust. The problem was epitomized when the present President of the United States, building upon what was said by his three predecessors, said to management and labor, "In this current situation, it is essential to restrain your power and, more than ever, to take the public interest into account in the making of private decisions."

The appeal is: "Modify your functions." Well, this is pretty tough to achieve. Union leaders are elected to represent the interests of their members. Among the principal functions of

management are perpetuating the company and achieving a certain return for the use of capital. It's expecting much of management to report to stockholders: "We didn't get the price increase, but, by gosh, we helped preserve the gold balance." It is pretty tough for a union leader to go to his membership and report that an achievable wage increase was not taken but that the public interest was served. Yet, such steps are becoming more and more essential if national goals are to be attained.

The private enterprise system has served us well by permitting the maximization of particular interests in the making of private decisions. It has been reasoned that public interests would be adequately protected by the force of the market place as a sufficient restraint on the private factors. In other words, a built-in and automatic protector of the public interest was counted upon to avoid excesses in the private sector of the economy. These inhibiting market forces are not as great as they once were. This was epitomized in recent years when, with vast unemployment and unused productive resources, wages and prices nevertheless went up. A free market should not operate that way if the public interest is to have built-in protection.

The decreasing effectiveness of the market as a protector of public interests is accompanied by an accentuated need for national planning in a troubled world. Gold balances can't be left to determination by the private sector of the economy. National planning comes into being in the creation of military might, space exploration, and aid to underdeveloped countries. The environment has changed.

I believe our big domestic problem is: how to preserve the private decision-making system and its proven strength while making its operation compatible with the attainment of national objectives vital to our safety as a nation. I put it this way: A bridge is needed between macro-economic and micro-economic considerations. In this process, private decision-makers are expected to give substance to a principle heretofore recognized only in a general and less than purposeful way—that differences should be resolved with due regard for the public interest. There were times in the past when concrete meaning was given to this idea, those times of national emergencies when tripartite bodies were established to comprise national labor boards. They represented a modification of traditional collective bargaining processes

to permit us to deal with a new and threatening environment. Bipartite collective bargaining was modified by agreement of the parties and became a tripartite process in order to give adequate representation to the public interests.

I hope that any modification of the collective bargaining institution to meet current problems will be made by the parties themselves in the pattern of the earlier modification which gave rise to grievance arbitration. We have better grievance procedures, I believe, because the parties themselves developed the final arbitration step in various ways to suit themselves. The public members were invited in under terms established by the parties.

Management and labor now face, it seems to me, a choice as to whether or not the public interest in agreement terms is going to be recognized and voluntarily introduced into the system in such a way as to properly preserve the private enterprise system and its unique strengths. The "third party participants" are not the real pioneers. Rather, that role is assumed by these people in industry and in unions who are able to discern the necessity of making institutional changes in their procedures. They invite third parties to sit in on negotiations just as you arbitrators are jointly invited to participate in the settlement of grievances. Here is another set of problems.

I would like briefly to refer to the work of the so-called Kaiser Long-Range Committee because the Chairman specifically said I should do so.

The most significant thing to me about the Kaiser agreement, the most unique and the most intriguing to me, is its assignment to study these questions: "How should the gains of technological advancement be shared? Who has legitimate interests in the sharing and to what degree?" You know, we are evolving in these days new answers to the question, "What do you pay wages for?" It used to be so simple when I studied undergraduate economics. Wages are paid in relation to a man's marginal contribution to production and, of course, you don't pay wages for time not worked—that would be unthinkable! Of course, it is not so unthinkable today. We are continually giving new answers to the question, "What do you pay wages for?" Basically, this was the question that was placed by the parties on the agenda of the Kaiser Long-Range Committee. Consider some of the

ramifications. When there is technological advance, how does one determine the share of those who are proximate to the advance? How is the share of the displaced man determined? How much is due to the stockholders, how much to the consumer? Automation has complicated the problems of collective bargaining.

