

Third-Party Intervention in Collective Bargaining Disputes by Jennifer Dekker

Abstract:

Changes to business models, labour laws and the weakening of unions have resulted in a significant reliance on third-party interventions such as facilitation, conciliation, mediation and arbitration to avoid strikes and resolve collective bargaining disputes. Studies indicate that third-party intervention has been effective in settling bargaining disputes when:

- the intensity of conflict was moderate;
- there was a mutual commitment to reaching agreement;
- resources were not scarce;
- disputants disagreed on specific, targeted items;
- parties were of relatively equal power;
- disputes concerned new collective agreement language (rather than the interpretation of existing articles);
- issues of disagreement concerned salary.

However, lack of data from the point of view of those who are bound by the conditions of a contract settled during collective bargaining with the assistance of a third-party is worrisome. This review describes common bargaining conflict and types of third-party interventions, including triggers for effectiveness. It also analyses empirical evidence that points to some limited success with third-party intervention, but ultimately concludes that without more evidence regarding the quality of collective bargaining agreements, negotiators should be cautious in their use of third-party interventions.

For most of the twentieth century, workplaces were regular sites of labour conflict. However, over the past four decades, the rapid fall in unionization rates in the developed world, combined with a globalising economy, have changed relationships between employees and employers. Strategies such as strikes are no longer as effective as they once were, because employers today (especially in private industry) can simply shut down and move to another geographical location where challenges to employer demands are less likely to be mounted.¹ In North America, the North American Free Trade Agreement (NAFTA) which came into effect in 1994, did not protect jobs in the US or Canada; both scholars and labour leaders have noted that private industry moved to geographical areas where health and safety protections, as well as wages, were low relative to North American standards.² A lack of employee leverage to counter management demands enabled by agreements like NAFTA, combined with a weakening trade union movement, as well as contemporary neoliberal economic policies such as prioritizing low inflation over full employment³, have eroded employee negotiating power. In this context, the desire to settle collective bargaining disputes without resorting to strike is growing. In the post-secondary education sector in Canada, austerity-oriented budgets in various provinces have added pressure to public universities, even as some continue to operate with historically low levels of public funding.⁴ Furthermore, professors are reluctant to go on strike unless necessary due to their strong commitments to, and support of, students. It is worth noting that despite the desire to avoid strike, professors, librarians and academic staff have gone on strike in the last

¹ William Brown, "Third-Party Processes in Employment Disputes.," in *The Oxford Handbook of Conflict Management in Organizations*, ed. William K. Roche, Paul Teague, and Colvin, Alexander J.S. (Oxford, UK: Oxford University Press, 2014), 1–11, 10.1093/oxfordhb/9780199653676.001.0001.

² Stanley M. Spracker and Gregory J. Mertz, "Labor Issues under the NAFTA: Options in the Wake of the Agreement," *The International Lawyer*, October 1, 1993, 737–50.

³ Jim Stanford and Tony Biddle, *Economics for Everyone: A Short Guide to the Economics of Capitalism*, 2015.

⁴ Statistics Canada and Council of Ministers of Education Canada, "Spending on Postsecondary Education," (Ottawa: Statistics Canada, Tourism and the Centre for Education Statistics Division, 2011), 9, <https://www150.statcan.gc.ca/n1/pub/81-599-x/81-599-x2011007-eng.pdf>.

decade at the following institutions:

- Laurentian University Faculty Association in Sudbury, Ontario was on strike for nine days in 2017.

- University of Manitoba Faculty Association in Winnipeg, Manitoba was on strike for 21 days in 2016.

- Nippissing University Faculty Association in North Bay, Ontario was on strike for 28 days in 2015.

- University of Northern British Columbia Faculty Association in Prince George, British Columbia was on strike for 14 days in 2015.

- Mount Allison Faculty Association in Sackville, New Brunswick was on strike for 21 days in 2014.

- University of New Brunswick Faculty Association in Fredericton, New Brunswick was on strike for 21 days in 2014.

- University of Windsor Faculty Association in Windsor, Ontario was on strike for three and a half days of rotating strikes in 2013.

- St. Francis Xavier Faculty Association in Antigonish, Nova Scotia was on strike for three weeks in 2013.

- Brandon University Faculty Association in Brandon, Manitoba was on strike for 44 days in 2011.

