Chapter 21

From Intervention to Prevention in Collective Labor Conflicts

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21.1 Conciliation and Mediation in Collective Labor Conflict Around the World

This volume presents studies on the practices of third party intervention in many parts of the world. Firstly, twelve European union member states are investigated, and this is followed by contributions on Australia, China, India, USA and South Africa. Together, these chapters cover large parts of the industrialized economies. In this chapter we take stock, analyze some global tendencies and present suggestions for further development of the field. Developments both at the level of societies and regulations, mediation practices, as well as research.

Collective labor conflicts are an inevitable part of organizational life, and also of industrial relations. The recognition of different interests between employers and employees has been a cornerstone of the development of these industrial relations, including the development of third party support in the management of collective conflicts (Katz, Kochan, & Colvin, 2000; Kochan, Katz, & McKersie, 1994; Roche, Teague, & Colvin, 2014). The chapters in this book show a great variety of such systems. A first important remark is about terminology. The title of this book refers to mediation only. However, in the field of collective labor disputes, the term conciliation has a long tradition and conciliation and mediation are differentiated in many societies (Foley & Cronin, 2015). Therefore, in this chapter both terms are used, conciliation and mediation. The topic of terminology is discussed later in this chapter more extensively.

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21.2 Global Promotion for New Forms of Third Party Interventions and the Role of the EC

According to Brown (2014), there is a global trend towards more Alternative Dispute Resolution (ADR) in collective labor conflicts, where parties are assisted to come to an agreement, as alternative to judicial ruling with one party winning and the other loosing.

Brown argues that governments—inside and outside of the European Union—have promoted the creation of quasi-judicial processes, third-party institutions which facilitate the resolution of these collective conflict outside of politics. The most notable differences refer to the extent to which these institutions are formalized and can be considered judiciary as opposed to carried out by non-legal specialists.

This volume is the result of a project promoted by the European Union. This expresses the importance given by the EC to promote initiatives for constructive conflict management in industrial relations. Such promotion is done along two lines; social dialogue and ADR. This combination is typical for the European tradition, and differs for example from the traditions in China, India and the USA.

The EC has a long tradition of institutionalized social dialogue, also at organizational level (European Commission, 2016; Euwema, Munduate, Elgoibar, Garcia, & Pender, 2015; Martinez-Lucio, 2013; Weltz, 2008). Legal frameworks foster structures which offer a systemic, continuous and constructive dialogue at different levels between employers and employees. A major aim of these, being the prevention and regulation of collective conflicts. This is for example reflected in a strong position of works councils in relation to organizational decision making (particularly in Germany, Denmark and the Netherlands; this volume). Such structures, if existing, have much less impact in the USA, India or South Africa.

The second line of promoting constructive conflict management is through ADR, and particularly mediation. The European Union issued Directive 2008/52/EC (see Chaps. 1 and 14 this volume) *The mediation directive has as its objective the facilitation of access to alternative dispute resolution and the promotion of the amicable settlement of disputes, by the promotion of the use of mediation as well as of a balanced relationship between mediation and judicial proceedings* (European Commission, 2016).

This EC directive is implemented in various ways by different member states. Also when it comes to collective labor conflicts, the development of this directive differs between member states with very successful outcomes in some, and with clear challenges in other, many of them with a short tradition in conciliation and mediation. Industrial relations worldwide are changing (Elgoibar, this volume). For this reason experimenting and international comparison might be the best way of developing good practices for different contexts.

Let a hundred flowers blossom. (Mao Zhe Dong, 1957)

Practices globally, and within the EU, differ largely, as is demonstrated in this volume. Not surprising, given the large differences between countries, and the relative early stage of development of these practices in many countries involved. In this sense, a parallel development can be observed between ADR in Europe, with the labor mediation practices in China. Wei and Wei (this volume), explain the large variety of mediation practices in China due to the relative early stage of mediation in a dramatic changed economic environment. China faces a growth of labor conflicts, and a growing demand for mediation services. These develop differently, also related to the specific sectors and regions. India on the other hand relies on relative old systems, which—according to Noronha and DCruz (this volume), are suffering a lack of government support, and even deteriorate. Here, a strong need is signaled for revitalization.

