New Era of Collective Bargaining and Mediation: 1980s and Since

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Introduction

Collective bargaining experienced a number of dramatic changes during the 20th century. A major expansions of collective bargaining during the first world war was followed by a sharp decline in the 1920s. Encouraging legislation during the 1930s depression led to major growth with further encouragement during world war two. Following the war, continued expansion and stability drew support from growing economic conditions, extending for thirty years. This latter period, often referred to as the golden era of collective bargaining, began unravelling in the late 1970s and was forced into a major decline in private sector collective bargaining during the 1980s.

Throughout this 20th century history of collective bargaining, mediators occupied the catbird seat at the bargaining table, not as an objective observer, but charged with the responsibility of making the collective bargaining process work. That responsibility required mediators to make adjustments to deal with new circumstance internal and external to collective bargaining.

This paper focuses on the adjustments made by FMCS mediators in response to changes beginning in the late 1970 as they witnessed the decline of collective bargaining and union membership. But, first, to place the decline in context, a review of collective bargaining (and mediation) during the 20th century is necessary.

Brief History of Collective Bargaining

Prior to the First World War, courts labelled trade unions as conspiracies in restraint of trade, routinely issued injunctions prohibiting strikes; neither custom nor legislation recognized any rights of workers or unions. Since property rights were supreme, the police or the army violently enforced injunctions against unions and workers in the interest of protecting property. Where strikes occurred, they were frequently violent. The two industries most related to industrialization, coal mining and railroading, provided dramatic evidence of hostility between industry and unionization.

Wartime Growth: The war effort between 1917 and 1919 witnessed a major change in the fortunes of trade unions and collective bargaining. The tremendous growth in war related production and the need for uninterrupted war products

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required co-operation between labor and management. With the government acting as the enforcer, trade unions were allowed to form and negotiate collective bargaining agreements. Government mediation services and wartime agencies responsible for production helped diminish strikes to near zero while union membership soared to unheard of levels, and collective bargaining agreements became commonplace in the war industry. One million union members in 1900 grew to 5 million during the war.

When the war ended, employers successfully returned labor management relations to prewar conditions. The slowdown of the economy as it adjusted to peacetime allowed employers to cut wages and refuse to renew collective bargaining agreements. Ironically, the enormous number of strikes that followed played well with an employer strategy of depicting unions as foreign, socialistic and anti-American. Union membership declined throughout the 1920s, never reaching the wartime high until the New Deal legislation in the 1930s.

New Deal Labor Law: Legislation and administrative action in the 1930s ushered in a growth in union membership and collective bargaining that dwarfed the earlier wartime boom. New legislation limited the use of injunctions against unions, allowed employee elections to select union representation for collective bargaining, and limited management activities that interfered with union activities and collective bargaining. The resulting growth in union membership was remarkable. By 1935 membership stood at 3.5 million, or 13% of the work force and by 1940 membership reached 9 million, or 27%. The use of mediation grew with the expansion of collective bargaining. The primary source of mediation was the United States Conciliation Service (USCS), the predecessor to FMCS.

World War II: During World War II, membership and collective bargaining continued to expand with production requirements greatly exceeding the demands of the earlier war. By the war’s end, union membership reached an all time high of 40 million or 35% of the work force. The growth of collective bargaining, accompanied by amazingly few strikes, was aided by an expanded mediation service and a ‘no strike pledge’ by trade unions.

When the war ended, the transition to a peacetime economy was difficult. The year following the war saw more major strikes than any time before or since in U.S. history. During the winter and spring of 1945-46, five major industries were on strike at the same time. With five million workers idled in steel, auto, meat-packing, coal mining and electrical manufacturing, 120,000 man-days were lost to workstoppages. President Truman, like Wilson had in 1920, called a White House conference of top labor and management representatives to seek some accommodation in the public interest. Truman’s conference produced only slightly better results than President Wilson’s with an agreement recommending improvements to the government’s mediation service.

Labor Law Amendment: In Spring 1947, a newly elected Republican Congress enacted a major amendment to the labor management relations act. The amendment created FMCS, prohibited some union activities, and provided a process for dealing with national emergency disputes.

The new labor law promised to oversee collective bargaining even-handedly between labor and management. The calm, good times of the 1950s provided a period for labor and management to work out relationships and useful practices to implement the new law in ways that served their separate interests. The collective bargaining practices and patterns evolved in the 1950s would hold reasonably well through the 1970s. A major practice, based on the ever rising U.S. economy, allowed unions to demand improvements in working conditions, wages and benefits. As the practice evolved, management resisted union demands, but ultimately, over a thirty-year period, management gave in to many improvements demanded by unions. These included benefits unheard of earlier: vacation, holiday, sick leave, health and life insurance, premium pay for night and weekend work, rest breaks and paid lunch periods, to name just a few that raised the standard of living and helped create the middle class. The rising economy allowed management to pass the employment costs on to their customers, just as their competition was able to do.

Collective bargaining from the 1950s to the 80s was unapologetically traditional and adversarial, since both sides possessed nearly equal skills and the strength to push their point-of-view. They were well-matched adversaries. During earlier periods, they bargained adversarialily, but not as equals. During the two world wars and following the new labor law in the 30s, unions experience greater power with government assistance.

Background of Change

In the late 1970s, as inflation pushed prices higher, unions demanded higher wage to keep pace with rising costs. Some employers, particularly in the manufacturing sector, sought relief by moving their operation south or off shore where costs were lower and unions nonexistent.

