

I·I·R

UNIV
SHELF

INSTITUTE OF INDUSTRIAL RELATIONS

UNIVERSITY OF CALIFORNIA, LOS ANGELES

**TRAINING
RUSSIAN MEDIATORS:**

The Advent of a New Era?

Ira B. Lobel, Commissioner
Louis J. Manchise, Commissioner
Federal Mediation and Conciliation Service

I·I·R

INSTITUTE OF INDUSTRIAL RELATIONS

UNIVERSITY OF CALIFORNIA, LOS ANGELES

**TRAINING
RUSSIAN MEDIATORS:
The Advent of a New Era?**

Ira B. Lobel, Commissioner
Louis J. Manchise, Commissioner
Federal Mediation and Conciliation Service

**Institute of Industrial Relations
Publications Center
University of California
Los Angeles, CA 90024-1478**

Editors

Jane Wildhorn
Maryann McGuire
Betsy Ryan

Manuscript Preparation

Margaret Zamorano
Juliana Tsao

To order copies of this publication, please phone 1-800-247-6553

**© 1993 by the Regents of the University of California
All rights reserved
Printed in the United States of America**

ISBN 0-89215-182-X

Foreword

As part of its Current Issues Series, the UCLA Institute of Industrial Relations (IIR) is pleased to present *Training Russian Mediators: The Advent of a New Era?* by Ira B. Lobel and Louis J. Manchise, both Commissioners in the Federal Mediation and Conciliation Service (FMCS) and located, respectively, in Albany, New York, and Cincinnati, Ohio.

This timely publication describes the planning and development, for the first time, of a mediation service in the Russian Republic that would function analogously to the labor mediation system in the United States. As part of a team of U.S. and Russian officials from public and private organizations whose purpose was to develop a mediation system and train potential Russian mediators, the authors traveled to Russia to conduct the training. Their revealing account of the cultural differences they encountered in their attempts to communicate mediation techniques as practiced in the United States, as well as their successes, gives a dynamic picture of a changing society that is both optimistic and pessimistic about increased democratization in all spheres of life.

In 1991, the IIR published an account by Brian L. Flores, Deputy Director of the FMCS, of his trip to Moscow as a member of the initial planning group whose mission was to determine what was needed for the eventual development of systems for resolving conflicts in the emerging Russian State (see IIR Current Issues Series No. 16). We are pleased now to offer this interesting follow-up publication, in keeping with the IIR's ongoing commitment to making available the latest developments and information on industrial relations topics.

Jane Wildhorn
Director
IIR Publications Center

TRAINING RUSSIAN MEDIATORS: The Advent of a New Era?

Ira B. Lobel and Louis J. Manchise

The challenge was innovative, immense, and interesting. Innovative in that we were asked to introduce a new system of dispute resolution in the Russian culture. Immense in that we were encouraging the creation of a new agency called the "Service for the Settlement of Labor Conflict in the Russian Republic." Interesting in that we were trying to instill American-style labor dispute resolution techniques into the Russian culture.

The process began with a series of intergovernmental meetings over the past two years. Search for Common Ground, a non-profit organization, and the Federal Mediation and Conciliation Service (FMCS), were asked to train fifteen potential mediators for the newly established "Service for the Settlement of Labor Conflicts in the Russian Republic." The training program was primarily the vision of four people: Bernard E. DeLury, Director of the Federal Mediation and Conciliation Service; Brian Flores, Deputy Director, FMCS; Ivan Smirnov, a Deputy in the Supreme Soviet of the Russian Republic; and John Marks, President of Search for Common Ground.

Through a series of meetings and discussions in both the United States and Russia, these officials inspired and generated interest in the concept of a labor mediation service in the Russian Republic to function in a manner analogous to the mediation system in the United States. The actual training program, however, had to be designed in such a way that it would be relevant for the students both in terms of content and cultural reality. The content requirement was fairly easy to satisfy due to the adversarial nature of labor-management disputes. The cross-cultural needs proved to be another story.

