



DEPARTMENT OF DEFENSE POLICIES AND PRACTICES  
IN LABOR-MANAGEMENT RELATIONS

Mr. Samuel Silver

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Reviewed by: Col Ingmire Date 5 February 1963

INDUSTRIAL COLLEGE OF THE ARMED FORCES  
WASHINGTON, D. C.

1962 - 1963

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8 November 1962

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Publication No. L63-67

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Washington 25, D. C.

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MR. HILL: Gentlemen:

Before introducing the speaker, I wish to amplify a question which came up yesterday regarding featherbedding. I should state that there are many featherbedding practices which have no connection to any measure of operations. In any event featherbedding is an entire economic waste.

If you are all interested in hearing what Mr. Silver has to say today, you will be a very happy audience. Mr. Silver is the Industrial Relations Director of the Department of Defense. As such, he is the highest ranking civilian in my business.

We are very pleased that Mr. Silver has taken the time and the effort to come to us with what is, I am sure, a very careful and thoughtful appraisal of the implication of industrial relations to the Department of Defense. That means all of us, since we are all students of management operations.

Mr. Silver, it is with great pleasure that I introduce you to our audience.

MR. SILVER: Mr. Hill, Admiral Rose, Faculty, and Students of the Industrial College:

In its simplest form the manpower field for the Department of Defense covers three broad categories--military personnel, civilian personnel, and industrial personnel. The Defense responsibility for these areas is vested in the Assistant Secretary of Defense for Manpower, Mr. Paul. My particular responsibility is

primarily for industrial personnel, that is, the problems arising between the military contractor and his employees.

Why should the Department of Defense be interested in industrial relations matters? This interest may spring primarily from four major sets of circumstances. First is the role which the Department of Defense plays as a purchaser and a consumer of goods or a builder of facilities. In that respect we have the legitimate interest of any buyer in avoiding an undesirable impact on or interruption to our logistical mission.

Secondly, the Department of Defense in the performance of its procurement activities is charged by various statutes and executive orders with obligations to conform with, apply, and in some cases administer certain labor standards.

I am referring to such laws as the Walsh-Healey Act, the Davis-Bacon Act, the Eight-Hour Law, and the Executive Order prohibiting discrimination in employment, and so forth.

Thirdly, the Department, in performing many of its regular military functions, is required to take actions in fields which may concern or affect labor, such as industrial security, procurement, utilization of military or civilian personnel, and so forth.

Fourthly, the Department, as one of the principal governmental departments, is frequently called upon by Congress or other government agencies to express an opinion with respect to proposed labor policies and legislation.

In order to handle the problems arising from these various circumstances, the military establishment, since the beginning of World War II, has had an

organization in this field. During World War II the organization reached its peak strength. In the War Department then, which included the Air Force, the overall responsibility was exercised by Headquarters Army Service Forces under General Somervell, with a division then known as Industrial Personnel Division, headed by former Secretary of Labor James P. Mitchell. Under James P. Mitchell was a Labor Branch which was headed for a long period of time by the present Supreme Court Justice, Mr. Brennan.

With the end of World War II, however, the elaborate Industrial Relations Organization was dissolved, although the principal functions have continued to today as part of the logistic or materiel responsibility in the military departments.

At the outset it is essential to an understanding of the role of the military in the labor-management disputes field to make a clear-cut distinction between a legitimate interest in a dispute and any responsibility we have for dealing directly with the dispute. The two are by no means coincidental. The responsibility for settlement belongs initially to the parties.

From the governmental standpoint responsibility for the most part belongs to other agencies of the Government which specialize in the problem. The responsibility of the Department of Defense is primarily to make certain that our interest in the dispute receives proper recognition and appropriate attention from the civilian agencies of the Government, such as the Federal Mediation and Conciliation Service. It is a job that requires recognition of the problem, an understanding of the issues, and seeing that the right people are alerted at the

proper time in order to assure that the Defense interests are adequately protected.

We have translated this Department of Defense interest in labor-management disputes into a basic policy statement which sets forth the Department of Defense law. This basic policy is that the Department of Defense will refrain from taking a position on the merits of any labor-management dispute and will not undertake its mediation, conciliation, or arbitration. It is based upon a recognition of the fact that in a democracy intervention by the military into primarily civilian affairs is undesirable, and that the maintenance of a position of impartiality is essential if the military is to enjoy the confidence and respect of all groups.

This policy of impartiality, however, does not relieve a military contracting officer of responsibility for efficient contract administration, and to that end contractor labor costs are not reimbursible under cost-type contracts if found to be discriminatory against the Government, unwarranted, or otherwise unreasonable. These costs are expected to be scrutinized even though set forth in labor-management agreements and without regard to whether such agreements were negotiated peacefully or following a work stoppage. We are concerned or interested in the reasonableness of settlement as we are in the impact of strikes.

