# RECENT DEVELOPMENTS IN BARGAINING PROCEDURES

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This is the first time that I have been in South Bend in 25 years. I recall the last time much too vividly, because I left your fair city in a University of Illinois band uniform one autumn day--completely humbled and humiliated as the result of the strong right arm of Angelo Bertelli. The score that sad day was 49 to 14. It has taken all of these 25 years to convince me to give Notre Dame another try, making sure that the meeting ground was not at the stadium. I am also hopeful that although I trust I shall leave today with humility, it will not be accompanied with humiliation.

I have been asked to speak today on recent developments in bargaining procedures. You may not think that this subject has any relevance to football, but I find that this is not entirely true. From at least the government's viewpoint, certain patterns that have been emerging in collective bargaining have on occasion resulted in the establishment or the maintenance of an effective balance of power between labor and management. Since free collective bargaining as an institution has its best chance of prospering when the parties come to and leave the bargaining table with relatively equal strength, it might have a special meaning here at Notre Dame to conclude that in collective bargaining, as in football, a tie between the parties can be considered an honorable result.

Since I am presently identified with government and the topic that I intend to discuss cannot be divorced from actions which the

Federal Government has taken in the form of National Labor Relations Board decisions, I wish to preface my remarks by stating that nothing that I may say is in any way intended to disparage that sister agency. I also hasten to add that all of my remarks, whether related to the NLRB or not, are entirely my own and do not necessarily reflect the policy of the Federal Mediation and Conciliation Service. I hope you will understand that my allusions to NLRB decisions are for the sole purpose of setting the background for the patterns that are emerging in collective bargaining. I might even say that some of these decisions are responsible for the patterns which have emerged, but I have no intention to either defending or criticizing the decisions themselves.

The reason that references to NLRB decisions cannot be avoided in any discussion on recent developments of consequence in in bargaining patterns is because the NLRB is the umpire in the legal game that has been and is presently being played by the parties who sit at the bargaining table. Not so long ago, the game began when the parties entered the bargaining room and proceeded to engage in the give and take of negotiations over rates of pay, hours of work, and other conditions of employment. However, in recent years, crucial legal considerations in collective bargaining have revolved around who is in the lineup on each side, and it is a present unfortunate fact that you cannot tell the players without a score card.

This is more than a cliche because of the masquerade that is being played on each side of the bargaining table.

This masquerade has been forced upon the employer's side in multi-employer bargaining situations because of the recent NLRB decisions in which it has been held that a union may require an employer who has been a member of a traditional multi-employer bargaining unit to bargain on a single employer basis with the union, provided the union makes a timely and unequivocal demand for single employer bargaining. In the court tests to date on this line of decisions, the Board has been upheld. I appreciate that multi-employer bargaining is not a prevalant form of bargaining here in the Midwest, but I assure you that this is not true on the West Coast, where I have had most of my labor relations experience. Out there, multi-employer bargaining is not only widespread, but I think it can be safely said that it has led to a great deal of labor-management stability, and has been pointed to as a desirable form of bargaining that might well be emulated in other areas of the country. These NLRB decisions which permit a union to decimate a multi-employer bargaining unit have had serious repercussions.

No longer may members of an association wear the association uniform in negotiations if the Union does not desire them to do so. However, there is nothing to prevent Company A, who is required by the union to bargain on a single employer basis, from giving powers of attorney to the people who used to be on the bargaining team for the association, even though these other persons in most instances are employees of other companies who were members of the former multi-employer bargaining unit. Similarly, each of the other companies may give comparable powers of attorney to the old bargaining team. All of this results in each member of the bargaining team having as many uniforms as there are companies

and these people continuing to bargain on a multi-employer basis in fact, but not in form.

