

Reforming the U.S. system of collective bargaining

Collective bargaining procedures and relationships between labor and management must reflect less conflict, more cooperation as the Nation's economy struggles to meet international competition and domestic needs

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Can collective bargaining in the United States meet the challenge of the 1980's by tempering traditional confrontation with new cooperative approaches? Can management and labor modify their adversarial, rulemaking relationship by exploring and recognizing mutual needs? This article examines some recent events that suggest affirmative answers to both of these questions.

Labor unions developed in the United States within a generally hostile business and legal environment. As early as 1806, unions in major eastern cities were being prosecuted in court as "combinations in restraint of trade." During the economically turbulent 1870's, industrial workers seeking better pay and conditions of work attempted strikes and public protests, only to be dispersed by police. In 1877, railway strikers throughout the country were repulsed by Federal troops. During the depression of the 1890's, martial law was declared to break strikes in the western mines. And the Federal Government intervened at the railroads' request to defeat the 1894 strike by the American Railway Union against the Pullman Co.; to further assist the

company, a Federal court enjoined the railway workers from interfering with interstate commerce.

Following World War I, strong opposition by employer associations and further unfavorable court decisions contributed to a dramatic decline in the labor movement. Revitalization of the unions occurred during the 1930's, but only after lengthy strikes, and the enactment of Federal legislation—the Norris-Laguardia Act (1932) and the Wagner Act (1935)—favorable to the organizing rights of workers.¹

Born in turmoil, and victorious over adamant employer opposition, U.S. unions view themselves essentially as adversaries to management, a role which their legislative successes during the 1930's appeared to legitimize. And during organizing campaigns in recent decades, employers have tended to force unions ever more strongly into an overall anti-management posture. The turbulence of labor relations in the construction and textile industries exemplifies this phenomenon.

Ambiguous national labor policy

Some have argued that the purpose of our system of collective bargaining no longer commands a national consensus. When the Wagner Act was passed, it included a statement endorsing collective bargaining and the right of workers to join unions as being in the national

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interest. It appeared that the United States was committed to incorporating unions among the institutions of its pluralist democracy and to making its economic system work by and through their addition. But with passage of the Taft-Hartley Act in 1947, the mood of the Congress and of the public seems to have shifted somewhat: the right of employees not to join unions in effect became enshrined with their right to join unions. When, by decisions of the courts in subsequent years, employers were permitted to attempt to persuade employees not to join unions, the national policy had come full circle. For all practical and legal purposes, government has ceased to favor a specific industrial relations policy, and seeks rather to serve as an unbiased umpire in the choice which employees make as to union affiliation.

The result of this apparent shift in public policy is, as might be expected, that labor relations in the United States is now best described as a series of disconnected events. There is no overall pattern or purpose. The national policy is one of free choice for individual employees, and the choices vary considerably among individuals and over time. The energies of business and labor are channeled into the struggle over union recognition rather than into making collective bargaining an institution which contributes to national economic objectives. Within this environment, which might best be termed "benign neglect" by government, collective bargaining has stagnated.

In practice, then, collective bargaining in the United States involves open economic conflict over the rights of employees, unions, and management in the workplace. Under U.S. law, employees who strike for better wages and benefits, or to preserve existing levels of wages and benefits, are gambling with their jobs. Managers are free to replace the strikers either on a temporary or permanent basis. Thus it is that economic strikes by long-established unions in our country often quickly become struggles over the continued existence of the union.

The result: a law of the shop

Some management and union representatives have described collective bargaining in our country in terms of a fistfight: the question is which side will be knocked down, or out, first. Given such a relationship, it is not surprising that there is little trust between the two sides. Where there is little trust, conflicts over the terms of the employment relationship are resolved not through mutual understanding but with specific, written contractual arrangements which the Congress has chosen to make legally enforceable.

The American collective bargaining agreement consequently reflects the importation of much of the adversarial system of U.S. law into the workplace. The agreement sets forth rules which are legally binding on the parties and establishes a grievance procedure as the

mechanism by which the rules are enforced. The union and management take the roles of contending parties, as in a lawsuit, whenever there is a dispute in the plant. And increasingly, the parties bring attorneys into the grievance procedure to conduct what is virtually, though not yet entirely, a formal court proceeding to resolve their differences.

