that fact-finding led directly to resolution of the dispute, as opposed to 18 employers and 14 unions who answered that fact-finding did not do so. This parallels our 1969 experience. We asked our mediators to express their opinions on the effectiveness of fact-finders' reports in dispute settlement. The mediators reported that out of 60 fact-finders' reports, settlement was aided in 39 cases.

Thus, it appears that fact-finding, like collective bargaining and like voluntary arbitration, is a means for impasse resolution in the public sector. It is not perfect, but neither is any dispute-resolving procedure in either public or private sector. It is a tool which can, and should, be used intelligently by those charged with administrative responsibility in the public sector.

It seems to my fellow commissioners and to me that emphasis should be placed on the improvement of fact-finders rather than on minute professorial dissection of the process. We have tried to bring improvement, by care in selection and by one session each year in which our fact-finders discuss procedures and are instructed on some areas of concern in education.[9]

Perhaps one more item should be mentioned. While some criticism of fact-finders and the fact-finding process is legitimate, I have observed that some of the more virulent observations directed toward a particular fact-finder, and at the process, have come from the mouths and pens of those who have not done their homework prior to presenting a case to a fact-finder.

Comment—

JACOB FINKELMAN *

Having accepted your invitation to participate in this panel, as soon as I received a copy of Bill Simkin's paper I realized how few qualifications I had to participate in such a session. The thought occurred to me that perhaps I might derive a grain of com-

[9] We have not had instruction on other areas in the public sector because fact-finding in schoolteacher disputes has comprised about 80 percent of our fact-finding. Undoubtedly, more than one session per year would have value, but our fact-finders are not paid for attending the day of schooling. There is a limit on what we can ask.

* Member, National Academy of Arbitrators; Chairman, Public Service Staff Relations Board, Ottawa, Ont., Canada.

fort from hearing what other Academy members had to say about themselves.

I have never mediated a dispute. I have never acted as a fact-finder, although I started in the arbitration field in 1937. In addition, I have not engaged in scholarly research in mediation or fact-finding. From a practical sense, my experience in the field of labor relations is as follows: After hearing evidence and arguments, I have, as Bill has said, withdrawn to my sanctuary and prepared a decision.

I must also warn you that I am not a philosopher. I am a pure pragmatist—which means, of course, that I have lived from hand to mouth and for any given moment.

Since I know nothing about the art of mediation or fact-finding, it occurred to me that I should outline for you briefly some of the history with respect to mediation and fact-finding in Canada. Fact-finding became part of the labor-management process in Canada as long ago as 1907 when provision was made for the appointment of fact-finding tribunals in certain circumstances. They were tripartite tribunals. The idea was that one member would be appointed by each of the parties and that these two would appoint the chairman. On failure of the parties to appoint the chairman, the appointment would be made by the Minister of Labor. The minister took the position that all members of the tribunal should be public members. They should not be partisans or associated with the parties in the sense that many of them later came to be so associated.

Mediation by government mediators simply was not part of this scheme. Mediation in that sense became popular in 1941, during the Second World War. In 1944 the Wartime Labor Relations Code was instituted, specifying a two-step mandatory procedure as a condition precedent to the strike. No union could call a strike until mediation was exhausted.

If the mediator did not succeed, then the dispute went to a tripartite tribunal, with each party nominating a member and the two joining in the nomination of a chairman. On failure to nominate, appointment would be made by the Minister of Labor. This procedure was applicable to all disputes. In no enterprise,

no matter how small or how large the incident, could there be a strike until these efforts were exhausted.

In the fifties there was growing disenchantment with the Conciliation Board, as we called it. The legislation was changed to allow the Minister of Labor to dispense with the fact-finding board. It continued to permit appointment to be made to the Conciliation Board on the joint request of the parties, and it also provided that if the minister felt a dispute were of major significance to the community, then a fact-finding tribunal could be established.

A point should be made clear. This legislation applies to public service bargaining in Canada at the local government level; it has so applied since 1944 and continues to do so to the present date. There is no difference in the treatment of local government employees, broadly speaking, from the general treatment of people in the private sector.

