Mediation: Fact or Fiction; Force or Finesse? A Synopsis of Case Studies

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MEDIATION:
FACT OR FICTION; FORCE OR FINESSE?
A SYNOPSIS OF CASE STUDIES

by

Charles N. Carpenter

A Project Report
Submitted to the
Faculty of The Graduate College
in partial fulfillment of the
requirements for the
Degree of Specialist in Education
Department of Educational Leadership

Western Michigan University
Kalamazoo Michigan
December 1985
The primary objective of this study was to observe a state mediator in his role during public sector contract negotiations and relate these observations to the tenets of conflict management and power sources.

Conclusions are drawn relative to the impact of the mediation process on collective bargaining.
ACKNOWLEDGEMENTS

Many, many people have contributed to a greater or lesser degree in the successful completion of this project. Certainly, thanks are in order to the team caucuses who permitted my intrusion without question. I fully appreciate their candor, especially knowing their words were often being memorialized. Thanks, too, to my advisor whose direction, encouragement and enthusiasm helped to maintain mine.

My family deserves its place in this acknowledgement for its cooperation with altered supper schedules and early morning intrusions. I also wish to express appreciation to my superintendent for his support and flexibility in freeing me from job responsibilities, thereby permitting me to participate in mediation sessions.

My secretary has earned a paragraph to herself, not only for this project, but for those many hours at the typewriter on my behalf throughout my Specialist program. Her patience in deciphering my notes and tolerance of the many rewrites proved of immeasurable assistance.

Finally, to the mediator upon whom this synopsis of case studies is derived, I offer my deepest gratitude. His willingness to share his experiences, his rationale and his advice have made this internship the most
enjoyable and valuable educational activity of my graduate program.

Charles N. Carpenter
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PREFACE

For reasons that will become apparent to the reader, characters and events within this document have been kept as confidential as possible. No names, dates or places have been employed unless camouflaged. For the same reasons sources such as local newspapers, state journals and the like are cited where appropriate, but not referenced.
CHAPTER I

INTRODUCTION

Collective bargaining is a phenomenon considered in most quarters to be confrontational, or at best adversarial. Even a cursory review of the media will reveal strife between labor and management at all regional levels as the parties posture themselves to their perceived public advantage. Of lesser notoriety are the uncounted thousands of private and public sector organizations whose labor relations are such that the collective bargaining process proceeds in a positive atmosphere of mutual accommodations. To generalize, the perspective of the impact of union job actions and disruptions upon local, state and national organizations must be tempered by the vast potential for conflict available and the comparatively limited number of times this type of coercion is invoked. The mediator, upon whose experiences this paper is based, for example, estimates his case load to be 1,300 bargaining units. In any given year, he may be called to mediate 115 to 130 cases—a maximum of 10%—many of which are settled amicably in a short period of time.

The degree of militancy resulting from these adversarial relationships is most often an outgrowth of
several mitigating factors. Essentially, management practices cause unions. Further, management practices dictate union practices. Rensis Likert (1967) identifies and classifies three organizational variables as "causal, intervening" and "end-result." To paraphrase, management holds assumptions and exhibits behavior patterns which cause a response from workers relative to loyalties, attitudes and job satisfaction which in turn significantly affect employee performances. In sum, management influences the human resources which affect organizational success.

The extent, then, to which adversarial relationships evolve into confrontations is directly proportional to the ability of the protagonists to manage conflict. As defined by Wilmot and Wilmot (1983), "they are interdependent and perceive some incompatible goals or scarce rewards" (p.19). Two points deserve emphasis. First, again drawing from Likert (1967), causal variables (management) affect intervening variables (employees), whose performance affects management, whose attitudes affect employees, whose... The two factions are inseparable; they are in theory and in fact interdependent. Secondly, it is worth noting that conflict arises due to the perceptions of incompatible goals or scarce rewards. Union philosophy may differ significantly from that of management, which may further
appear completely meaningless to an outside observer. Nonetheless, if believed and espoused by either party, these perceptions translate into real and possibly volatile conflicts.

As part of the mechanism employed by legislated labor agencies to prevent conflicts from erupting into confrontations, or to diffuse them when they do, a state or federal mediator is often assigned at the request of either party whose technical purpose is to elicit concurrence on the issues in dispute. Fundamentally, he or she is charged with the responsibility of preventing strikes and labor strife such that the tax base is preserved. Job actions not only reduce spending, but they also drain social service and unemployment resources. In effect, mediators should pay for themselves. This author was present with a state mediator during approximately 320 hours of field observation involving nineteen public sector cases. Included were employees of a county road commission whose 41 members were represented by AFSCME; a court secretarial unit whose 31 members were also represented by AFSCME; a unit of city fire fighters represented by the IAFF with 42 members; a city police unit of 170 members represented by the FOP; a city mass transit unit of 69 members represented by the AFL-CIO; city hospital employees whose 33 members were represented by the State Nurses' Association; a group of 5 city public
workers represented by AFSCME; and a township fire fighters' union of 17 members represented by the IAFF. In addition, five teacher contracts were mediated incorporating 35, 48, 75, 106 and 812 members respectively. All were represented by the local affiliate of the National Education Association (NEA). Finally, six other districts were involved during the mediation of bus drivers, custodians, transportation, maintenance and food service contracts. Two were represented by the AFL-CIO (15 and 42 respectively), three by the support branch union of the NEA (8, 49 and 55 members respectively), and one by the Teamsters (55 members).

Though the process is controlled extensively by three legislated acts, the mediator is vested with no sanctions, his or her sole sources of power being limited to those granted by or garnered from the individuals based on a willingness to settle. The neutrality of mediation is therefore a critical factor. Especially over time, were the mediator to be perceived as sympathetic to either faction, his credibility, and hence his effectiveness would be seriously impugned. Several times during the course of observations it was necessary for the mediator to privately caution a caucus that he could not carry the banner of their persuasions into the other, unless and until formally argued during a joint session. If he did so, the influence of his intervention would become
diminished and his judgements suspect. Even though mediation, once invoked, governs and directs the negotiating process, the involved parties continue to be the bargainers, not the mediator. Again, the writings of Wilmot and Wilmot (1983) provide insight:

A crisis point in a conflict ... is a point at which outside intervention is needed to move the conflict toward some satisfactory resolution ... People turn to them [interveners] not primarily because they know the individual ... but because that person represents an institution that is perceived as being potentially helpful to the persons in distress. (p.146)

Added credence is lent to this assessment by the research of Scheidel and Crowell (1979) who argue that the group process may be graphically characterized by a series of diverging and converging phases within a divergent–convergent framework. Further, "the converging phase is characterized by acts of judgement and the management of conflicts" (p.199). From their findings can be extrapolated a set of conditions whereby the role of the intervener is more completely defined. To synthesize, the mediator represents a potentially helpful neutral institution invited to intervene in a crisis (or impending crisis) during the converging phases of bargaining for the purpose of moving the conflict toward some satisfactory resolution. Where these conditions do not exist, the mediation process is substantially imperiled.

This definition notwithstanding, the author has
observed numerous situations whereby the mediator has been summoned for more pragmatic reasons. Since the process is legally confidential, opposing bargainers can make "non" proposals through the mediator without compromising formal or public stances. In a case involving city transit negotiations, management was willing to offer an economic package with deferred income in excess of the authority established by the city commission if the union team would propose and recommend it to the general membership. This proposal ultimately led to further discussions which broke an impending impasse. Absent the mediator, the management position could not have been sufficiently insulated.

In another situation, a school custodial union grieved the discharge of an employee for insubordination, drug abuse and failure to perform his duties. Throughout the discussions with the union and employer in separate caucuses, Al (the mediator) determined that the Teamsters' union representative believed the merits of the employer's action, but feared from his constituency a charge of "failure to represent." Al forcefully and explicitly berated the union caucus for its untenable position and its complete disregard for the facts of the case. The Teamsters' representative later confided that he agreed with Al's treatment of the case, but needed the input from an institutional representative to reinforce his own
stance with unit members. The firing was not contested.

One final example further illustrates the pragmatic use of the mediation process. The secretaries of a district court had recently organized under the American Federation of State, County and Municipal Employees (AFSCME). At the request of the union, Al agreed to mediate the formulation of their initial contract. It quickly became evident that much of the animosity between the parties resulted from the employer's negative reaction to unionization, the employees' original causes leading to unionization, and finally, the inexperience of the union team with the collective bargaining process. In essence, the union caucus became a negotiations workshop on the attainment of goals through collective bargaining. Al's credibility and neutrality provided a forum for the restructuring of union issues into more realistic and attainable postures without an escalation of the confrontation. Again, polarization and entrenchment of positions were effectively avoided through intervention.

The preceding examples are indicative of the function of a mediator, but they are not completely definitive. Certainly, it is a goal of mediation to break impasses, resolve conflicts and attain master agreements. More important, however, is the need of the mediator to improve climate between the parties; to increase the abilities of the bargainers to objectively manage conflict themselves;
to in fact, mediate himself into oblivion. Many of the cases later described reflect this overshadowing need for relational assistance. A review of Al's professional history clearly reveals that the greatest source of job satisfaction is not the win-loss record of attained contracts, but rather the impact he has had on providing an improved atmosphere for employer and employee coexistence.