Many of the requirements of due process in our legal system have been incorporated directly into the contract grievance procedure. (The major exception is that the strict rules of evidence do not apply.) Thus, the grievance procedure involves several steps with appeals to higher levels, ending in a quasi-judicial proceeding before an arbitrator. To ensure that a disciplinary action will survive the oversight of an arbitrator, the employer must have established clear rules of conduct in the workplace; have communicated them to employees; and have documented transgressions. At some plants, for example, groups of managers (for arbitrators insist that there be more than one witness of an employee's infraction of a company rule) assemble to watch workers punch out at the timeclock at the end of the workday. Employees seen punching out early or punching more than one card are subject to disciplinary action by management.

Due process is a treasured right of U.S. citizens and is not to be disparaged. But its incorporation in the industrial relations world has given us a "law of the shop" that has become more and more burdensome to our economic enterprises. For, like U.S. law generally, collective bargaining agreements have grown increasingly complex. What began as one-page documents establishing that the union and the company would deal with each other have become contracts, hundreds of pages long, specifying in minute detail rules for the operation of economic enterprises. In some agreements, for example, many pages of rules are devoted solely to the question of how management is to make temporary assignments of employees to cover for other workers who are absent. But, because neither managers nor union officials really know what all the rules mean in certain instances, each noncustomary assignment made by the company tends to find its way into the grievance procedure.

Rules as a productivity drain

Rules alone cannot ensure that an organization will perform well. They may keep it from dissolving into self-defeating open warfare, but often do not permit it to achieve its potential. An organization which depends upon adherence to a myriad of rules will always be vulnerable to competition from other organizations which operate in a more consensual and cooperative fashion, even when the latter have fewer resources. And, although an organization of rules may sometimes pull it-

self together to respond to an emergency, this need not necessarily occur.

It follows, then, that primary dependence on establishing and enforcing rules is a very poor way to run an economic enterprise. The existence of a multitude of rules, many of which attempt to "stretch the work" to maintain jobs in ways reminiscent of depression-era tactics, constrains productivity and raises costs. For example, maintenance classifications may prohibit an employee from doing incidental work outside the strict limits of his or her trade; multiple job classifications may exist even where a person in a single combined classification could do the work effectively, without undue effort and stress; and, job classifications may be perpetuated although technological change has rendered the incumbents' work trivial. Other restrictions may limit the amount of work a person may be assigned, such as permitting a mechanic to open only two flanges. The location of materials and inventory may be restricted by contract or past practice to retain jobs in now-inefficient areas of the plant. In some cases, rules may prohibit employees being assigned work during breaks, and simultaneously prohibit supervisors from doing the employees' work, so that emergencies occurring at coffee breaks or lunchtime cannot be legally handled under the agreement.

Over time, rules tend to become increasingly costly and constraining as technology, materials, products, and other aspects of production change. Even rules which made great sense at first become out-of-date under changing conditions. But the rules are difficult to change, and particular employees may be further benefited the more outdated the rules become. Sometimes a company can pay a high price and "buy the rules out," or a union can persuade some workers to give up favored positions for the good of the membership as a group. But often, change cannot be accomplished without a bitter struggle between management and labor.

Furthermore, the rulemaking process promotes a set of attitudes which are inimical to successful enterprise. The existence of the rulebook encourages both management and labor to assert their rights under the contract, rather than to attempt to work out problems. It gives rise to "shop-floor lawyers," rather than problemsolvers. It fosters conflict and controversy. It undermines trust.

To a large degree, it seems that unions have become captives of their origins. Born in adversity and conflict, they continued to act as opponents of management even when their strength had become much greater. In some instances, unions have created thickets of rules in which to immobilize management, just as spiders build webs to ensnare prey. But when the thickets of rules have crippled productivity, the unions have discovered themselves to be caught alongside management in the trap.

Plants have declined in competitiveness, and jobs have been lost. The unions have discovered too late that a snare is no less a snare because they have set it themselves.

