

"Collective Bargaining--A Prognosis"

Address by

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SEMINAR ON COLLECTIVE BARGAINING

Presented by

St. Bonaventure University
Industrial Relations Research Association
for Western New York
Federal Mediation and Conciliation Service

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Allegheny, New York

November 16, 1968

The title assigned to these remarks suggests crystal ball gazing. The last time I looked, the ball was murky. It's likely to be that way for a long time.

However, it is possible to take a good look at the current status of this process we call collective bargaining. With some lack of modesty, I suggest that my particular vantage point is a preferred seat--even if a "hot seat." For almost eight years now, mediator reports of active work in some 7,500 cases per year have moved across my desk--for all industries except railroads and airlines. Either in specific form or in summary, these reports show the strengths and weakness of the bargaining process for the difficult negotiations. Moreover, reports of some 13,000 additional cases per year--situations where no direct mediation is provided--add substantially to the picture.

Let's look first at some features of the large picture--myths and characteristics. Some of the points I will make may seem elementary but they are often ignored.

A first illusion to shatter is the notion that all aspects of bargaining are characterized by conflict. There are vast areas of mutual interest. Sometimes, mutual interest as respects a particular issue is quickly evident to all participants. More often, it has to be discovered--sometimes painfully. The process of discovery--by exchange of ideas and points of view--can be and often is

the essence of good bargaining. On many issues--including some that may have looked difficult--both parties walk away from the bargaining table with a sense of inward satisfaction.

For those issues where there is a real absence of mutual interest, bargaining is an art of compromise or capitulation. Compromise is not necessarily a dirty word. It is an essential part of our democratic legislative process. In the labor relations area, the spectrum of compromise varies all the way from a viable solution--at least for a time--to an answer accepted by one side or the other with great bitterness. Nor is outright capitulation on a particular issue an act of dishonor. It may well be only a sensible exercise of "consent to lose," sometimes within the range of the discovery process noted earlier, or a wise decision to "live to fight another day."

In short, most bargains are a mixture of recognized mutual interest, evident or discovered, along with compromise and capitulation. I like to emphasize the discovery aspects of the process--a pragmatic form of education at its very best.

A second myth about collective bargaining that ought to be punctured is the "equal bargaining power" concept. Who can define equality? The will, strength, intelligence and staying power of an organized group of workers cannot be measured by the same yardsticks as the same words applied to a company. Both the tangible and psychological factors are different. To the extent that comparisons can be made, both parties are constantly striving to enlarge their relative

power factor. Intelligent parties with tremendous power may decide very wisely and consciously not to exercise the power that is available. Other considerations are more important. Events and economic factors completely outside the domain of the bargainers may change the power factors--drastically and quickly. A union that may be very strong vis-a-vis management today may be quite weak three years hence. We can instinctively recognize significant inequality of power at a given moment of time. It is a disquieting thing to witness total capitulation. But I defy anybody who believes he can create lasting equality artificially or that he can quantify it precisely. Relative power factors are not by any means the only ingredients of bargaining. About the most that can be said is that an agreement reached at a particular moment of time does reflect, in some measure, a temporary equation of powers that are exercised or threatened.

A third characteristic of collective bargaining is what I have sometimes called the "yo-yo theory." In a very general way, basically sound relationships can be distinguished from seriously troubled ones. But if almost any single union-management relationship is examined over a long period of time, "ups and downs" are discernable. Sooner or later, a good picture will get very blurred; a poor picture will get better. Labor peace tends to slacken effort. Before anybody quite realizes what has happened, much of the peaceful atmosphere has departed. Conversely, there are enough people who dislike disorder and strife who will band together and work hard to take corrective action.

A fourth characteristic of bargaining is its constantly changing scope. Select almost any labor agreement at random, including choice from among those governing bargaining relationships of long vintage. Compare the current contract with the one in effect twenty years ago. The little books get fatter and fatter. Pension and insurance provisions are now often printed separately. The total current agreement may be a composite of several labor contracts and supplements, thousands of grievance settlements and hundreds of arbitration decisions. Some aspects of this development are deplorable; some are inevitable; some are highly desirable. All I'm suggesting here is that bargaining is a process that almost invariably enlarges its subject matter as a relationship develops. But this enlargement is very uneven. It's not growth at a steady pace. There are sharp rises and plateaus. The growth curve for any one relationship will be different from the one next door. Parenthetically, these differences make it somewhat unrealistic to attempt to formulate any general rules about mandatory subjects for bargaining.

These four characteristics (1) the varying mixtures of mutual interest and compromise, (2) the unrealities of the "equality of bargaining power" concept, (3) the "yo-yo" tendency in most specific continuing relationships, and (4) the generally enlarging scope of bargaining do not represent, by any means, a total catalog. However, they do suggest three even more general characteristics.

The first is that there are few things about bargaining that are static. Change is everywhere.

The second is that the process is highly adaptable in a very diverse economy where adaptability is essential to survival and growth.

The third is that the process stimulates imagination and innovation. It embodies important elements of creation.

The theme of this seminar is "Crisis In Collective Bargaining?" Many of us here today have attended numerous conferences over a long period of years and have read articles and editorials about some labor relations "crisis." The planners of this seminar had the wisdom to put a question mark after the title.

I'd like to suggest the not-very-profound notion that the word "crisis" is almost always misused if it is meant to "cover the waterfront" of all collective bargaining. It may not be misused if it is applied to a specific bargaining relationship at a particular moment of time or if it is applied to a selective problem area at a short interval in history.