BACKGROUND

In October 1990, FMCS Deputy Director Brian Flores and Director of Field Services and Training John Wagner were detailed to the United States Information Agency to work with Search for Common Ground and other private American mediators to exchange information on the two countries' labor relations systems. The exchange was a public/private venture with an objective to assess and gather information on the development of a framework for designing and implementing labor relations dispute resolution systems in the Russian Republic.¹ The public/private component was an important and integral feature of this project since total government participation would have been held suspect by our Russian colleagues. A federal government presence, however, was essential for credibility and legitimacy of the future mediation service.

The Americans met in Russia with a variety of trade union, government, and business officials. One of the highlights of this trip was a meeting with Ivan N. Smirnov, a Deputy in the Supreme Soviet of the Russian Republic and a member of the Commission on Social Policy. Mr. Smirnov is a visionary and was immediately excited by the possibilities of creating a labor-management mediation service. Ivan encouraged and initiated further discussions with Search for Common Ground and FMCS to develop such an agency in the Russian Republic. He is now one of the key officials in the establishment of a Russian mediation service.

In September 1991, another trip occurred to exchange additional information regarding the establishment of a mediation service. The American contingent included General Counsel Ted Chaskelson and Commissioner Ira Lobel, from FMCS, and private mediator Thomas Manley from Williams and Hutton, a law firm in Raleigh, North Carolina. Ted and Ira were chosen because of their positions with FMCS and their previous experience with administrative agencies. Tom is on the Board of Search for Common Ground and has extensive background as a private mediator of labor disputes.

There were some mixed signals in the objectives and goals for this trip, a frequent occurrence because of the language barrier. Instead of the fact finding and information gathering that was expected, Ivan pressed for a training program on mediation techniques. Ted, Ira, and Tom were pressed into hastily preparing such a program.

The resultant three-day session was conducted in Moscow for several key trade unionists and politicians handpicked by Mr. Smirnov. He believed these individuals would be valuable allies in supporting the development of a mediation agency. The focus of the program was to teach basic negotiation and mediation skills. The three Americans developed a mixture of lectures and role plays, a design which proved helpful in planning

subsequent programs. Emphasis was placed on using inter-active techniques used commonly for training adults in this country but not to any great extent in that part of the world.

From the beginning, it was clear that the students were more interested in arbitration than mediation. Upon reflection, this is not surprising, since the Russian culture has had totalitarian decision-making for hundreds of years. Mediation is a different process that involves an effort by a third party neutral to facilitate labor and management in making decisions for themselves. Arbitration is simply a third party making decisions for both parties and is consequently much more in tune with an autocratic mentality.

After this training, Ivan Smirnov suggested several steps necessary for the development of a legitimate and credible mediation service: (1) the formulation of a decree from President Boris Yeltsin regarding the establishment of such a service; (2) training in the United States of two mediators who could serve as a core for future training and development in Russia; and (3) more intensive and extensive training in Moscow later in the year which would include fifteen potential mediators.

The decree establishing the mediation service was formulated in September and signed by President Yeltsin in December 1991. Deputy Smirnov arranged for the two prospective core mediators to visit the United States in November for training and program development with FMCS and Search for Common Ground. The students were Igor Pevnitsky, Vice Principal of a school for gifted children in St. Petersburg, and Alexander "Sasha" Nukovich, consultant to the new independent trade union SOTSPROF. The three-week course included two weeks with mediators from FMCS and one week with Tom Manley from Search for Common Ground. The syllabus included the theory and practice of labor mediation, numerous role plays, and an observation of an actual labor-management negotiation. Commissioner Ira Lobel from Albany, New York, and Commissioner Louis J. Manchise from Cincinnati were assigned to conduct the FMCS portion of the training. Lou dealt with the theory, the practice, and the art and the science of collective bargaining and mediation. Ira concentrated on the development of various role plays, based in large part on his previous experiences in Moscow. The training of the core mediators was very intense: two instructors, two trainees, and an interpreter. At its conclusion, the program was evaluated as to content, style, and cultural suitability for the training in Moscow. Igor and Sasha both made valuable suggestions for the cultural adaptability. For example, it was suggested that role plays on apartment conditions be avoided, since housing conditions are very crowded in Russia and as such create severe

personal problems. It was felt that students would bring their personal concerns into the classroom instead of concentrating on the process of negotiations and mediation.

