

# THE AIMS AND OBJECTIVES OF UNIONS AND MANAGEMENT IN RELATION TO EACH OTHER\*

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## INTRODUCTION

In endeavoring to state the aims and objectives of unions and management, one is tempted to indulge in hopeful generalities. Possibly one might say something like this:

Unions and employers have a mutual stewardship and a common trust, the true beneficiaries of which are the employees and the general public. This is a common bond of interest between the union and the employer which should lead to intelligent and honorable settlements. When both parties show a deep concern for the continued economic progress of the enterprise and for the welfare of the employees, and when they approach their relationship to each other with mutual respect and a spirit of compromise, then a peaceful resolution of all questions will be assured.

While I do not by any means decry sincere efforts to establish mutuality of understanding and constructive relationships, I feel that we must be aware of the realities existing in the ordinary union-management relations. Regardless of what the ultimate ideal might be, lawyers must concern themselves with the aims and objectives as they relate to particular situations and to specific management and union personalities. Of course, there should be constant, intense efforts to improve relationships, but such efforts, like pious preachments, will be meaningless unless the real nature of the relationships is thoroughly understood. It is impossible to generalize as to what the objectives of either party might be in any particular situation because many variables affect the relationship. These variables include such factors as the general economic and political climate, the economics of the company, the industry, and the community, the history of the relationship, the personalities involved, technological developments and many others. These variables mean that specific objectives are ever changing and dynamic. While some broad generalities might be set forth, exceptions almost always have to be made.

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## LABOR PEACE AND CONFLICT

Today it is popular to talk about "labor peace" as a proper objective of the parties. The term has pleasant connotations, but what is "labor peace"? Obviously "labor peace" is not an end in and of itself. Management can buy labor peace, in one sense of the term, by acquiescing in every demand made by the union. On the other hand, there can be a form of "peace" where the union is subservient. Experience has demonstrated that peace acquired in either one of these ways is not necessarily wholesome, nor economically or socially beneficial. Subservient managements can be forced out of business or into a marginal economic position.<sup>1</sup> Subservient unions can be explosively displaced by more militant organizations or productivity can become so lethargic that it is uneconomic.

While there are many exceptions in specific situations, the objectives of unions and management by their very nature involve conflict.<sup>2</sup> Indeed, a free economy implies the necessity of differences of opinion between the various segments of our economy. Any attempt at total elimination of conflict would undoubtedly lead to a totalitarian regime which would be objectionable to all.<sup>3</sup> The real problem with respect to industrial conflict is to keep the conflict within socially approved bounds and to develop methods of resolving differences intelligently and constructively. The acceptable bounds of conflict change from time to time, from industry to industry, and from one economic situation to another. They are affected by the tensions of existing or past conflicts, by abuses or excesses of power, by the ascendancy or descendancy of various political and economic notions, and by many other factors. Government determines the maximum bounds within which the conflict may take place.<sup>4</sup> While the parties have a right to pursue proper objectives within those bounds, they also have a responsibility for minimizing the detrimental aspects of conflict and for not abusing their freedom.<sup>5</sup>

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1. Rising, *Union Influence on Management Decisions in the Automobile Industry*, in PROCEEDINGS OF SEVENTH ANNUAL INDUSTRIAL RELATIONS RESEARCH ASS'N 1954, at 29-32 (Tripp ed. 1955). An example of a company which has been placed in a marginal position partly because of its prior concessions to the union is the Studebaker Company. In an effort to regain a more competitive position, the last two contracts between the company and the union have modified many provisions previously considered favorable to the union, including such matters as seniority, bumping, transfers, production standards, number of stewards, determination of ability and inability to perform work, and establishment of straight-time basis of hourly pay. There were, however, 85 unauthorized work stoppages during negotiations, and the 1955 contract was ratified by only 53.45% of the employees voting. Wall Street Journal, Jan. 9, 1956, p. 3, cols. 1, 2.

2. BAKKE, *MUTUAL SURVIVAL: THE GOAL OF UNIONS AND MANAGEMENT* (1946); *INDUSTRIAL CONFLICT* (Kornhauser, Dubin & Ross eds. 1954).

3. WUNDERLICH, *GERMAN LABOR COURTS* (1946).

4. TAYLOR, *GOVERNMENT REGULATION OF INDUSTRIAL RELATIONS* (1948).

5. CHAMBERLAIN, *SOCIAL RESPONSIBILITY AND STRIKES* (1953); SEIDMAN, *UNION RIGHTS AND UNION DUTIES* (1943).

Public policy in regard to unions has completely reversed itself since *The Philadelphia Cordwainers Case* in 1806, where it was held that a union formed by workmen to raise wages to benefit themselves was an unlawful conspiracy.<sup>6</sup> Today, of course, the right of employees to form or join unions is clearly recognized. The principle of collective bargaining is firmly established as federal policy in the Labor-Management Relations Act of 1947.<sup>7</sup>

Before collective bargaining can exist there must be not only an employer, but there must also be a labor organization. So we might properly inquire why employees form or join unions.<sup>8</sup> There are many reasons. One reason is that employees believe that with a union they can advance their economic interests and improve their working conditions more effectively. Another reason is that employees feel that they can obtain job security and protection against arbitrary action on the part of the employer. Some join because they have a feeling of a "cause." They feel that the union gives them a means of expression and is an effective political force to represent their interests. Some join because they are compelled to join,<sup>9</sup> either directly by way of a union or closed shop, or indirectly by social pressures. On the other hand, there are reasons why people do not join or form unions.<sup>10</sup> Some feel that their company is doing a good job and that a union is either unnecessary or undesirable. Some dislike unions from what they know about them; they often associate unions with gangsterism, communism, or the tactics of strike and violence. Some do not join because they do not like the political trend in unionism. Some do not join because they feel that union policies, seniority for instance,<sup>11</sup> would be inimical to their welfare. Some do not join because they are coerced into not joining by their employer or by social pressures.

Some unions have an institutional existence which, at times, the unions feel must be protected, perpetuated or extended—even if such action is contrary to the best interests of all or any particular part of their membership. The union is different from the totality of its membership. Moreover, a union is a political institution.<sup>12</sup> Its officers

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6. *The Philadelphia Cordwainers Case*, in 3 DOCUMENTARY HISTORY OF AMERICAN INDUSTRIAL SOCIETY 59 (Commons & Gilmore eds. 1910).

7. 61 STAT. 136 (1947), 29 U.S.C. §§ 141-88 (1952).

8. VITELES, MOTIVATION AND MORALE IN INDUSTRY 333-58 (1953); Seidman, London & Karsh, *Why Workers Join Unions*, 275 ANNALS 75 (1951).

9. ROSE, UNION SOLIDARITY (1952) found that 45.9% of the members of the union studied by him joined the union because they worked in a union shop and had to join.

10. MAPES, MEN AND UNIONS (1950).

11. Sayles, *Seniority: An Internal Union Problem*, HARV. BUS. REV., Jan.-Feb. 1952, p. 55.

12. The internal and external political aspects of unions can have profound effect upon union-management relations. Consequently, companies must be alert to the political implications. Kerr, *The Collective Bargaining Environment*, in CAUSES OF INDUSTRIAL PEACE UNDER COLLECTIVE BARGAINING 44 (Golden & Parker

must be constantly alert to both the internal and external political ramifications of any action they take or fail to take. While there are some "vest pocket" unions where the officers can determine what action they want to take without consulting the membership, in most unions, particularly at the local level, the officers are constantly aware of the fact that they might be displaced.<sup>13</sup> This naturally causes unions as institutions to vie with each other in obtaining benefits and extending their jurisdiction. In many cases this compulsion is intensified by the personal aspirations and ambitions of the leaders themselves—they want to achieve a certain status or degree of power.

### ORGANIZING THE UNORGANIZED

Organizing the unorganized is necessarily a major objective of unions. Basically, this is so because union men are convinced that unions are essential if the interests of laboring people are to be protected and advanced. There are other reasons why unions feel it necessary to organize the unorganized. Unions feel insecure as long as there is a substantial number of unorganized workers in any particular industry or area, because there is the possibility that the unorganized plants will get all the work. This is particularly true if there is a strike or if there are significant labor cost differentials. It is not uncommon for organized employers to argue that they cannot grant various union demands because the cost of the demands would make it impossible to compete with unorganized employers. Hence, the unions are compelled in such circumstances to try to organize the the unorganized in order to secure additional gains in organized companies. In addition, the broadest possible membership will give the most effective power position and the best political force, and will improve the financial position of unions.