In Canada today the feeling is that, if it is at all possible, the fact-finding tribunal should be eliminated. Now whether this is 25 years ahead of your experience or whether it is a formula for the future, we cannot tell. Over the last year the feeling has grown that the Minister of Labor should be given an arsenal of weapons; he should be able to appoint a staff mediator, an outside mediator, a tripartite fact-finding tribunal with power to make recommendations, or a tripartite tribunal to mediate.

I would like to turn for a moment to the impasse procedure in the federal public service legislation which I now have the responsibility of administering. For some reason the provision here does not make the mediation step mandatory. A mediator can be appointed only at the request of one of the parties. The union is entitled to opt, at the time negotiations begin, either for binding arbitration as the terminal step or for a fact-finding tribunal with power to make recommendations.

If they opt for fact-finding, they cannot exercise the right to strike until they have applied for a tripartite tribunal. I do have the power to dispense with that tribunal if I see fit to do so. So far, I have not seen fit to do so. In fact I have made it quite

evident, certainly in the initial period, that it would be highly improbable that I would bypass the fact-finding tribunal.

I think that it was a mistake not to specify compulsory mediation in the legislation or, at least, to give power to appoint a mediator before the fact-finding tribunal goes into operation. I have found that the lack of mediation sometimes minimizes the effectiveness of the fact-finding tribunal. The tribunal sometimes has to spend many hours and many days at tasks that could have been eliminated if the fact-finding had been preceded by mediation.

I am not in a position to tell you how effective our fact-finding machinery is going to be under the Public Service Staff Relations Act. There have been a number of fact-finding tribunals, and all but one have been able to settle the dispute without writing a report. That one was the postal operations dispute about which many of you have heard. They are going into fact-finding again tomorrow, and the chairman of the tribunal, a tripartite tribunal selected by both parties, is Judge Rene Lippe, who spoke to you on Saturday.

There is one interesting thing about our legislation which I would like to bring to your attention, and that is that our arbitration tribunal—the tribunal where the parties have opted for arbitration—has certain terms of reference which are taken into account in arriving at a conclusion; these factors form the guide for the fact-finding tribunal as well. You will forgive me if I take a few moments to read them to you:

> "In the conduct of proceedings before it and in rendering an arbitral award in respect of a matter in dispute the Arbitration Tribunal shall consider
>
> "(a) the needs of the Public Service for qualified employees;
>
> "(b) the conditions of employment in similar occupations outside the Public Service, including such geographic, industrial and other variations as the Arbitration Tribunal may consider relevant;
>
> "(c) the need to maintain appropriate relationships in the conditions of employment as between different grade levels within an occupation and as between occupations in the Public Service;
>
> "(d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered; and

"(e) any other factor that to it appears to be relevant to the matter in dispute."

These are fairly wide terms of reference, but they do serve as a general guide to the tribunals.

I would like to spend a few moments on a rather unique institution that has been transferred to my jurisdiction and which I believe is of inestimable importance in helping us work out solutions to the problems that arise.

In 1957 legislation was introduced which empowered the Civil Service Commission, as it was then called, to recommend to the Government what increases in salaries should be given to public employees. The recommendations, although not binding, were nevertheless designed to help the Government perform its function. A Pay Research Bureau was established in 1957 and was provided, by our standards, with a large staff. The Bureau, which has a high degree of competence, was transferred to my jurisdiction, making it independent of government control.

The information which the Bureau obtains is released to the employer and the bargaining agent. It is not made public, but is supplied to our staff mediators or fact-finders privately for their purposes. It is also made available to our arbitration tribunals.

Tribunals, mediators, and fact-finders also have the power to call upon the Bureau, through myself or our vice chairman, who is responsible for the administration of the Bureau, for special studies on any aspect of their work. The Bureau enjoys a high reputation in the field. Many employers in the private sector in the last few years have been belaboring us with demands that Bureau reports be made public. The same is true of the unions.

Our services are available to and are accepted by both parties so that when they start negotiations they don't get into the jams that parties often get into because the two sides are presenting two sets of facts which do not coincide.

In conclusion I would like to say this: Any technique for settling disputes is valuable only as long as it works. It has been abandoned as a tool in a number of situations. I hope the day will come when fact-finding boards will not be appointed and when reliance will be placed on mediation alone.