The score card in this kind of bargaining becomes terribly important, particularly in light of the American Shipbuilding Supreme Court decision of ~~1960~~ 1965, in which it was held that an employer may lawfully lock out his employees to support his bargaining position when an impasse in negotiations has been reached. The Court took care in holding aside the question as to whether or not an employer could lock out before an impasse is reached. Keeping this decision in mind, it becomes vital in the many-uniformed employer bargaining situation that I have just described for the employers to make sure that each of the uniforms has been worn in negotiations, and to conform their negotiations in such a way as to be able to demonstrate that an impasse has been reached while wearing each of these uniforms. Were it otherwise, and were the union to strike one of the employers, the other employers might not have a lawful right to lock out their employees, and--let us not kid ourselves--the desire of a union to break up a multi-employer bargaining unit is most often related to its hope of whipsawing one employer against another, just as the most important reason generally for employers to engage in multi-employer bargaining is to be able to take common action and to prevent the whipsawing of one employer against another.

It seems to me that this kind of charade, to require employers to resort to the device of cross-powers of attorney and other ritualistic legalisms to perpetuate in effect a multi-employer bargaining unit that they believe to be the best form of bargaining from their standpoint, is senseless. It seems reasonable to me that multi-employer

bargaining should be permitted to fly under that flag, if that is what the employers desire, rather than to force them to assume poses as representatives of entities of which they are not in fact.

Now, let us turn our attention to the other side of the bargaining table, for similar uniform changing has been going on there as well in the name of coordinated or coalition bargaining. This new pattern of bargaining has incited such emotions that labor and management cannot even agree upon the semantics. In certain high temples of management, this form of bargaining is only referred to as "coalition bargaining" with the connotation of conspiracy attached to it. In fact, to be sure that this connotation is not missed, one representative of a large management association insists upon calling it "coalition conspiratorial bargaining." On the other hand, representatives of labor consistently call this new development in bargaining technique "coordinated bargaining"--with the implication that coordination in bargaining is no more sinful than motherhood--motherhood that is, under the proper circumstances. To maintin the objectivity which is required or at least professed by Government representatives, I hope that you will forgive my using the terms "coalition" and "coordinated" bargaining interchangeably, not indicating by the use of either of them the legitimacy or illegitimacy of the new offspring.

Simply stated, coordinated bargaining consists of a group of unions coordinating their efforts to achieve a common collective bargaining result in negotiations with a single employer notwithstanding the fact that each of the constituent unions to this coordinated group represents distinctly separate collective bargaining units. Technically

speaking, it is not multi-union bargaining. It is the union counterpart to the cross-power of attorney technique which I have just described in the multi-employer example.

Let us take the 1966 General Electric coordinated bargaining history as a "for instance." Each of 11 affiliated unions of the AFL-CIO represents certain bargaining units of GE employees. Under the auspices of the AFL-CIO, these 11 unions organized themselves into a coordinated bargaining group to achieve common bargaining goals in the 1966 negotiations with GE. The Company was first asked to agree to bargain with this group on a multi-union basis, and the Company promptly refused to do so. Then, the IUE, the union representing more of the GE employees than any of the other 10, designated representatives of the other 10 unions to act as part of its--the IUE--negotiating team. Each of the other 10 unions made the same designations as did the IUE. Thus, we had each of the 11 unions wearing 11 uniforms alternately.

The Company argued that this was all a sham and a fraud--that the unions had achieved in the guise of coalition bargaining what they could not legally achieve in the name of multi-union bargaining. I suspect that the Company will find it extremely difficult to substantiate these allegations with evidence in the pending NLRB action. One of the problems could be that what is the fact and what can be proved to be the fact are two distincly different things.

Let us first look at the fondest hopes of unions and the harshest predictions of management concerning the virtues and dangers of coalition bargaining. Mr. Jack Conway, Executive Director of the Industrial Union Department of the AFL-CIO, predicts that coordinated

bargaining will involve the entire resources and the commitment of the labor movement in negotiations with a single employer where a basic issue is at stake. Mr. Francis O'Connell, Director of Industrial Relations of Olin Mathieson Chemical Corporation, who is here today, has characterized coalition bargaining as "the gravest threat in recent years to industrial peace." The fact of the matter is that neither Mr. Conway's nor Mr. O'Connell's predictions has as yet proved to be even close to the mark.