What happens when a union endeavors to organize the unorganized? First, it should be noted that there is a distinction between "unions organizing the employees" and "employees organizing a

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eds. 1955). Companies tend to support established leaders with whom good working relations have been developed. If the union leader is too closely identified with management, he runs the risk of being removed from leadership. On the other hand, some union representatives use the argument that they have to get more gains if they are to maintain their leadership or avoid a raid by another union. In some instances, companies have made inadvisable concessions in response to such arguments. See Garfield & Whyte, *The Collective Bargaining Process: A Human Analysis*, HUMAN ORGANIZATION, Fall 1950, p. 10.

13. Officers of national and international unions generally have a fairly secure tenure in office. TAFT, *THE STRUCTURE AND GOVERNMENT OF LABOR UNIONS* 35-64 (1954). Local officers, on the other hand, are much more susceptible to displacement because of internal political factionalism or rank-and-file dissatisfaction with their performance. SAYLES & STRAUSS, *THE LOCAL UNION* 132-54 (1953). For a criticism of the perpetuation of power within unions, see Eby, *A Critical Look at Labor*, LABOR AND NATION, Fall 1951, p. 39.

union."<sup>14</sup> Normally, the union approaches the employees and endeavors to convince them of the advantages the union can produce. It is common to list the benefits which exist in various contracts and to claim that with the union these benefits can be won from the employer. Where the economic benefits are relatively equal, the union makes the argument that the employees are getting the indirect benefits of unions and are free riders, and that as a matter of moral obligation they should support the union.

Perhaps more significant than economic factors in most organizing campaigns are the existing grievances, blocked aspirations, and general feelings, real or imaginary, of personal insecurity which exist in almost every organization. Conflicts usually exist in a company, and the union capitalizes on these conflicts. Examples are: the actions of arbitrary, and sometimes tyrannical, foremen or other supervisors; sudden layoffs or arbitrary promotions; and personal dissatisfactions resulting from almost any cause. The union utilizes these underlying dissatisfactions and conflicts in endeavoring to convince the employees that they need a union and that a union will solve their problems.

In building up the campaign, the union organizer will frequently describe the employer in bitter, harsh, and trenchant words. At this stage, emotional appeals are frequently more effective than logical appeals.<sup>15</sup> It is for this reason that many unions utilize totally different personnel for organizing from the ones used for bargaining. The organizer must be able to make the emotional appeal, to create hostility toward the employer while building up a feeling of need for the union. The bargainer, on the other hand, generally has the job of mitigating the emotions of hostility and of developing an attitude which is predominantly based on logic and which looks forward to a continuing relationship.

Sometimes the union completely by-passes the employees and goes directly to the employer to demand that the employer either sign a contract or tell the employees, in effect, that he wants them to join the union. If the employer refuses, then the union either approaches the employees or uses more coercive means of achieving its objectives.

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14. This distinction has current importance in judicial consideration of statutory and constitutional provisions guaranteeing in one form or another the right of employees to organize and bargain through representatives of their own choosing. Benetar & Isaacs, *Pickets or Ballots*, 40 A.B.A.J. 848 (1954). See *Pappas v. Stacey*, 116 A.2d 497 (Me. 1955), *appeal dismissed*, 350 U.S. 870 (1956); *Bellerive Country Club v. McVey*, 284 S.W.2d 492 (Mo. 1955); *Chucales v. Royalty*, 164 Ohio 214, 129 N.E.2d 823 (1955). Some unions contend that where "employees" are granted the right to organize, as in MO. CONST. art. I, § 29 (1945), it means "labor" and the right of unions to organize employees, but does not protect or confer any right on employees to refrain from organizing.

15. SELEKMAN, *LABOR RELATIONS AND HUMAN RELATIONS* 12-41 (1947).

Similarly, if the direct appeal to the employees does not prove to be fruitful, some unions will indulge in the coercive techniques of the picket line or the boycott. The objective of these techniques is to injure the employer economically so that he, or his employees, will succumb to the demand of the union. These techniques are frequently quite effective in achieving the desired objective.

Let us now turn to employer attitudes toward the organizing campaign. Here we find a whole gamut of attitudes. There are some employers who are bitterly anti-union. They will use all available resources to prevent the union gaining recognition, regardless of the law. In some respects, this type of employer is of the same ilk as the racketeering union. Neither is typical of the vast majority of employers or unions and they will not be considered here. At the other end of the gamut are those employers who are quite willing for their employees to organize. They, in effect, welcome the union, or at least recognize that the union is a natural development in the particular situation. Between the two extremes are numerous gradations. If an employer is in a community or industry where labor is fairly well organized and where relationships in the other companies are, on the whole, constructive, his attitude is likely to be much different from that of one who is not in such a situation. At the present time organizational drives primarily involve medium-sized and smaller employers. For the purpose of simplifying this discussion, I shall examine a rather common attitude of the smaller employer confronted with an organizing campaign. He readily recognizes that unions are a definite part of our economic and social structure. The employer usually believes that unions exist to gain fair wages and to protect employees from arbitrary action. As to his operation, he usually feels that he is paying good rates for the work performed considering the circumstances under which he has to operate. He usually thinks that management has been sound, and he not infrequently refers to the employees as being well-satisfied or sometimes even as a "happy family." He feels that, with few exceptions, the employees on the whole do not really want a union. Actually, the predominant factor affecting an employer faced with an organizing drive is the uncertainty of it all. He knows that if the business is organized, things are going to be different, but he is not sure just how or in what way they will be different. He has heard many things about unions and about how they affect management's right to operate the business. It is fundamental that men facing major, but unknown and undefinable, changes have certain psychological reactions which are not always logical. Since the very purpose of a union is to produce changes, few unions can provide evidence to calm the employer's fears as to what

these changes mean.<sup>16</sup> As has been previously indicated, the union at this very point is frequently building up a campaign against the employer—the employer becomes an evil to be subdued. Here we have a situation filled with uncertainties and apprehensions. If the union indulges in a bitter campaign, studded with glowing promises about what it is going to make the employer do, the employer's fears and resentments become more fixed. Similarly, if the employer indulges in such activities as discriminatory discharges, the union becomes necessarily more determined to organize the outfit. The LMRA does prohibit certain conduct of both employers and unions as unfair labor practices,<sup>17</sup> but these will not be considered here. Aside from the strictly legal aspects, the nature of the organizing campaign obviously has tremendous effect upon subsequent relationships if the company does become organized. It is here, in the heat of an organizing campaign, that the lawyer frequently first comes into play and finds himself concerned with the aims and objectives of the parties. We will assume that the lawyer, whether he represents management or union, is going to do a thorough job of representing the client's interests to the best of his judgment and abilities. The client is entitled to have that kind of representation. Mere recognition of a client's legal rights is not the whole answer, however; there are basic problems involving human relationships to consider. Indeed, pursuit of legal rights and remedies can have dangerous practical consequences.

The lawyer cannot avoid getting involved in the nonlegal aspects of the relationship. Let us consider two simple situations. The union desires to place the maximum economic pressure on the employer. It goes to its lawyer and outlines a proposed program of action which includes a clearly prohibited secondary boycott, some clearly permissible activities, and also some borderline activities.<sup>18</sup> The lawyer

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16. The union usually points out that it has good relations with other companies in the industry or the community. This argument is not always too convincing to the employer for two reasons: (1) Each company usually feels that there is something unique about its operation which will be adversely affected by union policies, even though other companies accept some of those policies. (2) When the other companies are contacted they give varying reports as to the nature of the relationship with the union. Even where the company considers the relationship to be good, it nevertheless points out that it has had problems which had to be solved.

17. 61 STAT. 140 (1947), 29 U.S.C. §§ 158(a)(1)-(5) (1952) establishes employer unfair labor practices, and §§ 158(b)(1)-(6) establishes union unfair labor practices.

18. The legality or illegality of many activities is most uncertain. Moreover, interpretations change in some circumstances. Sometimes the only way the parties can determine whether or not certain conduct is prohibited or protected is to engage in the conduct and run the risk of violation. Similarly, where either party feels an existing interpretation is erroneous, it can sometimes challenge that interpretation only by engaging in conduct prohibited by the existing interpretation. The lawyer has a duty to represent the client in securing a clarification of the law, but such situations present most difficult problems to the lawyer. The

would undoubtedly advise against the clearly illegal action, but the borderline activities present another question. The lawyer would probably inquire in some detail into both the purpose and the means of the contemplated activity. He would necessarily be concerned with the aims and objectives because their nature might well determine the potential legality or illegality of the conduct. Moreover, he almost inevitably would have to consider the practical ramifications of the conduct. He would have to raise questions of whether the specific conduct would endanger the achievement of either the immediate or longrun aims. He would have to raise questions of whether or not other alternatives might not be more effective. Thus, the lawyer finds himself helping to formulate the aims of his client.

