Board of Mediation for Community Disputes
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MEDIATORS IN COMMUNITY DISPUTES:

Who Are They?

and

What Do They Do?

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An Introductory Comment

This paper is in the nature of a "think piece" rather than an attempt at providing any definitive statement regarding the antecedents, role or functions of the mediator - intervenor in community disputes. This approach, in conjunction with our haste in the preparation of the paper, has resulted in the extensive use of and references to materials previously prepared by both the Board of Mediation for Community Disputes and the Racial Negotiations Project.

Because this paper is presented as a basis for and a catalyst to discussions at this conference, we have raised as many questions as we have suggested possible approaches. On both the questions and the approaches the Board staff is engaged in continuing discussion and debate. Some of our differences in both kind and degree are reflected in this paper and provide a basis for discussion at the conference.

RWH
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The task of this paper, as suggested by the conference agenda, has two general thrusts; to offer some comment on the applicability-transferability of the labor-management and international conflict when interviewing in community disputes. These topics will be approached in reverse order, dealing first with the general topic of "What have we learned from the labor-management and international conflict models?" and then with "What do you mediators do...?".

The Non-existence of Models

To begin, it might be useful to dispense with the assumption that models have been developed for either labor-management or for international conflict situations. It is our assertion that they have not. A model suggests some systematic exposition of inter-relationships such that by "plugging-in" certain data or information it is possible to "crank out" expected outcomes. A model is a schematic presentation and abstrated reproduction of the reality. Perhaps the most familiar example of models in the social sciences are the economic models which have been created both to forecast future economic developments and to provide a vehicle for testing

out possible fiscal and monetary policies. While such models typically perform about as well as a model airplane built by a three-year old, they are, nonetheless, models. The propensity of political scientists and labor relations academics to label as "models" their largely descriptive efforts to explain international and labor-management relations is not in accord with the use of the term in other social and physical science disciplines.

While we do not have models from which to draw, however, there is a wealth of descriptive and analytic materials relating to the role of third parties in international and labor-management disputes which offer valuable analogies to community disputes. Labor-management disputes, in particular, have been studied from the perspective of a number of social science disciplines -- economics, sociology, psychology, etc. -- and provides an essential point of departure for gaining an understanding of community disputes. On the other hand, several observers have suggested that in many aspects -- such as the sovereignty of the parties and the lack of continuing and established institutional interdependence -- international disputes may often be more analogous than labor-management disputes to what we have come to call community disputes.

The Labor-Management Analogy:

Most studies of labor-management conflict are concerned with the confrontation-negotiations process. However, since mediation is largely a facilitation and/or extension of that process it is necessary to deal with and gain an understanding of the interactional

process between the parties before beginning to deal with the role of the intervenor, per se.

The most exhaustive attempt to compare labor-management and community disputes and assess what analogies exist in the confrontations-negotiations process, was undertaken by the Racial Negotiations Project directed by W. Ellison Chalmers. Generally, the conclusions of that study were that while there was a great deal of similarity in the interpersonal skills, the arenas within which the two types of disputes occurred were very different. It was suggested that the often glib assumption of the transferability of the labor-management experience which has been made by many observers is often dysfunctional in the sense that many adherents to this point of view have failed to perceive some very basic differences.

In an article prepared by the Project and published in the Cornell journal, Issues in Industrial Society,[1] it was suggested that some of the assumptions regarding the transferability of the labor-management experience arose out of a misunderstanding of both what labor had attained and of what community organizations were seeking. For example, the type of participation in the decision-making process gained by unions -- a system of review and once-in-awhile bargaining over terms and conditions of employment -- is not what is meant by demands for relevance, participation and community control.

Even a cursory consideration of cummunity disputes will suggest a variety of important differences between them and current highly developed labor-management collective bargaining relationships. The transitory nature of many challenging organizations and the lack of a framework of practices, experience, rules and legislation, for example, suggest a closer analogy with pre-Wagner Act labor-management relations rather than with current experience.

On another level, many of those who are now involved not only in the study of cummunity disputes but in the active role of third party intervenors have their experience in labor realtions theory and practic. Further, many community confrontation situations are either accompanied by or arise out of labor disputes. Some examples are the Memphis Sanitation Workers' Strike, the Charleston Hospital strike, the San Francisco State teacher and student strike, the current efforts of the Revolutionary Union Movement within the UAW, and challenges by minority communities to the building trades unions.[2]

<u>As a result of these two factors, it may be that such analogy as does exist is the creature of the evaluator and intervenor and the imposing of their experience and expectations rather than the result of basic similarities between the dispute situations</u>.

Dealing more specifically with the analogy between the role of the mediator in labor-management and community disputes, the Racial Negotiations Project in its Final Report to the Ford Foundation

speculated on some of the more important dimensions of the analogy. The following are some excerpts from that report:[3]

> Patterns of third party intervention have been quite clearly defined in labor-management relations. Typically, they are differentiated along at least two axes for purposes of general comparison: 1) degree of compulsion regarding entry of intervenor, and 2) degree of compulsion in acceptance of his findings.
>
> a. Voluntary vs. compulsory intervention.
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> Using labor-management experience, there are a variety of instances where third parties may become involved in assisting in the settlement of disputes. In some cases their entry may be required by some enforcing authority, in others entry will only occur after explicit invitation from the parties...
>
> The difference between voluntary and compulsory entry into collective bargaining disputes has a variety of very obvious impacts on the acceptance of such intervention by the parties, the "style" the intervenor finds it possible to employ, and the perceived public pressure felt by the two sides.
>
> Of course, there are a variety of situations that don't fit nicely into these niches: For example, the ability of the President under the U. S. system to declare

a dispute a national emergency dispute and require that mediation take place. In certain public employment disputes, expecially between teachers and school boards, the legislation is poorly defined (or unenforceable) and a variety of compulsory fact-finding situations emerge. The threat of such compulsory intervention being applied may well have an impact on the desire of the parties to "voluntarily" seek third party assistance.

There are also situations where the parties may voluntarily bind themselves to compulsory intervention at some future point. The grievance procedure which ends with compulsory arbitration is such a situation. Under U. S. Federal legislation, the parties to collective bargaining agreements need not conclude their grievance process with arbitration; yet, if they do, bind each other to such an agreement.

b. Compulsion in acceptance or imposition of findings.

A second major dimension is the degree of compulsion upon the parties to accept the recommendations or findings, if any, of the third party. Arbitration is a situation when the parties are, by definition, reguired to fulfill the findings of the arbitrator or third party. In effect, this is a judicial finding

and can be enforced by some outside authority, whether the courts, a labor board or whatever. A contract to abide by the findings of the intervenor is entered into by the parties.

At the other extreme, we have the situations where the parties are assisted by the third party whose only role is to give assistance. Not only does he not have any power to compel the parties to accept his recommendations but such recommendations will arise only out of his attempts to assist the parties in defining areas or bases of agreement.

However, in this dimension there is also an intermediate area. This occurs where there is no formal legal compulsion to accept the recommendations of the intervenor, but he has personal or institutional resources which enable him to "encourage" the parties to accept his recommendations. The most common example of such a situation is "fact-finding". Here, the third party publishes his recommendations in the hope that public pressure on the parties based on the "reasonableness" of those recommendations will bring the acceptance of the parties.

2. The racial negotiations experience.

It is interesting to note that in the racial disputes which were studies by the Project there were six in which a third party played some role, but there was not a single

dispute in which any formal degree of compulsion existed -- in either accepting third party intervention or in accepting his recommendations. However, it appears that if the black side requested or accepted an intervenor there was considerable pressure on the white-controlled institution to do the same. It appears that if the "unreasonable" black protestors were willing to seek third party assistance, it was "politically" impossible for the white-controlled institution to refuse to do so. Thus it could be argued that the degree of compulsion may differ as between the parties.

a. Compulsory intervention.

Compulsion, as observed in labor-management relations, rests on a legal basis. The Cleveland wildcat strike was the only case in which any sort of legally imposed third party intervention could have been imposed. And even here, since it was a wildcat strike, it fell outside the pale of the agreed upon grievance process. In Memphis, the Mayor specifically interpreted the strike as illegal, albeit through inaccurate interpretation of the law, and therefore this case, too, was defined as outside existing labor legislation.

However, in some of our other cases there are degrees of compulsion based largely on the personal or institutional referrant power of other parties who, while they are not directly involved in the dispute, nevertheless have some

interest either in a need for a settlement or a preference about the terms of agreement.

b. Voluntary intervention.

(1) The process of acceptance.

There appears to be, as we shall discuss more fully below, a direct and positive relationship between the personal or institutional power of the intervenor and the amount of compulsion involved in his gaining entry to a dispute. Powerless intervenors in the classic sense appear to do so by offering their service rather than as a result of the joint request of the parties. Where this is the approach, they must sell their services to both parties, and this is seldom a simple task.

The above Report also discusses at length problems of "voluntary" intervention as illustrated by the San Francisco State College dispute.

A second area of comparison with the labor-management analogy is the so-called, "two party model" which exists in labor-management disputes and its absence in community disputes. The Racial Negotiations Project has observed:[4]

4. Racial disputes and two party conflict model.

(This) question of neutrality vs. advocacy has important implications for the validity of the traditional labor-management dispute model which generally assumes two separate

> disputing parties with the intervenor or third party a "disinterested" participant.
>
> In racial disputes as we have noted in Chapter XI, it also is normally possible to identify two confronting parties. One basis for this, after the fact, might be the signatories to the agreement, if any, but even this may not clearly reflect the actual situation.

The Report then went on to illustrate this problem by identifying 15 clearly separate parties of interest in the San Francisco State dispute. It concluded that one way to cope with this diversity and multiplicity of parties was to view them as coalesced around specific goals.

The International Conflict Analogy

Analogies between international and community disputes must be drawn for oneself since attempts in the literature are extremely limited. Such analogies as have been drawn relate most specifically to the interactional aspects of strategy and tactics which we will deal with below. For example, Roger Fisher in an article entitled "International Diplomacy's Implications for Solving Domestic Conflicts," introduces his discussion by warning:

> The practice of international dispute settlement has not been so successful that it has much to teach practitioners of the domestic arts of conflict resolution. We who are primarily concerned with an international conflict, however, can warn of mistakes we regularly make. Perhaps

> you in domestic practice can then avoid these mistakes, and perhaps the magnitude of our disasters will illuminate some of the lesser mistakes you make.[5]

This would appear to be an accurate assessment of the proper role of the analogy in understanding community disputes.

In terms of the role of the intervenor specifically, there has been no real attempt to assess the analogy. For purposes of doing it one's self, a useful vehicle might be John Burton's paper "Controlled Communication in the Resolution of Conflict" which draws on his actual experience in and observation of third party intervention in international disputes.[6]

The Mediator as a Neutral

One of the first concerns voiced by many mediators and researchers as well as parties to a conflict relate to the "neutrality" of the mediator. The Final Report of Racial Negotiations Project, commented on the analogy between labor-management and racial disputes in this regard:[7]

> The Concept of Neutrality.
>
> The idea that a third party intervenor will be "neutral" is sacrosanct in labor relations theory (or, perhaps more precisely, mythology) and practice. Unfortunately, the concept of "neutrality" is difficult to define. Does it mean neutral as to the specific issues or as to the parties? Does it infer a lack of commitment to the need for social change or only a lack of bias?