Despite the different economic and political backgrounds of each country, there are some important commonalities, (Valdés Dal-Ré, 2003). For example, countries which were at some point in time very judicial, such as Spain, are becoming less so. Likewise, systems which relied more on voluntary approaches such as Britain, are increasing the regulation of collective disputes (Dix & Barber, 2015). A notable trend in European countries is the preference for voluntary approaches, as encouraged also by the European Commission in the year 2000. A spread of voluntary conciliation, mediation and arbitration procedures for dispute resolution can be noticed. This is due in part to the lower costs and fast resolution that these practices often achieve, and of course the building, restoration and maintenance of relations between the parties on the long run (Bollen, Euwema, & Munduate, 2016; Budd & Colvin, 2008). The design of these systems also shifts from a more formal model with a hearing and advice, to informal support to the dialogue of the parties. A good illustration of this is given by Bray and MacNeil (this volume), picturing the developments in Australia. Where traditionally ‘labor tribunals’ gave content advice, which would best be followed, now a clear trend is visible towards preventive actions and non-evaluative forms of conciliation (Della Noce, 2009; Prein, 1984, 1987). Such trends are in line with the reflection and recommendation by the ILO (see below).

Experience from many countries shows that the center of gravity of a State dispute settlement system should be conciliation/mediation procedures aimed at assisting the parties to reach a negotiated settlement under conditions that are as close as possible to those of the normal bargaining process. ILO

21.3 Collective (Labor) Conflicts in Organizations

This volume focuses on collective labor conflicts. These are usually differentiated in conflicts of interests and conflicts of rights. Disputes over interests are those in which parties attempt the modification or substitution of existing agreement terms, for instance, the negotiation of a collective agreement. Disputes over rights are those which deal with the interpretation and application of existent rules such as laws or collective agreements.¹ Third party interventions differ in strategies used, as well as in effectiveness (Martinez-Pecino, Munduate, Medina, & Euwema, 2008). Surprisingly, the scarce studies investigating these conflicts, focus mainly on conflicts of interest. This is understandable from a perspective of negotiation, and also as these negotiations typically are stronger related to strikes (Macneil & Bray, 2013).

The studies presented in this volume point out that this approach of labor conflict and differentiation between conflicts of rights and of interests is rather limited. Three aspects are discussed here: (a) classification of conflict; (b) not limiting to labor conflict; (c) conflicting parties.

Classification. First, conflicts over interests and over rights describe at best the overt content of the conflict. Conflicts are typically multi-issue, and in fact escalation is more related to psychological processes as the break down of trust and communication, perceived incompetence's (Foley & Cronin, 2015). Bollen (this volume), shows that conflicts between works councils and management typically are about lack of trust, and perceived lack of respect, and problems in information management. Given these more covert causes of conflict, another approach by third parties is needed. Not only focused on the overt content, however on the root-causes (Elgoibar, Euwema, & Munduate, 2016; García, Pender, & Elgoibar, 2016). Therefore, the classification of collective labor conflict deserves extension, towards 'soft' factors, as trust, communication, competences.

Labor conflict only? The literature on collective labor conflict is mostly rooted in the tradition of labor relations. Our studies show, this limits the types of conflict which are addressed through the formal systems. In several European countries, the formal mediation system is only accessible for conflicts of interest, or for unions, who have an institutional place at the table. To what extent are there third party provisions for other collective conflicts in organizations? For example conflict between two departments, or faculties, or between production and marketing, are common practice (De Dreu & Van de Vliert, 1997; Rahim, 2017). Such conflicts often have a detrimental impact, also for employees, however are left to management to deal with. A works council could play a signaling role in this. Conciliation and mediation services could be of

¹According to the ILO, "a rights dispute is a dispute concerning the violation of or interpretation of an existing right (or obligation) embodied in a law, collective agreement or individual contract of employment. At its core is an allegation that a worker, or group of workers, have not been afforded their proper entitlement(s). An interests dispute is one which arises from differences over the determination of future rights and obligations, and is usually the result of a failure of collective bargaining." <http://www.ilo.org/legacy/english/dialogue/ifpdial/llg/noframes/ch4.htm#3>.

great benefit also in these conflicts, and organizing such services would match with the changing dynamics in industrial relations.

Conflicting parties. Another issue which came visible in this investigation is the question whom the conflicting parties currently are in mediation. Particularly among employees in organizations, substantial differences might exist, with important groups not necessarily represented (Garcia, Munduate, Elgoibar, Wendt, & Euwema, 2017). Conflicts of interest often exist between groups of employees, for example between professionals (doctors and nurses), older and younger employees, and particularly permanent staff and non-permanent staff. These issues rarely become subject of formal mediation, or conciliation. Particularly the interests of relative vulnerable groups are lacking attention.