The management lawyer faces comparable situations. Suppose that a company comes to its lawyer and wants to discharge some of the "trouble makers," saying "They are not good workers anyway and should have been discharged a long time ago." The company also wants to write letters to the employees telling them the "truth" about what is going on and answering the union's "scurrilous and false" charges. Again the lawyer will advise against the illegal. When he tackles the question of the letter, however, he faces difficult problems. It is simple enough to tell the client that he can write letters giving his position and answering the union's charges so long as he does not make threats or promises of benefits. When the company begins to ask whether it can say specific things, the lawyer will often find it necessary to inquire about the reasons behind the proposed statements and what is hoped to be achieved. As the details are discussed, the odds are that the lawyers will end up drafting the letters or re-writing drafts submitted by the client. In the course of this process, the lawyer will have to think about what are the real aims of the company. Is the objective to win a battle of the typewriters? What will be the practical effect of the letters upon the employees or upon the union? Here again the lawyer necessarily becomes involved in formulating aims. He might indeed have to inform his client that the client's concept of the employees as the big happy family is not necessarily the true picture. He might have to point out to the company the danger of a letter backfiring.

### COLLECTIVE BARGAINING

After a union gains recognition, the stage is set for collective bargaining. The concept of "collective bargaining," though universally

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consequences of such determinations can drastically affect the practical relationships of the parties. All of the ramifications must be carefully weighed to determine whether any course of action is advisable, from both a practical and a legal standpoint.



used, is illusive when one tries to give a precise definition. Section 8 (d) of the LMRA states in part:

[T]o bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession. . . .<sup>19</sup>

It can easily be seen that this definition leaves a lot unsaid, and I believe any other definition would have to be equally indefinite.

The term "collective bargaining" necessarily implies that there are differences between the parties. If there were no differences, there would be no necessity for bargaining. Moreover, the bargaining implies that each party has something that it wants which requires some concession by the other party. Collective bargaining is a method of accommodating interests. It is a process by which representatives of management and union discuss and negotiate the various phases of their relationships with the objective of arriving at a mutually acceptable labor agreement. The law does not, however, require the parties to reach an agreement, nor may the NLRB compel concessions or otherwise sit in judgment upon the substantive terms of collective agreements.<sup>20</sup> Consequently, if the parties do not reach an agreement, they are free to use their economic powers.

It should be noted that while the act does place some limitations on the right to strike, such as strikes during the sixty-day notice period and strikes in violation of section 8(b) (4), the act basically recognizes the "cherished right" of organized labor to strike.<sup>21</sup> The strike is a fundamental weapon in the arsenal of industrial conflict, and it is the Damocles sword that hangs over collective bargaining.

The rationalization of collective bargaining is predicated on the notion that the single employee is powerless to bargain realistically with

19. 61 STAT. 140 (1947), 29 U.S.C. § 158(d) (1952).

20. NLRB v. American Nat'l Ins. Co., 343 U.S. 395, 404 (1951). The Court states:

That Section contains the express provision that the obligation to bargain collectively does not compel either party to agree to a proposal or require the making of a concession.

And it is equally clear that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements.

See Cox & Dunlop, *Regulation of Collective Bargaining by the National Labor Relations Board*, 63 HARV. L. REV. 389 (1950).

21. 61 STAT. 151 (1947), 29 U.S.C. § 163 (1952) provides:

Except as specifically provided for in this subchapter nothing shall interfere with or diminish the right to strike and nothing is to be construed to affect the limitations or qualifications on the right to strike.

See also Daykin, *The Right to Strike*, 6 LAB. L.J. 361 (1955).

an employer. The days when coal operators, and others, extracted yellow-dog contracts from their employees easily demonstrates this fact.<sup>22</sup> The employer could, and frequently did, say to any worker: "These are the conditions, and if you do not like them, somebody else will." It was thus felt that if the helpless and defenseless employees could form or join unions and then bargain collectively through their union, there would be a balance of bargaining power. Therefore, our laws were eventually designed to encourage the formation of unions and the principle of collective bargaining. There have been some drastic changes, however. Now some unions are of vast size and have infinitely more power and resources than the employers with whom they bargain. In the small entrepreneur industries it is not uncommon for a union to mail contracts to literally a thousand employers, gasoline station owners, for example, with a covering letter requesting that the enclosed contract be executed and stating, in effect, that if it is not, there will be a strike. Where unions have the power to force contracts on a take-it-or-leave-it basis or on a pattern basis, there is no more bargaining than in the situation of a corporate employer with an individual employee. As has been stated, "In both cases the 'bargaining table' is a myth."<sup>23</sup>

To meet this imbalance of power, employers sometimes form groups or associations to bargain with the union. Often the union encourages such group bargaining. In some instances this type of bargaining has had satisfactory results, but it presents many additional complex problems.<sup>24</sup> Except in some clearly identifiable industry groupings, employers do not have sufficient mutuality of interests to agree upon common goals. Usually, the aims and goals, the methods of doing business, the internal operations, etc., preclude effective agreement.

This is illustrated by the 1954 New York City teamsters' negotiations and strike. The negotiations commenced as group bargaining. The group represented many types of hauling operations, including some large chain grocery stores. Because the increased costs of the teamsters' demands represented such a small fraction of their total costs and a strike closed their total operations, the chain groceries capitulated on the first day of the strike. This led to a complete disin-

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22. SEIDMAN, *THE YELLOW DOG CONTRACT* (1932).

23. CARPENTER, *EMPLOYERS' ASSOCIATION AND COLLECTIVE BARGAINING IN NEW YORK CITY* 12 (1950).

24. BRAUN, *UNION-MANAGEMENT CO-OPERATION* (1947); CARPENTER, *EMPLOYERS' ASSOCIATION AND COLLECTIVE BARGAINING IN NEW YORK CITY* (1950); SMITH, *LOCAL EMPLOYERS' ASSOCIATIONS* (1955). See also the series of studies on industry-wide collective bargaining published by the University of Pennsylvania, e.g., ABERSOLD, *PROBLEMS OF HOURLY RATE UNIFORMITY* (1949); KENNEDY, *THE SIGNIFICANCE OF WAGE UNIFORMITY* (1949); LEVY, *MULTI-EMPLOYER BARGAINING AND THE ANTI-TRUST LAWS* (1949); PIERSON, *MULTI-EMPLOYER BARGAINING: NATURE AND SCOPE* (1948); POLLAK, *SOCIAL IMPLICATIONS OF INDUSTRY-WIDE BARGAINING* (1948).

tegration of group bargaining. Once the group was broken, there was no further bargaining. One of the locals involved, Local 807, opened its offices so that employers could come down and sign. Employers formed a queue at the union office to sign the take-it-or-leave-it contract. The president of the local stated that on October 19, 1954, it had signed 587 individual contracts out of a possible 1,000 by 5:30 p.m. when the union closed its office.<sup>25</sup>

The development of group bargaining drastically changes the objectives of the constituent members of the group. It also tends to create monolithic bargaining structures, which, some think, pose serious questions as to its effect on our economy.

### UNION OBJECTIVES

Regardless of the form of the bargaining structure, there are some general objectives of unions which are common to most unions. First, unions want to get "more" for their members. This was clearly stated by Samuel Gompers and has recently been repeated by George Meany.<sup>26</sup> By "more" the unions principally mean higher wages, more holidays, vacations, pensions and other economic benefits. There is nothing wrong with unions wanting to get more for their members. It is traditional in our country to stimulate the desire for more, as the advertisements in our popular magazines well attest. Moreover, the stimuli of union demands have had a general salutary effect in causing management to become more efficient in order to meet some of the demands. This, however, is not without some problems for unions, because it sometimes leads to mechanization and other activities which, in turn, might affect adversely the employment opportunities.<sup>27</sup> Just what a union will want as "more" will depend on what it thinks the particular company can pay, what is being paid by other companies in the area or industry, what other unions are demanding or getting, and similar factors.

Second, unions want to establish procedures for protecting the job security of their members. One of the major procedures usually sought is a grievance procedure ending in arbitration. However, some unions today are rejecting the principle of arbitration and are demanding a grievance procedure whereby they can reject arbitration and utilize the strike and other economic powers.<sup>28</sup> Other types of

25. New York Herald-Tribune, Oct. 19, 1954.

26. Meany, *What Labor Means by "More,"* Fortune, March 1955, p. 92.

27. SLICHTER, *UNION POLICIES AND INDUSTRIAL MANAGEMENT* 201-81 (1941). See also BROWN, *UNION POLICIES IN THE LEATHER INDUSTRY* (1947).