1. Neutrality and social change.

Mediators in labor-management relations immediately after passage of the Wagner Act in the U. S. could not be seen as neutral in the espousal of a system of joint bargaining. Their very participation in the negotiating process marked them as advocates of social change. Similarly, almost by definition anyone who advocates joint discussions between protestor and establishment is an advocate of social change--even as we observed in Sam Jackson's experience in San Francisco State. So, it is probably necessary to take as a given pre-requisite of successful intervention, the idea that the intervenor will have a commitment in the direction of increased involvement of the disadvantaged and disenfranchised in decisions affecting them.

Unfortunately, as we have already noted, while this commitment may well increase the acceptance of the intervenor by protesting groups, it may also lessen his acceptability to the establishment. Thus the concept of power or costs becomes important. Unless the establishment perceives that it can lessen its costs -- either in terms of control or of specific material demands -- through the role of an intermediary, it is unlikely that they will accept him. Therefore, even if we choose to define "neutrality" as being some total unconcern with the dispute and only an effort to assist the parties to find some basis for settlement, the intervenor becomes an advocate of social change by his very involvement -- except, of course, where both parties request his intervention.

2. A temporal dimension.

There are two schools of thought even in labor relations as to the responsibility of the mediator: 1) the majority of mediators would argue that their only concern is to find some basis for settlement between the parties whatever they feel may be its long term repercussions; 2) others would argue that the responsibility of the mediator extends to ensuring that the settlement provides some basis for continuing agreement. The first group argue that the parties should watch out for their own long term interests and for the mediator to intervene where he fears an emerging settlement could lead to future repercussions is to overstep his mandate. This may be true when the parties are established and experienced negotiators. However, even in emerging areas of public employee organization this doctrine proves difficult to follow. Typically the parties -- for example, school boards and teachers -- have far less experience than the intermediary and are quite unable to understand or forecast future difficulties which might arise either as a result of agreements or issues or even the language of agreement.

To the extent that the intervenor in racial disputes is an advocate of social change, he may also be concerned with the temporal viability of agreements reached.

3. Neutrality and specific issues.

A third general area of concern for mediator and disputant is the specific issues involved. As we discussed in Chapter XI

and have already observed in this chapter, the underlying issue of recognition -- recognizing by action the right of the protestors to have a voice in the relevant decision-making process -- is often the key issue. However, beyond this general hurdle to settlement there will typically be a variety of specific issues. (As we have seen, the type of issue varies widely with type of white-controlled institution being confronted.)

For example, in an employment dispute wages will normally be an issue. On the question of what the wage figure should be the intervenor will normally be neutral. At this level of specificity, even in racial disputes he is likely to be little interested in the amount but greatly interested in the fact of settlement. However in some of our cases the intervenor has a general concern that the "amount" of the settlement be adequate as well as acceptable. In addition, as developed above, the intervenor is involved in the issues of "recognition" and of "responsibility to bargain". The real question which must be dealt with, then, is not "acceptance as a neutral", but rather the problem of establishing a legitimate entry to perform certain intermediary functions in order to move the parties toward a resolution of the conflict.

The entire question and meaning of neutrality was also approached by the Board of Mediation for Community Disputes in its

Year-end Report to the Ford Foundation.[8] The following comments on the Board's first year experience are excerpts from that Report:

> The entire question of neutrality, including the meaning of "neutral" and whether being neutral is an asset in the mediation of community disputes, is an important matter to consider. In the modern labor-management analogy, third parties are very jealous of their neutrality. Yet, during the 1930's, mediators with the federal government were, by their function, advocates of change in the direction of the participation of workers, through their unions, in the determination of their terms and conditions of employment.

Ronald W. Haughton, President of the BMCD, has been quoted in the New York Times as saying:

> There should be an element of "advocate mediation" leading toward some meaningful "transfer of power." It should be aimed at convincing the part of the establishment that is under attack that there is an advantage in negotiating real change rather than fighting it out toe-to-toe.[9]

"Advocate mediation," as a practical matter, suggests that any question of neutrality, at least in the abstract, is academic. There are several dimensions to this concept of "neutrality" with which the BMCD has found it necessary to deal.

Almost by definition, anyone who advocates joint discussions between protester and established institution is an advocate of social change. The BMCD was established

for the purpose of aiding such joint discussions. The Directors and Officers of the BMCD would not be involved in this undertaking were they not individually and collectively committed to the possibility of and, in some situations, the need for social change. The credibility of BMCD is contingent upon mediation leading to meaningful social change. Such credibility would be lost if mediation was strictly a delaying tactic.

The commitment of an individual intervenor, as well as of the BMCD organizationally, to the need for social change provides the basic currency enabling the intervenor to gain the acceptance of the protesting organization. Although this commitment may increase the acceptance of the intervenor by protesting groups, some observers here feared that it may correspondingly lessen his acceptability to established institutions. The experience of the BMCD, however, seems to suggest the opposite. By the time an established organization has reached the point where it desires to negotiate an accommodation, it is usually desirous of finding an intervenor who can relate effectively to the protesters. Perhaps the organization hopes that the efforts of the intervenor, while leading to certain changes, will result in something less than the demands being made on it by the protesters and will forestall or halt the costs of overt confrontation.

The concept of power or cost is important. Unless the confronted organization believes that it can lessen its costs --

either in terms of its demands or of an ongoing confrontation -- through the participation of an intervenor, it is unlikely that it will be anxious to accept him. And, unless he is empathetic to the protest constituency, the latter will not accept and trust him. It appears that the intervenor in community disputes does not decrease his acceptability or effectiveness by being in favor of social change.

A second area of concern for the intervenor is the neutrality of his posture regarding the specific issues involved. Thus, in the Hillside Housing dispute, the BMCD staff was concerned that some agreement be worked out between the parties. However, as regards the specific issues, and the basis on which settlement would be achieved, the intervenor felt that it was necessary to appear relatively unconcerned. For example, the manner and proportion in which minority applicants would be accepted was an important issue upon which the intervenor presented no preconceived notions, his concern being that some accommodation acceptable to both parties be reached.

Giving the appearance of being relatively unconcerned about the basis of settlement on specific issues is important for several reasons. First, if the intervenor is trying, consciously or otherwise, to "lead" the participants to a specific point of settlement, he runs the serious risk of being discovered and discredited by both parties. Second, if the point of settlement does not (as was noted above) reflect fairly accurately the relative power of the parties, it is unlikely to stand. Third, a basic premise of the negotiation-mediation process is that an

agreement reached by the parties through their joint efforts brings with it commitment and the best chance of a lasting settlement. If the parties perceive that they were "sold a bill of goods" by the mediator, such lasting accord is much less likely.

However, even on specific issues there is a limit to neutrality. To the extent that the intervenor in racial disputes is an advocate of social change, he is also likely to be concerned with the viability of agreements reached. Thus, where the experienced intervenor concludes that the parties are approaching an accommodation which is unrealistic and likely to result only in renewed conflict, he may take careful steps to alert them that an alternate accommodation might be considered.

The real question which must concern the intervenor is not his acceptance as a neutral, but rather the problem of establishing a legitimate entry in order to perform certain intermediary functions and to assist the parties in reaching a joint resolution of the conflict.

It is evident that the conclusions reached as a result of the experience of the Board of Mediation for Community Disputes are generally the same as those reached by the Racial Negotiations Project. What is more, a consideration of the role of the "neutral" in early post-Wagner Act labor-management relations suggest a fairly close analogy with community disputes experience.

The Varied Functions of The Mediator In Community Disputes

The Year-end Report of the Baord of Mediation for Community Disputes concluded: [10]

> The term "mediator" is perhaps too limited to describe the variety of capacities in which the BMCD has served and the concept of third party "intervention," as normally used, ignores a substantial part of the BMCD's potential.
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> The BMCD has found it necessary to distinguish between:
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> i. Situations not involving the BMCD in direct intervention, but in which the BMCD contributed to the resolution of an immediate or pending conflict situation; and
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> ii. Situations in which the BMCD was directly involved in aiding disputants to reach an accommodation of differences.

1. Non-intervention roles

As a corollary to efforts to broaden the understanding of environments within which community disputes occur, preliminary discussions with one or both parties have led to settlement without traditional mediation between parties.

The BMCD position is that it is desirable for parties to be able to settle their disputes satisfactorily between themselves. When the accommodation is reached through a joint process, the resulting agreement will more likely be self-sustaining.

The BMCD is committed not to undercut existing dispute procedures which the parties might be expected to utilize. The BMCD is an alternative which parties can utilize when they have exhausted existing procedures. The BMCD may act in a consulting or advisory capacity with one or both parties in order to improve the parties' relationship and, thereby, the effectiveness of existing procedures, and it can suggest alternatives and standby procedures if existing procedures fail.

The twin functions of sensitizing potential participants in conflict to third party techniques and, simultaneously, gaining insights and establishing relationships are an important prerequisite to developing a viable intervention role.

Moving to a duscussion of the more classical intervention roles, the Racial Negotiations Project defined, as a result of its case studies, seven different functions which had been performed by third party intervenors: [11]

1. The "legitimizer" performs the function of establishing the "right" of a protesting party to be a part of a negotiations process. In the labor-management analogy this process is institutionalized through the representation election and the designation of bargaining units and bargaining agents. However, in most racial disputes this is not the case. Further, the establishment often has a vested interest in decrying the legitimacy of such protesting

constituencies and/or its leaders. To the extent that this can be a basis for refusing "recognition," it is then possible to refuse to negotiate. In the studies undertaken this challenge to legitimacy occurs under a variety of guises.

This is a key issue. The granting of legitimacy by the establishment is a part of recognition, and as we have already seen, recognition is a threshold issue. In fact, a question of legitimacy is often an excuse for non-recognition.

2. The facilitator or expeditor's main concern is to create an atmosphere within which meaningful negotiations may occur. Such assistance might range from providing a place for meetings to take place, to acting as an "interpretor," to providing communications link, to providing the resources to support the costs of negotiations (and interventions).

3. The "resources expander" provides some basis for integrative bargaining by offering, usually conditional on the reaching of an agreement, an extra pie to slice.

4. The "arbitrator" or "arbiter of facts" plays a role roughly analogous to that of the arbitrator or fact-finder in labor-management relations, as described at the beginning of this chapter. Of course, the most formal manner in which this might occur is where the parties agree to a quasi-judicial determination of fact and award by a jointly selected third party. However, on an implicit basis the parties may accept the intervenor's interpretation of "fact" due to his own personal power and qualifications.

This concern with establishing facts is important in providing an aura for settlement. The more "facts" which can be established to the satisfaction of both sides, the fewer areas for disagreement to exist.

5. The "assistant" intervenor is likely to be found where the protesting constituency is unorganized, unsophisticated and/or requires informational inputs. In certain cases, the intervenor (prospective) may perceive that until the protesting constituency is better organized or changes its strategy it will be unable to apply sufficient sanctions to cause the establishment to seek to find a basis for settlement of the conflict. Or, the intervenor may find it necessary to assist the protestors in formulating its demands or gathering information before meaningful negotiations can occur. (Of course, this role plays hob with any concept of "neutrality!")

There is a conflict which arises when different persons or parties who are ostensibly of the same organization adopt differing postures and assume different roles as intervenors in a dispute. However, the role of assisting one or other of the parties may be a necessary prerequisite to meaningful negotiations and settlement of the dispute where the intervenor is concerned that the settlement be one which contributes to a more lasting resolution of the conflict. (otherwise, the "defeated" or unsuccessful party -- usually the protestors -- may well feel that they have been "tricked" and not only

is the conflict likely to reoccur, but animosities make it even more difficult to deal with.)