- University of Western Ontario Faculty Association, Librarians and Archivists Bargaining Unit in London, Ontario was on strike for 17 days in 2011.

- Northern Ontario School of Medicine in Thunder Bay, Ontario, was on strike for 12 weeks and

was locked out for one week in 2010.⁵

While labour action is not usually a preferred or even possible action for many associations (especially those that are not certified, newly certified, or lacking financial resources to support a strike), this paper does not suggest that associations should use third-party intervention as a substitute for exercising organizational and mobilization capacities of our unions. Our goals include engaging and organizing members so that they feel confident taking labour action if necessary because strikes are part of the overall trajectory to getting high quality collective agreements. This paper should not be read as an alternative strategy to organizing or to striking but rather as a complement to both. We must organize and be ready for labour action while negotiators pursue improvements to the collective agreement.

Negotiation is defined as the “basic means of getting what you want from others,”⁶ but is often fraught with conflict when parties with opposing interests attempt to negotiate, especially in collective bargaining. Conflicts can escalate to strike or lockout, with serious consequences for individuals, economic sectors, governments, trade unions, the public and others. Whether or not collective bargaining conflict escalates to this level is not the specific subject of this examination although strike or lockout arguably constitute the apex of conflict in collective bargaining. This examination is more properly concerned with the nature of third-party intervention and whether it has been helpful in managing conflict so that workplace collective bargaining negotiations are successful. A successful negotiation means that not only has settlement been reached, but that each party has been able to achieve a high level of

⁵ Jeff McKeil, Email dated June 8, 2018. These numbers only include associations that drew on the Canadian Association of University Teachers Defence Fund. There have been other strikes in the post-secondary sector, notably the Ontario College Strike in fall of 2017, which lasted five weeks. The college professors and librarians were legislated back to work. See Salma Ibrahim, “Ontario College Strike Ends as Back-to-Work Legislation Passed,” *CBC News Toronto*, November 17, 2017, <http://www.cbc.ca/news/canada/toronto/strike-end-1.4409483>.

⁶ Roger Fisher, William Ury and Bruce Patton, *Getting to Yes: Negotiating Agreement without Giving In*, 3rd ed. (New York: Penguin, 2011), xxvii.

satisfaction with the agreement and the process. I also compiled this review mindful of the positioning of librarians in collective bargaining in higher education. We are usually a small group bargaining alongside our faculty partners, and I questioned whether third-party intervention can assist a sub-group within a more dominant group to achieve their bargaining goals. Though there are no definitive answers in the published literature on this specific question, I found that the scholarship of inter-cultural conflict addresses historical power imbalances in negotiations which is a useful frame for how unions can express positions to third parties, and how third parties can position themselves to address power inequities in the bargaining relationship.

Collective bargaining and third parties - how did we get here?

Collective bargaining is a negotiation between employees and their employer regarding the ensemble of working conditions including salaries, hours of work, extended health benefits, pensions, task definition, physical environment and equipment, etc. It is a form of conflict resolution (though it can feel more like conflict escalation than conflict resolution). Collective bargaining is not restricted to unionized work environments, as many non-unionized workplaces have staff associations that engage in negotiations on behalf of employees in much the same way that unions do. Collective bargaining is also not limited to the public sector though often it is associated with it; in fact, many current practices relating to collective bargaining in the public sector are historically based on practices from the private sector. In the United States for example, President Kennedy issued an Executive Order recognizing the desirability of collective bargaining for federal employees in 1962 after many years of successful collective bargaining in private industry.⁷ Eventually state and municipal employees were extended the

⁷ Douglas McCabe, "Dispute Resolution in the Federal Sector: An Analytical Historiography," *Advances in Competitiveness Research* 20, no. 1/2: 29.

same rights and with that “came an effort to emulate the positive record of dispute settlement in the private sector by seeking to copy its negotiation pattern, including provision for resolving public sector disputes...”⁸ The chief conflict resolution tool for resolving private sector disputes in collective bargaining had been mediation, so within a few years of Executive Order 10988, several laws were passed to ensure that mediation would be the preferred method for resolving collective bargaining impasses in the public sector. In the post-war period in Canada, provincial and federal laws were passed to ensure that strikes would be curbed and that bargaining impasse would be managed through the intervention of third parties, such as conciliators and mediators.⁹ Moreover, the appointment of conciliation boards and labour relations boards in the provinces sought to formalize the collective bargaining and grievance processes with the end goals of reducing labour conflict and direct actions in workplaces. Third-party interventions in collective bargaining thus grew out of deliberate historical objectives of strike avoidance and reductions in worker solidarity.