The results of the General Electric settlement in and of themselves demonstrate that coalition bargaining does not per se obtain anywhere near all the goals which a group of unions seek in negotiations with an employer, nor does this kind of bargaining lead to a breakdown in labor-management stability. It can fairly be said, I think, that the traditional bargaining technique of General Electric--to make an original offer to the Union and agree to rearrange the offer, but not to increase it--was badly bent, but not completely broken in the 1966 negotiations. While there is no question but that the final settlement was higher on a monthly pro-rata cost basis than was the original General Electric offer, it can be said with equal accuracy that the unions failed to achieve many of their objectives, one of the principal ones being to incorporate comprehensive arbitration provisions in their contracts. There is also the imponderable question as to whether General Electric may not have made its original offer higher--knowing that it faced coalition bargaining--than it otherwise would have made. No one would ever expect GE to admit that its offer was higher in the light of these circumstances even if it were true, but the possibility that this may have been the case should not be discounted.

There is an amusing sequel to the IUE-GE settlement. You will remember that GE refused to permit representatives of labor unions other than the IUE to be present in the IUE negotiations except on the basis that they were considered to be a part of the IUE negotiating team. Yet, after the IUE settlement, GE took the position that the other unions were morally committed to the same settlement as IUE's because these representatives were present in the IUE negotiations. Somewhere I sense an inconsistency in their official position with their protestation of moral commitments.

Before leaving the GE negotiations, I think it should be noted that Abe Raskin of the New York Times recently observed that GE practiced what he termed "a species of coalition bargaining in reverse." He explained that by this he meant that the traditional GE bargaining technique was to require every other union representing its employers to settle on essentially the same pattern as the settlement it made with the first union.

Let me take as another highly visible example of coordinated bargaining the effort by the IUD in negotiations with Union Carbide. To the extent that GE resisted coordinated bargaining, Union Carbide constituted the Rock of Gibralter. One of the major goals that the unions that coordinated their efforts had in the Union Carbide negotiations was to achieve a common termination date, so that in the next round of negotiations the full force of their bargaining strength could be brought against the Company at one time. On any realistic appraisal, it must be said that the coordinated bargaining effort of the unions with Union Carbide was almost a complete failure.

From our own institutional standpoint, coordinated bargaining has proved to be a most difficult phenomenon in mediation efforts. In some situations, an international union is determined to maintain a common front with other international unions and to resist bargaining on a single plant basis, while certain local union officials are simultaneously begging our mediators to call local bargaining sessions. This dilemma as to whether or not to satisfy the desires of the international officials or the local union officials can be very troublesome. Suffice it to say that we have not in the Federal Mediation and Conciliation Service found any ready answer to this dilemma. So far, we have exercised our best judgment on a case-to-case basis and probably will continue to follow the "seat of the pants" policy for quite some time as these situations arise.

I believe that the unions in propagandizing the value of coordinated bargaining and managements in propagandizing its dangers suffer from the same fallacious premise--namely, that a combination of unions is always stronger than the strongest union within the coalition. This simply is not necessarily so. The coalition of unions, it seems to me, can--in as many instances as not--result in an evening out of bargaining strength as among the participating unions, and it is just as likely that the weaker of these unions may pull the stronger unions down insofar as overall bargaining strength is concerned as the strong unions may bring the weak unions up. To put it in more academic terms, as Professor Arnold Weber of the University of Chicago stated in his excellent article Stability and Change in the Structure of Collective Bargaining, "Each group will press for, or acquiesce in, the expansion

of the worker alliance as long as the rate of substitution between the gains derived from the increment to bargaining power are greater than the perceived losses associated with the denial of autonomy in decision making."

May I say parenthetically that when my boss, Bill Simkin, read that statement, he said as only Bill could say it, "That's a fancy way of putting what a union guy would simply say--We'll stick with this so long as there's more to gain than there is to lose."