As mentioned earlier, the third week involved working with private mediator Tom Manley on an actual labor-management dispute. The collective bargaining dispute was between a major electrical utility and their independent union. Tom showed Igor and Sasha the dynamics of the mediation process, and while some of these dynamics were lost through the translations, the students reported that they were exposed to a tremendous experience.

Educationally, the program gave the students theoretical knowledge, practical applications, and real life experience. Furthermore, Igor and Sasha assisted in the development and design of the three-week training program to be held in Moscow later in the year. This program had to be both educationally significant and culturally appropriate. We believe their input was particularly important in the use and nature of the role play exercises.

The Moscow program included three weeks of training, half taught by FMCS and half by two private mediators—William Hobgood, of Usery and Associates, and Tom Manley, of Williams and Hutton—both selected by Search for Common Ground. The stratagem was for the first part of the training to emphasize the practical "how to" aspects of mediation; the second part was to discuss how a mediation service would fit into the Russian legal system and culture. There was one day planned when all four Americans would be present at the training; this would serve as a transition day for the instructors and the students.

THE ACTUAL TRAINING

The two FMCS instructors arrived in Moscow on March 29, 1992. At the airport, we were met by Ivan Smirnov's assistant, Igor Gustichev, who brought us to the training site located about an hour's drive outside the center of Moscow. The training site was a retreat or *dacchaw* formerly used by the Russian communist party. The trip to the site was through the Russian countryside of rolling hills where one could see for miles. Unfortunately, we were there in the middle of "mud" season, just after the snow melts, but before the leaves started budding. At this time of year, the countryside looked particularly unattractive.

By Russian standards, the retreat was luxurious. The food provided by the *dacchaw* was excellent; there was no evidence of any food shortages. Fresh fruit was relatively plentiful; meat was served three times a day. But, considering we were government officials working with their government, this treatment was not surprising.²

The training program included thirteen students, plus the two individuals who were involved in the November training mentioned above. The students included key trade unionists, factory managers, and politically influential individuals. It was obvious that Ivan Smirnov had invited people who either would support the agency once it became operational or who could serve as mediators of labor-management disputes.

The training included a great deal of inter-active exercises, role plays, and a number of lectures. Initially, due to both the cultural and language barriers, this training approach was difficult for both the instructors and the students. The students sought a detailed manual to cover each circumstance; they wanted to be told the one correct answer for each conceivable dispute situation. The instructors emphasized that normally there are no "correct" answers in the mediation process. Culturally, this concept was extremely difficult to bridge.

The cultural difficulties were further exemplified by the students' frequent reference to the word "conflictology," a new Russian word used for the "science" of dispute settlement techniques, reflecting the need in Russian culture to develop a fixed set of rules or discipline for new subjects. Coincidentally, there is now developing an entire "science" for dispute resolution with set definitions and procedures for mediators. It was obvious that a frustration the students had throughout the program was the lack of such a manual to dictate the course of mediator action for each and every type of labor-management dispute.

Early in the curriculum, there was a lecture on U.S. labor relations and labor law. The content level of the lecture was elementary since it was anticipated that it would be very difficult for the students to understand the American approach, which is relatively free from government intervention. It is important to know that Russian law has no system for identifying a union representative, no method for identifying the employer (in fact, in most situations, there is but one employer—the state), and no standing for a labor agreement enforceable in a court of law. These differences again proved difficult for a Russian trying to understand our system.

When we discussed the use of mediation and arbitration in labor relations, the students had difficulty understanding the different applications. Despite the emphasis that the U.S. government does not dictate terms of the collective bargaining agreement to labor and management, the concept was almost impossible for students to comprehend. Throughout these sessions, the students seemed to believe we were discussing arbitration, where somebody makes a final and binding decision. Upon reflection, this misunderstanding is not surprising in a society where a labor contract has little meaning

and where the government has been making all the decisions on wages, hours, and other terms and conditions of employment for the last seventy years.

It was necessary to partially repeat this lecture at least three times before the instructors felt confident that the students had a rudimentary understanding of the system we were describing. The students were very bright; intelligence was not the issue. What was the issue was that there was nothing in their culture that could help them relate to even the basic concepts of American collective bargaining and mediation.