The Secretary and the Deputy Secretary of Defense have stated on a number of occasions that we cannot accept or pay for any uneconomical and inefficient condition or practice, whether imposed by labor or by management.

Nor does this policy of impartiality preclude efforts by us in the event of labor-management difficulties to expedite resumption of work to satisfy military

requirements. These efforts normally include working with or obtaining assistance from the Federal Mediation and Conciliation Service, the Federal agency generally charged with responsibility of conciliating and mediating labor disputes.

The relationship with the Mediation Service is very close and involves not only a constant exchange of information but joint consideration of courses of governmental action to pursue in resolving a dispute, including possible supplemental efforts by the Department of Defense.

Additional actions on our part to expedite the resumption of work may also include urging a contractor to fulfill his obligation to minimize or overcome delays by pursuing, where reasonably available, such remedies as recourse to the procedures of the National Joint Board for the Settlement of Jurisdictional Disputes, the President's Missile Sites Labor Commission, the National Labor Relations Board, or any other available procedure. The National Joint Board for the Settlement of Jurisdictional Disputes was established by the Building and Construction Trades Department of the AFL-CIO for the purpose of resolving disputes as to the assignment of work among the various construction trades unions. The Missile Sites Labor Commission was established by Executive Order in May 1961 to resolve disputes at missile sites and to eliminate unreasonable costs at missile sites. The National Labor Relations Board deals with questions involving the representation of employees and unfair labor practices. It is also the governmental agency which seeks injunctions to terminate unfair labor practices and, in some cases, also passes upon union jurisdictional questions.

Requiring the contractor to pursue the remedies outlined or to take action before such other bodies as may be available is simply requiring a contractor to discharge one of its management responsibilities for which the Government is paying under its contract. One of these responsibilities is to handle employee relations, including labor disputes. Nor does this policy of impartiality preclude efforts on our part to minimize the impact of a work stoppage by arranging for the removal of required materials which are tied up in a struck plant. At the outset this is again the contractor's responsibility. If, however, the contractor is unable to deliver, the Department of Defense may work out an arrangement which will provide for removal either by alternate commercial carriers or by military vehicles and military personnel. Preferably such arrangements are made with the cooperation of the contractor and the union, but where this cannot be obtained we will secure necessary removals unilaterally when it is necessary to do so.

Another method of alleviating the impact of a strike includes arrangements under which a striking union exempts defense materials from the strike. The exemption technique has been particularly effective in the shipping and common carrier areas. Longshoremen, for example, will generally work military cargoes notwithstanding a general strike. Employees, for instance, of Pan American have a written agreement with the company which assures continued servicing of military requirements. And, strange as it may seem, even the teamsters usually will exempt military freight.

The potential value of exemption was recognized by a distinguished group of

individuals headed by Dr. Clark Kerr, President of the University of California, in a recent report financed by the Committee on Economic Development, entitled, "National Labor Policy." The report noted that partial operation of a struck industry or facility may be all that is necessary to protect the public interest. This, the group thought, would allow private pressures on private parties to bring about a voluntary settlement. Partial operation of a plant to produce just for the Department of Defense, however, poses many complex production and cost problems.

It is interesting to note that the Steel Workers Union in 1959, arguing against the propriety of the Taft-Hartley injunction, pressed this argument before the Third Circuit Court of Appeals and the Supreme Court. The Supreme Court, on November 7, 1959, dismissed the argument with a statement that the Taft-Hartley Act does not "require that the United States formulate a reorganization of the affected industry to satisfy its defense needs." The lower court in a similar vein also declared that the steel industry was too vast and too complicated to be segmented. The court relied on an affidavit of the Chairman of the Council of Economic Advisers, who stated that to reopen steel plants for the production of products to meet defense requirements would be totally impracticable and would create insurmountable technical and scheduling problems.

Another method available to the Government to minimize the impact of our urgent defense program is the injunctive process. Basically there are two types of injunctions that may be obtained under the Taft-Hartley Act. One is directed at preventing various types of illegal activity by the striking unions. This is

usually a remedy which the contractor, rather than the Government, pursues. But, where for some reason the contractor does not do it the Department of Defense will, if necessary, be the moving party.

The other form of injunction is known as the Eighty Day Injunction, and provides what is called a cooling-off period when management and labor are deadlocked. This type of injunction can be invoked only at the direction of the President, when he finds that the national health and safety are endangered. This is clearly an extraordinary remedy and is used only in cases of significant impact. As indicative of its sparing use, it has been invoked only about 20 times in 15 years. The most recent exercise of this power occurred last month and involved the longshoremen on the East and Gulf Coasts.