Most collective bargaining negotiations are bilateral – that is, involving only the two parties to the employment contract: the employer, usually represented by a small subset of management personnel, usually from Human Resources or Labour Relations departments, and employees, usually represented by either a union negotiating team or an equivalent group of employees where the workplace is not unionized, such as a staff association negotiating team. Collective bargaining normally occurs when one party gives notice to the other that they would like to begin negotiating, and both parties agree to meet to discuss each other’s concerns. In a unionized environment, this often happens shortly before the expiry of a collective agreement, and in a non-unionized workplace, this occurs as often as the parties agree. In some countries,

⁸ Arnold M. Zack, *Public Sector Mediation*, (Washington, DC: Bureau of National Affairs, 1985), 6.

⁹ Craig Heron, *The Canadian Labour Movement: A Short History*, (Toronto: Lorimer, 2012), 78-79.

collective bargaining is institutionalized in specific sectors and practices are determined in the context of local legislation. In these cases, collective bargaining is usually part of an overall policy of labour relations, with *industrial peace* being one of the principle goals.¹⁰ However, once a third-party is implicated, there are in fact three parties negotiating, though only two must actually abide by the conditions of the contract. Readers should not assume that third parties share any of the same goals as the primary negotiators. In fact, much of the literature of Alternative Dispute Resolution (ADR¹¹) insists on one goal only: getting a settlement. It is overwhelmingly concerned with techniques to achieve resolution and rarely mentions any follow up with parties regarding the quality of the agreement.

Asymmetric conflict

Most collective bargaining relationships and negotiations are asymmetric, that is to say, the two parties are of unequal power and resourcing. I was first made aware of the need to acknowledge power and historical relationships of domination as integral elements in negotiations while reading Paulette Regan's 2010 PhD dissertation detailing her role in the negotiations that ultimately led to the Indian Residential School Settlement Agreement in 2006.¹² I had previously understood that third parties were supposed to be neutral and impartial in order to ensure a fair agreement. But in retrospect, not confronting power disparities between parties seems a very serious omission. My own experience suggested that in fact, third parties are aware of and sensitive to power inequalities, especially when we - the less well-resourced

¹⁰ International Labour Office, *Conciliation and Arbitration Procedures in Labour Disputes: A Comparative Study*, (Geneva: ILO, 1980), 24-27.

¹¹ Alternative dispute resolution, or ADR, is generally defined as any process for achieving settlement that is outside of the courts and includes negotiation, facilitation, conciliation, mediation, arbitration, etc...

¹² Paulette Yvonne Lynette Regan, *Unsettling the Settler Within: Canada's Peacemaker Myth, Reconciliation, and Transformative Pathways to Decolonization*, (PhD diss. University of Victoria), 2009, <http://hdl.handle.net/1828/1941>.

and powerful party - specifically express ourselves in these terms.¹³ I mention the deficit in the literature as a note, but am reasonably confident that parties who are disempowered can engage with third parties regarding the history of the relationship, how the imbalance in power is disadvantageous, and bring forth suggestions for creating better balance in the contract and post-negotiation. Addressing inequality is significant for long term conflict resolution and labour peace because agreements that institutionalize severe power imbalances over the long term in fact do little to create sustainable conflict resolution.

Conflict typology

In a 2008 study, Martinez-Pecino, Munduate, Medina and Euwema refer to two types of conflict that typically arise during collective bargaining: *conflicts of interests* and *rights conflicts*.¹⁴ The first refers to conflicts that arise when establishing the working conditions in a collective agreement while the latter refers to the application and interpretation of an existing article or clause - this is often the territory of grievances, but collective bargaining can also address issues of non-compliance.¹⁵ This distinction is common in Western European countries and has roots in Austria, Denmark, the former Weimar Republic, Norway and Sweden, where trade unions and industrial conflict resolution have long been institutionalized. In Canada, the Labour Code recognizes the distinction between interest disputes and rights disputes as do most Latin American countries, Iceland, Finland, New Zealand and Pakistan.¹⁶

Third Parties

¹³ In particular, I suggest that librarians do an analysis of their collective agreements from the perspective of institutional power and communicate with the third-party in those terms when appropriate.