The development of the field benefits from new and broader access to conciliation and mediation, than the relative limited approach now.

21.4 Employee Representatives in Conflict

In most countries presented in this volume, collective labor conflicts are between employers, and their representatives inside or outside the organization, and employee representatives. In most countries these are unions. Within Europe there are two basic institutional actors on the side of employees: inside the organization we find works councils and health and safety committees, and outside the organization we find unions representing the interests of workers. These bodies are related to different types of conflict. Most literature and legal regulations focus on one of these two, works councils or unions. Including third party interventions such as conciliation and mediation. In different countries, we see mostly different provisions for both.

Unions, strikes and mediation. Within the EU, usually unions are the only party with a right to call for a strike (Warneck, 2007). Before going into social action there will be in many countries an attempt to solve the conflict through conciliation or mediation. Such is for example the case in Spain, Portugal, and Belgium.

Works councils, deadlock in decision making and mediation. Works councils are the formal bodies of dialogue between management and elected employee representatives. Organizations in most EC member states have to inform, consult and even need the approval of the works council when it comes to decisions impacting the employees, such as restructuring. For example a Dutch health care organization facing financial losses proposed to restructure. The works council did not approve, which made progress impossible. Third party assistance to unfreeze these conflicts are offered for example in the Netherlands and Denmark.

In some countries, e.g. the UK, employees are able to directly ask for conciliation or mediation. This also is the case in China and India. With growing education of employees, larger variety, and a decreasing membership of unions worldwide, an important question is, who can have access to mediation services. Particularly, when such services are provided or funded by governments. The ILO also promotes access to services for (groups) of employees, who do not necessarily work with previously elected representatives.

21.5 Conciliation and Mediation: What's in a Name?

Mediation can be broadly defined as ‘any third party assistance to help parties preventing escalation of conflicts, helping to end their conflict, and find negotiated solutions to their conflict.’ (Elgoibar, Euwema, & Munduate, 2017). For collective labor conflicts, the international terminology differs from other domains. Internationally, conciliation and mediation are often used as synonymous in scientific literature (Foley & Cronin, 2015; Wall & Dunne, 2012). In the collective conflict's systems and regulations, significant differences exist between both concepts. Conciliation is defined as “the practice by which the services of a neutral third party are used in a dispute, as a means of helping the disputing parties to reduce the extent of their differences and to arrive at an amicable settlement or agreed solution” (Foley & Cronin, 2015). The way this conciliation process is organized differs largely between countries, however is mostly a relative informal process, where the primary conflicting parties are engaging in a facilitated dialogue. The contributions in the volume from the USA, UK and Denmark give good examples of the use of such informal facilitation in early and preventive stages (Cutcher-Gershenfeld, Kochan, & Calhoun Wells, 2001; Dix & Oxenbridge, 2004). Here, the facilitation aims at the development of cooperative relations and competencies for problem solving negotiations. The goals and way of working shows resemblance with transformative mediation (Folger & Bush, 1996). The facilitator is focusing on the process (Schein, 1999), asking questions to parties to stimulate the learning process, and not giving own opinions (Foley & Cronin, 2015; Schein, 2013). If such conciliation does not end the conflict, a second step can be mediation. This is in many countries a more formal process, with mediators taking up an evaluative role, and give recommendations to the parties how to proceed. When parties accept these recommendations, the conflict can be ended with an agreement. There are systems, for example in Spain, in which parties can choose between mediation with and without recommendations. In the first case, a specific protocol how to give these recommendations by mediators exists. This form of evaluative mediation comes close to arbitration (Bush, 2002). In chapter two, developing the five phases model for collective labor conflict, conciliation is defined as an informal process of supported negotiation between parties. Mediation is defined as a process of more formal third party support, typically used when conflicts are more escalated and previous attempts to facilitate were unsuccessful. This approach is consistent with also individual work place conflicts, where often first a more informal conciliation effort is made (by different actors), followed by a formal mediation procedure (Bollen et al., 2016; Brinkert, 2016). These third party interventions offer substantial benefits, compared to collective actions or legal procedures (Budd & Colvin, 2008; Costantino & Merchant, 1996).