Finally, the term "credibility" has surfaced during case descriptions, and should be further emphasized. Dictionary definitions include descriptors of "trustworthy" and "reliable" and "worthy of belief." Inferred in these synonyms is the requirement that credibility, like power, is an earned commodity, a response granted by one party or another during interaction. It is this perception of personal and agency credibility that the mediator carefully nurtures and jealously protects throughout his career. In a case prior to this internship, Al was asked to intervene in a contract dispute between a university and its faculty. During mediation, the administration presented a settlement proposal addressing 18 outstanding issues. The mediator was informed that the proposal should be considered as a package rather than fractionated into smaller "trade-offs." Nonetheless, during a later joint caucus, the chief administrative bargainer attempted to
elicit agreement from the faculty team on several of the sub issues. Al reminded them that the several items were originally presented as a group, and that individual issue responses would alter the intent of the proposal. After further discussion, the joint caucus concluded. Subsequently, in the administrative caucus, the university attorney, who was present during administrative caucuses but did not negotiate at the table, berated Al for calling his chief negotiator a liar. Al vehemently responded that the chief administrative negotiator had in fact lied to the faculty team and that had he (Al) remained silent he would have lent credence to the lie. Furthermore, the tactics of the administration were an abuse of the mediation process. He therefore informed the team that he could no longer be of any possible assistance to them and he removed himself from the case. Another mediator was summoned to conclude bargaining.

Though credibility is not considered in the literature as a power source, it is a fundamental precursor to the attainment of power during mediation interaction, and absent a flawless reputation, the mediator's threshold influence will be reciprocally neutralized. Of all possible accolades attributable to the mediator, none is as sacred as the perception by both factions of the credibility of the mediator and the agency he represents. Absent positive perceptions, mediation
becomes relegated to the status of a procedural obstacle--a fictional formality.
CHAPTER II
THEORETICAL IMPLICATIONS

The mediation process, like that of conflict management itself, is not without a theoretical framework. Kilmann and Thomas (1975) identify five conflict styles emanating from two partially competing goals—concern for self and concern for the other. The following diagram depicts this interaction as a two dimensional continuum which correlates degrees of cooperation with those of assertiveness:

The theorists do not espouse one particular style as best or most appropriate. To the contrary, they argue that each descriptor is part of an arsenal to be employed by an individual dependent upon the nature of the interaction itself. The application of these styles to mediation provides a barometer for the assessment of the
relationship between the opposing teams and of the mediator to the collective and individual principals.

Where the parties approach the table competitively, Al is most apt to adopt an accommodating style until he is able to fractionate the issues, at which time, usually during individual caucuses, he matches their style and attempts to sway them toward collaborative or compromise positions. Even avoidance tactics play a major role. It was mentioned earlier that the mediator refused to "carry the banner" of arguments from one caucus to the other. In addition, he at times selectively ignored resurfacing issues. In one example, the union privately requested copies of the budget and emphatically demanded responses to charges of mismanagement. Al carefully noted their requests, but failed to raise them with the employer. The concerns received no further mention. Had they been flaunted before the employer, the conflict might well have escalated, and mediation would have suffered.

Fueling the model of conflict management are several concepts of power and authority whose attainment and utilization influence to a large extent the climate during bargaining. French and Raven (1960) describe five bases of influence commonly regarded as power sources. Later, Raven, collaborating with Kruglanski (1975) identified a sixth, and finally, Hersey and Blanchard (1982) acknowledged a seventh and summarize them as follows:
COERCIVE POWER is based on fear because a failure to comply will lead to punishment. LEGITIMATE POWER is based on the position held by the leader. EXPERT POWER is based on the leader's possession of expertise, skill, and knowledge. REWARD POWER is based on the leader's ability to provide rewards which will lead to positive incentives. REFERENT POWER is based on the leader's personality. INFORMATION POWER is based on the leader's possession of or access to information perceived as valuable. CONNECTION POWER is based on the leader's "connections" with influential or important persons. (pp.178-179)

Each of the bargaining teams may assume one or more of these sources of power to greater or lesser degrees during formal interactions. Ironically, however, it is a primary role of the mediator to influence both parties while functioning from a foundation reasonably devoid of formal authority. He has no coercive power; very little legitimate power; no reward power except the willingness of the protagonists to attain an agreement; and virtually no connection power. Two of the remaining three, expert and referent power, are the result of the mediator's past performance, his reputation. Though he is universally regarded as an expert in his field, and his personality is such that it instills confidence and trust, it is the last source of power--information--that is most often conducive to a breakthrough.

Several examples come to mind for which this observation applies, but to generalize, Al elicits data from each faction in private caucus. He will then ferret the "real" from the "smokescreen" issues, the needs from
the wants, and synthesize his perception of the ultimate settlement. As he moves between caucuses, he will dole out bits of information while insulating final proposals until the negotiators are close enough on the issues to conclude the bargaining themselves. Granted, this is an oversimplification of a complicated process, but it is nonetheless indicative of the exploitation of information power whereby the protagonists eagerly anticipate resolution to fractionated issues until they perceive total package closure. Significant decisions are then often made, usually in the form of compromises, based primarily on the urgency to conclude.

The literature reveals yet a third phenomenon impacting the study of group interaction. In his book *Groupthink*, Irving L. Janis (1982) contends that groups may form such a closed system that all other intrusions along with their ideology are excluded. In the extreme, groups perceive themselves as invulnerable, inherently moral and ethical, and are typified as closed minded, while stereotyping opponents as evil, weak or stupid. Internally, they will resist deviations from apparent group consensus, and will pressure any member who expresses strong dissention to group norms. His observations strongly support the thesis that individuals are social; that they need reinforcement of personal and group ideas and ideals; that in the face of adversity they
need the support of others; that they will act vigorously to preserve these tenets; that, in sum, they seek security, even though such security may be purchased at the expense of tunnel thinking. Adherence to group norms—essentially a sacrifice of individual freedom—provides these attributes. Group cohesion is a normal outgrowth of social interaction, and abject loyalty to the group is often a prerequisite for continued membership in fulfillment of social needs. The climate for success established during bargaining is therefore a direct function of the absence of groupthink, to the end that the importance of the process itself supersedes its own outcome.

Each of these three bodies of research—conflict style, power sources and groupthink—continually intertwine throughout bargaining. The most vivid summary of these phenomena is characterized by interactions between the county road commission and its 41 employees represented by a local branch of AFSCME.

Prior to the expiration of the contract, the union approached the newly appointed superintendent expressing its intent to bargain, stating that their membership foresaw few significant issues, and that negotiations should proceed smoothly and quickly. A formal bargaining session was therefore scheduled, but in contrast to earlier assurances, the union presented a five page
document of demands, many of which were potentially volatile. The commission retrenched, and engaged a local law firm for the services of a labor attorney who became their chief spokesman. Four additional bargaining sessions were equally non productive, characterized mainly by position posturing. An impasse was declared, bargaining broke off and no further meetings were scheduled.

In the hiatus, the attorney met with his client to discuss bargaining status as did the AFSCME counterpart with his constituency. Both separately contacted the mediator by phone expressing interest in continued negotiations and a willingness to show movement. Based on this information, Al convened the bargainers for mediation. It quickly became evident, however, that the formal issues were mere smokescreens for a relational breakdown between employer and employee. During the initial caucus with the union team, the mediator was graphically and explicitly informed of management favoritism in job placement and its refusal to provide requested information. Furthermore, "Sam [a non bargaining commissioner] runs the organization anyway. If he is not present, perhaps mediation is a waste of time." By contrast, the employer felt that the union bargaining team did not represent the union, that the membership would probably accept their last offer and that the union
threat of fact finding was purely a delaying tactic. In this atmosphere of distrust and enmity, mediation commenced.

Parenthetically, the union, very early in the process had adopted a competing style of bargaining, almost to the point of abject militancy. By the time Al intervened the parties had already exhibited coercive power tendencies and a strong predilection to groupthink. Scheidel and Crowell (1979) refer to these preliminary interactions as displaced conflict (p.200)--the expressed issues themselves being irrelevant, or at least subordinate to the "true" conflict, the principals choosing instead to emphasize their independence (Wilmot and Wilmot, 1983, pp.12-15) and autonomy.

Polarization intensified both at and away from the table as time passed. During a severe snowstorm, unit members had worked diligently for long hours to clear roads, but nonetheless contended that supervisory personnel, who also were called on to plow, had effectively reduced their overtime. Management replied that after 16 hours on the road, union personnel should be given a break, and in fact, many of them expressed their gratitude. The result was the filing of three grievances by the union negotiators on behalf of the aggrieved parties. Dave, a union team member explained to the mediator that employees fear recrimination if they file
grievances personally, and therefore expect union leaders to "carry the ball" for them. Al responded that this activity transmits differing signals to the employer whose union contacts describe their own representatives as a group of militants currently guiding union policy via bargaining. The employer is therefore in a stronger bargaining position and perceives the climate as less intense than the union negotiators. What could have been viewed as an attempt at mutual cooperation reverted to antagonism. The union took pride in a job well done, and management's attempt to assist was viewed as intervention. Supportive actions resulted in defensive behavior, and climate continued to deteriorate. As Cross, Names and Beck (1979) depict, further collaborative attempts degenerated into "defensive behavior ... which subsequently increased the defensiveness of the communicator, resulting ... in a circular pattern of escalating defensiveness" (p.182), and individual justification (Wilmot and Wilmot, 1983, p. 149).

At the table, the union team focused on the common goal of attaining a contract favorable to their membership, but any methods of achieving that goal were based haphazardly on the random overlap of individual perspectives rather than a concerted effort to achieve consensus. During the several mediation sessions, new issues were proposed, and former, supposedly critical
stances were dropped, only to later resurface. Al was thwarted in his attempts to focus the union on those points crucial to ultimate ratification. The members were unable to move beyond the divergent phase of the group process. Their stereotype of the employer as an untrusted opponent shackled their ability to explore options.