One inter-active technique that worked very well involved having the two American instructors act as advocates in a collective bargaining role play and having the students function as the mediators. With this approach, the instructors fashioned the role play in an educationally significant way by giving the students clues as to the potential comments and questions they might ask in an actual case. The role play was divided into sections, with a different student handling each section, and consisted of initial mediator contact of the parties; a joint session with the parties and the mediator; separate sessions with the parties; additional joint and separate sessions; and closing techniques. After each section, the approach of the mediator student was analyzed and critiqued by the entire class.

This approach proved to be a major breakthrough. It was used several times during the training. In the first couple of exercises, students wanted to control and direct the negotiations and tell the advocates what to do. This was reflective of the desire to arbitrate. As we further discussed mediation techniques, the students began to understand that mediation can and does facilitate the decision-making processes of labor and management, and this would lead to a mutually agreeable solution.

The students also wanted to see the instructors mediate a simulated dispute. A role play was developed in which students were asked to negotiate a set of issues that would lead to an impasse. The two instructors took turns being the mediator so that the students could see their two different styles. Both instructors painstakingly probed the issues and asked "what if" a great deal; moved slowly to bring the "parties'" underlying interests to the surface; and guided the parties toward a solution. When the students observed this approach, they were able to adapt various techniques to their own style and personality. In subsequent role plays, their mediation skills improved rapidly.

Over time, the students started to appreciate the value of asking questions and trying to get the parties to talk to one another to come up with their own solutions and ideas. They learned that some very well placed questions and suggestions could serve the cause of settlement better than a statement of what the mediator believed would settle a dispute.

The training itself was very well received, although the learning went much slower than had been anticipated in our original plan. Working with interpreters doubled the length of all lectures and questions often lost something in the translation. Accordingly, material took at least twice as long to get through.

We kept emphasizing that the techniques of mediation depend on the situation, the issues, the personalities of the parties, the timing, the parties' relative bargaining power, and a host of other factors. We emphasized that there is no one prescription; that there are a variety of answers and approaches that could be generated by the parties to satisfy their needs. After several days of listening to us reiterate the need for flexibility, the students started to appreciate that a mediator's function was to facilitate, explore, and question, not to give answers. Observing the instructors mediate with their different styles helped students appreciate that different styles and approaches are at the heart of any mediation system.

This non-directive approach to problem solving will take time for Russians to learn and apply. The Russian culture promotes giving speeches and telling the parties what to do. Also, in most cases, someone else and not the negotiators will make the final decision.

We also found that, in addition to consuming training time, the interpreter's translation, while accurate in terms of the words, did not portray the nuances of our message due to cultural differences. This created additional questions and some puzzled looks that were not anticipated by us. For example, at one point, we discussed the need to explain the mediation process to the parties and to explore ideas with both union and management representatives through the use of open-ended questioning techniques. This approach was interpreted as an "official investigation," which has a connotation in Russia very different from what we were trying to convey. Some students perceived that mediators should behave like police investigators. The program was fortunate to have as one of its Russian participants a mediator of ethnic disputes, Valaria Votchal, who was well versed in the terms and concepts of mediation. She frequently rescued us when verbatim translations missed the point we were making.

THE PEOPLE WE SAW, THE FRIENDS WE MADE

As we walked through the streets of Moscow, one aspect of Russian culture that struck us was the lack of eye contact. Despite our trying to be friendly and courteous on the street, people would not look directly at us. Yet, these same people, in the privacy of their homes, were gregarious, friendly, and open. This dichotomy was fascinating and it

could be seen in the classroom as well. During the first few days of our training, there were very few questions and very little eye contact. It was as if there were a wall between the students and the instructors. It took the students much longer to get "loosened" up than it would have in this country. Yet, once they realized that questions and comments were both welcomed and appropriate, they appeared eager to participate and extremely open in their feelings. To use an overused word, we bonded—no two ways about it.

Disagreements among students, however, were rare. In the United States, adult students are not bashful about disagreeing with another student or a teacher. In our class, it appeared the students would not challenge another's opinion but instead state their opinion in its entirety, without contradicting someone else. Speeches outlining their opinions were far more common than criticizing the instructors or another student.

Regardless of these differences, the students were anxious to learn, anxious to think, and anxious to exchange viewpoints.