28. This is illustrated in the Central States Local Cartage agreement with the International Brotherhood of Teamsters covering employers in a thirteen-state area for a period from February 1, 1955 to January 31, 1961. The agreement authorizes the use of economic recourse or strikes under numerous circumstances such as: (a) in the event a part of the agreement is declared invalid and the

clauses calculated to protect the job security of the employees include such clauses as seniority, jurisdictional assignment, plant removal, mutual agreement, guaranteed annual wage, contracting work out, and sale of business.<sup>29</sup>

A third general objective is the protection of the institutional security of the union.<sup>30</sup> What a union will consider necessary to obtain security will vary with the circumstances. The union shop is, of course, primarily designed to protect the union's security. Unions fear that if employees are not compelled to support the union financially, there will be many free riders. Moreover, requiring membership is an overt act which tends in and of itself to create in the employees a feeling of loyalty to the union. The union shop also makes it difficult for the employees to switch allegiance to another union or to abandon the incumbent union. The control of the jobs by apprenticeship systems,

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parties are unable to reach agreement on a substitute provision; (b) in the event the parties cannot reach agreement as to application of changes in FLSA; (c) in the event the parties are unable to agree on the details as to "piggy back" operations; (d) in the event there is a deadlock in settling grievances; (e) in the event the employer insists that employees handle unfair goods; (f) in the event of a failure to agree upon various reopenings provided in the agreement. Art. VIII, § 1(h) provides:

In the event of strikes or work stoppages or other activities which are permitted in case of deadlock, default or failure to agree, no interpretation of this Agreement by any tribunal shall be binding upon the union or affect the legality or lawfulness of the strike unless the union stipulates to be bound by such interpretation, it being the intention of the parties to resolve all questions of interpretation by mutual agreement unless otherwise agreed to. Nothing herein shall prevent legal proceedings by the employer where the strike is in violation of this agreement.

For a statement of the philosophy back of this type of agreement, see Hoffa, *Handling Grievances, Union Viewpoint*, in PROCEEDINGS OF AMERICAN TRUCKING ASSOCIATIONS, INC.—NATIONAL FORUM ON TRUCKING INDUSTRIAL RELATIONS 10-18, 46-72 (1953).

29. Sometimes there is a conflict between the union's security activities and the security interests of particular employees. The senate committee on labor and public welfare pointed out that while unions may get along satisfactorily with particular employers, "they may also join in a campaign which incidentally hurts his business; they may be willing to overthrow a long-existing welfare program for something the labor movement is now pushing." Senate Labor & Public Welfare Committee, *Factors in Successful Collective Bargaining*, 82d Cong., 1st Sess. 36 (Comm. print 1951).

30. Another phase in the question of the union's institutional security, which is also related to other union objectives, is the extent to which it endeavors to control or affect any function of the enterprise which relates to the interests of workers. Meany, *What Labor Means by "More,"* Fortune, March 1955, pp. 92, 93, states:

A union exists to protect the livelihood and interests of a worker. Those matters that do not touch a worker directly, a union cannot and will not challenge. . . . But where management decisions affect a worker directly, a union will intervene.

Mr. Meany refers to such things as plant location. The conflicts in the area of "management prerogatives" are patent. At times there have been some indications of union support of co-determination. The CIO at its annual convention in 1951 adopted a resolution calling for the establishment of industrial councils and demanding equal union authority with respect to (1) prices, (2) production levels, (3) rates and nature of capital investment, (4) rates and nature of technological change, and (5) the site and location of plants and other matters. 1951 CIO PROCEEDINGS 51.

the hiring hall, and the like are conceived to protect the union as well as the existing employees.<sup>31</sup> The development of the stewardship system is usually considered essential for the security of the union and for the policing of the contract.

A fourth major general objective of unions is really a reflection of the aspirations and the personalities of their leaders and staff personnel. The aims of the union are necessarily moulded in some degree by its leaders' desires and ambitions.

#### MANAGEMENT OBJECTIVES

Some objectives of management can be stated in general terms. The first is to operate a business producing goods or rendering services in a manner that enables the company to be competitive and to make a profit. The concept of profit is not a precise one.<sup>32</sup> What is a satisfactory profit in one situation is not so in another. The relation of cost to possible selling price is a fundamental question in bargaining from management's viewpoint. Obviously, if costs, including labor costs, are disproportionately high, the company will neither make a profit nor be competitive. Another factor is that competition exists not only between producers of the same commodity, but also between producers of different commodities, for if one commodity becomes relatively high in costs, consumers will choose other commodities. Thus, employees of companies who do not remain competitive are faced with insecurity and loss of employment. Management must necessarily bargain to keep costs on a realistic basis. In most situations, there is a fundamental difference of opinion between a union and a company as to what effect the demands of the union will have on the ability of the company to maintain its competitive position and make a satisfactory profit. There is another reason why management generally has an obligation to bargain for realistic cost factors. The essential nature of our dynamic economy requires a constant effort to produce goods at the lowest reasonable costs to the consuming public. In this respect, Professor Slichter is of the opinion that management not only represents itself in bargaining on costs, but also represents the consuming public.<sup>33</sup> It is clear that bargaining on costs entails conflict, and the final solutions constitute an accommodation of the interests of the owners, the management, the employees, and the public.

A second objective of management is to assure its ability to continue a healthy existence, including the right to make those decisions and

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31. SLICHTER, *UNION POLICIES AND INDUSTRIAL MANAGEMENT* (1941).

32. DRUCKER, *THE PRACTICE OF MANAGEMENT* 34-48 (1954). Drucker points out that it is the duty of business to survive. The precariousness of business, even in large industrial companies, is sometimes overlooked. KAPLAN, *BIG ENTERPRISE IN A COMPETITIVE SYSTEM* (1954) points out that of the 100 largest industrial concerns in 1909, only 36 were among the largest in 1948.

33. SLICHTER, *THE CHALLENGE OF INDUSTRIAL RELATIONS* 30-35 (1947).

to take those steps it considers necessary to protect the continuity of its existence.<sup>34</sup> Discussions of this objective tend to get entangled with semantic arguments about management rights or prerogatives.<sup>35</sup> Unions usually agree with the generality that management has the right to run the business, but just what that right is in specific situations is productive of unending arguments.<sup>36</sup> What one management will consider necessary, another will consider unimportant. The conflicts between management's desire for flexibility and the union's desire for stability are obvious in such matters as the development of new processes, products, or techniques which affect the skills, status, or employment of the employees.<sup>37</sup> The automobile workers, for instance, clearly proclaim that one of the objectives of the guaranteed annual wage is to force management to gear technological change to protect the interests of the existing work force of the automobile manufacturers.<sup>38</sup>

A third objective of management is to develop a sound relationship with its employees which will produce both employee job satisfaction and good productivity.<sup>39</sup> There are many instances where unions and management do co-operate to achieve this objective,<sup>40</sup> but the objective

34. HILL & HOOK, *MANAGEMENT AT THE BARGAINING TABLE* (1945).

35. CHAMBERLAIN, *THE UNION CHALLENGE TO MANAGEMENT CONTROL* (1948).

36. DIVISION OF LABOR STANDARDS, U.S. DEP'T OF LABOR, BULL. No. 77, PRESIDENT'S NATIONAL LABOR-MANAGEMENT CONFERENCE SUMMARY AND COMMITTEE REPORTS 57 (1945). At that conference the labor representatives agreed that "the functions of management must be preserved if American business is to continue to be progressive and efficient." They, however, took the position that the variety and complexities of relationships precluded the classification and specification of rights and functions.

37. McMurry, *War and Peace in Labor Relations*, HARV. BUS. REV., Nov.-Dec. 1955, p. 48.

38. UAW (CIO), *Progress Report on the Annual Wage Program*, 33 L.R. R.M. 14 (1953).

39. In the last two decades, there has been a tremendous amount of experimentation and analysis on morale, job satisfaction, and productivity. See GARDNER & MOORE, *HUMAN RELATIONS IN INDUSTRY* (1955); HOSLETT, *HUMAN FACTORS IN MANAGEMENT* (1946); INDUSTRIAL RELATIONS RESEARCH ASSOCIATION, *INDUSTRIAL PRODUCTIVITY* (1951); KATZ, *PRODUCTIVITY, SUPERVISION, AND MORALE IN AN OFFICE SITUATION* (1950); PIGGORS & MEYERS, *PERSONNEL ADMINISTRATION* (2d ed. 1951); ROETHLISBERGER & DICKSON, *MANAGEMENT AND THE WORKER* (1946); TROXELL, *EMPLOYEE UNDERSTANDING AND TEAM WORK FOR GREATER PRODUCTIVITY* (1954); VITELES, *MOTIVATION AND MORALE IN INDUSTRY* (1953); WHYTE, *MONEY AND MOTIVATION* (1955); B. & S. Selekman, *Productivity—And Labor Relations*, HARV. BUS. REV., May 1949, p. 373; Worthy, *Factors Influencing Employee Morale*, HARV. BUS. REV., Jan. 1950, p. 61.

