Chapter 2

Third Party Interventions at Different Phases of Collective Labor Conflict

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In 2018 the UK faced an escalating conflict, resulting in a rather unique strike in many universities over pensions. 27 February 2018, the *Telegraph* headed: ***“Lecturers and university leaders enlist conciliation service ACAS but strikes are set to continue”***.¹

Lecturers and university leaders have agreed to enlist the conciliation service ACAS to mediate in their bitter dispute over pensions. The full 14 days of strikes are still going ahead, University and College Union (UCU) said, with students facing further disruption and cancelled lectures in the coming weeks.

Strikes will continue on Wednesday, as well as four days from next Monday, and ending with a five-day walkout from Monday March 12 to Friday March 16. The UCU said it was pleased that Universities UK (UUK), the vice-Chancellor membership body, had agreed to another meeting to try to end strike action currently affecting 61 universities.

A spokesman for Universities UK said: “Further talks are being arranged. In the interest of students, we have asked UCU to stop the industrial action while talks continue to find an alternative, viable and affordable solution. Both parties agreed to involve ACAS in facilitating further talks to bridge the significant distance between both sides.”

Almost two months later, the *Guardian* headed²:

“UK university strike action to end after staff vote to accept offer”

¹ <https://www.telegraph.co.uk/education/2018/02/27/lecturers-university-leaders-enlist-conciliation-service-ACAS/>.

² <https://www.theguardian.com/education/2018/apr/13/uk-university-strike-action-to-end-after-staff-vote-to-accept-offer>.

The ballot of 50,000 University and College Union members in higher education found a substantial majority in favour of accepting the offer, which establishes a joint committee of experts to evaluate pensions provided through the University Superannuation Scheme (USS).

The conflict in the UK on pensions is a classic example of a collective sectorial conflict, with many institutes for higher education involved. In the UK (see Chap. 14 for details), employees have the right to strike, without previous attempts to find agreement through conciliation or mediation. We see here, that even while the actions continue, also ACAS as third party is invited by parties to mediate in the dispute. ACAS offers different third party services, including facilitation, conciliation and mediation related to the development and escalation of the conflict, and the requests of the parties. Typically, when collective conflicts arise and escalate, different third parties and different interventions are available. In this chapter we first present a model of development of these conflicts, and secondly, related interventions.

2.1 Escalation of Collective Labor Conflicts

Escalation of conflict is the process of intensification of a conflict. According to several authors (Rubin, Pruitt & Kim, 1994), escalation is characterized through different changes: (a) parties use harder tactics (change from promises to threats); (b) the number of issues increases; (c) small issues grow into big and more fundamental ones; (d) number of involved persons and parties increases; (e) the goal of parties shift from realizing own interests to hurting the other.

A main cause of escalation is the denial by one party of the claims of the other. Deutsch (1958) mentioned three main phases of conflict escalation. Firstly, parties' focus on the realization of their own goals, and maximize these. When it becomes clear this is difficult to achieve, competition becomes dominant. The aim now is to win from the other. When this power battle develops further, again a fundamental shift appears. The aim is to blame and shame and hurt the other party. These three phases, (win-win; win-loose; loose-loose), have been further developed by Glasl (1982), into his nine stage model of escalation. There is little empirical evidence conflicts go through all these nine phases, however the essential idea is, that third party interventions should be tailored based on the level of escalation. With facilitation being most useful in relative early stages of escalation, mediation in higher escalated levels, followed by arbitration and legislation, or forms of unilateral power, trying to end the conflict. The intervention of a neutral third party with status or other forms of power (for example a politician, a public figure), is employed in some cases as a way to reduce the social and organizational conflict. An example is the mediation between a mining company and the inhabitants of Cajamarca (Perú), leaded by Miguel Cabrejos, a prestigious priest in Perú. Pruitt and Kim differentiate five ways to end escalation.

(1) One party wins over the other. One of the parties gives in, or simply loses. Such outcomes can be seen after a long battle in labor conflicts, where one of the parties gives in. (2) One party gains, manipulates the situation to their own advantage. (3) Parties stop fighting, and move forward. (4) A third party in an authoritative role rules and forces parties to comply to the decision; (5) Parties negotiate towards an agreement, usually supported by a third party. This might include the formation of a joint taskforce, as in the case of the university staff strike in the UK.

Zartman (2000) added three concepts to escalation theory which are highly relevant for the understanding of the development of collective labor conflicts. His core idea is the 'ripeness' of a conflict, needed to come to a solution. This is essentially composed of two criteria: a hurting stalemate situation, and hope. Industrial relations in organizations often develop over time into antagonistic relations. We have seen the example of Air France, where labor relations in France have been intensely conflictive for many years. A change towards social peace requires such conflict to 'ripen', before a more systemic solution can be achieved. For such, according to Zartman, two conditions are needed. First, parties have to experience a 'hurting stalemate', the conflict is costly to the parties, both financially as well as in general terms of threat of survival of the company or relationship. Reputational costs are high, media exposure contributes to that, and social and psychological costs build up. When costs increase, and former strategies don't work, parties are motivated to work on solutions if the second condition also is there: hope. Hope that for example working with a third party, changing the strategies used so far, might bring indeed an improvement of conditions.