Beyond these remedies there is a possibility for outright seizure of a plant or industry. To the extent this power exists today, it is provided by Section 18 of the Selective Service Act of 1948. This section authorizes the President to place an order with any industry or facility for any article or material necessary for the Armed Forces or the Atomic Energy Commission. In the event any such person refuses or fails to fill such order within the time prescribed by the President, the President is authorized to take immediate possession of the property of such person and operate it for the Government. This particular seizure power has never been invoked in a strike.

That the President in peacetime does not have inherent constitutional powers to seize and operate was settled by the Supreme Court decision in 1952.

That case stemmed from seizure of the steel industry by President Truman. In

World War II, as a result of the war powers and special legislation, seizure was used to deal with serious labor disputes. It was an effective means of obtaining compliance with governmental decisions on the merits of disputes. The Government, mainly through the War and Navy Departments, was involved in some 60 seizure actions stemming principally from labor disputes.

In an effort to cope with serious labor disputes which could have a great impact on our national safety, the President has devised additional methods or techniques. Noticeably among these is the Missile Sites Labor Commission to which I have already referred. The Commission has received pledges from both labor and management for uninterrupted work and has been very helpful in maintaining continued operations. Most of the missile sites strikes prior to and after the creation of the Commission have been of a short duration, for which the Taft-Hartley Eighty-Day Injunction would be useless, as the strike would be concluded before the appointment of a Taft-Hartley board or the report from the board, a necessary preliminary step before an injunction is obtained.

The success of the Commission is indicated by its first report issued in June of this year. It showed that at the end of its first year of operation last time resulting from strikes at missile and space sites has been reduced to one man-day loss for each 1100 man-days worked, as compared with one man-day loss for each 96 man-days worked prior to the creation of the Commission. The figures covering July through August of this year show an even better record--one man-day loss for about each 3300 man-days worked, about three times better than the first year's experience. This is remarkable in light of the fact that the missile site activation

program is one of the most complex and largest construction and installation jobs ever undertaken. The task requires many varied skills and talents. It involves both construction and industrial firms. Consequently industrial and construction workers frequently are working together in remote areas under compressed schedules. These circumstances could yield frequent disputes were it not for the intense efforts of the Commission and the Department of Defense.

Another device which the President has used to meet critical labor disputes is the appointment of boards consisting of distinguished men from public life to investigate the dispute and make recommendations. This was recently done in a labor dispute involving the aerospace industry. It proved generally effective when labor and management at Convair, North American, and Ryan agreed to the recommendations of the Board. It cannot, however, be regarded as completely successful, since Lockheed at the moment disagrees with that portion of the recommendation calling for a vote by the employees on the union shop.

A powerful weakness of this technique lies in the fact that it is wholly voluntary. That is, in order for it to be effective both parties must voluntarily agree to the appointment of the board, and the union must also agree to postpone strike actions while the board investigates and makes recommendations. While the voluntary cooperation of the parties is most welcome and provides the most wholesome conditions for a settlement, an argument can be for predicating action in emergency strikes on a sounder and more dependable basis, the solid underpinning of law,

It has been suggested that the President be provided with a more varied arsenal of legal weapons to cope with critical strikes. Giving the Chief Executive greater latitude would create uncertainty as to whether or how he would act. This would help push the parties to settlement, since an uncertain procedure would make it difficult for the parties to guide their own bargaining strategy in reliance upon any particular action by the Government.

During the past year two important reports on emergency strikes were made by two distinguished groups, one by the President's Advisory Committee on Labor-Management Policy, and the other by a group headed by Dr. Clark Kerr, which I mentioned earlier. Both groups proposed that the President be authorized to appoint a board of experts before the strike deadline. The proposed board would assist the mediators in seeking a settlement and would recommend procedures or techniques which appeared to be conducive to settlement. Such a board would, with the approval of the President, make recommendations for settlement, which is not possible under a Taft-Hartley Board.

Under the proposed procedures, no strike would be permitted for 80 days. If, after 80 days, the strike was still unsettled, the President would be free to ask Congress for additional legislative remedies.

If any particular development has stood out in the emerging pattern of labor-management-government relations under the present Administration, it has been the recognition of a third-party interest, that of the public, in collective-bargaining negotiations. The responsibility of labor and management not only to their members and shareholders but also to the public has been repeatedly stressed. This

is because private collective-bargaining decisions affect all of us, and we cannot remain insulated from them. For example, if benefits negotiated from collective-bargaining decisions exceed the growth of productivity, someone pays the price. Profits are reduced, prices are increased, demand is discouraged, the balance of payments is endangered, or economic growth is stifled. The impact of these results on our country's economic health clearly impels the Government to express its interest. This is what the Administration has done in its publicized 3 percent productivity guidepost announced by the Council of Economic Advisers. The guiding principle is that the overall increase in output per man hour of 2.5 or 3 percent a year be taken as the measuring rod for settlement of wages and fringe benefits in any industry. This principle has exerted influence on many collective-bargaining settlements this year--most notably in the steel industry and recently at North American, Douglas, and Convair. Although this principle was originally offered as a contribution to discussion, it has emerged as a new stabilization policy. I think in the overall the principle has had a salutary effect.