40. CAUSES OF INDUSTRIAL PEACE UNDER COLLECTIVE BARGAINING (Golden & Parker eds. 1955); WILLIAMSON & HARRIS, *TRENDS IN COLLECTIVE BARGAINING* 130-41 (1945); Dubin, *Union Management Co-Operation and Productivity*, 2 IND. & LAB. REL. REV. 195-209 (1949). HARBISON & COLEMAN, *GOALS AND STRATEGY IN COLLECTIVE BARGAINING* 11-12 (1951) classifies union-management relations as "armed truce," "working harmony," and "union-management co-operation." They find that co-operation where the union assumes joint responsibility to increase productivity and efficiency is rare. It has usually occurred where the company fails to meet competition and is threatened with serious layoffs or a closing of its doors. Under these circumstances, management is sometimes willing to share management functions with the union and the union is willing to work

is pregnant with conflicts. One question it raises is whether the relationship is bipartite, with only the company and union being involved, or whether it is tripartite, and includes the employees.<sup>41</sup> It is not uncommon for a union to take the position that it has nothing to do with the improvement of morale or productivity and that the matter is solely the concern of management. There are many instances where unions actively oppose management efforts to improve either morale or productivity on the ground that such efforts are attempts either to undermine the union, or to introduce a "speed-up," or to achieve some objective detrimental to the interests of the union or the employees.<sup>42</sup>

A fourth major objective of management is, similar to that of unions, a reflection of the aspirations and personalities of those representing management.<sup>43</sup> Some pride themselves on their abilities to get along with people and to develop an atmosphere which motivates peo-

for productivity and efficiency in order to save jobs and increase economic benefits for employees.

41. Barkin, *Management Personnel Philosophy and Activities in a Collective Bargaining Era*, in PROCEEDINGS OF INDUSTRIAL RELATIONS RESEARCH ASS'N 329-30 (1953) takes the position that the union must become the exclusive agency for communication and consultation with employees on matters other than job instruction. General Elec. Co., *Year End Review*, Employee Relations News Letter, Dec. 31, 1954, sets forth the policy of directly communicating to employees all information pertinent to employee interests. This is a part of a program, as stated by BOULWARE, HOW ARE WE TRYING 27-35 (165 Am. Mgt. Ass'n Personnel Series) (1955) whereby General Electric wants "to do right voluntarily and have everybody know that we are trying our best to do so." For a program of union-management co-operation on communications, see STEPHENS, LABOR RELATIONS IN UNITED STATES STEEL 34-37 (164 Am. Mgt. Ass'n Personnel Series) (1955). PURCELL, THE WORKER SPEAKS HIS MIND ON COMPANY AND UNION (1953) finds that employees in the circumstances studied by him generally have dual loyalty to both the company and the union as institutions. In specific situations, however, both management and unions will make appeals for the loyalty of employees and in many instances the loyalties will be affected by these appeals.

42. Barkin, *A Trade Unionist Appraises Management Personnel Philosophy*, HARV. BUS. REV., Sept. 1950, p. 59; Corey, *Human Relations Minus Unionism*, LABOR AND NATION, Spring 1950, pp. 48-51. Compare WHYTE, PATTERNS FOR INDUSTRIAL PEACE (1951).

43. HARBISON & COLEMAN, *op. cit. supra* note 40, at 11-12. Any lawyer who has had much experience in representing corporations in industrial relations is aware of the complexities resulting from the different goals of management representatives. A common type of situation is this: An existing contract provides for departmental seniority applicable only to layoffs and rehiring. The union is demanding strict plant-wide seniority applicable to layoffs, rehiring, promotions, transfers, and job vacancies, including bumping. The production vice-president is unalterably opposed to such a proposal. The company's production record is the best in the industry, and it is believed that this is due to the fact that skill and ability apply to job assignments. The sales vice-president, who sees this year as his biggest sales year, does not under any circumstances want to run the risk of a strike. He thinks it should be settled at any cost so that the sales record will not be ruined. The industrial relations director is proud of the fact he has always been able to negotiate contracts without a strike, but he realizes that to concede on this demand will adversely and seriously affect production and will jeopardize his relationship with production personnel. On the other hand, to take a strike will result in the sales department and customers putting on terrific pressures to settle the strike immediately. Comparable dilemmas frequently occur. DRUCKER, THE NEW SOCIETY (1950); Drucker, *The Employee Society*, 58 AM. J. SOC. 358 (1953).

ple to work toward common goals. Others feel it is important to demonstrate that they cannot be shoved around and that when they take a position they know what they are doing. There are many variant attitudes which affect the formulation of objectives.

The very stating of general objectives clearly shows that there are basic conflicts between management and union. When these general objectives are translated into specific situations these conflicts often become sharper and more complex.

### OBJECTIVES IN COLLECTIVE BARGAINING

Collective bargaining is a very workable process for resolving these differences. This is evidenced by the thousands of contracts that are successfully negotiated each year. Sincere, responsible, and intelligent unions and managements have demonstrated that collective bargaining can be most constructive and that the parties can accommodate their interests harmoniously in a great variety of circumstances. There have been some recent studies showing how collective bargaining does operate constructively. These studies warrant close scrutiny by all those involved in union-management relations. One of the most outstanding of these studies is the National Planning Association's series of reports on the causes of industrial peace under collective bargaining, where the history and nature of bargaining between various companies and the unions representing the employees of those companies is reported and analyzed in illuminating detail.<sup>44</sup>

There is, however, one portion of the final report of the study which is disturbing to some lawyers. The report states that "there was one point on which virtually all companies and unions agreed in regard to the make-up of the negotiating teams: the exclusion of lawyers." The report further states that the aversion to lawyers "was best summed up in the words of Sharon's president to a union official, 'I know the steel business and you know the union business, so let's keep

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44. There are some factors concerning the companies involved in the National Planning Association studies which should be noted. For the most part the companies were operating under comparatively ideal conditions. Clinton S. Golden describes the typical environment of the companies studied as follows:

A medium-sized company with a steady production pattern and subject to moderate technological advance; interesting and responsible jobs; an efficient company with an expanding market and administered prices; a company firmly established in a multi-industry community containing a tractable labor force and paying wages which can readily be met in accordance with industry standards; a community which is accustomed to collective bargaining; a secure union with stable leaders and a homogeneous membership; a wage pattern which the parties can use as a guide; some local autonomy for both parties; a system which is well-established, and leaders on both sides who are experienced.

CAUSES OF INDUSTRIAL PEACE UNDER COLLECTIVE BARGAINING 21 (Golden & Parker eds. 1955). Obviously, these conditions do not prevail in the typical situation which confronts most lawyers.



lawyers out of this so they won't obscure our mutual objectives.'"<sup>45</sup> The simplicity with which this statement is made is somewhat misleading. No doubt there have been too many situations in which lawyers have been obscurantists. Also, there is no doubt that the actual bargaining is best done by the parties themselves, providing they know what they are doing and have the ability to practice the art of collective bargaining. After all, the parties do have the most intimate knowledge of the operations and they do have to live with each other under the contract. If they reach agreement directly, they are more likely to have a better understanding of that agreement. It is for these reasons that many lawyers encourage the parties to do their own bargaining with the lawyer serving in an advisory capacity. Most contracts today, however, have legal ramifications about which the parties must be advised if they are to avoid some possible difficulties.<sup>46</sup> And there are many situations in which one or both parties want a lawyer to participate in negotiations.

Companies are more prone to bring a lawyer into negotiations than are unions. Indeed, unions frequently endeavor to convince companies that they should not use lawyers. Unions have a traditional distrust of lawyers.<sup>47</sup> Moreover, where a lawyer is not present, unions generally have a superior bargaining position, especially with respect to smaller and many medium-sized employers. Here are some of the reasons.

Collective bargaining is virtually an everyday experience for most union negotiators. They have developed psychological expertness in all phases of bargaining. They have encountered most of the arguments and know what arguments to make, and how and when to make them—what economic pressures to apply, and how and when to apply them. Union negotiators are constantly thinking about contract clauses and demands. They receive assistance from their internationals, based on experience throughout the country, as to how contract clauses can be improved to gain benefits for the union and its members. The union negotiators often have the benefit of well-developed research departments, and frequently come to the bargaining table with detailed information about the company and the industry.

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45. *Id.* at 44.

46. Many contracts contain complex provisions relating to such matters as welfare plans, pensions, and supplemental unemployment compensation which involve not only questions of labor law but also questions of taxation, trusts, etc.