Third parties can have different roles and positions, related to the society, culture as well as level of escalation and specific parties involved (unions vs. works councils for example). Also, we notice there is a wide array of terminologies used, which often contributes to confusion. In several countries we observe that what is officially called ‘mediation’, has most characteristics of arbitration, and often is a very formal process

where representatives of the conflicting parties are negotiating for solutions, and the third party often acts in an evaluative way. For example in China, the same ‘mediation’ team can first try to facilitate the conflict, however also can act as arbitrator (Wei & Wei, this volume).

The development of the field benefits from more clarity and consistency in terminology. The presented definitions here might offer a way forward.

21.6 Understanding Different Mediation Practices with the 3-R Model

The 3-R model (Garcia et al., this volume) refers to three different dimensions that are important to consider when deciding for mediating and what form mediation takes: Regulations, Roles and Relations (Fig. 21.1). The three dimensions together create a pyramid that is built upon different layers, going from the broader context at the bottom, to specific third party tactics at the top.

The 3-R model has been used to classify the different systems presented in this volume. Evidently, the interplay of regulations, roles and relations result in highly different systems. The evident conclusion has to be, that certainly not one model for conciliation or mediation can be promoted or implemented. The fit within the context determines the effectiveness. However, these contexts develop, and often rapidly. As is shown in China, India and for example Estonia and Poland.

Alignment of components is a fundamental requirement for good functioning systems (Cummings & Worley, 2014). In the different systems we see examples of good alignment, such as ACAS in the UK, and the Belgium system with a team of

Fig. 21.1 The 3-R model of mediation in collective labor conflict

mediators at the ministry of labor acting also in preventive roles, or South-Africa. We also see poor alignment, for example in Italy, Poland and Estonia. Within each country, learning from other systems can help to further align the own national system.

The 3-R model helps to analyze conciliation and mediation in its context. First, it helps to understand the extent to which mediation is used, for what conflicts and how the process of entering the mediation is organized and functioning. Secondly, the model offers a framework to understand the choice for certain mediation styles, strategies and tactics based on the interplay of regulations, roles and relations. Finally, the 3-R model offers a tool to understand and explain specific outcomes of mediation, given the characteristics of the Regulation, Roles and Relations and their interplay.

21.7 Collective Conflicts: Interventions Through Five Phases

Collective labor conflicts develop, and this can be through five phases. Interventions differ for each (Pender et al., this volume) (Fig. 21.2).

Fig. 21.2 Five phases of conflict development

*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).

While we see in many countries (legal and structural) arrangements for third party intervention in specific escalation phases (particularly around a threat of strike, or of other collective actions), much less is arranged in other stages of conflict in the relation between management and employee collectives. In several countries we see initiatives for intervention in an early stage of conflict. For example where facilitators help the collective bargaining process with setting the agenda, coordinating meetings and using caucus in order to facilitate negotiation and break the impasse.

Worldwide, we notice a trend to more preventive actions and early stage interventions. Zach and Kochan (this volume) present important evidence for the positive results of training in integrative bargaining, in one of the few academic studies in this field. They signal a trend towards more early stage support and education in collective bargaining and related conflicts. Same trends are mentioned by Jordaan

(this volume) in South Africa, by MacNeil in Australia. In Europe, Acas (UK), Belgium, Denmark and the Netherlands, all offer different forms of preventive actions and early intervention. However, a consistent message in all chapters is, the recognition of more early interventions, with high potential for improvement of industrial relations, and prevention of conflict escalation. Further investment in these type of interventions is highly recommended.

The phase of rebuilding after a conflict episode is apparently weakest developed in most countries. Our studies consistently show stakeholders all recognize the need, and address the lack of such support. This is left to the organizations, and usually parties move on, however with low trust and with increased risk for new escalations. If not properly addressed, the aftermath of one conflict 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 should not just be left to the organizational dynamics. Surprisingly few initiatives address this topic in any of the 12 EC member states, nor in the other countries studied here.

21.8 More Methods and Research Needed

This volume presents empirical studies in a substantial amount of countries. Investigating the academic empirical literature, the conclusion is, there is a very limited amount of studies investigating the effectiveness of conciliation and mediation in collective labor conflicts. Given its relevance, this is surprising, and hindering the development of good practices.

There are several of such good practices though. Often a good research practice goes hand in hand with a well-developed national or regional mediation system, mature enough to invest in training and evaluation. Acas in this respect might be considered a benchmark organization, doing systematic qualitative evaluations of their interventions, keeping record of agreements and other outcomes, and investigating this in academic ways.