It ultimately became apparent that for mediation to succeed, the focus must shift from substantive conflict to affective conflict (Scheidel and Crowell, 1979, p.202)—from the attainment of conceptual agreement to the establishment of communication channels. To this end, the mediator called both parties together and guided the interaction towards the improvement of communication, and the need to recognize their mutual dependency. He was able to elicit assurances from the employer of its intent to improve the working climate in an atmosphere of cooperation. The union, however, was not mollified, and further expressed fears of favoritism and recrimination. Their response to invitations to risk the establishment of new and trusting relationships was, "How much are you willing to pay?"

Neither side was able to amass sufficient power to coerce a settlement from the other. The union was unable to obtain sufficient strike support from its membership, while the employer faced an ambivalent public. Power, or lack thereof, was shared equally. Ultimately, despite
animosity and lack of cooperation, a tentative agreement was reached through a series of compromises. Following a rejection by the union of the agreement, and amidst charges of unfair labor practices a second agreement was again obtained and finally ratified. Nonetheless, it is the contention of this writer that the confrontational tactics adopted by the parties in their power struggle combined with the increased cohesiveness of the factions themselves will continue to govern the activities of this road commission for years to come.

It would be inappropriate to apply traditional cause and effect theories to these proceedings in an attempt to determine blame. The responsibility for much of the demonstrated union antagonism must be shared by the employer. As conditions continued to deteriorate, the union responded with grievances or job inefficiency, to which management responded by asserting greater control and instigating more rules, to which the union responded. The resultant "nag-withdrawal" downward spiral gains momentum of itself, and the assertion of blame becomes meaningless. A primary task of the mediator, then, is to interrupt this self perpetuating cycle and allow both parties the opportunity to set aside past differences and risk the establishment of new relationships. It is ironic that an outside intervener is necessary to breach this internal self perpetuating cycle,
and that his success or failure along with that of each team, often depends upon one or two players whose tactics do not instil confidence in responsible actions. On such a thin vine hangs the fruition of a mediator's labor.
CHAPTER III

IMPEDEMENTS

As stated several times throughout this paper, bargaining is a process, a very human process, and as such is subject to the personalities and tendencies of those individuals immersed in the activity. It is the author's contention, therefore, supported by observations, that negotiations represent a microcosm, albeit an intense microcosm, of the society from which it has evolved. As inferred in the introduction, the vast majority of contract negotiations are amiable and successful. Mediation, however, by definition commences from a point of impasse or impending crisis between the parties. This chapter, therefore, explores those human and environmental impediments which negatively influence bargaining and which often lead to the need for third party intervention. The list is by no means all inclusive, but the topics appear to this observer as the most critical and most prevalent.

Scarce Rewards

One of the primary elements defining conflict is the perception of scarce rewards as unions approach management
to better their terms and conditions of employment. Generally, their demands are economic, based on the fiscal well being of the organization. Management, while obviously concerned with economics, more often addresses language issues in an attempt to stem the erosion of management rights, or recoup those previously bargained away. Nonetheless, observations indicate that management rights become bargaining chips which are ultimately bartered on the basis of an economic settlement.

Unlike private sector bargaining however, it is difficult to determine a "margin of profit" for public entities, nor does increased employee efficiency directly correlate to increased earnings. The "product" is intangible. The concern of management, therefore, is to maintain the same level of public service while at the same time trying to retain the same budget allocation and the same number of staff. Unions are therefore placed in a position of developing rationale to address several layers of organizational influence. The decision by a local district to reroof the high school for example, was met with derision by the teacher bargaining unit who argued that their members were in fact subsidizing the costs. In a second instance, a city commission established a Mass Transit Authority to research the feasibility of sub contracting bus services to a private firm or of seeking a supplemental millage.
Both of the cited examples negatively impacted the negotiations, but because of their economic nature, eventual resolution was possible. Much more difficult are scarce rewards attributed to matters of principle. A school bus driver union approached the table with a demand for insurance. The employer responded that under no circumstances would these part time employees receive insurance, contending that the drivers were second income employees, and other bargaining units would make similar demands. Furthermore, there is no control over burgeoning insurance premium costs. In yet another case, teachers struck the district in an attempt to obtain an agency shop clause, very nearly drawing all other county schools as well.

Dissimilar to conflict management by compromise which usually accompanies economic issues, bargaining stances based on principle are most often competitive, and can only be resolved by submission. In the first example, insurance was granted on a co-pay basis. In the second, the teachers ceded the cause and returned to the classroom. Neither of the issues is truly settled, and the bargaining climate as well as employer/employee relations will be adversely affected for many years. Mediation of economics is much preferred to mediation of principles.
Politics

In contrast, the political arena and its effects on bargaining interaction can be considered as substantially environmental. In most instances it is not so much the perception of the political climate which concerns bargainers as it is the actual evidence of historical events which governs the atmosphere of the proceedings. Several of the cases are instructional.

Al was called in to mediate a contract between the teachers and the board in a very small school district. Two issues, agency shop and binding arbitration of grievances had already been resolved. Nonetheless, the superintendent informed Al that the board of education had reversed its stance and now wanted the issues back on the table. The superintendent further admitted that she had misread the influence of three of her board members. Al berated the board team for "sand bag" bargaining. If not cloaked with the authority to make proposals and concessions, they subject themselves to an unfair labor practice charge. Fortunately, the chief negotiator, superintendent and mediator were able to convince the remaining board team members of their error, and in time, bargaining recommenced.

The situation with the district court secretaries was not as obvious. The court is governed by an elected
county commission who vest the management of the court on five judges and a court administrator. The secretaries perceived that the commission was not sympathetic to the formation of the secretarial union, and that the judges were split 3-2 against them. The climate was further clouded by the untoward actions of several of the administrators. One judge had been arrested at least twice for indecent exposure; the personnel director had recently completed his probationary sentence for soliciting; and many of the ladies complained of subtle forms of sexual harassment. These working conditions were part of the cause for protection through unionization. Regretfully, the commission negotiator was unaware of these allegations, and therefore misread the climate. In a sense, the secretaries sought retribution through negotiations. For all practical purposes, legitimate bargaining ceased. As of this writing, the contract is unsettled, and in the mediator's view will remain so until the relationship improves substantially.

The final illustration can be considered classical city politics. The city in question includes approximately 80,000 residents, is governed by an elected commission and administered by a city manager. Three of six contracts were in dispute: the fire fighters, police and mass transit. In all cases, both management and union bargainers privately conceded that the immediate
past city manager, in contention for another post, had "purchased" contracts in order to improve his resume. Further, those settlements opened a substantial wage gap between the various units. The unions representing the three expired contracts proffered righteous arguments of parity.

Because of the high cost of these settlements, and because of the unpopular melding of fire fighter and police officer responsibilities, and reduction in federal subsidies, the city faces a shortfall of nearly one million dollars. To complicate matters, the terms of all nine city commissioners expire with the next election, only three of whom are seeking reelection. A coalition of five candidates has formed whose public stance includes a 20% reduction of the budget, including 10% across the board pay cuts; private subcontracting; the division of safety officers into separate police and fire fighter categories; and the removal of the current city manager. One candidate has gone so far as to contact placement offices and legislators for a slate of potential city manager candidates. There is little doubt that the attitudes and direction of the new commission will be significantly altered.

The impact of this climate on mediation was significant. The unions feared a lack of job security; the city manager was (and is) fighting to maintain
equilibrium while advocating fiscal responsibility; and the public was (and is) aroused. On several occasions, the city negotiator could only break off mediation sessions to relay union proposals to the commission. He had the authority to say no, but none with which to agree. Even if a tentative agreement is reached, there is speculation that the current commission will defer ratification to the new governing body. There is little doubt that binding contract arbitration must be employed to impose a master agreement which of itself will further aggravate the relational climate.

Arbitration

Not surprisingly, when legislators become involved in an area for which they may have limited knowledge, the result is often contrary to the original intent. The enactment of a public act prohibiting strikes by public safety officers while mandating that following mediation, all unresolved issues be submitted to an impartial arbitrator whose decision is final, is a case in point. Theoretically, the concept has merit; in practice, it has come to be employed as the sole method of settling a dispute.

In each of the four cases controlled by the legal constraints of arbitration, several similarities were noted. The intensity of bargaining during mediation was
weak; members were late to the meetings, and spent much time exchanging banalities; both sides retained a lengthy "laundry list" of both wants and needs; and both sides were reluctant to accede issues for fear of weakening their case before an arbitrator. Al's job was to "clear the smoke" and elicit packaged "non" proposals which might be confidentially acceptable to the opposite side. Occasionally, minor groupings of issues were agreed upon, but in no case was a total package accepted by either party, and the minor concessions were quickly withdrawn. Generally, the position of both teams was to buffer themselves with giveaway issues preparatory to inevitable arbitration, or to delay bargaining while awaiting results of rulings from other units. Mediation stagnated.

In the case of the city police, a new twist was added to arbitration positioning. By previous contractual agreement, only wages and pension were to be considered for bargaining. Nonetheless, during mediation, the union presented an extensive list of issues to posture for the arbitrator, one of which included a demand to alter management rules, procedures and practices—a permissive subject of bargaining. As such, by law, the issue cannot be bargained to impasse by either party. The chief of police took a strong position against the union proposal, contending that he would not give up the right to run his department. In the waning hours of the morning, no accord
could be attained on the issue and the parties requested that the mediator authorize arbitration. In essence, the contract was settled, but the police union held the city hostage on a single item that would, except for the confidentiality of mediation, otherwise be a blatant unfair labor practice. Bargaining broke off, and 34 issues will be presented to the arbitrator, some of which could threaten the autonomy of the city. Of all the impediments to bargaining, whether humanistic or environmental, whether economics or principle, the mediator contends that the most difficult to resolve are those legislated by the threat of arbitration.