¹⁴ Robert Martinez-Pecino, Lourdes Munduate, Francisco J. Medina and Martin C. Euwema, "Effectiveness of Bargaining Strategies in Collective Bargaining," *Industrial Relations* 47 no. 3 (July 2008): 480-495.

¹⁵ Martinez-Pecino et. al., "Effectiveness of Bargaining Strategies,"; David B. Lipsky and Ronald L. Seeber, "Managing Organizational Conflicts," in *The SAGE Handbook of Conflict Communication: Integrating Theory, Research, and Practice*, eds. J. Oetzel, and S. Ting-Toomey (Thousand Oaks, CA: Sage, 2006), 359-391, doi: 10.4135/9781412976176.n13

¹⁶ Martinez-Pecino et. al., "Effectiveness."

Research on third-party intervention in collective bargaining negotiations often include the following types of third-party intervention: facilitation, conciliation, mediation, and arbitration. These are generally grouped together as ADR processes and are typically extrajudicial, voluntary systems of conflict resolution, except when they are imposed by the state. All of these processes recognize the parties' rights to strike and to lock out, but seek to reduce the need for such measures. Other goals include the continuation of bargaining, the settlement of disputes, and negotiated collective agreements. With the exception of arbitration, most do not have enforceable elements; those hired as facilitators, conciliators or mediators encourage the exchange of information, play devil's advocate, point out whether a position is realistic or acceptable, but ultimately leave the decision to settle, continue negotiating, lockout or strike with the parties themselves. I describe the various interventions below.

Facilitation

Facilitators often play a role in non-traditional or non-adversarial collective bargaining scenarios such as in interest-based bargaining. The facilitator's role is flexible but can include increasing the motivation (or decreasing the reluctance) to negotiate by emphasizing common ground between the parties or even punishing or rewarding certain behaviour, increasing the knowledge or improving the skills of those involved in collective bargaining; defining the roles of each person on a negotiating team so that they achieve internal consensus, and building trust both between themselves and the negotiating teams, as well as between the two parties.¹⁷ Further to these general categories, a case study in Australia found that facilitators helped the parties to prepare for negotiations by offering training on specific issues such as pay systems and healthy workplace relations. They also provided skill-building sessions in active listening

¹⁷ Johanna MacNeil and Mark Bray, "Third-party Facilitators in Interest-Based Negotiation: An Australian Case Study," *Journal of Industrial Relations*, 55 no. 5 (2013): 705-706.

techniques and brainstorming, and actively worked with the teams to prepare their bargaining plans. During negotiations, facilitators were called on to provide expert guidance related to industry standards, common practices and laws where their experiences were greater than the negotiators. Ultimately, participants in that case study reported increased levels of trust in their own team members and of their opposing negotiators than in previous sessions of collective bargaining, which ultimately improved their confidence in the collective bargaining process.¹⁸

Conciliation

Conciliation is one of the least rigid methods of third-party intervention and is concerned far more with process than structure.¹⁹ Conciliators transmit information without interjecting personal viewpoints or proposing alternatives. Often conciliators will schedule meetings, keep disputants talking, transfer messages between the parties, and keep things calm in tense situations.²⁰ Like other forms of ADR, the goal is to help parties settle their differences and it relies to a great extent on the parties' willingness to compromise. Conciliation preserves the relationship between the disputants and is faster and costs less than legal proceedings. The fundamental value in conciliation is that of social harmony rather than individual rights. Critics have emphasized that conciliation does not neutralize the power imbalances between the parties and therefore unfair agreements can result.²¹

Mediation

Carnevale and Pruitt define mediation as a variation of negotiation, one in which “one or

¹⁸ MacNeil and Bray, “Third Party Facilitators.”

¹⁹ Masayuki Murayama, “Conciliation,” in *Encyclopedia of Law & Society: American and Global Perspectives*, David S. Clark, ed., (Thousand Oaks, CA: Sage, 2007), 236-240.

²⁰ William E. Simkin, *Mediation and the Dynamics of Collective Bargaining* (Washington, DC: Bureau of National Affairs, 1971), 25-26.