A prescription for change

In a recent survey conducted by the Harris organization, a majority of the general public professed the belief that unions contribute less than they once did to the growth and efficiency of business. Not surprisingly, only 15 percent of union leaders agreed with this judgment.² The need for unions to assist companies in the light of increased foreign competition is apparent to the public. To the inhabitants of the Snow Belt, it is similarly evident that unions should cooperate with local business to stem the outflow of industry and jobs to the South and West. Public perceptions of a productivity problem are supported by Bureau of Labor Statistics estimates, which show particularly sluggish growth in output per labor hour after 1973.³

Collective bargaining practiced primarily as rule-making has become self-defeating for both unions and management. It interferes with management's efficient operation of the enterprise, and ensnares employees with legitimate grievances in a web of red tape. It also contributes to the vehemence of employer attempts to resist union organization drives. Study after study of U.S. managers has shown that managers fear the imposition of restrictive work practices far more than the higher wages and benefits which unionization may bring. Companies' efforts to make competitive operations out of older plants often fail because changes in current work rules take the form of additional complex rules which do not provide the flexibility needed to turn a facility around. What management really needs is fewer rules altogether, and willing cooperation from the work force. The union, for its side, needs a management sensitive to the needs of people. Both are very difficult to obtain in the U.S. labor relations environment.

There are, of course, many reasons for this. The unions cite a long list of management actions and inactions which they feel justify an emphasis on protected rules and challenges to management action. Among the accusations frequently leveled at management are its failure to update the equipment in union plants; its location of new and more profitable products in nonunion facilities; and its burdening of unionized facilities with unfairly heavy overhead charges. Such actions call into question the good faith that management would show in any more cooperative relationship.

Managers have also helped to shore up the archaic labor relations system. American management has often proved unsympathetic to the problems of workers. For example, U.S. firms are quick to turn to layoffs during business downturns in an effort to maintain profit lev-

els. (In contrast, many firms abroad and some few U.S. firms attempt to preserve employment at the cost of short-term fluctuations in profits.) It should be acknowledged, however, that U.S. unions often contribute to the problem by insisting upon layoffs by seniority in preference to worksharing among employees during business declines, and that the U.S. unemployment insurance system encourages this preference by generally denying benefits to workers on short workweeks due to economic conditions.

Because of the substantial inefficiencies created by outdated rules, and the risk of resulting job losses, managers and union officials should always have at the top of their agenda the minimizing of rulemaking and the broadening of cooperation and consensus. This is the only method by which the flexibility needed to meet changing conditions and the ability to call forth the full potential of people can be obtained. In some instances, the relaxation of restrictive rules will cause employees to lose jobs, or to be assigned to less desirable jobs. But it is an illusion in most situations to think that jobs can be preserved in the long term by restrictive practices. Instead of preserving the few jobs at risk, high costs imperil the jobs of all persons in a plant.

Collective bargaining should be more than a fistfight, more than rulemaking. It must be more than merely adversarial. And there is ample evidence that it can be.

A great irony of history may serve as an example. At the end of World War II, the U.S. occupation authorities, under General Douglas MacArthur, reorganized the Japanese economy. The great trading companies, or *zaibatsu*, were broken up. Trade unions were established to add a dimension of social responsibility to Japanese political life. But the occupation authorities did not simply copy the U.S. industrial relations system. Instead, they imposed what they thought would be a better system, of which company-specific unions were to be the building blocks. And in West Germany, British occupation authorities with similar purposes in mind reorganized German industrial relations. In the British zone of occupation they introduced three major reforms: elected work councils, union representation on the boards of directors of companies (initially in the coal and steel industries only), and a few national industrial unions to bargain at the industry level with companies on behalf of the workers. In later years, a reunited Western Germany adopted the British innovations on a nationwide basis. In Japan, MacArthur avoided the adversarial and rulemaking obsession of U.S. labor relations. In Germany, the British avoided the multiplicity of trade union organizations that contributes to decentralized and disorderly industrial relations in Great Britain.

The reforms in Germany and Japan were largely a dramatic break with prewar institutions in both countries. Such substantial change was made possible

by the virtually total devastation which war had imposed on the industrial and social fabric of both nations. But over the years since the war, managers and unions in Japan and Germany have, by and large, built successfully upon the reforms instituted by occupation authorities. Many observers believe that these reforms in industrial relations have had as much to do with the economic success of the two nations as did any material assistance they were given in the postwar period.

The irony is that neither the United States nor Britain has been able to implement domestically the sorts of reforms in industrial relations practices that were imposed on the defeated powers. The result is that both Germany and Japan today have systems of collective bargaining which are much better suited to the needs of a competitive international economy than that of Britain or the United States. We in the United States apparently have known for many years the direction in which we should move, but we do not know how to get there from here.