6. The "Scapegoat" is a role which is mentioned in every industrial relations textbook. The idea is that the union negotiator who got less than his members expected (or he had promised) and the management negotiator who conceded more can return to their constituents and blame it on the mediator. In racial negotiations where the intervenor appears likely to have even more power than would be the typical situaion in labor-management mediation, one might expect this to be an even more popular device.

7. The "cool out" role sometimes played by the intervenor is of particular concern to many blacks. One basis of this role is that the implied, if not explicit, purpose of intervention is to reach settlement. In terms of strategy, it may not be propitious for the protesting constituency to reach an agreement at that time. Since power is an amalgam of resources, numbers, and organization, the protesting constituency may perceive that there is a need to use a confrontation in order to increase militance and participation and to build an organization. Under such circumstances, should an intervenor attempt to sponsor meaningful negotiations, he is likely to be perceived in this "cool out" role by the black protestors. This problem may impose a

responsibility on the intervenor to be careful in planning the timing of his intervention, particularly where "he" has an individual power capacity.

The Board of Mediation for Community Disputes in reviewing its activities found that four of these "roles" or, more accurately, functions, had been of particular importance. The "assistant" role is analagous to the "non-intervention" activities of the Board, as outlined above. The other three roles were described in the Year-end Report, as follows: [12]

a) The "legitimizer"

One by-product of third party intervention is establishing the right of a protesting party to be part of the negotiation process. Established institutions recognize that to enter into any type of dialogue with a protest organization is to confer de facto recognition of that organization's "right" to represent its claimed constituency. Where institutions are willing to confer recognition they may be confused about which organization represents the community and who are its leaders or representatives. The third party may aid in making this determination.

Hence, the third party intervenor may have to (1) assume a degree of responsibility for a community protest organization; (2) reassure the established institution on such questions as the "reasonableness" of the protesters, their willingness to halt overt actions, and the likelihood

of their living up to agreements reached; and (3) confer legitimacy and a degree of stature in society.

Conversely, the BMCD on occasion has had to reassure community organizations regarding the willingness of an established organization to engage in meaningful negotiations.

b) The "resources expander"

The intervenor will often expand the resources available to the disputants (i.e., providing an "extra pie to slice"), so that both parties have something to gain from a joint resolution of their differences. Other resources provided by the intervenor may include information, advice and facilities.

The ability of the BMCD to provide such resources may be the basis of a request for mediation or may justify the BMCD's role in a dispute. The BMCD recognizes that either or both parties may have interests that go beyond or do not directly coincide with settlement of the dispute, and that it may be necessary to provide an incentive to parties in order that the mediation process can be given a change.

c) The "facilitator"

The facilitator creates an atmosphere within which meaningful negotiations may occur by providing a meeting place and resources to support the costs or negotiations and by acting as an interpreter and/or a communications link.

Automation House has been frequently used as a place to meet. It has provided neutral ground (in terms of ownership, function of the building, and location) where parties can be divorced from immediate pressures and sources of continuing confrontation.

The BMCD has had the resources to assume the costs of the mediation process for the parties, thereby removing an area of possible contention in negotiations.

The skills of the BMCD staff and consultants have proven valuable in aiding meaningful negotiations by setting agendas, chairing meetings and performing the art of mediation.

There are few non-aligned agencies available to provide information and the parties are frequently without resources, expertise, or inclination to obtain information for themselves. Were the BMCD unable or unwilling to provide constructive advice and information to a requesting party, the possibility of establishing effective mediation might be impeded.

The relatively underdeveloped relationships, which characterize many community disputes and attempts at settlement, require and provide scope for the broadest possible range of roles.

Again, rigid acceptance of the labor-management analogy would fail to recognize the very broad possibilities and opportunities in community disputes intervention.

The Techniques of the Mediator

In discussing the techniques employed by community mediators, it is useful to begin by identifying three general "steps" or areas of concern for the mediator: 1) how he gets in; 2) what he does once he is in; and 3) how he brings a dispute to some sort of conclusion. In discussing "What do mediators do in community disputes?", we will look at these three areas of concern separately.

How The Mediator Gains Entry

In this discussion, we will be drawing the majority of our conclusions from the experiences of the Board of Mediation for Community Disputes. (Brief descriptions of nine of the disputes in which the Board has been involved are attached to this paper as Appendix One.)

The Board has approached the problem of gaining entry to disputes on two levels. First, it has worked toward gaining general acceptance and repute throughout the New York community in order to become a "candidate" for intervenor in disputes. Once again excerpting from the Year-end Report; [13]

Establishing the Bases for Service

1. The problem

Beyond its responsibility to become and to remain informed about the milieu within which community disputes take place, the BMCD has also found it necessary to become "known" and to establish credentials both in the community at large and with various individuals, groups, and established organizations. To meet this need, the BMCD has soughts to invest its resources in a manner that familiarizes prospective users with the services it can offer and with the various roles which may be played by mediators in community conflict situations. These efforts were undertaken with an acknowledgement of the need to establish and protect the BMCD's impartial position of concern for the commonweal.

2. The approach

There are a number of ways in which these ends have been

pursued and, in general, accomplished. Mr. Haughton and Mrs. Watson have worked through their own established relationships to inform individuals and organizations of the BMCD and of the resources and services which it can offer to the New York community. These personal contacts, particularly important in establishing a reputation among potential users, have been used extensively. There have been, for example, some forty-five formal presentations to groups and organizations in the New York area, outlining the concept and purposes of the BMCD and, more basically, the potentials and limitations of the entire concept of the negotiations and mediation process. Concurrently, there have been individual meetings with local community leaders, with public officials, and with political leaders in order to convey the same information and discuss the same concepts. The courses being offered by the Center for Mediation and Conflict Resolution have also afforded an opportunity for the staff of the BMCD to reach community and public leaders.

Two separate brochures were prepared and distributed to selected groups and individuals. The first brochure, printed in English and Spanish, is designed to make individuals and organizations within the community aware of the BMCD and the types of services it could provide. The second, directed more toward officials of public agencies and of community groups, describes in some depth the BMCD, the mediation process, and the services which the BMCD can and has provided in community

dispute situations.

Turning from the problems of entry as related to the establishment and maintenance of an on-going intervention agency, each individual mediator in each individual situation faces the problem of entry. As was observed in discussing the analogy with labor-management systems, in many situations there is no mechanism whereby the intervenor can be effectively imposed upon the parties. However, in major crises situations, the chief executive, whether he be president, governor or mayor can traditionally step in and, by dint of his public office, appoint a mediator to act in a dispute. For example, the Chancellor of the New York City Schools imposed a board to attempt to resolve a dispute between a local school board and a community-parent group; the Mayor of Newark appointed a mediation panel to deal with that city's recent school crisis; and the Mayor of Philadelphia recently appointed Board of Mediation President Haughton to intervene in a housing dispute there.

The experience of the Board of Mediation for Community Disputes has been that one party to a dispute will usually ask its assistance and then the Board must gain the concurrence of the other party(ies). As suggested in the amount of "non-intervention" activity in which the Board is involved, this is not an easy task. The party who requests the assistance will typically be the one who is "hurting" and, therefore, perceives the Board as improving its chances of a satisfactory settlement. Conversely, the opposing party is likely to see the Board or intervenor as a threat to its own power.

When faced with this dilemma, one approach has been to meet with the second party and discuss ways in which the assistance of the Board might actually improve its position, perhaps by lessening the costs to all parties reaching the same agreement as would have been reached without the assistance of an intervenor. Similarly, through offering new or additional resources to both parties, the Board has in some instances been able to gain the acceptance of both sides.

There have also been some situations where the Board of Mediation for Community Disputes has never succeeded in gaining the formal acceptance of the parties, never succeeds in (or even attempts to) bring about a joint meeting, yet by acting as a communications link has succeeded in bringing about a jointly accepted accommodation.

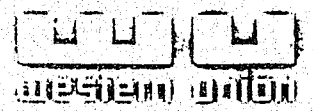
In part because the Board of Mediation for Community Disputes is still not known in all parts of the community and in part because even the concept of mediation is not even considered by many disputants, the Board may insert itself into a situation of its own volition. In some cases this has been done simply by being on the scene and available at a critical moment. In other cases the Board of Mediation for Community Disputes has "bought" its way into a dispute by offering and providing various facilities and resources to the parties in order to gain acceptance. As the Year-end Report observed: [14]

The perceived ability of a third party, such as the BMCD,

to expand the resources available to a particular party or parties may in some cases by the basis of the request for mediation. Thus, the BMCD may be called upon to use certain of its resources so as to justify or establish its role in a particular dispute. This function is both understandable and ethical, as it recognizes the reality that either or both parties or even an outsider may have interests that go beyond or do not coincide with a settlement within the existing resources. Furthermore, because the mediation of community disputes is a novel and frequently misunderstood procedure, often perceived by community organizations as a "cool-it" approach, it is sometimes necessary to provide an incentive to the parties in order that the mediation process be given a chance. The BMCD is committed to the premise that mediation is a continuing process which can and frequently does lead to a meaningful transfer of power, rather than the mere cooling-off of a dispute. This, accordingly, means that the Board has an obligation to use the resources at its disposal to encourage conflicting parties to familiarize themselves with the process of mediation and, through it, to enter into an interchange leading to the joint resolution of their problems.

Wherever possible, however, the Board of Mediation for Community Disputes attempts to obtain a formal joint request from the parties for its services. In several cases this has been achieved in the form of a telegram requesting the assistance of the Board, as reproduced in Exhibit One.

EXHIBIT ONE



AHA352 (43)PRLBD405
B KLA077 PD KL NEW YORK NY 25 500P EDT
BOARD OF MEDIATION FOR COMMUNITY DESPUTES
49 EAST 68 ST NYK TEL 628 1010
THERE IS A PROBLEM INVOLVING ALLEGED DISCRIMINATION AT HILLSIDE HOUSES 3480 SEYMOUR AVENUE BRONX ON BEHALF OF THE EMPLOYER WE RESPECTUFFLY REQUEST THE ASS@STANCE OF BOARD IN DEALING WITH THIS PROBLEM
HILLSIDE HOUSING CORP BY NORMAN E KING PRESIDENT.

SF-1201 (R5-69)

Following the drafting of the telegram (albeit not its receipt), Haughton and Julio Rodriguez, a consultant to the Board, went to the Corporation offices where the sit-in was under way. Following lengthy discussions, facilitated by the fact that Rodriguez and some of the leaders of the sit-in were acquainted and that Haughton and another leader of the sit-in had common experiences and acquaintances through relationships in the U.A.W., as well as Haughton's long standing acquaintance with legal counsel for the Corporation, the joint agreement was achieved which is reproduced in Exhibit Two.

EXHIBIT TWO

The undersigned agree herewith to submit the following isssues to meaningful mediation under the auspices of the Board of Mediation for Community Disputes:

1. Identify all the vacant apartments
2. Give lsttpreference to Blacks and Puerto Ricans, including employees, by date of application
3. Ethnic breakdown of present tenants
4. Alleged harassment of minority groups and equal opportunity for upgrading of minority groups
5. Alleged discrimination in the use of facilities

Tu by 10:00 AM

Such mediation must commence in formal session/by June 2, 1970, at Automation House, 49 East 68th. St.

