

IV. WORDS, CONCEPTS, FACTS, AND PEOPLE

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This is rough competition. I yield to Dave Cole as respects all those aspects of experience and seniority that matter, save only for the happenstance of having been the second instead of the third president of this outfit—an item of no significance whatever. Those few of you who know the story realize that Dave should have been the second president anyway. As for Ralph, we all yield to his excellence of purpose and his superiority as to quality. I don't possess the wit or brilliance of Seward, Gill, Hill, or Seitz. Any effort in that direction from me would be a disaster. So, despite the inappropriateness of serious—and hopefully controversial—observations in the stupor of an after-dinner occasion, here goes:

We work with a fascinating and hazardous mix of *words*, of *concepts*, of *facts*, and—most important—of *people*.

Words

As a general proposition, words in a labor agreement should be reasonably accurate and descriptive. Sometimes the meaning of one word may be crucial. For example, most of us would agree that “may” is not equivalent to “shall.” I've heard tell that some of our clients wouldn't always concede that observation. But I suggest that “word” cases are not the most important ones.

We also know that there are exceptions to accuracy. There is the deliberate ambiguity. There is inadvertent ambiguity.

Without being unduly critical of some of my colleagues, I'm a bit dismayed when I pick up a decision and find elaborate and labored references to Webster and related sources. Why this dismay? I've been around a fair number of bargaining tables and have yet to find one or more dictionaries as standard pieces of equipment. If we, and the parties, don't use words that are within the realm of understanding of union and company officials—and these representatives are not stupid—I suggest that the dictionary is not of much help.

Concepts

Concepts utilize words but should be differentiated from the word notion previously mentioned. For example, we have “just

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cause" in discharge cases and "when skills and abilities are approximately equal" in promotion cases. These are not deliberate ambiguities. They are very valid skeletal concepts. There has been conscious intent to fail to put flesh on the skeleton. But the basic concept is very significant and meaningful.

Facts

Some of you will remember that, in Montreal, I unburdened myself of some distaste for the hyphenated word "fact-finding." This was and is not due to any intent to belittle facts. We do have an important obligation to obtain the basic facts and to reconcile, to the best of our abilities, real or alleged factual disputes.

But I suggest that the more difficult cases where facts are significant come down to the much more important question: What do you do about the facts?

People

People negotiate and write the words. People develop the basic concepts. Many of the facts only reflect actions and performance of people. People are going to have to live with our decisions.

Any of us who might think that we can ignore or underestimate the "people" aspect of the mix are only kidding ourselves. People relationships are the name of the game.

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Thus we work with this mix of words, of concepts, of facts, and of people. The proportions of the brew vary widely from case to case. How we view the relative weights of the ingredients in a particular case may be more critical than our appraisal of the various components.

What I have tried to say so far can almost be condensed in one sentence: *We succeed or fail depending on our ability to exercise valid value judgments.*

This brings us to a look at some other words that are used by and about us: neutral, impartial, competence, compromise, and consensus.

Neutral

My dislike for the word neutral is not confined to possible association with neuter. As an erstwhile chemistry major, I once fussed around with acids and alkalines to arrive at a neutral

solution. I suggest that there is no litmus-paper test that is appropriate to our situation.

Like all propounders of precepts, I have violated my own. I took a look at a dictionary and it gave me an idea. One definition of neutral is: "A position of the parts in a gear mechanism in which no power is transmitted." The collective bargaining relationship at a plant is seldom static. It is moving forward to a better relationship or it is retrogressing. Even when it appears to be stagnant, there is movement at or beneath the surface.

Many arbitration decisions have important effects on that movement—in either direction. Even a reaffirmation of a well-known word or concept has some effect. The decisions that have no effect are in cases that probably should not have been submitted to arbitration. And even the stoutest proponents of the purest forms of the umpire concept (nothing but the calling of balls and strikes) do not always practice what they preach. All parties expect the arbitrator to be a part of the gear mechanism. They want him to help move the relationship forward, from their respective points of view. They are alarmed when he contributes to retrogression.

Now I think I am fully aware of the impropriety of transmission of too much power by the arbitrator. I carry some battle scars. Different parties want and need different amounts of power transmission, and those wants and needs vary from time to time, frequently case by case, even within any one relationship.

We do need restraints on some tendency to "play God." One quite proper restraint is to refuse to employ those of us who do not fit the particular needs of a specific relationship. And if somebody does employ us, there is the equally proper restraint of firing us if we "go overboard." In that particular situation, our only valid grievance is that the parties may not have been adequately frank and candid in indicating wants and needs. A General Electric-type clause versus a "when any trouble arises in the plant" jurisdiction clause does provide something more than a hint. But the so-called standard clause ("interpretation and application") may be quite inadequate in portrayal of actual attitudes.

As a general proposition—if we transmit no power, we are no damned good.