47. This distrust stems partly from the historical role lawyers played in the issuance of injunctions during the period unions were struggling for recognition. Additionally, the overly legalistic approach of some lawyers toward collective bargaining and the ineptitude of some lawyers fostered distrust. Segal, *Labor Union Lawyers*, 5 *IND. & LAB. REL. REV.* 343, 357 (1952). Unions even had, and some still have, a reluctance to consult with their own attorneys. Kovner, *The Labor Lawyer*, in *THE HOUSE OF LABOR* 396 (Hardman & Neufeld eds. 1951); Asher, *The Lawyer in the Field of Labor*, 1 *LAB. L.J.* 302 (1950).

They always know what the contracts of other employers in the industry and in the area provide, and are able to pit the provisions of the contract of one employer against those of another employer. The union negotiators are, of course, adequately informed as to what financial resources are available in the event of an impasse. In other words, the union's negotiators are skillfully equipped to do an effective job of collective bargaining.

In some cases management negotiators are equally well-equipped. This would be true, for example, in companies with adequately developed industrial relations departments, or companies with a background of matured association bargaining. A totally different situation, however, exists with respect to the average medium-sized or small employer. In the average company, the person having the responsibility for bargaining also has a host of other duties concerning such matters as production, finance, sales, or purchasing. He cannot devote a substantial portion of his time throughout the year to thinking about contract negotiations. He does not have the opportunity to acquire the requisite bargaining skills comparable to those of a union negotiator. He sometimes fails to realize that collective bargaining is a complex process involving many factors—psychological, economic, political, and legal. He does not have the time, resources, or facilities for gathering pertinent economic or contract data. Rarely does he actually know in any detail what has been the experience of other companies in bargaining on various clauses, or what is the effect of those clauses on day-to-day operation, or even the cost of them. Sometimes impending negotiations strike terror in the heart of a management representative. He feels incompetent and is at times virtually inarticulate in the presence of the union negotiator.<sup>48</sup> Moreover, while not acquainted with the details, he knows there are many pitfalls in the bargaining process which might catapult him into unfair labor practices. Consequently, a company will seek out someone to help in this awesome situation—and that someone is usually a lawyer or an industrial relations consultant.

When a client asks a lawyer to conduct or actively participate in actual negotiations, he does so because he feels that the lawyer has the skill, knowledge, and experience necessary to do a more effective job of bargaining than the client can. By agreeing to participate in actual negotiations the lawyer accepts the responsibility of helping to formulate and effectuate the objectives of the parties. In the bargaining process the parties must be able to state their objectives, to discover areas of agreement, and to resolve areas of disagreement. Normally, unions have a much better idea of their specific objectives. This is partly due to the fact that they are usually the proponents who want to change the existing situation. Additionally, in their pursuit of

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48. REISMAN, GLAZER & DENNY, *THE LONELY CROWD* 253 (1950).

more, they can spell out their objectives quite tangibly in terms of wages and other economic benefits. Management tends to have a negative approach to bargaining.<sup>49</sup> That is, management endeavors to resist the union's demands and to hold the cost factors down to what it considers reasonable. The resistance to union demands is a valid function of the bargaining process, but more companies are realizing that collective bargaining also includes the idea that companies should take positive positions. Consequently, more companies are coming to the bargaining table with definite and positive industrial relations programs and philosophies.<sup>50</sup>

The parties naturally place relative values on their various specific objectives. It is common for many unions to announce that certain demands are "musts," while other demands are subject to discussion. Companies, too, place relative values on their demands and on the acceptance or rejection of the union demands. The initial determination of the relative significance of the objectives is not a permanent matter. The dynamics of the bargaining negotiations, with the interplay of logic, facts, emotions, and power, means that the values of the objectives are transitory and that even the objectives themselves sometimes undergo a metamorphosis. Consequently, it is necessary in the course of the negotiations to re-evaluate the objectives in the light of what has transpired and what still lies ahead.

All of the specific objectives with respect to the contract have a rather mercurial nature, subject to the final agreement on the total contract. In re-evaluating the objectives, the parties might determine the status of each objective on some such basis as this: (1) There are the ideal objectives—those objectives the parties would wish if they could have their own way. (2) There are the realistic objectives—those objectives which they sincerely believe they should obtain. (3) There are the acceptable objectives—those objectives which they feel are not quite what they should obtain, but under the circumstances they are willing to accept. (4) There are the demised objectives—

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49. This attitude has partly resulted from the notion that negotiating a contract is a process of transferring authority from the employer to the union. Those who hold this attitude feel that what the company does not grant to the union, it retains for itself. While there is considerable authority supporting this position in some respects, it is clear that management does not always have the right of unilateral control on issues not covered by the contract. Cox & Dunlop, *Regulation of Collective Bargaining by the National Labor Relations Board*, 63 HARV. L. REV. 389 (1950). Unions tend to demand the elimination of management-rights clauses or the limitation of such clauses to a few general items, and they use the argument that what is not given away is retained. There is a tendency at the present time for management to spell out in some detail those "rights" which it feels essential to the operation of the business.

50. Bureau of National Affairs, *Bargaining Outline for Management*, COLLECTIVE BARGAINING NEGOTIATIONS AND CONTRACTS 12:101; Gouger, *Negotiating a Competitive Company Union Contract, YOU ARE THERE AT THE BARGAINING TABLE* (a conference kit prepared by the Am. Mgt. Ass'n) (1955); Torff, *Are You Ready to Talk Contract?* 32 PERSONNEL 51 (1955).

those objectives which are abandoned in the course of bargaining, either because they then seem inconsequential or because it became obvious that to insist upon them would bring undesirable consequences. (5) There are indomitable objectives—those objectives which the party will not abandon no matter what the consequences. Perhaps I ought to mention one other type of objective which has a very dubious place in bargaining, and that is the “sham” objective. Sham objectives are those demands which are not seriously made, and are commonly used to gain a psychological advantage by dropping the sham demands in the course of negotiations. Then upon dropping the sham demand, the party making it sanctimoniously claims that he has given up something and that therefore the other party should give up something.

The relativity of the various objectives is extremely important. Obviously, if either party achieves what it considers either an ideal or realistic agreement with respect to its prime objectives, it is more willing to abandon other objectives or agree upon them on an acceptable basis. On the other hand, if a prime objective is blocked entirely or is not attainable on an acceptable basis, there is a tendency for other objectives to become enlarged.<sup>51</sup> This situation is something like a balloon which becomes enlarged when pushed on one side. Also like a balloon, if the pressure is too violent, or the limits of expansion are reached, there is an explosion. Experienced bargainers are sensitive to these limits and are usually able to make accommodations so that a contract is negotiated.

After the contract is completed, the parties enter into their day-to-day relations under the contract. This presents a totally different situation because negotiators are not the only ones involved. Foremen, shop stewards, and employees are also directly concerned in the administration of the contract. The better the foremen, the stewards, and employees understand the contract, the more likely it will be administered constructively. Of course, there are instances where either one or both parties carry on a battle of hostility and endeavor to use the contract as an instrument of harassment. But assuming good faith in efforts to make the contract work, there is always the question of how adequately the contract has been drafted to meet the problems of daily operations. No matter how artfully drafted, it is

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51. The parties try to plan their bargaining strategy to provide for this contingency. Many unions propose that the bargaining proceed by considering and reaching agreement item by item starting with the “non-cost” or “non-economic” items and then proceeding down to such economic items as wages. Consequently, if an impasse should occur, the union would have an economic issue involved which has greater employee and public appeal. Additionally, wages are more flexible in making concessions than items involving “principles,” such as the union shop. Management generally proposes discussing the whole contract, reaching tentative agreement on the specific items subject to reaching total agreement on the whole contract.

indeed an unusual contract which will not be subject to interpretation or which will have anticipated all conceivable problems which could arise under it. Consequently, there will be grievances. The presentation of grievances, assuming they are not made for harassment purposes, performs useful functions. Not only does the grievance procedure, if utilized by both the company and the union, lead to an adherence to the agreement, it also indicates to management and union how the operation can be improved.<sup>52</sup> The nature of the grievances that do arise and the attitudes of the parties in processing the grievances have a considerable effect on the next negotiating session.<sup>53</sup>

There is one set of objectives which I will not discuss in any detail and those are the political objectives. These objectives have received some emphasis lately because of the merger of the AFL and the CIO. George Meany recently said:

It goes without saying that labor unity will provide a more effective instrument for political action. Our major objective is to elect strong liberal majorities to Congress. Thus we can reverse the trend of recent years which has resulted in the enactment of such union-busting legislation as the Federal Taft-Hartley Act and the misnamed state "right-to-work" laws. These laws are a continuing threat to the very existence of unions.<sup>54</sup>

No doubt, both management and union will endeavor to secure legislation they consider favorable to their position and to block what they consider to be unsound. Legislative changes, as well as changes in political climate, will in turn affect other objectives of the parties.<sup>55</sup>

52. Ryder, *Some Concepts Concerning Grievance Procedure*, 7 LAB. L.J. 15 (1956).

53. Lens, *Meaning of the Grievance Procedure*, HARV. BUS. REV., Nov. 1948, p. 713; Shulman, *Reason, Contract and Law in Labor Relations*, 68 HARV. L. REV. 999 (1955).