Hellside Housing Corp.

Nat Asso. Equal Rights Inc.

Witnessed for the Board of Mediation for Community Disputes

Randolph W. Hamilton, President

Julio Rodriguez, Consultant

May 26, 1970

While such neatly tied together entrances are not always possible, this situation does illustrate what the Board of Mediation for Community Disputes has found to be a situation very felicitous to effective mediation. Both parties both accept and are, to some degree, bound to the process.

Where entrance into a dispute situation is as a result of appointment by a mayor or other cheif executive (as discussed above), it is also necessary to receive some formal notice of appointment. To some extent this formal notice of appointment, since copies will probably be forwarded to the parties involved, will serve as the mediator's "credentials." Exhibit Three is a facsimile of a recent "invitation" of this type.

The Interactional Techniques

Generally speaking, the same interactional or interpersonal techniques that are useful in settling any dispute -- whether labor-management, international or marital -- will be useful in community disputes settlement. Since these techniques are generally familiar, in this section we will concentrate on a few of the aspects of mediating community disputes which the Board of Mediation has found to be particularly unusual, difficult or common. (It should be noted that a good deal -- and, in some cases, all -- of the mediators interactional effort takes place outside of formal joint meetings between the disputants.)

Large Delegations: From one of its first cases, the George Washington High School dispute -- the Board has been conscious of the fact that community groups are unlikely to send only one or two representatives to a mediation session. There are a variety of reasons for this. First, the power of community groups is frequently based on physical numbers and, as a result, there is some need to demonstrate the continued viability of their power base. During the George Washington dispute, for example, there were as

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MR RONALD HAUGHTON, EXECUTIVE DIRECTOR, BOARD OF MEDIATION

OF COMMUNITY DISPUTES, DLY .75 PD

49 EAST 68 ST NYK

1971 MAY 13 AM 2 57

CONFIRMING OUR TELEPHONE CONVERSATION I AM TODAY INVITING YOU TO COME TO PHILADELPHIA IN AN EFFORT TO RESOLVE THE DISPUTE PRESENTLY EXISTING AT THE PROPOSED WHITMAN HOUSING PROJECT LOCATED AT FRONT AND SHUNK STREETS. THE CHAIRMAN OF THE PHILADELPHIA HOUSING AUTHORITY BOARD, MR. GORDON CAVANAUGH, AND HIS ASSOCIATES WILL BE ASSEMBLED AT THEIR OFFICE, 2012 CHESTNUT STREET, PHILADELPHIA , AT FOUR OCLOCK P.M. SO THAT THEY CAN ACQUAINT YOU WITH THE DETAILS, ON WEDNESDAY, MAY 26TH.

I HAVE ALSO MADE ARRANGEMENTS FOR YOU TO MEET WITH MR. FRED DRUGING, PRESIDENT OF THE WHITMAN COMMUNITY GROUP, AT HIS HOM E, 341 RITNER STREET. TELEPHONE NUMBER FU 9-7799, AT SIX OCLOCK P.M. HIS COMMITTEE WILL BE GLAD TO MEET WITH YOU AT THAT TIM E. YOUR COURTESY IN FOLLOWING THROUGH AS INDICATED WILL BE VERY MUCH APPRECIATED BY MYSELF AND THE PHILADELPHIA CITY ADM INISTRATION. YOU MAY REACH ME THROUGH MU 6-1776 AT ANY HOUR OF THE DAY OR NIGHT

JAMES H J TATE MAYOR

2012 26TH 341 FU 9-7799 MU 6-1776.

PO FM FAX HFX PHILADELPHIA PENN 25 402P EDT.(245)

EXHIBIT THREE

many as 250 men, women and children on hand at one time with about 70 remaining through an entire weekend of negotiations. Second, there may be no clear-cut and experienced heirarchy of leadership in many newly emerged and often ad hoc groups. Third, many community groups are coalitions and/or alliances of a number of smaller community organizations and the necessity that all organizations be represented on a "negotiating committee" makes a large committee almost inevitable.

Unfortunately, large delegations can result in a number of problems for the mediator. The representatives of an established institution may, for example, demand equal numbers. The mediator may deal with this type of situation by caucusing with institution representatives to discuss why they want equal numbers. It can usually be demonstrated that this is a dummy issue and the demand will be dropped on the basis that it really doesn't matter.

The mediator may also be faced with a large delegation having several different spokesmen. In such cases he may find that his first mediation function is in separate caucus with the community delegation. (Note that having several spokesmen may also be a negotiating tactic.)

Another difficulty with a large delegation is working out the specific final agreement, if any. Here, one course is for the mediator to work toward having each party appoint two or three delegates to work as sub-committees once possible agreement is in sight.

While large delegations may be the result of the three factors mentioned above, they may also be the result of there being several

different parties to a dispute. As a result there may not only be large delegations, but several delegations.

Multiplicity of Parties: As we have already noted, community conflict seldom involves only two parties. Typically, the mediator must deal with a multiplicity of parties, each of whom has its own agenda and own concerns. One of the problems then becomes not only how do you reconcile all of these separate positions into simple accommodation acceptable to all, but how do you bind all of the parties who can destroy an agreement to that agreement?

The reality is, you frequently don't. At Hillside Housing, for example, the tenants who were not a part of the negotiations but who later claimed to be a party at interest were able to prevent the "understanding" reached from being implemented.

In many situations, the mediator will try to define the parties to the dispute in terms of their position regarding the key issue(s) rather than on their organizational base. (To this extent he may actually work toward helping the parties to define and build possible coalitions.) There may, then, be subsidiary agreement whereby the coalescing parties trade-off between themselves support for specific issues.

Whether or not the mediator has the right (or responsibility) to introduce parties not presently involved in a dispute (i.e. the tenants at Hillside) into the situation in interest of achieving a viable agreement is a question which should be raised.

Non-negotiable Demands: Non-negotiable demands seem almost an inevitable part of community disputes. Some of these are, by definition, non-negotiable. For example, the demands that the representatives selected by the community be the leaders with whom

the institution actually deals. Other non-negotiable demands may well be based in rhetoric. If there is any general approach that successful mediators seem to follow it is that there is little to be gained by arguing whether or not demands are negotiable. Generally, it is possible to begin to deal with other issues -- or even "create" other issues such as where the meeting will be held, etc. -- and non-negotiable demands which arise out of rhetoric have a way of being resolved. Others may be accepted in reality without overt statements that would be perceived as "giving-in."

Legitimate Representatives: It could almost be stated as a law that at some point in the proceedings the institution will challenge whether or not the spokesmen for the protestors represent the community or constituency they claim to speak for. Inevitably, spokesmen for institutions will also point out that they know the community and "what the community really wants" better than the community spokesmen. It is unfortunate that the community does not challenge the legitimacy of the institution to represent the interests it claims to speak for.

The reality, of course, is that it is the power that the party represents that resulted in negotiations taking place. The mediator will have to listen to the rhetoric on both sides but should be primarily concerned with ensuring that it does not result in animosities which destroy any possibility of a joint agreement.

Amnesty: Demands for amnesty become increasingly a part of community dispute as repression becomes a more acceptable mode of dealing with controversy and confrontation. One difficulty is that when police and judicial authorities become involved they must

also be a part of any accommodation that is reached. This is made even more difficult to deal with where authorities demand an assurance that they will not be asked to drop criminal charges at some later date, becoming scape goats, before any police or similar action will be taken. Another difficulty which may occur is that the protestors may demand assurances of amnesty before dealing with other agenda items while an institution will see amnesty only as the quid pro quo for a viable agreement being reached.

The mediator may find that the best approach under such circumstances is to find some way of having the court request that he mediate the dispute with the courts rather than the institution holding amnesty as the quid pro quo for an accommodation. Alternatively, the mediator may, as a public person, find an opportunity to confer with the judge and prosecution involved in an informal and careful manner so long as he takes pains not to abuse such a privilege.

In other situations, the mediator may follow the form of treating amnesty as the premier issue but in reality take a package approach which involves all or most of the key issues. In such an approach, formal face-to-face mediation may not occur and the mediator will act as a broker-communicator between the parties.

Lack of Clear Issues: In community disputes, having a list of agreed upon clear-cut issues such as emerged in the Hillside Housing Case is the exception rather than the rule. In other situations it becomes quickly apparent that either the parties do not agree on what the issues are or that the hidden agenda is far more important than items officially "on the table." Here the mediator must use his skills -- either with the parties together or in

caucus -- to find some common agreement. He may even find it necessary to use such techniques as preparing his own agenda for a meeting, thus giving the parties an opportunity to react to his rather than to each other's definition of the issues in conflict.

The Board has found that in some instances that the dispute can really be explained only in terms of underlying animosities, often based on misunderstandings, and the so-called issues are little more than excuses to do battle. In at least one situation of this type the Board has served as a communications device and meeting convenor performing a caretaker function for the parties. After a few cathartic sessions, the parties have begun to construct and reconstruct their own communications linkages.

Finally, situations will occur where the mediator is able to identify a single underlying issue of which other so-called issues are symptomatic. Where this occurs, settlement -- or even movement -- on that key issue can result in other concerns being swept aside.

This paper does not pretend that the difficult, unusual or recurring problems that are likely to be confronted in community disputes mediation have been exhausted. Only a very few have even been alluded to. It is, however, intended that these will serve as a beginning for and catalyst to continued discussion.

As we have noted there are a number of personal skill techniques which the mediator will develop as a part of his personal style. These include such skills as:

--the ability to build personal credibility

--knowing when to separate the parties and when to keep them together;

--whether or not to take notes during a session;

--whether to get little agreements and build to the hard questions or start with the "sticklers";

--the ability to write and try out on the parties, jointly and separately, possible agreements;

--the ability to control conflict so that the parties "move" each other but don't get into fixed positions;

--how to rephrase statements and demands so that they remain acceptable to their author yet are as non-threatening as possible to the other party;

--and similar interactional techniques.

It is evident that the approach of the mediator must inevitably be the product of 1) his own skills and experiences, 2) the parties to the dispute, and 3) the situation within which the dispute occurs. These are not presented in "value" but, rather, in prepotent order. The mediator who, as a result of his experience, is unable to perceive and relate to the peculiar surroundings of highly variable individual community disputes, will not attempt or be able to gain the insights essential to positive intervention. On the other hand, it is not entirely trite to observe that the more empathetic the mediator is as a result of his experience, the more likely it is that he will perceive the way in which his skills can be used to best advantage. To this extent, the mediator transcends all "models" or situations.

Techniques in Finding Closure

Finding some satisfactory way of bringing closure to a dispute is a problem which arises in all disputes. However, while in labor-management disputes there is some mechansim for formalizing agreement, in community disputes the mediator must be innovative in accomplishing the same end. This problem was reviewed in considerable depth in the Year-end Report, relevant passages of which are abstracted below:[15]

> Labor disputes (other than those involving the day-to-day settlement of grievances), like football games, typically occur during prescribed periods. At the end of the prescribed period, overt conflict over issues included in the agreement will not occur until the next scheduled "game," one, two, or three years hence. The agreement is codified and recorded in a legally accepted contract which is enforceable both through internal grievance-arbitration systems and, externally, through the courts and the National Labor Relations Board.
>
> Community disputes tend to be open-ended and subject to renegotiations. There are a number of reasons for this lack of closure. First, the typical agreement emerging

out of a community dispute does not have a specified time during which it is operative. Further, the agreement often is not consummated, however formal it may be, because the agreement is really a "solution" to a power equation existing between the parties and, should that equation change, the solution would also change. Thus, for example, should a community group suffer a decrease in relative power, an established organization might decide that it is unnecessary to fulfill all or part of the agreement. Should the community group increase its relative power, it might then press for increased gains.