I am sure private decision making has a major responsibility in grappling with the problem of automation, taking the public interest into account while doing so. Perhaps less and less of this problem will be resolvable by collective bargaining. This is why tripartite public bodies, such as the President's Labor-Management Advisory Committee, are vital. Such bodies constitute not an intrusion of government into labor and management affairs but a bringing of the representatives of labor and management into government where more and more important decisions are going to be made.

Besides grappling with fundamental problems, such as the ones just alluded to, the Kaiser Company and the United Steelworkers have been willing, in the Long-Range Committee, to experiment with procedural changes. They have been willing to make invited outside participants aware of the difficulties each party faces in its bargaining. They are saying, in effect, "If we have to have mediation, we would rather have mediation by somebody who knows something about our problem."

They go one step further. They have concluded that before resorting to a strike with its public impact, it makes sense to consider what somebody other than themselves thinks would be a fair settlement. They may reject a recommendation, but they accept a public obligation to at least consider what somebody else thinks before they look to a work stoppage as a way of resolving their differences.

I think the real problem that is being grappled with in the Kaiser Long-Range Committee is whether or not substance can be given to the phrase "collective bargaining must be conducted with due regard to the public interest." This is quite a challenge.

Discussion——

JOHN T. DUNLOP*

It may not be obvious that all of us on this panel are talking about the same thing. But at this early stage in the development of relatively new terrain, it may be useful to share different perspectives about new forms of collective bargaining and new roles for neutrals. It has seemed to me most useful to organize my brief remarks under two general headings:

I.

One of the things that is happening is that there are adjustments being made in the bargaining arrangements. This is quite different from the normal practice of sitting down and negotiating a bargaining agreement and living with that agreement.

One role of the neutral has to do with helping to adjust the bargaining arrangements. Let us consider five ways in which bargaining arrangements are being altered.

(1) One activity is to change the scope of bargaining. Ordinarily, we have thought that this was a concern of the National Labor Relations Board or the National Mediation Board. I think a great deal of confusion has been introduced by giving these agencies credit for that, or saying that they determine the scope of bargaining.

In the railroad industry in recent years, most of the bargaining for the operating unions has been taking place, union by union. The trainmen bargain, the switchmen bargain, the firemen bargain, and so forth. Each of the five operating unions bargains separately. Inevitably, when you bargain that way, there are some issues which you cannot consider very carefully. One is the relative wage differentials between these crafts or between types of service, and classes of service. Another is interdivisional runs. You cannot have interdivisional runs in which the firemen make the run and not the engineers. The rules governing the division between road service and yard service involve all these unions.

The Presidential Railroad Commission, in part, is a reflection

* Professor of Economics, Harvard University; Public member (1961), Presidential Railroad Commission, Missile Sites Commission.

of the fact that it is necessary for all five unions, with the carriers, to sit down to consider some types of questions.

The scope of bargaining is being readjusted by the introduction of neutrals.

In the absence of neutrals, that process would not be so easily facilitated. The parties have bargained, union by union, for many years. Each one of these bargains has been a matter of individual strategy and game-playing. One function of the neutrals in this situation is to affect the scope of bargaining.

Let me give another illustration:

Dave Cole and I are so-called neutrals on the Presidential Missile Sites Commission. Last week I was down in Canaveral trying to readjust the scope of bargaining. In construction there are about 20 separate area agreements that cover Canaveral, each negotiated by separate groups of building trades unions and contractors. That arrangement might work all right on an ordinary isolated project of limited duration, but when you put several billions down there over a period of a decade and when there are unusual conditions calling for shift operations and special hours of work, there are greater needs for standardized conditions among the crafts. Thus, one union has a third shift which is limited to six hours. Another union permits no extra shift but charges double time; another set of area agreements say seven hours on the shift. Or, one union has holidays numbering seven, another has five; one has a Memorial Day, and another regards Memorial Day as falling on a different date. You cannot run such a project with those uncoordinated area agreements.

The problem is to rearrange the scope of bargaining so that you get all the unions and all the contractors together to agree upon certain standard conditions which will prevail for that unusual and unique job.