²¹ Murayama, “Conciliation.”

more outsiders ("third parties") assist the parties in their discussion."²² Mediators make negotiations more viable by performing as the intermediary in situations where parties refuse to meet, encouraging or suggesting solutions to conflicts, interpreting the positions and statements of each side for parties who do not or will not understand each other, encouraging trust or suggesting solutions that do not require trust, and providing a way for parties to compromise without having to directly concede to each other – yielding to a mediator instead of one's opponent preserves dignity in a public dispute.²³ Mediation normally precedes arbitration and is more useful in moderate, rather than intense conflicts. It is most effective when parties are motivated to reach a settlement, where there is not a severe shortage of resources, when the parties disagree on specific items rather than general issues, and when there is not a serious power imbalance between the disputants.²⁴ Others observed that mediation interventions in rights conflicts are less effective than interventions in conflicts of interests to the extent that a 30 percent difference in settlements achieved is noticeable when the two conflict situations are compared.²⁵ This bodes well for collective bargaining which is normally more concerned with establishing new working conditions or improving existing ones than in obtaining agreement on contractual language that has previously been instituted.

Arbitration

An arbitrator is a third-party agreed to by both employer and employees to make a fair and binding decision regarding a conflict. It is usually faster and less cumbersome than court and parties do not have to conform to evidentiary standards required by the law.²⁶ Choosing

²² Peter J. Carnevale and Dean G. Pruitt, "Negotiation and Mediation," *Annual Review of Psychology* 43 (1992): 531–582.

²³ Ibid.

²⁴ Ibid.

²⁵ Martinez-Pecino, et. al. "Effectiveness."

²⁶ John Gennard, "Voluntary Arbitration: The Unsung Hero," *Industrial Relations*, 40 no. 4 (2009): 309-323.

arbitration is a recognition by both parties that bargaining has become ineffective and will not continue post-arbitration, unlike other forms of ADR, such as mediation or conciliation where negotiations often continue after the intervention. Arbitration can be of two varieties: final offer or conventional arbitration. Final offer arbitration involves the arbitrator selecting either of the two parties' final offers for resolving the conflict, whereas conventional arbitration typically means that the arbitrator will craft a resolution that rests somewhere in between the two final positions. In final offer arbitration, each party is encouraged to reduce the gap between their positions voluntarily whereas in conventional arbitration, the arbitrator finds the acceptable middle ground between the two positions.²⁷ Arbitration of either type requires a high degree of trust in the arbitrator as both parties surrender control of negotiations. However, Gennard notes that [the parties] "... attempt to minimise this loss of control by jointly agreeing the terms of reference within which the arbitrator is to work, selecting the arbitrator and agreeing with the arbitrator a procedure for the conduct of the hearing which gives them every opportunity to state their case,"²⁸ since neither disputant would choose to surrender all control in a high stakes

²⁷ Ibid., 314-315.

²⁸ Ibid., 322.

situation.

Intervention	Voluntary	Trigger/Use	Together/ Apart	Conditions for Effectiveness	Binding?	Long term Impact
Facilitation	Yes (Usually)	Interest-based bargaining, or mandated.	Together	Trust	No	Can be successful as part of broader program (e.g. MacNeil & Bray, 2013).
Conciliation	Depends on jurisdiction	One party usually calls for conciliation at stalemate.	Apart	Self-motivated problem-solving. Narrow focus. Low intensity conflict.	No	Positive long term effects if agreement reached. Focuses on communication between parties.
Mediation	Yes	Parties invite an agreed-upon mediator.	Apart, then usually together	Conflict low to mid intensity. Less effective in rights conflicts than interest conflicts (Martinez-Pecino et. al., 2008).	No Either party can conclude mediation at any point.	Allows parties to maintain dignity, relationship usually maintained. Good mediators try to balance power inequities. Mediators have their own agendas, beware.
Med-Arb	Yes + protocol agreement	Same as Mediation. Impasse triggers arb.	Apart, then together	Parties must work actively with the mediator/arbitrator.	In arb phase, yes.	Parties have control over mediation but none over arbitration outcome. Despite this, med-arb takes into account discussions from mediation which can result in + outcome (Javits, 2017 sec.C).
Arbitration	Yes, but arbitrator makes decision re: outcome.	Bargaining impasse. Parties agree to arbitrate.	Together	Resolves conflict temporarily.	Yes	Variable outcomes. Interest/binding arbitration tends to preserve long term relationships, whereas final offer arbitration provides a short term win for one side. To be used only occasionally, not a long term strategy for conflict resolution. Arbitrator must be one-shot (Brown, 2014).