Both in the EC, as well through international cooperation, setting standards for the measurement of conciliation and mediation outcomes, as well as for methods used, would help this field to develop towards more mature practices, greater recognition by conflicting parties, and acceptance in each society. Cooperation internationally in developing and evaluation of interventions will add to our understanding of the conditions under which specific conciliation and mediation efforts are contributing to conflict prevention, resolution, and rebuilding of relations.

21.9 State of the Art in Conciliation and Mediation

Comparing the regulations and practices in described in this volume reveals large differences on all levels of third party interventions. It is difficult to compare these

systems and practices, given the different traditions, and labor relations systems. Here, we summarize the findings in 13 conclusions and propositions.

1. *Terminologies* differ between countries. Terminologies also differ from other areas of mediation, such as in family, commercial or individual workplace conflict. Most countries differentiate conciliation (informal process, aiming at problem solving guided by a third party), and mediation in collective labor conflict. Mediation in many countries is a more formal process, in which the mediator is fact finder, and usually gives recommendations. This is a form of *evaluative mediation*, particularly suitable in highly escalated conflicts.
2. *Conciliation* is used considerably more in most countries, compared to mediation.
3. *Mediation* appears mostly in highly escalated conflicts, often with threat of strike or during strike.
4. The *role of government* differs. This should not come as a surprise, given the large differences in political and societal models and ideologies between societies, such as China, USA, and India. However, these differences also are substantial within the EC. Most EC member states provide an organized public service. This can be either through public servants employed by the ministry of Labor (Belgium, Portugal, Estonia), or through an independent or autonomous service provider, funded by public means (SERCLA-Andalusia; ACAS, UK), or through organization founded by social partners (SER, Netherlands; Cooperation Consultants, Denmark). Several countries however lack such a public office (Germany, Italy, France).
5. *Third parties* are quite different when it comes to whom are available, and to what extent conflicting parties have freedom to choose a mediator. Also the level of professionalism differs substantially.
6. There is no international or European standard for conciliators and mediators in collective conflicts. Each organization uses own criteria. These are mostly based in general education (law), and experience. Less so in specific training in facilitation and mediation techniques.
7. Mediators acting in collective labor conflicts are typically not registered in national registers for mediators, and don't follow the guidelines of such professional bodies.
8. Mediation styles are shifting towards more facilitative mediation, and less evaluative mediation, however the approach in many countries still is rather formalized, acting with a mediation team (composed typically of third parties representing employers and employees). This shows still resemblance with the 'traditional' forms of tribunals, where a group of relative outsiders is investigating the facts, and comes with recommendations.
9. There is a growing tendency, particularly in conciliation, to introduce one single third party, working directly with conflicting parties in a explorative, problem solving, way.
10. Human resources practices are needed in all aspects of the mediation systems: selection of mediators, training, evaluation, competence-based systems.

11. Mediators see a large potential for their contributions which is still majorly under used. Main reasons are the lack of knowledge among primary actors, and the resistance to accept third parties.
12. The greatest potential for contribution is seen in the prevention of escalation, and in the post-conflict period. There are few initiatives to systemically offer third party services (Acas, UK; and Cooperation Consultants, DK). Furthermore, this is in most countries a free market where different providers are active.
13. Systematic evaluation and quality control is lacking and needed, with equivalent indicators for the evaluation of the mediation systems to compare effectiveness and learn of best practices in each country.

21.10 Ways Forward to Promote Third Party Support in Collective Labor Conflict

1. *Promote one provider at regional and/or national level for third parties services, at least to provide information for access to high quality facilitation and mediation.*
2. *Promote early signaling and facilitation programs, to develop competences among primary parties and to develop a more cooperative climate for social dialogue in organizations.*
3. *Promote exchange of good practices both within and between countries in relation to conflict conciliation and mediation.*
4. *Promote an international, or at least a European idiom, overcoming the Babylonian language issues.*
5. *Develop a European knowledge center, servicing EC member state offices and other third party providers. Exchange internationally expertise in conciliation and mediation.*
6. *Develop a strong HR policy recognizing the need for well trained, professional mediators in collective labor conflicts. Both at national, and international level.*
7. *Promote understanding of the specific requirements for conciliation and mediation in collective conflict through systematic evaluation, and further academic investigation as well as theory development.*

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