With the advent of the 1980s, foreign competition and globilization increased its pinch on the U.S. economy as its technological and productivity advantages were eroded by foreign advancements. As management lost the ability to pass labor costs on to customers, labor costs were identified as the villain. When the pro-business Reagan Administration came to power, a paradigm shift began.

The Reagan Administration began efforts to fight inflation with a tough period of economic recession that drove up unemployment and created uncertainty. Next, an ill-advised strike by air traffic controllers provided Reagan the opportunity to fire and replace thousands of strikers. This dramatic and unprecedented move by Reagan, a former head of the actors union, won praise from the travelling public and the business community. But more importantly, it depicted unions as a selfish interest group that had become too strong, as <u>the</u> problem and not part of the solution to regaining the nation's competitive edge. Practices that had been outside the norm for over thirty years became legitimate. If the President could replace strikers, why shouldn't corporations aggressively take on unions in their drive to restore the nations competitive advantage. The replacement of the Air Traiffic Strikers by Reagan became a defining moment in collective bargaining since no federal employee striker had ever been permanently replaced until Reagan did it on a massive scale.

New Collective Bargaining Paradigm

As these new circumstances took hold, a significant alteration in the balance of power occurred. The preceeding thirty years had evolve a nearly equal balance of power, that at some points favored one party over the other, but generally, bargains were struck between equally powerful parties. Unions had pushed for higher wages and more benefits: management resisted with the knowledge that costs could be pass on to the customer. Strikes did occurred when one side or the other miscalculated the other sides determination.

The 1980s brought an attack on hard-won union gains and a significant decline in union membership. Unionized plants were closed, labor agreements saw wage and benefit reductions, strikes were lost before starting, and bargaining featured union concessions in a hope of achieving job security in the face of massive lay-offs.

Adding to union troubles, Reagan appointees to the National Labor Relations Board (NLRB) shifted collective bargaining rules to significantly favor management in a rush to support free enterprise. During the 1980s, union membership declined from 23% to 16% of the work force, from 20 to 16 million. As this decline continued during the 1990s, union staff reductions and membership services declined as well, forcing union mergers and a defensive union mentality.

Over the years, based on their responsibility to help collective bargaining work, mediators often had made adjustments to deal with new circumstance, primarily economic, that impacted collective bargaining. During the 1930s depression when collective bargaining was first encouraged by law, mediators focused on training the parties on how to bargain. During the second world war, mediators learned to mediate with the threat of striking almost completely absent, wage controls in place, and a war labor board eager to up-stage mediation by ordering settlements. With the war-time system gone, mediators faced an extraordinary number of strikes and bargainers inexperienced in free collective bargaining, not having experienced it throughout the war. That was followed by wage and price controls during the Korean War and wage-price guideline in the 60s and 70s. The 60s also witnessed union membership unrest in the form of rejecting agreements negotiated by union bargaining teams. Also during the 70s, many public employees gained collective bargaining rights with a prohibition on striking, a limited bargaining scope, and fact-finding and interest arbitration that competed with mediation. To round out this long but incomplete list, a new statute in the 70s gave bargaining rights in the health care industry with a unique strike notice provision and a board of inquiry feature.

While each of these required mediator flexibility and adjustments, they were short-lived compared with the nearly 30 year decline of collective bargaining and shrinkage of union membership. The current period of decline now rivals in length the golden years of collective bargaining from World War ll until the 1980s.

Post Reagan Collective Bargaining

Here are some characteristics of the present collective bargaining era:

* Most employers can’t withstand a strike since their customers and suppliers won’t (can’t) wait for a strike to be resolved; therefore, employers readily consider the option of replacing strikers.

* Previously employers made few to no demands. Now they make the majority of demands, and the demands often involve reductions.

* Previously, the Union was the moving party; they were willing to take risks by confrontation and striking.

* Now the employer is the risk taker, confronter, and aggressor in the form of locking-out employees, taking unilateral action, forcing an issue, moving work elsewhere, and using arbitration or litigation to achieve their objectives.

* Parties largely accept the idea that cost settlements are determined or strongly influenced by the employer’s service or product market, ie. Settlement is limited to what management’s market allows.

* Cooperative working relations are the goal of some employers.

* Cooperative working relations are viewed by some unions as necessary.

Post Reagan Mediation Scene

Here are some reflections made by mediators who mediated before and after the Reagan era:

* Mediators thought 1980s changes were temporary and the pendulum would swing back to more balanced relationship.

* IBB training and IBB facilitation are widely used with good results.

* Mediators have become more problem solvers, than advocates for traditional collective bargaining.

* Previously mediators took the union demands to the employer and attempted to persuade them to meet as much of the union’s demands as they could.

* Now mediators focuses their persuasion on the union, based
on the employer's demands.

* Private sector work has declined; public sector work has grown.

* Training in cooperative relationships has grown: Relationships By Objectives, Partners In Change, and Labor-Management Committees.

* Strikes have decline to such an extent that some mediators have never mediated a strike case.

* Crisis mediation on a deadline has largely been replaced by mediators being used as trained professionals who offer advice, options, and expertise.

* New technology is used extensively: laptops, power point programs, data bases, lesson plans, CD programs, etc.

* Hiring of new mediator emphasizes experience in technology and training, with collective bargaining experience less emphasized.

Summary

The growth of globilization and foreign competition, beginning in the late 70s, impacted the U.S. economy, collective bargaining and the labor movement so dramatically that a thirty-year patern of private sector collective bargaining imploded. Mediators, given their role of maintaining peace between labor and management, sought new ways of assisting the parties in their altered relationship.

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