As long as parties believe they can win over the other, there is not much incentive to search for a negotiated solution. Such beliefs, also embedded often in beliefs of (moral) superiority, and justice ('the other acts totally unfair and illegal'), contribute to escalation.

Stalemate and hope motivate parties to search for an acceptable solution, helped by a third party.

2.2 Collective Conflicts: Development Through Five Phases

Escalation theories naturally focus on the process of growth of the conflict. And typically start where there is already a conflict present. Also most collective labor conflict models start with the dispute, sometimes even with the threat of a strike, which already involves a high level of escalation.

Therefore, we might best compare the development of conflict, with the development of storms.

Industrial relations have a strong conflict potential, given different interests of employers and employees, in combination with their interdependence. Interdependence means that employers and employees need each other to realize their own goals and they need to continue working together when their conflict disappears. However they also have different and even conflicting interests. These latent phases

Fig. 2.1 Five phases of conflict development

are the perfect condition to build up the industrial relations, so they can endure the winds of change that inevitable come.

Figure 2.1 presents five phases of conflict development.

The cycle represents different possible phases of conflict escalation and de-escalation. Evidently, not each conflict has to go through all phases. Winds of change might be mild. And when handled properly might result in renewed productive working relations and continued social dialogue. However, winds can also develop to storms or hurricanes, with potential to destroy. This destructive side of conflicts is seen too often, although Brown (2014) convincingly argues that the occurrence of escalated labor conflicts such as strikes has become less frequent. This might be due to early warning signals and early interventions (Brown, 2014), which will be discussed in more detail in the next paragraph.

Five phases of collective labor conflict development

Win–Win

1. **Latent conflict:** No visible conflict, however conflicts of interest are latent, problems about misinterpretation or other’s behaviors or small discrepancies could appear in this phase.
2. **Early stage:** rise of tensions between parties, debate replaces dialogue, issues at the table, open discrepancies, pressures inside the parties for an open conflict.

Win—Loose

3. **Confrontation:** negotiations are blocked, confronting tactics, forming of alliances, threats, competitive approaches by both parties.

Loose—Loose

4. **Hot conflict:** parties aim to hurt the other, through strikes, unilateral actions, lay-offs etc. Communication bridges are blocked. Parties increase competitive and aggressive actions.

Ending and Restoration

5. **Rebuilding working relations:** ending of conflict episode, searching new ground to work together, if the organization continues to exist. Dealing with damage done, restore relations, replace key actors (fire, prosecute, or change for political reasons)

A conflict might end in different ways. The UK university case shows a classic technique, that is forming a joint task group, which will investigate and work on integrative solutions acceptable for the main parties involved. Alternatively, arbitration or ruling of the court might end this conflict episode. However after the storm, usually parties continue to work together. This does not necessarily have to be the same actors, however employer(s) and employees are there. Unless the conflict ends through dramatic change, the bankruptcy of the company, moving to another country, downfall of union, or massive layoffs. Most conflicts don't result in such damage and then repair works need to be done. This is typically left to the organizations, and usually parties move on, however with low trust and an increased risk for new escalations. If not properly addressed, the aftermath of one conflict episode will be fueling the next cycle, reinforcing a conflict culture. Therefore, investing in preventive interventions as well as measures for trust rebuilding are important steps to take, and not just left to the organizational dynamics.

2.3 Third Party Interventions in Each Phase

The five-phases model offers a stepping stone to reflect on possible third party interventions in each phase. Such possible interventions are presented in Fig. 2.2.

Fig. 2.2 Interventions during the phases of conflict development

1. *Training during the latent conflict phase.*

It is a wisdom of old, that you best build your house in summer, with nice weather conditions. Building constructive and strong industrial relations in organizations also are best done in relative peaceful times. Investing in a clear infrastructure for social dialogue, developing a team spirit, both within a works council, and between the works council, management and HR, as well as with the key players from unions, pays off in times of crisis. Training competences for social dialogue both at individual, team and organizational level are considered among the most important preventive measures (Munduate, Euwema, & Elgoibar, 2012). Foley and Cronin (2015) give several examples of preventive actions, including audits by trusted conciliators.

2. *Facilitation during early stages of conflict.*

When conflicts arise, conflicting parties often benefit from a facilitator, who helps them to focus on a constructive, and problem solving attitude, helps them to define common interests, and assists to search for valid information, and exploration of different scenarios and options. There is a clear trend towards more ‘early stage intervention’ and training in such ‘interest based bargaining’, showing very good results in collective labor conflicts (Cutcher-Gershenfeld, Kochan, & Calhoun Wells, 2001). Also, other forms of facilitated negotiation can be seen, for example, in Belgium, for many years, the CLA-negotiations are chaired by mediators who are civil servants, contracted at the ministry of labor (See Chap. 3, this volume).