Multiplicity of Units

The existence of several bargaining units within the same organization can also impede negotiations. Teacher mediation in a small district was hampered by "me, too" economic clauses in support contracts. Were the teachers to receive an economic settlement exceeding those in others, they, too, would automatically benefit. Naturally, when management concessions to other units are favorable, unions will whip-saw them to their advantage. The employer reacts in similar fashion to negotiated agreements appropriate to its side. Both teams therefore entered bargaining with the resolve to convince the other that what was acceptable for one must surely be suitable
for the other. The consequence of "prior issue resolution" was a series of frustrating mediation sessions.

In the same case, the board feared a coalition of regional bargaining tactics. The union adamantly proposed a three year contract coincident with many other county teacher settlements. The board was equally adamant that the contract duration would be less than three years. Similar to issues of principle, one party will be forced to accede if a settlement is to be reached.

The previous arguments point to one other little discussed phenomenon of multiple organizational units. Commonly, the employer will identify or engage a chief negotiator for all units who may well face the same union representative for many contracts, especially if the units are associated with the same international union. Depending on the professional approach of either chief bargainer, this familiarity can either lead to smooth and amiable bargaining, or entrenchment on the issues. By the time a mediator is necessary, the latter is often the case.

One final observation is worthy of note. Though the author has observed that professional union negotiators generally have a high regard for each other, there are instances where the competition of unions is an impediment to bargaining. During mediation of a dispute between a
nurses' union and a city hospital, it became evident that part of the obstacle to settlement was due to the reluctance of union members to trust their own representative. The preceding contract had been settled as the result of a three week strike. Several nurses, however, crossed the picket line. As a result, the strikers were unable to maintain the pressure, and ultimately agreed to the same economic package offered prior to the job action with the proviso that non-supporting nurses would be excluded from the union.

In the interim, the union representative was quietly replaced by the state organization and management overtly attempted to improve relationships. Nonetheless, the same representative was reassigned to the current case, and entered bargaining with a vengeance. This case was the only instance witnessed by this observer of a personal attack on the mediator. The nurses' representative privately accosted Al criticizing his lack of neutrality, his flippancy, his chauvinism, and his complete disregard for the needs of the nursing unit. Al replied in kind in an attempt to correct her misconceptions, and was for the most part successful. Nonetheless, his effectiveness with the nurses' committee was diminished, and he had no alternative but to permit the employer to propose its last, best and final offer. The proposal was ratified by the general membership. It is the opinion of this writer,
supported by that of the mediator that because of the union hierarchy power struggle and the representative's insecurity, the union could well have struck over issues its membership proved willing to accept, and probably missed an opportunity for a more favorable settlement with an improved employer/employee relationship.

Humanism

Though the reactions previously described in this chapter are certainly characteristic of human nature, they are for the most part reactions to events or environmental situations over which bargainers may have little control. Another formidable influence upon bargaining is an outgrowth of long term interactions both at and away from the table. A history of strikes, work slowdowns or management coercion for example, will establish a negative atmosphere which must be overcome if an amiable settlement is to be attained.

Too, the relationship of the chief bargainer to his or her constituency may impact bargaining. The chief bargainer is often an attorney or union representative who has no other vested interest in the organization. In two small school districts, the attorney/client relationship was visibly strained due to disputes over bargaining tactics. In one instance, the attorney was able to convince his client that the proposed tactic could well
result in a sustained unfair labor practice. The second
district, however, forced the attorney to continue a hard
line stance which was viewed by the union and the mediator
as ill conceived. For similar reasons, it is probably
inappropriate for the chief executive officer or
controlling board members to be active negotiators. In
one case, the superintendent became a mere messenger
between the bargaining table and the board table. Due to
his inexperience, the union was easily able to route
proposals around him in an end run and negate his
bargaining authority. This author feels strongly that
because board members and/or the officer must make
objective decisions regarding bargaining, those decisions
should be made in the absence of subjective and often
emotional bargaining interactions.

A third quality of humanism is the relationship that
evolves between the opposing chief negotiators. Where
mutual trust and respect are evident, one-on-one side
bargaining sessions can quickly alleviate sensitive
issues. In their absence, the results can be devastating.
Negotiations between a school district and the union
representing 106 teachers had continued for approximately
10 hours in the absence of the mediator. The two chief
negotiators had side bargained for the previous four hours
and had come very close to an agreement. Finally the
issues tenuously converged and the union representative
assured his counterpart that the package would be accepted by his team to be recommended to the general membership. Unfortunately, he was unable to deliver, and the session aborted. Al was summoned, and spent much time and energy convincing the union that the side bar proposal of the previous session was truly the limit of the board authority, and not a new bench mark from which to bargain upwards. Mediation was eventually successful, but had he been involved during the earlier stages, he would have had more flexibility on the issues and could have insulated both parties.

A final human frailty is the love of power, an eagerness to confront. The 812 teacher union had rejected two tentative agreements and directed their team to prepare new and more demanding proposals. As a result, even previous resolved issues were again thrust into the arena. Throughout the several months of bargaining, the union president was sought by the media, the administration, and other teachers as a source of information and authority. No other circumstances come to mind for which a classroom teacher can obtain such attention or wield such influence. Upon ratification the president's glory will disappear. The love of process can in its extreme supersede the tenets of conflict management and raise a massive bulwark between bargaining and a contract settlement.
Leaks

Much of the interaction during bargaining can be classified as a simple exchange of information, a verbal attempt by one team to influence the thinking of the other to attain its own ends. Commonly, several types of arguments are strongly proffered either to convince or confuse the opposition, to establish bargaining priorities, or to set the stage for a trade off—all legitimate bargaining strategies. In each of these scenarios, if the opposing team has information to the contrary, not only are the exchanges ineffectual, they become ludicrous. Leaks also render the mediator suspect. In a case described later in more detail, Al was asked by the employer to protect from the knowledge of the union a concession they were actually willing to make. Al spent several hours subtly eliciting a union response only to find later that the union leadership probably already knew of the plan. In order to protect his credibility with the union and maintain his neutrality, the mediator felt compelled to inform the union chief negotiator of the ruse. As stressed earlier, information is a source of power, a critical source of power. Those who believe the opposition should have equal information and therefore release it to them are not only misguided, but they in truth hinder both sides from attaining a satisfactory
agreement. Well intentioned meddling (if it is indeed well intentioned) more often yields inadvertent catastrophe than choreographed resolution.

"Collective" Bargaining

One of the impediments most often noted during mediation was the misapplication or misunderstanding of the term "collective." At least three nuances apply, and the failure of any one of them can seriously impair bargaining.

The first application usually involves the structure of the union itself. Several are amalgams of many classifications whose peculiar and individual needs can dictate a multitude of issues to the representative negotiating team. In an attempt to include the philosophies of all factions, union teams, especially, can become overlarge and unwieldy, and their bargaining demands lengthy. Three cases provide insight.

The first involved a large teacher union whose full bargaining teams varied from 15 to 20 members. Though only six were vested with voting rights, the others were active and influential participants. On a number of occasions, the mediator was able to elicit agreement on issues between a limited number of management and union representatives during side bargaining sessions, only to have them negated by the full caucus. Even when a
"reluctant" tentative agreement was reached, the general membership overwhelmingly voted it down and returned to the table with a new set of demands.

Another public school unit is an accretion of food service, transportation, custodial and maintenance personnel. Their needs were as varied as their classifications, and included full time and part time, as well as school year and fifty two week positions. A tentative pact was eventually reached through mediation and barely ratified. Prior to board ratification, however, after more thoroughly examining the agreement, several unit members circulated a petition amongst the union demanding a reconsideration. They argued that their union representatives had not fully explained the conditions of the contract during union ratification. The several classifications accused their team of failing to champion individual causes and of selling out the membership for their own personal interests. Ironically, though the board ratified the contract, the internal relations now exhibited will take a concerted effort on the part of management and union leadership to smooth the path for future "collective" bargaining.

Though more often a bane of unions, misapplication of the collective tenet is by no means limited to their leadership. Al was summoned to mediate a dispute between another school district and an SEIU unit. Prior to the
second session, the unit struck the system. The board of education met to receive public input, and to reassert its faith in its bargaining team and the righteousness of its stand on the outstanding issues. Gradually, Al was able to ferret consensus on most issues until a settlement seemed imminent. The board caucus, sensing closure, then attempted to achieve more. Al accosted them on the difference between needs and wants. The board needed a subcontracting clause, but board individuals wanted a reduction in the money offer. They visualized the union as wavering, and reached for an unnecessary improvement at the risk of aborting the session. Several hours later, the board convinced its recalcitrant members and acquiesced. An agreement was reached and the strike was terminated.

A second aspect of the "collective" definition is evidenced by bargainers who fail to treat the issues themselves collectively. Realistically, neither party can hope to fully realize its entire set of demands. Nonetheless, it is not uncommon for those not involved in actual bargaining, but affected by its outcome to seek full justification from their representatives for unattained issues. Often, the outcome of ratifications is dependent upon the extent to which these questions are satisfactorily answered. In the extreme, the agreement is voted down, and the negotiating team is charged to remain
at the table until a more appropriate agreement is attained. Fundamentally, the authority of the team to make proposals and concede to demands is thereby diminished. Bargaining becomes polarized.