Table 1. Different forms of third-party intervention organized at the top from the least interventionist to the most interventionist at the bottom. I have also included whether or not the parties physically meet in the same room with each other, and the general triggers and conditions for effectiveness for each type of intervention according to published literature.

When has Third-Party Intervention been Effective?

In an attempt to answer the question of when and whether third-party intervention has been effective, Jeffrey R. Zubin conducted a meta-analysis of published literature focused on three hypotheses,²⁹ summarized below:

- 1) Third-parties facilitate concession-making without loss of face, promoting faster and more effective conflict resolution.

²⁹ Jeffrey Z. Rubin, “Experimental Research on Third-Party Intervention in Conflict: Toward Some Generalizations.” *Psychological Bulletin*, 87 no. 2 (1980): 379-391.

A wide range of articles on conflict resolution and collective bargaining negotiation mention the importance of appearing strong, especially when one is negotiating on behalf of constituents. The presence of a mediator or other third-party provides a socially acceptable way of managing this concern; one can blame the mediator or justify compromise as an attempt to appease her. One study found that parties are more likely to make the same concession when it is offered by a third-party rather than by the opposing negotiators. Another concluded that when negotiators thought they were being watched, cooperative behaviour increased significantly. Thus, the presence of a third-party, even if she does not actively intervene, encourages compromise at the negotiating table.

- 2) Third-party intervention is most likely to be effective when conflict is less intense and that the same methods will not work when conflict is heightened.

A series of simulations explored whether verbal communication – effective at low intensities of conflict - could be successfully scaled to more intense conflicts. They simulated highly intense negotiating situations to observe how both voluntary and forced communication affected conflict and found that instead of resolving disputes as one might expect, verbal communication actually increased the intensity of the conflict when no third-party was present. However, when a third-party intervened, it had a positive effect on negotiations. Other studies with respect to particular outside interventions found that regardless of technique, all were more effective when conflict was at lower intensity.

- 3) Third-party intervention is unwelcome; negotiators want to solve their own problems.

Rubin examined the conditions under which negotiators will accept outside intervention. Most studies confirmed that when conflict was relatively low intensity and when the third-party was perceived to be an authoritative figure, negotiators were motivated to settle disputes as quickly as possible prior to intervention. When conflict escalated however, negotiators chose to

transition into either face-saving mode in order to maintain dignity (this entails inviting a third-party and then attributing concessions to that person - in these cases a very heavy-handed intervention is preferred by disputants) or inducing agreement because no third-party is expected. In these tense situations, third-parties were found to actually increase the likelihood of impasse.³⁰

Other findings

As indicated above, there are few research articles measuring the effectiveness of third-party intervention in collective bargaining, but even fewer regarding satisfaction with the resulting agreement when third-parties were implicated. One study of unionized professors concluded that planned third-party intervention used throughout the bargaining process yielded higher rates of satisfaction by both management and employees in terms of how the parties related to each other. Each side indicated that it had:

...changed their bargaining style, learned techniques for collaborative problem solving which could be beneficial in their future relationships, and had a more balanced and less stereotypical view of each other. Both parties thought the contract was fair and were particularly pleased with the inclusion of creative clauses covering two mutual problems that in the absence of the project might have gone unaddressed. Both union and administration representatives attributed these changes to the project and the involvement of the neutral party.³¹

While third-party intervention improved the relationship between the parties and outcomes of collective bargaining, there were no data regarding the quality of the settlement. It is true that relationships in collective bargaining are important, even crucial to successful outcomes, but focusing primarily on process or relationships minimizes the importance of the substance of the agreements and their impacts on those who are governed by them. These voices

³⁰ Rubin, "Experimental Research."

³¹ Birnbaum, "The Effects," 730.

are not present in the literature, yet are of most interest regarding whether or not the use of third parties results in good agreements.