(2) Bargaining arrangements are being changed in other respects than in their scope. There is a great deal of discussion among parties about the level at which various problems should be handled. We have some problems handled on a national level that should be settled on the local level. We have other problems on a local level which should be settled on a national level. One of the roles of neutrals in this process, it seems to me, is to assist the parties to reassess the level at which matters may best be handled.

Let me give one illustration from the railroads:

At the present time, in commuters' service, wages and conditions are settled nationally; but are the problems for commuters' service in Los Angeles the same as for Long Island? Is the spread of hours that is appropriate for Boston the same as for Philadelphia? The length of runs, the volume of traffic, and the financial conditions of the service are very different in each metropolitan area. Indeed, commuter service varies from one metropolitan area to another; it is not a single national problem. The neutrals may assist the parties in reassessing the level at which a decision is made.

(3) Another facet of the adjustment in bargaining arrangements that is going on is a matter that Dr. Taylor talked about, and I will list it with only a brief comment. This is: the procedures that the parties follow when the contract expires. In the United States we have done a very creditable job in developing procedures for the administration of agreements. This group is testimony to the fact. Other countries like Great Britain have not done such a good job in the administration of agreements, but they have done a much better job than we have in handling disputes that arise with the expiration of agreements. By the devices of the Joint Councils and other arrangements, the vast majority of British agreements have procedures which the parties commit themselves in advance to follow when the agreement itself comes to an end, or, since many agreements are without termination date, when there is a dispute over changing the terms of an agreement.

I think Dr. Taylor is quite right in saying that one of the areas for the further development of collective bargaining in this country is the adjustment in bargaining arrangements by the development of procedures to be followed when the contract is open.

(4) There are changes in bargaining arrangements that Dave Cole mentioned to take care of and put right grievance procedures that have gone berserk.

(5) I want to mention one other type of adjustment in bargaining arrangements that arises because of the greater role of government. A large number of cases where third-party neutrals are being introduced arise because government is already in the picture and it is often the inconsistency or mistakes of government policy, or the necessity of government formulating some policy,

that creates real problems for the parties. I would argue that the government's nonsensical subsidy policy in the maritime field contributes very greatly to the problems of that industry and creates a role for neutrals.

It may very well be that here, again, there would be a role for neutrals to examine on a continuing basis the scope of bargaining in that industry in the light of the character of government activity.

The school cases that have been talked about fit into this pattern also.

Thus, one of the major things that is emerging in collective bargaining is that the parties are adjusting their bargaining arrangements in various ways. I am suggesting that some neutrals can be and have been useful in helping the parties, not to negotiate another agreement in the same framework, but to readjust the bargaining arrangements themselves.

II.

The second range of comments that I would make is that the parties are being compelled to tackle some new problems, or some old problems in new forms and new intensities. Neutrals have a role to play in helping to formulate and consider these newer problems.

In many circumstances the parties are having to pay more attention to manpower problems and issues.

In our Railroad Commission work, for example, we had a unique opportunity to make a study of manpower in the railroad industry. By virtue of the fact that there are unusual data available through the Railroad Retirement Board records, we are able to have, by craft or by occupation, the present age distribution of the operating work force attached to that industry and also the length of service in that industry. Therefore, one can project manpower developments for the future. One can talk about the age distribution and length of service by craft in the future. One can talk, therefore, with the parties, about the problems they have never talked about before, in terms of hiring and retirement policies in an industry where employment trends have been going down rapidly.

What I am suggesting is that these new substantive issues that are arising permit new and unique opportunities for a neutral, and one of the principal functions of neutrals in these situations is to assist the parties to bring to bear new forms of information on their problems which they have not previously marshalled.

It would take too long, perhaps, to go through a list of new substantive issues stimulating the resort to neutrals. But let me comment on one or two. There is, obviously, the very important area of new technological change. I assume Bob Fleming will have something to say about that.

Then, we are seeing that new forms of training are required, particularly retraining and upgrading. Here a neutral has a new role to play in assisting the parties to recognize the problem and to help them formulate programs.

It is also likely to be the case that new methods of wage payments are required, as Dr. Taylor mentioned. Here, again, this is not the kind of problem that the parties will think through in crisis bargaining. Any readjustments in methods of wage payment, particularly those that are complicated, such as incentive systems in steel or the dual basis of pay in the railroads, require extended periods of time for study.