The third and final definition emanates from the need to treat the bargaining process itself as a collective. Organizationally, the teams are totally interdependent. Again drawing from the sequence of the county road commission, union bargainers were unable to assess arguments and persuasions from the employer. During one interaction while exploring options during a side bargaining caucus, Dave, a union member reacted with, "I can't take that back--wouldn't even discuss it. Management should take cuts. Might as well go home. Management doesn't want to work with us. I ain't got no more to say." The union advocate was unable to assimilate other points of view into his thinking. Moreover, his attitude was fairly typical of most of his peers on the committee. Had he or the AFSCME representative been able to perceive other viewpoints, or objectively understand the employer's frame of reference, interaction between the parties could well have settled the contract without mediator intervention. In sum, unmitigated advocacy precludes positive bargaining and leads to polarization. In the extreme it results in unresolvable organizational impasse.
Division of Power

Despite the threat of arbitration, or the inexperience of and mistrust between negotiators, other impediments pale when compared to the disparity of power that often arises between bargaining factions. Purely by virtue of numbers, union membership far exceeds that of management, and subsequent pressure is proportional. Much of the mediator's time is therefore spent in equalizing forces. He may berate a caucus for "sand bagging"; he may recommend stronger positions; or he may propose a mediator's recommendation which may bring public pressure to bear. Increasingly however, especially during recent years, his inducements fall on skeptical ears.

As stressed earlier, the persuasion of the mediator is in direct proportion to his reputation, his credibility, his expertise and most importantly to his neutral advocacy during disputes. Contrary to his position as a representative of a neutral institution, his position has of late become tainted. His governing agency, the employment relations commission, has recently reversed itself on many rulings to the benefit of unions.

In one decision, the commission found that COLA payments were to continue to be paid even after the contract providing for COLA had expired. Prior to this case it had been ruled that COLA payments were the
creature of a labor contract and upon the expiration of such a contract, the public employer's obligation to pay COLA expired accordingly. By reversing itself and ruling anew, the county suddenly found itself in violation of PERA and under order to make payments that had not been negotiated.

In another case, the commission opined that it was time to reverse the rule concluding that increment steps in the wage schedule must be applied even in the absence of a contract. Thus, a public employer was found guilty of committing an unfair labor practice though said employer had acted in compliance with prior commission direction.

A third instance revealed that the commission found a public employer guilty of an unfair labor practice for failing to meet for the purpose of negotiation during the regular shift hours of employees. After twenty years of its existence, the commission concluded that PERA's mandate to meet at reasonable times now means to meet on occasion during employee working hours.

More recently, the commission held that upon the expiration of a labor contract they will hear certain disputes if no contractual procedures exist for binding arbitration. The commission, in effect, established grievance arbitration even though the parties' contract did not provide for same.
Finally, it had long been concluded that unilateral implementation could only be effectuated when the parties were at impasse in their negotiations. Further, it was generally known that a true impasse may not exist until such time as all lawful means of impasse resolution are exhausted. This would include mediation and fact-finding. The commission in its reconsideration of a county and AFSCME dispute found that a public employer could not unilaterally implement a final offer until a "reasonable time" (in the instant case a "reasonable time" was determined to be sixty days) after the issuance of a fact finder's report. This new rule was applied retroactively.

Even knowledgeable union leaders privately agree that these citations are examples of the erosion of neutrality in favor of unions. Because of them, at least one employer bargainer has refused to submit to fact finding as a viable solution to an impending teacher strike. The mediator is most able to assist the parties when power is equally shared and when his own credibility is supported by his governing organization. If the trend of the commission continues along its present path, however, the import of collective bargaining in general, and fact finding and mediation in particular will be substantially compromised.
CHAPTER IV

EXPEDIENTS

The preceding chapter paints a rather bleak picture of collective bargaining as a harbinger of positive employer/employee relationships. One might wonder how master agreements are in fact ratified; or how management can possibly manage; or how union members can possibly function in such an organizational morass. In rare instances and in the extreme, contracts are not ratified, and relationships have deteriorated to the point where either the organization dissolves or its workers are replaced. Fortunately, these instances are rare indeed, and impediments to bargaining are most often overcome as satisfactory closure becomes imminent. Still, the road to a master agreement could be substantially smoothed with the imposition of constraints, be they artificially induced, or willfully internalized. Granted, little can be done to alleviate scarce rewards, principles, multiplicity of bargaining units, leaks or incompetent bargainers. Even less can be done to improve the effects of the political climate over which negotiators and legislators have little control. Substantiated historical action cannot be gainsaid. Nonetheless, mandates on
bargaining could favorably impact the process considerably.

Bargainers must internalize the tenets ascribed to "collective." Basically a matter of training and education, each participant in the process should understand the needs and concerns not only of his or her own bargaining team, but also those of the adversary. Too often bargainers are "elected" as negotiators simply because others are unwilling. The atmosphere thus created degenerates from uncertainty to mistrust to hostility. In his discussion of groupthink and mindguarding, Janis (1982) holds that a predilection towards groupthink can be assessed prior to deliberations. Based on this premise, much misfortune could be avoided by adherence to suitable guidelines of group selection. Memberships should collectively represent a diversity of backgrounds and/or ideology (p.239). Secondly, members of intelligence, able to contribute independent judgements (p.242) and common sense are those most able to objectively inhibit the intrusions of invulnerability and stereotypical behavior. Most collective bargaining agreements contain a clause prohibiting interference with the selection of team members. Perhaps these clauses should be revisited. Perhaps team members should be mutually selected by chief negotiators prior to the onset of formal bargaining. In any event, the author admonishes each team to carefully
select members who have already earned the respect of their counterparts. The perceived best workers bargaining collaboratively with (not competitively against) the perceived best administrators will yield the most satisfactory results. If careful groundwork is laid by both teams, issues of "humanism" become subdued. Extreme advocacy will be tempered with realism as both parties strive to address the needs of each other, and hence, the organization. Opponents are then free to concentrate on uncommon solutions to common problems with emphasis on issues--on mutually addressed problems--not on each other.

These idealistic admonishments notwithstanding, there are several avenues which could be explored in an attempt to expedite the bargaining process. Currently, strikes by public employees are outlawed by law. Yet, they occur. They occur primarily because of ineffective legal restrictions and the absence of economic sanctions. It is therefore recommended that mediation be mandated by law before a total impasse can be declared, and that if a contract is not voluntarily settled, that the mediator then recommend a settlement proposal which would be binding on both parties. If the union or the employer failed to abide by the process or the outcome, either or both would be penalized accordingly. Obviously, this places a great deal of authority and responsibility on the mediator who would then wear the hat of the arbitrator,
and greatly expands the necessity for his or her credibility and neutrality.

The same would be true for public safety officers who are now required to submit all unresolved issues to binding arbitration. As earlier mentioned, both sides perceive voluntary negotiations as merely a hurdle to a forced settlement. The strategy at the table is to amass a sufficient quantity of issues such that by sheer weight, the balance will tip favorably during arbitration. Unlike mediation, once arbitration is invoked, bargaining ceases. The issues and positions are presented along with mitigating circumstances and a decree emanates usually in the form of a series of imposed compromises. By combining these two offices, the mantle of power with which a mediator is cloaked, would be greatly enhanced. His base would expand from referent, information and expert power to include coercive, reward and most importantly, legitimate power as well. Under the governance of mediation, laundry list proposals and posturing would quickly give way to the espousal of mature bargaining needs, due to the simple expediency that anything else would backfire. Mediation is a catalyst for bargaining, but once a true impasse is reached, the mediator would become the authority whose binding settlement proposal would be based on the actions and arguments proffered during mediation. The case of 812 teachers would have
settled much more quickly and the resultant internal and public scars would never have been. The wheel need not be reinvented. Several states now employ this method of contract settlement very successfully without rancor or recrimination.

All of this would stand no chance, however, unless and until the employment relations commission regains its status as a neutral entity. Currently, the commission is viewed publicly by management and privately by organized labor as a politically motivated authority currently fueled by a labor sympathetic governor. Neither side can play by the rules when the rules keep changing, especially when the changes blatantly and consistently favor one coalition. As it stands, labor now reaps the benefits. After a future election, the pendulum may swing to management. Over time, it is this uncertainty which destabilizes negotiations. The argument is no less true for the careful selection of commissioners than for the careful selection of local team members. If the appointments to the commission are to remain the purview of the governor, they should at least be bi-partisan or confirmed by legislators. It would be far better if they were restricted to men and women familiar with and knowledgeable about collective bargaining, whose experiences demonstrated neutrality, and whose advocacy was parallel to the mediators they direct—namely, a fair
and equitable contract suitable to organizational well being.

The suggestions of this chapter can easily be summed under the heading of division of power. A dictum of mediation is that unless power between the parties is equally shared, he or she is rendered impotent. By virtue of numbers, union membership can provide more time, make more contacts, and apply more pressure over a shorter period of time than any management staff. Conversely, management holds the purse strings while accommodating its watchful public. When these checks and balances move out of equilibrium, anarchy results. It is the thrust of these arguments that the agency established to moderate the imbalance must itself remain impartial, while empowering its field representatives with sufficient authority to forcibly, if need be, ensure continued organizational stability.
CHAPTER V

TECHNIQUES

The mediator has often confided to the author that he "flies by the seat of the pants," attributing much of his success to spur of the moment decisions and hunches. Nonetheless, many of his techniques, gained carefully and painfully by experience can be easily identified and analyzed. Several have already surfaced in previous examples, but despite the many cases observed, one in particular evinces more techniques than all other cases collectively. What follows, therefore, is a chronological history of a dispute described by Al as, "one of the three most difficult and frustrating of my 17 year career." The techniques themselves are not necessarily specifically identified in all instances. It is hoped, however, that the description is sufficiently adequate to make them clear for the reader.