As I indicated at the outset, the Department of Defense's interest in industrial relations stems not only from the fact that we are a major purchaser of goods but also from the fact that we have the responsibility for obtaining compliance with various legal requirements. The requirements of the Government as a whole stem primarily from three sources of authority: First, the legislative power under the commerce clause of the Constitution; second, the legislative power in connection with the Government's right to contract; and, third, the executive power of the President.

Under the commerce clause laws of general application exist which are not specified in a government contract but are equally applicable to defense contractors as to nondefense contractors. In this category we find the Fair Labor Standards Act, commonly known as the minimum-wage law. As a result of this law most employees engaged in interstate commerce now must be paid a minimum of \$1.15 per hour. Next September it will be \$1.25 an hour. Other laws of general applicability are the Taft-Hartley and the Landrum-Griffin Act. As I indicated, the Taft-Hartley Act has provisions relating to injunctive action which are of particular interest to the Department of Defense. However, its more fundamental purpose is to provide general ground rules governing the collective-bargaining process. It establishes a variety of methods for determining whether or not a union is entitled to represent employees. In addition the board enforces limitations imposed by the Act on the conduct of labor, union, and management representatives.

The Landrum-Griffin Act is to a degree an extension of the Taft-Hartley Act, and it imposes additional limitations on the activities of the union and management representatives to protect the rights of the individual union members as well as others more effectively.

Some other labor laws of general applicability are the Norris-Laguardia Act, controlling injunctions against picketing, several reporting and disclosure acts relating to labor-management expenses, and welfare and pension records, and the Railway-Labor Act relating to labor disputes in the railroad and airline industries.

Incidentally, other labor laws of general applicability involve State labor laws. It has been the policy of the Department of Defense to cooperate and to require contractors to cooperate to the fullest extent possible with State agencies responsible for enforcing labor standards requirements.

As you would expect, however, the labor laws which are of most constant interest to the Department of Defense are those which are included in the Government contract. The most important law in this field is the Walsh-Healey Act, which provides for the establishment of minimum wages, overtime payments, safety, and a number of other aspects of employment.

Since all government contracts for the manufacture of fort-furnishing supplies which are in excess of \$10,000 are subject to this act, it can be readily seen that it has extremely broad impact. During Fiscal Year 1962 it is estimated that from \$8.5 to \$9 billion of work were subject to that act. Some \$7 billion more work would have been subject to the act if the work has not been subcontracted. Subcontracts generally are not subject to the act.

The primary responsibility for the establishment of standards under this act and for an enforcement of its provisions rests with the Department of Labor. As a result the Department of Defense becomes involved in it only incidentally. We are, however, from time to time, confronted with questions and consulted with respect to application and coverage.

In the area of construction contracts the counterpart of the Walsh-Healey Act was actually a network of several laws: First, the Davis-Bacon Act, which provides for the establishment of minimum wages by the Secretary of Labor

in contracts over \$2,000; second, the Eight-Hour Law, as recently amended by the so-called Contract Work Hour Standards Act, which establishes the conditions under which daily and weekly overtime must be paid to employees; third, the Anti-Kickback Act, which prohibits certain payroll deductions in order to assure that construction workers receive their full pay.

There are other laws which provide for incidental matters, such as appendices and bonding. While the Department of Labor has general responsibility in this area, the primary responsibility for enforcement of construction labor standards rests with the contracting agency. As a consequence, the Department of Defense and the military departments become much more involved in cases arising under these laws than under the Walsh-Healey Act, even though fewer procurement dollars are involved in construction work. An estimated \$1.2 billion of Davis-Bacon work was placed in Fiscal Year 1962.

One particular difficulty arising under the Davis-Bacon Act has been its coverage-- the meaning of the words used in the law, such as "construction alteration and repair." The reason for this difficulty is that, since the original enactment of the Davis-Bacon Act in 1931, problems of application have become more complicated because of many rapid, novel, technological changes, particularly in the missile-space field. The unions and contractors are interested in the determination as frequently it influences whether a construction union and a construction-type contractor or an industrial union and an industrial-type contractor will perform the work. This occurs not because the application of the act results in the Government excluding one or the other type of contractor, as it does

not, but because construction contractors generally perform contracts subject to the act.

Another particular difficulty which has arisen under the law involves questions of whether the Davis-Bacon law is applicable to minor construction work which is incidental to a supply contract. Differences have arisen on what constitutes incidental work as opposed to substantial construction.