There is no reason that coalition bargaining should be more successful in terms of labor gains than multi-employer bargaining has been in benefiting management. It has been accurately pointed out by a representative of a large West Coast multi-employer association that at some point, depending upon the facts and circumstances of a given situation, an employer association decreases in effectiveness as it increases in size, and that what can be accomplished in the way of solidarity and cohesiveness with six employers may be extremely difficult with 16 employers and impossible with 60 employers. This is no less true in coordinated bargaining on the union's side. Actually, when it is recognized that a labor organization is a political organism which must be responsible to the desires of union membership, it is infinitely more difficult for international unions in a coordinated bargaining effort to maintain the cohesiveness vis a vis the employer than it is for employers who are not political in nature to maintain a common front in negotiations.

To date, it appears to me that coalition bargaining has been attempted by the unions in bargaining with employers who have, relatively speaking, a great deal of bargaining strength, and coordinated bargaining has been the union movement's method to reach what it considers to be an equilibrium of bargaining strength. It is somewhat of a paradox, I think, that in industries where the unions can be said to have a whip hand over the employers, multi-union bargaining is sought after by the employers. For example, in both the construction and maritime industries--two industries where employer bargaining strength is not exactly a hallmark--the employers actively seek negotiations on a joint basis with all the unions representing their employees, so that one union will not attempt to obtain a higher settlement than the prior union just obtained. This has been true in the newspaper industry as well, and the failure of the New York newspapers to achieve true multi-union bargaining in their industry has been largely responsible for the labor relations ills that they are now suffering.

As of this moment, an association representing West Coast Shipbuilders is primarily concerned with resisting the demand of the IBEW who decided to break ranks with a Metal Trades Council that had represented all of the maintenance employees in the yards for years. The IBEW is seeking to obtain a higher settlement than all of the remaining constituent unions within the Metal Trades Council have already agreed to. It is fair to conclude that the Shipbuilder Association's major concern is that any higher settlement with the

IBEW would only result in more unions breaking away from the Metal Trades Council, and it is a primary concern of the Association to preserve their traditional multi-union pattern of bargaining and to witness the return of the IBEW to the Metal Trades Council fold.

There is another way that coordinated bargaining can be of benefit to an employer. I know of one company that has three large plants within a radius of less than forty miles, each of them represented by a different international union. One of these plants is part of a multi-plant contract which provides for inter-plant transfers, much at the Company's expense. However, the nearest plant under this multi-plant contract is about one thousand miles away. With coordinated bargaining, the necessary people would be at the bargaining table to work out an inter-plant transfer arrangement among the three neighboring plants. It makes much more sense to let an employee transfer to a plant in his own area where he does not need to move his home, than for the Company to foot a thousand mile moving bill.

Although coordinated bargaining may be in some instances beneficial to the employer, we can be sure that this was not the reason that the technique was instituted by the unions. Moreover, it would be naive to suggest that its sole purpose is the establishment of closer communications among unions that deal with a single employer. I can readily agree with Frank O'Connell that the strategy of coalition bargaining is to enable unions to deal more effectively with a multi-plant employer. And by "more effectively", is meant "more muscle."

The larger question is what this new strategy of coordinated bargaining presages for the future of free collective bargaining. It is, of course, impossible to make long range predictions of the consequences of coalition bargaining. If I were convinced that it were to be as successful in its ultimate objective as the unions hope or wish it, I would be disturbed, because it could escalate many disputes into the "national emergency" category with the concomitant governmental intervention that is antithetical to free collective bargaining. Conversely, to the extent that it results in a balancing of strength between labor and management, the institution of free collective bargaining is a byproduct beneficiary. It is my personal conviction that free collective bargaining is <u>not</u> in immediate danger because of coalition bargaining, primarily because of the inability of the unions to match performance with the objective. In a period when local union memberships are causing international officers so many headaches with their independence, it is hardly practical to expect these memberships to allow another layer of union hierarchy to decide their destiny. Any legislation which would deprive union membership of their present internal autonomy of action--legislation which some have suggested--would in my judgment, not only be undesirable in and of itself, but would also make more immediate the perils that some management circles see in coalition bargaining.

I close by quoting a man knowledgeable in labor relations but uncertain in syntax who in a speech to a group of Kaiser labor

relations people, spoke often of "Mr. Kaiser's subversified industries." He ended as I now end by saying, "I could go on and on, but time don't prevail."

I thank you.