History and Background

The case evolved from a school district during its bargaining with the local affiliate of the National Education Association (NEA) following the expiration of a three year contract. The union represents 812 teachers,
but it should be noted that the district also serves as the operating agency for the city library, and that its 27 librarians are also included in the local.

The history of bargaining over the past 15 years has been tumultuous, mainly due to weak union leadership and questionable management practices. In most instances, disputes were settled only after rejection of tentative agreements (T.A.'s), and a subsequently improved board offer, occasionally, in the chambers of a judge. The most recent contract was ratified only after the board of education threatened to fire all striking teachers. The tenor of this history was evident in the instant situation.

Prior to mediation, the teams had met thirteen times over a period of six months, and substantial progress was made on a three year agreement. Language regarding class size, committee participation and a restructuring of middle schools were "purchased" by the board team with a promise of an economic package in excess of that of a neighboring school district. Further, the board team assured the union that management's "market value" plan would significantly improve the salary ranking of teachers in comparison with the rest of the state. Despite assurances, the teacher representatives and their general membership were not of the same opinion after receiving the board economic proposal. Following the latter
bargaining sessions, the membership expressed its dissatisfaction and solidified its arguments. Though they agreed to maintain a low profile with the media, they encouraged their team to seek the services of a state mediator.

Pre Mediation

One technique employed by the mediator is to gather information from the principals regarding the status of bargaining. Consequently, Al met privately with the two chief negotiators, and discovered that though there were several issues to be addressed, the major stumbling blocks would be salary and equal raises for librarians. The board attorney informed Al of the intent of the board of education to divest itself from the library within the next two to three years, but in the meantime, the board's market value approach dictated that because the librarians are already comparatively overpaid, they would be receiving less of a raise than the teachers. This theme was also important for negotiations with several other district unions. The concept was critical.

Immediately prior to the first session, the superintendent privately informed the mediator that he wanted no disruptions to the start of school. He had worked diligently throughout the preceding three years to achieve labor peace, and the public has begun to view the
district in more favorable light. Many are re-enrolling their students from parochial schools, and as a result, the district could well be "in-formula" (thereby qualifying the district for membership state aid). His long range planning depends entirely on going into formula, and any public foment could jeopardize those designs. Within reason, the board would find a way to settle the contract before the weekend.

Mediation Session 1

During initial mediation sessions it is Al's general habit to convene a joint caucus to clarify issues. His reasoning is two fold. First, it is important that all players work from the same script. Much time and energy can be saved and much miscommunication avoided if both parties are in complete agreement on their areas of disagreement. More importantly, however, the initial interchange before the mediator will provide him with a barometer to gauge the credibility of the parties and the depth of the issues. If either credibility is low or the issues are substantive, mediation will be difficult. If both are true, mediation may become a long, gruelling process, perhaps impossible. In the instant situation, Al's immediate assessment favored the latter.

Subsequent to the joint caucus, Al segregated the teams and met individually with each caucus. The union
team reaffirmed its strong stance on parity for librarians, and several of the 15 member caucus criticized the board negotiators for using coercive tactics to safeguard T.A.'d issues. Because of the prior agreements, the union needs more money before it can return to the membership. Likewise, the board caucus charged the teacher negotiator with lack of authority, withholding information from his team, and obstructing the process. Al waited out the tirade and asked them to focus on needs. In brief, the team, responding to the direction of the board of education, was wed to the market value philosophy, and therefore was adamant on breaking the lock step pay increases between teachers and librarians. Too, "There will be no additional money." Al suggested a bonus concept for librarians that would not alter the existing salary schedule. The board team caucused to contact board members for additional authorization.

Subsequently, Al pulled three board team members and three union members for a private side bar. The chief bargainers again began to bicker, inducing the mediator to interrupt and join him privately. He admonished them to spell out their proposals without speeches and to address issues not personalities. The chiefs agreed and returned to the three-on-three caucus. The board negotiator signaled his ability to make movement, but asked for assurances that all would be null and void if the board
divested from the library. The union strongly disagreed, and the side bar broke off.

Al then joined the union caucus whose members stressed that the economic offer did not match the neighboring school as promised. They felt no obligation or pressure to settle under the circumstances. The union negotiator stressed that economics were important, but suggested that Al garner board responses to several other outstanding issues in an attempt to record some bargaining progress. Al refused, arguing that the board was now looking for a package proposal. Often, fractionating the issues can help, but at this stage, the issues must be treated collectively. Al conferenced privately with the union negotiator and pressed him for settlement benchmarks. He was able to elicit a salary limit, but in response to parity for librarians, the representative could only reply vaguely, "I'm not sure I can ever get consensus. I see too much divergence." Al urged him to coax his team into presenting additional ideas to keep the parties talking. Nonetheless, shortly thereafter, the union representative informed Al that his team was regressing; that they wanted to pull previous T.A.'s off the table; and that the immediate past president (a caucus member with no vote) was torpedoing the talks. Despite the nearness of an agreement, this first mediation session ended abruptly.
Parenthetically, the teams perceived differing pressure points. The board pressed for a settlement based on philosophical needs that went unrecognized by the union. The pressure was artificial. A further complication was exemplified by the board chief negotiator, a product of private sector bargaining, who had formally offered his entire monetary authority far too early. As confirmed privately by the board attorney after the session, subsequent meetings would probably be characterized by the board team responding negatively to union proposals.

Interim 1 (Two Days)

The union presented its arguments to the local press. The release clearly indicated that additional millage would be required to fund the economic package already proposed by the board. Al was contacted to give his opinions of progress and to comment on the outstanding issues. He responded that bargaining was continuing, but he must leave it to the parties to portray their issues and arguments.

Mediation Session 2

The second mediation meeting was convened over the Labor Day weekend, still in advance of students reporting for class. The board negotiator requested a joint caucus
during which he intended to accentuate the positive and minimize the differences. Al agreed, but conferenced with both chiefs to set the stage to prevent the possibility of conflict escalation. The union representative declared that because the board had raised the issue of library divestiture, the union now needed assurances of retirement and job protection. The union was retrenching, but finally coming to grips with a pay differential even though the general membership had bolstered the librarian stance. Al responded that the board's money offer was appropriate, and that a ratification could be attained if the union would identify floor leaders who could speak favorably for a settlement—all based on the assumption that the union team would recommend the tentative agreement. If this was not the case, the decision makers were not at the table. The union representative chose not to respond.

Nonetheless, during the joint caucus, both parties objectively and unemotionally outlined the issues of agreement, and those yet in dispute. Following same, the mediator launched into what the author politely refers to as his "power broker speech": Both parties need to act and react as businessmen—not power brokers. Neither has absolute control over money, which makes each position difficult, and demands increased responsibility—the board to sell educational services and the union to sell
labor. Neither party will attain all demands, and each must recognize the logic in appropriate concessions. The chief negotiators must sell their respective teams and hence their constituency. The key is timing—when do the parties want to settle?

In the following union caucus, Al accused the members of continually moving the target. The employer could no longer see what would ratify. The mediator cannot be the contract bargainer; he can only work with proposals. The union representative responded that they needed a greater economic package than their neighboring counterparts and movement on all the outstanding issues. The board caucus later countered that if more money is needed they might as well adjourn. Al informed them that the board negotiator had reached the limit of his authority too soon leaving him little to work with. To settle, some additional money would be necessary.

Al again isolated three members of the union team, this time including Dave, the past union president who had been identified as impeding progress in the employee caucus. During the discussion, Dave reaffirmed, "We gave them [the board] everything they wanted. Now they want more." Al argued that the union would still receive more than the other school, but Dave was not satisfied. "Not on the library issue. Librarians need guarantees. The teachers have volunteered for committees etc., but are not
appreciated by the current administration. This can't be the best deal we can get." Al continued to escalate the confrontation: "Get out of the way of a settlement. You're an obstructionist. You're not going to convince me that librarians are underpaid." Dave altered his competitive stance to avoidance: "Then I'll leave--let you get on with it." Al pressed, "And then torpedo it later." Dave concluded, "No, I'd just let it happen."

The preceding narrative contains many theoretical implications. Dave adopted a competing style and attempted to influence the discussion by means of coercive power. Al pressed him to assume responsibility for his actions and internalize arguments from the board. Exhibiting characteristic tendencies indicative of groupthink, Dave refused. At this juncture, the mediator felt that any strategies on his part would be fruitless, and that the only possible chance of a settlement would be a one year contract. The board might be willing to buy off the teachers.

The board negotiator requested a joint caucus, during which he did, in fact, propose a one year contract based on the previous T.A.'s. The union responded that they had only agreed to several language changes because of the three year package. In addition, they had accepted a 5% increase in year one because of 6% and 7% for the subsequent two years. There would be no one year
settlement based solely on existing T.A.'s. The board agreed to examine another economic counter proposal, and the caucus concluded.

With this change in tactics, the board put pressure on the union in an attempt to equalize the division of power. They were now in a position to take their arguments to the public and seek expedited fact finding on the outstanding issues. Following fact finding, the board could propose its last, best and final offer and impose a contract. Al agreed to issue a statement indicating that mediation was exhausted, and to certify fact finding.