Second, the difficulty of identifying the parties at interest in a dispute may result in an organization not being included in an agreement, but interested in and with power relative to that agreement, demanding that negotiations be reopened. The Board was faced with this type of circumstances when another party requested a reopening of the formal, written Hillside Housing Agreement. The exigencies of the situation were such that the property owner did reopen and reach a settlement with the new party on a particular item. This did not jeopardize the whole agreement, as the community party of the first part did

not oppose the "amendment" initiated by the second spokesman and implemented by the owners:

Third, a given institution might have several overlapping relationships with a variety of parties -- such as employees, consumers, and owners -- and an agreement with one party may not only fail to settle an issue with another party, but may even precipitate a dispute with it over issues which arise out of the new agreement.

Fourth, these several relationships -- and even a single relationship -- are frequently so complicated as to make it almost impossible to include all of their important aspects in any single agreement. As new issues gain ascendancy, perhaps precisely because others have been settled, a new agreement is required. Moreover, the reopening of a dispute and agreement on new issues could throw previously agreed upon issues back into contention.

Finally, because third parties in community disputes are typically not powerless and, as discussed above, will bring to bear a variety of their own resources, the continued application of pressure by a third party may be

necessary in order to keep a particular agreement viable.

An important ingredient of the resolution of the dispute between the Young Lords and the Church was a commitment by the Church to provide for the establishment of a day care center with community participation on its Board of Directors, a narcotics information program, and a housing program. An unwritten quid pro quo was that Badillo and the attorneys for the parties would urge the court that charges against YLO members be dropped.

By August, however, little visible progress had been made on these demands and the BMCD began to hear rumors of an impending renewal of the confrontation. In late August, the BMCD, relaying an inquiry from Badillo, asked the attorney for the United Methodist Church what progress had been made in implementing the various programs.

On October 18, following the death of a YLO member, who prison officials said hanged himself in his cell, the Young Lords ended a funeral cortege by bearing the coffin to the Church, reoccupying the building in the process.

The BMCD thereupon renewed its inquiry as to what had been accomplished in implementing the programs. Shortly thereafter, copies of a letter dated October 15, and addressed to the attorney for the Church from the Executive Secretary of the New York City Society of the United Methodist Church were hand-delivered to the BMCD offices and to Badillo. The letter indicated that, for a number of reasons, little progress in implementing the Church's commitment of February 24, 1970, had been made. The day care center had progressed only to the point of asking bids (October 8, 1970).

This second occupation was ended in November, 1970. without agreement and with only informal mediation by the BMCD.

This situation could be typified as one in which the holder of certain rights, with the overt pressure released, did not or could not, for whatever reason, deliver promptly on its commitment.

It could be further argued that the challenging organization chose to interpret the delays in the implementation of commitments as an invitation to renew the confrontation. Conversely, the Church argued that it was prevented by the time realities of carrying out its commitments to move more expeditiously. It could also be argued that the YLO, with the threat of court action no longer present and its power increased by a series of confrontations with other protagonists, saw the now existing power equation as no longer requiring what it perceived as the minimal gains earlier agreed upon. The actual process is not as important as the fact that the contents of the letter from Badillo to Justice Streit of February 24, 1970, were no longer relevant in the realities of October, 1970.

In the labor-management analogy, the parties are defined and exclusive representation is determined by an

elections procedure applied by a third party (a government agency). In community disputes, the principals -- including the intervenor -- must make judgements based on less clear cut assessments of the existing situation, just as was the case in labor-management relations prior to the passage of the National Labor Relations Act in 1935. If their assessments of power and parties are incorrect, they will soon discover their error. At Hillside, for example, the alternate Puerto Rican spokesman had sufficient power to accomplish a reopening on a specific issue. The State Housing Commission, in spite of the position of the State Commission on Civil Rights, had sufficient power to stay execution of the basic item in the understanding. This action was sufficiently in accord with the desires of the tenants organization that it decided not to protest further.

The type of situation where the passing of time leads to consecutive but separate disputes involving different parties is illustrated by a dispute between a consortium which purchased property containing several old apartment houses, which it intended to raze and replace with a home for the aged.

The dispute came to the attention of the BMCD after some 300 Spanish-speaking squatters had occupied three buildings scheduled for demolition. The owner, Morningside Houses, Inc., is a private non-profit corporation.

Morningside House is headed by a Board of Directors which includes several clerics as well as representatives of such local organizations as St. Luke's Hospital, all of whom are to some degree sensitive regarding their posture in the community. This factor gave added strength to community pressures. Furthermore, Morningside House could not realistically expect to remove forcibly 300 squatters, including some 200 women and children, in an area with a large Spanish-speaking population and still proceed to build the proposed facility for the aged.

An accommodation was reached. The President of Morningside House reportedly cancelled the demolition permit, thereby resuming ownership of the structures, and no longer intends to construct a facility for the aged on the site. Although he has no objections to utilities being restored, he will take no responsibility for those services. The squatters and their supporters are apparently responsible for heating (the main boiler had been removed prior to occupation) and, presumably, for any repairs to or maintenance of the structures. No rent is being collected and there is no specified time period during which this accommodation will remain in effect. Meanwhile, it is understood that the squatters are considering incorporating and collecting "renovating money" from the "tenants" on a regular basis.

This situation was preceded by the resolution of an earlier dispute involving the relocation of the original tenants of the buildings to be razed. As a part of that first settlement, several of the

> tenants were given a type of relocation allowance and Morningside House agreed not to raze two of the five buildings which were on the property. The link between the two dispute situations is that two or three of the original tenants had refused to leave and, at the time the squatters had entered, had not yet been evicted. Thus, Morningside House was required to provide services for the "legal" tenants and the squatters could take advantage of that situation.

It is interesting to note that one of the early concerns of the President of Morningside House, Inc. was that he receive some assurance that, if he reached an accommodation with a first group of squatters, another group of squatters would not supplant them. Of course, in the particular circumstances, there was no one who could provide such assurance.

These various concerns and problems in gaining closure suggest that the degree of "permanancy" in any apparent "ending" to a dispute will be highly variable. The question which must be addressed by mediators is, to what extent should the temporal viability of the agreement be one of the concerns of the intervenor?

The problem of the viability of agreements also raises the question of the extent to which the mediator should play an enforcement role, an area in which the Board has had very limited experience.

It may be a dimension in which any continuing agency concerned with the mediation of community disputes should involve iteself at least to the extent of following up and recording and, perhaps, publicizing compliance or non-compliance.

Important in closure are the mechanics whereby agreements are formalized. Frequently, the concern of institutions that they maintain the appearance of not "negotiating under pressure" or not overtly making any formal agreement with protest constituencies often results in imaginative efforts to achieve agreements without appearing to do so. For example, in the Hillside Housing dispute the parties reached an understanding which provided positive steps to increase the proportion of Black and Puerto Rican tenants. In this case, the Corporation minimized the overt challenge to its ownership rights by having the "understanding" formalized without any jointly signed agreement. A letter was written by the Corporation to Mr. Haughton, as a representative of the Board, stating the "<u>unilateral</u>" actions it was prepared to take. These were based on a prior understanding which had been reached between the parties during mediated negotiating sessions. The Corporation at all times avoided the use of the term "agreement", referring always to the "understanding." The community spokesman then wrote a separate

letter to Haughton which stated:

> We have been notified of the policies and procedures adopted by the Hillside Housing Corporation as set forth in the letter to you dated June 5, 1970.
>
> We believe that such policies and procedures constitute a reasonable and equitable resolution of all of the matters under discussion at your office.

In the dispute between the Young Lords and the church the agreement was even less overtly attributable to negotiations and a joint agreement between the parties. The church decided, on the basis of the existing realities of power, to take apparently unilateral steps to move toward "relevant" social action programs. Specifically, it announced that it intended 1) to establish a day care center, 2) to explore possible involvement with the Adopt-A-Building program, and 3) to establish a narcotics counselling service. It then, as a quid pro quo, joined with the attorneys for the Young Lords in petitioning the court that criminal and civil charges be dropped. Since Herman Badillo, a Director of the Board of Mediation for Community Disputes, was the court-appointed mediator, the court had given some indication that it would be amenable to such a petition, should an agreement be reached. (See our discussion of the courts and the problems of "amnesty", above).

dup. page

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Finally, an even less formal agreement -- really a stand-off -- was reached in the Morningside Squatters dispute. The President of Morningside House cancelled the demolition permit thereby resuming ownership of the structures. While he would take no responsibility for essential services he had no objections to the utilities being restored and other arrangements were made by the squatters. The squatters and their supporters assumed responsibility for heating, (the main boiler had been removed prior to occupation) and for repairs to and maintenance of the structures. No rent is being collected and there is no specified time period during which this accommodation will remain in effect. (Meanwhile, it is understood that the squatters are considering incorporating and collecting "renovating money" from the "tenants" on a regular basis.)

* * *

Perhaps the best advice for a mediator in community disputes, therefore, is to "stay loose" regarding possible ways of bringing disputes to a formal jointly-satisfactory conclusion: The parties will prove to be very innovative.

FOOTNOTES

[1]W. Ellison Chalmers and Gerald W. Cormick, "Collective Bargaining in Racial Disputes?," Issues in Industrial Society (Vol. 1, No. 3, 1970), pp. 8-16.

[2]F. Ray Marshall and Arvil Van Adams, "The Memphis Public Employees Strike," and James E. Blackwell and Marie R. Haug, "The Strike by Cleveland Water Works Employees," in W. Ellison Chalmers and Gerald W. Cormick's, Racial Conflict and Negotiations: Perspectives and First Case Studies, (1971) pp. 71-103 and pp. 111-147.

[3]W. Ellison Chalmers and Gerald W. Cormick, Racial Negotiations Potentials and Limitations: Final Report to the Ford Foundation, (Institute of Labor and Industrial Relations, University of Michigan-Wayne State University, October, 1970) pp. 251-255.

[4]Ibid. pp. 260.

[5]Roger Fisher, "International Diplomacy's Implications for Solving Domestic Conflicts," Issues in Industrial Society, (op. cit.) pp. 17-21.

[6]John Burton, "Controlled Communication in the Resolution of Conflict," Paper presented at the Sixty-fifth Annual Meeting of the American Political Science Association, New York, N.Y., September, 1969.

[7]Chalmers and Cormick, Racial Negotiations: Final Report, pp. 258-9.

[8]Board of Mediation for Community Disputes, Year-end Report to the Ford Foundation, December 31, 1970, pp. 76-80.

[9]Rudy Johnson, "Mediator Helps in Local Fights," New York Times, Sunday, June 21, 1970.

[10]Board of Mediation, Year-end Report, pp. 76-80.

[11]Chalmers and Cormick, Racial Negotiations: Final Report, pp. 254-71.

[12]Board of Mediation, Year-end Report, pp. 7-9.

[13]Ibid., pp. 25-28.

[14]Ibid., pp. 42-3.

[15]Ibid., pp. 48-58.

[16]Even here, in the case of jurisdictional disputes, a settlement involving two established parties can precipitate a dispute in a separately defined and certified bargaining unit.