Let me try to illustrate. There exist today, in many relationships, well-accepted applications of the concept of corrective discipline. These did not develop painlessly. If you look carefully at many of them, arbitrators were responsible for much of the input. The gears were not in neutral. This illustration is only one of a very long list.

Impartial

Impartial is a much better word, but even here there are problems.

I ask myself the question: "Am I impartial in each and every specific case?" The only honest answer is no. In the close ones—the decisions that legitimately could go either way (and they are likely to be the most important cases)—I must confess that I may decide such cases on the basis of my own accumulated experience, background, bias, if you will. Sometimes we label it to ourselves as a "gut reaction" even if we are not that candid in the opinion.

The parties may and do ask: "Who is he impartial for?" One colorful, now departed, labor leader is reputed to have said, when presented with a list of names: "Where is me old impartial?" Now I don't put the same connotation to those questions that some people do. Sure, a company or a union may seek to obtain temporary advantage for a particular controversy by attempting to guess—frequently unsuccessfully—as to how a particular arbitrator will rule. But much more often the real question underlying the others is "Will he understand our problem?"

We are what we are and what we have demonstrated that we are. We are accepted or rejected accordingly. This is as it should be. The significant test of impartiality is a test over time. In a very real sense, the test is one of inner integrity. *Are we ready and willing to "call 'em as we see 'em" for industry or for labor, with due regard to the consequences to the parties but without regard to the consequences to us?*

Competence

Many years ago I had one of my first experiences as a member of a tripartite board. The two other members were tough, seasoned opponents but with great respect for each other. One evening, after several drinks, the two of them—for no apparent reason—started off on a hot debate. The subject was: "Which is more

important in an arbitrator, competence or impartiality?" The labor member terminated the discussion by a sentence that constituted a labor-management consensus, at least for those two men. It was: "I'd prefer not to have to choose, but if I have to, I'll take competence any time."

What is competence? It's that indefinable combination of judgment and personality that I tried to indicate earlier. Put in other words, it's the hard-headed ability to make generally valid and practical value judgments *plus* the important ingredient of guts.

Compromise

Compromise is not a dirty word. It is an essential ingredient of most social mechanisms in a democratic society and often the only sensible answer to a dispute. Compromise becomes objectionable when it is utilized in a fruitless endeavor to please everybody *or* when it reflects absence of guts *or* when it is an indication of our inability to truly understand and appraise a problem.

Consensus

The concept of consensus is much better than compromise. Obviously, it is difficult to achieve in an adversary situation, but it is by no means impossible.

Often, after extremely difficult but successful negotiations, the bargainers shake hands at 6:00 a.m. after long and torturous meetings. Positions held fiercely only 12 hours earlier have been abandoned or compromised. But there is a spirit of elation. Both sides say: "This is a good agreement. We can live with it." As arbitrators, we can hope that the parties have similar reactions to our decisions, even though the process is different.

Summary

We are a part of, not apart from, the important institution of collective bargaining. We in this room represent 25 years of opportunity and privilege of making contributions to that process. In a very real sense we are servants to, but not servile to, those industry and labor groups who voluntarily choose to utilize our services. As we continue to work in various relationships, let us hope that we fulfill the purposes for which our profession was created.

The mix of words, of concept, of facts, of people will continue and become even more complex. As we look ahead to another

quarter-century, the need for effective functioning of this Academy will almost certainly be greater than during the years that are behind us.

V. THE TWENTY-FIVE YEAR MILESTONE

RALPH T. SEWARD *

We have reached a milestone—our 25th anniversary. This should not be primarily an occasion for looking backward. In the life of an organization, as in the life of a man, the challenges always lie ahead, and there is more to be gained from planning for the future than from remembering the past. Reaching a milestone, however, can well be an occasion for measuring the meaning of distance traveled—the worth and value of what has so far been done. To make such measurements, we must return to first principles.

We are here in many capacities. We are members and guests; we are arbitrators, labor representatives, and management representatives; we are husbands and wives, children and friends; we are old-timers who remember all or most of the 25 years, or we are newcomers who know about those years mainly by hearsay. But whatever our capacity, whatever the reasons that bring us to this room, we are all of us engaged in a quest for effective self-government. We are engaged in a race between the forces in our society that are fostering effective self-government and those forces—and they are very strong these days—that are obstructing effective self-government.

This all sounds pretty high-flown and dramatic, but I submit to you that it is one of the basic realities of our lives. Without effective government, in these confused, troubled, and threatening times, we cannot achieve or maintain a good life. Without effective *self*-government, we cannot define that good life in terms of self-realization. There cannot be effective self-government in society unless there is self-government in industry. And we are here tonight because in one way or another we are working toward effective self-government in industry—self-government which involves not only industry and labor but all sections of society that touch the processes of labor relations and that are touched by those processes.

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