Al transmitted the board's economic package proposal to the union. They expressed disappointment, contending that promises had not been kept. Nonetheless, through the mediator, they did make minor concessions on several language issues favoring the board. The management team was encouraged, and mediation continued. Eventually, very early Labor Day morning, an agreement was sighted. The only outstanding issue blocking a three year package was Sunday work for librarians. The board wished to assign Sunday work, while the union maintained it should continue to be voluntary. Al emphasized to both teams that they had an agreement. All that remained were the details.

Regardless, following breakfast, the union representative informed Al that Dave had angrily stormed from the caucus and that the other members were
infighting. The package would be sent to the full membership, but voting team members were evenly split, and those opposed might very well lobby against ratification. The only issue was Sunday work for librarians, the union team acceding to the board demand for a pay differential. Al reluctantly dismissed the parties and closed the mediation session.

In retrospect, the union team, even at this late date was in the divergent stage of conflict management. In other circumstances, it would be clear that mediation was probably premature. In reality, however, there was probably no alternative.

Interim 2 (Fifteen Days)

The union filed unfair labor practice charges against the board, some of which could be substantiated. As a result of contacts with the chiefs during the interim, Al surmised that the charges were filed to protect the unit from a suit. Especially in the event that the board of education divested from the library, the union needed to posture itself against "failure to represent."

The tentative agreement itself was refuted by "78%," and many articles, editorials and letters to the editor filled the local newspaper and other media. Though school started without incident, teachers picketed the administration office and issued statements during board
meetings declaring their intent to "work under protest." There would be no volunteer committee work; no assistance for club sponsorship or other after school activities; and no additional student assistance. Essentially, the teachers would only work to the letter of the expired contract. Pressure began thereby to build on the board.

**Mediation Session 3**

The climate during this third session was sullen. The union had conducted two surveys among the membership and returned to the table with a list of ten demands, many of which would require additional funding. They forcefully informed the mediator that they would not take back the same T.A., and that the list of ten must be considered a single priority. They had already culled other issues, and demanded adjustments on all. Furthermore, there would absolutely be no contract with a pay differential for librarians. Al accosted the union caucus for its misconception of "collective issues" and stressed that the problem was primarily due to a lack of union leadership. The members had expressed their views so long they now believe them. The union team cannot possibly expect the board to improve both money and language. "Your team is out of control."

Al informed the board caucus of the union proposal. The chief countered that he could not respond to the
package, but would be willing to make minor concessions on two issues if Al would draft a mediator's proposal. He declined, reasoning that he had no clear indication of the needs of either party; that in any event, the union would demand proposals on the other eight issues as well; and that the superficial concessions were probably only a ruse to force another membership vote. Nevertheless, the board insisted and Al dutifully transmitted the proposals to the union caucus, receiving the expected results. There being no further reason to continue, the third mediation session was adjourned.

Interim 3 (Fourteen Days)

The press continued to attack both parties, picketing continued, and students themselves began to express their concerns. Al met privately with both parties in an attempt to elicit consensus on a package that could be ratified by both factions. Based on these assessments, he drafted an extensive mediator's recommendation for settlement on all outstanding issues. In brief, his proposal required an accommodation from the board to increase its economic package by $50,000 over the three years, and from the union, to concede their stand on equal pay for librarians.

Because of the increased cost, Al shared the framework of his proposal with the management team in
advance of the formal mediation session in order to permit them to seek authority from the full board. During this discussion, it became apparent to Al that the board team was involved in a power struggle. Their attorney, who had negotiated the past teacher contract, was thrust to the forefront by the superintendent as the team spokesman. It later became evident that the board negotiator had not been informed of the content of interim discussions with the mediator. Management, too, began to diverge.

Finally, because of the tension associated with the administration offices caused by picketing, the press and concerned citizens, the mediator convened the next session in offices nearby but off site. Al rationalized that a neutral setting where picketing would be prohibited and the media controlled might be more conducive to bargaining.

Mediation Session 4

The board attorney privately thanked Al for his efforts on the mediator's proposal and for the advanced notice. The board of education had met and accepted the mediator's recommendation in toto, but wanted the union to believe the board was reluctant to do so. Al agreed that this staging would serve two purposes. It would obviously put the onus on the union team to make a decision, but more importantly, it is generally a wise tactic for the
final settlement proposal to come from the union. By the time issues approach closure, the employer is generally able to compare them with previously established authority, and state with confidence that a T.A. would be administratively ratified. The same is not necessarily true with the union. Often many issues impact various unit members to differing degrees, but if the team members recommend their own proposal for ratification, they are psychologically committed to argue for its acceptance.

Al then laid the groundwork with the teacher caucus. He informed them that the board team was reluctant to accept, but if the teachers did so, the board team would be pressured to comply. The union representative replied that his team would take back the proposal for a vote, but would not recommend it. The money was inadequate, and the librarian pay differential was now a matter of strong principle. He would not face his constituency again without parity for the 27 librarians. The proposal would be presented the next day to the general membership for a "yes" or "no" response.

The substance of the union strategy was transmitted to the board caucus. The board balked at relaying their acceptance of the recommendation for fear that history would repeat itself and that the union would return with new and higher demands. Al suggested that they call a special board meeting to make it appear that they were
deliberating the mediator's proposal in the same manner as the union. They need not tip their hand at this point.

Despite the staging of this session, and despite the union's stand to forego an endorsement of the mediator's recommendation, the superintendent decided to "play it up front." He directed his team to prepare a press release of acceptance urging the union membership to do likewise. The release was read to the full union caucus and the fourth mediation session was adjourned.

**Interim 4 (Six Days)**

The teachers, by an approximate 300-200 vote, rejected the mediator's recommendation. Further, by a stand up vote, they authorized their team to call a strike at its discretion. They also began to solicit support from other unions, both internally and externally with little success. The local press continued to urge a settlement and mildly chastised the teachers for using students as pawns in their power struggle. The board of education also met, and also further entrenched. Al was in continual contact with both chiefs to keep lines of communication open.

**Mediation Session 5**

The private board caucus apprised Al that the union president had double crossed them. She did not remain
neutral during the presentation of the proposal. Al suggested that the board petition the employment relations commission to hold a secret ballot on the mediator's recommendation. Board sources, however, seemed to infer that many of the teachers were beginning to waver, hinting that the method of taking the strike vote was a tactic of membership intimidation. Though the membership appeared entrenched, administrators perceived that many teachers were becoming frustrated and fatigued. The board team determined to wait it out. For them, bargaining was now over.

By contrast, the union caucus continued to justify its position in spite of a belief that no one was listening. The two issues were again emphasized: More money than offered by the mediator's proposal, and equal pay for librarians. This information was relayed by Al to the board caucus with the suggestion that fact finding was probably the only option for resolution. The attorney answered that if they had more faith in the employment relations commission, this advice might be tenable. Instead, if there is a strike, the board will probably seek an injunction and eventually fire the teachers. Al could only agree. Mediation was again adjourned.

As a consequence of continued public and internal pressure, power at this stage was primarily in the hands of the teachers. Al had no sanctions with which to break
the impasse. Ironically, the board's decision to wait out the teachers and let internal dissention disperse throughout the ranks was probably the only appropriate action available to them. Irving Janis' description of the Bay of Pigs fiasco provides an apt metaphor. The teachers' groupthink syndrome might well lead them to blatantly and recklessly attack the harbor. The main difference, of course, is that no Castro's army is available to repel the invasion.

Interim 5 (Twenty Three Days)

Five teachers were arrested while picketing the bus garage. The union contended that the board and police were using strong arm tactics. The administration countered that the teachers were delaying the buses. Association lawyers were summoned.

In separate discussions with the chief negotiators, Al discovered that the union team was irresolvably divided between more money and equal pay for librarians. The board attorney reiterated that equal pay was a strike issue and that there would be no additional money. He reiterated that the board must yet bargain with several other units, and the marketing philosophy was critical to all. Negotiations with the teachers was at an end.

At this point, Al had only three techniques left to force either team off center. He could recommend to the
union that they pre ratify a contract with the same money but with equal pay for librarians thereby putting the board in a box; he could sequester the teams in his office until one team conceded; or he could recommend that the teams submit to binding fact finding on the issue of equal pay. Opting for the latter, Al discussed his plan with the board attorney preparatory to the sixth and final mediation session.

Mediation Session 6

In the union caucus, Al attempted to elicit a certified proposal. The union replied that they would be willing to drop their demand for more money if the board would agree to equal pay. The board caucus refused to discuss it. The only accommodation they were now willing to make would be to submit the single issue of librarian pay to binding fact finding. As before, however, it must appear that the board was coerced into acceptance. If unable to sway the union, the attorney urged Al to cut off the session and publicly recommend binding fact finding as the only possible solution.

Parenthetically, it should be explained that boards of education are loathe to submit to binding fact finding or binding arbitration. The effect is to place organizational management decisions in the hands of a third party. The results, as evidenced by city police and
firefighter rulings, are often damaging to the resources of the board. By contrast, unions generally perceive binding third party intervention as favorable.

Al therefore responded to the board caucus that he would be unable to publicly recommend binding fact finding without sacrificing his own credibility and that of his agency. Boards of education in all other districts in the state would look askance, and mediation could well suffer. Instead, Al asked for the names of three fact finders who would be acceptable to the board. If he could gain consensus from the union, he would return to play out the scenario and "coerce" the board into compliance.