APPENDIX ONE

Illustrative Case Synopses

SELECTED CASE SYNOPSES

Nine case synopses have been used to illustrate the experience of the Board of Mediation for Community Disputes during its first year of operation. The cases have been selected for the insights which they offer into some of the roles possible for a continuing center for ad hoc mediation, such as the BMCD, to play. Accordingly, most of the cases which are included have been referred to within the body of the Report.

These synopses will, therefore, also place in the broader context some of the brief descriptions which are interspersed throughout the body of the Report.

Finally, the reader will note that all of the situations which are included in this Appendix are in the category of what has been described in the Report as the "intervention role" of the BMCD.

During the second year, the Board will undertake more comprehensive studies of the cases in which it has been involved over the two-year period. It is expected that these in-depth studies will comprise the body of the Final Report to the Ford Foundation.

P.S. 2 DISPUTE

Setting

Located on Manhattan's lower east side, P.S. 2 is in what was referred to as the Two Bridges Model School District. This district, along with Ocean Hill-Brownsville and I.S. 201, were demonstration projects prior to the decentralization of the New York City school system.

When the United Federation of Teachers went on strike two years ago in the Ocean Hill-Brownsville conflict, the Two Bridges Governing Board made the decision to keep its schools open. Some parents supported the UFT strike, while others did not. Likewise, there were some teachers in the district who did not support the strike. Because many of the members on the Governing Board were not only representatives from schools within the district but also, in a number of instances, para-professionals in those schools, the divisiveness spread throughout the district in a variety of forms.

At P.S. 2, a deep-seated distrust between two parent groups --each composed of an almost identical racial and ethnic mix--was the result of nearly two years of conflict.

The student population of P.S. 2 is 45 per cent black, 35 per cent Chinese, and the remaining 20 per cent is comprised of Puerto Rican, Italian, and Jewish. At the time that the Board of Mediation entered the dispute, the acting principal was black. This principal had been hired by the Governing Board after a series of meetings with parent groups. A majority of the teachers and the assistant principal were white.

Because almost all of the parents had very young children, most of the meetings with the parties were held during the day either at the school or at the District Superintendent's office. One mediation session was held at Automation House with several representatives from each of the parent groups.

Issues

At a meeting in early March, 1970, attended by spokesmen for each of the two parent groups, their attorneys, the District Superintendent, representatives of the Board of Education and BMCD staff, two specific areas of difference between the parties were defined and focused upon--one relating to which parent group properly represented the P.S. 2 Parent Association and the other regarding the acceptability of the school principal.

Although the acting principal was strongly supported by a group of parents who had opposed the UFT strike, she was opposed by the more tradition-oriented parents who had supported the strike.

An initial resolution to the two major issues of the dispute was reached at a meeting on March 30, 1970, and embodied in a "Memorandum of Agreement." The groups agreed (1) that the principal's salary be upgraded retroactively from the acting to the regular principal's rate; (2) that she remain as acting principal until June 30, 1970; (3) that there be an election held during the second week of May, supervised by the BMCD, to elect new officers for the Parent Association; and (4) that the new officers would assume their positions as of July 1, 1970.

However, in early April, it became apparent that one group was moving to force the principal to leave before the

agreed date. The BMCD wrote to the attorneys and the Assistant Superintendent to suggest that, even though agreement as to the item in the Memorandum relating to the principal had not been consumated, they might wish to proceed with the election as outlined and scheduled in the Memorandum.

Because of the distrust between the two groups, the normally routine process of establishing election procedures became a major arena for disagreement. The mediation effort which followed was complicated by the lack of clearly defined spokesmen for either group, particularly as a result of the respective officers of the two Parent Associations not necessarily being the actual leaders for the groups. However, after an extensive joint mediation session, held at Automation House with representatives chosen by the informal power leadership, election procedures were agreed upon. The procedures were formally approved when the president for each parent group affixed her signature to a description of the procedures to be followed.

Parties to the Dispute

The parties to the dispute are the two parent groups, each of which was initially represented by an attorney. Also involved in the dispute was P.S. 2 administrative and teaching staff, the Two Bridges District Office, and the Board of Education. The moving party in getting the mediation process started was the Assistant Superintendent. He and the Superintendent played a very constructive role throughout the proceedings.

Role(s) of the Board of Mediation for Community Disputes

Besides developing a clarification of and focus on the issues, the BMCD identified leadership and, in several cases, distinguished them from spokesmen in each of the groups.

When the two major items in dispute were narrowed to the one on elections, the BMCD proposed election procedures and mediated points of difference between the groups, including campaigning procedures, time and date for the election, and voting procedures.

The BMCD performed a number of "mechanical" functions in the supervision of the election, such as (a) the provision of Spanish-speaking and Chinese-speaking interpretors,

(b) assisting in the appointment of poll watchers, (c) breaking up verbal and physical disputes between the supporters of the two slates (and, in the process, referring to and interpreting the agreed upon election procedures), (d) preparing the lists of eligible parent voters, and (e) counting the ballots cast and reporting upon the results of the election.

Outcome

One slate won six of the seven contested positions by a clear and consistent majority. It was not possible to certify a winner for the seventh position, that of Corresponding Secretary. This position was left unfilled. Noteworthy is the fact that, despite the intense concern of those who were directly involved in the dispute, the election turnout was low, with less than a third of the parent population voting.

The Board's involvement has resulted in an important continuing relationship with some of the principles in the conflict--both "winners" and "losers"--regarding issues involving the wider Two Bridges community.

THE P.S. 116 PARENT DISPUTE

Setting

Public School 116 is an elementary school located on Manhattan's east side. Some thirty-five per cent of its students are Puerto Rican. The dispute, which is between two parent groups, grew out of a disagreement over a proposal to a foundation asking support for a community school. Although the proposal has never been submitted, and is not likely to be, the lines have remained tightly drawn over this issue.

The dispute came to the attention of the Board of Mediation for Community Disputes during the pendency of a court hearing, when the attorneys for both groups jointly petitioned the court to dismiss the case. This request was subject to the agreement of the parties to mediate their differences under the auspices of the BMCD. The petition was granted and the case was accepted by the Board.

Issues

The only apparent issue between the parties was personal differences arising out of the proposal mentioned above. Allegedly, a central figure in the dispute had prepared the proposal without adequate consultation with the Parent Teacher Association, under whose sponsorship it was to have been presented. The strength of feelings which thereafter developed were such that the P.T.A. was effectively immobilized.

Parties to the Dispute

The parties to the dispute are the two parent groups: One parent group supports the now defunct proposal and the other opposes it. The supporting group apparently has support from Spanish-speaking parents.

Role(s) of the Board of Mediation for Community Dispute

Since the mediation agreement was accomplished, the BMCD has conducted a series of meetings. The first meeting was attended by about fifteen parents who were closely identified with one or the other group. However, since all parents have been invited to subsequent meetings, attendance has increased substantially.

The BMCD has now assumed de facto "receivership" of the P.T.A., both chairing the meetings and making the necessary arrangement for them. The whole process is being actively encouraged by the Community School Board.

Outcome

The BMCD's involvement in this particular dispute is continuing. At the latest meeting (February 24, 1971), a series of informal committees was appointed to provide some structure for a new P.T.A. and to enable the parents and teachers to begin to interact. Formal elections have not been held to date, and there is reluctance to their being scheduled at this time. Many parents fear that to hold elections at this juncture could exacerbate an improving situation.

I.S. 49 PARENT ASSOCIATION ELECTION

Setting

Intermediate School 49 is located in the Williamsburg section of Brooklyn. Williamsburg has a mixed population, approximately one half of whom are Spanish-speaking. The remaining population is composed of approximately equal numbers of black and Chassidim residents (the latter are a Jewish sect). I.S. 49 had been the center of a continuing conflict which had resulted in the dissolution of the Parent Association and the appointment of new officers by the principal, a lengthy boycott of classes, the involvement of the Community School Board, and, eventually, the arrest of the principal. The scheduled Parent Association election reflected this backround and became the arena in which control over the Parent Association would be decided. Two slates of candidates had been nominated.

The campaign for the various offices was marked by allegations relating to the involvement of the school administration and the tactics used. There was considerable concern regarding the handling of the actual election process and the necessity to avoid any incidents which could lead to a challenge of the election results.

Both the Honest Battot Association and the American Arbitration Association had been asked to supervise the election. However, they both had indicated that they would be unable to do so and the Board of Mediation for Community Disputes was suggested by Board of Education staff as a possible alternature. At about 9:30 AM on the morning of the scheduled election, the Superintendent for the local School Board telephoned the BMCD to ask if it would supervise the election. The BMCD agreed to do so.

Issues

Insofar as the BMCD was concerned the "issue" in this situation was to supervise the scheduled election of officers for the Parent Association. Because it was alleged that there had been irregularities during the campaign leading up to the election, the BMCD took care to associate itself only with the election procedures, noting that it could not be held accountable for any challenges to the election which arose out of any incidents preceeding the actual balloting.

Parties

The immediate parties to the dispute were the competing slates of candidates. However, one slate had allegedly received support from the school administration and the other was supported by some local community organizations.

As a result of the incidents leading up to the calling of the election, the local Community School Board was concerned with the election. Certain of the Board members were present during the balloting. The request that the BMCD supervise the election was made by the District Superintendent's office.

Role(s) of the Board of Mediation for Community Disputes

The BMCD staff performed the variety of mechanical duties usually associated with the supervision of elections, including such tasks as controlling campaigning at the polling place, ascertaining that all voters were parents of children enrolled at I.S. 49, counting the ballots, and reporting the election results. Since many of the parents at I.S. 49 were Spanish-speaking, it was also necessary to obtain the services of a number of interpretors.

Because the actual balloting was only a part of a continuing dispute, the first order of business for BMCD staff upon arriving at the school was to achieve an understanding as to the election procedures between the representatives of the two slates of candidates. Such an agreement was reached and formally endorsed by the representatives. Its provisions included the distribution of campaign literature, the number of poll-watchers, the manner in which voter eligibility would be checked, and a time limit for challenges.

Included as signatory to the agreement was one woman who, although active in the community and supporting one of the slates, had no formal role in the election.

The BMCD publicly tallied the ballots in the school auditorium immediately following the closing of the polls.

Outcome

One slate won all of the positions being contested by a clear majority. The election was held without incident and there were no subsequent challenges to the results.

GEORGE WASHINGTON HIGH SCHOOL DISPUTE

Setting

George Washington High School (GWHS) is located in the predominantly white middle-class area of Washington Heights in upper Manhattan. The principal and a majority of the 275 teachers were white. During the crisis in early 1970, four men, all of whom were white, successively assumed the duties of principal. This same period at the school was marked by violence involving students, parents, teachers, and police; arrests; and suspensions. The 4700 students are 38 per cent Spanish-speaking, 32 per cent black, and 30 per cent white. GWHS is over-crowded and in need of many special services.

Mediation sessions were held at Automation House and lasted nearly a total of forty-two hours, from Friday evening, April 17, to early Monday morning, April 20.

Issues

A demand for a student grievance table served as the focal point for the mediation. Other issues included community control of the school, student participation, student arrests and suspensions, and patrol and supervision of the school cafeteria. Influencing both the perceptions of the parties and their commitment to resolution of the dispute were the following factors: community sentiment going back to Ocean Hill-Brownsville; parents pressing for student rights and community control versus more traditionally oriented parents; differences based on race and ensuing conflicts among various student groups; and "community" versus police, heightened by police presence and action.