In a study based in the UK, Hiltrop examined disputes that were mediated and did not lead to strike or lockout. Using Advisory Conciliation and Arbitration Service data from 1981-1982, he found that disputes regarding pay were assisted by mediation in 73% of cases. In matters other than salary, this rate dropped to 46%. A second sample from 1985 confirmed the earlier conclusions: 71% of pay disputes that year were settled with the help of mediation compared to only 47% of non-salary disputes.³² Thus, the type of dispute determined to some extent whether mediation would be effective. Other relevant findings were that when strike or lockout was threatened, 67% of disputes were resolved with mediation, whereas only 53% were resolved when no threats were made. In cases where a strike or lockout had already been imposed, mediation helped settle 80% of the disputes.³³ Hiltrop also examined disputant characteristics as part of the overall analysis of success of conflict resolution and confirmed an earlier study whereby unrealistic expectations, hostility and low motivation to settle were all factors that contributed to non-settlement.

Summary

Parties in collective bargaining often seek third-party intervention such conciliation, mediation, arbitration and fact-finding to solve disputes. Avoiding strike and lockout is usually the goal because of risks inherent in each. However, in looking to the future, is this a strong enough argument for continued third-party intervention? How do we know if third-party intervention is achieving optimal results? Despite a lack of recent research regarding the levels

³² Jean-Marie Hiltrop, "Factors Associated with Successful Labour Mediation," in *Mediation Research*. Kressel, Pruitt and Associates, eds., (San Francisco: Jossey-Bass, 1989), 246-7.

³³ *Ibid.*, 249-250.

of satisfaction with negotiated agreements among those who are subject to them, a few studies indicate that third-party intervention has been effective in collective bargaining conflicts when the intensities were moderate, there was a mutual commitment to reaching agreement, resources were not scarce, the disputants disagreed on specific items, the parties were of relatively equal power, the disputes concerned new collective agreement language (rather than the interpretation of existing articles) and were concerned with salary. In situations where the intensity of the conflict was high, having a firm deadline and the threat of strike or lockout were likely to stimulate agreement. These research findings outline general conditions in which third-party intervention can assist in bargaining impasse.

Going forward, the lack of data from the perspectives of those who must abide by the conditions agreed to during collective bargaining when third-party intervention is employed is worrisome. Furthermore, the published literature in labour relations has not addressed historical power imbalances in negotiations and how third parties might help to correct them; this oversight ought to be addressed through new studies. As a result, those looking for evidence to support the use of third-party interventions have little data on which to base decisions regarding where to invest their time, money and energy. Given these shortcomings, neither employers nor unions will be very confident in the use of third parties, which is problematic since many provinces now include third-party intervention as part of a labour relations regime. Further, much conflict could probably be resolved at earlier stages if negotiators had more trust that third-party intervention would assist in the settlement of satisfactory collective agreements - not just the simple resolution of conflict, but the achievement of high quality contracts. "Some mediators...argue that an effective mediator will help the parties articulate their basic interests and then help steer the process to results that best serve their interests. In this view, the

substantive terms of the settlement are as important to the success of mediation as a settlement is.”³⁴ This statement is rare in that it acknowledges that mediators (and third parties more generally) should be concerned with outcomes, and not only the process, of collective bargaining. Though it is not a rousing call for improvement in the practices of third parties, it gives some small hope for a new direction in ADR research and a future focus on the quality of collective agreements.

³⁴ Harry C. Katz, Thomas A Kochan, and Colvin, Alexander J.S. “Dispute Resolution Procedures,” in *An Introduction to U.S. Collective Bargaining and Labor Relations* (Ithaca, NY: Cornell University Press, 2017), 241.