The union representative and president proved very reluctant, however, recognizing that fact finding on only one issue would probably end favorably for the board. Despite their reluctance, Al was able to elicit the names of three fact finders, one of whom coincided with those of the board. The union representative again stressed that they could only agree to binding fact finding on two issues, not one, but would be willing to downplay the money issue. The remainder of the side caucus explicitly demonstrates the tenor of the bargaining relationship. As the climax to mediation, it is quoted verbatim:

Al: Then what are you willing to pay for it [librarian parity]? It will have to come from salary.
President: We'll drop our demand for more money.

Al: Your committee is power hungry! Added money is a hollow issue. You've discussed it so long you believe it.

President: Why don't you modify your proposal to include equal pay? You're trying to punish the teachers.

Al: That's right! You should have had a contract long ago. The original proposal if put to the teachers without comment would probably pass. It was fair to both sides and justifiable. I won't bail you out again. I'm willing to go to the commission to get binding fact finding and I'll even recommend equal pay, but I won't recommend two issues.

President: You're trying to embarrass us.

Al: No! I'm thinking of 12,000 kids whose parents swallow this nonsense and pay for it besides. I could care less if you're embarrassed. You've had your chances. This option is the best I can do to pull you out of the fire again. Either you lower your salary proposal to pay for the differential or get away from it entirely. Those are the practical solutions. That's what bargaining is all about. The board won't kick in more
money. They've done it three times already, once on my recommendation. If you'd propose equal pay at less salary, you'd put the board in a box.

Chief Negotiator: But that's a yes or no issue. There's no way to package it differently.

Al: You've not come here to bargain. I can't help you. You want guarantees without risks. You want the board to take the risks and pay for it, too. It won't happen.

As a result of this interchange, Al asked the board caucus to rethink a one year contract. The attorney agreed that it might be the only alternative, but the board would need the previous T.A's. Al pushed the union negotiator to conclude a one year contract, but he ultimately reported that his team was still balking. One member nearly resigned. The representative had even suggested an end run on the mediator by petitioning the employment relations commission for fact finding on two issues. Nothing worked. His team seemed about to break apart, and therefore requested an adjournment to work among themselves. Discussion of a one year contract would be meaningless. It wouldn't ratify. Mediation was again aborted.
It was after the adjournment of this meeting that the attorney apprised Al of the possible leak from his sector. The analysis and consequences were mentioned under Impediments, and need not be revisited.

Interim 6 (Unspecified Duration)

Al spent the better part of the following day with the author contacting parties relevant to the dispute. He informed the attorney that he was now considering a public recommendation of binding fact finding or a re-vote on his original proposal despite the consequences. His thinking, however, was tempered by the fact that his mediator's proposal was poisoned by the initial teacher rejection, and binding fact finding by the leak. His only advice was for the board to cave, to "hand over the keys." The attorney responded that even then, the millage increase was dead, the renewal in serious doubt and the question now moot.

Al's contact with union leadership reaffirmed his original contention that binding fact finding on one issue was not an option. However, he was apprised that assistance from headquarters would be arriving on the following Monday. Union hierarchy might be able to sway the team.
Epilogue

The membership gave no indication of being swayed, and filed a $1,000,000 lawsuit on behalf of the five arrested teachers for a violation of civil rights. Named were the police chief, the superintendent and the board of education. Further, they petitioned the employment relations commission for fact finding. The board publicly expressed its willingness to participate and accordingly requested that the teachers now fulfill their total professional responsibilities by participating in extra curricular activities. The union president responded that the teachers did not do so during mediation and do not intend to do so prior to fact finding. "There will be no lifting of the protest ... until ratification of a new contract."

The parties are now at a stand off with an equal share of power. The teachers are unable to gather sufficient support to strike, nor can they garner assistance and support from other unions. Their remaining option is to withhold extra curricular services. On the part of management, no sanctions are available to coerce submission, and public pressure is sporadic. They can but wait.
Prognosis

Both parties have agreed to name the fact finder derived during mediation. Al will submit his confidential mediator's report to the commission along with his original settlement proposal and his suggestions for final settlement. Because the union perceives two issues, his report must also identify both, but he will indicate that the increased salary proposal is a smokescreen used as a bargaining chip for equal pay for librarians. The board has no additional issues.

Unlike mediation, fact finding is a public process. Since it cannot be binding unless so stipulated by both parties, it is this public characteristic that lends credence to its impact as a process for settlement. Within four to six weeks, the fact finder will issue his conclusion and Al will again undoubtedly return to mediate the report, this time with a more knowledgeable public and a fully informed union membership.

To speculate, the prognosis for a three year contract is quite good. The prognosis for positive employer/employee relations is not. The damage has been done, and unless both sides make every effort to rebuild relationships on a foundation of mutual trust and respect, this negative atmosphere will substantially influence the
educational process and permeate the next round of contract negotiations as well.
CHAPTER VI

OBSERVATIONS AND CONCLUSIONS

The many theoretical threads running through this document serve as reference points between the mediator and each of the conflicting groups. Appropriately, other writings can be tapped to bundle the strings into a cohesive package. Helpful is the synthesizing Theory of Supervisory Effectiveness proffered by Sergiovanni and Starratt (1983) incorporating the values of climate described by Likert (1967) with variations by Gibb (1967) and Halpin and Croft (1963).

Very simply, Likert (1967) proposes a descriptive series of systems on a continuum model of increasing member participation. The research suggests that as a group progresses from System 1 to System 4, its improving climate results in increased motivation and production. More to the point, it results in significantly improved negotiations. A portion of the Sergiovanni and Starratt (1983) synthesis is outlined below:

<table>
<thead>
<tr>
<th>Theorist</th>
<th>System 1</th>
<th>System 2</th>
<th>System 3</th>
<th>System 4</th>
</tr>
</thead>
<tbody>
<tr>
<td>Likert</td>
<td>Exploitive</td>
<td>Benevolent</td>
<td>Consultive</td>
<td>Participative</td>
</tr>
<tr>
<td>Halpin &amp; Croft</td>
<td>Closed</td>
<td></td>
<td></td>
<td>Open</td>
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<tr>
<td>Gibb</td>
<td>Defensive</td>
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<td>Supportive</td>
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Figure 2. Sergiovanni's Synthesis.
From this model can be inferred a measurement of relationships between the mediator and the bargainers as well as between the bargainers themselves. Compare, for example the characteristics of System 1 and 2 with the county road commission or the recently described case of the 812 teachers. Even when attempts were made by the mediator or the principals to be more open and supportive, invitations were greeted with animosity and mistrust. The factions had no foundation upon which to build a solid and meaningful relationship.

Leaving Sergiovanni and Starratt (1983) for the moment, attention is redirected to the writings of Hersey and Blanchard (1982). Their observations correlate degrees of follower maturity with leadership style, and are graphically represented by the well known bell shaped curve (p.152):

Figure 3. The Relation Between Leadership Style and Follower Maturity Levels.
For purposes of this discussion, it is important to note that the assessment of the mediator of the maturity level of the "followers" will dictate his style throughout formal bargaining. It is for this reason that Al convenes a joint caucus early in the initial stages of mediation to determine the credibility of the parties and the depth of their issues.

Further insight is provided by a comparison of the impact of power bases to maturity levels. Hersey and Blanchard (1982) perceive a direct relationship between the two based on the probability of gaining compliance:

High Maturity

- Expert
- Information
- Referent
- Legitimate
- Reward
- Connection
- Coercive

Low Maturity

Figure 4. The Relation Between Power Sources and Follower Maturity Levels. (Hersey and Blanchard, 1982, p.181)

This model implies that "higher order" sources of power are more conducive to situations where the bargainers exhibit substantial maturity. Because the
mediator has only the upper three power sources with occasional ventures into the fourth at his disposal, it can be argued that mediation is most successful where the parties approach the bargaining process in a mature matter. Hence, when credibility is low and the issues are significant, mediation will be arduous and time consuming. Further, because reward power only accrues to the mediator when the parties are willing to settle, or when money can be bartered and compromised, mediation of economics is far preferred to mediation of principles. Hersey and Blanchard (1982) explain:

The power bases that influence people who are above average in maturity must ... be earned from the people the leader is attempting to influence. The power bases that are most relevant at the below-average levels of maturity tend to be those that the organization or others can bestow upon the leader. (p.185)

For the most part, Al is devoid of the latter despite the fact that most mediation cases are observed to emanate from immature relationships. A diagrammatic synthesis of Likert and the seven power sources in contrast with the maturity level of the followers is succinctly summarized in figure 5.

The remaining two concepts identified in the Theoretical Implications Chapter tend to influence the construct rather than the reverse. Conflict management styles do not correlate with the maturity model. This author has observed many instances of the usage of each of
the five styles in a multitude of settings regardless of the maturity level of the participants. It is suggested, however, that collaboration and compromise are more often successfully employed among groups of higher maturity. Similarly, the encroachments of groupthink are also evidenced at all levels of the maturity continuum. Groupthink is a phenomenon of group cohesiveness, not necessarily of intelligence or maturity. It therefore
must be transactionally identified and artificially constrained by the protagonists themselves.

The responsibility for a contract, then, falls heavily on the shoulders of those empowered to bargain, not the mediator. He or she can only provide a forum for problem solving as an authoritative facilitator whose power is substantially derived from the followers. Nonetheless, it is the contention of this writer that mediation is a viable and influential process, and that the resultant resolutions, whether to the benefit or detriment of the individual organizations, will be in direct relational correlation to the individually and corporately adopted styles of conflict management.
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