There are also questions that border on the role of government, including legislation. There are many fields as government activities expand where the parties are in touch with governmental agencies, and in these areas the parties form joint arrangements to deal with the government. I think not enough attention has been given to the Coal Conference which was formed by the coal producers, the coal union, and a number of others interested in the coal industry.

Let me bring these remarks to a conclusion:

With changing times and problems, the parties are often seeking to change or to adjust bargaining arrangements. Further, the parties are often groping to deal with some new issues.

These circumstances create new opportunities for the neutrals to play a role, although it is important to note that these roles may vary in the depth of their penetration:

First, the neutrals may assist the parties to help get the facts in a way that would not otherwise be possible.

Second, they help to introduce a longer-run view than might be normal.

Third, they help the parties themselves, in dealing with their own constituents, to introduce elements of public interest that Dr. Taylor talked about.

Fourth, they often help to coordinate fragmented bargaining arrangements. We have too often assumed that bargaining takes place between one union and one employer. Actually a large part of the bargaining in the United States takes place between groups of unions and groups of employers, and in these circumstances the neutral may serve a very important role in helping to pull together each side in dealing with its constituents.

Finally, the neutral can fulfill the role of providing the consideration of new problems throughout the agreement period at periodic intervals, rather than just in the few weeks before a contract's expiration.

Discussion——

ROBBEN W. FLEMING*

No one is suggesting that every collective bargaining relationship ought to be replete with both parties and neutral advisors. The need for help from neutrals arises out of the existence of specific problems which both union and company representatives feel might be more easily resolved if they had the assistance of outsiders. There is no virtue whatsoever in calling in so-called neutrals just to keep up with the Joneses.

As to the actual operation of a tripartite Committee, like the Armour Automation Committee, let me say just a few words.

I agree with some of the previous speakers that the presence of neutrals does tend to encourage the parties to keep their conversations on a constructive level. This will be particularly true if the parties agree at the outset that what they have to say to each other during the course of the meetings is not for publication elsewhere. The presence of sophisticated neutrals contributes to candor, and the platform speeches and cliches which so often accompany bargaining sessions find little place in such an atmosphere.

There is another function of such a Committee which I think is very useful. I tend to label it "research," though I find that

* Professor of Law, University of Illinois; Executive Director, Armour Automation Committee.

such an appellation tends to strike a discordant note among labor and management people. I have in mind the function of the Committee in helping the parties to gather factual information which will be useful to them. Those of us from the universities doubtless tend to be biased in the direction of research studies, but I would argue that documentation often serves to crystallize agreement which may otherwise be impossible because the parties see the situation quite differently.

I am also impressed with the experimental possibilities offered by a tripartite committee. In the course of routine collective bargaining it is often impossible for the parties to experiment with an approach which may appeal to both of them as reasonable, simply because it may involve a degree of future commitment which is undesirable. The Armour experience indicated that in such a situation the Committee could be used as an instrumentality for experimentation without committing either side to continuation of the practice if it did not prove satisfactory. Thus a much needed element of flexibility was introduced into the relationship.

I would add two final observations. One is that the neutral participant in collective bargaining is likely to be of maximum assistance if the parties fully realize his limitations. It is obvious that he will know far less about their problems than do the parties. His value is that he can contribute ideas drawn from a wholly different background. These ideas may be adaptable and thus useful. But the important fact is that they will almost certainly have to be adapted. In the Armour situation, for instance, many of the matters discussed in Committee ultimately found their way into the contract—but in a different form, and as adapted by the parties to meet their problems. This strongly suggests that for the neutral to be useful there must be a reciprocal relationship, under which the neutral advances ideas which the parties then mold to fit their own situation.

Finally, I agree with Neil Chamberlain that we are at a stage in our history in which collective bargaining cannot be expected to cope with all of the problems faced by labor and management. Increasingly we must explore the interrelationship between collective bargaining and governmental action. The prospect is exciting, for success depends on our capacity to relate the two in a fashion which will best serve our particular system.