Parties to the Dispute

Immediate parties to the dispute were the GWHS administration, represented by the principal of the school, and the several groups within the GWHS Parent Association. There was no president of the Association; rather, there were three Vice-Presidents, each apparently representing a different parent grouping--conservative, moderate, or militant (the "table group").

Other parties with an interest in the dispute were the New York City Board of Education, diverse GWHS student

groups, the Borough President, GWHS teaching staff, the United Federation of Teachers, the United Parents Association, the Mayor's Urban Task Force, United Bronx Parents, the New York Civil Liberties Union, District 6 Local School Board, the Council of Supervisory Associations, the Student Government Organization, and the GWHS Consultative Council (an amalgam of students, community, and teacher representatives).

Role(s) of the Board of Mediation for Community Disputes

The Board of Mediation for Community Disputes provided a setting for the mediation sessions at Automation House, developed a clarification of and focus on the issues, brought in outside resources, identified the parties in the dispute, and employed mediation techniques leading to tentative agreement between the parties who had been formally identified as direct parties to the mediation process.

Outcome

As a result of the weekend mediation, a number of issues were tentatively resolved. It was agreed that there would be a complaint table and that it would be manned by parents, one of whom would be Spanish-speaking. The selection and role of the parents at the table was also agreed upon. Although the parties decided that one or two students would assist at the table, there was no firm agreement on the number or whether or not one would be Spanish-speaking. A procedure was also designed for the processing of student complaints.

On the other hand, there were several issues pertinent to the grievance table which were not resolved, such as, the location of the table; the participation of teachers at the table; the extent of information to be obtained from students registering complaints; the participation of the Parents Table Group and of adults without enrolled children at the school; the establishment of a representative table committee; and the possibility of other functions of the table, e.g., literature distribution.

A statement of the above resolved and unresolved issues was issued by the Board of Mediation and concurred with a recommendation of the Borough President that the unsettled issues be submitted to voluntary arbitration. The issue of the grievance table, meanwhile, was the subject of intensive side mediation efforts led by the President of the Board

of Education. The results of this latter effort were issued in a policy statement by the Board of Education on the Thursday following the weekend mediation.

Pursuant to an arrangement worked out directly by the parties and with the assistance of the President of the Board of Education and some of his associates, a parent-manned student grievance table was established in May, 1970, in a room off the main lobby of the school. Its operations, however, were suspended in October following a closing of the school for more than a week because of an outbreak of student disorders. This suspension of the table did not produce any substantial public protest from its early proponents.

BRONX COMMUNITY COLLEGE
BILINGUAL PROGRAM

Setting

Funded in September, 1968, for a two-year period by the Ford Foundation to the City University of New York, the Bilingual Project proposal, as developed by the Puerto Rican Community Development Program, was to provide educational opportunities for Puerto Rican high school graduates (i.e., from a high school in Puerto Rico), or with the educational equivalency, who do not speak English. A secondary objective, without negating the Spanish culture, was that of providing experience which might lead to economic stability and advancement.

The City University committed itself to continue the program if it proved successful. The University also agreed to provide stipends for students to continue after the two-year program if they wished to proceed with their education in one of the City colleges.

By 1970 eighty-five students were enrolled in the program. Throughout the winter, they had been engaged in a struggle with the administration of the college and of the City University. In support of their demands, the students had at different times occupied the buildings of the college and the headquarters of the Board of Higher Education. Because of the timing of the student action, continued financial support by the CUNY for the program and the students was in jeopardy.

On March 3, 1970, the Board of Mediation for Community Disputes (BMCD) received a letter from the attorney for the Bilingual Student Organization requesting its assistance in finding a resolution to the dispute. He also suggested that a member of the BMCD Board of Directors, Hon. Herman Badillo, would be an acceptable mediator. This request was conveyed by the BMCD to the Chancellor of the CUNY.

On March 17, the Chancellor and the Chairman of the Expanded Educational Opportunity Committee of the Board of Higher Education jointly appointed a three member "Fact Finding Panel" for "a review of the facts in the controversy between the 85 Puerto Rican students . . . and the college administration." Herman Badillo was named Panel Chairman.

Issues

The demands of the students included student control over curriculum, personnel budget, and planning; restructuring of the program; changes in the financial assistance process; tenure for the director of the program; immediate dismissal of two members of the faculty; amnesty for all students for actions taken in the dispute; and the end of "all racism, insults, and degradation of our 'Puertoricanse'."

Parties to the Dispute

The Bronx Community College Bilingual Program dispute was between the students enrolled in the program, and the local college president and administration and the Board of Higher Education. Some faculty members and community persons were in coalition with the students.

Role(s) of the Board of Mediation for Community Disputes

The Fact-Finding Panel met with the parties at Automation House, with BMCD providing full staff services. Besides arranging and carrying out the mechanics of the meetings, the BMCD researched and provided the Panel members with a description of the background to the dispute and discussed procedures and strategies with the parties.

Outcome

At the meeting on March 21, the students demanded that the proceedings be conducted in Spanish. They and their attorney also voiced the concern that the Panel members had been unilaterally appointed by the Chancellor. Their contention was that, however acceptable the individual Panel members might be on a personal basis, institutionally the Panel was unacceptable because of the manner in which it had been appointed. The students were also concerned that the Panel might delay any action being taken, due to the need for meetings and consideration of possible findings. Finally, the students felt that the intervention of the Panel would dilute the legitimacy accorded in their joint negotiations with the CUNY.

Rejected by the students, the Panel issued the following statement:

> Recognizing that the current struggle between the Puerto Rican students in the Bilingual Program of the Bronx Community College and the City University and the College administration has reached a critical point and recognizing that as this fact-finding panel is presently empowered a speedy resolution of the crisis is impossible, we the members of the panel withdraw.
>
> Withdrawing, we urge the immediate resumption of the direct negotiations between the students, the college administration, the City University and the Board of Higher Education's Council on Puerto Rican Studies and Affairs. We suggest a meeting be scheduled between all parties on Monday, March 23, 1970.
>
> We hold ourselves ready to attend the Monday meeting as observers and should the parties request, to intervene in the negotiations in whatever capacity the parties deem necessary.

While the Fact-Finding Panel as an institution was rejected, neither the Panel members personally nor the BMCD were rejected; all continued to be involved in the ongoing dispute.

After the initial discussions between the Board of Higher Education and the students failed to result in any resolution of the issues, one of the students filed a com-

plaint with the Community Relations Service of the Department of Justice and another with the City Human Rights Commission. The BMCD staff met with the investigators for both of these bodies to discuss the problem.

In mid-July, 1970, the dispute was formally disposed of on the basis of a letter from the Chancellor to students in the Bilingual Program outlining a number of apparently unilateral changes that would be undertaken in the program, including its relocation from Bronx Community College to Lehman College, the naming of a new Director, and a variety of curriculum changes. Underlining the unilateral nature of the decision, the letter noted the following:

> It is to be emphasized that the initiative for this development came from the Committee on Expanded Educational Opportunity, following a three-month study of the Bilingual Program at the Bronx Community College and of similar programs elsewhere in the City.

HUNTER COLLEGE

Setting

Hunter College, a part of the City University of New York, is an urban institution on New York's upper east side. During the spring of 1970, there were a series of disputes involving students, administration and faculty focusing on student demands for wider participation in decision making. The dispute was exacerbated by the protests of night students who contended that they were being discriminated against under the existing fee structures. In mid-March the students sat-in, blocking access to the building and the elevators, and the school was closed.

During the next few weeks there were negotiations on the student demands for a decision-making role. The faculty senate voted during these negotiations to oppose dissolving the existing government structure in order to replace it with a college senate consisting of 50% faculty and 50% students. This taking of a formal position had a detrimental effect on the negotiations and new disruptions

occurred which resulted in the arrest of twelve students and one faculty member.

Issues

The arrested faculty member, a supporter of the student demands, was suspended as a result of his actions during the dispute. Under the terms of the contract between the Legislative Conference and the Board of Higher Education, there was provision for the establishment of a "special committee" to conduct an investigation of the events leading to the suspension and to make recommendations.

Parties to the Dispute

The immediate parties in the dispute were the suspended professor, who was represented by legal counsel, and the Hunter College administration. The nature of the events which had led to the suspension, resulted in several other groups and organization also having a concern in the outcome. These groups included the various student organizations and coalitions, the faculty and their local organization, as well as the American Association of University Professors and the city-wide college administration.

Role(s) of the Board of Mediation for Community Disputes

In a letter dated May 5, 1970, the President of the BMCD was asked by the College Personnel and Budget Committee to construct and chair a special committee under the terms specified in the contract:

> "Under the terms of the authorization of the College Personnel and Budget Committee, you are asked to create a special committee of three or five members, a majority of whom are to have present or past affiliation with an institution of higher learning, and whose other members are recognizable for the impartiality of their work or profession in the community outside Hunter College."

After investigating and holding a hearing into the charges against the faculty member, the special committee was to determine:

> ". . . whether the conduct complained of did indeed constitute conduct unbecoming a member of the staff. If the special committee so concludes, it is to recommend an appropriate penalty. The penalty may be dismissal, suspension with or without pay for a stated period, or a reprimand for the staff member involved. The special committee's findings, conclusion and recommendation are to be presented by the committee to the President of Hunter College."

Following discussions with the various parties, a three-man panel was chosen whose members were acceptable to all concerned. After preliminary discussions by the committee chairman, it appeared that the parties were amenable to reaching some accommodation. The approach, then, was to set a date for a formal hearing and to "mediate" against that deadline.

Extensive discussions were held with the parties involved, and the Chairman, in conference telephone consultation with the other committee members, prepared committee recommendations which embodied an accommodation acceptable to the immediate parties. There also was informal "clearance" with other concerned groups, including the collective bargaining agent.

Outcome

At 9:00 a.m. on the day that the formal hearing was scheduled, the tentative recommendations of the special committee were formally shown to the attorney for the suspended professor and to the administration. The parties had been alerted as to the content and had indicated informally their acceptance of what they understood would be the recommendations. There was, therefore, ready formal agreement without the need for public hearings or the rest of what could have been an extended process, and without resort to testimony which could have had unpleasant aftermaths.

HILLSIDE HOUSING CORPORATION

Setting

The Hillside Housing Corporation (HHC) owns and operates a 1400 unit apartment complex in the South Bronx. The area in which the complex is located has a substantial black and Spanish-speaking opulation. As of May, 1970, seventy units were occupied by black and Puerto Rican tenants.

The possibility of a confrontation taking place had been brought to the attention of the Board of Mediation for Community Disputes some weeks previous to its actual occurance. Direct BMCD involvement, however, came after a sit-in led by the National Association for Puerto Rican Civil Rights (NAPRCR), with the support of a number of other community organizations, began in HHC offices.

Issues

As a result of the mediatory efforts of the BMCD, the parties agreed to submit the following issues or demands to mediation under the auspices of the Board:

1. That all vacant apartments be identified.
2. That first preference for future vacancies be given to Black and Puerto Rican applicants, including employees, by date of application.
3. That an ethnic breakdown of present tenants be provided.
4. That alleged harrassment of Black and Puerto Rican employees be stopped.
5. That minority employees be provided equal opportunity for promotions.
6. That alleged discrimination against minority employees in the use of facilities be halted.