The administration and enforcement of the Davis-Bacon Act is further complicated in that the contracting agency, the Department of Labor, and the Comptroller General all play important roles in this area. In the discharge of the respective responsibilities by the three agencies differences of opinion have existed in specific situations. This particular aspect was highlighted by recent hearings on the Davis-Bacon Act between June to August 1962 by the House Subcommittee on Labor, which is expected to make a report soon.

In addition to these statutory requirements, the President at times acts directly under his executive authority. Currently the most noticeable use of this authority is <sup>the</sup> Executive Order establishing the Commission on Equal Employment Opportunities. Under the Executive Order a contract clause obligating the contractor to employ people without regard to race, creed, color, or national origin must be included in the government contract. Enforcement of that clause is undertaken by the contracting agency under the general direction of the Commission.

Violations of any of the provisions I have outlined can result in very severe penalties. In some cases there are provisions for substantial fines and

imprisonment. There are also provisions for barring a contractor from receiving future government contracts for a period of years. Because of the severity of these penalties the Department of Defense is constantly endeavoring to assure that contractors are aware of their obligations so that they do not become subject to these penalties unwittingly.

As you can see from a brief review of the various labor laws and executive orders which are included in government contracts, they are intended to promote certain government, social, and economic policies. Although procurement officials may complain that such policies in a contract interfere with a fundamental purchasing mission, it must be kept in mind that the Government does have other objectives and responsibilities. It is very unlikely that in filling its other responsibilities the Government will ever abandon this significant contract leverage. For instance, the Department of Defense alone last fiscal year spent some \$26.1 billion of the annual budget in the United States through the medium of contracts, an increase of \$3.2 billion over the previous fiscal year.

You may be interested to know that the latest proposal now under serious consideration is a contract requirement prohibiting discrimination on account of sex--that's women.

While on the subject of labor laws in our contracts, permit me to mention some of the significant decisions of the Comptroller General relating to contracting and labor. Contracting agencies are bound by the Comptroller General's decisions regarding propriety of any given procurement practice, and the Comptroller General exercises influence in this area. The Comptroller General has

looked with disfavor upon the imposition of labor standards upon contractors unless they are required by statute, on the ground that they would restrict competition or increase the cost of performance. For example, in the absence of specific statutory authority, a contract may not prescribe a minimum rate of wages to be paid by a contractor. Compliance with the requirements of the National Labor Relations Act may not be required as a condition of a contract, nor may noncompliance therewith be considered as a ground for rejection of a bid, nor may a bid be rejected because the bidder does not employ union labor.

Before closing, I wish to mention some ideas in the industrial relations area which are now being discussed. One thought has been that the Government should encourage contracting with firms that can reasonably be expected to be free of labor difficulties. Thus, as a condition for obtaining urgent defense work, union contractors might have to demonstrate that they have in their collective-bargaining agreement or have sought in good faith to obtain provisions for arbitration or some other terminal machinery to resolve disputes. Some assurance that work will proceed uninterruptedly would seem to be reasonable.

Another idea has been that the Government should encourage contracting with firms whose history indicates that future labor-management relations will be peaceful, not marred by disputes. It is proposed that this type of consideration be given more weight than it now is in evaluating prospective contractors for purposes of determining ability to perform on schedule.

As previously indicated, contractors are expected by Defense policy to take reasonable action during a strike to eliminate or minimize delays, including

resort to legal action. If such action is not taken a question arises whether the delayed performance is excusable. A parallel question also arises as to whether the Government will pay increases in unit cost when production is continued notwithstanding the existence of a strike. Of course the terms of the contract under which the work is performed will, in the last analysis, determine how the cost question is handled. However, as you know, under many contracts the allowance or disallowance of cost is determined by the nature of the cost. Under a firm fixed-price contract if the unit of cost rises, it is of minor concern to the Government since it must be absorbed by the contractor. On the other hand, in cost-type contracts, where the Government normally bears all costs incurred by the contractor, to the extent they are reasonable substantial questions arise.

Some increases in unit cost during a labor dispute can be anticipated and a reasonable business judgment may dictate that these costs be incurred in order to continue operations. There is, however, a limit in the extent to which increases can be deemed reasonable. Therefore, costs incurred during a strike are scrutinized and increases in unit cost are questioned.

In this area we recognize that the government-contract cost or pricing policy could have a profound and decisive influence on labor-management disputes. The magnitude of the economic power wielded in this area by the Department of Defense can be readily seen by the fact that during the last fiscal year \$16 billion, or 62 percent of our contract dollars, were obligated on cost reimbursement or some other type of contract other than firm fixed price. We feel that it is our responsibility to assure that this economic power remains neutral insofar as labor disputes

are concerned.

As an extension of this cost policy it has been suggested that the Department of Defense should also look into the causes of disputes and determine whether a strike is the fault of labor or management. Upon making this determination, cost allowances would be guided accordingly so that strikes precipitated by management would result in lower cost allowances, whereas more liberal cost allowances would occur where the union was at fault. Normally such a determination would be most difficult. Issues and work stoppages are too complicated and generally are not susceptible to a precise determination by a contracting officer of fault or blame.