54. Meany, *On The Threshold of AFL-CIO Unity in the United States*, St. Louis Labor Tribune, Dec. 1, 1955, p. 1, col. 6.

55. In some instances unions endeavor to use collective bargaining to produce legislative changes. The UAW report on the guaranteed annual wage states:

The fourth principle endorsed by the Convention provides that:

Guaranteed payments should be integrated with state unemployment compensation benefits so that employers can reduce their liabilities by effectively working toward the improvement of the state laws.

. . . .  
There is the same kind of lag in unemployment compensation behind wages and living costs as there was in the case of pensions. Our efforts to improve pensions on the legislative front were fruitless until we negotiated collective bargaining pension plans which provided for integration with federal pensions.

Once we had done that, the corporations became actively interested in joining with us instead of blocking our efforts to raise the level of federal pensions.

UAW (CIO), *Progress Report on UAW'S Annual Wage Program*, 33 L.R.R.M. 21 (1953).

## OBJECTIVES AND THE STRIKE

From time to time in this discussion we have referred to the strike. In the last decade or so, there have been some general trends in strikes which should be noted. Formerly, a great many strikes were of an emotional and precipitous nature. Some strikes occurred without anybody really knowing what their causes were. I can remember some strikes in the coal mines in the Hocking Valley which were called by the simple device of a loader leaving the face of the mine, picking up his water pail and spilling some water as he passed other men. The spilling of water meant a walkout. The other men would pick up their pails and spill water as they passed still other men. Sometimes when everybody got to the tipple it was difficult to find out what it was all about. Not a single word would have been spoken regarding the reason for the walkout. There are still some strikes of a precipitous nature, particularly "wildcats."<sup>56</sup> There are also some strikes that appear to be almost inevitable. Their occurrence seems essential to clear the air, or to serve some purpose other than to force a settlement of the issues in dispute.<sup>57</sup>

Where there is an established bargaining relationship, there is a tendency for the parties to look upon the strike as an economic power weapon of dangerous potential which must be used only after a careful calculation as to the possibilities of its achieving the desired goals. Consideration is also given to the question of whether or not the achievement of those goals is worth the risk of the dangers involved in the strike.<sup>58</sup> An official strike arising out of the bargaining relationship ordinarily involves both a decision by the union to call the strike and a decision by management to take the strike.<sup>59</sup> Prior to

56. GOULDNER, WILDCAT STRIKE (1954); Sayles, *Wildcat Strikes*, HARV. BUS. REV., Nov.-Dec. 1954, pp. 42-51.

57. Strikes cannot always be explained in terms of calculations of the practical economist. There have been strikes to strengthen the solidarity of a union or to improve or alter an internal situation within a union, or even to satisfy a whim, idea, prejudice, emotion, or conviction of a leader or a faction.

Senate Labor & Public Welfare Committee, *Factors in Successful Collective Bargaining*, 82d Cong., 1st Sess. 6 (Comm. print 1951). DRUCKER, THE NEW SOCIETY 118-19 (1950) points out that in a number of strikes in 1946 the apparent issues could have been settled without a strike, but:

The real purpose of the strikes was to display the power of the union to its own members and to the public, to overcome strife and conflicts within the union, or to beat a rival union. The strike as "symbolic violence" becomes an end in itself.

See also KNOWLES, STRIKES (1952); STAGNER, THE PSYCHOLOGY OF INDUSTRIAL CONFLICT 414-48 (1946).

58. CHAMBERLAIN & SCHILLING, THE IMPACT OF STRIKES (1954); Ross, *The Natural History of the Strike*, in INDUSTRIAL CONFLICT 23 (Kornhauser, Dubin & Ross eds. 1954).

59. There are, of course, some official strikes, such as jurisdictional and internal political strikes, which are called even though management does not make a decision to take a strike. Also in some situations, there are lockouts or work stoppages where it can be debated whether the stoppage is a strike or a lockout. The use of the lockout by employers as an economic weapon (*i.e.*, excluding its

the occurrence of most official strikes there is a period of uncertainty during which the parties endeavor to determine how seriously the other is facing the strike possibility. The union usually takes a strike vote and informs management that a strike will occur if certain concessions are not made. Management will sometimes state that it has seriously considered the matter and while not wanting a strike will take one rather than make certain concessions. The threat of a strike or the statement of a willingness to take a strike is far different from the actual occurrence of the strike. At this stage there is often a period of bluffing and of psychological pressures calculated to produce changes in positions or to lead to a discovery of some adjustment that allows one or both parties to rationalize the results of a settlement. The history of the relationship of the parties plays a crucial role during this unsettled period which is pregnant with strike possibilities. If both parties mean what they say, and each knows this from past relations, a strike is likely to occur only where the issues are clear and the parties have thoroughly explored the alternatives. On the other hand, if, in the past, the parties' words and actions have been inconsistent or their attitudes have been of a blustering or indecisive nature, the possibilities of a precipitous strike are greater.

Before a strike occurs, there is a point where the parties re-examine the issue or issues, and sometimes they shift emphasis on the issues at stake. The reason for this is that each wants to be on a ground which it feels will seem soundest to the employees and to the public. For instance, if a union is demanding the elimination of a management rights clause and a wage increase, it will tend to shift to the wage increase as the strike issue. Also at this point, the parties tend to "render all the fat" out of their positions.<sup>60</sup> If they do not, they are

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use as an anti-union weapon) is an unsettled question. In *Morand Bros. Beverage Co. v. NLRB*, 190 F.2d 576, 582 (7th Cir. 1951) the court said, "the lockout should be recognized for what it actually is, *i.e.*, the employer's means of exerting economic pressure on the union, a corollary of the union's right to strike." On remand the NLRB disagreed with the court. 99 N.L.R.B. 1448 (1952). See Littler, *The Right to Lockout*, in A.B.A. PROCEEDINGS OF THE SECTION OF LABOR RELATIONS 4 (1952); Petro, *The NLRB On Lockouts*, 3 LAB. L.J. 659, 739 (1952). Subsequently, on a second appeal in the *Morand* case, the court criticized the NLRB for not following "the law of the case." *Morand Bros. Beverage Co. v. NLRB*, 204 F.2d 529, 532 (7th Cir. 1953). In a later case the NLRB approved the action of one employer who belonged to a multiple-employer bargaining unit temporarily locking out its employees after the union had struck other members of the unit. *Buffalo Linen Supply Co.*, 109 N.L.R.B. 447 (1954). The majority clearly stated, however, that the decision "does not establish that the employer lockout is the corollary of the employees' statutory right to strike." *Id.* at 448. The Board based its position on the reasoning of *Leonard v. NLRB*, 205 F.2d 355 (9th Cir. 1953) which justified the temporary lockout as a means of protecting the nonstruck employers of the association from the whipsawing tactics of the union. The Court of Appeals for the Second Circuit did not agree with the NLRB, however, and set aside the board's order. *Local 449, Teamsters Union, AFL v. NLRB* (1956). The court stated that it thought the reasoning in the *Leonard* case was erroneous.

60. There are differences of opinion as to how much the pre-strike offers

setting the stage for subsequent strikes. Here is an example. An employer offers an increase of 3 cents per hour, but he knows that if there is a strike he will give 5 cents to settle the strike. On the second or third day of the strike he gives the 5 cent increase and the strike is settled. From then on, the union is never sure that the final offer is meaningful and it will be inclined to strike just to see if more could not be produced shortly. The same sort of relative position occurs where the union calls a strike it has to abandon on short order. Of course, unions have a more difficult problem. The expectations of the members might be of such a nature, either because they have been overly whetted by the leaders or for other reasons, that the negotiators are out on a limb, and the strike, although unwise, is unavoidable. Calculated strikes are considered in terms of the potential length of the strike. If one party has sufficient power to be sure the strike will be won almost immediately, that is within a week or so, the potentials of the strike are not forbidding to that party. Increasingly, the parties are realizing that if a strike cannot be settled within a week or so of its commencement, then the parties must be prepared for a strike of considerable duration.