Even with these limitations, I'd prefer to try to look at a few aspects of the present and the nearby future that may more aptly be called serious problem areas. Within what should be the limitations of a short speech, this exploration cannot be exhaustive or thorough within the areas that are mentioned. Nor am I attempting to assign any necessary priority by reason of the order of discussion.

One very obvious and serious problem area is bargaining in the public sector. The current situation in New York City is not necessarily typical. Let us hope that we will have few locations and

situations that will rival New York in the fall of 1968. But we would be kidding ourselves to think that this basic problem will "go away." What we are experiencing now is a very rough parallel to the stormy period in the late 1930's and early 1940's when bargaining was getting started in most of the mass production industries. Bargaining in the public sector is having and will continue to have many similar problems of gestation, birth pains and the eccentricities of early youth. If there are any pleasures of conception in this area, they are obscured.

It is equally clear that the two situations (mass production and the public sector) are not comparable in many ways. The differences can't be explored here in depth. To mention only one, the very potent, if sometimes abused, right to strike or lock out in the private sector is a strong stimulus to effective collective bargaining. I would not want to see any serious "tinkering" with these rights.

I do not intend to enter here, in any detail, the current debate about the right to strike in the public sector. I'm not concerned at the moment about the legalities, the illegalities or even the moralities of this issue. I'm not unsympathetic with the problems of the teachers. I was one once and could conceivably be one again. I am suggesting that the teachers in New York are proving now, in the most effective way possible, that an actual strike in the public sector is not the long-run answer to anything. I do not pretend to be wise enough to outline answers. But I do suggest that it is imperative to develop imaginative and workable alternatives.

A second problem area is not totally unrelated to the matter just discussed. It is, of course, the so-called public emergency strike in the private sector. Variouslly defined, it is the situation where the real damage of a strike to the non-contestants becomes unbearable long before the strike serves its intended function to produce an agreement. We have had a considerable amount of experience in this area. We do not yet know all the answers. Nor is it likely that we will ever find any generalized answers. I am personally convinced that imaginative, hard-hitting, and intelligent mediation in all its varied forms remains as the principal tool of government.

A third problem area is the relationship of collective bargaining to inflation. We cannot ignore the fact that some bargains are not in the public interest. No two people in this room are likely to agree on where the borderline is, but I think most of us would agree that there are at least some current excesses. Nor is it enough to say, as many of us believe, that the evils and impracticable aspects of mandatory controls would be worse than the disease. Even as a not-too-avid exponent of economic theory, I do believe that economic forces tend to be self-correcting of abuses--at least in the long run. But the short run can be very damaging. Excessive wage bargains are only one of many inflationary factors, but the "which comes first--the chicken or the egg" argument doesn't really get us anywhere. In short, while I'm undoubtedly more tolerant than many people about this problem, I would not be inclined to try to deny that a real problem exists.

A fourth problem area that can be mentioned here only very briefly is the relationship between collective bargaining and civil rights. We cannot ignore the fact that many bargainers on both sides of the table do not now face up to this problem fully and fairly. On the other side of the picture, it is very easy to forget that many unions and companies made very substantial progress towards real integration and economic equality long before the general public, the lawmakers or even the churches exhibited any effective positive interest. Nor is that labor-management progress confined to the past. It must be accelerated in the future.

So--there are some very real problem areas. Is the collective bargaining process adequate to meet these problems?

A positive answer to that question must necessarily be based, in part, on instinct and on faith.

Some reasonably extensive knowledge of the thousands of persons who sit at bargaining tables in the fifty states strengthens that faith. Bargainers fill the entire spectrum from the venal to the superb. However, it is my considered opinion that bargainers, as a group, fully justify a solid expression of confidence.

Earlier in these remarks, I attempted to outline a few important characteristics of the collective bargaining process. Most of these characteristics very strongly buttress a positive answer. Discovery of mutual interest, willingness and ability to innovate and experiment, ability to recognize and deal with the manifold

variations of a complex society are essential ingredients of problem solving. There is every reason to believe that a proven instrument in meeting many of the difficulties of the past will meet the problems of the present and the future.

Will the bargainers need assistance from outside the ranks of labor and management? It's fairly obvious that I wouldn't be in the position where I am today if I didn't believe that the answer to that question is "Yes."

But it's of the utmost importance to know when and how that outside assistance should be provided. The first essential is to have the common sense and good judgment to stay away from the bargaining table when the parties really need no assistance. Secondly, even when assistance is required, the degree and type of assistance must be tailored to the need--no more than is required. Thirdly, there is a wide range of activity that properly falls within the scope of the word "persuasion." But "persuasion" should not be pursued beyond its proper limits. Finally, a true sense of humility is essential. I do not mean meekness or timidity. Let no one be confused by thinking that these are easy principles to apply. They are not. But ability to apply these precepts determines the realistic value of the assistance.

Will labor and management need laws and rules that go beyond the outer limits of voluntary persuasion? The answer to that question is a bit academic. We already have them and probably will have more. It's beyond the reach of these remarks to attempt to analyze what we have or to predict what we may have. The answers lie, on the one hand, in the hoped-for good judgment of the lawmakers and, on the other hand,

in the demonstrated ability of the bargainers to exercise the process within the reasonable range of its potential.

The days, months, and years ahead in the collective bargaining arena will not be easy. There are serious problem areas, some of which have been noted in these remarks. Collective bargaining is on trial. It has been on trial in the past. It will always be on trial. There are many sound reasons to believe that both the process and the practitioners will meet the challenge.