Parties to the Dispute

The immediate parties to the dispute were the officers of the Hillside Housing Corporation, represented by their attorneys, and a coalition of community organizations, led by the NAPRCR. Other organizations identified with the community group included the Gentlewomen's Association for Political Action, the Boyamon Social Club, and a local legal action program.

At a later point in the dispute and after an initial accommodation had been achieved between these parties, HHC

tenants became active in opposing the settlement on the grounds that they had not been involved in the negotiations leading to the agreement.

After the initial understanding had been reached, a "spokesman" for the Puerto Rican community, who had not been a part either of the initial confrontation or of the understanding, demanded that negotiations, as they related to the employees, be reopened.

Role(s) of the Board of Mediation for Community Disputes

BMCD staff discussed the dispute at the site both with the group sitting-in and with corporation officers. These discussions led to a clarification of the issues and the agreement by both parties to submit the issues to "meaningful mediation."

As a result of the agreement to seek mediation, seesions were held at Automation House under the auspices of the BMCD. The first such session resulted in the determination to seek information from State Housing and Human Rights Commissions. The second, with representatives of those authorities in attendance at the request of the BMCD, resulted in an understanding being reached on the issues in dispute between the parties.

The understanding was formalized in the form of a letter to the BMCD from Hillside Housing outlining the steps it was prepared to take in response to the demands. A corresponding letter, also to the BMCD, was sent by the President of NAPRCR acknowledging that the steps to be taken by Hillside Housing were sufficient to satisfy the demands.

Outcome

In response to the demands, Hillside Housing agreed to take the following steps:

"1. We will notify all persons on the waiting list for more than two years that they must renew their application within ten days of receipt of such notice or they will be eliminated from the waiting list.

2. All new applicants for apartments will be given a receipt and all new applications and receipts for applications will be dated and numbered in order of date of application.
3. Notwithstanding any current waiting list, out of the next 100 vacancies which arise, one out of every two will be filled by a tenant of Negro or Spanish-speaking origin. One out of every three subsequent vacancies which arise will be filled by a tenant of Negro or Spanish-speaking origin. The foregoing is subject to there being a fully qualified applicant of Negro or Spanish-speaking origin on the waiting list at the time of such vacancy who is prepared to fill such vacancy.
4. It is understood that employees, other than those required by the Corporation to live on the premises, shall not be eligible for apartments.

In addition, the Corporation will extend the trial period for Mr. Luis Carbonell for a period of thirty (30) days from the date of this letter."

Shortly after this understanding was reached, another "spokesman" for the Puerto Rican community demanded that negotiations be reopened, asserting that the employees had not been properly represented. HHC management was sufficiently influenced by the new demands that it deleted the probationary aspect of a promotion to which there had been agreement.

Also after the critical settlement, an organization called the "Hillside Tenants Committee" emerged and protested that the agreement was invalid because, although it vitally affected its members, they had not been a party to it. The tenants were particularly opposed to those aspects of the agreement relating to the proposed method of selecting tenants. Subsequently, the Housing Commission representative forwarded to the BMCD for transmittal to the parties a finding by the Commission's General Counsel that the agreement was illegal and discriminatory. The same representative had previously "endorsed" the "two-list" approach when he stated that the Housing Commission would defer to the State Commission on Human Rights, whose representative had suggested the approach as a possible alternative.

At a subsequent meeting conducted by the Board and attended by representatives of Hillside Housing, the NAPRCR,

the tenants, and the State Housing Commission, it was understood that the conflicting rulings of the Housing and Human Rights Commissions would have to be considered by legal counsel representing the several parties involved.

THE MORNINGSIDE SQUATTERS

Setting

Some 300 Spanish-speaking squatters, including about 200 women and children, occupied three apartment buildings during July, 1970. The buildings are located in the Morningside Heights area of upper Manhattan and directly across Amsterdam Avenue from the Cathedral of St. John the Divine, headquarters of the Episcopalian Diocese of New York City.

The owner of the buildings has assembled the property for the purpose of razing the buildings and constructing a facility for the aged on the site.

In a wider context, the dispute had begun eight years earlier, when the owner attempted to relocate the original tenants. A dispute arose which led to the State Supreme Court in October, 1969. The dispute was eventually resolved on the basis of an agreement that some tenants would be given a "relocation allowance" and that several others would be relocated into two of the five buildings on the proposed site, which the owner agreed not to raze.

This earlier dispute is linked to the squatter action. Three of the original tenants had refused to leave and had not been evicted at the time the squatters entered. Thus, the owner was required to provide services in one of the buildings for the "legal" tenants, a situation of which the squatters could take advantage.

Issues

Insofar as Morningside Houses, Inc. was concerned, the immediate issue at the outset was the removal of the squatters in order that demolition could proceed.

The squatters countered with four demands, all of which were based on the assumption and most basic demand

that they be permitted to remain in the buildings:

1. That MHI accept the squatters as legal tenants;
2. That MHI abandon its plans to erect a home for the aged on that site;
3. That MHI immediately begin to provide essential services (heat, water and light); and
4. That New York City be permitted to acquire the property under Operation Turnkey.

Parties to the Dispute

The owner of the buildings is Moringside Houses, Inc. (MHI), a consortium of existing homes for the aged in the area. MHI was formed for the specific purpose of building an additional 300-bed facility for the aged. The Board of Directors of MHI includes several clerics, representatives of such important local organizations as St. Luke's Hospital, and a number of prominent lawyers. The MHI spokesman throughout the dispute has been its president, a prominent New York City lawyer.

Many of the squatters are of Dominican origin. They moved to consolidate their position and strengthen their organization by forming a "Tenants Organization" and establishing building regulations, a security system, caretakers, and a waiting list on which prospective "tenants" were placed.

Prior to the involvement of the Board of Mediation for Community Disputes in this particular situation, the New York City Commission on Human Rights had been contacted by the squatters and had held some preliminary discussions with both parties.

The Role(s) of the Board of Mediation for Community Disputes

This dispute came to the attention of the BMCD when the Chairman of the City Commission on Human Rights called Mrs. Watson of the BMCD staff and requested that she assist in the dispute. Accordingly, Mrs. Watson attended a meeting on the evening of August 22, at which more than 150 of the squatters were present. At the meeting (held in a local store front) it was announced by spokesman for the squatters that the Chairman of the Commission and Mrs. Watson had

agreed to "assist in the negotiations."

Following this announcement, a number of sessions were held in which the BMCD staff met with the parties, both jointly and separately. Most of these meetings were also attended by a representative of the Commission.

While an accommodation has now been reached between the parties, the situation has not been regularized. The BMCD has continued to keep abreast of the developments in the situation.

Outcome

The President of Morningside House has reportedly cancelled the demolition permit, thereby resuming ownership of the structures, and no longer intends to construct a facility for the aged on the site. Although he had no objections to utilities being restored, he would take no responsibility for those services. Apparently, after the intervention of another city agency, Consolidated Edison has begun to supply power to at least two of the buildings in the name of the squatters. The squatters and their supporters are apparently responsible for heating (the main boiler had been removed prior to occupation) and, presumably, for any repairs to or maintenance of the structures. No rent is being collected and there is no specified time period during which this accommodation will remain in effect.

Meanwhile, it is understood that the squatters are considering incorporating and collecting "renovating money" from the "tenants" on a regular basis.

FIRST SPANISH METHODIST CHURCH AND THE YOUNG LORDS ORGANIZATION

Setting

The First Spanish Methodist Church is located in East Harlem at 111th Street and Lexington Avenue. Its small Spanish-speaking congregation includes a number of Cubans who fled the Castro regime, as well as Puerto Ricans.

In mid-November, 1970, the Young Lords requested that the church institute a number of social programs. When the congregation did not respond positively, the Young Lords

began to attend church services. On December 7th, several Young Lords attempted to address the congregation. The police were called and thirteen Young Lords were arrested.

The following day, the church assisted in the raising of bail for those who had been arrested, and a meeting was held between the YLO Minister of Defense and officials of the New York Area Conference of the United Methodist Church. The latter offered to help the Lords begin a dialogue with the local church on the understanding that there would be no further disruption of the services. A meeting with the administrative board of the local church was scheduled for the following Sunday. However, there were disruptions during the service, and the administrative board refused to meet.

The Sunday after Christmas, one of the Lords attempted to address the congregation following the service. He was ignored and, after the congregation filed out, the Lords and their supporters occupied the building. A variety of community programs, including a day care center and a breakfast program were begun. Two weeks later (January 7, 1970), an injunction was obtained by the church and the occupiers were peacefully evicted and arrested on contempt charges.

Issues

At the outset, the Lords' demands had centered around the establishment of a number of community programs in the church, including a day care center, drug program, and Adopt-a-Building program. As the dispute escalated, the Lords also demanded that they be given control over the programs.

As a result of the arrests, the charges leveled against Lords members became an important concern.

Parties to the Dispute

The immediate parties to the dispute were the Young Lords and the congregation and administration of the First Methodist Church. The officials of the New York Area Conference of the United Methodist Church were also directly involved in the dispute as a result of their general responsibility for the church.

Role(s) of the Board of Mediation for Community Disputes

During and following the occupation of the church, BMCD staff, the Hon. Herman Badillo (a member of the BMCD Board of Directors), and Frank Espada (a leader in the Puerto Rican community) had held extensive discussions with the Young Lords, the local church administration and officials of the New York Area Conference of the United Methodist Church. As a result of these discussions, the parties jointly petitioned supreme Court Justice Saul S. Streit to postpone court proceedings arising out of the arrests, pending mediation of the issues.

Justice Streit granted this petition and requested that Badillo act as mediator. Badillo agreed.

Beside meeting with the parties on an individual basis, the mediator held a series of joint meetings. These led to an accommodation being reached between the parties.

BMCD staff provided a number of supportive services for mediator Badillo in the setting-up and handling of the various sessions.

Outcome

An accommodation was reached on certain of the major issues between the parties when the church made a commitment to establish a day care center in the church, to begin a narcotics information program, and to develop a housing program. The church also advised the mediator that it "unreservedly would like to see all court actions against the Young Lords dropped."

In his report on the mediation effort to Justice Streit, Badillo stated:

> "I can now report that the mediation effort you assigned to me can be regarded as completed. Although, of course, not all of the differences have been resolved, there can be no question that the programs to be provided are meaningful and that the Young Lords have helped to make a constructive contribution which will benefit the local community. I must report that the Young Lords cooperated fully during this mediation effort and I join with the attorneys for the church in urging that all court actions against them be dropped."

Justice Streit acceded to this petition.

Addendum

By August, 1970, little visible progress had been made by the church in meeting its commitments, and there were rumors of renewed confrontation. In late August, at the request of Mr. Badillo, the BMCD asked the attorney for the church what progress had been made in implementing the programs.

On October 18, 1970, following the death of a Young Lords member, who prison officials said hanged himself in his cell, the Young Lords ended a funeral cortege by bearing his coffin to the church and reoccupying it in the process.

The BMCD thereupon repeated its inquiry as to what had been accomplished in the implementation of the programs agreed upon in February. Shortly thereafter, copies of a letter dated October 15, 1970, and addressed to the attorney from Henry C. Wyman, Executive Secretary of the New York City Society of the United Methodist Church, were hand-delivered to the BMCD offices and to Badillo. The letter indicated that little progress had been made as of October 8, 1970. The day care center, a key issue, had progress only to the point of asking for bids.

The second occupation of the church was ended in November, 1970, without a joint agreement and with only informal mediation by Badillo and the BMCD.

END