THE FUTURE

It is difficult to predict the future of labor-management mediation in Russia. The situation is changing very rapidly. For example, as we traveled, we could see hundreds of "flea markets" opening around Moscow, a concept that was prohibited just six months previously. The entrepreneurial spirit exists,³ but the country must establish systems that will allow the free enterprise economy to develop, collective bargaining to percolate, and the inevitable labor-management disputes to be resolved.

One way of helping to resolve disputes is the development of an official mediation service. What is also needed is an adjustment in Russian thinking that will allow people to challenge each other's ideas, concepts, and methods. Openness to these new and different ideas has not occurred in hundreds of years; yet, if our students were any indication, the people are looking for ways to change their way of doing business. If they are successful, Russian mediation will flourish.

The opinions expressed by two Russians we met on this trip were, to us, emblematic of the dilemma and conflict facing the country at the present time. Svetlana is forty, a widow, Jewish, with two children aged seventeen and four. She mentioned how she and her family were on several blacklists, one dating back to the 1930s when her grandfather had protested against Stalin. She remarked that the State never forgets. Svetlana thought Russia was doomed for eternity—that it could not break out of the economic and cultural abyss that it was in. She is the classic Russian pessimist.

Katie, on the other hand, is about thirty, single, a Russian Orthodox from Georgia, who thought that the country had the natural resources, the energy, and the intellect to make the country the best and most wonderful in the world. She is the classic Russian optimist. To hear these friends discussing the future of Russia was to appreciate the current state of the country: it is clearly at a crossroads.

Regardless of which way Russia heads, perhaps one of our students, who became a new Russian mediator, articulated the answer to the above dilemma. He said: "Life in Russia has been worse before; we lived through it and, if need be, we will endure and live through it again." We hope that Katie is right and that the student will never have to test his fortitude.

Did we succeed in training Russians in the art and science of labor-management mediation? Will there be a Russian mediation service? Only time will tell whether our efforts will help bring about the advent of a new era. We certainly hope so.

NOTES

1. See Brian Flores, *A Look Back in Time: An Appreciation of Collective Bargaining* (Los Angeles: UCLA Institute of Industrial Relations, Current Issues Series No. 16, 1991).

2. At one point, we visited a Russian grocery store—the size of a very small American grocery store with less stock than the last day of a going out of business sale. Unlike in the United States, there are only one or two kinds of cereal, soda, etc.

3. In fact, it appeared that some of our students were trying to figure out how a living could be made out of mediation.

IIR PUBLICATIONS

Created in 1945, the UCLA Institute of Industrial Relations was established to further academic research and to serve all groups and persons involved in industrial relations. IIR publications reflect the Institute's dual purpose, covering a range of important and timely subject areas and making available the latest thinking, research findings, legal developments, and applications in the field of industrial relations, broadly defined.

The Current Issues Series is one of several that the IIR publishes.

To order IIR publications and to receive a complete publications catalogue, please contact BookMasters Distribution Center, 1-800-247-6553.

CURRENT ISSUES SERIES

1. *Employee Relations Outlook: Impact of Foreign and Domestic Competition*, 1985
2. *Retiree Nonpension Benefits: Management Guidelines*, 1987
3. *Employer's Withdrawal Liability: An Update*, 1987
4. *Current Issues in Employee Benefits*, 1987
5. *EEO Update: Sexual Harassment*, 1987
6. *EEO Update: Affirmative Action*, 1987
7. *EEO Update: California Threshold Issues*, 1987
8. *EEO for Practitioners - 1988*, 1988
9. *Organizing Asian Pacific Workers in Southern California*, 1989
10. *Union Strategies for a High Tech Era*, 1989
11. *Issues in Public Sector Employment*, 1989
12. *Retiree Health Care Crisis*, 1989
13. *EEO Update: Employee Selection and Promotion*, 1990
14. *Issues in Public Sector Employment*, 1990
15. *Human Resource Perspectives for the 1990s*, 1991
16. *A Look Back in Time: An Appreciation of Collective Bargaining*, 1991
17. *Issues in Public Sector Employment. Into the Future: Public Sector Issues for the 90s — A Panel Discussion*, 1991
18. *Labor in an International Economy: Implications for Bargaining and Jobs*, 1991
19. *Training Russian Mediators: The Advent of a New Era?*, 1993