Bibliography

- Birnbaum, Robert. "The Effects of a Neutral Third-Party on Academic Bargaining Relationships and Campus Climate." *The Journal of Higher Education* 55, no. 6 (1984): 719-734.
- Brown, William. "Third-Party Processes in Employment Disputes." In *The Oxford Handbook of Conflict Management in Organizations*, edited by William K. Roche, Paul Teague, and Colvin, Alexander J.S., 1–11. Oxford, UK: Oxford University Press, 2014. 10.1093/oxfordhb/9780199653676.001.0001.
- Carnevale, Peter J., and Dean G. Pruitt. "Negotiation and Mediation." *Annual Review of Psychology* 43 (1992): 531–82.
- Fisher, Roger, William Ury, and Bruce Patton. *Getting to Yes: Negotiating Agreement Without Giving In*. 3rd ed. New York: Penguin, 2011.
- Gennard, John. "Voluntary Arbitration: The Unsung Hero." *Industrial Relations* 40, no. 4 (2009): 309–23.
- Heron, Craig. *The Canadian Labour Movement: A Short History*. 3rd ed. Toronto: Lorimer, 2012.
- Hiltrop, Jean-Marie. "Factors Associated with Successful Labor Mediation." In *Mediation Research: The Process and Effectiveness of Third-Party Intervention*, edited by Kenneth Kressel and Dean G. Pruitt, 241–62. San Francisco: Jossey-Bass, 1989.
- Ibrahim, Salma. "Ontario College Strike Ends as Back-to-Work Legislation Passed." *CBC News Toronto*. November 17, 2017. <http://www.cbc.ca/news/canada/toronto/strike-end-1.4409483>.
- International Labour Organization. *Conciliation and Arbitration Procedures in Labour Disputes: A Comparative Study*. Geneva: ILO, 1989.
- Katz, Harry C, Thomas A Kochan, and Colvin, Alexander J.S. "Dispute Resolution Procedures." In *An Introduction to U.S. Collective Bargaining and Labor Relations*, 232–50. Ithaca: Cornell University Press, 2017.

- Kolb, Deborah. "Labor Mediators, Managers, and Ombudsmen: Roles Mediators Play in Different Contexts." In *Mediation Research: The Process and Effectiveness of Third-Party Intervention*, 91–114. San Francisco: Jossey-Bass, 1989.
- Lipsky, David B., and Ronald L. Seeber. "Managing Organizational Conflicts." In *The SAGE Handbook of Conflict Communication: Integrating Theory, Research, and Practice*, edited by J Oetzel and S Ting-Toomey. Thousand Oaks: Sage, 2006.
- MacNeil, Johanne, and Mark Bray. "Third-Party Facilitators in Interest-Based Negotiation: An Australian Case Study." *Journal of Industrial Relations* 55, no. 5 (2013): 699–722.
- Martinez-Pecino, Robert, Lourdes Munduate, Francisco J. Medina, and Martin C. Euwema. "Effectiveness of Bargaining Strategies in Collective Bargaining." *Industrial Relations* 47, no. 3 (2013): 480–95.
- McCabe, Douglas. "Dispute Resolution in the Federal Sector: An Analytical Historiography." *Advances in Competitiveness Research* 20, no. 1/2 (2012): 29–36.
- McKeil, Jeff. "Strike Reports," June 8, 2018.
- Murayama, Masayuki. "Conciliation." In *Encyclopedia of Law & Society: American and Global Perspective*, edited by David S. Clark, 236–40. Thousand Oaks, CA: Sage, 2007.
- Rubin, Jeffrey Z. "Experimental Research on Third-Party Intervention in Conflict: Toward Some Generalizations." *Psychological Bulletin* 87, no. 2 (1980): 379–91.
- Simkin, William E. *Mediation and the Dynamics of Collective Bargaining*. Washington, D.C.: Bureau of National Affairs, 1971.
- Smith, William P. "Effectiveness of the Biased Mediator." In *Negotiation Theory and Practice*, edited by William Breslin and Jeffrey Z. Rubin, 419–28. Cambridge, Mass.: The Program on Negotiation at Harvard Law School, 1991.
- Spracker, Stanley M., and Gregory J. Mertz. "Labor Issues under the NAFTA: Options in the Wake of the Agreement." *The International Lawyer*, October 1, 1993, 737–50.
- Stanford, Jim, and Tony Biddle. *Economics for Everyone: A Short Guide to the Economics of Capitalism*. London, UK: Pluto Press, 2015.

Statistics Canada and Council of Ministers of Education (Canada). *Spending on Postsecondary Education*. Ottawa: Statistics Canada, 2011.

<https://www150.statcan.gc.ca/n1/pub/81-599-x/81-599-x2011007-eng.pdf>

Susskind, Lawrence E., and Connie Ozawa. "Mediated Negotiation in the Public Sector." In *Negotiation Theory and Practice*, 401–18. Cambridge, Mass.: The Program on Negotiation at Harvard Law School, 1991.

Zack, Arnold. *Public Sector Mediation*. Washington, D.C.: Bureau of National Affairs, 1985.