In conclusion, we have sought in our Industrial Relations Program to recognize that labor represents an important segment of our economy and an essential ingredient of our defense effort. With challenges to our security, the teamwork of all is more than ever imperative. Our Industrial Relations Program has been instrumental in promoting greater cooperation, support, and understanding of labor in defense programs and in eliminating labor difficulties to our program.

Thank you.

MR. BARAN: Mr. Silver is now ready for questions.

QUESTION: Mr. Silver, Mr. Hayes spoke to us yesterday, from the International Machinists Union. The only thing he really sounded mad about was the fact that a two-thirds vote was required in these plants on the West Coast. I, for one, don't know why a two-thirds vote was established as a criterion rather than a simple majority.

**MR. SILVER:** Well, I think he mentioned the fact that there was a so-called Taylor Board appointed by the President to make these recommendations. Management on the West Coast was certainly opposed to any union shop. I think it was more of a compromise by the Taylor Board than anything. Mr. Hayes is right that normally the majority vote is all that serve in the union shop. This was something that was not negotiated voluntarily between union and management. It is my impression that North American and Convair and Ryan would not have agreed voluntarily to the union shop, but apparently they thought it was reasonable to accept the recommendation on the two-thirds vote. That was the basis of it.

As I said in my prepared remarks, Lockheed has not accepted that. Lockheed says it is a matter of principle. They are opposed to a union shop. They refused to permit the employees the opportunity to vote. It is my personal feeling that the employees of Lockheed are rejecting it--that is, they would not get a two-thirds vote as they did in North American, Ryan, and Convair.

This, incidentally, could be a very critical situation in Lockheed. It is my impression that the union will probably issue a notice to strike in Lockheed, and the Government will be faced with a very serious situation in this field, very shortly.

**STUDENT:** The union has agreed to the two-thirds vote.

**MR. SILVER:** Yes, the union has agreed to it and the union has agreed to the economic provisions. The union was not happy with the economic recommendations of the Taylor Board, but they were willing to take the whole package. They

were willing to permit the workers at these companies to vote. North American, Ryan, and Convair all agreed to the whole package. The only company that has dissented so far is Lockheed. Boeing, incidentally, is in negotiation, but that is being handled separately. Their contract did not expire at the same time as the other aero-space companies. A separate board is involved in the Boeing situation. I understand that situation really won't come to a head for two more months.

QUESTION: You just mentioned the situation the Government will face if a strike does happen.

MR. SILVER: Well, I really don't know--we still have on the books the Taft-Hartley Law which permits the President in effect to seek an 80-day injunction. It is the feeling among many government officials that this is not an equitable thing to do in this particular case, because the union has postponed its strike action for more than 60 days already, and in this particular case the union has been willing to accept the recommendations of the board appointed by the President.

Nevertheless, this is the only real legal remedy we have on the books. It is hard for me personally to see that the Government would permit a strike in Lockheed to continue for a period of time without invoking some legal action. The President has said in one of his press conferences that in the event there is a strike he thinks it will be management's fault here for failing to accept the recommendations of an impartial board.

QUESTION: I am interested in the statistics on the reduction of strikes in

missile sites. I am also under the impression that under the cost-plus-a-fixed-fee contracts we give management and labor everything they want. Do you have any statistics to show how much our costs went up due to the last increase in labor rate while you were pushing the strikes out?

MR. SILVER: I think the implication of your question is that we are paying for labor peace. I have no statistics. I understand the Air Force, however, has followed this field pretty thoroughly. It is their feeling, I believe, that they are not buying labor peace here. As a matter of fact, I know that many labor costs have been disallowed at these missile sites, and labor agreements are being scrutinized. I do not have statistics, however.

QUESTION: I would like to refer to your comment about certain pressures to place contracts with companies that can demonstrate that they probably will not have labor difficulties. It seems to me that experience has been that where arbitration features have been included in the contracts these have been to the advantage of the unions in the long run. Perhaps I am wrong. That is what I have read. Doesn't this requirement to place contracts with these companies give greater strength to the unions in their negotiations and in the long run result in increased costs?

MR. SILVER: First of all, I said in that respect that this is one of the ideas that are being kicked around in the Department of Defense at the moment. You are referring to the question of requiring in an agreement some form of arbitration or some terminal machinery. I don't know whether the union prefers that or not. I really don't care. I think from the standpoint of the Department

of Defense --and that should be our primary interest here--we should be concerned with uninterrupted production. It seems to me that some assurance of some way of resolving this dispute is all to our interest. Whether this makes management happy or unhappy at the moment really doesn't bother me. I do not think it will increase cost. I think you have higher costs when you have strikes than when you have labor peace.