Of course, there is no "clean slate" in this country as there was in the defeated powers at the end of World War II. We are not in a position to abandon collective bargaining as rulemaking, or simply to dispense with the adversarial element of our collective bargaining process. But we must move beyond these obsessions in substantial ways if a major new contribution to U.S. economic performance is to be made. Rulemaking may be replaced by a greater degree of employee participation and commitment in the workplace, but unless the adversarial posture also changes, increased participation may be of no use. Instead of resolving production problems, participatory schemes may simply add delays to management decisionmaking. And if the parties insist on treating earlier participatory decisions as precedents for further matters, the problemsolving mechanism may itself become yet another source of conflict and rigidity in the bargaining relationship.

Fortunately, a concept of collective bargaining that goes beyond rulemaking has deep roots in the U.S. labor movement. Before the 1930's, unions ordinarily envisioned themselves becoming involved in a broad range of problems associated not only with the difficulties of employees on the job, but also with the performance of the business enterprise. In union meetings, skilled trades workers debated what we would today call management issues. The dividing line between prerogatives of management and those of labor was far less well-defined than it is now.

It is time to draw on this older tradition of the U.S. labor movement, and leave behind the concept of collective bargaining as primarily a rulemaking process. This should be accomplished by putting far more flexibility into the collective bargaining agreement—making provisions less detailed, reorganizing work arrange-

ments, and designing different incentives for both management and labor. Some rulemaking and the legal enforceability of contracts are not to be abandoned. But they must take a back seat to attempts to move the collective bargaining process beyond continual confrontation and into a more constructive mode.

A commitment to enhancing productivity is not easily made by the U.S. unionist. Too often, past attempts to boost productivity have simply meant speeding up the pace at which managers require employees to work. But there is far more to improving productivity than speed-ups; and the failure to seek productivity improvement in a company threatens the continued existence of jobs that the company provides. Unions must become more sophisticated in their response to management efforts to improve productivity. Some efforts, perhaps, should be opposed, but others must be supported. And the goal of improving productivity should be accepted.

Today, the United States is full of experimental efforts to extend collective bargaining beyond the concepts of the 1930's—to increase the participation of the worker in his or her job and to help preserve jobs by keeping business viable. These efforts extend across many industries and various sectors of the economy, and take many forms, including quality circles, Scanlon plans, and job enrichment programs. They cannot yet be described as successes, although many have shown promise. These endeavors are of great significance for the future—they are steps that are being taken today to meet tomorrow's needs. If successful, these innovations may provide the basis for a new system of collective bargaining which will help preserve jobs, increase the number of U.S. businesses that successfully meet the

challenge of foreign competitors, and enhance the contribution and satisfaction of employees in the American workplace.

THE ECONOMIC REVITALIZATION of the United States in the 1980's is getting off to a start, though slow and uneven. With recent tax legislation, the Government has provided certain economic incentives which may help to restore the U.S. goods-producing sector to long-term viability, although much remains to be done in the important area of job creation for the next decade.

Within this broad economic context, both business and labor have their separate obligations. Business should be prepared to assist our work force in adjusting to the substantial production and employment changes which the 1980's are going to bring, both by providing workers with more advance notice of planned innovations, and by implementing changes in ways that minimize adverse effects on employees. The unions, for their part, should be ready to work with management toward a broader concept of collective bargaining than has been common in recent decades—one which is based on the participation of employees and union officials in the business process and which includes their commitment to the success of the individual enterprise.

The transition to a new cooperative mode of collective bargaining will be a difficult one, given the traditionally antagonistic atmosphere of U.S. labor-management relations and the fact that the change will probably have to be accomplished within a generally unfavorable business environment. But the alternative is a degree of economic and social unrest which cannot be in the best interests of management, workers, or, indeed, of the Nation as a whole. □

— FOOTNOTES —

¹ For an interesting discussion of the history of U.S. labor relations, see *A Brief History of the American Labor Movement, 1970 Edition*, BLS Bulletin 1000 (Bureau of Labor Statistics, 1970), and the 1976 supplement to that bulletin (also BLS Bulletin 1000).

² Louis Harris, quoted in *Daily Labor Report* (Washington, Bureau of National Affairs), June 3, 1981, pp. A14-A16.

³ See *Productivity and the Economy: A Chartbook*, BLS Bulletin 2084 (Bureau of Labor Statistics, 1981), p. 4; and p. 83 of this issue.