Resistance to involve third parties

Inviting third parties to prepare for contending, complex and high-stake negotiations usually pays off. However, parties in conflict tend to be resistant to ask for third party assistance. This is observed at all levels in organizational conflicts, including collective labor conflicts, between top management and employee representatives. Reasons for not inviting third parties in early stages of conflict are usually related to the self-definition of primary parties, who believe; '*we are professionals and it is our core job to manage these situations*'. Inviting a third party often makes the primary party feel less competent, insecure, and less in control (Schein, 1999). Schein advocates therefore a humble attitude by third parties, focused on asking the right questions, instead of giving opinions (Schein, 2013).

3a. Conciliation when a formal conflict appears.

When a party perceives a conflict or dispute, they can turn to a third party for assistance. This requires indeed the explicit recognition that there is a dispute. In many societies, such recognition is related to social action (moving from dialogue to action), however also many authors argue the conflict already is there before, and third parties should be involved when no progress is made by parties. In many countries, a first step than is to invite a conciliator, who searches informally with the parties for common ground and solutions. Such conciliation is well described by Foley and Cronin (2015), and Dix and Oxenbridge (2004). Where Foley and Cronin (2015) argue that conciliation and mediation can be seen as essentially the same process, in many countries conciliation is defined and organized as a relative informal process, where conflicting parties participate voluntarily, and search with support of a third party for solutions. Mediation is often described as a next step, more formal, using caucus and in some circumstances giving recommendations to the parties.

3b. Mediation when the conflict intensifies.

When the conflict further escalates, and parties threaten each other with unilateral actions, or are using those to increase pressures on the other party to make concessions, the dialogue often is disrupted. Parties refuse to meet at the table, before the other makes a move. In such cases, voluntary conciliation doesn't always work, as parties are not willing to invite a third party. Often, higher authorities then appoint a mediator. Alternatively, legislation provides in such mediation procedures. The voluntary nature is less present, and the third party is also accepted due to the expertise in the area or the trust in the mediation system. Parties might be willing to listen to the considerations of a 'wise person'. Putting pressures on parties to move is not

uncommon, including giving opinions. As such the mediation can take a more evaluative form. And although some describe ‘evaluative mediation’ as an oxymoron, there is a growing trend to this form of third party intervention (Della Noce, 2009).

4a. *Arbitration when conflict costs run high.*

With tensions rising and more escalated conflicts, the third party interventions also become more authoritative. Traditionally, third party mediation often was characterized by a strong evaluative character. Parties presented their case, and a committee would ask questions for clarification, deliberate, and then came with a recommendation. This form is still present in several countries, and is close to arbitration. Bush (2002) sees hybrid forms, also Jordaan and de Wulf (2016) describe the South Africa practice of med-arb in labor conflicts. The combination of mediation and arbitration offers parties the ability to come to an agreement, however if not successful the mediator can act as arbitrator. This practice also is not uncommon in China in collective labor disputes. Arbitration involves parties accepting the decision of a third party. Such might be helpful to end a conflict when parties no longer are able to find common ground and a negotiated agreement. Typically, this might end the conflict episode, however underlying causes will not be dealt with.

4b. *Court rulings when the conflict needs an ending.*

Most countries have established specialized labor courts. Ruling by the court might indeed end the conflict episode. This can help parties to de-escalate. The ruling however might very well imply also referral to some form of mediation (Pel, 2008). Alternatively, court ruling might fuel new episodes, or take the conflict to other levels, both judicial and societal. For example taking the case to higher courts, or getting sectoral or national actors involved.

5. *Facilitating rebuilding relations*

Who cleans up, picks up the pieces and rebuilds after the storm? Conflicts leave traces. Distrust often is strong, resentment and feelings of revenge might prevail (Elgoibar, Munduate, & Euwema 2016). Key players who have been demonized are hurt, and the negative images prevail, fostering the negative stereotypes and intergroup tensions. A conflict-episode might be ended, the aftermath can easily refuel the conflict as we see for example in the Air France case in France. Even after the replacement of several key players, the conflict continues like a smoldering wildfire. Is third party assistance needed to rebuilt trust, to repair and restructure social dialogue, and to start preventive measures to learn from the past? This seems evident, however very little literature gives insights in the actual practices which take place (Lewicki, Elgoibar, & Euwema, 2016). And more so, who should provide such assistance, and after what stage of escalation would this be helpful, and needed? Such questions are part of the exploration in the EC study and this book.

2.4 Conclusion

Collective labor conflicts typically develop through phases. Given the nature of industrial relations, there is always a latent conflict between the interests of employers and employees, also in times of social peace. These latent conflicts might develop into episodes of overt conflict, and escalate to destructive levels. Different third party interventions are available during different phases of conflicts. In most countries some form of third party intervention is available. This is usually limited to specific escalation phases (particularly around threat of strike, or other collective actions) much less seems arranged for preventive third party support, or restorative actions to rebuilt relations after a conflict episode.

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