**QUESTION:** Mr. Silver, under this Administration there has been a great deal of intensification of effort to eliminate racial discrimination on the part of contractors. Particularly with our defense contractors there have been some sorts of reprisals or discouragement. A number of unions in certain sections of our country in fact practice racial discrimination. What are you doing about that?

**MR. SILVER:** I can answer that very easily. This is not my area. It so happens on the race-creed-color area it has been organized in the Department of Defense in a different manner. Because of the concern and emphasis there is a separate organization. However, I happen to know that the President's Commission has been exerting efforts among the unions to eliminate discrimination. In addition, AFL-CIO itself has set up procedures as the result of the last national convention to eliminate discrimination.

One of the difficulties in that area, of course, is that the Department of Defense has the contract only with management, not with the unions. We have to sort of look, I think, to the President's Commission to direct its efforts to the union side.

QUESTION: I understand the political reasons why in a sense the Department of Defense is neutral in these disputes. It doesn't seem to be a good management practice in view of the large percentage of the gross national product that the DOD is spending, particularly in noncompetitive areas where the cost plus a fixed fee is imposed on most of our big projects. Is this a built-in inflationary cause?

MR. SILVER: You may recall that in my prepared remarks I said that neutrality does not preclude us from disallowing unreasonable costs. Neutrality means only that we will not try to determine whether management or labor is correct in a labor dispute. We do exercise responsibility in the reduction of costs and in trying to get the dispute settled. I personally feel that this is the only type of policy the Department of Defense can have. This does not mean that we should ignore excessive costs whether imposed by labor or by management.

QUESTION: Sir, with regard to these last questions, who determines the reasonableness of costs of labor? In other words, who prevents this thing from creeping up and up and up, since it is to management's advantage to have an increased cost with an increased fee, and to labor's advantage to get increased labor?

MR. SILVER: In cost-type contracts we have in our procurement regulations spelled out certain things that a contracting officer may do. He may disallow unreasonable costs. Now, this is a difficult area. What is "unreasonable," of course? There is no government agency, unfortunately, set up in the Government to determine that. In World War II we had a Wage Stabilization Agency. Today each contracting agency must determine for itself. The Council of Economic

Advisers has given us some guidelines--3 percent. That, plus our own Service Procurement Regulations, does provide some criterion for our contracting officers to review costs.

In  
QUESTION: /the September 10 issue of The U. S. News and World Reports there is an article entitled "Will the United States Ban Defense Strikes?". This article is based on the increased demand by Congress for outlawing strikes, et cetera. Would you care to give us the Department of Defense view on whether or not we would support Congress in such a position?

MR. SILVER: At the moment the Department of Defense has deferred to the Secretary of Labor on what further courses of action the Government should take in critical strikes. We have indicated to the Secretary of Labor our concern to assure uninterrupted production. We look to the Secretary of Labor as a technician in this area to devise what is the most effective way to handle a strike. The President looks to the Secretary of Labor as his labor adviser in this field. At the moment this has been our approach.

QUESTION: Sir, you said that a contracting officer may enter into the situation to determine whether labor cost is being excessive. We read in the papers and in some of the better magazines that elevator operators in Cape Canaveral get the same salary as a major general, and analogies like this. To your knowledge, has a contracting officer ever terminated a contract because the labor costs were excessive?

MR. SILVER: I don't know about terminating the contract. It has been my impression that the Air Force has disallowed various labor costs at missile

sites. It is my impression that there is continuing surveillance of labor costs at missile sites.

QUESTION: I would like to get a better picture of the magnitude and extent of this operation. I think you are in a good position to see the whole spectrum from Congress, who is legislating new laws and laws beyond those to explain the laws, all the way along to the negotiators, the committees, and the management advisers. From some scale of values, either a percentage of the billions of dollars we are spending for defense or the number of people involved in this whole effort or segment of our active manpower in Government contracts, what is the magnitude of our national resources that are being involved, or drained, in effect, in these situations, compared to what it might be with two well-meaning parties at either end having no problems?

MR. SILVER: I am not sure I get your meaning.

STUDENT: Let's assume the idea of a condition with labor sincerely dedicated, whatever the cost, in a national exercise, with a minimum of management control of defense contracts, to secure what we need, and no problems and no advisers, just you and I willing to do a good job together. Compare that with the situation we have today with thousands of lawyers, advisers, economists, and so on, each one requiring salaries, /the time involved in making them produce which could be /used productively in other areas. What's the magnitude of this compared to the number of people we have and the billions of dollars we are spending?

MR. SILVER: Are you suggesting that maybe it is desirable that we permit labor and management to handle these things alone without a host of advisers?

STUDENT: I am not suggesting. I'd just like an estimate from you on what is being tied up on a national basis in this whole problem.