Once a strike occurs, the aims of the parties become much different from pure negotiating aims. Sometimes the objectives become the winning of the strike even at the risk of annihilating one of the parties—that is, even at the risk of forcing a company out of business or breaking a union. In the process of the strike, the union usually has two immediate goals. The first is to place the maximum economic pressure on the employer—to cut him off from his suppliers and his customers, and to prevent him from doing business of any kind.<sup>61</sup> This is done by the picket line, the boycott, the “hot cargo” clause, and other devices. The second is to build up and maintain the morale of the members so that the strike will be fully supported and so that there will be no inclination on the part of the employee-members to go back to work.<sup>62</sup> This calls for strike benefits and other measures to meet the economic needs of the employees, and for the building up of the esprit de corps of the members by picket line involvement and by convincing them of the “rightness” of the strike. Attacks on the employer as being vicious, calloused, union-busting, or as being an ex-

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should really be “final” positions. There are some who believe that certain concessions should be retained until after the strike occurs and then used for face-saving purposes in reaching a settlement. Helmer, *When Management Faces a Strike*, 32 PERSONNEL 66 (1955). There is a distinction between reserving a specific matter solely for settlement purposes as against having alternate plans as potential bases for settlement or developing a flexible position which will enable one to adjust to developments resulting from the strike. See PETERS, *STRATEGY AND TACTICS IN LABOR NEGOTIATIONS* (1955); Lind, *How to Handle Crisis Bargaining*, 31 PERSONNEL 151 (1954).

61. Petro, *Picketing and Labor Strategy*, 2 LAB. L.J. 243, 312 (1951).

62. STEUBEN, *STRIKE STRATEGY* (1950).



plotting profiteer are not uncommon. Violence frequently develops, particularly if the employer continues to operate.

The company's objectives during the strike are dependent upon one basic decision—whether it will try to operate or whether it will close its operations and wait out the strike. A number of factors determine the decision. Some of them are: the nature of the issues, whether they are employee-related issues or union-institutional-related issues; the morale of the employees, whether they actively support the strike or whether they simply go along with it; and the nature of the employer's business. If the customers can satisfy their needs elsewhere there will be little customer pressure to settle the strike, but the employer might permanently lose some customers to other sources. On the other hand, a strike which entirely cuts off the needs of the customers, such as a city-wide drayage strike, creates tremendous customer pressure on the employer to settle the strike at any price or to operate at any price. If the business is seasonal, a strike at the peak of the season calls for different responses from those needed in a strike during a slack period. One of the greatest deterrents to operating the business in the face of a strike is the possibility of violence. As long as the business does not operate, the union feels that the odds are in its favor, and that eventually the company will succumb, providing that at the same time there is not too much pressure by the employees to settle the strike so that they can return to work. On the other hand, if the business is not entirely closed or if it successfully commences operations, the odds are that the strike will not succeed. Consequently, when a business continues or resumes operations, the union reacts as if it sees defeat. This situation of a company operating in face of a strike presents the most difficult one in the power relationship between a union and a company. It is here, of course, that the conflict spills most vigorously over into the courts and the NLRB. Out of this conflict a solution must be found. The lawyer can and should be useful in finding a solution even though he is in a sense a partisan in the conflict. The reasons are that the lawyers of the two parties constitute one of the few lines of communication between the parties, and the lawyers in their professional capacities can talk about potential areas of settlement that the parties themselves would not, and sometimes could not, dare talk about. In this connection, some of the elements of settlement should be noted. Except for precipitous strikes and for strikes calculated to produce immediate results, it is not uncommon for the parties to have no communication with each other for a week or so. Then contact is usually made through the Federal Mediation and Conciliation Service. Of course, many strikes are averted through the assistance of a skillful conciliator who can propose alternatives the parties had not considered, clarify confusion between the parties, and in other ways facili-

tate agreement. While he has no compulsory powers, a conciliator often provides a basis for finding a solution to the dispute.

If conciliation does not produce a settlement, then some other approach must be made. The settlement of a lengthy strike is seldom the white flag of complete capitulation. More likely the settlement is reached through an oblique approach. This does not necessarily mean there must be a compromise on the basic issues or that the predominant power is not recognized. These factors are muted to some degree, and some method is reached so that operations can be resumed constructively. Reaching an oblique settlement often requires considerable ingenuity.<sup>63</sup> Experienced lawyers can, by working together, often develop the basis of settlement.

### CONCLUSION

In discussing the nature of the conflicts that can arise between management and unions, I do not intend in any way to imply that every effort should not be made to develop healthy and harmonious relationships. Differences of opinion there will always be. The challenge is to resolve these differences intelligently and without unnecessary strife. A realization of the dangers of strikes and open warfare may itself be a substantial deterrent to their occurrence. A perceptive realism is most helpful in establishing a solid foundation for healthy union-management relations.

One of the most frequent condemnations about lawyers in labor relations is the charge that lawyers do not really understand what is involved, and that their advice leads either to unnecessary conflict or to unworkable agreements. Unfortunately, there are enough instances where this is true, that we cannot make a blanket denial of the charge. The lawyer who undertakes work in labor relations assumes great responsibilities, because anything he does or advises can have ramifications far beyond a mere answer to a legal question. As said by Judge Wyzanski, the lawyer "invariably advises his client upon not only what is permissible but also what is desirable. And it is in the public interest that the lawyer should regard himself as more than predictor [sic] of legal consequences. His duty to society as well as to his client involves many relevant social, economic, political, and philosophical considerations."<sup>64</sup>

We lawyers in all our work emphasize the importance of prepara-

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63. Very often a strike will be settled on issues which were not present at the time the strike commenced. For instance, if there had been violence during the strike, the reinstatement of those participating in the violence might become a basis of settlement. Similarly, if either party commenced litigation or NLRB proceedings after the commencement of the strike, the withdrawal of such proceedings might become a basis of settlement.

64. *United States v. United Shoe Mach. Corp.*, 89 F. Supp. 357, 359 (D. Mass. 1950).

tion, of getting and knowing all facts and data relevant to the problem before us. In this respect the labor relations field is more difficult than some other fields of law. The preparation must include the acquiring and understanding and knowledge of many dynamic elements involved in union-management relations, such as the economic, psychological, political, and social factors. Unfortunately, this kind of understanding and knowledge cannot be found in the books on short notice. It takes time, diligence, and experience.<sup>65</sup> Indeed, any lawyer who undertakes union-management problems without such an adequate preparation runs a great risk of injuring his client, himself, and the profession.<sup>66</sup> On the other hand, the acquisition of such understanding and knowledge, and the development of the ability to advise management or unions soundly, present a stimulating challenge which many lawyers have met most successfully.<sup>67</sup> Such lawyers have made admirable contributions to the establishment of sound and constructive union-management relations.

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65. Wells, *Negotiation of Collective Bargaining Contracts from the Standpoint of the Union*, in READINGS ON LABOR LAW 122 (Reynard ed. 1955).

66. An all too common situation where a lawyer is called into negotiations is where he demonstrates his legal knowledge and his rhetorical powers of argument. He ties the other side in knots. His client may even be pleased about the way he makes an argument the other side cannot answer. Perhaps the representatives of the other side cannot answer the argument, but their position may become solidified so that virtually nothing will alter it. They may be snowed under, but they will wait until the snow melts. CARPENTER, EMPLOYERS' ASSOCIATIONS AND COLLECTIVE BARGAINING IN NEW YORK CITY 181 (1950). Carpenter also states, "Everyone is agreed that some of the most successful representatives of employers' associations and of labor unions in New York City are lawyers. The weight of the evidence, however, is against the use of legally trained men, except for advice on points of law, at any stage of group bargaining activities." *Id.* at 330 n.27. See also Ching & Stavisky, *Good Bargaining is Good Business*, *Nation's Business*, Dec. 1949, p. 41.

67. Kelley, *Collective Bargaining*, MICH. ST. B.J., Feb. 1951, pp. 14, 18-19 states:

The presence of legal counsel during negotiations is not universally accepted. We prefer to have him with us during all of our negotiating sessions. . . . Some of the advantages of having counsel present are these: Being an outside person, he often has a fresh point of view. Then, too, he usually has had experience with other unions and other companies, which can be very useful and helpful during the period of negotiations. This is important because the union international representatives spend most of their time negotiating. Since counsel has often negotiated many different contracts, he can give his client the benefit of broader experience. Thus, counsel is often in a position to evaluate proposals in terms of what others are doing better than the company representatives can, themselves. He will have an objectiveness often difficult for the management committee to maintain.

See also Fuller, Caples & Haggerty, *Panel Discussions—The Role of the Lawyer in Labor Relations*, in A.B.A. PROCEEDINGS OF THE SECTION OF LABOR RELATIONS 23-32 (1954).