MR. SILVER: I don't know. I think it is tremendous. This field has become very complicated. There are labor advisers, public relations advisers, and a host of other officials. It is growing, including the Department of Defense. In the Air Force, for instance, we have labor advisers at the various missile bases and in the various procurement districts. The Navy Yards and Docks have people stationed there. We have all grown, so to speak. Maybe it is because the problems have become more complicated or there is a greater interest in these problems. Beyond that I can't make an estimate.

QUESTION: I have never understood why the civil service people need a union. It seems to me they are pretty strong in themselves. At any rate, what is the DOD policy toward Federal unions? Have they been effective in helping the civil service people?

MR. SILVER: That's an easy question. I am not involved in that, either. The civilian personnel side is handled by a separate office. I know generally that the Administration, as you may know, has issued a new policy on the relationship with government unions. It is the official policy of the Government and it has always been the official policy of the Government to recognize unions. Now it has been made a matter of an Executive Order. Now there is a more formal feeling or a more formal recognition of the various unions. I think this has given a boost to government unions. I think they have increased their strength. However, they still can't bargain over wages, for instance. That's a matter of

Congressional determination. I think they are gaining strength not only in the Department of Defense but in the Government generally.

QUESTION: Mr. Silver, you have referred to a number of things that you are not involved in and to a number of basic laws which contracting officers will handle with the contractors, and so on, and some of the things that private managers could handle with contractors, and so on. I am having a little trouble in narrowing down just what your office does handle. Can you give me a case example or two of what things you handle in your office?

MR. SILVER: I mentioned the Davis-Bacon law and the Walsh-Healey Act. These are laws on government contracts. These are laws in which there are many problems involving application and interpretation. With respect to the Davis-Bacon law we have questions of enforcement. This is what we are involved in. I mentioned in my prepared remarks that we are not involved in laws of general applicability of fair labor standards. But these laws I am talking about involve billions of dollars.

As I said in my prepared remarks, we have in the military departments people who are doing some of the more detailed work in these areas. For instance, in the construction field you have the Army Engineers Organization. In the Navy you have the Yards and Docks. They have large organizations that spend considerable time in checking contracting payrolls to make sure they conform with the wage determination of the Secretary of Labor, that they employ apprentices, as required by law. If there are violations, there are certain requirements of barring the contractor from awards. These labor laws that are in our contracts

represent billions of dollars, and there are a variety of problems stemming from these laws.

QUESTION: Sir, I would like to rephrase the last question. What specifically do you do?

MR. SILVER: Well, in the Office of the Secretary of Defense we try to coordinate the Army, Navy, and Air Force with respect to the enforcement of these laws--say the Davis-Bacon law. We try to get a uniform position. To be specific, now, the Department of Labor is planning to issue new regulations in the Davis-Bacon field. We are working now with the Army, the Navy, and the Air Force to prepare a uniform, consistent position. There are matters of application of the law that arise, which involve the three services. We work with them trying to develop a uniform position.

It is that type of problem in the labor standards field. This has nothing to do, now, with the labor disputes field. We will in the Walsh-Healey field have problems of the application of the law to situations on which we work with the military departments. It is that type of thing that we are doing constantly.

QUESTION: What is the DOD position on the jurisdiction of the wild-cat strikes which create work stoppages?

MR. SILVER: Of course we are obviously opposed to them. If these things are not resolved by the President's Missile Sites Labor Commission, we have urged and insisted that our contractors take legal action to enjoin any illegal action. This has been done in many situations where the contractor would go to the National Labor Relations Board to get an injunction to prohibit these

strikes. Fortunately, in the last few months they have declined.

QUESTION: In contracting, the military services have to gather a large number of factors in the selection of the contract, including one of looking toward labor relations stability. Where do the services go to get advice on the prospective stability in the plants of the contractors?

MR. SILVER: The Federal Mediation and Conciliation Service is normally the best source of authority in that field. They are supposed to be in touch with the labor-management relations in at least the more important facilities in the country. They have regional offices and they can tell instantly what the situation is at practically any facility.

QUESTION: Mr. Silver, is the DOD contemplating any additional authority for the field office representatives in dealing with both unions and industry in the case of disputes and strikes?

MR. SILVER: As I said in my prepared remarks, we think we have sufficient authority now to do a variety of things if the people in the field want to exercise the authority. For instance, it is our policy to insist that our contractors and management go to the courts, or go somewhere, to terminate a strike. It used to be the practice for management to sit idly by and to permit a strike to continue and then to argue that this was an excusable cause for delay. As you know, in the contract clause strikes are an inexcusable cause. We have in the last year or so insisted that our contractors go to a labor board to enjoin that action. We feel that there is sufficient authority now to do a variety of things.

MR. BARAN: I am sorry time has run out. Mr. Silver, on behalf of the

school Commandant, the faculty and the student body, thank you for an informative lecture and discussion period.